

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 6th Floor
Courtroom 34, Department A
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: SEPTEMBER 10, 2019
CALENDAR: 11:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

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

1. [19-20616](#)-A-13 **IN RE: HASSAN/JASMINE ROBINSON**
[RDG-2](#)

OBJECTION TO CLAIM OF NET CREDIT, CLAIM NUMBER 13
7-29-2019 [\[38\]](#)

MARK HANNON

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. *See id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. *See id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. *See id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. *See In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

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 claim 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. Claim no. 13-1 will be disallowed.

2. [19-23718](#)-A-13 **IN RE: JAMES SHROPSHIRE**
[JCK-2](#)

MOTION TO CONFIRM PLAN
7-18-2019 [\[28\]](#)

KATHLEEN CRIST
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to be confirmed by this motion, the court will deny the motion as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to confirm is denied as moot.

3. [18-26522](#)-A-13 **IN RE: ALICIA BROWN-RILEY**
[FF-6](#)

MOTION TO CONFIRM PLAN
7-30-2019 [\[81\]](#)

GARY FRALEY

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

4. [19-22025](#)-A-12 **IN RE: JEFFREY DYER AND JAN WING-DYER**
[RLC-3](#)

OBJECTION TO CLAIM OF FARM AND TRADE, INC., CLAIM NUMBER 5
7-31-2019 [\[68\]](#)

STEPHEN REYNOLDS
RESPONSIVE PLEADING

No Ruling

5. [18-28033](#)-A-13 **IN RE: MARY NEVIS**
[RDG-3](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER
13
8-2-2019 [\[62\]](#)

LUIS TOVAR

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. *See id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. *See id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. *See id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. *See In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

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 claim 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. Claim no. 13-1 will be disallowed.

6. [18-22841](#)-A-13 **IN RE: PAUL/MARLYN JOY WINTER**
[PGM-2](#)

MOTION TO MODIFY PLAN
8-5-2019 [\[47\]](#)

PETER MACALUSO
RESPONSIVE PLEADING

No Ruling

7. [17-23749](#)-A-13 **IN RE: BERENICE GRANTHAM**
[WW-3](#)

MOTION TO MODIFY PLAN
8-1-2019 [\[38\]](#)

MARK WOLFF
RESPONSIVE PLEADING

No Ruling

8. [19-22551](#)-A-13 **IN RE: RICARDO QUESADA**
[FI-1](#)

MOTION TO CONFIRM PLAN
7-26-2019 [\[42\]](#)

FRED IHEJIRIKA

No Ruling

9. [19-22551](#)-A-13 **IN RE: RICARDO QUESADA**
[RDG-4](#)

CONTINUED MOTION TO DISMISS CASE
7-16-2019 [\[36\]](#)

FRED IHEJIRIKA

Final Ruling

This motion has been voluntarily dismissed by the movant. ECF No. 65.

10. [19-22551](#)-A-13 **IN RE: RICARDO QUESADA**
[RDG-5](#)

CONTINUED MOTION TO DISMISS CASE
8-12-2019 [\[57\]](#)

FRED IHEJIRIKA
RESPONSIVE PLEADING

No Ruling

11. [17-26152](#)-A-13 **IN RE: VERNON/EDWINA DAYO**
[FF-2](#)

MOTION TO APPROVE LOAN MODIFICATION
8-9-2019 [\[30\]](#)

GARY FRALEY

Final Ruling

Motion: Approval of Mortgage Loan Modification

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).

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 362(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

12. [19-21461](#)-A-13 **IN RE: OLIVIA MERCADO**
[RWF-2](#)

MOTION TO CONFIRM PLAN
7-24-2019 [\[35\]](#)

ROBERT FONG

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*,

32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

13. [18-26462](#)-A-13 **IN RE: ALBERTO DELAROSA**
[RDG-2](#)

OBJECTION TO CLAIM OF TITLE MAX OF CA, CLAIM NUMBER 47
8-2-2019 [\[49\]](#)

PETER MACALUSO
RESPONSIVE PLEADING

No Ruling

14. [16-28163](#)-A-13 **IN RE: KAREN KHAN**
[RDG-2](#)

OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER
13
7-29-2019 [\[81\]](#)

KATHLEEN CRIST

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

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 objection. The court construes Wells Fargo Bank, N.A.'s response as a statement of non-opposition to the relief requested. Dckt. 85. 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).

