

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY  
**DATE:** NOVEMBER 16, 2017  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

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

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

1. [17-14000](#)-A-13 EDDIE MENDRIN  
[ADR-1](#)  
WESTWINDS MOBILE HOME PARK/MV  
ANTHONY ROWE/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-1-17 [[13](#)]

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue Unlawful Detainer Action and Writ of Possession

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Exercise of state law rights and remedies to obtain possession of real property located at 3109 McKinley Avenue, Space 3, Fresno, CA, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession

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**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of real property located at 3109 McKinley Avenue, Space 3, Fresno, CA, and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Westwinds Mobile Home Park'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 3109 McKinley Avenue, Space 3, Fresno, CA, and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

2.     [13-15305](#)-A-12    ROGELIO CALDERON AND                    MOTION FOR ENTRY OF DISCHARGE  
          [TOG-15](#)                LAURA BOBADILLA-DELGADO                    10-9-17 [[100](#)]  
          ROGELIO CALDERON/MV  
          THOMAS GILLIS/Atty. for dbt.

### **Final Ruling**

**Motion:** Entry of Discharge [Chapter 12 case]

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

**Disposition:** Granted

**Order:** Prepared by the movant

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

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

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

3. [17-11605](#)-A-13 OFELIA GARCIA  
[TOG-2](#)  
OFELIA GARCIA/MV  
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
INTERNAL REVENUE SERVICE  
9-27-17 [[64](#)]

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]

**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.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral of the Internal Revenue Service consisting of personal property described as all debtor's personal property. The debtor does not own real property. An IRS lien does is outside the scope of § 1325(a)'s hanging paragraph. The court values the collateral at \$30,002.

## 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 non-vehicular, personal 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 debtor does not own real property, and all the debtor's personal property has a value of \$30,002. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$30,002 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.

4. [17-11605](#)-A-13 OFELIA GARCIA  
[TOG](#)-3  
OFELIA GARCIA/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
9-27-17 [[69](#)]

### Final Ruling

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Denied

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

The trustee objects to confirmation on grounds that the plan has a funding problem. See 11 U.S.C. § 1322(a)(1). The problem arises because no payment was listed for the IRS, a secured class 2 creditor. The trustee also raises the issue that debtor has not valued collateral of the IRS; however, the debtor has now prosecuted a motion to value on this calendar of the IRS's collateral.

The debtor has filed a reply in which the debtor concedes the grounds for the opposition and indicates that the opposition is well taken. The debtor states that she will file an amended plan and address the issues of the trustee. Accordingly, the court will sustain the objection.

## 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 confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

5. [17-13307](#)-A-13 CRYSTAL HYATT  
[APN](#)-1  
WELLS FARGO BANK, N.A./MV  
SUSAN HEMB/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
10-4-17 [[13](#)]

### **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

**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 proposes to reduce a Class 2 secured claim based on the value of the collateral. But the failure to file a motion to value such collateral that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c). Because confirmation must be denied on this ground, the court need not address the other grounds for the objection at this time.

### **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.

Wells Fargo Bank, N.A.'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.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

6. [17-13307](#)-A-13 CRYSTAL HYATT MOTION TO DISMISS CASE  
[MHM](#)-1 10-19-17 [[24](#)]  
MICHAEL MEYER/MV  
SUSAN HEMB/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

**No Ruling**

7. [15-13909](#)-A-13 THOMAS CSIBOR MOTION FOR RELIEF FROM  
[RMP](#)-1 AUTOMATIC STAY  
SETERUS, INC./MV 10-16-17 [[39](#)]  
PETER FEAR/Atty. for dbt.  
RENEE PARKER/Atty. for mv.

## Final Ruling

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or a third party. Section 2.11 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral and any non-debtor who is a co-debtor under the applicable loan documents. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer

exists because the stay no longer affects its collateral. The motion will be denied as moot.

8. [17-13314](#)-A-13 SALLIE BRADLEY  
[JDW](#)-1  
SALLIE BRADLEY/MV  
JOEL WINTER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
TRADING FINANCIAL CREDIT, LLC  
10-18-17 [[12](#)]

### **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 2010 Dodge Caravan. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$5445.



