

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

Honorable Fredrick E. Clement  
Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** SEPTEMBER 7, 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. [15-14303](#)-A-13 LORI SILVA PRETRIAL CONFERENCE RE:  
RSW-2 OBJECTION TO CLAIM OF EQUITY 1  
LORI SILVA/MV LOANS, CLAIM NUMBER 9  
5-5-16 [[28](#)]  
  
ROBERT WILLIAMS/Atty. for dbt.  
ORDER #46

**Final Ruling**

This matter is continued to October 5, 2016, at 9:00 a.m. to allow Equity 1 to file the Amended Proof of Claim described in the Status Report ¶ 1(b), August 23, 2016, ECF # 48. Absent a request by the parties otherwise, if the Amended Proof of Claim has been filed, the court intends to drop the matter as resolved by stipulation of the parties. If the Amended Proof of Claim has not been filed, not later than 14 days prior to the continued pretrial conference the parties will file a joint status report.

2. [11-17104](#)-A-13 RUSSELL DAVIS AND APRIL MOTION TO DISMISS CASE  
MHM-2 ARLOW 7-15-16 [[73](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [15-13704](#)-A-7 IGNACIO BENITEZ MOTION TO DISMISS CASE  
MHM-2 7-14-16 [[41](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [15-14306](#)-A-13 CATHLEEN GANDARA MOTION TO DISMISS CASE  
MHM-2 7-14-16 [[37](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/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 \$5832.15.

#### **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.

5. [15-13607](#)-A-13 BEATRICE NARVAEZ  
MHM-2  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
7-14-16 [[85](#)]

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [12-15109](#)-A-13 EDUARDO/GLENDA VALLADARES  
PLG-4  
EDUARDO VALLADARES/MV  
STEVEN ALPERT/Atty. for dbt.  
NON-OPPOSITION

MOTION TO VACATE DISMISSAL OF  
CASE  
8-19-16 [[122](#)]

**No tentative ruling.**

7. [15-14810](#)-A-13 ROBIN NEAL  
MHM-2  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE  
8-9-16 [[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 \$2629.35.

**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. [15-14411](#)-A-13 NICK/CHRISTINA NGIRAILILD  
MHM-1  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
OPPOSITION  
WITHDRAWN

MOTION TO DISMISS CASE  
8-8-16 [[43](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

9. [15-12017](#)-A-13 MICHAEL/TRISA GONZOLAS MOTION TO DISMISS CASE  
MHM-2 8-8-16 [[38](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
OPPOSITION  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

10. [16-12018](#)-A-13 PAULA DUNAWAY MOTION TO VALUE COLLATERAL OF  
PK-1 AMERICREDIT FINANCIAL SERVICES  
PAULA DUNAWAY/MV DBA GM FINANCIAL SERVICES  
7-14-16 [[15](#)]  
PATRICK KAVANAGH/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 2013 Nissan Rogue. 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 \$15,997.

#### **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 Rogue has a value of \$15,997. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$15,997 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.

11. [16-11819](#)-A-13 KEITH SWANSON  
MHM-1  
MICHAEL MEYER/MV  
WILLIAM OLCOTT/Atty. for dbt.

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

#### **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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was

filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e) (2) (A)-(B).

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.

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| 12. <a href="#"><u>16-10720</u></a> -A-13    PHILIP/SUSANNE ICARDO<br>RSW-1<br>PHILIP ICARDO/MV<br><br>ROBERT WILLIAMS/Atty. for dbt. | MOTION TO COMPROMISE<br>CONTROVERSY/APPROVE SETTLEMENT<br>AGREEMENT WITH JIMMY HILL<br>8-16-16 [ <a href="#"><u>28</u></a> ] |
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**No tentative ruling.**

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| 13. <a href="#"><u>16-10721</u></a> -A-13    MANUEL/MICHELLE PENA<br>MHM-1<br><br>ROBERT WILLIAMS/Atty. for dbt. | CONTINUED OBJECTION TO<br>CONFIRMATION OF PLAN BY TRUSTEE<br>MICHAEL H. MEYER<br>7-8-16 [ <a href="#"><u>18</u></a> ] |
|--|---|

