

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

APRIL 2, 2015

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. [14-15102](#)-A-13 TONYA STRANE
MHM-1
MICHAEL MEYER/MV
CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS, MOTION TO DISMISS
CASE FOR FAILURE TO PROVIDE TAX
DOCUMENTS, MOTION TO DISMISS
CASE
12-3-14 [[24](#)]

RESPONSIVE PLEADING

No tentative ruling.

2. [11-13106](#)-A-13 JORGE TORO AND LIDIA
MHM-3 VERDUZCO
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-11-15 [[95](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [11-61110](#)-A-13 ROBERTO/MARGARITA
MHM-2 GONZALEZ
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-12-15 [[43](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [15-10010](#)-A-13 ANTONIO ALVAREZ
DVW-1
US BANK, N.A./MV
DIANE WEIFENBACH/Atty. for mv.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-10-15 [[27](#)]

Final Ruling

The case dismissed, the motion is denied as moot.

5. [13-18013](#)-A-13 MADELINE MEDINA
SSD-1
ELISE DIAZ/MV
PETER BUNTING/Atty. for dbt.
STEVEN DIAS/Atty. for mv.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-4-15 [[35](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted only to the extent specified in this ruling

Order: Prepared by movant consistent with this ruling and signed by counsel for debtor and co-debtor

Subject: State court litigation in Fresno County Superior Court, as more particularly described on the stay relief summary sheet

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).

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The motion is somewhat unclear about the relief sought. The motion at page 2 states that relief is sought to permit movant to proceed with the civil suit and seek recovery from Debtor's insurance coverage. Paragraph 5 of the motion states that recovery is sought "only" from the Property (i.e., the debtor's insurance coverage) and expressly states that movant will limit her recovery to recovery from the insurance company. But the prayer for relief states that relief from the stay is sought "for all purposes against Debtor, the Trustee, and Co-Debtor"

The court construes the motion as requesting relief only for the limited purpose of seeking recovery from applicable insurance proceeds and not from the debtor or co-debtor. Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief as against the debtor, and finds grounds for stay relief against the co-debtor pursuant to § 1301(c)(3), subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment for the purpose of recovery only from insurance proceeds and not from the debtor or co-debtor's personal assets. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

6. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON CONTINUED MOTION TO SET ASIDE
DRJ-1 DISMISSAL OF CASE
LARRY ANDERSON/MV 2-26-15 [[99](#)]
M. ENMARK/Atty. for dbt.
DISMISSED 2/20/15

Tentative Ruling

Motion: Set Aside Dismissal of Case

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

Disposition: Conditionally granted

Order: Prepared by moving party pursuant 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 court will grant the motion subject to the condition that debtors confirm a modified plan not later than May 20, 2015. The order shall vacate the dismissal and set a bar date for confirming a modified plan not later than May 20, 2015. The order shall state that if a modified plan is not confirmed by this date (if the condition is unsatisfied), then the prior order dismissing the case will once become effective again and this order will become null and void by its terms.

7. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON MOTION TO MODIFY PLAN
MNE-5 2-4-15 [[86](#)]
LARRY ANDERSON/MV
M. ENMARK/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

8. [15-10017](#)-A-13 JAMES CULVER
APN-1
WELLS FARGO BANK, N.A./MV
DAVID JENKINS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-25-15 [[28](#)]

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition filed by debtor

Disposition: Denied without prejudice to a subsequent motion for relief from stay based on subsequent post-petition payments being missed

Order: Prepared by moving party

Subject: 2007 GMC Yukon

STANDARDS

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

Subsection (d)(2) of § 362 of Title 11 allows relief from stay as against property of the debtor if the moving party shows that two elements are satisfied: (i) "the debtor does not have an equity in such property," and (ii) "such property is not necessary to an effective reorganization." *Id.* § 362(d)(2). Under the first element of this subsection, the moving party bears the burden of proof to show that the debtor lacks equity in the property. See 11 U.S.C. § 362(g)(1); *In re Bialac*, 712 F.2d 426, 432 (9th Cir. 1983). The responding party has the burden of showing that the property is necessary for an effective reorganization and all other issues. 11 U.S.C. § 362(g)(2); see also *In re Bonner Mall P'ship*, 2 F.3d 899, 902 (9th Cir. 1993).

