

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

WEDNESDAY

DECEMBER 10, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [10-63700](#)-A-13 JOSE/IRMA MALDONADO
MHM-4
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-23-14 [[106](#)]

Tentative Ruling

Motion: Dismiss Chapter 13 Case

Notice: LBR 9014-1(f)(1); written opposition filed and reply filed by the trustee

Disposition: Pending

Order: Pending

The trustee moves to dismiss the case for failure to make plan payments. The trustee asserts that the debtors are delinquent in the amount of \$443.00. The debtors in their opposition contend that they are current. Debtors contend that they have made additional payments of \$477.00 in October and that the November payment was mailed on November 20, 2014.

The trustee states, however, that despite receipt of payments in October and November, the debtors are still delinquent. The trustee explains that when the motion to dismiss was filed, the payment that was received October 8, 2014 had already been included and deducted. (It appears that the payment received October 8, 2014 did not cover the September 2014 plan payment.) Further, the trustee contends that the debtors' payments on October 28, 2014 and November 25, 2014 were for the October 2014 and November 2014 plan payments, but that debtors are still delinquent in their plan payments in the amount of \$443. The trustee requests that the debtors become fully current by the December 10, 2014 hearing or that the court dismiss the case.

2. [13-16207](#)-A-13 MICHAEL/NOREEN THACKREY
PLF-2
- MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR,
DEBTOR'S ATTORNEY(S).
11-7-14 [[72](#)]
- PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this 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).

COMPENSATION AND EXPENSES

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

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

CIVIL MINUTE ORDER

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

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

Fear Law Group, P.C.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$7876.00 and reimbursement of expenses in the amount of \$643.79. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$8519.79 shall be allowed as an administrative expense to be paid through the plan, and the remainder, if any, shall be paid from the retainer held by the applicant. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the distribution priorities of the confirmed plan.

3. [11-12010](#)-A-13 LARRY/JENNIE ROMERO
MHM-2
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-10-14 [[44](#)]

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1200.00.

4. [13-15013](#)-A-13 JUDY EVANS
MHM-1
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-10-14 [[51](#)]

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$11,421.96.

5. [14-15013](#)-A-13 NORA GARCIA
BDB-1
NORA GARCIA/MV
BENNY BARCO/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
FLAGSTAR BANK, FSB
10-28-14 [[16](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Not Principal Residence]

Notice: Written opposition filed by the responding party

Disposition: Continued to January 14, 2015, at 9:00 a.m.; joint status report due 14 days before the continued date of the hearing (Dec. 31, 2014)

Order: Civil Minute Order

The motion seeks to value nonresidential real property that is the responding party's collateral. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value.

But the respondent also states that the appraisal is set to take place on November 25, 2014. So it may be that the appraisal has already occurred. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's valuation must be resolved before the court can rule on the relief requested.

6. [14-14017](#)-A-13 DAVID BAILEY AND KATHLEEN
CJY-1 PAXTON-BAILEY
DAVID BAILEY/MV

MOTION TO CONFIRM PLAN
10-14-14 [[30](#)]

CHRISTIAN YOUNGER/Atty. for dbt.

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 Chapter 13 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.

7. [09-15218](#)-A-13 JAMES/V. WILSON
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO DISCHARGE BY
MICHAEL H. MEYER
11-3-14 [[40](#)]

No tentative ruling

8. [14-13418](#)-A-13 ROBERT/LUCERO BISHOP MOTION TO DISMISS CASE
MHM-2 10-27-14 [[35](#)]
MICHAEL MEYER/MV
SUSAN HEMB/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [11-61524](#)-A-13 TREVOR/CARRIE WEST MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 10-10-14 [[27](#)]
PETER BUNTING/Atty. for dbt.
NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1006.82.

10. [10-12925](#)-A-13 ANTONIO ARROYO MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 10-10-14 [[41](#)]
JANINE ESQUIVEL/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [12-14926](#)-A-13 JOHN/KAREN LYSTAD
MHM-4
MICHAEL MEYER/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-10-14 [[148](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to January 14, 2015, at 9:00 a.m.

Order: Civil minute order

The trustee moves to dismiss the case for cause under § 1307(c)(1) and (6). The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$7836.00.

But the debtors have filed a modified plan set for hearing on January 14, 2015. The court will continue the hearing on this motion to January 14, 2015. If the modified plan is confirmed, the court may deny the motion. If the modified plan is not confirmed, the court may grant the motion.

12. [13-16127](#)-A-13 RICHARD/KAREN WENDT
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
10-10-14 [[44](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [12-15328](#)-A-13 DANIEL FUENTES

JEFF REICH/Atty. for dbt.

ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
11-7-14 [[49](#)]

Tentative Ruling

Order to Show Cause: For Failure to Tender Fee for Filing Transfer of Claim

Date Issued: November 7, 2014

Disposition: Transfer of claim stricken from docket

Order: Civil minute order

The respondent Nationstar Mortgage LLC has filed an assignment / transfer of claim for which the filing fee of \$25.00 has not been paid. If the respondent has not paid this past due fee by the date of the hearing, then the court will order that the transfer of claim document at docket no. 44 be stricken.

