

**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 18, 2016
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. [15-13701](#)-A-13 KEVIN GERHARDT
MHM-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-26-16 [[87](#)]

GABRIEL WADDELL/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

2. [11-12106](#)-A-13 RAY/BETTYE SULLIVAN
GH-2
BETTYE SULLIVAN/MV
GARY HUSS/Atty. for dbt.

MOTION FOR OMNIBUS RELIEF UPON
DEATH OF DEBTOR
3-28-16 [[49](#)]

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: 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). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rules 1001-1(f) and 1016-1(b), the court will grant the motion.

The court will authorize further administration of this case as to the deceased debtor, and waive the requirement that the deceased debtor

file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

Furthermore, the court will substitute Bettye Juel Sullivan in the place of the deceased debtor as the deceased debtor's representative or successor.

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. Plan payments have been completed. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. And the court finds the continued administration of the estate is possible and in the best interests of the parties. The court substitutes Bettye Juel Sullivan in the place of the deceased debtor as the deceased debtor's representative or successor."

3. [16-10410](#)-A-13 JAMES SPRAGUE

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-21-16 [[29](#)]

SCOTT LYONS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

4. [15-14711](#)-A-13 ANDREA SOUSA
DRJ-4
ANDREA SOUSA/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
1-28-16 [[41](#)]

No tentative ruling.

5. [15-14711](#)-A-13 ANDREA SOUSA
MHM-2
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

CONTINUED MOTION TO DISMISS
CASE
2-19-16 [[49](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [15-14811](#)-A-13 RUBEN/KARIMA PARKS MOTION TO DISMISS CASE
MHM-2 4-6-16 [[32](#)]
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

7. [15-14112](#)-A-13 BRIAN HAINES MOTION TO DISMISS CASE
MHM-1 3-18-16 [[41](#)]
MICHAEL MEYER/MV
MICHAEL ARNOLD/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

8. [15-10123](#)-A-13 CURTIS ALLEN AND OBJECTION TO CLAIM OF FINANCIAL
VRP-3 CHARLOTTE JACKSON CREDIT NETWORK, CLAIM NUMBER 20
CURTIS ALLEN/MV 3-17-16 [[60](#)]
VARDUHI PETROSYAN/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 motion. 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).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

9. [13-14824](#)-A-13 ALBERT/DEE ANNA KNAUER CONTINUED MOTION FOR
BMJ-2 ADMINISTRATIVE EXPENSES
COMM 2006-C8 SHAW AVENUE 3-14-16 [[34](#)]
CLOVIS/MV
TIMOTHY SPRINGER/Atty. for dbt.
JOHN MICHAEL/Atty. for mv.

Final Ruling

Motion: Administrative Expense

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).

Movant seeks an administrative expense under 11 U.S.C. 503(b)(7) in the amount of \$66,080.21. The motion will be granted.

10. [16-10626](#)-A-13 RAMON GUTIERREZ AND MOTION TO DISMISS CASE
MHM-1 MARGARITA AGUILERA 4-20-16 [[21](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

11. [15-12329](#)-A-13 ANITA BARLOW
BDB-3
ANITA BARLOW/MV

BENNY BARCO/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF U.S. BANK
NATIONAL ASSOCIATION, CLAIM
NUMBER 6
3-24-16 [[61](#)]

No tentative ruling.

12. [15-12329](#)-A-13 ANITA BARLOW
LL-1
U.S. BANK NATIONAL
ASSOCIATION/MV
BENNY BARCO/Atty. for dbt.
JAMES TREADWELL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-4-16 [[70](#)]

No tentative ruling.

13. [15-11730](#)-A-13 JOSE GOMEZ
MJA-1
JOSE GOMEZ/MV
MICHAEL ARNOLD/Atty. for dbt.

MOTION TO MODIFY PLAN
3-17-16 [[25](#)]

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. [12-60233](#)-A-13 TREVOR HOOD
DRJ-4
TREVOR HOOD/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO MODIFY PLAN
4-14-16 [[73](#)]

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.

15. [15-14936](#)-A-13 CHARLES/KATRINA ROCHA
RS-1
CHARLES ROCHA/MV
RICHARD STURDEVANT/Atty. for dbt.

MOTION TO CONFIRM PLAN
3-18-16 [[35](#)]

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 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.