DISCUSSION

The movant admits that there is equity in the property. See Relief from Stay Summary Sheet, ECF No. 32. The movant requests stay relief under § 362(d)(1) for cause based on 2 post-petition payments. See Mot. Stay Relief at 3, ECF No. 28. A plan has not been confirmed in this case.

However, a modified plan has been filed and a hearing on such plan will be held on May 21, 2015. The modified plan contains the claim of the movant in Class 2, Part A.

The supplemental declaration filed by the debtor explains the circumstances surrounding the failure to schedule the vehicle described above and the claim of the movant. The declaration further indicates that a payment was made to movant in the amount of \$1526.00. This payment was sent on or about March 6, 2015. The movant indicates that the monthly payment is \$500.85. The payment made by the debtor equals slightly more than 3 monthly payments. The plan as modified proposes that distributions on the Class 2 claim of Wells Fargo commence in month 3 in the amount of \$645 per month at 19% interest. The court finds that the creditor is adequately protected based on these facts. The motion will be denied without prejudice to a future motion being filed based on subsequent post-petition payments being missed.

9. [14-13418](#)-A-13 ROBERT/LUCERO BISHOP
SAH-2
ROBERT BISHOP/MV
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN
- OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 2
2-13-15 [[64](#)]

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

10. [15-10019](#)-A-13 MICHAEL/NATALIE FAGUNDES
BHT-1
OCWEN LOAN SERVICING, LLC/MV
- CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY OCWEN
LOAN SERVICING, LLC
1-22-15 [[16](#)]
- PETER FEAR/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

No tentative ruling.

11. [12-13320](#)-A-13 CESAR CORNEJO AND MARIA MOTION TO VALUE COLLATERAL OF
RHB-1 MORENO-CORNEJO CITIMORTGAGE, INC.
CENTRAL MORTGAGE COMPANY/MV 3-5-15 [[32](#)]
RICHARD BAMBL/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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 respondent 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).

VALUATION OF COLLATERAL

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) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). 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 respondent'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. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1440 Lewis St., Selma, CA.

The court values the collateral at \$100,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 1440 Lewis St., Selma, CA, has a value of \$100,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

12. [10-12925](#)-A-13 ANTONIO ARROYO MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 2-10-15 [[48](#)]
JANINE ESQUIVEL/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [14-10525](#)-A-13 PEDRO VELASQUEZ MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A./MV 2-26-15 [[46](#)]
SCOTT LYONS/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

14. [14-14125](#)-A-13 MARTIN CALDERON AND MOTION TO CONFIRM PLAN
DRJ-3 MERCEDES PINEDA 2-15-15 [[55](#)]
MARTIN CALDERON/MV
DAVID JENKINS/Atty. for dbt.
JOINT DEBTOR DISMISSED

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.

15. [14-14125](#)-A-13 MARTIN CALDERON AND
MHM-2 MERCEDES PINEDA
MICHAEL MEYER/MV
- CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
1-16-15 [[47](#)]
- DAVID JENKINS/Atty. for dbt.
JOINT DEBTOR DISMISSED,
MOTION WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [12-14926](#)-A-13 JOHN/KAREN LYSTAD
MHM-5
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
AND/OR MOTION TO DISMISS CASE
2-12-15 [[169](#)]
- NANCY KLEPAC/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the

amount of \$9580.

17. [11-17827](#)-A-13 MICHAEL/JEANNYE MORGAN MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 2-11-15 [[68](#)]
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4460.

