

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

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

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: AUGUST 24, 2017
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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

1. [15-14701](#)-A-13 WILLIAM/PATRICIA GRIFFIN MOTION TO SELL
DRJ-2 7-19-17 [[29](#)]
WILLIAM GRIFFIN/MV
DAVID JENKINS/Atty. for dbt.

Tentative Ruling

Motion: Sell Property [Real Property]

Notice: LBR 9014-1(f)(1); 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: 1971 Double Wide Mobile Home

Buyer: Juan Manuel Olmos

Sale Price: \$12,500

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). 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).

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 not property of the estate because the debtor's confirmed plan provides that property of the estate revests in debtor upon confirmation of the plan. However, the confirmed plan obligates the debtor to obtain court authorization prior to transferring property, so the plan provides the basis for the court's authority to decide whether to approve the sale.

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 stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

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.

2. [17-10301](#)-A-13 LESLIE DANIELS MOTION TO CONFIRM PLAN
NES-4 7-10-17 [[37](#)]
LESLIE DANIELS/MV
NEIL SCHWARTZ/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

3. [13-12504](#)-A-13 ROEL/ALMA CALO PRETRIAL CONFERENCE RE: MOTION
AP-1 FOR RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, NATIONAL 11-22-16 [[38](#)]
ASSOCIATION/MV
SCOTT LYONS/Atty. for dbt.
GINA KIM/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The motion for relief from stay having been resolved by stipulation, the pretrial conference is vacated.

4. [17-12104](#)-A-13 ALBERT/PATRICIA ZEPEDA MOTION TO CONFIRM PLAN
JDR-1 7-11-17 [[27](#)]
ALBERT ZEPEDA/MV
JEFFREY ROWE/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

5. [17-12104](#)-A-13 ALBERT/PATRICIA ZEPEDA MOTION TO DISMISS CASE
MHM-2 7-21-17 [[42](#)]
MICHAEL MEYER/MV
JEFFREY ROWE/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

6. [16-13709](#)-A-13 JO MORRISON
CJO-1
HOUSEHOLD FINANCE
CORPORATION/MV
RABIN POURNAZARIAN/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION TO APPROVE LOAN
MODIFICATION
8-4-17 [[92](#)]

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

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.

7. [17-12310](#)-A-13 CLARENCE SPEAR
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
7-26-17 [[23](#)]

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 debtors have failed to provide credit counseling certificates. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). Credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

8. [17-12719](#)-A-13 FRED/ANNA VALDEZ
SL-2
FRED VALDEZ/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE AUTO FINANCE
8-1-17 [[16](#)]

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor 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 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 2009 Nissan S/SL. 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 \$9137.

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 2009 Nissan S/SL has a value of \$9137. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9137 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.

9. [17-12320](#)-A-13 ROBERTO/VICKI GUTIERREZ MOTION TO DISMISS CASE
MHM-1 7-26-17 [[22](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [17-12320](#)-A-13 ROBERTO/VICKI GUTIERREZ OBJECTION TO CONFIRMATION OF
SW-1 PLAN BY ALLY FINANCIAL INC.
ALLY FINANCIAL INC./MV 8-1-17 [[27](#)]
TIMOTHY SPRINGER/Atty. for dbt.
ADAM BARASCH/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

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

11. [17-12023](#)-A-13 J EFREN LARES-MORENO AND MOTION TO VALUE COLLATERAL OF
TOG-1 IMELDA LARES WELLS FARGO BANK, N.A.
J EFREN LARES-MORENO/MV 7-6-17 [[21](#)]
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party.

First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 13727 E. Bulah Ave., Parlier, CA.

The court values the collateral at \$105,011. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 13727 E. Bulah Ave., Parlier, CA, has a value of \$105,011. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

12. [15-13926](#)-A-13 LOUIE/MARTHA AGUIRRE MOTION TO MODIFY PLAN
PBB-1 7-20-17 [\[22\]](#)
LOUIE AGUIRRE/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None

has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

13. [17-10427](#)-A-12 LUIS/ANGELA OLIVEIRA MOTION TO COMPROMISE
WW-16 CONTROVERSY/APPROVE SETTLEMENT
LUIS OLIVEIRA/MV AGREEMENT WITH LUIS M.
OLIVEIRA, JR.
8-1-17 [[184](#)]
- RILEY WALTER/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Civil minute order

Parties to Compromise: The debtors and Luis M. Oliveira, Jr.