14. [13-12828](#)-A-13 MARTIN CERDA AND MONICA
MHM-1 GARZA MOTION TO DISMISS CASE FOR
MICHAEL MEYER/MV FAILURE TO MAKE PLAN PAYMENTS
DAVID JENKINS/Atty. for dbt. 10-10-14 [[32](#)]
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [13-12433](#)-A-13 MARK SIDLEY
MHM-1 MOTION TO DISMISS CASE FOR
MICHAEL MEYER/MV FAILURE TO MAKE PLAN PAYMENTS
SCOTT LYONS/Atty. for dbt. 10-10-14 [[67](#)]

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$9,770.

16. [10-18134](#)-A-13 LUCIO/AMY BERNABE
MHM-1 MOTION TO DISMISS CASE FOR
MICHAEL MEYER/MV FAILURE TO MAKE PLAN PAYMENTS
PETER BUNTING/Atty. for dbt. 10-10-14 [[39](#)]
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [11-13440](#)-A-13 PHILLIP/KARA BRANDON MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 10-10-14 [[61](#)]
GEOFFREY ADALIAN/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3,763.46.

18. [14-10145](#)-A-13 CHRISTOPHER/MELODIE SMITH MOTION TO MODIFY PLAN
JMA-1 10-30-14 [[28](#)]
CHRISTOPHER SMITH/MV
JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

19. [14-12645](#)-A-13 NANCY ADINOLFI
MHM-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
10-30-14 [[27](#)]

DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

20. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON
TCS-5
ERNEST SHELTON/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN,

CONTINUED MOTION TO MODIFY PLAN
9-15-14 [[81](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

21. [12-14754](#)-A-13 ANDREA BASSETTI
JMA-3
ANDREA BASSETTI/MV
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO MODIFY PLAN
10-24-14 [[35](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

22. [13-10355](#)-A-13 MARY MIGLIORE
MHM-1
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-10-14 [[44](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [14-11857](#)-A-13 HAN/IN KIM
MHM-4
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS ,
MOTION TO DISMISS CASE
10-23-14 [[121](#)]

H. AHN/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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) to dismiss the case. This case was filed on April 10, 2014 and a plan

has not been confirmed. On September 26, 2014, the court entered a 75-day order requiring confirmation of a chapter 13 plan to be confirmed no later than the first hearing date available after the 75-day period that commences on the date of "this hearing," which referred to the hearing on September 25, 2014. Civ. Min. Order on Objection to Confirmation, ECF No. 118. The trustee asserts that this December 10, 2014, hearing is the first hearing date available after the 75-day period that commenced on September 25, 2014. No modified plan appears on the court's docket other than the plan filed April 10, 2014, which plan was objected to and not confirmed after the court sustained the trustee's objection. The court will dismiss the case for unreasonable delay prejudicial to creditors and noncompliance with the court's 75-day order.

Alternatively, the debtors are \$8100 delinquent in payments under the proposed plan. This delay in making payments is also unreasonable delay by the debtor that is prejudicial to creditors.

24. [14-14361](#)-A-13 MICHAEL/REGINA JOHNSON MOTION TO VALUE COLLATERAL OF
DRJ-2 OLD REPUBLIC INSURANCE COMPANY
MICHAEL JOHNSON/MV AND REPUBLIC EQUITY CREDIT
 SERVICES, INC.
 10-26-14 [[26](#)]
- DAVID JENKINS/Atty. for dbt.

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 5010 W. Celeste Ave., Fresno, CA.

The court values the collateral at \$245,000. 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 considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The real property collateral located at 5010 W. Celeste Ave., Fresno, CA, has a value of \$245,000. 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.

25. [14-12362](#)-A-13 BENITO/MARTHA GALARZA
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS ,
MOTION TO DISMISS CASE
10-23-14 [[79](#)]

THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [14-13168](#)-A-13 ERIC/CHRISTINA PIERSON MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
CAPITAL ONE AUTO FINANCE/MV 10-31-14 [[34](#)]
PETER BUNTING/Atty. for dbt.
MARK ESTLE/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2008 Chrysler 300

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 debtor has defaulted on a loan from the moving party secured by the property described above. The moving party's claim is classified as a Class 2 claim. According to the plan, each Class 2 claim will be paid through the plan by the trustee.

The motion asserts that 2 postpetition plan payments are past due. For each postpetition plan payment that is past due, the moving party will not have received its monthly dividend of \$465. This constitutes cause for stay relief.

Given the lack of opposition filed by the debtor or co-debtor, relief from the co-debtor stay is warranted under § 1301(c)(3). This section provides that the court shall grant relief from the co-debtor stay of § 1301(a) if "such creditor's interest would be irreparably harmed by continuation of such stay." 11 U.S.C. § 1301(c)(3). Allowing the co-debtor stay to remain in effect when cause exists to grant the automatic stay protecting the debtor in this case would irreparably harm the creditor's interest in the property. The reason is that even though payments are not being made to the creditor, the creditor could still not take action to enforce its rights and remedies against its collateral and protect its interest if the co-debtor stay were continued in effect.

