

**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: THURSDAY
DATE: MAY 11, 2017
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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.

1. [17-10202](#)-A-13 LEONARD/SONYA HUTCHINSON MOTION TO DISMISS CASE
MHM-2 4-3-17 [[36](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

2. [17-11003](#)-A-13 JOHN/NANCY ALVA ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-25-17 [[17](#)]
SCOTT LYONS/Atty. for dbt.
\$80.00 INSTALLMENT PAYMENT
4/25/17

Final Ruling

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

3. [16-14304](#)-A-13 TINA MORENO OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
MHM-2 4-12-17 [[43](#)]
MICHAEL MEYER/MV
MICHAEL ARNOLD/Atty. for dbt.

Final Ruling

After the trustee's objection to exemption was filed, the debtor amended her claim of exemption on Schedule C, and this amendment affected the exemption to which the trustee's objection was directed.

4. [13-15305](#)-A-12 ROGELIO CALDERON AND MOTION FOR AN ORDER TO SHOW
MHM-1 LAURA BOBADILLA-DELGADO CAUSE WHY ATTORNEY FEES PAID
MICHAEL MEYER/MV SHOULD NOT BE DISGORGED
4-20-17 [[54](#)]
THOMAS GILLIS/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.

Final Ruling

This matter is continued to May 25, 2017, at 10:00 a.m. Counsel for the debtor shall file, serve and set for hearing a final motion for compensation prior to that date. If counsel for the debtor does so, the court will continue this matter to the date of that hearing. If not, the court intends to grant the motion without hearing.

5. [17-10207](#)-A-13 PEDRO/MICHELLE SARABIA MOTION TO DISMISS CASE
MHM-1 3-10-17 [[20](#)]
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.

No tentative ruling.

6. [17-10514](#)-A-13 GREGORY LOPEZ MOTION TO DISMISS CASE
MHM-1 4-5-17 [[26](#)]
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [17-10116](#)-A-13 PAULA PARDO CONTINUED MOTION TO VALUE
TOG-1 COLLATERAL OF DITECH FINANCIAL,
PAULA PARDO/MV LLC
2-24-17 [[13](#)]
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Pursuant to the stipulation between the parties, the hearing is continued to June 30, 2017, at 9:00 a.m.

8. [12-15427](#)-A-13 RANDALL/TAMARA THARP MOTION FOR COMPENSATION FOR
BCS-4 BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
4-10-17 [[40](#)]
BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Application: Allowance of Final 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, Shein Law Group, PC has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3450.00 and reimbursement of expenses in the amount of \$222.85. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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 a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

Shein Law Group, PC's application for allowance of final 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 a final basis. The court allows final compensation in the amount of \$3450.00 and reimbursement of expenses in the amount of \$222.85. The aggregate allowed amount equals \$3672.85. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3672.85 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

9. [12-12029](#)-A-13 DARREN/STACY ANDERSON MOTION TO DISMISS CASE
MHM-2 4-7-17 [[74](#)]
MICHAEL MEYER/MV
CHRISTIAN YOUNGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [16-10642](#)-A-13 TIMOTHY MAYO MOTION FOR RELIEF FROM
TGM-1 AUTOMATIC STAY
SYSTEMS & SYSTEMS 4-11-17 [[64](#)]
TECHNOLOGIES, INC./MV
PATRICK KAVANAGH/Atty. for dbt.
TYNEIA MERRITT/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or a third party. Section 2.11 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

11. [17-10647](#)-A-13 RAMIRO LOPEZ MOTION TO DISMISS CASE
MHM-1 4-13-17 [[15](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [12-12650](#)-A-13 ROBERT/MONICA OLIVEIRA MOTION TO DISMISS CASE
MHM-5 4-7-17 [[95](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.

No tentative ruling.

13. [14-13562](#)-A-13 JAMES/MARGARET CHARLES MOTION TO MODIFY PLAN
TCS-4 4-3-17 [[52](#)]
JAMES CHARLES/MV
TIMOTHY SPRINGER/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 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. The court will grant the motion and approve the modification of the plan.

14. [14-13562](#)-A-13 JAMES/MARGARET CHARLES
TCS-5

MOTION FOR COMPENSATION FOR
TIMOTHY C. SPRINGER, DEBTORS
ATTORNEY(S)
4-6-17 [[60](#)]

TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Application: Allowance of Final 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, Timothy C. Springer has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$6000.00 and reimbursement of expenses in the amount of \$0.00.

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 a final basis.

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.

Timothy C. Springer's application for allowance of final 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 a final basis. The court allows final compensation in the amount of \$6000.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$6000.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of

\$6000.00 shall be allowed as an administrative expense to be paid through the plan.

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. [17-11367](#)-A-13 KEVIN/JULIE GERHARDT MOTION TO EXTEND AUTOMATIC STAY
PBB-1 4-27-17 [[15](#)]
KEVIN GERHARDT/MV
PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

16. [17-11569](#)-A-13 JASON SCHULTZ
THL-1
MASTRO PROPERTY MANAGEMENT,
INC./MV
TYLER LESTER/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-27-17 [[10](#)]

Tentative Ruling

Motion: Stay Relief to Pursue State-Court Litigation

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

Disposition: Granted only to the extent specified in this ruling

Order: Civil minute order

Subject: Exercise of state law rights and remedies to obtain possession of real property located at 1508 W. Michigan, Fresno, CA, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession

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).

