

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: DECEMBER 16, 2015
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

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

COURT'S ERRORS IN FINAL RULINGS

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

1. [13-13202](#)-A-13 STEVEN/MARIA LUNA
MHM-1
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE
11-4-15 [[32](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$5443.68.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$5443.68. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

2. [15-12203](#)-A-13 WILLIAM SEUELL
SL-2
WILLIAM SEUELL/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
11-3-15 [[75](#)]

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. 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. But the moving party has not filed a reply to the opposition.

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.

3. [13-10004](#)-A-13 BRANDON/CASEY HOWARD
MHM-3
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE
11-4-15 [[61](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1755.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$1755. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

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| 4. | 15-10004 -A-13 LARRY VALENCIA
MHM-2
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING | CONTINUED MOTION TO DISMISS
CASE
9-17-15 [49] |
|----|--|---|

No tentative ruling.

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| 5. | 15-10004 -A-13 LARRY VALENCIA
TCS-3
LARRY VALENCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING | MOTION TO MODIFY PLAN
11-12-15 [57] |
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Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

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.

6. [15-13604](#)-A-13 MARIO/DIANA PEREZ CONTINUED MOTION TO USE CASH
PBB-1 COLLATERAL
MARIO PEREZ/MV 9-14-15 [[10](#)]
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

7. [15-13410](#)-A-13 KIMBERLY SHACKELFORD MOTION TO CONFIRM PLAN
SAH-3 10-15-15 [[32](#)]
KIMBERLY SHACKELFORD/MV
SUSAN HEMB/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 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.

8. [15-13410](#)-A-13 KIMBERLY SHACKELFORD
SAH-4
KIMBERLY SHACKELFORD/MV

MOTION TO VALUE COLLATERAL OF
1ST INVESTORS SERVICING
CORPORATION
10-23-15 [[42](#)]

SUSAN HEMB/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2007 Ford Mustang. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$6369.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil

minutes for the hearing.

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2007 Ford Mustang has a value of \$6369. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6369 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. [13-17712](#)-A-13 RUBEN OLVERA AND GLORIA CONTINUED MOTION FOR
SAS-2 CHAVEZ COMPENSATION FOR SHERYL A.
SHERYL STRAIN/MV STRAIN, CHAPTER 7 TRUSTEE(S)
9-8-15 [[123](#)]

THOMAS GILLIS/Atty. for dbt.
PETER FEAR/Atty. for mv.

No tentative ruling.

10. [15-14112](#)-A-13 BRIAN HAINES MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
AMERICREDIT FINANCIAL 11-13-15 [[18](#)]
SERVICES, INC./MV
MICHAEL ARNOLD/Atty. for dbt.
JENNIFER WANG/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: 2013 Chevrolet Malibu

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

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make payments to the moving party pursuant to a lease agreement by which the debtor leases the vehicle described above. The debtor has defaulted under such lease agreement as 1 postpetition lease payment is past due. The moving party's interest in the vehicle is not being adequately protected due

to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(B) (requiring personal property lease payments to commence not later than 30 days after the petition).

In addition, the movant recovered the vehicle October 12, 2015 prepetition. The petition was filed October 21, 2015.

Therefore, 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.

11. [15-14512](#)-A-13 MARY JAURIQUE
ALG-1
MARY JAURIQUE/MV

MOTION FOR EXEMPTION FROM
CREDIT COUNSELING AND/OR MOTION
FOR EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE
11-30-15 [8]

JANINE ESQUIVEL/Atty. for dbt.

Tentative Ruling

Motion: For Debtor to Be Excused from Completing Credit Counseling Course and Personal Financial Management Course

Notice: LBR 9014-1(f)(2); no 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). 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).

Completion of an approved course concerning personal financial management is a prerequisite for individuals' obtaining a chapter 7 discharge. 11 U.S.C. § 727(a)(11). Section 727(a)(11) provides for an exception to this requirement for a debtor whom the court determines is unable to complete the personal financial management course because of incapacity or disability as described in § 109(h)(4). *Id.* §§ 109(h)(4), 727(a)(11).

