

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY

DATE: MAY 6, 2020

CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-15100](#)-A-13 **IN RE: ANGELINA LOPEZ**
[NES-5](#)

MOTION TO MODIFY PLAN
3-16-2020 [\[132\]](#)

ANGELINA LOPEZ/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

2. [20-10100](#)-A-12 **IN RE: TRANQUILITY PISTACHIO, LLC**
[NCK-1](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
3-16-2020 [\[106\]](#)

TRANQUILITY PISTACHIO, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The motion is denied. The notice must accurately describe the date written opposition, if any, is due. LBR 9014-1(d)(3)(B)(i). Written opposition to a motion to confirm a Chapter 12 plan must be filed and served 14 days prior to the hearing on the motion. LBR 9014-1(f)(1). Here, the notice incorrectly states that opposition may be filed 4 day prior to the hearing. Notice ¶ 2, ECF No. 107. A civil minute order will issue.

3. [19-11701](#)-A-13 **IN RE: RAMON DIAZ**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
3-4-2020 [\[59\]](#)

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This motion having been withdrawn, the court will drop this matter from the calendar as moot.

4. [19-11701](#)-A-13 **IN RE: RAMON DIAZ**
[MJH-1](#)

MOTION TO MODIFY PLAN
3-16-2020 [[65](#)]

RAMON DIAZ/MV
MARK HANNON/ATTY. FOR DBT.

No Ruling

5. [19-15201](#)-A-13 **IN RE: TRAVALE/CAMELA SHORTER**
[JMM-1](#)

MOTION TO CONFIRM PLAN
3-19-2020 [[25](#)]

TRAVALE SHORTER/MV
JEFFREY MEISNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This motion having been withdrawn, the court will drop this matter from the calendar as moot.

6. [19-15201](#)-A-13 **IN RE: TRAVALE/CAMELA SHORTER**
[MHM-2](#)

MOTION TO DISMISS CASE
4-17-2020 [[38](#)]

MICHAEL MEYER/MV
JEFFREY MEISNER/ATTY. FOR DBT.

No Ruling

7. [20-10301](#)-A-13 **IN RE: HELIBERTO ELIZONDO**
[GS-2](#)

MOTION TO CONFIRM PLAN
3-31-2020 [[36](#)]

HELIBERTO ELIZONDO/MV
GARY SAUNDERS/ATTY. FOR DBT.

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

NOT ALL CREDITORS WERE SERVED.

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 Lakeview Loan Servicing, LLC has not received notice.

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.

PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT

Local Bankruptcy Rule 9014-1(e)(3) provides, "The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served."

In this case, the movant attached the Proof of Service to the motion, and did not file the Proof as a separate document. ECF 36. The court finds the manner of service to violate Local Bankruptcy Rule 9014-1(e)(3). In the future, failure to following local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

8. [20-10301](#)-A-13 **IN RE: HELIBERTO ELIZONDO**
[MHM-2](#)

MOTION TO DISMISS CASE
3-20-2020 [[30](#)]

MICHAEL MEYER/MV
GARY SAUNDERS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

9. [19-10507](#)-A-13 **IN RE: TUCKER/JAMIE MAXFIELD**
[TCS-3](#)

MOTION TO MODIFY PLAN
3-26-2020 [[91](#)]

TUCKER MAXFIELD/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: prepared by the trustee, approved by the 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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d

405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

10. [19-15207](#)-A-13 **IN RE: SUKETU VAIDYA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-20-2020 [[124](#)]

JAMES MILLER/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

11. [20-11408](#)-A-13 **IN RE: DOMINGO/TAMARA GARZA**
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-21-2020 [[10](#)]

DOMINGO GARZA/MV
SCOTT LYONS/ATTY. FOR DBT.

No Ruling

12. [20-10110](#)-A-13 **IN RE: ANGEL DIAZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-20-2020 [[33](#)]

MARK HANNON/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

13. [20-10110](#)-A-13 **IN RE: ANGEL DIAZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-20-2020 [[29](#)]

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

14. [20-10011](#)-A-13 **IN RE: TY SALES**
[SLL-1](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS
ATTORNEY(S)
3-19-2020 [[16](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Stephen Labiak has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$7,060.00 and reimbursement of expenses in the amount of \$72.10.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim

basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Stephen Labiak's application for allowance of interim compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$7,060.00 and reimbursement of expenses in the amount of \$72.10. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$7,132.10 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

15. [15-10914](#)-A-13 **IN RE: RICHARD/SUSAN BILL**
[PPR-1](#)

MOTION TO VACATE AND/OR MOTION TO RECONSIDER
4-16-2020 [[141](#)]

ELIZON MASTER PARTICIPATION
TRUST I, U.S. BANK TRUST
ROBERT WILLIAMS/ATTY. FOR DBT.
BONNI MANTOVANI/ATTY. FOR MV.

