

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: NOVEMBER 7, 2019
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

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

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. [18-15100](#)-A-13 **IN RE: ANGELINA LOPEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
9-27-2019 [[75](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
DISCHARGED 5/14/19; RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

2. [19-13701](#)-A-13 **IN RE: PAUL/KATHERINE MCCURRY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
10-16-2019 [[16](#)]

D. GARDNER

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan must provide for all of Debtors' projected disposable income to be applied to unsecured creditors under the plan. 11 U.S.C. §1325(b). According to the plan, "Debtors & son" pay the mortgage payment for the real property. Debtors' son resides in the property and pays for utilities on the property. See Schedule I. Trustee stated: i) he is unable to determine if the Debtors are above or below median income. No contribution income from the son for the mortgage payment is listed on the 122C-1 or Schedule I. See Doc. No. 1.; ii) Trustee has no information regarding the source and amounts of income Debtors' son receives; iii) Debtors have not demonstrated why it is reasonably necessary to include in the plan the 2009 Travel Trailer, which Debtors testified at the 341 hearing that it is used for vacation purposes.

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 confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

3. [19-11502](#)-A-13 **IN RE: RANDY ADAMS**
[MHM-2](#)

MOTION TO DISMISS CASE
10-7-2019 [[33](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling.

4. [19-13807](#)-A-13 **IN RE: ROD/ANGELIQUE REED**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
10-17-2019 [[12](#)]

ROBERT WILLIAMS

No Ruling.

5. [19-13308](#)-A-13 **IN RE: MICHAEL/CECELIA BLANCO**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT
COMPANY
9-5-2019 [[35](#)]

FORD MOTOR CREDIT COMPANY/MV
PHILLIP GILLET
AUSTIN NAGEL/ATTY. FOR MV.

No Ruling.

6. [19-13308](#)-A-13 **IN RE: MICHAEL/CECELIA BLANCO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-30-2019 [[45](#)]

PHILLIP GILLET

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the
objection; opposition may be presented at the hearing. LBR 3015-
1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the
hearing, the court may rule on the merits or set a briefing
schedule. Absent such opposition, the court will adopt this
tentative ruling.

Trustee also stated that the plan does not provide for all of
Debtor(s') projected disposable income to be applied to unsecured
creditors under the plan. See 11 U.S.C. §1325(b). Trustee stated: i)
Official Form 122C-2, Line 2 shows Debtors are paying 16.50% to
their unsecured creditors which totals about \$10,944.23 over the
life of the plan. Official 122C-1, line 2, shows that Debtor's
historic 6 month lookback was \$6,811.05; ii) Debtors are not
calculating their taxes correctly. The tax analysis is outdated and
from 2009; iii) As a result of the income increase stated above in
objection 1, the debtors' new monthly tax consequence will be
\$2,424.12. Therefore, the disposable income should be increased by
another \$447.24 instead of \$781.61. As a result of all the increases
stated in objection 1 and 2, the debtors' projected disposable
income overall is more accurately \$2,599.10 (wages of 1,961.58 +
taxes \$447.24 + line 45: \$190.28). This amount would require a 100%
plan. This would require a plan payment of \$2,414.22.

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 confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

7. [19-14310](#)-A-13 **IN RE: TRACY FLAHERTY**
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-24-2019 [\[8\]](#)

TRACY FLAHERTY/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Extend the Automatic Stay

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 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).

EXTENSION OF THE STAY

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. 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, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

8. [19-13213](#)-A-13 **IN RE: LAWRENCE/DIANE MCCONNEHEY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-27-2019 [[13](#)]

ROBERT WILLIAMS

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Trustee also stated that the plan does not provide for all of Debtor(s') projected disposable income to be applied to unsecured creditors under the plan. See 11 U.S.C. §1325(b).