Incapacity and disability are defined terms. *Id.* § 109(h)(4). The debtor qualifies for the exemption because she suffers from dementia and is mentally incapacitated.

Because of the debtor's mental incapacity, she is also exempt from the credit counseling requirement imposed on debtors as an eligibility requirement under § 109(h)(1).

12. [12-18514](#)-A-13 ERNESTINA RODRIGUEZ
MHM-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO DISMISS CASE
11-4-15 [[41](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$330.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$330. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [12-10416](#)-A-13 ALEX HERRERA
MHM-2
MICHAEL MEYER/MV
RANDY RISNER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
11-4-15 [[63](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [15-13716](#)-A-13 RIGOBERTO GONZALEZ
PK-6
RIGOBERTO GONZALEZ/MV

PATRICK KAVANAGH/Atty. for dbt.
OST 12/4/15

No tentative ruling.

15. [11-19929](#)-A-13 JOHN/NORMA PINEDO
MHM-3
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [15-14230](#)-A-13 ALVARO HERNANDEZ AND
GISELLE MARTINEZ
OCWEN LOAN SERVICING, LLC/MV

PETER BUNTING/Atty. for dbt.
JESSICA ABDOLLAHI/Atty. for mv.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled

Order: Civil minute order

PROCEDURAL DEFICIENCIES

The objection has not been served in compliance with the court's Local Rules. LBR 3015-1(c)(4) requires service of the objection and a notice of hearing upon the debtor, debtor's attorney and the trustee. In this case, the objection was not served. Instead, the objecting creditor's proof of service states as follows:

"I HEREBY CERTIFY that on November 19, 2015, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, and a true and correct copy has been served via CM/ECF or United States Mail to the following parties"

First, the word "foregoing" does not describe with particularity what documents were served. No other statement in the proof shows what documents were served. LBR 9014-1(e)(3) notes that "the proof of service shall identify the title of the pleadings and documents served." The court cannot conclude that the objection itself was served. At best, the foregoing refers only to the notice.

Next, the proof of service does not make clear the manner of service. The proof leaves ambiguous whether service was made by mail, or whether the objecting party relies on CM/ECF electronic "notification," which is not service at all. Whenever a party files a matter with the court, and electronic notifications are sent of the docketing event, that does not constitute service. There is no other method of "service" through CM/ECF. Therefore, the proof shows a significant possibility that the objecting creditor has not served the objection.

Finally, although the court overrules the objection on service grounds, the objection fails to comply with the court's local rules in other ways. The objecting creditor has not used a docket control number, LBR 9014-1(c)(1) (note that a "motion" includes an objection LBR 9001-1(n)), and it has not followed LBR 9014-1(e)(3) requiring the filing of a *separate* proof of service.

CIVIL MINUTE ORDER

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

Ocwen Loan Servicing, on behalf of Wells Fargo Bank, N.A. (Indenture Trustee) has filed an objection to confirmation in this case. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled.

17. [10-65031](#)-A-13 EDWARD/ADELA MARTINEZ MOTION TO DISMISS CASE
MHM-2 11-4-15 [[59](#)]
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [12-13631](#)-A-13 KEVIN ROSE MOTION TO DISMISS CASE
MHM-2 11-4-15 [[59](#)]
MICHAEL MEYER/MV
SUSAN HEMB/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [15-14134](#)-A-13 CARLOS/LUZ DELGADO
EGS-1
BAYVIEW LOAN SERVICING, LLC/MV
PIERRE BASMAJI/Atty. for dbt.
EDWARD SCHLOSS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-2-15 [[37](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Continued to January 14, 2016, at 9:00 a.m. with any supplemental proof of service to be filed no later than 14 days in advance of the continued hearing date

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The debtors' address includes the city Firebaugh, but the proof shows the city as Firebraugh. Given the convenience of mail service under the bankruptcy rules, the court adheres strictly to the procedural requirements for such service. Facial irregularities often cause the court to treat service as insufficient absent waiver by the affected party.

20. [15-13935](#)-A-13 RANDALL/SHARI WARKENTIN
APN-1
CAPITAL ONE AUTO FINANCE/MV

JERRY LOWE/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
11-24-15 [[23](#)]

No tentative ruling.