**No tentative ruling.**

- |   |   |
|---|---|
| 14. <a href="#"><u>11-16822</u></a> -A-13    RUBY TOMAS<br>MHM-3<br>MICHAEL MEYER/MV<br>ROBERT WILLIAMS/Atty. for dbt.<br>WITHDRAWN | MOTION TO DISMISS CASE<br>7-15-16 [ <a href="#"><u>83</u></a> ] |
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### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

15. [15-13122](#)-A-13 MARIA GUARDADO  
MHM-2  
MICHAEL MEYER/MV  
D. HARELIK/Atty. for dbt.  
OPPOSITION

MOTION TO DISMISS CASE  
8-8-16 [[43](#)]

**No tentative ruling.**

16. [16-12426](#)-A-13 PATSY ALLEN  
PPR-1  
CHAMPION MORTGAGE COMPANY/MV  
  
ROBERT WILLIAMS/Atty. for dbt.  
CASSANDRA RICHEY/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY CREDITOR CHAMPION  
MORTGAGE COMPANY  
8-3-16 [[14](#)]

**No tentative ruling.**

17. [11-61227](#)-A-13 GUILLERMO/ELVA RUBIO  
MHM-3  
MICHAEL MEYER/MV  
LEONARD WELSH/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
7-14-16 [[186](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [14-16029](#)-A-13 DAGMAR VAUGHAN  
RSW-1  
DAGMAR VAUGHAN/MV  
  
ROBERT WILLIAMS/Atty. for dbt.  
ORDER #45

PRETRIAL CONFERENCE RE:  
OBJECTION TO CLAIM OF GREEN  
TREE SERVICING LLC, CLAIM  
NUMBER 13  
9-11-15 [[32](#)]

**No tentative ruling.**

19. [16-11734](#)-A-13 LILIA MINER  
  
\$77.00 FILING FEE PAID  
7/25/16, DISMISSED

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-22-16 [[40](#)]

**Final Ruling**

The case dismissed, the order to show cause is discharged.



20. [16-11734](#)-A-13 LILIA MINER MOTION FOR RELIEF FROM  
DMG-1 AUTOMATIC STAY  
MOHAMAD ARDESHIRI/MV 7-27-16 [[42](#)]  
D. GARDNER/Atty. for mv.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

21. [14-14537](#)-A-13 DENNIS/LASHANE WILLIAMS CONTINUED MOTION TO MODIFY PLAN  
RSW-2 6-6-16 [[56](#)]  
DENNIS WILLIAMS/MV  
ROBERT WILLIAMS/Atty. for dbt.  
OPPOSITION WITHDRAWN

**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.

22. [16-11137](#)-A-13 LENIE MORALES MOTION TO DISMISS CASE  
MHM-1 7-14-16 [[22](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
OPPOSITION  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

23. [15-14738](#)-A-13 JACQUELINE  
PLG-1 O'BANNON-STRONG  
JACQUELINE O'BANNON-STRONG/MV  
  
RABIN POURNAZARIAN/Atty. for dbt.  
OPPOSITION

OBJECTION TO CLAIM OF SELECT  
PORTFOLIO SERVICING, INC.,  
CLAIM NUMBER 2  
6-23-16 [[41](#)]

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b) (1); written opposition required

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

The debtor Jacqueline O'Bannon-Strong objects to the allowance of Claim No. 2-1 filed by the claimant U.S. Bank, N.A., and its agent / servicer, Select Portfolio Servicing, Inc. The claimant opposes the sustaining of the objection. The court will overrule the objection without prejudice for the reasons discussed.

### **STANDARDS**

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

### **BASIS FOR OBJECTION**

The basis for the claim objection is that the claim was filed "with fraudulent transactions attached to the amount owed." *Obj.* at 2, ECF No. 41. The debtor asserts that a fraudulent loan was taken out in the debtor's name in 2006 with Encore Credit Corporation, Nevada Deed(s) [sic], without consent or approval of the debtor. The debtor

also alleges that a police report was filed, and has attached some documents showing that report that was filed as Exhibit 2.

The debtor has filed a declaration filed in support of the objection, but this declaration, like the objection, provides little detail regarding the nature of the alleged fraud. The declaration asserts that two fraudulent equity loans were taken out against the debtor's property, one in 2006, and another in 2008. The debtor states that she "did not receive the funds, and did not sign the checks." The filing of a police report and the activity taken by the police pursuant to that report are also discussed.