15. [19-21463](#)-A-13 **IN RE: PATRICIA MADRID**
[RDG-2](#)

OBJECTION TO CLAIM OF BANK OF STOCKTON, CLAIM NUMBER 13
7-30-2019 [\[72\]](#)

HANK WALTH

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. *See id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. *See id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. *See id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. *See In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

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 claim 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. Claim no. 13-1 will be disallowed.

16. [14-26570](#)-A-13 **IN RE: CATHERINE GRIFFIN**
[RDG-6](#)

CONTINUED MOTION TO DISMISS CASE
8-12-2019 [\[82\]](#)

HANK WALTH

No Ruling

17. [19-24173](#)-A-13 **IN RE: CLYDE FORD**
[JCK-1](#)

MOTION TO CONFIRM PLAN
7-19-2019 [\[13\]](#)

KATHLEEN CRIST
RESPONSIVE PLEADING

No Ruling

18. [19-24173](#)-A-13 **IN RE: CLYDE FORD**
[JCK-2](#)

MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT
DEPARTMENT
7-22-2019 [\[19\]](#)

KATHLEEN CRIST

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D. Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on state or municipal corporation or other governmental organization must be made by first class mail addressed "to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought." Fed. R. Bankr. P. 7004(b)(6). "Thus, to meet the requirements of the Rules and comply with considerations of due process, a Rule 3012 motion (either with or without a plan) must be served on the affected creditors in accord with Rule 7004." *Millspaugh*, 302 B.R. at 102 (emphasis added); see also *In re Pereira*, 394 B.R. 501, 506-07 (Bankr. S.D. Cal. 2008) (Chapter 13 plan containing lien stripping proposal must be served on the affected creditor pursuant to Rule 7004). Rule 3012 notice alone will not suffice for the motion. See *Pereira*, 394 B.R. at 506.

Service of the motion was insufficient as it is not list the correct address identified in the Roster of Governmental Agencies. Form EDC 20785, *Roster of Governmental Agencies*. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

19. [19-24885](#)-A-13 **IN RE: ANAMARIA MALDONADO**
[MKM-2](#)

MOTION TO VACATE DISMISSAL OF CASE
8-26-2019 [\[17\]](#)

MICHAEL MOORE
DEBTOR DISMISSED: 08/20/2019

No Ruling

20. [19-23886](#)-A-13 **IN RE: SEAN/NATALIE HAMILTON**
[MC-2](#)

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
8-27-2019 [\[25\]](#)

MUOI CHEA

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 2013 Ford Fusion. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$11,828.00.

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 Ford Fusion has a value of \$11,828.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,828.00 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. [18-22287](#)-A-13 **IN RE: MARCOS DOMINGUEZ CRUZ AND IRES DOMINGUEZ**
[LRR-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
7-30-2019 [\[35\]](#)

LEN REIDREYNOSO
LEN REIDREYNOSO/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Prepared by the movant

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

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

Section 1307(b) of the Bankruptcy Code provides that “[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.” 11 U.S.C. § 1307(b). For the reasons stated in the motion, the court will dismiss this case.

22. [19-22987](#)-A-13 **IN RE: MARVIN BODINE**
[PJE-1](#)

MOTION TO CONFIRM PLAN
7-24-2019 [\[26\]](#)

PATRICK EDABURN
RESPONSIVE PLEADING

No Ruling

23. [19-23989](#)-A-13 **IN RE: WILLIAM/ELVIRA VARQUEZ**
[ETL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
8-7-2019 [\[23\]](#)

HANK WALTH
ERICA LOFTIS/ATTY. FOR MV.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.