## 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 2010 Dodge Caravan has a value of \$5445. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5445 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

9. [17-13314](#)-A-13 SALLIE BRADLEY MOTION TO DISMISS CASE  
[MHM](#)-1 10-19-17 [[19](#)]  
MICHAEL MEYER/MV  
JOEL WINTER/Atty. for dbt.  
RESPONSIVE PLEADING  
MOTION WITHDRAWN

### Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [17-12815](#)-A-13 JEFFREY/CHRISTINA STANLEY CONTINUED MOTION TO DISMISS  
[MHM](#)-1 CASE  
JEFFREY STANLEY/MV 9-13-17 [[17](#)]  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

### No Ruling

11. [12-17416](#)-A-13 ALFRED/CAROL SILVA MOTION TO DETERMINE FINAL CURE  
[MHM](#)-3 AND MORTGAGE PAYMENT RULE  
MICHAEL MEYER/MV 3002.1  
10-16-17 [[94](#)]  
GARY HUSS/Atty. for dbt.

### Final Ruling

**Motion:** Determination of Final Cure and Payment of Required Postpetition Amounts under Rule 3002.1(h)

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

**Disposition:** Granted

**Order:** Prepared by moving party

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).

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response under subdivision (g)." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not timely file it. *Id.*

The holder of the claim then has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to agree or dispute whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bankr. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

12. [17-13317](#)-A-13 LORNA TREMBLE  
[DMG](#)-1  
LORNA TREMBLE/MV  
D. GARDNER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
FORD MOTOR CREDIT  
10-17-17 [[17](#)]

### **Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Notice:** Written opposition filed by responding party

**Disposition:** Continued for evidentiary hearing

**Order:** Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

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

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

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

13. [17-13618](#)-A-13 ROBERTO MELENDREZ AND  
[MHM](#)-1 PERLA MENDEZ

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-27-17 [[15](#)]

THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The objection withdrawn, the matter is dropped as moot.

14. [17-13320](#)-A-13 EUSTORGIO CRUZ-REYES  
[MHM](#)-1  
MICHAEL MEYER/MV  
YELENA GUREVICH/Atty. for dbt.

MOTION TO DISMISS CASE  
10-19-17 [[25](#)]

### **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.

15. [17-13628](#)-A-13 HONG MOUA  
[MHM](#)-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-27-17 [[22](#)]

PETER BUNTING/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The objection withdrawn, the matter is dropped as moot.

16. [17-12729](#)-A-13 VIRGINIA SOTO  
[JRL](#)-1  
VIRGINIA SOTO/MV  
JERRY LOWE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
TRAVIS CREDIT UNION  
10-16-17 [[15](#)]

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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.*

### **HANGING PARAGRAPH OF § 1325(a)**

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. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(7). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

## **EVIDENTIARY ISSUE**

In addition, the declaration references an exhibit that is not attached. The debtor's declaration states that "Exhibit A is a true and correct copy of the subject Loan Agreement . . . ." But no exhibits have been filed with the motion.

## **CIVIL MINUTE ORDER**

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

The debtor's motion to value collateral has been presented to the court. Given the procedural and substantive issues discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

17. [17-12533](#)-A-13 ALEX BECERRA  
[NLG](#)-1  
SETERUS, INC./MV  
JEFFREY ROWE/Atty. for dbt.  
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-5-17 [[36](#)]

## **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2733 West Conejo Avenue, Caruthers, CA

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**

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 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).

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.

Seterus, Inc.'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 2733 West Conejo Avenue, Caruthers, CA, 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.

18. [17-12234](#)-A-13 CECIL/MARY OSORIO  
[MAZ](#)-2  
CECIL OSORIO/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
NATIONWIDE WEST  
10-6-17 [[50](#)]

### Final Ruling

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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, a 2007 GMC Sierra 1500 Extended Cab, collateral for Nationwide West's secured claim. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case.

The motion states that the secured claim was incurred "within" 910 days of the petition. It also represents that the purchase money portion of the claim is not subject to modification. The declaration, moreover, affirms that the lien against the vehicle secures the purchase price of the vehicle. But nowhere does the motion identify the purchase money portion of the claim. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d) (7).

