

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY

**DATE:** JUNE 27, 2019

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

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

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

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

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

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

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

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
6-10-2019    [\[18\]](#)

THOMAS GILLIS

**No Ruling**

2. [19-11702](#)-A-13     **IN RE: JOSE MORALES**  
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL  
5-25-2019    [\[14\]](#)

JOSE MORALES/MV  
THOMAS GILLIS

**Final Ruling**

**Motion:** Value Collateral [Personal Property; 2007 Chevrolet Tahoe 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 2007 Chevrolet Tahoe. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$5,473.

#### **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 2007 Chevrolet Tahoe vehicle has a value of \$5,473. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5,473 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.

3. [18-14905](#)-A-13     **IN RE: TRACEY PRITCHETT**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-23-2019    [\[26\]](#)

CREDIT ACCEPTANCE  
CORPORATION/MV  
TIMOTHY SPRINGER  
JENNIFER WANG/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** \$8,633.53 in insurance proceeds received as a result of accident involving the movant's collateral, a 2015 Mazda5 vehicle

The movant seeks relief from stay to apply received insurance proceeds (\$8,633.53) from an accident involving the movant's collateral, a 2015 Mazda5 vehicle, to its claim.

However, the trustee opposes the motion. According to him, after this motion was filed, the movant has agreed to turn over the insurance proceeds to the trustee and to be paid through the plan.

Given that the movant has now agreed to turn over the insurance proceeds it is holding to the trustee, this motion is moot. Accordingly, the motion will be denied as such.

### **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.

Credit Acceptance Corporation's motion for relief from the automatic stay has been presented to the court. Having considered the motion and any papers filed in support of and response to the motion,

IT IS ORDERED that the motion is denied as moot.

4. [19-10806](#)-A-13     **IN RE: RANDY/EUFEMIA BROWN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-10-2019    [\[33\]](#)

MARK ZIMMERMAN

**Final Ruling**

The installment fees having been paid, the order to show cause is discharged. The case will remain pending.

5. [19-10008](#)-A-13     **IN RE: RANDALL CURRY**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-22-2019    [\[32\]](#)

MICHAEL MEYER/MV  
GABRIEL LIBERMAN  
DISMISSED 5/24/19

**Final Ruling**

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

6. [19-10409](#)-A-13     **IN RE: IRENE BARRAGAN**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-22-2019    [\[44\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

**Final Ruling**

This motion has been withdrawn by the movant. ECF No. 56. The court deems the motion to have been voluntarily dismissed.

7. [19-11810](#)-A-13     **IN RE: ROBERT/ROBIN OCHOA**  
[ETL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
5-13-2019    [[14](#)]

DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
NICHOLAS ANIOTZBEHERE  
ERICA LOFTIS/ATTY. FOR MV.

**No Ruling**

8. [19-11913](#)-A-13     **IN RE: JOSE VITOLAS**  
[VVF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MECHANICS BANK  
6-6-2019    [[17](#)]

MECHANICS BANK/MV  
JAMES CANALEZ  
VINCENT FROUNJIAN/ATTY. FOR MV.

**No Ruling**

9. [19-11121](#)-A-13     **IN RE: RAYMOND/DEBORAH MARTIN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-28-2019    [[22](#)]

MICHAEL MEYER/MV  
RICHARD STURDEVANT

**No Ruling**

10. [19-10223](#)-A-13     **IN RE: RAFAEL SANCHEZ AND CANDELARIA RAMOS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-22-2019    [[47](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS

**No Ruling**

11. [19-10223](#)-A-13     **IN RE: RAFAEL SANCHEZ AND CANDELARIA RAMOS**  
[TOG-1](#)

MOTION TO CONFIRM PLAN  
5-13-2019    [\[39\]](#)

RAFAEL SANCHEZ/MV  
THOMAS GILLIS

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

12. [16-12630](#)-A-13     **IN RE: ROGELIO/BETTY TRUJILLO**  
[JRL-4](#)

MOTION TO REFINANCE  
6-3-2019    [\[54\]](#)

ROGELIO TRUJILLO/MV  
JERRY LOWE  
NON-OPPOSITION

**Tentative Ruling**

**Motion:** Approve New Debt [Refinance Existing Home Loan]

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtors seek to incur new debt to refinance an existing home loan with Wells Fargo Bank. Amended Schedules I and J have been filed indicating that the debtors can afford both the plan payment

and the proposed monthly loan payment of principal and interest that would result from obtaining this financing.