Dispute Compromised: The debtors assert an \$82,500 claim for contribution against Luis M. Oliveira, Jr. This contribution claim stems from a lawsuit filed against the debtors by James Sergis, which was settled for \$82,500. Luis M. Oliveira, Jr. has two claims against the debtor for \$31,500 (services-related proof of claim) and \$15,000 (postpetition advancement of money for the benefit of debtors).

Summary of Material Terms: Luis M. Oliveira, Jr. owes the debtors \$36,500 to be paid with 5% interest on the total owed, and amortized so that payments are made in the amount of \$5,000 quarterly. All parties will release each other from any claims.

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).

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise

is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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 chapter 12 debtors' motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 189.

14. [17-10427](#)-A-12 LUIS/ANGELA OLIVEIRA
WW-17

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WALTER WILHELM
LAW GROUP FOR RILEY C. WALTER,
DEBTORS ATTORNEY(S)
8-3-17 [[191](#)]

RILEY WALTER/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final 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 12 case, Walter Wilhelm Law Group has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$41,826.50 and reimbursement of expenses in the amount of \$2774.15. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 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 a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

Walter Wilhelm Law Group'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 \$41,826.50 and reimbursement of expenses in the amount of \$2774.15. The aggregate allowed amount equals \$44,600.65. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$44,600.65 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

15. [17-11027](#)-A-13 CLINTON/CYNTHIA
RUTHERFORD

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-26-17 [[52](#)]

JAMES MILLER/Atty. for dbt.
FINAL INSTALLMENT OF \$60.00
PAID 8/2/17

Final Ruling

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

16. [17-12029](#)-A-13 SAMUEL/YOLANDA BLANCO
PBB-1
SAMUEL BLANCO/MV
PETER BUNTING/Atty. for dbt.

CONTINUED MOTION TO VALUE
COLLATERAL OF WESTAMERICA BANK
6-22-17 [[15](#)]

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).

Here, the debtor does not argue that the vehicle is collateral outside the scope of the hanging paragraph. Instead, the debtor argues that only a portion of the respondent's claim, secured by the subject collateral, described as 2015 Chevrolet Traverse, is unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle traded in at the time of the debtor's purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not secured by a purchase money security interest (PMSI). Thus, negative-equity debt is not protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to respondent on its claim. The product is the amount of the present claim that is secured by a PMSI and protected by the hanging paragraph of § 1325(a). The non-PMSI portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

The total amount of the original financing for the subject collateral was \$48,904.31. The portion of the amount originally financed secured by a PMSI was \$39,362.33. This is 80.49% of the total amount financed. It follows that 19.51% is the non-PMSI amount that financed negative equity on the trade-in vehicle.

Multiplying 80.49% by the present claim amount of \$37,961.57 equals \$30,555.27, which is the PMSI portion of the present claim held by respondent. The negative equity portion of the present claim is not protected by the hanging paragraph, and, as a result, may be treated as an unsecured claim if it is uncollateralized.

The debtor has offered evidence that the vehicle is worth \$27,077.00.

The vehicle's value is less than the PMSI-portion of the respondent's claim. The entire PMSI portion of this claim is protected by the hanging paragraph. The entire non-PMSI portion of this claim (negative-equity financing) is unsupported by the collateral's value. The respondent has a secured claim equal to \$30,555.27 and an unsecured claim for the balance of the claim.

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 has a value of \$27,077. The respondent has a secured claim in the amount of \$30,555.27 equal to the portion of the claim secured by a purchase money security interest. The respondent has a general unsecured claim for the balance of the claim.

17. [17-12330](#)-A-13 TIMOTHY/SHARON TEGTMEYER OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
7-26-17 [[22](#)]

ERIC ESCAMILLA/Atty. for dbt.

No Ruling

18. [17-12530](#)-A-13 RAUL/ROSARIO COBIAN ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-4-17 [[16](#)]

ERIC ESCAMILLA/Atty. for dbt.
\$310.00 FINAL INSTALLMENT
PAYMENT 8/8/17

Final Ruling

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

19. [14-14236](#)-A-13 EDGAR SANTANA MOTION FOR COMPENSATION BY THE
FW-3 LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
7-20-17 [[51](#)]

GABRIEL WADDELL/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1168.00 and reimbursement of expenses in the amount of \$56.30.

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.

Fear Waddell, P.C.'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 \$1168.00 and reimbursement of expenses in the amount of \$56.30. The aggregate allowed amount equals \$1224.30. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$1224.30 shall be allowed as an administrative expense to be paid through the plan.

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.

