

**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: SEPTEMBER 1, 2016
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 Tentative 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 Tentative 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. [15-13701](#)-A-13 KEVIN GERHARDT MOTION TO DISMISS CASE
MHM-3 7-13-16 [[109](#)]
MICHAEL MEYER/MV
GABRIEL WADDELL/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-14006](#)-A-13 DENNIS NAJARIAN MOTION TO DISMISS CASE
MHM-2 7-8-16 [[66](#)]
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [16-12409](#)-A-13 LISA BRADBURY OBJECTION TO CONFIRMATION OF
APN-1 PLAN BY WELLS FARGO BANK, N.A.
WELLS FARGO BANK, N.A./MV 7-27-16 [[25](#)]
STEPHEN LABIAK/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

The hearing on this matter is continued to October 27, 2016, at 9:00 a.m.

4. [16-11310](#)-A-13 TINA MCCOMB MOTION TO DISMISS CASE
MHM-1 8-2-16 [[16](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [14-14017](#)-A-13 DAVID BAILEY AND KATHLEEN MOTION TO DISMISS CASE
MHM-1 PAXTON-BAILEY 7-12-16 [[48](#)]
MICHAEL MEYER/MV
CHRISTIAN YOUNGER/Atty. for dbt.
OPPOSITION

No tentative ruling.

6. [15-14720](#)-A-13 JOSEPH MCDERMOTT MOTION TO DISMISS CASE
MHM-2 7-14-16 [[52](#)]
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2215.34.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

7. [15-14722](#)-A-13 ANTHONY JUAREZ
MHM-3
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.

MOTION TO DISMISS CASE
7-14-16 [[32](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$640.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

8. [15-11424](#)-A-13 LORETO/LUCIANA PASCUA
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO DISMISS CASE
7-13-16 [[24](#)]

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

9. [16-12327](#)-A-13 GUSTAVO IBARRA
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-16-16 [[21](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

10. [16-11128](#)-A-13 GARY LOY
MHM-2
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
7-14-16 [[28](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The 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 \$1565.

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.

11. [11-19929](#)-A-13 JOHN/NORMA PINEDO
FW-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
8-3-16 [[149](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final 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 final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4159.50 and reimbursement of expenses in the amount of \$206.72. 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 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 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.

Fear Waddell, P.C.'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 \$4159.50 and reimbursement of expenses in the amount of \$206.72. The aggregate allowed amount equals \$4366.22. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4366.22 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, as well as any no-look fee that was approved as part of plan confirmation.

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. [11-19929](#)-A-13 JOHN/NORMA PINEDO MOTION TO DISMISS CASE
MHM-7 7-15-16 [[144](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
OPPOSITION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [14-14236](#)-A-13 EDGAR SANTANA MOTION TO DISMISS CASE
MHM-1 7-12-16 [[25](#)]
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.
OPPOSITION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [15-10639](#)-A-13 RACHEL RIVERA MOTION TO DISMISS CASE
MHM-2 7-13-16 [[99](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [16-12040](#)-A-13 JIM ARIAS AND STEPHANIE BUTTICCI
MHM-2
OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-15-16 [[22](#)]
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

The case dismissed, the objection is overruled as moot.

16. [16-11842](#)-A-13 FRANK/STEPHANIE HERNANDEZ
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-2-16 [[17](#)]

Final Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Civil minute order

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). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

PAID-EARNINGS EXEMPTION

The trustee objects to the debtors' claim of exemptions. Two different grounds for the objection are presented. The trustee objects first to the debtors claim of exemption in a checking account and in a savings account. The total funds in these two accounts equal approximately \$3949.40 as indicated on Schedule B. See Fed. R. Evid. 201. The exemption claimed is pursuant to C.C.P. § 704.070, the "paid earnings" exemption.

A debtor may claim an exemption in paid earnings under California Code of Civil Procedure section 704.070. Cal. Civ. Proc. Code § 704.070(a)(2), (b). The term "paid earnings" means "earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy." *Id.* § 704.070(a)(2). The term "earnings" means "compensation made payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." *Id.* § 706.011(a) (emphasis added).

The exemption for earnings is limited to all or a percentage of earnings paid to an employee within the 30-day period prior to the date of levy, which translates in the bankruptcy context to the 30-day period preceding the date of the petition. See Cal. Civ. Proc. Code

§704.070(a)(2); *In re Moffat*, 119 B.R. 201, 204 n.3 (B.A.P. 9th Cir. 1990) ("The debtor's exemption rights under state law are determined as of the date of the petition.").

The debtors have not opposed the relief sought. Accordingly, the court finds that the objection to the claim of exemption in the funds in these two accounts should be sustained.

FINANCIAL-AID EXEMPTION

The trustee also objects to the debtors claim of exemption in funds described as "Federal Credit Union - Families and Schools, profit share account . . . Daughter's . . . college Fund." These funds are claimed exempt under C.C.P. § 704.190. The trustee argues that the debtors have not shown that the source of the money has been provided by an institution of higher education as required in § 704.190(b). In addition, the daughter has not been shown to be attending an institution of higher education.

The debtors have not opposed the relief sought. Accordingly, the court finds that the objection to the claim of exemption in the funds under §704.190 should be sustained.

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 13 trustee's objection to the debtors' claim of exemptions 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 objection,

IT IS ORDERED that the objection is sustained.

17. [15-11245](#)-A-13 WILLIAM O'BRIEN AND JILL MOTION TO DISMISS CASE
MHM-1 ALVARADO-O'BRIEN 7-13-16 [[50](#)]
MICHAEL MEYER/MV
MARK SIEGEL/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON MOTION TO DISMISS CASE
MHM-3 7-7-16 [[151](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [15-10847](#)-A-13 RONALD/DOLORES SANDERS MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
HARLEY-DAVIDSON CREDIT 7-30-16 [[38](#)]
CORP./MV
SCOTT LYONS/Atty. for dbt.
MARK ESTLE/Atty. for mv.