The court cannot grant the motion though because the debtors' calculations do not add up. They want to incur a new loan of \$161,365 and use \$35,000 to make needed repairs of the home and use \$7,634.04 to catch up on plan payments. This leaves \$118,730.96 to pay off the sole existing mortgage against the property, alleged by the debtors to be in the amount of \$114,968.08.

However, the mortgagee on the existing mortgage has filed a responsive pleading indicating that the total payoff is not \$114,968.08. It is \$132,554. The proposed new debt then is not sufficient to cover the home repairs, plan payment arrears, and the existing mortgage. As such, the motion will be denied.

#### **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 debtors' motion to refinance has been presented to the court. Having considered the motion and any papers filed in support of and response to the motion,

IT IS ORDERED that the motion is denied without prejudice.

13. [14-12433](#)-A-13     **IN RE: RICHARD/MARIANNA RANDALL**  
[JDW-4](#)

MOTION FOR COMPENSATION FOR JOEL D. WINTER, DEBTORS  
ATTORNEY(S)  
6-5-2019    [\[90\]](#)

JOEL WINTER

#### **Tentative Ruling**

**Application:** Allowance of Additional Compensation and Expense  
Reimbursement after Plan Completion

**Notice:** LBR 9014-1(f)(2); no written opposition required (opposition  
by the trustee filed)

**Disposition:** Denied without prejudice

**Order:** Civil minute order

#### **FACTUAL BACKGROUND**

Joel Winter, counsel for the debtors, has applied for a first and final allowance of compensation in the amount of \$4,375 and reimbursement of expenses in the amount of \$0.00.



However, the trustee opposes the application, among other things pointing out that the application is supported by the declaration of attorney Benjamin Shein in another bankruptcy case, Huckabee, Case No. 14-11145. ECF No. 92. Attorney Joel Winter's declaration in support of this application, which the proof of service says is part of this application, is not among the pleadings before the court. See ECF No. 95 at 1. As such, the trustee complains that this application's exhibits are unauthenticated and thus inadmissible.

The court agrees. Given the absence of Joel Winters' declaration in the record on this application, the exhibits in support of the application, including the time sheets underlying the instant request for attorney's fees. This violates LBR 9014-1(d)(3)(D), which requires that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Given this, the application will be denied without prejudice. At this time, the court finds it unnecessary to address the other objections raised by the trustee.

#### **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.

Attorney Joel Winter's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having considered the application and any papers filed in support of and response to the application,

IT IS ORDERED that the application is denied without prejudice.

14. [18-15139](#)-A-13     **IN RE: AARON/ANNIE LUCAS**  
[MHM-3](#)

MOTION TO DISMISS CASE  
5-23-2019    [[65](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH

**No Ruling**

15. [18-15139](#)-A-13     **IN RE: AARON/ANNIE LUCAS**  
[PK-2](#)

MOTION TO CONFIRM PLAN  
5-22-2019    [\[56\]](#)

AARON LUCAS/MV  
PATRICK KAVANAGH  
RESPONSIVE PLEADING

**No Ruling**

16. [19-10640](#)-A-13     **IN RE: GARY/ROSE BRADY**  
[SAH-2](#)

MOTION TO CONFIRM PLAN  
5-8-2019    [\[31\]](#)

GARY BRADY/MV  
SUSAN HEMB  
RESPONSIVE PLEADING

**No Ruling**

17. [18-14242](#)-A-13     **IN RE: ELIZABETH FRANCO**  
[NLL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION  
6-10-2019    [\[56\]](#)

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION/MV  
SCOTT LYONS  
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION/ATTY. FOR MV.