19. [17-13834](#)-A-13 RANDY PALMER

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-30-17 [[21](#)]

W. SHUMWAY/Atty. for dbt.  
\$31.00 FILING FEE PAID  
10/31/17

#### **Final Ruling**

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

20. [13-17637](#)-A-13 BENJAMIN/SONIA VELO  
[NLG](#)-1  
SETERUS, INC./MV  
ANDREW MOHER/Atty. for dbt.  
NICHOLE GLOWIN/Atty. for mv.  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-9-17 [[74](#)]

#### **Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 4. Class 4 secured claims are long-term claims



that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or a third party. Section 2.11 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

21.	<a href="#">17-12539</a> -A-13 LUIS TAVARES <a href="#">MHM</a> -1 MICHAEL MEYER/MV THOMAS GILLIS/Atty. for dbt. WITHDRAWN	CONTINUED MOTION TO DISMISS CASE 8-15-17 [ <a href="#">27</a> ]
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**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

22.	<a href="#">17-12539</a> -A-13 LUIS TAVARES <a href="#">TOG</a> -2 LUIS TAVARES/MV THOMAS GILLIS/Atty. for dbt. OPPOSITION WITHDRAWN	CONTINUED MOTION TO CONFIRM PLAN 8-18-17 [ <a href="#">31</a> ]
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**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.

23. [17-12639](#)-A-13 JOSE VELOZ  
[TOG](#)-1  
JOSE VELOZ/MV  
THOMAS GILLIS/Atty. for dbt.

MOTION TO CONFIRM PLAN  
10-4-17 [[35](#)]

**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.

24. [17-12944](#)-A-13 MARIA BECERRA  
[MHM](#)-2

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-23-17 [[30](#)]

THOMAS GILLIS/Atty. for dbt.

**No Ruling**

25. [17-13146](#)-A-13 DANIEL AMADOR  
[MHM](#)-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE  
10-13-17 [[26](#)]

**Final Ruling**

The hearing on this motion to dismiss is continued to December 13, 2017, at 9:00 a.m. to coincide with the hearing on the debtor's motion to confirm an amended chapter 13 plan.

26. [17-13446](#)-A-13 LEONEL TERA  
[MHM](#)-1 MOTION TO DISMISS CASE  
MICHAEL MEYER/MV 10-19-17 [[14](#)]  
PETER FEAR/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

27. [17-13050](#)-A-13 DWIGHT/MARISSA ROSENQUIST  
[MHM](#)-2 OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-23-17 [[42](#)]  
MARC VOISENAT/Atty. for dbt.

**No Ruling**

28. [17-12451](#)-A-13 DAVID/DELIA HAYES  
[DMH](#)-5 AMENDED MOTION TO CONFIRM PLAN  
10-4-17 [[55](#)]  
DAVID HAYES/MV  
DAVID HAYES/Atty. for mv.  
RESPONSIVE PLEADING

**No Ruling**

29. [17-12451](#)-A-13 DAVID/DELIA HAYES  
[MHM](#)-3 MOTION TO DISMISS CASE  
10-17-17 [[66](#)]  
MICHAEL MEYER/MV

**No Ruling**

30. [16-12852](#)-A-13 ELEANOR AIKINS  
[JDR](#)-1 MOTION TO MODIFY PLAN  
9-29-17 [[42](#)]  
ELEANOR AIKINS/MV  
JEFFREY ROWE/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

31. [17-12453](#)-A-13 ROBERT/SALLY MALY  
[MHM](#)-3

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
9-28-17 [[35](#)]

JERRY LOWE/Atty. for dbt.  
RESPONSIVE PLEADING

**No Ruling**

32. [16-13155](#)-A-13 RYAN/MICHAEL SMITH  
[RPZ](#)-1  
QUICKEN LOANS INC./MV  
JAMES MILLER/Atty. for dbt.  
WILLIAM MCDONALD/Atty. for mv.  
WITHDRAWN

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-6-17 [[24](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

33. [16-10356](#)-A-13 KENNETH/AMANDA WOOD  
[MHM](#)-4  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

MOTION TO DISMISS CASE  
10-18-17 [[65](#)]

**Final Ruling**

Having been withdrawn, the court drops the matter from calendar as moot.

34. [17-13663](#)-A-13 SANTIAGO/MARIA LOPEZ

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-30-17 [[20](#)]

THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

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

35. [17-12968](#)-A-13 JOHN/DIANE URIAS  
[MHM](#)-2  
MICHAEL MEYER/MV  
BENNY BARCO/Atty. for dbt.

