

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

THURSDAY

MARCH 13, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [13-12423](#)-A-13 VICTOR BENCOMO
JRL-3
VICTOR BENCOMO/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
1-23-14 [[39](#)]

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

2. [13-12433](#)-A-13 MARK SIDLEY
SL-3
SCOTT LYONS/MV

MOTION FOR COMPENSATION FOR
SCOTT LYONS, DEBTOR'S
ATTORNEY(S), FEE: \$4,271.67,
EXPENSES: \$64.99
2-20-14 [[42](#)]

SCOTT LYONS/Atty. for dbt.

No tentative ruling.

3. [13-17735](#)-A-13 ANTONIO/MARIA ROMERO
SL-1
ANTONIO ROMERO/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
1-28-14 [[25](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

The trustee's two grounds for objection are (1) that the plan reduces the secured claim of a Class 2 creditor without having a ruling on a motion to value collateral securing such claim, and (2) that the plan does not properly fund. The court's tentative ruling on this calendar appears to resolve the first issue, unless the respondent creditor appears at the hearing and opposes the debtors' valuation motion.

The trustee indicates that the second issue (plan's funding) may be capable of resolution in the order confirming the plan. The court is inclined to confirm the plan if the trustee and the debtors' attorney are able to resolve this issue on or before the hearing.

If, however, the debtors dispute the trustee's objection that the plan does not fund, then the debtors shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

4. [13-17735](#)-A-13 ANTONIO/MARIA ROMERO
SL-2
ANTONIO ROMERO/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CITY OF CORCORAN
2-26-14 [[37](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$85,483.00

Senior Liens: \$113,324.41

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default

of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

5. [13-16237](#)-A-13 JOSEFINA HURTADO
SL-1
JOSEFINA HURTADO/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
1-29-14 [[44](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

6. [13-17239](#)-A-13 KEVIN/MICHELLE FOX
DRJ-3
KEVIN FOX/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
THE BED STORE
2-10-14 [[30](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$400.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

The right to value non-vehicular collateral in which the creditor has a purchase money security interest is limited to collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of non-vehicular personal property. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the collateral is the amount set forth above.

7. [10-16341](#)-A-13 JOSE GARCIA
HDN-6
JOSE GARCIA/MV
HENRY NUNEZ/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
2-19-14 [[146](#)]

Tentative Ruling

Motion: Loan Modification Approval

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party according to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor and the holder of the loan to be modified to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the court grants the motion and that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

8. [13-17445](#)-A-13 MIGUEL/LETICIA HERNANDEZ
TCS-1
MIGUEL HERNANDEZ/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
2-7-14 [[18](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

9. [13-15146](#)-A-13 BARBARA BRYAN
MHM-2
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.

MOTION TO DISMISS CASE
2-27-14 [[62](#)]

Final Ruling

The case having been dismissed March 6, 2014, this matter is dropped as moot.

10. [13-17562](#)-A-13 SAMMY/ALVA MARTINEZ
UST-1
U.S. TRUSTEE/MV

MOTION AGAINST MELODIE FURTADO
FOR FINES AND PAYMENT TO
DEBTORS PURSUANT TO 11 U.S.C.
SECTION 110
2-6-14 [[42](#)]

ROBIN TUBESING/Atty. for mv.
DISMISSED

Final Ruling

At the request of the moving party, the hearing is continued to April 17, 2014, at 9:00 a.m.

11. [10-11369](#)-A-13 JAMES/SHERRIE ROBERTSON MOTION FOR CONSENT TO ENTER
CJO-1 INTO LOAN MODIFICATION
EVERBANK/MV AGREEMENT
2-27-14 [[47](#)]
- M. ENMARK/Atty. for dbt.
CHRISTINA O/Atty. for mv.

Tentative Ruling

Motion: Loan Modification Approval

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party according to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the court grants the motion and that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

12. [13-16274](#)-A-13 JOSEPH DESROSIERS MOTION TO CONFIRM PLAN
JRL-2 1-28-14 [[62](#)]
JOSEPH DESROSIERS/MV
JERRY LOWE/Atty. for dbt.

Tentative Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors, if any, must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

13. [13-17076](#)-A-13 RAQUEL ARROYO
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-27-14 [[61](#)]

Final Ruling

The motion withdrawn, this matter is dropped as moot.

14. [12-17979](#)-A-13 CARLOS SEGOVIA AND FLOR MOTION TO INCUR DEBT
TOG-10 LARREYNAGA 2-26-14 [[41](#)]
CARLOS SEGOVIA/MV
THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Motion: Incur Debt

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Denied without prejudice

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Because the amended notice of hearing provided less than 28 days' notice of the hearing to all creditors and parties in interest, the court will deem the motion as having been noticed under Local Bankruptcy Rule 9014-1(f)(2). See LBR 9014-1(f)(1) (when written opposition is required no later than 14 days before the hearing, then at least 28 days' notice of the motion must be given), (f)(2) (when fewer than 28 days' notice is required, no written opposition shall be required and the motion must be noticed at least 14 days before the hearing).