## **INSUFFICIENT ALLEGATIONS OF FRAUD**

### Rule 7009

The court agrees with the claimant that Federal Rule of Bankruptcy Procedure 7009 applies to this contested matter. Fed. R. Bankr. P. 7009, *incorporated by* Fed. R. Bankr. P. 9014(c). Rule 7009 incorporates Federal Rule of Civil Procedure 9(b). Since this is a claim alleging fraud, Rule 9(b) applies. This rule's heightened pleading standard requires a plaintiff to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b), *incorporated by* Fed. R. Bankr. P. 7009. A plaintiff must include the "who, what, when, where, and how" of the fraud. *Vess v. Ciba-Geigy Corp. U.S.A.*, 317 F.3d 1097, 1106 (9th Cir. 2003).

The court does not find that fraud has been alleged sufficiently for purposes of this proceeding. The defendant must be given adequate notice of the fraud to allow it the fair opportunity to defend against the allegations brought by the objection in this proceeding. The objection provides scant detail of the fraud alleged. From the objection, the court cannot determine what portion of the claim, approximately, is the result of the fraudulent transactions, whether the deed of trust securing the claim is part of the fraud (potentially implicating Rule 7001, as the opposition discusses), and when the fraud occurred, and how the fraud occurred.

### Local Rule 3007-1(a)

Similarly, the objection does not provide sufficient evidence to comply with LBR 3007-1(a). At the outset, the objection need not provide all evidence necessary to establish its assertions of fact, particularly when discovery is anticipated in advance of an evidentiary hearing. But more evidence is required than what has been provided here.

## **RULE 7001**

The claimant has raised the issue of whether an adversary proceeding is the proper procedural mechanism to resolve this dispute. Based on the objection's factual allegations, the court is unable to determine whether the debtor disputes the validity or extent of the claimant's lien such that an adversary proceeding would be required. Fed. R. Bankr. P. 7001(2).

## **CONCLUSION**

Because the court has decided that the claim objection must be overruled for the grounds given, the court need not address the other

grounds raised in opposition to the claim objection.

### **CIVIL MINUTE ORDER**

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

The debtor's objection to claim no. 2 has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice to the filing of another claim objection.

24.	<u>16-12341</u> -A-13 THOMAS/ALICE MILLER RSW-2 THOMAS MILLER/MV ROBERT WILLIAMS/Atty. for dbt.	MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE 8-22-16 [ <a href="#">13</a> ]
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### **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 2007 Toyota Tundra. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$12,850.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2007 Toyota Tundra has a value of \$12,850. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$12,850 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.

25. [16-10442](#)-A-13 VALARIE WAGNER-PRESTAGE MOTION TO DISMISS CASE  
MHM-4 7-25-16 [[45](#)]  
MICHAEL MEYER/MV  
SHARRON WILLIAMS GELOBTER/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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for over 6.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

## 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. The court hereby dismisses this case.

26. [15-14447](#)-A-13 ASHLEY RANDOLPH  
MHM-4  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
7-14-16 [[62](#)]

### Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [16-10847](#)-A-13 STANLEY/LINDA MORGAN  
PK-2

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF PATRICK  
KAVANAGH, DEBTORS ATTORNEY(S)  
8-11-16 [[30](#)]

PATRICK KAVANAGH/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, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3240.00 (\$4740 - \$1500 pre-filing fees paid) and reimbursement of expenses in the amount of \$0.00.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

## **CIVIL MINUTE ORDER**

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

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

Patrick Kavanagh'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 \$3240.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$3240.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3240 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.

28. [16-12351](#)-A-13 ERIC DEWAR  
MHM-1  
MICHAEL MEYER/MV  
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO DISMISS CASE  
8-5-16 [[16](#)]

**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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

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.

29. [16-10253](#)-A-13 JOE PEREZ  
MHM-2  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
ORDER DENYING, ECF NO. 143

MOTION TO DISMISS CASE  
7-27-16 [[139](#)]

**Final Ruling**

The motion denied by Order, ECF #143, the matter is dropped from calendar as moot.