MOTION TO DISMISS CASE  
10-4-17 [[28](#)]

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2973.79.

**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.

36. [15-12670](#)-A-13 RICK/KIMBERLY HUDSON  
[PBE](#)-1  
RICK HUDSON/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN  
10-6-17 [[22](#)]

**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.

37. <a href="#">14-14572</a> -A-13 ALFREDO/GRACIE LAZO <a href="#">JRL</a> -3 ALFREDO LAZO/MV JERRY LOWE/Atty. for dbt. DISMISSED	MOTION TO SET ASIDE DISMISSAL OF CASE 10-17-17 [ <a href="#">75</a> ]
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**Final Ruling**

This motion is continued to December 13, 2017, at 9:00 a.m. Not later than November 22, 2017, the debtors shall serve the motion, all supporting documentation and a notice of continued hearing on all creditors and shall file a Certificate of Service so indicating. The notice of continued hearing shall provide that opposition may be offered orally at the continued hearing.

38. <a href="#">17-13274</a> -A-13 SERGIO/MARLEAN BRAVO <a href="#">MHM</a> -2  MARK NELSON/Atty. for dbt.	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER 10-26-17 [ <a href="#">32</a> ]
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**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

**MOOTNESS**

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.

39. [16-10082](#)-A-13 RICARDO MONTANANA  
[FW-3](#)  
RICARDO MONTANANA/MV

OBJECTION TO CLAIM OF  
DEPARTMENT OF THE TREASURY -  
INTERNAL REVENUE SERVICE, CLAIM  
NUMBER 1  
10-3-17 [[50](#)]

PETER FEAR/Atty. for dbt.

#### **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. 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 objection, the court will sustain the objection. The correct amount of priority taxes due and owing for 2015 is \$10,627 and not \$18,439.05. After reducing the tax due for 2015 to the appropriate amount, the total priority amount of the IRS's claim shall be \$48,579.07 (\$56,391.12 - 18,439.05 + 10,627.00), and the balance of the \$56,391.12 priority claim shall be disallowed. The general unsecured portion of the IRS's claim shall be allowed in the amount of \$4529.04 [adding the following: \$3601.92 (starting amount shown on amended claim no. 1-1) + \$477.63 (penalty) + \$212.28 (penalty) + \$53.07 (penalty) + \$140.28 (interest) + \$43.86 (interest)].

#### **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 objection to the proof of claim filed by the U.S. Department of the Treasury, Internal Revenue Service ("IRS's 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. The court will allow the IRS's claim as a priority claim in the amount of \$48,579.00. The balance of the \$56,391.12 priority claim shall be disallowed. Further, the general unsecured portion of the IRS's claim shall be allowed in the amount of \$4529.04.

40. [15-14786](#)-A-13 MARY SMITH  
[DMG](#)-11  
MARY SMITH/MV  
D. GARDNER/Atty. for dbt.  
DISMISSED

MOTION TO MODIFY PLAN  
10-9-17 [[150](#)]

**Final Ruling**

The case dismissed, the matter is denied as moot.

41. [16-10697](#)-A-13 DARCY NUNES  
[TCS](#)-2  
DARCY NUNES/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN  
10-11-17 [[44](#)]

**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.



42. [12-60298](#)-A-13 HERBERT/DENISE DORIA  
[MHM](#)-2  
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE  
AND MORTGAGE PAYMENT RULE  
3002.1  
10-4-17 [[113](#)]

MARK ZIMMERMAN/Atty. for dbt.

### **Final Ruling**

**Motion:** Determination of Final Cure and Payment of Required  
Postpetition Amounts under Rule 3002.1(h)

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

**Disposition:** Granted

**Order:** Prepared by moving party

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).

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response under subdivision (g)." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not timely file it. *Id.*

The holder of the claim then has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to agree or dispute whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

43. [17-13498](#)-A-13 DUSTY/SONJA THOMAS

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-18-17 [[16](#)]

SCOTT LYONS/Atty. for dbt.  
\$79.00 INSTALLMENT PAYMENT  
ON 10/18/17

**Final Ruling**

The installment fees having been paid, the order to show cause is discharged and the case shall remain pending.