21. [15-13238](#)-A-13 TODD/MINDY MACIEL
FLG-1
TODD MACIEL/MV
PETER FEAR/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CHASE AUTO FINANCE
11-18-15 [[23](#)]

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).

Here, the debtor does not contend that the respondent's claim is outside the scope of the hanging paragraph. Instead, the debtor argues that only a portion of the respondent's claim secured by the present collateral, a 2014 Ford Fusion SE Sedan, is unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle debtor traded in when purchasing the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the "negative equity" of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the negative equity portion of an

automobile lender's claim is not part of the purchase money security interest protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases discussed in the debtor's briefing. The total amount financed was \$27,804.22. The portion of this amount financed that was for the purchase of the present collateral was \$24,538.22. This is 88.25% of the total amount financed.

Stated differently, 11.75% of the present claim has resulted from negative-equity financing. Multiplying 88.25% by the present claim amount of \$24,792 equals \$21,878.94. The PMSI portion of the present claim is \$21,878.94. The non-PMSI portion equals \$2913.06. The non-PMSI portion is not protected by the hanging paragraph, and, as a result, may be treated as an unsecured claim if it is uncollateralized. The debtor has offered evidence that the vehicle is worth only \$15,987.00. Because the vehicle is worth less than the PMSI-portion of the respondent's claim, the amount of the debt that exceeds the PMSI portion may be considered an unsecured claim.

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 2014 Ford Fusion SE Sedan has a value of \$21,878.94. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$21,878.94 equal to the value of the collateral in which the respondent has a purchase money security interest. The respondent has a general unsecured claim for the balance of the claim.

22. [15-13238](#)-A-13 TODD/MINDY MACIEL
FLG-3
TODD MACIEL/MV
PETER FEAR/Atty. for dbt.

MOTION TO CONFIRM PLAN
11-2-15 [[13](#)]

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.

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| 23. 15-10639 -A-13 RACHEL RIVERA
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING | CONTINUED MOTION TO DISMISS
CASE
9-11-15 [46] |
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No tentative ruling.

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| 24. 15-10639 -A-13 RACHEL RIVERA
TCS-4
RACHEL RIVERA/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING | CONTINUED MOTION TO MODIFY PLAN
10-15-15 [53] |
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Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

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.

25. [11-11242](#)-A-13 DENISE WADE
PLF-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
11-6-15 [[48](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Law Group, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2041.00 and reimbursement of expenses in the amount of \$198.30.

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 a final basis.

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's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having

entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2041.00 and reimbursement of expenses in the amount of \$198.30. The aggregate allowed amount equals \$2239.30, and this amount is approved in addition to the flat fee of \$3500 approved as part of plan confirmation under LBR 2016-1(c). As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2239.30 shall be allowed as an administrative expense to be paid through the plan.

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

26. [15-12243](#)-A-13 WILLIAM NILMEIER MOTION TO DISMISS CASE
MHM-1 10-30-15 [[68](#)]
MICHAEL MEYER/MV
WILLIAM COLLIER/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

27. [11-15845](#)-A-13 JAMES/MARIA RODRIQUEZ MOTION TO INCUR DEBT
MAZ-3 11-24-15 [[52](#)]
JAMES RODRIQUEZ/MV
MARK ZIMMERMAN/Atty. for dbt.

Tentative Ruling

Motion: Approve New Debt [New Home Loan]

Notice: LBR 9014-1(f)(2); no 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). 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 seeks to incur new debt to finance the purchase of a new home.

The court presumes that the real property shown on Schedule A filed with the voluntary petition in 2011, and for which a payment of \$2370 is shown on the original Schedule J, will be sold and the secured debt no longer paid by the debtors—the secured debt for this property does

not appear on the amended Schedule J. If this is not the case, the debtor should so indicate at the hearing.

Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

28.	15-11845 -A-13 ROBERT DOUGLAS JGB-2 ROBERT DOUGLAS/MV JAMES BEIRNE/Atty. for dbt. RESPONSIVE PLEADING	CONTINUED MOTION TO CONFIRM PLAN 8-19-15 [65]
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Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1) / Continued hearing date;
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.