30. [16-11354](#)-A-13 ODILON/SAURISARET  
EGS-1 PEREZ-FLORES  
BAYVIEW LOAN SERVICING, LLC/MV  
PHILLIP MYER/Atty. for dbt.  
EDWARD SCHLOSS/Atty. for mv.
- OBJECTION TO CONFIRMATION OF  
PLAN BY BAYVIEW LOAN SERVICING,  
LLC  
7-14-16 [[41](#)]

**Final Ruling**

The court will overrule the objection as moot. An amended plan has been filed since the filing of this objection, and the amended plan has been noticed for hearing on October 5, 2016, at 9:00 a.m.

31. [16-11354](#)-A-13 ODILON/SAURISARET  
MHM-1 PEREZ-FLORES  
MICHAEL MEYER/MV  
PHILLIP MYER/Atty. for dbt.  
WITHDRAWN
- CONTINUED MOTION TO DISMISS  
CASE  
6-13-16 [[27](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

32. [16-10357](#)-A-13 APRIL BLANDBURG  
MHM-2  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
OPPOSITION
- MOTION TO DISMISS CASE  
8-2-16 [[67](#)]

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Grant

**Order:** Civil minute order

**CASE DISMISSAL**

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to comply with the 75-day order the court imposed for achieving confirmation of a chapter 13 plan in this case. The court issued a 75-day order requiring that a plan be confirmed no later than the first hearing date available 75 days after the prior confirmation hearing date. The date that is 75-days after the June 8, 2016, hearing date is August 22, 2016. The debtor has missed this deadline as two different chapter 13 Fresno calendar dates have passed since August 22, 2016.

The opposition does not address the delay, but instead discusses a delinquency in payment.

## 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 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 given the debtor's failure to confirm a chapter 13 plan no later than the 75-day deadline established by the court. The court hereby dismisses this case.

33. [16-11857](#)-A-13 ROBERT/CHRISTINE MC DUFF MOTION TO DISMISS CASE  
MHM-1 7-8-16 [[19](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

### Final Ruling

The motion withdrawn, the matter is dropped as moot.

34. [16-11857](#)-A-13 ROBERT/CHRISTINE MC DUFF MOTION TO DISMISS CASE  
MHM-2 8-5-16 [[31](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/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 \$775.57.

## **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.

35. [16-11857](#)-A-13 ROBERT/CHRISTINE MC DUFF MOTION TO AVOID LIEN OF CACH,  
RSW-1 LLC  
ROBERT MC DUFF/MV 8-17-16 [[41](#)]  
ROBERT WILLIAMS/Atty. for dbt.

### **Final Ruling**

The case having been dismissed, the motion is denied as moot.

36. [16-11857](#)-A-13 ROBERT/CHRISTINE MC DUFF MOTION TO AVOID LIEN OF  
RSW-2 PORTFOLIO RECOVERY ASSOCIATES,  
ROBERT MC DUFF/MV LLC  
8-17-16 [[37](#)]  
ROBERT WILLIAMS/Atty. for dbt.

### **Final Ruling**

The case having been dismissed, the motion is denied as moot.

37. [15-10560](#)-A-13 WILLIAM/CATHY GRIMES MOTION TO DISMISS CASE  
MHM-1 8-8-16 [[18](#)]  
MICHAEL MEYER/MV  
VINCENT GORSKI/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 \$5500.

#### **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.

38. [16-11761](#)-A-7 GINA CARDENAS  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE  
7-8-16 [[15](#)]

#### **Final Ruling**

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

39. [16-10162](#)-A-13 JUAN GARCIA - LOPEZ AND MOTION TO DISMISS CASE  
MHM-1 NICOLE GARCIA 7-25-16 [[76](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
OPPOSITION

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to November 2, 2016, at 9:00 a.m.

**Order:** Civil minute order

### **CASE DISMISSAL**

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The case was filed January 22, 2016. A plan has not been confirmed, and over 7 months has passed since the petition date.

The debtors in opposition argue that no prejudice to creditors has occurred. They offer evidence that all payments have been made, and no delinquency exists. Approximately one-third of the amount required under the plan has been made.

The court will continue the hearing to November 2, 2016, at 9:00 a.m. If the plan noticed for a confirmation hearing on that date is not confirmed, then the court may likely dismiss this case.

