

**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: TUESDAY**  
**DATE: AUGUST 8, 2017**  
**CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES**

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Ruling" will be called.

**ORAL ARGUMENT**

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

**COURT'S ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [13-10004](#)-A-13 BRANDON/CASEY HOWARD MOTION TO DISMISS CASE  
MHM-5 7-6-17 [[85](#)]  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

2. [17-11708](#)-A-13 DAVID MOORE MOTION TO VALUE COLLATERAL OF  
MAZ-1 MECHANICS BANK  
DAVID MOORE/MV 7-6-17 [[28](#)]  
MARK ZIMMERMAN/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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. The debtor has offered evidence that the security interest in the subject vehicle is a purchase money security interest. The debtor further admits that the debt was incurred within 910 days of the petition. The motion does not state that any portion of the undersecured debt is non-purchase money.

Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(7). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained

in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

3. [17-11708](#)-A-13 DAVID MOORE  
MHM-1  
MICHAEL MEYER/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE  
7-10-17 [[33](#)]

### **Tentative 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 chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2387.

The court is in receipt of a undated letter from the debtor, ECF No. 43. The letter does not provide sufficient grounds to deny the motion.

### **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 13 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 because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

4. [15-10914](#)-A-13 RICHARD/SUSAN BILL  
PPR-2  
RICHARD BILL/MV

MOTION FOR CONSENT TO ENTER  
INTO LOAN MODIFICATION  
AGREEMENT  
7-7-17 [[98](#)]

ROBERT WILLIAMS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Granted

**Order:** Prepared by moving party according to the instructions below

The notice is insufficient for use of the notice procedure under LBR 9014-1(f)(1). The notice period requires opposition but also references LBR 9014-1(f)(2). The court will treat the motion as having been noticed under LBR 9014-1(f)(2).

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).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

5. [17-12719](#)-A-13 FRED/ANNA VALDEZ  
SL-1  
FRED VALDEZ/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO IMPOSE AUTOMATIC STAY  
7-19-17 [[10](#)]

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

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

**Order:** Prepared by moving party pursuant to the instructions below

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

#### **CLARIFICATION OF RELIEF SOUGHT**

The motion requests imposition of the automatic stay under § 362(c)(4). However, this statutory relief is reserved for cases where the debtor has had two prior bankruptcy cases pending in the previous year that were dismissed.

In this case, the debtors have had only one prior case that was pending within the 1-year period preceding the petition and was dismissed. Therefore, the court will treat this motion as requesting extension of the stay rather than imposition of the stay. 11 U.S.C. § 362(c)(3).

#### **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 except as to any creditor without proper notice of this motion.

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| 6. | <a href="#">17-10427</a> -A-12 LUIS/ANGELA OLIVEIRA<br>WW-15<br>LUIS OLIVEIRA/MV<br>RILEY WALTER/Atty. for dbt. | OBJECTION TO CLAIM OF CAVALRY<br>SPV I, LLC, CLAIM NUMBER 4<br>7-5-17 [ <a href="#">159</a> ] |
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#### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no written opposition required

**Disposition:** Sustained

**Order:** Prepared by objecting party

#### **NOTICE PERIOD**

The objection was served on July 5, 2017, which is 34 days before the hearing date. For notice to be proper under LBR 3007-1(b)(1), 44 days' notice of the hearing must be provided. The court will treat this objection as having been noticed under LBR 3007-1(b)(2).

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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).

### **CLAIM OBJECTION**

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

The objection's well-pleaded facts show that the debtor has not made any payments or other transactions on the loan held by the respondent claimant within the four years prior to the petition date. The objection will be sustained. The claim will be disallowed.

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| 7. | <a href="#">17-12133</a> -A-13 MA DEL SALDANA DE<br>TOG-1 GUERRERO<br>MA DEL SALDANA DE GUERRERO/MV<br>THOMAS GILLIS/Atty. for dbt. | MOTION TO VALUE COLLATERAL OF<br>GOLDEN 1 CREDIT UNION<br>6-30-17 [ <a href="#">13</a> ] |
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### **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 2014 Kia Optima. 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 \$11,684.

## **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 Kia Optima has a value of \$11,684. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,684 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. [17-12234](#)-A-13 CECIL/MARY OSORIO

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-12-17 [[21](#)]

MARK ZIMMERMAN/Atty. for dbt.

**Final Ruling**

The fee paid in full, the order to show cause is discharged and the case shall remain pending.

9. [16-14237](#)-A-13 JULIO/CYNTHIA HERNANDEZ  
JES-5  
JAMES SALVEN/MV

MOTION FOR COMPENSATION FOR  
JAMES E. SALVEN, CHAPTER 7  
TRUSTEE(S)  
6-28-17 [[97](#)]

THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

10. [17-12441](#)-A-13 SHERYL RILEY  
DWE-1  
WELLS FARGO BANK, N.A./MV  
DANE EXNOWSKI/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-6-17 [[11](#)]

**Final Ruling**

The case dismissed, the matter is denied as moot.

11. [13-14348](#)-A-13 DANILO/JOSEPHINE ROLDAN  
JMA-3

MOTION FOR COMPENSATION FOR  
MICHAEL J. ARNOLD, DEBTORS  
ATTORNEY(S)  
7-3-17 [[55](#)]

JOSEPH ARNOLD/Atty. for dbt.

**Tentative 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 \$7654.00 and reimbursement of expenses in the amount of \$346.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on 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 \$7654.00 and reimbursement of expenses in the amount of \$346.00. The aggregate allowed amount equals \$8000.00. As of the date of the application, the applicant held a retainer in the amount of \$2000.00. The amount of \$6000.00 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.

12. [17-10250](#)-A-13 SHENG/CHAO VANG  
MHM-1  
MICHAEL MEYER/MV  
GABRIEL WADDELL/Atty. for dbt.

MOTION TO DISMISS CASE  
7-10-17 [[67](#)]

**No Ruling**

13. [17-12258](#)-A-13 DELORA CACERES  
JDR-2  
DELORA CACERES/MV  
JEFFREY ROWE/Atty. for dbt.

MOTION TO SELL  
7-21-17 [[21](#)]

**Final Ruling**

**Motion:** Sell Property

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**NOTICE INSUFFICIENT**

All creditors and parties in interest have not received sufficient notice. Notice of a proposed sale other than in the ordinary course of business must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(2).

The original notice of hearing and motion to sell property were not served on all creditors and parties in interest. The court's matrix was not used in providing notice to all creditors and parties in interest.

**NOTICE PERIOD FOR AMENDED NOTICE**

The movant did not provide a sufficient period of notice of the proposed sale. The amended notice of hearing was filed on July 25, 2017 and served on the same date. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires not less than 21 days' notice of a proposed use, sale or lease of property of the estate other than in the ordinary course of business unless the court shortens the time for notice for cause. The amended notice of hearing on the sale went to all creditors and parties in interest only 13 days before the hearing on the sale.

**BIDDING PROCEDURES**

The bidding procedures in their current form will not be approved. The initial overbid is stated as \$307,000, which is a bid that is equal to the purchase price. An overbid must exceed the purchase price by a reasonable amount (\$1000 overbids is acceptable). In addition, the procedures require potential bidders to bring certified funds in the amount of \$307,000 made payable to seller. This is a significant sum to require parties to present in the form of certified funds as of the hearing, and has the tendency to chill bidding.

14. [17-11367](#)-A-13 KEVIN/JULIE GERHARDT CONTINUED MOTION TO CONFIRM  
PBB-2 PLAN  
KEVIN GERHARDT/MV 5-19-17 [[28](#)]  
PETER BUNTING/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

15. [17-10375](#)-A-13 RANDALL/TAMMY REYNOLDS MOTION TO MODIFY PLAN  
SJS-1 6-27-17 [[40](#)]  
RANDALL REYNOLDS/MV  
SUSAN SALEHI/Atty. for dbt.

**Final Ruling**

This matter is continued to August 31, 2017, at 9:00 a.m. Not later than August 16, 2017, the debtors may augment the record with respect to feasibility. 11 U.S.C. § 1325(a)(6). The most recent Schedules I and J were filed almost six months ago. Moreover, the debtors' one sentence statement of feasibility is insufficient. Decl. Reynolds, June 27, 2017, ECF # 42 ("We can make all of the payment required under the First Modified Plan and will comply with all provisions of the First Modified Plan.") A civil minute order will issue.

16. [14-15882](#)-A-13 DELIA GALLARDO MOTION TO MODIFY PLAN  
JDR-6 6-29-17 [[110](#)]  
DELIA GALLARDO/MV  
JEFFREY ROWE/Atty. for dbt.

**Final Ruling**

This matter is continued to August 31, 2017, at 9:00 a.m. Not later than August 16, 2017, the debtors may augment the record with respect to feasibility. 11 U.S.C. § 1325(a)(6). An adequate showing of feasibility requires a recent, sworn itemization of the debtor's current income and current expenses. Here, the only showing of feasibility is the declaration of counsel (which is not based on personal knowledge) and pro forma but unsworn Schedules I and J. A civil minute order will issue.

17. [15-13883](#)-A-13 EDWARD/LETICIA BARAJAS MOTION TO MODIFY PLAN  
PBB-2 6-27-17 [[40](#)]  
EDWARD BARAJAS/MV  
PETER BUNTING/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

18. [17-12188](#)-A-13 NICOLE JIMENEZ MOTION TO VALUE COLLATERAL OF  
BDB-1 EXETER FINANCE LLC  
NICOLE JIMENEZ/MV 7-11-17 [[18](#)]  
BENNY BARCO/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(7). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013. The motion need only negate one element of the conjunctive list of elements necessary for the hanging paragraph to apply. For example, many motions to value collateral state that the secured debt was incurred outside the 910-day period preceding the petition date.

19. [11-10791](#)-A-12 LUKE/SARAH PEASTER  
FW-12  
LUKE PEASTER/MV  
PETER FEAR/Atty. for dbt.

MOTION FOR ENTRY OF DISCHARGE  
7-7-17 [[144](#)]

### **Final Ruling**

**Motion:** Entry of a Chapter 12 Discharge

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

**Disposition:** Granted

**Order:** Prepared by the movant

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

The debtors move for entry of a chapter 12 discharge. They have completed all payments required by the confirmed chapter 12 plan. The trustee has filed a final report and account indicating the case is complete. Debtors have complied with § 1228(a). No domestic support obligations of the type described in § 1228(a) are owed by the debtors. Section 522(q) is inapplicable to the debtors. The court will enter discharge.

20. [17-11295](#)-A-13 SANDEEP KAUR AMENDED MOTION TO CONFIRM PLAN  
PBB-1 6-22-17 [[34](#)]  
SANDEEP KAUR/MV  
PETER BUNTING/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

21. [17-12047](#)-A-13 TAMMY ABELS OBJECTION TO CONFIRMATION OF  
PLAN BY 2005 RESIDENTIAL TRUST  
2005 RESIDENTIAL TRUST 3-1/MV 3-1  
7-25-17 [[36](#)]  
PETER FEAR/Atty. for dbt.  
JOSHUA SCHEER/Atty. for mv.

**No Ruling**

22. [17-12824](#)-A-13 RAFAEL/MARTHA HERNANDEZ MOTION TO EXTEND AUTOMATIC STAY  
PBB-1 7-28-17 [[11](#)]  
RAFAEL HERNANDEZ/MV  
PETER BUNTING/Atty. for dbt.

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

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

**Order:** Prepared by moving party pursuant to the instructions below

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

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the

creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.