Trustee stated: i) Official 122C-1, line 5, shows that Debtor's gross business income historically was \$1,575.00. ECF # 1. His expenses listed on Official Form 122C-2, line 43 reflects \$1,306.63. This is a net income of \$269.37. However, debtors reflect an increase in their net income on Schedule I;

ii) Official 122C-1, line 2, shows that Joint Debtor's gross income monthly was historically \$10,389.25. ECF # 1. However, debtors reflect an increase in her wages on Schedule I to \$11,111.82. Debtor testified at the meeting of the creditors that she has received an increase in wages over the last six months. As such, line 46 should reflect this increase of \$722.57;

iii) Debtors have claimed a monthly tax expense of \$2,253.53. However, with the increases in income stated above the Trustee reflects that Debtors monthly tax consequence will be around \$2,363.92. Therefore, line 46 should reflect this increase in expense totaling \$110.39 per month. Trustee calculates that debtors have \$392.27 of projected disposable income. This requires that debtors pay \$20,636.20 to their unsecured creditors. This would require a plan payment of \$516.96, paying 9.91% to the unsecured creditors.

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 confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

9. [19-13213](#)-A-13 **IN RE: LAWRENCE/DIANE MCCONNEHEY**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF AMERIFIRST HOME IMPROVEMENT
FINANCE, LLC
10-22-2019 [[16](#)]

LAWRENCE MCCONNEHEY/MV
ROBERT WILLIAMS

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. 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 must be served on at least 28 days prior to hearing date. LBR 9014-1(f)(1). Written opposition to this motion is required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B).

Service of the motion was insufficient. Here, movant filed the motion with 16 days notice, but gave 14 days for filing of opposition. ECF #17. Court will therefore deny the motion without prejudice.

10. [16-10720](#)-A-13 **IN RE: PHILIP/SUSANNE ICARDO**
[MHM-2](#)

MOTION TO DISMISS CASE
9-25-2019 [\[88\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

Motion: Dismissal or Conversion of Case

Disposition: Continued to December 18, 2019 at 9:00 a.m.

Order: Civil Minute Order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(a)(4). Unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal for failure to pay the filing fee, the hearing on the dismissal or conversion of a case in Chapter 7, Chapter 11 or Chapter 12 must be noticed to all creditors and parties in interest. Fed. R. Bankr. P. 2002(a)(4).

Joint debtor was not served at her correct address. ECF #55. Trustee will correct service of his motion. This hearing is to be continued to December 18, 2019 at 9:00 a.m. The deadline for service will be 28 days before the hearing. The deadline for opposition will be 14 days before the hearing.

11. [19-13020](#)-A-13 **IN RE: MOISES/LUCINA OCAMPO**
[LKW-1](#)

MOTION TO CONFIRM PLAN
9-11-2019 [\[17\]](#)

MOISES OCAMPO/MV
LEONARD WELSH

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.

12. [19-13020](#)-A-13 **IN RE: MOISES/LUCINA OCAMPO**
[LKW-2](#)

MOTION TO VALUE COLLATERAL OF DEUTSCHE BANK NATIONAL TRUST
COMPANY OR SPECIALIZED LOAN SERVICING, LLC
9-17-2019 [\[22\]](#)

MOISES OCAMPO/MV
LEONARD WELSH

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property

value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 409 Loewen Street, Shafter, California 93263.

The court values the collateral at \$233,423.61. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 409 Loewen Street, Shafter, California 93263 has a value of \$233,423.61. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

13. [19-13327](#)-A-13 **IN RE: KEITH/MICHELLE LOGAN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-27-2019 [\[14\]](#)

ROBERT WILLIAMS

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the

hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Trustee stated that the plan does not provide for all of Debtor(s') projected disposable income to be applied to unsecured creditors under the plan. See 11 U.S.C. §1325(b). Trustee found that debtors are not calculating the joint debtor's withholding taxes correctly. Trustee stated: i) The FICA withholding should be .062 annually and SDI should be .01 annually. While the calculation is correct for the husband the wife's is being calculated at .0765 for FICA and .011 for SDI. This creates a difference of about \$601.13 annually; ii) Debtors have 5 dependents not 4. See Schedule J. Therefore, they would receive an extra state dependent exemption and a higher standard deduction; iii) Debtors have 3 dependents that would qualify them for a \$2,000.00 tax credit each; iv) Debtors have 2 dependents that qualify for a \$500.00 child credit. This would allow them a below the line reduction of \$7,000.00 off their annual taxes each year. These reductions in their annual tax result in a monthly reduction of \$704.00 to line 16. Debtors' tax consequence is actually \$2,552.92 monthly, not \$3,256.92.