STAY RELIEF

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).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of real property located at 1508 W. Michigan, Fresno, CA, and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

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 money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding.

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.

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.

Mastro Property Management'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 1508 W. Michigan, Fresno, CA, and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant 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 money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

17. [15-12675](#)-A-13 CARLOS/TAMMIE COSTALES MOTION TO MODIFY PLAN
PBB-1 3-31-17 [[64](#)]
CARLOS COSTALES/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 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. The court will grant the motion and approve the modification of the plan.

18. [17-10375](#)-A-13 RANDALL/TAMMY REYNOLDS MOTION TO DISMISS CASE
MHM-1 3-10-17 [[29](#)]
MICHAEL MEYER/MV
SUSAN SALEHI/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [17-10578](#)-A-13 OSCAR/NATALIE OBJECTION TO CONFIRMATION OF
CJO-1 VILLAGOMEZ-LEMUS PLAN BY PENNYMAC LOAN SERVICES,
PENNYMAC LOAN SERVICES, LLC/MV LLC
4-13-17 [[32](#)]
ROSALINA NUNEZ/Atty. for dbt.
CHRISTINA O/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

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.

IMPROPER CLASSIFICATION

This district's form chapter 13 plan provides that "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Form Chapter 13 Plan, EDC 3-080 (effective May 1, 2012). Claims that are in default and mature after the completion of the plan's term are to be placed in Class 1.

Secured Creditor PennyMac Loan Services, LLC objects to confirmation of the debtors' plan because the plan incorrectly classifies PennyMac's claim under class 4. However, there are pre-petition arrears owed to PennyMac in the amount of \$2416.12. PennyMac Loan Services, LLC's Proof of Claim, Claim No. 10. Because this claim is deemed allowed until a party in interest objects, § 502(a), the claim is a delinquent claim that matures after the completion of the Plan, thus should be classified under class 1. The objection will be sustained.

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.

Secured creditor PennyMac Loan Services, LLC'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, and confirmation of the plan is denied.

20.	17-10578 -A-13 OSCAR/NATALIE JHW-1 VILLAGOMEZ-LEMUS CREDIT ACCEPTANCE CORPORATION/MV ROSALINA NUNEZ/Atty. for dbt. JENNIFER WANG/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-3-17 [25]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2005 Volkswagen Touareg

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 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 the loan as 1 postpetition payment is past due. The total past due balance of principal and interest is approximately

\$299.71. In addition, the plan provides for the surrender of the vehicle. Once the plan is confirmed, the plans terms provide that the automatic stay would be modified to allow a Class 3 claim holder to exercise its rights against its collateral.

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. No other relief will be awarded.

21. [17-10479](#)-A-13 GUADALUPE LOPEZ-HERNANDEZ MOTION TO VALUE COLLATERAL OF
TOG-1 ONE MAIN FINANCIAL, INC.
GUADALUPE LOPEZ-HERNANDEZ/MV 4-7-17 [[24](#)]
THOMAS GILLIS/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 1998 Oldsmobile Silhouette. 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 \$900.

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 1998 Oldsmobile Silhouette has a value of \$900. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$900 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.

22. [17-10481](#)-A-13 MARK EDELMAN
MHM-1
MICHAEL MEYER/MV
JAMES MILLER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
4-5-17 [[29](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [17-10185](#)-A-13 WILLIAM RICHARDSON
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

MOTION TO DISMISS CASE
3-13-17 [[22](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [16-13492](#)-A-13 DOUGLAS/LINDA HORWOOD OBJECTION TO CLAIM OF CAVALRY
SAH-1 SPV I, LLC, CLAIM NUMBER 10
DOUGLAS HORWOOD/MV 3-7-17 [[16](#)]
SUSAN HEMB/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1 (b) (1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 objection, the court will sustain the objection. The court will issue an order that the secured portion of Claim No. 10 will be set at \$0.00 and the unsecured portion will be set at \$2114.22.

25. [16-13893](#)-A-13 DAVID/DELIA HAYES MOTION TO CONFIRM PLAN
DMH-10 3-17-17 [[47](#)]
DAVID HAYES/MV
DAVID HAYES/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

- | | | | |
|-----|---------------------------------------|-------------------|-----------------------------|
| 26. | <u>16-13893</u> -A-13 | DAVID/DELIA HAYES | CONTINUED MOTION TO DISMISS |
| | MHM-1 | | CASE |
| | MICHAEL MEYER/MV | | 12-15-16 [20] |

No tentative ruling.

27. [17-11652](#)-A-13 GREGORY/ROUZANA TOROSSIAN MOTION TO EXTEND AUTOMATIC STAY
MJA-1 5-3-17 [[8](#)]
GREGORY TOROSSIAN/MV
MICHAEL ARNOLD/Atty. for dbt.
NO OST

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.