**No Ruling**

18. [18-15048](#)-A-13     **IN RE: ALDO ESCRIBENS AND ANA CASTILLO**  
[SL-3](#)

CONTINUED MOTION TO CONFIRM PLAN  
3-25-2019    [\[38\]](#)

ALDO ESCRIBENS/MV  
STEPHEN LABIAK  
DISMISSED 5/6/19

**Final Ruling**

The case was dismissed, the matter is dropped as moot.

19. [19-11448](#)-A-13     **IN RE: DONNIE EASON**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-21-2019    [\[20\]](#)

MICHAEL MEYER/MV  
DAVID JENKINS

**No Ruling**

20. [19-10251](#)-A-13     **IN RE: RAFAEL VALDOVINOS AND BERTA DE**  
AGUILAR  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-22-2019    [\[44\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS

**No Ruling**

21. [19-10251](#)-A-13     **IN RE: RAFAEL VALDOVINOS AND BERTA DE**  
AGUILAR  
[TOG-1](#)

MOTION TO CONFIRM PLAN  
5-17-2019    [\[37\]](#)

RAFAEL VALDOVINOS/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**No Ruling**

22. [19-11351](#)-A-13     **IN RE: NORMA YANEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-28-2019    [\[44\]](#)

MICHAEL MEYER/MV

**No Ruling**

23. [16-12852](#)-A-13     **IN RE: ELEANOR AIKINS**  
[JDR-4](#)

MOTION TO MODIFY PLAN  
5-17-2019    [\[98\]](#)

ELEANOR AIKINS/MV  
JEFFREY ROWE  
RESPONSIVE PLEADING

### **Tentative 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 modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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

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

24. [19-11654](#)-A-13     **IN RE: LINNEY WADE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-29-2019    [\[17\]](#)

MARK ZIMMERMAN  
\$160.00 INSTALLMENT PAYMENT 6/4/19

**Final Ruling**

The installment payment having been paid, the order to show cause is discharged. The case will remain pending.

25. [19-11255](#)-A-13     **IN RE: MOISES/JACQUELINE ARCE**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-17-2019    [\[25\]](#)

MICHAEL MEYER/MV  
MARK ZIMMERMAN

**No Ruling**

26. [19-11356](#)-A-13     **IN RE: ROBERTO GUZMAN AND VERONICA AVALOS DE**  
GUZMAN  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-21-2019    [\[15\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS

**Final Ruling**

This motion has been withdrawn by the movant. ECF No. 21. The court deems the motion to have been voluntarily dismissed.

27. [19-11756](#)-A-13     **IN RE: LOUIS CASTELLO**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
6-3-2019    [\[14\]](#)

DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
SEAN FERRY/ATTY. FOR MV.

**No Ruling**

28. [19-11460](#)-A-13     **IN RE: RICKY MARTINEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-21-2019    [\[17\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS

**No Ruling**

29. [19-11460](#)-A-13     **IN RE: RICKY MARTINEZ**  
[SL-1](#)

MOTION TO CONFIRM PLAN  
5-23-2019    [\[21\]](#)

RICKY MARTINEZ/MV  
SCOTT LYONS

**No Ruling**

30. [19-11762](#)-A-13     **IN RE: ARTHUR/RACHEL QUINTANA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-4-2019    [\[25\]](#)

BENNY BARCO  
\$80.00 INSTALLMENT PAYMENT 6/4/19

**Final Ruling**

The installment payment having been paid, the order to show cause is  
discharged. The case will remain pending.

31. [19-11762](#)-A-13     **IN RE: ARTHUR/RACHEL QUINTANA**  
[BDB-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.  
5-24-2019    [\[20\]](#)

ARTHUR QUINTANA/MV  
BENNY BARCO

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; 2015 Chevrolet Traverse 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 2015 Chevrolet Traverse vehicle. 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 \$23,925.