Trustee also stated that Official Form 122C-2 reflects a decrease in Debtor's wages on Line 46 totaling \$2,634.92, based on what the debtor earned last year. At the meeting of the creditors, the debtor testified that he was still employed and has another construction job already lined up after the current job. Debtors have not demonstrated a reduction of income that is known or virtually certain. If debtors' income reduces in the future the debtors are free to modify their plan to pay what they can reasonably afford. After all the aforementioned adjustments to debtors' disposable income, debtors would have a positive disposable income of \$1,988.22 monthly. Debtors only have \$7,058 of unsecured debt and should be required to pay 100% to unsecured creditors, not 0%.

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 confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

14. [19-10438](#)-A-13 **IN RE: JOSE/JENNIFER RODRIGUEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
10-7-2019 [[63](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

15. [19-13238](#)-A-13 **IN RE: HENRY/KRISTI GARCIA**
[LBJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
10-7-2019 [[34](#)]

U.S. BANK TRUST NATIONAL
ASSOCIATION/MV
JULIE MORADI-LOPES
L. JAQUEZ/ATTY. FOR MV.

No Ruling.

16. [19-13238](#)-A-13 **IN RE: HENRY/KRISTI GARCIA**
[MHM-1](#)

RESCHEDULED MOTION TO DISMISS CASE
9-18-2019 [[19](#)]

MICHAEL MEYER/MV
JULIE MORADI-LOPES
RESCHEDULED TO 11/12/19, ECF NO. 25

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

17. [19-13238](#)-A-13 **IN RE: HENRY/KRISTI GARCIA**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-26-2019 [\[28\]](#)

JULIE MORADI-LOPES

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Trustee stated the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary for execution of the plan. See 11 U.S.C. §1322(a). Class 1 of the plan requires that the trustee pay both the pre-petition mortgage arrears and the on-going mortgage payment. See section 3.07 (a) Cure the defaults and 3.07(b) Maintaining payments. The two payments combined in class 1 with the Trustee compensation is \$5,694.62. The plan payment is only \$1,198.50 per month. The plan payments are insufficient to fund the plan.

Trustee stated the plan has not been proposed in good faith and not by any means forbidden by law. See 11 U.S.C. §1325(a)(3). i) Debtors are required under 11 U.S.C. §521(e) to provide not later than 7 days before the date first set for the first meeting of the creditors, to the trustee a copy of the Federal income tax return required under applicable law 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 2018 Federal income tax return was provided to the Trustee; ii) Debtors are required under Local Bankruptcy Rule 1007-1(c)1) to provide to the Trustee the paystubs required under 521(a)(1). Debtors have provided no paystubs to the Trustee; iii) The debtors did not provide a mortgage statement; iv) Debtors' Schedule H is incomplete. The Trustee cannot tell if the debtors are intentionally hiding prior spouses or if the schedule has a typographical error.

Trustee stated the plan does not provide for all of Debtor(s') projected disposable income to be applied to unsecured creditors under the plan. See 11 U.S.C. §1325(b). Debtors have positive disposable income on their Official Form 122C-2 totaling \$1,802.22. Debtors' plan states for the Trustee to pay 0% to their unsecured

creditors which they estimate at \$0.00. However, the Internal Revenue Service has filed an unsecured claim of \$26.36. Debtors have incorrectly stated their unsecured debt and must pay 100% in order to meet the disposable income requirement.

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 confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

18. [19-13339](#)-A-13 **IN RE: ERIC CALDERON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-26-2019 [[14](#)]

ROBERT WILLIAMS

Final Ruling

The case having been dismissed, the objection will be overruled as moot.

19. [19-13339](#)-A-13 IN RE: ERIC CALDERON
[MHM-2](#)

MOTION TO DISMISS CASE
10-7-2019 [\[18\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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 \$2,050.00.

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 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.

20. [19-13251](#)-A-13 **IN RE: OSCAR/MELISSA GARZA**
[MHM-1](#)

MOTION TO DISMISS CASE
10-7-2019 [[31](#)]

MICHAEL MEYER/MV
WILLIAM OLCOTT
RESPONSIVE PLEADING

No Ruling.