20. [17-12337](#)-A-13 MODESTO/CINDY GOMEZ
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
7-26-17 [[23](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [15-13238](#)-A-13 TODD/MINDY MACIEL
FW-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL FOR
GABRIEL J. WADDELL, DEBTORS
ATTORNEY(S)
7-20-17 [[81](#)]

PETER FEAR/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, Fear Waddell, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$13,647.00 and reimbursement of expenses in the amount of \$553.75.

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.

Fear Waddell, P.C.'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 \$13,647.00 and reimbursement of expenses in the amount of \$553.75. The aggregate allowed amount equals \$14,200.75. As of the date of the application, the applicant held a retainer in the amount of \$0.00, but garnished funds recovered in a preference action are to serve as the source of payment of fees incurred in bringing such action. The amount of \$10,500.00 shall be allowed as an administrative expense to be paid through the plan; the amount of \$1609.50 shall be allowed as an administrative expense to be paid by funds recovered in the preference action brought to recover garnished funds; and the remainder of the allowed amounts (\$2091.25) shall be paid by the debtor directly.

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.

22. [17-12539](#)-A-13 LUIS TAVARES

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-7-17 [[25](#)]

THOMAS GILLIS/Atty. for dbt.
\$140.00 INSTALLMENT PAYMENT
PAID 8/7/17

Final Ruling

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

23. [10-18346](#)-A-12 RICKY BEALS
FW-27
RICKY BEALS/MV
PETER FEAR/Atty. for dbt.

MOTION FOR ENTRY OF DISCHARGE
7-20-17 [[448](#)]

Final Ruling

Motion: Entry of Discharge [Chapter 12 case]

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 motion requests entry of discharge under § 1228 of the Bankruptcy Code. The court finds that the debtor has completed all payments under the plan in this chapter 12 case. See 11 U.S.C. § 1228(a). The debtor has certified by declaration that the debtor has no domestic support obligations under a judicial or administrative order or statute. See *id.*

Under § 1228(f), the court finds that § 522(q)(1) is inapplicable to the debtor. The court also finds no proceeding is pending in which (1) the debtor may be found guilty of felony of the kind described in § 522(q)(1)(A), or (2) the debtor may be liable for a debt of the kind described in § 522(q)(1)(B). The court finds that a chapter 12 discharge should be entered in this case.

24. [17-12047](#)-A-13 TAMMY ABELS
2005 RESIDENTIAL TRUST 3-1/MV

PETER FEAR/Atty. for dbt.
JOSHUA SCHEER/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY 2005
RESIDENTIAL TRUST 3-1
7-25-17 [[36](#)]

No Ruling

25. [17-12047](#)-A-13 TAMMY ABELS
FW-2
TAMMY ABELS/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
FCI LENDER SERVICES, INC.
7-20-17 [[30](#)]

Tentative Ruling

Motion: Value Collateral

Notice: Written opposition filed by the responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The motion seeks to value real property collateral that is the moving party's principal residence. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d).

An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested: (1) the value of the collateral located at 611 Cherry Avenue, Sanger, CA, (2) the ownership of that collateral and the effect of that ownership on the debtor's right to strip off the respondent's lien, and (3) the amount secured by the first lien on the property held by Bank of America.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

26. [10-16950](#)-A-12 LUIS AZEVEDO
HAR-8
LUIS AZEVEDO/MV
HILTON RYDER/Atty. for dbt.

MOTION FOR ENTRY OF DISCHARGE
7-12-17 [[76](#)]

Final Ruling

Motion: Entry of Discharge [Chapter 12 case]

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 motion requests entry of discharge under § 1228 of the Bankruptcy Code. The court finds that the debtor has completed all payments under the plan in this chapter 12 case. See 11 U.S.C. § 1228(a). The debtor has certified by declaration that the debtor has no domestic support obligations under a judicial or administrative order or statute. See *id.*

Under § 1228(f), the court finds that § 522(q)(1) is inapplicable to the debtor. The court also finds no proceeding is pending in which (1) the debtor may be found guilty of felony of the kind described in § 522(q)(1)(A), or (2) the debtor may be liable for a debt of the kind described in § 522(q)(1)(B). The court finds that a chapter 12 discharge should be entered in this case.

27. [17-11652](#)-A-13 GREGORY/ROUZANA TOROSSIAN
SETERUS, INC./MV
MICHAEL ARNOLD/Atty. for dbt.
RENEE PARKER/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY SETERUS, INC.
8-4-17 [[49](#)]

Tentative Ruling

Objection: Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Overruled

Order: Civil minute order

When the chapter 13 plan is filed within 14 days of the petition and no motion to confirm is required, see LBR 3015-1(c)(1), the court's local rules require an objection to plan confirmation to be filed and served within 7 days after the first date set for the meeting of creditors, see LBR 3015-1(c)(4). The notice of the meeting of creditors includes notice of this deadline.

The deadline for filing an objection to confirmation was June 20,

2017. But the objection was filed on August 4, 2017. The order extending time to object to confirmation (referenced in the objection at page 1 and filed at docket 36) is inapplicable to the objecting creditor. By its terms, it is only applicable to the trustee. Order Extending Time to Object to Confirmation, June 17, 2017, ECF No. 36. The court will overrule this objection as untimely.

28. [17-11652](#)-A-13 GREGORY/ROUZANA TOROSSIAN CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 6-14-17 [[32](#)]
MICHAEL ARNOLD/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

29. [17-12258](#)-A-13 DELORA CACERES MOTION TO CONFIRM PLAN
JDR-1 7-6-17 [[12](#)]
DELORA CACERES/MV
JEFFREY ROWE/Atty. for dbt.

Final Ruling

The case voluntarily dismissed, the motion is denied as moot.

30. [14-11059](#)-A-13 JORGE VELAZQUEZ-JARACUARO MOTION FOR CONSENT TO ENTER
ALG-7 AND ADRIANA OROPEZA INTO LOAN MODIFICATION
JORGE VELAZQUEZ-JARACUARO/MV AGREEMENT
7-13-17 [[135](#)]
JANINE ESQUIVEL/Atty. for dbt.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted

Order: Prepared by moving party according to the instructions below

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

The motion 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.

31. [17-12263](#)-A-13 CALVIN BYNUM
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
7-27-17 [[23](#)]

No Ruling

32. [17-12263](#)-A-13 CALVIN BYNUM
RWR-1
BRUCE WARREN/MV
TIMOTHY SPRINGER/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO CONFIRMATION OF
PLAN BY BRUCE WARREN
8-2-17 [[28](#)]

No Ruling

33. [16-13873](#)-A-13 AMALIA ZUNIGA
JRL-2
AMALIA ZUNIGA/MV
JERRY LOWE/Atty. for dbt.

MOTION TO MODIFY PLAN
7-13-17 [[30](#)]

Final Ruling

The court having granted the debtor's motion to modify at docket 45 (JRL-3), the motion is denied as moot.

34. [16-13873](#)-A-13 AMALIA ZUNIGA MOTION TO MODIFY PLAN
JRL-3 7-17-17 [[45](#)]
AMALIA ZUNIGA/MV
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

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

35. [17-10474](#)-A-13 ALVARO DIAZ AND MARISELA MOTION TO DISMISS CASE
MHM-2 LUA 7-21-17 [[52](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

36. [17-10777](#)-A-13 KARINA BLANCAS GRANADOS MOTION TO CONFIRM PLAN
PLG-1 7-6-17 [[35](#)]
KARINA BLANCAS GRANADOS/MV
RABIN POURNAZARIAN/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

37. [17-12182](#)-A-13 RENEE BURTON MOTION TO DISMISS CASE
MHM-1 7-21-17 [[22](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

38. [15-14786](#)-A-13 MARY SMITH MOTION TO MODIFY PLAN
DMG-10 7-5-17 [[135](#)]
MARY SMITH/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

39. [17-10291](#)-A-13 JUAN GONZALEZ AND MARIA MOTION TO CONFIRM PLAN
TOG-2 DIAZ 7-13-17 [[70](#)]
JUAN GONZALEZ/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

40. [17-10993](#)-A-13 MARTIN/ERMILA AGUILAR
DMG-1
MARTIN AGUILAR/MV

MOTION TO VALUE COLLATERAL OF
NISSAN MOTOR ACCEPTANCE
CORPORATION
7-24-17 [[37](#)]

D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2013 Nissan NV 1500 Cargo Van. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$13,638.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2013 Nissan NV 1500 Cargo Van has a value of \$13,638. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$13,638 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.

41.	17-10294 -A-13 VERONICA/RAFAEL CHAVEZ MHM-1 MICHAEL MEYER/MV IRMA EDMONDS/Atty. for dbt. MICHAEL MEYER/Atty. for mv.	MOTION TO DISMISS CASE 7-19-17 [54]
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Final Ruling

The motion withdrawn, the matter is dropped as moot.