#### **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 2015 Chevrolet Traverse vehicle has a value of \$23,925. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$23,925 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.

32. [19-11762](#)-A-13     **IN RE: ARTHUR/RACHEL QUINTANA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
6-10-2019    [\[27\]](#)

BENNY BARCO

**No Ruling**



33. [19-12364](#)-A-13     **IN RE: FRANK RECCHIO**  
[EPE-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
6-6-2019    [\[10\]](#)

FRANK RECCHIO/MV  
ERIC ESCAMILLA

### **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.

A motion to extend the automatic stay has been presented to the court in this case. 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. [19-11767](#)-A-13      **IN RE: ARACELI MORA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-28-2019    [[22](#)]

HENRY NUNEZ  
\$31.00 FILING FEE PAYMENT 5/29/19

**Final Ruling**

The filing fee having been paid in full, the order to show cause is discharged. The case will remain pending.

35. [19-10570](#)-A-13      **IN RE: RICKEY/GALE AJOOTIAN**  
[PK-4](#)

MOTION TO CONFIRM PLAN  
5-23-2019    [[50](#)]

RICKEY AJOOTIAN/MV  
PATRICK KAVANAGH  
DISMISSED 6/6/19

**Final Ruling**

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

36. [18-10772](#)-A-13      **IN RE: EDUARDO FELIX**  
[JRL-5](#)

MOTION TO MODIFY PLAN  
5-16-2019    [[70](#)]

EDUARDO FELIX/MV  
JERRY LOWE

**No Ruling**

37. [19-11672](#)-A-13     **IN RE: RICHARD HAWORTH**  
[ETW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY EQUITY TRUST COMPANY  
CUSTODIAN  
5-31-2019    [\[20\]](#)

EQUITY TRUST COMPANY  
CUSTODIAN/MV  
EDWARD WEBER/ATTY. FOR MV.

**No Ruling**

38. [19-11672](#)-A-13     **IN RE: RICHARD HAWORTH**  
[ETW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-31-2019    [\[25\]](#)

EQUITY TRUST COMPANY  
CUSTODIAN/MV  
EDWARD WEBER/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 1849 Crane Lane Squaw Valley, CA

**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 as both prepetition and postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

While the debtor opposes the motion, he provides no basis for denial of the motion. In fact, the debtor admits to being in default on payments to the movant. "Debtor agrees that he is in default pursuant to the terms of the Note." ECF No. 43.

The debtor asks that the stay is left in place for two months starting on June 27, as he has just filed another chapter 13 plan. ECF Nos. 43 & 39. The debtor also desires to refinance the movant's loan.

However, during the pendency of a chapter 13 case, even if there is not yet a confirmed chapter 13 plan, the debtor is required to make

his mortgage payments and to make his plan payments. The debtor here admits to not making payments to the movant.

Although the court understands that the debtor wishes to keep his home, he is not following the rules of chapter 13 bankruptcy. Chapter 13 debtors must maintain their mortgage payments post-petition. Section 362(d)(1) says that the court "**shall** grant relief from the stay . . . for cause." Failure to maintain post-petition payments to a mortgagee is cause for the granting of relief from stay.

Further, the debtor's desire to refinance the movant's loan is not helpful either. The debtor says that he has already started the refinancing process. But, the debtor is in bankruptcy and he must obtain a court order to borrow. The debtor cannot refinance without permission from the court. The debtor seems to be unaware of this, as he is proceeding in this case without the representation of an attorney.

Finally, as further cause for the granting of relief from stay, the court notes that the debtor failed to appear at the June 4, 2019 meeting of creditors.

The court cannot allow the stay to remain in place when the debtor is not following the rules for chapter 13 bankruptcy debtors. The foregoing is cause for the granting of relief from stay.

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.

Equity Trust Company'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 1849 Crane Lane Squaw Valley, 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.