21. [16-12853](#)-A-13 **IN RE: JESUS MURILLO**
[MHM-1](#)

MOTION TO DISMISS CASE
10-9-2019 [[22](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

22. [18-14853](#)-A-13 **IN RE: JERRICK/SANDRA BLOCK**
[RSW-2](#)

MOTION TO MODIFY PLAN
9-9-2019 [[30](#)]

JERRICK BLOCK/MV
ROBERT WILLIAMS

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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

23. [19-12953](#)-A-13 **IN RE: ELIANE GIFFORD**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
9-9-2019 [\[12\]](#)

ROBERT WILLIAMS

No Ruling.

24. [19-12953](#)-A-13 **IN RE: ELIANE GIFFORD**
[MHM-3](#)

MOTION TO DISMISS CASE
10-7-2019 [\[24\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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 \$747.00.

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 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.

25. [19-13553](#)-A-13 **IN RE: ZATHHEBA/BRITTANY LEBO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
10-16-2019 [[12](#)]

NEIL SCHWARTZ

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Trustee stated: i) Debtors failed to provide Class 1 checklists and recent mortgage statements for each Class 1 creditor. See LBR 3015-1(b)(6); ii) Debtors have not submitted to Trustee paystubs dated August 2, 2019, August 9, 2019 and August 16, 2019. See 11 U.S.C. § 521 (i)(1); LBR 1007-1(c)(1).

Trustee also stated the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary for execution of the plan. See 11 U.S.C. §1322(a). i) The plan is short at least \$852.91 per month; ii) The plan provides for Freedom Mortgage to be paid \$0.00 of arrears and an arrearage dividend of \$0.00. If Debtors are current, Trustee does not know why is this claim in Class 1. If Debtors are not current, Trustee does not know what monthly arrearage dividend the Trustee is to pay.

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 confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

26. [19-13856](#)-A-13 **IN RE: DARRIN/REBECCA STACEY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
10-16-2019 [[16](#)]

D. GARDNER

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan fails to comply with other applicable provisions of this title. [11 U.S.C. § 1325(a)(1)] The Trustee has not yet concluded the Meeting of the Creditors as Debtors failed to appear at the 341 hearing on October 15, 2019. The continued meeting will be held on November 26, 2019.

Trustee The plan fails to provide for the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is at least the amount that would be paid on such claim if the estate of the Debtor(s) was liquidated under a Chapter 7 of this title on such date. See 11 U.S.C. §1325(a)(4). i) Debtors are taking 703 and 704 exemptions. See Schedule C, Doc No. 1. B; ii) Debtors provided an insurance statement for a 2001 BMW 325I, which is not disclosed on Debtors' Schedules; iii) The plan on its face does not provide for all of Debtors' projected disposable income. Debtors are above median income. See ECF #1. According to the paystubs provided to the Trustee, for the months of August and September 2019, Debtor's gross wages are \$4,717.56 every two weeks or \$10,221.38 per month. Line 2 of the 122C-2 equals \$9,141.24. Based on the paystubs provided, it appears that Debtor's base salary increased from \$4,580.16 to \$4,717.56 biweekly during the six months prior to filing. Debtor's increased income must be accounted for on Line 46 of the 122C-2. B. Line 45 of the 122C-2 is \$1,733.04. $\$1,733.04 \times 60 \text{ months} = \$103,982.40$ - $\$4,800.00$ (attorney's fees) = $\$99,182.40$. The plan proposes to pay 55% or \$81,400.00 to unsecured creditors.

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 confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

27. [17-14665](#)-A-13 **IN RE: VICKI/ANGELA VALENTYN**
[MHM-4](#)

MOTION TO DISMISS CASE
10-2-2019 [\[90\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS

No Ruling.

28. [19-12869](#)-A-13 **IN RE: KENNETH CARTER**
[MHM-2](#)

MOTION TO DISMISS CASE
10-7-2019 [\[32\]](#)

MICHAEL MEYER/MV
STEVEN ALPERT

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 \$4,216.54.

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.

