

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
510 19th Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** AUGUST 7, 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. [18-10305](#)-A-13     **IN RE: TIM FISHER**  
[PK-2](#)

MOTION TO MODIFY PLAN  
5-30-2019    [\[28\]](#)

TIM FISHER/MV  
PATRICK KAVANAGH

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan 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.

2. [19-11706](#)-A-13     **IN RE: LUIS/ROSALINDA MARTINEZ**  
[RSW-1](#)

MOTION TO CONFIRM PLAN  
6-25-2019    [\[19\]](#)

LUIS MARTINEZ/MV  
ROBERT WILLIAMS

**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 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.

3. [19-12010](#)-A-13     **IN RE: TORINO/GLORIA JACKSON**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-3-2019    [\[25\]](#)

MICHAEL MEYER/MV  
WILLIAM OLCOTT  
RESPONSIVE PLEADING

**Final Ruling**

This motion has been voluntarily dismissed by the movant. ECF No. 36.

4. [19-12010](#)-A-13     **IN RE: TORINO/GLORIA JACKSON**  
[WDO-1](#)

MOTION TO VALUE COLLATERAL OF STRATA CREDIT UNION  
6-12-2019    [\[19\]](#)

TORINO JACKSON/MV  
WILLIAM OLCOTT

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; 2014 Cadillac ATS 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 2014 Cadillac ATS 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 \$9,650.

#### **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 2014 Cadillac ATS vehicle has a value of \$9,650. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,650 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.

5. [18-13311](#)-A-13     **IN RE: MELINDA MARTINDALE**  
[DMG-1](#)

MOTION TO CONFIRM PLAN  
7-3-2019    [\[115\]](#)

MELINDA MARTINDALE/MV  
D. GARDNER  
STIPULATION

#### **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 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.

6. [18-13213](#)-A-13     **IN RE: JAMES/CHERYL CARRINGTON**  
[RSW-1](#)

MOTION TO MODIFY PLAN  
6-12-2019    [\[52\]](#)

JAMES CARRINGTON/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

**No Ruling**

7. [19-12620](#)-A-13     **IN RE: ANDREA MONROVIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-17-2019    [\[22\]](#)

**Tentative Ruling**

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

8. [19-12620](#)-A-13     **IN RE: ANDREA MONROVIA**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-24-2019    [\[29\]](#)

BANK OF AMERICA, N.A./MV  
WENDY LOCKE/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Stay Relief under § 362(d)(4)

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 1202 Jeffrey St. ## A & B, Bakersfield, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record,

accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **STAY RELIEF UNDER SECTION 362(D) (1)**

There has been a default on a loan held by the moving party and secured by the subject property, and postpetition payments are past due. In addition, the proposed unconfirmed plan fails to provide for the movant's secured claim. See ECF No. 16. This is cause for the granting of relief from stay under section 362(d) (1).

The basis for granting relief from stay under section 362(d) (4) below is further cause for the granting of prospective relief from stay under section 362(d) (1).

Accordingly, prospective relief from stay will be granted and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived.

#### **SECTION 362(d) (4)**

Section 362(d) (4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d) (4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d) (4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." § 362(d) (4).

In this case, individuals named Jose and Areli Soto ("Borrowers") borrowed money in 2007 from the movant's predecessor in interest to finance the purchase of the subject property. The movant acquired

interest in the deed of trust on the property and note reflecting the loan in October 2016.

In June 2013, a grant deed was executed and recorded, transferring the property from the Borrowers and Yadira Ochoa to Jorge Rocha as a gift. The movant's predecessor in interest did not authorize this transfer of the property.

In December 2016, Jorge Rocha transferred the property as a gift, via another grant deed, to himself as a trustee/trustor of a family trust. The movant appears not to have authorized this transfer either.

There was a default on the loan secured by the property in or about March 2017, when a notice of default was recorded against the property. A notice of a trustee's sale was recorded in January 2019, for a foreclosure sale on March 11, 2019.