18. [12-12633](#)-A-13 RICHARD/SANDRA BERNIER MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 2-12-15 [[90](#)]
M. ENMARK/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [15-10433](#)-A-13 STEPHEN/MARTHA EVANS MOTION TO VALUE COLLATERAL OF
PBB-1 SPRINGLEAF FINANCIAL SERVICES,
STEPHEN EVANS/MV INC.
PETER BUNTING/Atty. for dbt. 2-25-15 [[14](#)]

Final Ruling

Motion: Value Collateral [personal property]

Disposition: Denied without prejudice

Order: Civil Minute Order

The motion requests that the court value two items of collateral—an Apple desktop computer and a laptop computer. The motion states that the collateral has a replacement value of \$500. The court presumes that this value is the aggregate value of both items of collateral. The motion lacks sufficient particularity because it does not give discrete replacement values for each of the two items of collateral being valued. Further, the motion does not provide information about the applicability of the hanging paragraph. (Exhibit B is a copy of Schedule D, but it is unclear from Schedule D whether the debt for both items of collateral was incurred on the date shown or whether only the debt for the desktop was incurred on that date. Schedule D is somewhat ambiguous about the extent of the collateral described.) Thus, the motion does not comply with Rule 9013 and does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6).

20.	15-10433 -A-13 STEPHEN/MARTHA EVANS PBB-2 STEPHEN EVANS/MV PETER BUNTING/Atty. for dbt.	MOTION TO VALUE COLLATERAL OF STERLING JEWELERS, INC. 2-25-15 [20]
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Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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 respondent 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).

VALUATION OF COLLATERAL

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, personal property collateral in which the creditor has a purchase money security interest is limited to such 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 personal property described as a wedding band. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$1500.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value non-vehicular, personal property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a wedding band has a value of \$1500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1500 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

21. [15-10037](#)-A-13 JOSEPHINE MALONEY
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
3-2-15 [[17](#)]

TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling.

22. [12-12841](#)-A-13 THOMAS/SARAH CORREA
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-12-15 [[67](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [15-10441](#)-A-13 JAMES/SARAH SIDOTI ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-17-15 [[23](#)]

VARDUHI PETROSYAN/Atty. for dbt.

Final Ruling

The fee paid, the order to show cause is discharged.

24. [11-11650](#)-A-13 GREGORY/DENISE HIPPERT MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 2-11-15 [[70](#)]
SUSAN MOORE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [14-13162](#)-A-13 ANTONIO/ANNETTE GUZMAN MOTION TO MODIFY PLAN
TCS-2 2-23-15 [[46](#)]
ANTONIO GUZMAN/MV
NANCY KLEPAC/Atty. for dbt.

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.

26. [12-13173](#)-A-13 SANDRA OCHOA
MHM-4
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-12-15 [[70](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [15-10473](#)-A-13 ELOISA PEREZ
GGL-1
ELOISA PEREZ/MV

MOTION TO VALUE COLLATERAL OF
LEO KESSELMAN/PLM AND/OR MOTION
TO CRAMDOWN THE VALUE OF THE
SENIOR LIEN , MOTION TO USE
CASH COLLATERAL
3-3-15 [[17](#)]

GEORGE LOGAN/Atty. for dbt.
ORDER CONTINUING TO 4/30/15,
ECF NO. 37

Final Ruling

The hearing continued to April 30, 2015, at 9:15, pursuant to Order
ECF #37, the matter is dropped as moot.

28. [15-10573](#)-A-13 SUSAN LEIBOWITZ
SL-1
SUSAN LEIBOWITZ/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA
3-2-15 [[11](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Disposition: Denied without prejudice

Order: Civil minute order

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 motion and declaration together indicate that the lien is a purchase money security interest as it secures the purchase price of the vehicle.

But the court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. It appears, moreover, that the hanging paragraph may apply given that the collateral is a motor vehicle, the respondent's claim was incurred within 910 days preceding the petition (see motion ¶ 6), and the respondent has a purchase money security interest that secures the debt that is the subject of the claim. What is not discussed is whether the vehicle was acquired for the personal use of the debtor.