The motion for relief from stay and from the co-debtor stay of § 1301 will be granted. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. No other relief will be awarded.

27. [11-63472](#)-A-13 JOSE/LINDA TRUJILLO CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR FAILURE TO MAKE PLAN
MICHAEL MEYER/MV PAYMENTS
10-6-14 [[64](#)]

NANCY KLEPAC/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [09-19674](#)-A-13 MANUEL/LETICIA SEPULVEDA MOTION TO DISMISS CASE FOR
MHM-2 UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS ,
MOTION TO DISMISS CASE
11-13-14 [[71](#)]

PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

29. [14-13974](#)-A-13 FERNANDO POO AND PALOMA MOTION TO CONFIRM PLAN
TOG-2 HERNANDEZ 10-16-14 [[26](#)]
FERNANDO POO/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

CONFIRMATION

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition

are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

75 DAY ORDER

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).

30. [14-14086](#)-A-13 JAMES/SARAH SIDOTI MOTION TO DISMISS CASE
MHM-1 10-31-14 [[40](#)]
MICHAEL MEYER/MV
VARDUHI PETROSYAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

31. [11-19093](#)-A-13 SCOTT/WENDY ADDISON MOTION TO DISMISS CASE
MHM-1 10-10-14 [[36](#)]
MICHAEL MEYER/MV
JAMES MILLER/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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). No opposition has been filed, and a non-opposition 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 debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1,780.

32. [13-16093](#)-A-13 HECTOR VIGIL MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 10-10-14 [[30](#)]
GARY HUSS/Atty. for dbt.

Final Ruling

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

33. [14-14194](#)-A-13 FRANK VAZ, JR. AND LAURA MOTION TO DISMISS CASE FOR
MHM-1 VAZ UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
10-31-14 [[40](#)]
DAVID JENKINS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

34. [14-13895](#)-A-13 VERONICA MARTINEZ MOTION TO CONFIRM PLAN
PLG-2 10-22-14 [[58](#)]
VERONICA MARTINEZ/MV
RABIN POURNAZARIAN/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to February 12, 2014, at 9:00 a.m.

Order: Civil minute order

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice.

The debtor shall file a Notice of Continued Hearing pursuant to LBR 3015-1 (d)(1) and 9014-1(f)(1). The proof of service shall attach a copy of the court's matrix with the computer generated date visible (not whited out) and near in date to the date of the service. Service shall be made no later than December 31, 2014.

1. [13-10971](#)-A-13 JEREMY WINANS MOTION TO AMEND COMPLAINT
[13-1054](#) KLL-13 11-21-14 [[87](#)]
DAVIS V. WINANS

THOMAS ARMSTRONG/Atty. for mv.
HEARING VACATED BY ORDER
11/25/14

Final Ruling

The motion was denied by order entered November 25, 2014, ECF #96.

2. [13-10971](#)-A-13 JEREMY WINANS MOTION FOR SUMMARY JUDGMENT
[13-1054](#) KLL-8 11-12-14 [[71](#)]
DAVIS V. WINANS

THOMAS ARMSTRONG/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

3. [13-10971](#)-A-13 JEREMY WINANS MOTION TO AMEND HER COMPLAINT,
[13-1054](#) KLL-19 OR IN THE ALTERNATIVE, OTHER
DAVIS V. WINANS
REMEDIES

12-2-14 [[103](#)]

THOMAS ARMSTRONG/Atty. for mv.

Final Ruling

The request for an order shortening time (erroneously designated as DC No. KLL-26) was denied by order entered December 3, 2014, ECF #132.

10:00 a.m.

1. [14-13416](#)-A-12 JOAO/LUZIA VAZ MOTION TO CONFIRM CHAPTER 12
TCS-6 PLAN
JOAO VAZ/MV 11-18-14 [[71](#)]
NANCY KLEPAC/Atty. for dbt.

No tentative ruling.

2. [14-13416](#)-A-12 JOAO/LUZIA VAZ MOTION TO VALUE COLLATERAL OF
TCS-7 WESTAMERICA BANK
JOAO VAZ/MV 11-17-14 [[66](#)]
NANCY KLEPAC/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property]

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). 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

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); accord *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' *i.e.*, the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's

The motion requests that the court value the debtor's personal property collateral. The collateral is described as 2012 Chevrolet Silverado.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is granted. The personal property collateral described as 2012 Chevrolet Silverado has a value of \$18,230. Senior liens on the collateral secure debt in the amount of \$0.00. The respondent has a secured claim in the amount of \$18,230 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.

- No tentative ruling.

- ## Final Ruling

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

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); *accord Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value the debtor's personal property collateral. The collateral is described as 2012 Ford Mustang.

The court values the collateral at \$17,575. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. 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 personal property collateral has been presented to the court. Having considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The personal property collateral described as 2012 Ford Mustang has a value of \$17,575. Senior liens on the collateral secure debt in the amount of \$0.00. The respondent has a secured claim in the amount of \$17,575 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.