No Ruling

16. [20-10318](#)-A-13 **IN RE: JOSE GONZALEZ AND ITALIA DE LOZA**
[MJH-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL
3-27-2020 [\[24\]](#)

JOSE GONZALEZ/MV
MARK HANNON/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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.*

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 described as a 2012 Dodge Grand Caravan. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$7,836.00.

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 collateral consisting of a motor vehicle 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 2012 Dodge Grand Caravan has a value of \$7,836.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7,836.00 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.

17. [19-13645](#)-A-13 **IN RE: GUSTAVO/BEATRIZ ROCHA**
[SLL-2](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS
ATTORNEY(S)
4-2-2020 [[38](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Stephen Labiak has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,925.00 and reimbursement of expenses in the amount of \$77.60.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Stephen Labiak's application for allowance of interim compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$5,925.00 and reimbursement of expenses in the amount of \$77.60. The aggregate allowed amount equals \$6002.60. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6002.60 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

18. [20-10451](#)-A-13 **IN RE: APRIL MARTINEZ**
[JDR-1](#)

MOTION TO VALUE COLLATERAL OF CARMAX BUSINESS SERVICES, LLC
3-30-2020 [\[13\]](#)

APRIL MARTINEZ/MV
JEFFREY ROWE/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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.*

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 described as a 2009 GMC Acadia. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$6,732.00.

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 collateral consisting of a motor vehicle 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 2009 GMC Acadia has a value of \$6,732.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6,732.00 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.

19. [19-14956](#)-A-13 **IN RE: ISAURO CAMPOS**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
3-3-2020 [[63](#)]

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

20. [19-14956](#)-A-13 **IN RE: ISAURO CAMPOS**
[MJH-1](#)

MOTION TO CONFIRM PLAN
3-16-2020 [[67](#)]

ISAURO CAMPOS/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

21. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-4](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
2-27-2020 [[139](#)]

FRANK FAGUNDES/MV
RILEY WALTER/ATTY. FOR DBT.

No Ruling

22. [19-13163](#)-A-13 **IN RE: GENE FEUERSINGER AND DENISE CAMPOS**
[PBB-3](#)

MOTION TO MODIFY PLAN
3-17-2020 [[44](#)]

GENE FEUERSINGER/MV
PETER BUNTING/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: prepared by the trustee, approved by the 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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof.
The court will grant the motion and approve the modification.

23. [19-15365](#)-A-13 **IN RE: REYNALDO CHAVEZ GARCIA**
[MHM-1](#)

MOTION TO DISMISS CASE
3-20-2020 [\[24\]](#)

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

24. [20-10865](#)-A-13 **IN RE: ARTURO MONTEJANO MELGOZA AND LIDUVINA**
SEVILLA DE MONTEJANO
[JWC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-13-2020 [\[20\]](#)

BMO HARRIS BANK N.A./MV
ERIC ESCAMILLA/ATTY. FOR DBT.
JENNIFER CRASTZ/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2015 Freightliner Cascadia Series, 2013 Freightliner
Cascadia Series, 2018 Utility Dry Van

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).

2015 FREIGHTLINER CASCADIA SERIES LEASE AGREEMENT

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make payments to the moving party pursuant to a lease agreement by which the debtor leases the

vehicle described above. The debtor has defaulted under such lease agreement on November 1, 2019 and has paid no monthly installments post-petition.

The moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(B) (requiring personal property lease payments to commence not later than 30 days after the petition).

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

2013 FREIGHTLINER CASCADIA SERIES LOAN AGREEMENT

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on loan payments on October 1, 2019 and has paid no monthly installments post-petition.

Alternatively, because the plan which has not been confirmed provides for the surrender of the subject property that secures the moving party's claim, ECF 11, the court concludes that such property is not necessary to the debtor's financial reorganization. Here, the value of the vehicle is \$21,075.00 and the lien encumbering the property by the movant is \$31,593.77. ECF 24. The moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

2018 UTILITY DRY VAN LOAN AGREEMENT

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on loan payments on October 1, 2019 and has paid no monthly installments post-petition.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

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.

BMO Harris Bank's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 2015 Freightliner Cascadia Series, 2013 Freightliner Cascadia Series, and 2018 Utility Dry Van, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

25. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[SRS-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES
3-27-2020 [[65](#)]

NUTRIEN AG SOLUTIONS, INC./MV
DAVID JENKINS/ATTY. FOR DBT.
STEVEN STOKER/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

26. [19-14374](#)-A-13 **IN RE: VICTOR GONZALEZ AND FELICITAS DE**
CARRILLO
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-26-2020 [[42](#)]

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

27. [19-14374](#)-A-13 **IN RE: VICTOR GONZALEZ AND FELICITAS DE CARRILLO**
[MJH-2](#)

MOTION TO CONFIRM PLAN
3-19-2020 [\[48\]](#)

VICTOR GONZALEZ/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

28. [19-14377](#)-A-13 **IN RE: ERIC/MARIE MENDEZ**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
2-26-2020 [\[46\]](#)

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

29. [19-14377](#)-A-13 **IN RE: ERIC/MARIE MENDEZ**
[MJH-1](#)

MOTION TO VALUE COLLATERAL OF EDUCATIONAL EMPLOYEE CREDIT UNION
3-19-2020 [\[52\]](#)

ERIC MENDEZ/MV
MARK HANNON/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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.*

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 described as a 2013 Nissan Altima. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$7,615.00.