On March 6, 2019, an individual named Estella Marquez filed a chapter 13 bankruptcy case (Case No. 19-10800), in pro per and as a skeleton filing, listing the subject property as her mailing address. That case was dismissed on March 18, 2019.

On or about March 7, 2019, a grant deed was executed and recorded, transferring the property as a gift from the Jorge Rocha family trust and Jorge Rocha to the same family trust, Jorge Rocha as trustee presumably of the trust, John Garcia, and Estella Marquez. The movant did not authorize this transfer of the property.

On April 10, 2019, Estella Marquez filed in pro per, as a skeleton filing another chapter 13 bankruptcy case (Case 19-11438). That case was dismissed on April 22, 2019.

On or about May 16, 2019, a grant deed was executed and recorded, transferring the property as a gift from the Jorge Rocha family trust and Jorge Rocha to the same family trust, Jorge Rocha, Marcos Romero, John Garcia, and the instant debtor Andrea Monrovia. The movant did not authorize this transfer of the property.

On May 16, 2019, the debtor here filed in pro per, as a skeleton filing a prior chapter 13 bankruptcy case (Case No. 19-12080). That case was dismissed on May 28, 2019.

On May 20, 2019, a notice of postponement of the foreclosure sale to June 24, 2019 was given to the parties.

The debtor filed the instant chapter 13 bankruptcy case on June 18, once again in pro per and as a skeleton filing.

The movant is a creditor secured by the subject property.

From the timing of the multiple unauthorized transfers of the property and the timing of the multiple bankruptcies filed involving the property, including the filing of the instant case, as the transfers and filings relate to the foreclosure of the property, the court infers that the filing of this case is part of a scheme to



delay, hinder, or defraud creditors, including the movant. This scheme involves both transfers of interest in the property without creditor consent or court approval and multiple bankruptcy filings affecting the property, including the filings of third parties and the debtor. Accordingly, relief under section 362(d)(4) is appropriate.

#### **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.

Bank of America, N.A.'s motion for relief from the automatic stay under § 362(d)(1) and (4) 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 1202 Jeffrey St. ## A & B, Bakersfield, 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 AND DECLARED, under 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved transfer of ownership of the aforesaid real property without the consent of the secured creditor or court approval and multiple bankruptcy filings affecting such real property.

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.

9. [16-10721](#)-A-13     **IN RE: MANUEL/MICHELLE PENA**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-17-2019    [58](#)

TD AUTO FINANCE LLC/MV  
ROBERT WILLIAMS  
JENNIFER WANG/ATTY. FOR MV.  
WITHDRAWN

#### **Final Ruling**

The motion was withdrawn, the matter is dropped as moot.

10. [14-16029](#)-A-13     **IN RE: DAGMAR VAUGHAN**  
[MHM-3](#)

MOTION TO DISMISS CASE  
7-10-2019    [[106](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
WITHDRAWN

**Final Ruling**

The motion was withdrawn, the matter is dropped as moot.

11. [19-11931](#)-A-13     **IN RE: MARTINA DUL**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-10-2019    [[24](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 33.

12. [18-13343](#)-A-13     **IN RE: EUGENE/ANDREA WILLIAMS**  
[LKW-7](#)

MOTION FOR COMPENSATION FOR LEONARD K. WALSH, DEBTORS  
ATTORNEY(S)  
7-12-2019    [[79](#)]

LEONARD WELSH

**Tentative Ruling**

**Application:** Allowance of Second Interim Compensation and Expense Reimbursement

**Notice:** LBR 9014-1(f)(2); no 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).    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, Law Offices of Leonard Welsh has applied for an allowance of a second interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,010 and reimbursement of expenses in the amount of \$30.55.

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.

Law Offices of Leonard Welsh'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 \$2,010 and reimbursement of expenses in the amount of \$30.55. The aggregate allowed amount equals \$2,040.55. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,040.55 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.