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, no proof of service appears on the docket. Neither the debtors, nor their attorney, nor the case trustee have been served with the motion.

20. [16-12147](#)-A-13 ANTONIO/MARIA NAVARRO
MGG-2
ANTONIO NAVARRO/MV
MATTHEW GRECH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF THE WEST
7-21-16 [[22](#)]

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 2005 Ford Expedition. 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 \$2696.

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 2005 Ford Expedition has a value of \$2696. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2696 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.

21. [16-12147](#)-A-13 ANTONIO/MARIA NAVARRO MOTION TO VALUE COLLATERAL OF
MGG-3 BANK OF THE WEST
ANTONIO NAVARRO/MV 7-21-16 [\[27\]](#)
MATTHEW GRECH/Atty. for dbt.

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 2008 GMC Acadia. 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 \$7259.

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 2008 GMC Acadia has a value of \$7259. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7259 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.

22. [14-15749](#)-A-13 NATHAN RODRIGUEZ
MHM-1
MICHAEL MEYER/MV
ERIC ESCAMILLA/Atty. for dbt.
OPPOSITION

MOTION TO DISMISS CASE
7-12-16 [[55](#)]

No tentative ruling.

23. [16-12149](#)-A-13 IRMA CASTRO
MHM-2
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
7-27-16 [[23](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [12-12650](#)-A-13 ROBERT/MONICA OLIVEIRA MOTION TO DISMISS CASE
MHM-4 7-15-16 [[61](#)]
ROBERT OLIVEIRA/MV
GEOFFREY ADALIAN/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to October 14, 2016, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$7160.

The debtors admit the trustee's allegation of a default in the amount of \$7160. But debtors have filed a first modified plan and a motion to confirm it, noticed for hearing on 10/14/16. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to October 14, 2016, at 9:00 a.m.

25. [16-11951](#)-A-13 JOSE RAMIREZ OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
8-16-16 [[37](#)]
HENRY NUNEZ/Atty. for dbt.

No tentative ruling.

26. [15-14356](#)-A-13 ARMANDO MARTINEZ
TLC-2
ARMANDO MARTINEZ/MV
JESSICA DORN/Atty. for dbt.

MOTION TO AVOID LIEN OF
DISCOVER BANK
8-2-16 [[50](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

INSUFFICIENT SERVICE

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. *See* Fed. R. Bankr. P. 7004(h) (1)-(3).

INSUFFICIENT EXEMPTION IMPAIRMENT

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien. The total amount of the responding party's lien, all other liens, and the exemption amount, does not exceed the property's value. Accordingly, a *prima facie* case has not been made for relief under § 522(f).

27. [14-12359](#)-A-13 ANDRES/BILLIE SALAZAR MOTION TO DISMISS CASE
MHM-2 7-8-16 [[38](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [16-12161](#)-A-13 RODNEY/PATRICIA PARKER MOTION TO DISMISS CASE
MHM-1 7-28-16 [[18](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The 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 \$4552.

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.

29. [16-12161](#)-A-13 RODNEY/PATRICIA PARKER MOTION TO DISMISS CASE
MHM-1 8-16-16 [[26](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

The case having been dismissed, the court will deny the motion as moot.

30. [11-17662](#)-A-13 FABIAN/JAN SANCHEZ MOTION TO DISMISS CASE
MHM-4 7-15-16 [[119](#)]
MICHAEL MEYER/MV
JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2916.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

31. [14-13264](#)-A-13 WILLIAM ADDONIZIO
MHM-1
MICHAEL MEYER/MV
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO DISMISS CASE
7-8-16 [[30](#)]

Final Ruling

The case converted to chapter 7, the motion is denied as moot.

32. [13-13666](#)-A-13 JOHN COOK
MHM-1
MICHAEL MEYER/MV
BENJAMIN SHEIN/Atty. for dbt.

MOTION TO DISMISS CASE
7-8-16 [[48](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1052.61.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

33. [15-10170](#)-A-13 STEPHEN/KRISTI TOLBERT MOTION TO DISMISS CASE
MHM-1 7-13-16 [[23](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
OPPOSITION

No tentative ruling.

34. [12-13173](#)-A-13 SANDRA OCHOA MOTION TO DISMISS CASE
MHM-5 7-7-16 [[80](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

35. [15-12673](#)-A-13 ARTURO/RHONDA MOSQUEDA MOTION TO DISMISS CASE
MHM-1 7-13-16 [[23](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$8062.74.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

36. [14-12780](#)-A-13 JUAN MALDONADO AND MOTION TO DISMISS CASE
MHM-1 PATRICIA GONZALEZ 7-8-16 [[22](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [16-10789](#)-A-13 PAUL/MARIA WILLIAMS MOTION TO DISMISS CASE
MHM-1 7-19-16 [[44](#)]
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
OPPOSITION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

38. [12-60092](#)-A-13 GARY/CHRISTINA STAHL MOTION TO DISMISS CASE
MHM-4 7-18-16 [[62](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
OPPOSITION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [16-11792](#)-A-13 MICHAEL/LEAH CADY
RLF-1
MICHAEL CADY/MV
SHANE REICH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE AUTO FINANCE
7-30-16 [[25](#)]

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 2011 Dodge Avenger. 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 \$10,292.

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 2011 Dodge Avenger has a value of \$10,292. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,292 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.

40. [16-12192](#)-A-13 ROBIN BLAKE
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
OPPOSITION

MOTION TO DISMISS CASE
7-29-16 [[19](#)]

No tentative ruling.