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 collateral consisting of a motor vehicle 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 2013 Nissan Altima has a value of \$7,615.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7,615.00 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.

30. [19-14377](#)-A-13 **IN RE: ERIC/MARIE MENDEZ**
[MJH-2](#)

MOTION TO CONFIRM PLAN
3-19-2020 [\[57\]](#)

ERIC MENDEZ/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

31. [19-12679](#)-A-13 **IN RE: NAEEM/SAIMA QARNI**
[NEA-4](#)

CONTINUED MOTION TO CONFIRM PLAN
12-18-2019 [\[194\]](#)

NAEEM QARNI/MV
NICHOLAS ANIOTZBEHERE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to be confirmed by this motion, the court will deny the motion as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to confirm is denied as moot.

32. [20-10180](#)-A-13 **IN RE: DANIELLE BAILEY**
[SL-1](#)

MOTION TO CONFIRM PLAN
3-12-2020 [\[23\]](#)

DANIELLE BAILEY/MV
SCOTT LYONS/ATTY. FOR DBT.

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 the trustee, approved by the 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 has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

33. [20-10384](#)-A-13 **IN RE: JANET VAZQUEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
3-20-2020 [\[33\]](#)

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

34. [20-10384](#)-A-13 **IN RE: JANET VAZQUEZ**
[PBB-2](#)

MOTION TO CONFIRM PLAN
3-24-2020 [[37](#)]

JANET VAZQUEZ/MV
PETER BUNTING/ATTY. FOR DBT.

No Ruling

35. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[NEA-2](#)

OBJECTION TO CLAIM OF DONALD AND KAREN ALUISI, CLAIM NUMBER
3
3-11-2020 [[195](#)]

JAMES JORGENSEN/MV
NICHOLAS ANIOTZBEHERE/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

36. [20-10188](#)-A-12 **IN RE: MIKE WEBER**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION
1-17-2020 [[1](#)]

DAVID JENKINS/ATTY. FOR DBT.

No Ruling

37. [20-10488](#)-A-13 **IN RE: EDWIN/MARIZEN PROTACIO**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
3-23-2020 [\[20\]](#)

WELLS FARGO BANK, N.A./MV
DAVID JENKINS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

OBJECTION TO CONFIRMATION OF PLAN

The debtor owns a 2011 Lexus ES-V6, which it contends is worth \$11,059.00. ECF 1. Interest on the contract is 13.69%. Creditor Wells Fargo Bank holds a security interest in that vehicle. The debtor has proposed a plan that classifies this as a Class 2(B) claim, providing for \$11,059.00 at 5.50% interest over 60 months. Creditor has filed a Proof of Claim No. 3 that the amount due is \$12,350.00. No motion to value the car has been filed or granted.

In a Chapter 13 proceedings, a Debtor may confirm a Plan over a creditor's objection only if the Plan provides the creditor the full value, as of the effective date of the Plan, of the allowed amount of the secured claim. 11 U.S.C. § 1325(a)(5)(B). The allowed amount of the secured claim is determined based on the replacement value a retail merchant would charge for a Collateral of a similar age and condition. 11 U.S.C. § 506(a). Here, the plan proposes to pay Creditor's claim at 89% of the § 506(a) valuation of the collateral. ECF 23. Creditor objects to the confirmation of the plan to the extent it does not pay for the full value of the claim pursuant to § 506(a).

In addition, the Debtor must pay the present value of the secured claim by paying the creditor a discount rate of interest as measured by the formula rate expressed by the United States Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) (holding that prime and risk factors are generally deemed to be 1-3%). *See, also Drive Fin. Servs., L.P. v. Jordan*, 521 F.3d 343 (5th Cir. 2008). In this case, the current prime rate is 4.75% but provides no interest. ECF 20. Creditor further contends that the interest should receive a risk factor adjustment of 3.00%. ECF 20.

The court will deny confirmation of the plan.

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.

Wells Fargo Bank's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

38. [20-10189](#)-A-13 **IN RE: JOSHUA CRABLE**
[MHM-2](#)

MOTION TO DISMISS CASE
3-20-2020 [[22](#)]

MICHAEL MEYER/MV
THOMAS MOORE/ATTY. FOR DBT.
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

39. [19-12697](#)-A-13 **IN RE: CHRISTOPHER/HEATHER KENT**
[DRJ-2](#)

MOTION TO MODIFY PLAN
3-20-2020 [[32](#)]

CHRISTOPHER KENT/MV
DAVID JENKINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling