

**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

**THE HEARINGS WILL BE HELD IN COURTROOM 12
THE HONORABLE W. RICHARD LEE, PRESIDING**

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: MAY 24, 2018
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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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. [16-14304](#)-A-13 **IN RE: TINA MORENO**
[MJA-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF ARNOLD LAW
GROUP, APC FOR MICHAEL J. ARNOLD, DEBTORS ATTORNEY(S)
4-12-2018 [[96](#)]

MICHAEL ARNOLD

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, Arnold Law Group, APC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6,648.60 and reimbursement of expenses in the amount of \$351.40.

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.

Arnold Law Group, APC'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 \$6,648.60 and reimbursement of expenses in the amount of \$351.40. The aggregate allowed amount equals \$7,000.00. As of the date of the application, the applicant held a retainer in the amount of \$2,000.00. The amount of \$5,000.00 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.

2. [18-10105](#)-A-13 **IN RE: SCOTT MARSH**
[MHM-4](#)

MOTION TO DISMISS CASE
4-20-2018 [[42](#)]

MICHAEL MEYER/MV
JERRY LOWE
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [18-11112](#)-A-13 **IN RE: ANDREW/MICHELLE BUSTOS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-2-2018 [[17](#)]

Final Ruling

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

4. [18-10415](#)-A-13 **IN RE: TERRILL/SUSAN COX**
[SLC-2](#)

MOTION TO CONFIRM PLAN
4-4-2018 [[51](#)]

TERRILL COX/MV
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [17-14518](#)-A-13 **IN RE: EFREN/AMALIA ROJAS**
[TOG-1](#)

MOTION TO CONFIRM PLAN
3-28-2018 [[43](#)]

EFREN ROJAS/MV
THOMAS GILLIS

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.

6. [18-10326](#)-A-13 **IN RE: ANGEL MELENDEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
4-13-2018 [[18](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

Final Ruling

The trustee moves to dismiss this case for failure to obtain an order valuing the collateral of a Class 2 creditor Santander Consumer USA. The motion to dismiss will be denied as moot because the court has on this calendar granted a motion valuing this collateral.

7. [18-10326](#)-A-13 **IN RE: ANGEL MELENDEZ**
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
4-18-2018 [[26](#)]

ANGEL MELENDEZ/MV
TIMOTHY SPRINGER

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 2010 Nissan Armada. 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 \$13,100.

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 2010 Nissan Armada has a value of \$13,100. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$13,100 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.

8. [17-14529](#)-A-13 **IN RE: BRIAN FOLLAND**
[DRJ-2](#)

MOTION TO CONFIRM PLAN
4-13-2018 [[45](#)]

Final Ruling

The hearing on this matter will be continued to May 31, 2018, at 9:00 a.m., and the court may treat the continued hearing as a status conference to consider whether the matter is suitable for further

briefing or an evidentiary hearing.

9. [17-14529](#)-A-13 **IN RE: BRIAN FOLLAND**
[DRJ-2](#)

MOTION TO VALUE COLLATERAL OF CIT BANK, N.A.
5-10-2018 [[53](#)]

BRIAN FOLLAND/MV
DAVID JENKINS

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f)(2); no 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). 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 1530 East La Quinta, Fresno, CA.

The court values the collateral at \$1,000,000. 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).

LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case. Here, the docket control number is exactly the same as another matter filed in this case.

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 1530 East La Quinta, Fresno, CA, has a value of \$1,000,000. 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.

10. [18-11029](#)-A-13 **IN RE: SYLVIA NICOLE**
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SETERUS, INC. AND/OR
MOTION TO DISMISS CASE
5-8-2018 [[44](#)]

SETERUS, INC./MV
STEPHEN LABIAK
RENEE PARKER/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: Overruled

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

Creditor Seterus, Inc, as a servicer for Federal National Mortgage Association, objects to confirmation on the grounds that (1) the debtor is incapable of reorganization and (2) the plan is not feasible. The court will consider each argument.

Seterus, Inc. contends that the debtor does not have enough income to provide for payments under the plan. In support of this argument, Seterus, Inc. references only the debtor's proposed chapter 13 plan and the debtor's filed Schedules I and J. Seterus, Inc. contends that the debtor's disposable income as shown on Schedule J in the amount of \$1335.16 is less than the total of the debtor's plan payment. It asserts without evidence that the debtor's plan payment is 1368.53.

The court takes judicial notice of the proposed chapter 13 plan filed by the debtor and its contents. The plan on file at docket no. 12 shows a plan payment of \$1335.16, an amount equal to the net income shown on Schedule J. Seterus, Inc. claims, without any evidence in support, that the trustee's fee is 10%, which may account for the difference in the plan payment as proposed and the plan payment as alleged by Seterus, Inc. But the trustee has not objected to the plan payment for not including a sufficient allocation for the trustee's fee pursuant to 28 U.S.C § 586(e). The plan, moreover, provides for a trustee's fee in an amount "up to 10% of plan payments" which means that the amount of the fee might be less depending on a variety of factors. The court will overrule this objection.

Next, Seterus, Inc. argues that the plan is not feasible because the plan does not provide for its allowed secured claim. Based on this alleged claim, Seterus, Inc. states that the plan would have to provide an additional \$784.58 per month for pre-petition arrears as well as \$1,008.53 for ongoing postpetition payments.

The problem with this argument is that Seterus, Inc. has offered no admissible evidence of its secured claim in this case. It has not filed a proof of claim that could be deemed allowed. No declaration was filed in support of this fact, and none of the exhibits have been authenticated under Fed. R. Evid. 901.

Further, the debtor has not scheduled Seterus, Inc.'s alleged secured claim on Schedule D, and has not listed on Schedule A the Nevada property that purportedly secures Seterus, Inc.'s claim. The unauthenticated grant deed attached to debtor's opposition, even if considered, would tend to suggest that the debtor no longer owns this Nevada property, and it does not show that the debtor owes the debt secured by such property. The court will overrule the feasibility objection based on lack of admissible evidence.

REQUEST FOR DISMISSAL FOR BAD FAITH

Seterus, Inc. requests dismissal of this case with a bar to re-filing. This request is found on pages 3-5 of the objection. The court will deny this request for two reasons. First, a request for dismissal of a case requires a motion. The local rules of this court provide as follows:

Joinder. Every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules.

LBR 9014-1(d)(5). This local rule does not permit a party to combine two separate requests for relief when such requests are not based on the same statute or rule and joinder of such requests is not otherwise authorized.

The objection to confirmation and the request for dismissal of a chapter 13 case are not based on the same statute or rule. An objection to confirmation is brought pursuant to the standards of §§ 1321, 1322, 1324, and 1325 and Fed. R. Bankr. P. 2002(b) and 3015(f). None of these statutes and rules provide the basis for dismissal of a chapter 13 case. Dismissal of a chapter 13 case is governed by § 1307(c) and Fed. R. Bankr. P. 1017(f). So Seterus, Inc.'s joinder of its request for dismissal with its objection to confirmation is improper. The court will deny the request on this ground.

Even if the request for dismissal had been filed a separate motion, the court would deny it for lack of admissible evidence.

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.

Seterus, Inc.'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 overruled.

11. [18-11029](#)-A-13 **IN RE: SYLVIA NICOLE**
[SSA-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY T2M INVESTMENTS, LLC
4-25-2018 [\[27\]](#)

T2M INVESTMENTS, LLC/MV
STEPHEN LABIAK
STEVEN ALTMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

12. [18-11029](#)-A-13 **IN RE: SYLVIA NICOLE**
[SSA-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-25-2018 [\[31\]](#)

T2M INVESTMENTS, LLC/MV
STEPHEN LABIAK
STEVEN ALTMAN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted (except that the request for attorney's fees and costs is denied)

Order: Prepared by moving party

Subject: 1521 S. 7th Street, Los Banos, CA

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).

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan. The note evidencing this loan matured fully prior to the petition date in this case. Pre-petition, the movant was required to advance property insurance to cover the property. Property taxes secured by the property have become delinquent post-petition in the amount of \$804.77. And the debtor does not oppose the relief sought. Taking these facts together, the court finds that 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.

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.

T2M Investments, LLC'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 1521 S. 7th Street, Los Banos, CA, 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.

13. [18-10635](#)-A-13 **IN RE: ROBERTO AGUILAR**
[MHM-2](#)

MOTION TO DISMISS CASE
4-18-2018 [[17](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

14. [18-10640](#)-A-13 **IN RE: YESENIA BAROCIO**
[MHM-2](#)

MOTION TO DISMISS CASE
4-18-2018 [[21](#)]

MICHAEL MEYER/MV
BENNY BARCO

Final Ruling

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

15. [18-10241](#)-A-13 **IN RE: LINDA FORD**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-8-2018 [[20](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
WITHDRAWN

Final Ruling

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

16. [18-10241](#)-A-13 **IN RE: LINDA FORD**
[TCS-1](#)

MOTION TO CONFIRM PLAN
4-11-2018 [[29](#)]

LINDA FORD/MV
TIMOTHY SPRINGER

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.

17. [18-11243](#)-A-13 **IN RE: CYNTHIA BAUDER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-7-2018 [[14](#)]

PHILLIP GILLET

Final Ruling

The installment having been paid, the order to show cause is discharged.

18. [17-14548](#)-A-12 **IN RE: BI-RITE AUTO TRANSPORT, INC.**
[MHM-1](#)

MOTION TO DISMISS CASE
4-2-2018 [[36](#)]

MICHAEL MEYER/MV
WILLIAM ROMAINÉ

Final Ruling

Motion: Dismiss Chapter 12 Case

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 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).

CASE DISMISSAL

The trustee moves to dismiss this chapter 12 case. The case was filed November 29, 2017. Section 1221 requires that a chapter 12 plan be filed no later than 90 days after the petition date. This deadline may be extended by the court. Ninety days after the petition date was February 27, 2018. A chapter 12 plan is not on file. For the reasons stated in the motion, cause exists under § 1208(c)(1) to dismiss the case.

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 trustee's motion to dismiss this chapter 12 case has been presented to the court. Having entered the default of respondent debtor 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 court hereby dismisses this case.

19. [18-11049](#)-A-13 **IN RE: ELIZABETH HAGAN**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PHH MORTGAGE
CORPORATION
5-8-2018 [[16](#)]

PHH MORTGAGE CORPORATION/MV
GABRIEL WADDELL
JAMIE HANAWALT/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: Overruled

Order: Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 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.

PHH Mortgage Corporation (PHH) objects to confirmation of the plan because the plan understates the amount of arrears on its secured claim. PHH has filed a proof of claim secured by real property located at 887 Loyola Avenue, Clovis, CA. Both of PHH's objections under § 1322(b)(5) and § 1325(a)(5)(B)(ii) share the same factual basis: the plan's understatement of the prepetition arrears owed on PHH's secured claim.

But § 3.02 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section. This means that the plan's understatement of the pre-petition arrears on a Class 1 claim does not reduce the amount of the arrears reflected in a filed proof of claim.

The objection will be overruled because any understatement of the prepetition arrears in the plan does not alter or affect the creditor's rights.

CIVIL MINUTE ORDER

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled.

20. [17-14550](#)-A-12 **IN RE: MIKAL JONES AND ANGELA ANDERSON**
[MHM-1](#)

MOTION TO DISMISS CASE
4-2-2018 [[41](#)]

MICHAEL MEYER/MV

Final Ruling

Motion: Dismiss Chapter 12 Case

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 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).

CASE DISMISSAL

The trustee moves to dismiss this chapter 12 case. The case was filed November 29, 2017. Section 1221 requires that a chapter 12 plan be filed no later than 90 days after the petition date. This deadline may be extended by the court. Ninety days after the petition date was February 27, 2018. A chapter 12 plan is not on file. For the reasons stated in the motion, cause exists under § 1208(c)(1) to dismiss the case.

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 trustee's motion to dismiss this chapter 12 case has been presented to the court. Having entered the default of respondent debtor 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 court hereby dismisses this case.

21. [18-10063](#)-A-13 **IN RE: DENNIS/KRISTINE MILLS**
[JDW-1](#)

MOTION TO CONFIRM PLAN
3-28-2018 [[29](#)]

DENNIS MILLS/MV
JOEL WINTER

Final Ruling

The case having been dismissed, the matter is denied as moot.

22. [17-13274](#)-A-13 **IN RE: SERGIO/MARLEAN BRAVO**
[MSN-6](#)

MOTION TO CONFIRM PLAN
3-27-2018 [[86](#)]

SERGIO BRAVO/MV
MARK NELSON

Final Ruling

The case dismissed, the matter is denied as moot.

23. [18-10676](#)-A-13 **IN RE: MICHAEL/LOREE JONES**
[MHM-2](#)

MOTION TO DISMISS CASE
4-18-2018 [[19](#)]

MICHAEL MEYER/MV
JEFFREY ROWE

Final Ruling

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

24. [18-10179](#)-A-13 **IN RE: PETER LEON**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-8-2018 [[15](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

Tentative Ruling

The trustee moved to dismiss this case for failure to make all payments due under the plan. § 1307(c)(1), (c)(4). The hearing was continued to coincide with the hearing on the debtor's modified plan which was filed to resolve the default in payments. Civ. Mins., Apr. 12, 2018, ECF. No. 33. The debtor's motion to confirm the modified plan (at docket control no. TCS-1) will be denied as indicated in the final ruling immediately following this ruling. Unless the debtor has cured the delinquency as confirmed by the trustee at the hearing, the court will dismiss this case.

25. [18-10179](#)-A-13 **IN RE: PETER LEON**
[TCS-1](#)

MOTION TO CONFIRM PLAN
4-11-2018 [[26](#)]

PETER LEON/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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.

26. [18-10883](#)-A-13 **IN RE: ANTONIO LOZANO DE ANDA**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FIFTH THIRD MORTGAGE
COMPANY
5-8-2018 [[26](#)]

FIFTH THIRD MORTGAGE
COMPANY/MV
RICHARD STURDEVANT
JAMIE HANAWALT/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: Overruled

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.

BACKGROUND

Secured creditor Fifth Third Mortgage Co. (Secured Creditor) has
objected to confirmation on several grounds relating to the
treatment of its secured claim. It has filed a secured proof of
claim, which is Claim No. 3 on the claims register. Its claim is
secured by real property located at 2805 Road 124, Pixley, CA. 11
U.S.C. § 502(a).

The debtor has proposed a chapter 13 plan. Secured Creditor has
filed an objection to confirmation of that plan.

CONFIRMATION OBJECTION

The grounds for Secured Creditor's objection are as follows:

1. The plan fails to provide for the cure of creditor's pre-petition
arrears in violation of § 1325(a)(5)(B)(ii). Secured Creditor
asserts that its claim includes pre-petition arrears totaling about
\$4,406.71.
2. The plan does not promptly cure creditor's pre-petition arrears
under § 1322(b)(5).
3. The plan is not feasible under § 1325(a)(6) given that if
debtor's plan were to include the pre-petition arrears, the plan
payment would exceed the debtor's monthly disposable income.

4. The plan fails to provide for ongoing maintenance payments on this mortgage as required by § 1322(b)(5).

Not only does the plan not provide for Secured Creditor's pre-petition arrears, it also does not provide for any other amount of its secured claim.

Section 1325(a)(5)(B)

Section 1325(a)(5)'s requirements apply only when an allowed secured claim is "provided for by the plan." See 11 U.S.C. § 1325(a)(5). In other words, whenever a plan provides for a secured claim, the plan's treatment must then comply with the strictures of § 1325(a)(5). A plan that does not provide for a secured claim is not subject to § 1325(a)(5) as to that claim by the express terms of § 1325(a)(5).

In this case, the plan does not provide for this creditor's secured claim at all. So the plan does not violate section 1325(a)(5)'S requirements. Of course, once the plan is confirmed, the plan provides that Secured Creditor has cause for stay relief under the terms of the plan. See Chapter 13 Plan § 3.11(b), ECF No. 13.

In short, the plan does not provide for Secured Creditor's claim, and Secured Creditor is not bound by anything in the plan. As a result, the plan falls outside the scope of § 1325(a)(5) as to Secured Creditor's claim. The court will overrule the objection under § 1325(a)(5)(B).

Section 1322(b)(5)

Section 1322(b)(5) provides:

(b) Subject to subsections (a) and (c) of this section, **the plan may** . . . (5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due[.]

11 U.S.C. § 1322 (emphasis added). Because subsection (b) of § 1322 begins with the phrase "the plan may," its provisions for ongoing maintenance payments and cure of any default on long-term claims are permissive and not mandatory. If the plan attempts to cure a default as this statute permits, then such cure must be within a reasonable time. But if the plan does not attempt to cure the default, the debtor cannot be required to do so. The court will overrule the objections under § 1322(b)(5).