29.	15-11845 -A-13 ROBERT DOUGLAS JGB-2 ROBERT DOUGLAS/MV JAMES BEIRNE/Atty. for dbt. RESPONSIVE PLEADING	CONTINUED MOTION TO VALUE COLLATERAL OF GREENLIGHT FINANCIAL SERVICES/ NATIONSTAR MORTGAGE LLC 7-10-15 [40]
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Final Ruling

The matter resolved by stipulation and order, the matter is dropped as moot.

30. [13-10146](#)-A-13 MICHELLE MORENO
MHM-1
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
11-4-15 [[46](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

31. [15-13346](#)-A-13 STEPHAN GRAHAM
MHM-1
MICHAEL MEYER/MV
MATIN RAJABOV/Atty. for dbt.

CONTINUED MOTION TO DISMISS
CASE
10-27-15 [[29](#)]

Final Ruling

Due to a service issue, the court continued the hearing on this matter. The trustee filed a new motion docketed at no. 39 (but also containing the same DCN) containing substantially similar grounds for dismissal. The court will consider the new motion to dismiss on the merits and drop this matter as a duplicate.

32. [15-13346](#)-A-13 STEPHAN GRAHAM
MHM-1
MICHAEL MEYER/MV
MATIN RAJABOV/Atty. for dbt.

MOTION TO DISMISS CASE
11-17-15 [[39](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to January 28, 2016, at 9:00 a.m., with a supplemental proof of service filed no later than 28 days in advance of the continued hearing

Order: Not applicable

The court continues the hearing on this matter to January 14, 2016, at 9:00 a.m. The court's civil minutes (docket no. 35) directed service at both addresses of the debtor's attorney: the address shown on the petition and the address shown in the party information section of CM.

The trustee has accomplished service at the address for the debtor's attorney shown on the petition. No further service needs to be accomplished at this address.

However, for the other address on Olympic Blvd. in Los Angeles, CA, the suite number was not included (suite #104) for the debtor's attorney. The court realizes that this error may have resulted from the court's own exclusion of the suite number in the civil minutes at docket no. 35.

Accordingly, the court requests a supplemental proof of service at the following address no later than 28 days before the continued hearing date: 8648 Olympic Blvd. #104, Los Angeles, CA 90035-1975

33. [15-14447](#)-A-13 ASHLEY RANDOLPH MOTION TO EXTEND AUTOMATIC STAY
RSW-1 12-7-15 [[8](#)]
ASHLEY RANDOLPH/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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).

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

34. [15-12949](#)-A-13 KENNETH/JULIE SCOTT CONTINUED OBJECTION TO
MHM-1 CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
11-2-15 [[26](#)]

JERRY LOWE/Atty. for dbt.

No tentative ruling.

35. [15-14451](#)-A-13 GREGORY LOPEZ
MAZ-2
GREGORY LOPEZ/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
11-24-15 [[19](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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).

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

36. [12-10052](#)-A-13 LEONEL SALGADO AND
MHM-2 ESTHELA MARTINEZ
MICHAEL MEYER/MV
CHRISTIAN YOUNGER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
11-4-15 [[46](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [15-13653](#)-A-13 BRADLEY JAURIQUE
JRL-2
BRADLEY JAURIQUE/MV
JERRY LOWE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
TITLE LOAN, LLC
11-17-15 [[36](#)]

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 2005 Hummer H2. Because the copy of the promissory note attached as an exhibit shows that the loan was made for personal, family or household purposes, the court concludes 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 \$2500.

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 2005 Hummer H2 has a value of \$2500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2500 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

38. [15-13653](#)-A-13 BRADLEY JAURIQUE
JRL-3
BRADLEY JAURIQUE/MV

MOTION TO VALUE COLLATERAL OF
AMERICAN FINANCIAL SERVICES,
INC.
11-17-15 [[32](#)]

JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

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.