13. [19-12044](#)-A-13     **IN RE: SHELTON MCKENZIE**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-8-2019    [\[14\]](#)

MICHAEL MEYER/MV  
NEIL SCHWARTZ

**No Ruling**

14. [19-10558](#)-A-13     **IN RE: GWENDOLYN BROWN**  
[MHM-4](#)

MOTION TO DISMISS CASE  
6-24-2019    [\[64\]](#)

MICHAEL MEYER/MV  
DAVID JENKINS

**Final Ruling**

The motion was withdrawn, the matter is dropped as moot.

15. [17-14665](#)-A-13     **IN RE: VICKI/ANGELA VALENTYN**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
6-13-2019    [\[74\]](#)

VICKI VALENTYN/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

**No Ruling**

16. [19-11865](#)-A-13     **IN RE: MANUEL DURAN**  
[MHM-1](#)

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

ROBERT WILLIAMS  
WITHDRAWN

**Final Ruling**

The motion was withdrawn, the matter is dropped as moot.

17. [15-11373](#)-A-13     **IN RE: FREDRICK HALL**  
[PK-4](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
6-17-2019    [\[76\]](#)

PATRICK KAVANAGH

### **Final Ruling**

**Application:** Allowance of a First and Final Compensation for Substantial and Unanticipated Post-Confirmation Work

**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 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).

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Law Office of Patrick Kavanagh has applied for an allowance of a first and final compensation and reimbursement of expenses for substantial and unanticipated post-confirmation work. The application requests that the court allow compensation in the amount of \$5,500 (reduced from \$8,220) and reimbursement of expenses in the amount of \$0.00. The applicant also asks that the court allow on a final basis the requested compensation.

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, satisfying the substantial and unanticipated compensation requirements, and the court will approve the application on a final basis. There are no prior interim compensation applications for the court to approve.

### **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.

Law Office of Patrick Kavanagh's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$5,500 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$5,500. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$5,500 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 directly by the debtor after completion of the plan's term.

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

18. [19-10791](#)-A-13     **IN RE: JASON/RANDI PATTERSON**  
[RSW-2](#)

MOTION TO VALUE COLLATERAL OF SAFE 1 CREDIT UNION  
7-16-2019    [\[33\]](#)

JASON PATTERSON/MV  
ROBERT WILLIAMS

### **Tentative Ruling**

**Motion:** Value Collateral [Personal Property; 2007 Toyota Tacoma vehicle]

**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).

### **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 Toyota Tacoma 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 \$12,125.

#### **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 Toyota Tacoma vehicle has a value of \$12,125. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$12,125 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

19. [18-14493](#)-A-13     **IN RE: ALICIA GOMEZ**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
7-2-2019    [\[44\]](#)

ALICIA GOMEZ/MV  
ROBERT WILLIAMS

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan 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.



20. [19-12993](#)-A-13     **IN RE: WILLIAM COOK**

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-17-2019    [\[10\]](#)

38SDJV HOLDINGS, LLC/MV  
MILES GRANT/ATTY. FOR MV.

**Final Ruling**

**Motion:** Stay Relief

**Notice:** Deficient

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 4237 E. Clinton Ave. Fresno, CA

This motion will be denied without prejudice because the notice of hearing for the motion does not state whether and when written opposition must be filed to the motion, in violation of LBR 9014-1(d)(3)(B)(i), which requires that:

The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.

ECF No. 10; see also LBR 9014-1(f)(1) and (2) (prescribing different notice requirements, depending on when the motion is filed and served).

Without the requisite language in the notice of hearing, parties in interest are not informed about whether and when written opposition is required for the motion. As such, notice is insufficient.

The notice of hearing also violates LBR 9014-1(d)(3)(B)(iii), which requires that the notice

advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

The instant notice does not provide such language.

Finally, the motion and notice documents are one and the same document, violating LBR 9014-1(d)(4), which requires them to be separate documents.

**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.

Having considered the motion,

IT IS ORDERED that the motion is denied without prejudice.