The motion requests authorization for the debtor to purchase a 2011 Freightliner on credit. The motion generally states that the purchase satisfies "the budget and my needs."

The trustee opposes the motion because the debtors' schedules of current income and expenses do not show that the debtors have the

ability to service the debt for the credit required to purchase this vehicle. The monthly installment payment to service the debt for this purchase will be in the range of \$1,200 to \$1,500 per month. Debtors' Schedules I and J filed with the petition on September 19, 2012, show that debtors have a monthly net income of \$100. Debtors' plan payment is in the same amount. Thus, the motion fails to show that the debtors have the ability to service the new debt that they propose to incur to make this purchase.

Regardless what the debtors' financial data on their Schedules I and J shows, however, the absence of updated Schedules I and J filed within the 30-day period prior to the filing of the motion preclude the court from authorizing the proposed new debt. The court will deny the motion without prejudice.

15. [13-15979](#)-A-13 JAIME HERNANDEZ

MOTION TO VALUE COLLATERAL OF
LOBEL FINANCIAL
2-10-14 [[47](#)]

JAIME HERNANDEZ/MV
JAIME HERNANDEZ/Atty. for mv.

Tentative Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

SERVICE INSUFFICIENT

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

GROUND FOR VALUATION

The debtor has brought this motion to value a 2007 Nissan Altima. The debtor states that the vehicle was scheduled with a value of \$2,883. Schedule D shows the vehicle listed at a value of \$2,883.00. Schedule D was filed about 2 weeks after the petition date.

Section 506(a)(2) requires a replacement valuation for personal property "acquired for personal, family, or household purposes" that takes into account "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Given this valuation approach, there are two concerns the court has with the debtor's motion. First, the motion does not explain how the value of \$1,307.08 is obtained given that the vehicle was scheduled at

a value of \$2,883. The debtor describes the cost of both essential and nonessential repairs. The total costs of repair are \$2,797.62. The repairs described as essential total \$1,940.92. Deducting \$1,940.90 from \$2,883 does not equal the proposed valuation of \$1,307.08. Deducting the total repair costs from 2,883 also does not equal the proposed valuation. If a future motion to value is brought for this vehicle, and the debtor wishes to factor in essential repair costs, the debtor will make clear specifically the extent to which the repair costs reduce the vehicle's value.

Second, the court cannot tell from the motion whether the repair costs were necessary on the date the bankruptcy was filed or whether the need for the repairs arose after such date. If the need for repairs described in the motion was necessary on the date this bankruptcy was filed, then the motion should state this fact. Section 506(a)(2) requires that the date the bankruptcy was filed be used as the date for valuing collateral used for personal, family or household purposes.

16. [13-15979](#)-A-13 JAIME HERNANDEZ
MHM-1
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
12-31-13 [[39](#)]

Tentative Ruling

Motion: Motion to dismiss case by the Chapter 13 trustee

Notice: Continued from prior hearing date

Disposition: Further continued to May 1, 2014, at 9:00 a.m.

Order: Civil minute order

The court will further continue the hearing on this matter until the hearing on the debtor's motion to value collateral is concluded.

17. [13-16084](#)-A-13 JOHN/NANCY ALVA
TCS-1
JOHN ALVA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
2-10-14 [[24](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

18. [13-15686](#)-A-13 RICKY/SUZETTE WIGGS MOTION TO VALUE COLLATERAL OF
RDB-3 SANTANDER CONSUMER USA, INC.
RICKY WIGGS/MV 1-30-14 [[46](#)]
RICK BANKS/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$17,350

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

19. [13-15686](#)-A-13 RICKY/SUZETTE WIGGS
RDB-4
RICKY WIGGS/MV
RICK BANKS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
1-30-14 [[50](#)]

No tentative ruling.

20. [13-17293](#)-A-13 KHAMMINH/BOUNMA RASAVONG
MHM-1
MICHAEL MEYER/MV
JEFF REICH/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-27-14 [[43](#)]

No tentative ruling.

10:00 a.m.

1. [10-19022](#)-A-12 SOCHEATH SAR AND NAY MENG MOTION FOR ENTRY OF DISCHARGE
PLF-5 2-10-14 [[63](#)]
SOCHEATH SAR/MV

PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Entry of Discharge

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The court has reviewed the motion and declaration filed in support, and the scheduling order regarding procedures for entry of discharge in a chapter 12 case at docket number 60. The court finds that the debtors have met the requirements for obtaining a chapter 12 discharge. The court will issue an order discharging the debtors from all debts described in § 1228(a) except for the debts not discharged under § 1228(a).