39. [12-19355](#)-A-13 PHELIX SELLERS MOTION TO DISMISS CASE
MHM-3 11-4-15 [[48](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

40. [12-15358](#)-A-13 SHAWN/TINA IPSEN MOTION TO DISMISS CASE
MHM-2 11-4-15 [[72](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

41. [12-15161](#)-A-13 MARK WHITE AND SHEALON MOTION TO DISMISS CASE
MHM-2 HILLARD-WHITE 11-4-15 [[92](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

42. [15-12169](#)-A-7 MIRIAM GONZALEZ MOTION TO DISMISS CASE
MHM-4 10-30-15 [[63](#)]
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.
CONVERTED 11/10/15

Final Ruling

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

43. [11-62172](#)-A-13 RUBEN/NORA GONZALEZ
MHM-3
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
11-4-15 [[61](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3251.24.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$3251.24. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

44. [15-11376](#)-A-13 SOFIA REYNOZO
GEG-2
SOFIA REYNOZO/MV

GLEN GATES/Atty. for dbt.

PRETRIAL CONFERENCE RE:
OBJECTION TO CLAIM OF NICHOLAS
FLORES, CLAIM NUMBER 3
6-30-15 [[39](#)]

Final Ruling

This matter is continued to January 27, 2016, at 9:00 a.m. In the event the matter is not resolved by stipulation, not later than 7 days prior to the continued hearing the parties shall file a joint status report.

45. [15-11376](#)-A-13 SOFIA REYNOZO
MHM-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
7-31-15 [[45](#)]

GLEN GATES/Atty. for dbt.

Final Ruling

This matter is continued to January 27, 2016, at 9:00 a.m.

46. [15-12776](#)-A-13 TONY/CHRISTINA BONILLA
JRL-1
TONY BONILLA/MV

MOTION TO VALUE COLLATERAL OF
HOUSEHOLD FINANCE CORPORATION
OF CALIFORNIA
11-16-15 [[39](#)]

JERRY LOWE/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 1915 E. Alpine Ave., Tulare, CA.

The court values the collateral at \$145,000. 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 entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 1915 E. Alpine Ave., Tulare, CA, has a value of \$145,000. 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.

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| 47. 15-13980 -A-13 HAROLD THORNTON
RCO-1
U.S. BANK NATIONAL
ASSOCIATION/MV
DAVID JENKINS/Atty. for dbt.
JONATHAN DAMEN/Atty. for mv. | OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
11-23-15 [19] |
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No tentative ruling.

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| 48. 11-18082 -A-13 LUIS/LUISA CALVILLO
ALG-7
LUIS CALVILLO/MV
JANINE ESQUIVEL/Atty. for dbt. | MOTION TO APPROVE LOAN
MODIFICATION
11-30-15 [126] |
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Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted

Order: Prepared by moving party according to the instructions below

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).

The motion seeks approval of a loan modification agreement. A copy of

the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

49. [15-13883](#)-A-13 EDWARD/LETICIA BARAJAS MOTION TO VALUE COLLATERAL OF
PBB-1 GOLDEN 1 CREDIT UNION
EDWARD BARAJAS/MV 11-17-15 [\[20\]](#)
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien

secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2012 Chevrolet Traverse. The debt owed to the respondent is not secured by a purchase money security interest because the original debt was refinanced by the current holder of the claim secured by the vehicle. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$21,362.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2012 Chevrolet Traverse LT has a value of \$21,362. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$21,362 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.

50. [15-13384](#)-A-13 ARTHUR/KAREN GONZALES
MHM-2
MICHAEL MEYER/MV
VARDUHI PETROSYAN/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
10-29-15 [[27](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

51. [15-13384](#)-A-13 ARTHUR/KAREN GONZALES MOTION TO CONFIRM PLAN
VRP-2 11-4-15 [[33](#)]
ARTHUR GONZALES/MV
VARDUHI PETROSYAN/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 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.

52. [15-13086](#)-A-13 CHARLES KEELE CONTINUED OBJECTION TO
RWR-1 CONFIRMATION OF PLAN BY TULARE
TULARE COUNTY TAX COLLECTOR/MV COUNTY TAX COLLECTOR
9-22-15 [[22](#)]
SCOTT LYONS/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

No tentative ruling.