Lack of Feasibility

Secured Creditor's feasibility objection is that the debtor's Schedule J does not show sufficient disposable income to fund a plan payment once the plan payment is revised upward to provide for a

cure of its prepetition arrears. Secured Creditor's argument relies on the assumption that the debtor's plan must provide for a cure of its prepetition arrears. But the court has rejected this argument, and the plan does not attempt to provide any cure of Secured Creditor's prepetition arrears, much less a prompt one. Because the plan need not provide for a cure of debtor's prepetition arrears, the feasibility objection will be overruled.

NO CONFIRMATION ORDER AT THIS TIME

In this case, the trustee has moved to extend time to object to confirmation. The trustee's motion was granted. The time to objection to confirmation has been extended to 7 days after the conclusion of the meeting of creditors. Because of this, the court's overruling this objection will not result in a plan being confirmed.

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.

Fifth Third Mortgage Co.'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 overruled without prejudice to Fifth Third Mortgage Co.'s request for any other relief under applicable law.

27. [18-10793](#)-A-13 **IN RE: THOMAS/RUSELL WHEELER**
[MHM-2](#)

MOTION TO DISMISS CASE
4-18-2018 [[19](#)]

MICHAEL MEYER/MV
JOEL WINTER

Final Ruling

Motion: Dismiss Case

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 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).

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

28. [18-11294](#)-A-13 **IN RE: EULALIO GIRAL ALVARADO**
[JRL-1](#)

MOTION TO VALUE COLLATERAL OF RENEW FINANCIAL COMPANY, LLC
4-27-2018 [[19](#)]

EULALIO GIRAL ALVARADO/MV
JERRY LOWE

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of personal property described as 16 Solar Panel Modules, Model Number CS6K-275 MONO and 16 Inverters Model Number M215-60-2LL-S22. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$2,500.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 16 Solar Panel Modules, Model Number CS6K-275 MONO and 16 Inverters Model Number M215-60-2LL-S22 has a value of \$2,500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2,500 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.

29. [18-11294](#)-A-13 **IN RE: EULALIO GIRAL ALVARADO**
[JRL-2](#)

MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES,
INC.

4-27-2018 [\[23\]](#)

EULALIO GIRAL ALVARADO/MV
JERRY LOWE

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 Chevrolet Camaro LT Convertible. 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 \$12,000.

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 Chevrolet Camaro LT Convertible has a value of \$12,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$12,000 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. [18-11294](#)-A-13 **IN RE: EULALIO GIRAL ALVARADO**
[JRL-3](#)

MOTION TO VALUE COLLATERAL OF VERIPRO SOLUTIONS, INC.
4-27-2018 [\[27\]](#)

EULALIO GIRAL ALVARADO/MV
JERRY LOWE

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 1259 Plum Circle, Lemoore, CA.

The court values the collateral at \$220,000. 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 1259 Plum Circle, Lemoore, CA, has a value of \$220,000. 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.

31. [17-14598](#)-A-13 **IN RE: ALEJANDRO TAPIA AND MAYRA IBARRA**
[TOG-7](#)

MOTION TO CONFIRM PLAN
4-12-2018 [\[78\]](#)

MAYRA IBARRA/MV
THOMAS GILLIS
DEBTOR DISMISSED, PLAN WITHDRAWN

Final Ruling

The plan and motion withdrawn, the matter is dropped as moot.

32. [17-14598](#)-A-13 **IN RE: ALEJANDRO TAPIA AND MAYRA IBARRA**
[TOG-8](#)

MOTION TO CONFIRM PLAN
4-17-2018 [\[85\]](#)

MAYRA IBARRA/MV
THOMAS GILLIS

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.

33. [18-11599](#)-A-13 **IN RE: SILVIA ABARCA**
[HDN-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-30-2018 [\[8\]](#)

SILVIA ABARCA/MV
HENRY NUNEZ

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no 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). 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).

EXTENSION OF THE STAY

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.

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 present motion to extend the automatic stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

34. [18-11926](#)-A-13 **IN RE: STEVEN/TELVA RAMIREZ**
[SL-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
5-16-2018 [\[11\]](#)

STEVEN RAMIREZ/MV
SCOTT LYONS
OST 5/16/17

Tentative Ruling

Motion: Impose the Automatic Stay

Notice: LBR 9014-1(f)(2); no 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). 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).

IMPOSITION OF THE STAY

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. 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.

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 present motion to extend the automatic stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is imposed in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code. The automatic stay shall be effective upon the date of entry of this order.