To show inapplicability of the hanging paragraph as to collateral that is a motor vehicle, only one of the elements of that paragraph must be negated as these elements are conjunctive. Here, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

29. [10-15076](#)-A-13 KIMBERLY BIRD
DRJ-1
KIMBERLY BIRD/MV
M. ENMARK/Atty. for dbt.
DISMISSED 2/16/15

CONTINUED MOTION TO SET ASIDE
DISMISSAL OF CASE
2-26-15 [[117](#)]

Tentative Ruling

Motion: Set Aside Dismissal of Case

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

Disposition: Conditionally granted

Order: Prepared by moving party pursuant 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 court will grant the motion subject to the condition that debtors confirm a modified plan not later than May 20, 2015. The order shall vacate the dismissal and set a bar date for confirming a modified plan not later than May 20, 2015. The order shall state that if a modified plan is not confirmed by this date (if the condition is unsatisfied), then the prior order dismissing the case will once become effective again and this order will become null and void by its terms.

30. [10-15076](#)-A-13 KIMBERLY BIRD MNE-6
KIMBERLY BIRD/MV
M. ENMARK/Atty. for dbt. CONTINUED MOTION TO MODIFY PLAN
1-29-15 [[104](#)]

No tentative ruling.

31. [11-62579](#)-A-13 WALTER/CYNTHIA WEBER MHM-2
MICHAEL MEYER/MV
KARNEY MEKHITARIAN/Atty. for dbt. WITHDRAWN
OBJECTION TO NOTICE OF INTENT
TO ENTER DISCHARGE BY MICHAEL
H. MEYER
2-26-15 [[64](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

32. [14-15879](#)-A-13 VIRGINIA MOORE TCS-2
VIRGINIA MOORE/MV
TIMOTHY SPRINGER/Atty. for dbt. CONTINUED MOTION TO SELL
3-3-15 [[35](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party and approved as to form and content by the Chapter 13 trustee

Property: 2051 W. Via Tivoli, Fresno, CA

Buyer: Lindemann Properties, Inc.

Sale Price: \$260,000

Sale Type: Private sale subject to overbid opportunity

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).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the plan has not yet been confirmed, so the subject property remains property of the estate.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. §

1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

33. [13-15181](#)-A-13 LINDSAY LEMONS
[13-1124](#)
STORMS ET AL V. LEMONS
GLEN GATES/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-12-13 [[1](#)]

No tentative ruling.

34. [13-15181](#)-A-13 LINDSAY LEMONS
[13-1124](#) GEG-2
STORMS ET AL V. LEMONS

GLEN GATES/Atty. for mv.

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LINDSAY LEMONS
12-16-14 [[46](#)]

No tentative ruling.

35. [13-15181](#)-A-13 LINDSAY LEMONS
SL-2
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
11-26-13 [[79](#)]

No tentative ruling.

36. [13-15181](#)-A-13 LINDSAY LEMONS
SL-3
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF
WES STORMS, CLAIM NUMBER 2
11-7-13 [[49](#)]

No tentative ruling.

37. [13-15181](#)-A-13 LINDSAY LEMONS
SL-4
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF
WAYLENCO, CLAIM NUMBER 3
11-7-13 [[54](#)]

No tentative ruling.

38. [13-15181](#)-A-13 LINDSAY LEMONS
SL-5
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF
WAYNE STORMS, CLAIM NUMBER 1
10-24-13 [[134](#)]

No tentative ruling.

39. [13-15181](#)-A-13 LINDSAY LEMONS
SL-6

SCOTT LYONS/Atty. for dbt.
WITHDRAWN

CONTINUED MOTION BY SCOTT LYONS
TO WITHDRAW AS ATTORNEY
2-23-15 [[306](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

40. [11-10687](#)-A-13 ANTONIO/NORA OLMOS
MHM-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-10-15 [[56](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

41. [14-16093](#)-A-13 ERIC FELDMAN
JRL-1
ERIC FELDMAN/MV
JERRY LOWE/Atty. for dbt.

MOTION TO AVOID LIEN OF THE
GOLDEN 1 CREDIT UNION
2-11-15 [[18](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been

entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

42. [12-11896](#)-A-13 MYRNA GOMEZ
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-12-15 [[49](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9:15 a.m.

1. [15-10085](#)-A-13 PEDRO SANDOVAL
[15-1015](#)
U.S. TRUSTEE V. SANDOVAL
ROBIN TUBESING/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
1-29-15 [[1](#)]

Final Ruling

The status conference is continued to April 16, 2015, at 10:00 a.m.