29. [19-13473](#)-A-13 **IN RE: CHRISTOPHER LOCASCIO**
[CJO-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ROUNDPOINT MORTGAGE
SERVICING CORPORATION
9-18-2019 [[13](#)]

ROUNDPOINT MORTGAGE SERVICING
CORPORATION/MV
ROBERT WILLIAMS
CHRISTINA O/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The Debtor's Plan fails to provide for the cure of the pre-petition arrears owed to Creditor. The total amount of pre-petition arrears due and owing to Creditor total \$3,820.55.

Debtor's plan seeks to classify Creditor's lien under section 3.10 for Class 4 of the Plan for claims which "...mature after the completion of this plan, are not in default, and are not modified by this plan." Creditor requests its claim be classified under section 3.07 for Class 1 of Debtor's Plan, "Class 1 includes all delinquent

secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence" as Debtor is in default due to the existing pre-petition arrears owed on Creditor's lien, which is secured against the Debtor's principal residence.

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.

Roundpoint Mortgage Servicing Corporation's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

30. [19-14275](#)-A-13 **IN RE: TRACEY MARI**
[SJS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-16-2019 [\[12\]](#)

TRACEY MARI/MV
SUSAN SALEHI

Tentative Ruling

Motion: Extend the Automatic Stay

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 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).

EXTENSION OF THE STAY

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

the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. 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, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

31. [19-12384](#)-A-13 **IN RE: ANTHONY D'ANGEL**
[MHM-2](#)

MOTION TO DISMISS CASE
10-7-2019 [[27](#)]

MICHAEL MEYER/MV
STEVEN ALPERT
RESPONSIVE PLEADING

No Ruling.

32. [19-12785](#)-A-13 **IN RE: MIGUEL/MARIA ESCALANTE**
[WDO-2](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
9-27-2019 [[34](#)]

MIGUEL ESCALANTE/MV
WILLIAM OLCOTT

No Ruling.

33. [19-13685](#)-A-13 **IN RE: FRANK ANDRASEVITS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
10-16-2019 [[16](#)]

JULIE MORADI-LOPES

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to December 18, 2019 at 9:00 a.m.

Order: Civil minute order

DICSUSSION

Parties have stipulated to continue this hearing to December 2019.
The court approves of the stipulation and will hear the matter on
December 18, 2019 at 9:00 a.m.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to December 18, 2019
at 9:00 a.m. Opposition will be filed no later than November 20,
2019. Reply to opposition will be filed no later than December 4,
2019.

34. [17-12991](#)-A-13 **IN RE: TOMMY/JANET SVARE**
[RSW-1](#)

MOTION TO MODIFY PLAN
10-1-2019 [[27](#)]

TOMMY SVARE/MV
ROBERT WILLIAMS

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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

35. [19-12897](#)-A-13 **IN RE: RAYMOND/CYNTHIA SANDERS**
[WLA-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SUZANNE GOST
8-20-2019 [\[20\]](#)

SUZANNE GOST/MV
ROBERT WILLIAMS
WILLIAM ALEXANDER/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling.

36. [19-14171](#)-A-13 **IN RE: KAREN/MARIA RUTAN**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-24-2019 [\[10\]](#)

EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
THOMAS HOGAN
DON POOL/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Coachmen by Forest River Freedom Express Series M-248
RBS

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

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as QZ—both prepetition and postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

Debtors have surrendered possession of the property to Creditor on September 17, 2019. Official Form 107, ECF #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.

Educational Employees 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 2017 Coachmen by Forest River Freedom Express Series M-248 RBS, 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.

37. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[RSW-2](#)

MOTION TO VALUE COLLATERAL OF CHASE AUTO FINANCE
10-24-2019 [\[47\]](#)

JEFFREY VANDERNOOR/MV
ROBERT WILLIAMS

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 Mercedes E350. 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 \$15,775.00.

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 Mercedes E350 has a value of \$15,775.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$15,775.00 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.

38. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[WJH-1](#)

MOTION FOR RELIEF FROM PRETRIAL ORDER
10-24-2019 [[129](#)]

DONALD ALUISI/MV
NICHOLAS ANIOTZBEHERE
KURT VOTE/ATTY. FOR MV.

No Ruling