53. [10-62088](#)-A-13 HUMBERTO/ELBE RANKIN MOTION TO DISMISS CASE
MHM-1 11-4-15 [[46](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

54. [14-15493](#)-A-13 DANIEL/LYDIA WILLIAMS MOTION TO MODIFY PLAN
FLG-1 10-30-15 [[35](#)]
DANIEL WILLIAMS/MV
PETER FEAR/Atty. for dbt.

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.

55. [13-14594](#)-A-13 JUANITA MARTINEZ MOTION TO DISMISS CASE
MHM-2 11-4-15 [[48](#)]
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

56. [11-12195](#)-A-13 GARY/SABENA FORD MOTION FOR COMPENSATION BY THE
PLF-4 LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
11-13-15 [[63](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Law Group, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2376.50 and reimbursement of expenses in the amount of \$229.55.

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 a final basis.

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 final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2376.50 and reimbursement of expenses in the amount of \$229.55. The aggregate allowed amount equals \$2606.05, and this amount is approved in addition to the flat fee of \$3500 approved as part of plan confirmation under LBR 2016-1(c). As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2606.05 shall be allowed as an administrative expense to be paid through the plan.

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

57. [15-13995](#)-A-13 VICTOR/NICHOLAS DE LA
BF-5 TOURE OBJECTION TO CONFIRMATION OF
CELLAR FSB/MV PLAN BY CELLAR FSB
DAVID JENKINS/Atty. for dbt. 12-1-15 [[17](#)]
BRANDYE FOREMAN/Atty. for mv.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled

Order: Civil minute order

The plan provides for the claim of CELLAR FSB (servicer for loandepot.com, LLC) in Class 1 proposing to cure arrears in the amount of \$3828. CELLAR FSB objects on the ground that the actual arrearage in its proof of claim is much higher. The objection will be overruled because any understatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section.

58. [11-15196](#)-A-13 TIM/CHRISTINA GARRISON MOTION TO DISMISS CASE
MHM-4 10-29-15 [[133](#)]
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

59. [15-12996](#)-A-13 NIGEL MARIN CONTINUED MOTION TO DISMISS
MHM-1 [CASE
MICHAEL MEYER/MV 9-23-15 [[34](#)]
RESPONSIVE PLEADING

No tentative ruling.

60. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES CONTINUED MOTION TO CONFIRM
FLG-1 PLAN
CRYSTAL MONROY CERVANTES/MV 9-21-15 [[15](#)]
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

The court will inquire (1) whether an evidentiary hearing is requested and, if so, the issues to be decided; (2) the precise legal issue(s) remaining. (Notwithstanding the Joint Status Report, filed November 30, 2015, ECF # 52, the court is unable to articulate the precise legal issue(s) that remain.)

61. [15-12763](#)-A-13 FRANK MOOSIOS CONTINUED MOTION TO DISMISS
DRJ-3 CASE
LOUIS MOOSIOS/MV 11-10-15 [[72](#)]
TRUDI MANFREDO/Atty. for dbt.
DAVID JENKINS/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Chapter 13 Case

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

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 disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material issues: (i) whether the debtor has regular income that qualifies him for relief under chapter 13 of Title 11, see 11 U.S.C. § 109(e); (ii) whether the case was filed in bad faith; and (iii) whether the plan was proposed in bad faith.

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.

62. [14-15736](#)-A-13 OMAR MARTINEZ AND JUDIT CONTINUED MOTION TO DISMISS
MHM-2 LOPEZ CASE
MICHAEL MEYER/MV 10-7-15 [[60](#)]
GLEN GATES/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

63. [15-14694](#)-A-13 DAVID PENA MOTION TO EXTEND AUTOMATIC STAY
SL-1 12-9-15 [[9](#)]
DAVID PENA/MV
SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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).

PROCEDURAL ISSUE

The court no longer accepts the 7-day notice procedure for expedited BAPCPA motions without an order shortening time. Accordingly, motions to extend the stay should be brought either under the notice provisions of LBR 9014-1(f)(2) or (f)(3). In the future the court may deny motions to extend the stay when they are filed and noticed less than 14 days before the hearing without an order shortening time for notice.

MERITS

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only

"after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.