39. [19-11878](#)-A-13     **IN RE: ROXANNE CLARK**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
6-6-2019    [\[13\]](#)

TIMOTHY SPRINGER

**No Ruling**

40. [16-13279](#)-A-13     **IN RE: CHAD/CANDACE WESTFALL**  
[PWG-1](#)

RESCHEDULED MOTION TO SELL AND/OR MOTION TO PAY  
5-25-2019    [\[29\]](#)

CHAD WESTFALL/MV  
PHILLIP GILLET

**Tentative Ruling**

**Motion:** Sell Property [Real Property]

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

**Disposition:** Granted

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

**Property:** 2203 Trapper St., Bakersfield, CA

**Buyer:** Joshua Sandoval

**Sale Price:** \$255,000

**Sale Type:** Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation. Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

Finally, the court agrees with the trustee's comments on the automatic exemption and the reinvestment requirement within six months after the sale. As requested by the trustee, the order granting the motion shall also provide that:

(1) the bankruptcy estate reserves a revisionary interest in the sale proceeds, up to payment of 100% to unsecured creditors in order to meet liquidation and in the event of a conversion to chapter 7, and

(2) upon the end of the six-month period after the sale, the debtors, if not having reinvested the net proceeds of the sale up to the automatic exemption amount - as required by applicable California law, shall turn over such sale proceeds to the trustee, to the extent necessary to satisfy liquidation.

41. [18-13785](#)-A-13     **IN RE: KRISTIN VOOLSTRA**  
[MHM-4](#)

MOTION TO DISMISS CASE  
5-22-2019    [[71](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

**No Ruling**

42. [19-11493](#)-A-13     **IN RE: KENNETH/LAVERNE BRISTER**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-17-2019    [[21](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

**Final Ruling**

The movant has withdrawn this motion. ECF No. 35. The court deems the motion to have been voluntarily dismissed.

43. [19-11295](#)-A-13     **IN RE: ROGELIO/MYRA RIOS**  
[MHM-3](#)

CORRECTED MOTION TO DISGORGEE FEES  
6-14-2019    [[42](#)]

MICHAEL MEYER/MV  
PHILLIP GILLET

**No Ruling**

44. [19-11295](#)-A-13     **IN RE: ROGELIO/MYRA RIOS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-24-2019    [[24](#)]

MICHAEL MEYER/MV  
PHILLIP GILLET

**No Ruling**

45. [19-11399](#)-A-13     **IN RE: ERICKA MORAN**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-21-2019    [[12](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

**No Ruling**

46. [19-11654](#)-A-13     **IN RE: LINNEY WADE**  
[BW-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY USAA FEDERAL  
SAVINGS BANK  
6-11-2019    [[35](#)]

USAA FEDERAL SAVINGS BANK/MV  
MARK ZIMMERMAN  
BETHANY WOJTANOWICZ/ATTY. FOR MV.

**No Ruling**

47. [19-10038](#)-A-13     **IN RE: ANTONIO CASTANEDA**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
5-2-2019    [\[25\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**Final Ruling**

The movant has withdrawn this motion. ECF No. 35. The court deems the motion to have been voluntarily dismissed.

48. [18-15139](#)-A-13     **IN RE: AARON/ANNIE LUCAS**  
[PPR-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY CITIZENS BANK, N.A.  
6-13-2019    [\[80\]](#)

CITIZENS BANK, N.A./MV  
PATRICK KAVANAGH  
LEE RAPHAEL/ATTY. FOR MV.

**No Ruling**

49. [17-10374](#)-A-13     **IN RE: JESSE/LISA VASQUEZ**  
[SL-2](#)

MOTION TO SELL  
6-12-2019    [\[49\]](#)

JESSE VASQUEZ/MV  
SCOTT LYONS

**Final Ruling**

The motion will be denied without prejudice because it was noticed on 15 days' notice, in violation of Fed. R. Bankr. P. 2002(a)(2), which requires at least 21 days' notice of motions to sell. This motion was filed and served on June 12, 15 days prior to the June 27 hearing on the motion.