16. [10-16342](#)-A-7 MANUEL/ENEDINA PEREZ PRE-TRIAL CONFERENCE RE: MOTION
DAC-5 FOR SANCTIONS FOR VIOLATION OF
MANUEL PEREZ/MV THE DISCHARGE INJUNCTION
4-21-15 [[29](#)]

ERIN SAKATA/Atty. for dbt.
ORDER RESCHEDULING TO
5/17/16, ECF NO. 74

Final Ruling

The matter was rescheduled to May 17, 2018, and was heard on that date.

17. [16-10747](#)-A-13 CASEY/RUTH FRITZ OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
5-2-16 [[15](#)]

SCOTT LYONS/Atty. for dbt.

No tentative ruling.

18. [16-10947](#)-A-13 JOSEPH/KRISTEN ABLES MOTION TO VALUE COLLATERAL OF
JDM-1 NAVY FEDERAL CREDIT UNION
JOSEPH ABLES/MV 4-4-16 [[12](#)]
JAMES MILLER/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 2005 Toyota Sequoia SR5. 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 \$7253.

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 2005 Toyota Sequoia SR5 has a value of \$7253. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7253 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. [16-11150](#)-A-13 TERRY/MARIA THEIS
TFJ-1
TERRY THEIS/MV
THOMAS JEFFREY/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
4-7-16 [[10](#)]

Final Ruling

Motion: Value Collateral

Disposition: Continued to June 2, 2016, at 9:00 a.m.

Order: Civil minute order

INSUFFICIENT SERVICE

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

Service of the motion was insufficient. Service on the IRS in a contested matter must comply with Fed. R. Bankr. P. 7004(b)(5). According to that provision, service must be made by mailing the motion to (1) the United States as prescribed in Rule 7004(b)(4), and (2) the agency.

Mailing the motion to the United States as prescribed in Rule 7004(b)(4) requires further that the motion be mailed to (1) the civil process clerk at the U.S. attorney's office for this district (Fresno division) and (2) mailing a copy of the motion to the Attorney General at Washington, D.C.

Review of the proof of service shows that all of these requirements have been satisfied except for the mailing the motion to the civil process clerk at the U.S. Attorney's office for this district. The address needed to meet this requirement is shown in LBR 2002-1(a)(2): United States Attorney (For Dep't of the Treasury / Internal Revenue Service), 2500 Tulare Street, Suite 4401, Fresno, CA 93721.

The hearing is continued to June 2, 2016, at 9:00 a.m. No later than May 25, 2016, a supplemental proof of service shall be filed showing that the motion was mailed to the respondent agency at the address for the U.S. Attorney's office in this district shown above.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the motion is continued to June 2, 2016, at 9:00 a.m. The movant shall serve the motion on the respondent agency no later than May 25, 2016. The respondent may oppose the motion orally at the continued hearing date.

20. [16-10253](#)-A-13 JOE PEREZ
KDG-3
MONICA TRIANO/MV

OBJECTION TO DEBTORS 11 U.S.C.
SEC. 1328 CERTIFICATION BY
MONICA TRIANO
4-7-16 [[74](#)]

PATRICK KAVANAGH/Atty. for dbt.
JACOB EATON/Atty. for mv.
RESPONSIVE PLEADING

[This matter will be called with #39 below.]

No tentative ruling.

21. [16-10055](#)-A-13 MICHAEL/ROBIN BRIGGS
MHM-2
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
4-19-16 [[59](#)]

Final Ruling

Since the objection was filed, the debtor has amended Schedule C. The objection will be overruled as moot.

22. [16-10055](#)-A-13 MICHAEL/ROBIN BRIGGS
SL-1
MICHAEL BRIGGS/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS
4-8-16 [[40](#)]

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 1852 N. Temperance Avenue, Fresno, CA.

The court values the collateral at \$460,000. 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 1852 N. Temperance Avenue, Fresno, CA, has a value of \$460,000. 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.

23. 16-10055 -A-13 MICHAEL/ROBIN BRIGGS SL-2 MICHAEL BRIGGS/MV STEPHEN LABIAK/Atty. for dbt.	MOTION TO VALUE COLLATERAL OF SLS (SPECIALIZED LOAN SERVICING LLC) 4-8-16 [44]
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Final Ruling

Motion: Value Collateral [Real Property; Not 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

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); accord *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value real property collateral securing the respondent's claim. The real property is located at 1212 N. Van Ness Ave., Fresno, CA, and is not the debtor's principal residence.

The court values the collateral at \$320,000. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. 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 1212 N. Van Ness Ave., Fresno, CA, has a value of \$320,000. Senior liens on the collateral secure debt in the amount of \$343,000. The respondent has a secured claim in the amount of \$0.00 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.