### **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 November 2, at 9:00 a.m.

40. [16-10162](#)-A-13 JUAN GARCIA - LOPEZ AND MOTION TO CONFIRM PLAN  
PK-5 NICOLE GARCIA 7-25-16 [[80](#)]  
JUAN GARCIA - LOPEZ/MV  
PATRICK KAVANAGH/Atty. for dbt.  
OPPOSITION

### **Final Ruling**

The motion is denied as moot. A modified plan has been filed and noticed for hearing on November 2, 2016. In addition, no master address list is attached to the certificate of service, showing that notice was not provided. Therefore, the court would have denied the motion had a modified plan not been filed.

41. [14-12769](#)-A-13 ELEODORO/MARGARITA  
MHM-2 VASQUEZ  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
OPPOSITION  
WITHDRAWN

MOTION TO DISMISS CASE  
7-14-16 [[52](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

42. [16-10073](#)-A-13 DONALD WILLIFORD  
LKW-1  
DAN COOK, INC./MV  
ROBERT WILLIAMS/Atty. for dbt.  
LEONARD WELSH/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-16-16 [[90](#)]

**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, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The debtor has not been properly served with the motion. The zip code for the debtor's address appearing on the proof of service (93313) does not match the zip code provided for the debtor on the petition (93390). Additionally, the proof of service provides that service was made on August 16, 2016, but the proof was executed on August 16, 2015. Though this may be a typographical error, the proof has not been properly executed, given that the affiant has attested to events that occurred after the execution of the document.

43. [15-13174](#)-A-7 MARSHA WALKER MOTION TO DISMISS CASE  
MHM-2 8-8-16 [[45](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

44. [16-11576](#)-A-13 SCOTT KIRK MOTION TO DISMISS CASE  
MHM-2 7-11-16 [[82](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
OPPOSITION

**No tentative ruling.**

45. [16-12776](#)-A-13 TOMMY KEELING ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-15-16 [[13](#)]  
  
PHILLIP GILLET/Atty. for dbt.  
\$310.00 FILING FEE PAID  
8/18/16

**Final Ruling**

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

46. [15-13880](#)-A-13 CARLOS/ROSARIO MAGANA MOTION FOR RELIEF FROM  
BMO-1 AUTOMATIC STAY  
CHEVRON VALLEY CREDIT UNION/MV 8-2-16 [[29](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
BRANDON ORMONDE/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2003 Ford F-150 SuperCrew truck

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).

## **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . . ) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

In this case, the equity cushion is less than 1%. The movant is not receiving adequate protection for an asset that is well known to rapidly depreciate.

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 10 post-petition payments due on the debt secured by the moving party's lien. This also constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.



## CIVIL MINUTE ORDER

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

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

Chevron Valley Credit Union's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2003 Ford F-150 SuperCrew, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

47. [15-13880](#)-A-13 CARLOS/ROSARIO MAGANA MOTION TO DISMISS CASE  
MHM-1 8-8-16 [[35](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/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 \$3254.67.

## 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.

48. [15-14786](#)-A-13 MARY SMITH  
DMG-8  
MARY SMITH/MV  
D. GARDNER/Atty. for dbt.

MOTION TO CONFIRM PLAN  
7-27-16 [[106](#)]

### 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.

49. [15-14786](#)-A-13 MARY SMITH CONTINUED MOTION TO DISMISS  
MHM-3 CASE  
MICHAEL MEYER/MV 6-16-16 [[96](#)]  
D. GARDNER/Atty. for dbt.  
OPPOSITION

**Final Ruling**

The trustee moved to dismiss for failure to confirm a plan. The court has granted the motion to confirm the plan on this calendar (DMG-8). The court will deny the motion to dismiss as moot.

50. [16-11295](#)-A-13 MICHAEL LOPEZ CONTINUED MOTION TO DISMISS  
MHM-2 CASE  
MICHAEL MEYER/MV 6-20-16 [[23](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
OPPOSITION

**Final Ruling**

This matter is continued to October 5, 2016, at 9:00 a.m. to coincide with the debtor's motion to modify the plan.

51. [16-10073](#)-A-13 DONALD WILLIFORD CONTINUED MOTION TO CONFIRM  
RSW-3 PLAN  
DONALD WILLIFORD/MV 6-22-16 [[65](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
OPPOSITION

**Final Ruling**

Since the filing of the motion and the objection to confirmation, an amended plan has been filed and noticed for hearing on October 5, 2016. The court will deny the motion as moot.