24. [16-10356](#)-A-13 KENNETH/AMANDA WOOD
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING
- OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
4-19-16 [[23](#)]

Final Ruling

Since the objection was filed, the debtor has amended Schedule C. The objection will be overruled as moot.

25. [15-13461](#)-A-13 RAMIRO OCHOA
NRA-5
RAMIRO OCHOA/MV
- CONTINUED OBJECTION TO CLAIM OF
BANK OF AMERICA, N.A., CLAIM
NUMBER 4
3-7-16 [[102](#)]
- NELLIE AGUILAR/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

26. [15-14062](#)-A-13 JOHN/NANCY ALVA
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE
3-31-16 [[49](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [16-10164](#)-A-13 DENNIS/PATRICIA WOOD
PLG-1
DENNIS WOOD/MV
STEVEN ALPERT/Atty. for dbt.
- MOTION TO VALUE COLLATERAL OF
DITECH FINANCIAL, LLC
5-3-16 [[17](#)]

Tentative 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 5630 Bear Creek Dr., Catheys Valley, CA.

The court values the collateral at \$325,000. 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 5630 Bear Creek Dr., Catheys Valley, CA, has a value of \$325,000. 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.

28. [15-14067](#)-A-13 WARREN/MICHELLE BOND MOTION TO DISMISS CASE
MHM-3 4-7-16 [[40](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied as moot

Order: Civil minute order

CASE DISMISSAL

This case was filed on October 16, 2015. After the trustee's objection to confirmation was sustained on February 27, 2016, the debtors did not file a modified plan. It appears that as of May 12, 2016, a modified plan has been filed along with a motion to confirm it. The motion will be denied.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is denied as moot.

29. [16-10767](#)-A-13 GILBERT/MARY ONTIVEROS OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
5-2-16 [[17](#)]
SCOTT LYONS/Atty. for dbt.

No tentative ruling.

30. [15-12272](#)-A-13 ISAMU UTSUROGI OBJECTION TO CLAIM OF OLD
MSN-1 REPUBLIC INSURANCE COMPANY,
ISAMU UTSUROGI/MV CLAIM NUMBER 4
3-25-16 [[30](#)]
MARSHALL MOUSHIGIAN/Atty. for dbt.

No tentative ruling.

31. [16-11575](#)-A-13 LOUIS/LILLIE PANCOTTI MOTION TO EXTEND AUTOMATIC STAY
FW-1 5-4-16 [[7](#)]
LOUIS PANCOTTI/MV
GABRIEL WADDELL/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.

32. [12-11276](#)-A-13 LUIS/CAROLYN HERNANDEZ MOTION FOR COMPENSATION BY THE
BCS-5 LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTORS ATTORNEY(S)
4-18-16 [[91](#)]
BENJAMIN SHEIN/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, Shein Law Group, PC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5095.50 and reimbursement of expenses in the amount of \$416.07.

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.

Shein Law Group, PC'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 \$5095.50 and reimbursement of expenses in the amount of \$416.07. The aggregate allowed amount equals \$5511.57. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5511.57 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.

33. [11-12477](#)-A-13 JAMES/TRACY SILVEIRA TRUSTEE'S FINAL REPORT AND
DJP-1 ACCOUNT
3-1-16 [[63](#)]

GEOFFREY ADALIAN/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

34. [15-11284](#)-A-13 ORA HOWARD MOTION TO MODIFY PLAN
ALG-5 3-29-16 [[80](#)]
ORA HOWARD/MV
JANINE ESQUIVEL/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.

35. [15-14786](#)-A-13 MARY SMITH CONTINUED MOTION TO VALUE
DMG-5 COLLATERAL OF WELLS FARGO
MARY SMITH/MV DEALER SERVICES
2-24-16 [[42](#)]

D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The parties have resolved the matter by stipulation. The matter will be dropped from calendar as moot.

36. [15-14786](#)-A-13 MARY SMITH
DMG-6
MARY SMITH/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
4-4-16 [[73](#)]

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

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

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

37. [16-10090](#)-A-13 HENRY/IRMA ROMERO
MHM-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
3-24-16 [[17](#)]

PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The objection withdrawn, the matter is dropped as moot.

38. [16-10591](#)-A-13 STEVEN/MARIA LUNA
MHM-1
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE
4-20-16 [[27](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [16-10253](#)-A-13 JOE PEREZ
KDG-2
MONICA TRIANO/MV
PATRICK KAVANAGH/Atty. for dbt.
JACOB EATON/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
4-6-16 [[60](#)]

No tentative ruling.