

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: April 3, 2019
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

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

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

1. [18-12106](#)-A-13 **IN RE: HECTOR SOLIZ AND BEATRIZ GOMEZ SOLIZ**
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-19-2019 [[37](#)]

CITIBANK, N.A./MV
ROBERT WILLIAMS
ROBERT ZAHRADKA/ATTY. FOR MV.

No Ruling

2. [19-10009](#)-A-13 **IN RE: MATTHEW REGPALA**
[MHM-1](#)

MOTION TO DISMISS CASE
3-5-2019 [[34](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

No Ruling

3. [19-10009](#)-A-13 **IN RE: MATTHEW REGPALA**
[PK-3](#)

MOTION TO VALUE COLLATERAL OF TD BANK (MOR FURNITURE FOR
LESS)
3-5-2019 [[38](#)]

MATTHEW REGPALA/MV
PATRICK KAVANAGH

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular
(furniture)]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of personal property described as furniture, including a table, chairs, a desk, a dresser, and a mattress. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$500.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a table, chairs, a desk, a dresser, and a mattress has a value of \$500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$500, equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

4. [19-10037](#)-A-13 **IN RE: KAMMI SARGENT**
[PK-2](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 2
2-15-2019 [[24](#)]

KAMMI SARGENT/MV
PATRICK KAVANAGH
WITHDRAWN, CASE DISMISSED 3/13/19

Final Ruling

The case dismissed and the motion withdrawn, the matter is dropped from calendar.

5. [18-15139](#)-A-13 **IN RE: AARON/ANNIE LUCAS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
3-4-2019 [[21](#)]

PATRICK KAVANAGH

No Ruling

6. [18-15139](#)-A-13 **IN RE: AARON/ANNIE LUCAS**
[MHM-2](#)

MOTION TO DISMISS CASE
3-4-2019 [[26](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

No Ruling

7. [18-15139](#)-A-13 **IN RE: AARON/ANNIE LUCAS**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CITIZENS BANK, N.A.
2-5-2019 [[18](#)]

CITIZENS BANK, N.A./MV
PATRICK KAVANAGH
DIANA TORRES-BRITO/ATTY. FOR MV.

No Ruling

8. [18-10656](#)-A-13 **IN RE: ERIN FAIRBANK**
[WDO-4](#)

MOTION TO MODIFY PLAN
2-14-2019 [[46](#)]

ERIN FAIRBANK/MV
WILLIAM OLCOTT

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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

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

9. [18-15167](#)-A-13 **IN RE: RANDY ADAMS**
[MHM-1](#)

MOTION TO DISMISS CASE
2-11-2019 [[14](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

As of February 11, 2019, the debtor is delinquent under an unconfirmed plan filed December 30, 2018 in the amount of \$2,500 (January 2019 payment). February and March 2019 payments will become due by the hearing of this motion.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1), (4).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted for default on payments under an unconfirmed plan and unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

10. [16-10680](#)-A-13 **IN RE: CHRISTOPHER/AMANDA GONZALES**
[PK-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH NATIONWIDE AND/OR MOTION FOR AUTHORITY TO
GRANT RELEASE , MOTION FOR COMPENSATION FOR PATRICK
KAVANAGH, DEBTORS ATTORNEY(S)
3-11-2019 [[90](#)]

CHRISTOPHER GONZALES/MV
PATRICK KAVANAGH

No Ruling

11. [18-14892](#)-A-13 **IN RE: NICHOLAS ANGELICA**
[PK-5](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 8
1-31-2019 [[53](#)]

NICHOLAS ANGELICA/MV
PATRICK KAVANAGH
DISMISSED 3/8/19

Final Ruling

The case dismissed, the matter is dropped from calendar.

12. [18-14493](#)-A-13 **IN RE: ALICIA GOMEZ**
[RSW-1](#)

MOTION TO CONFIRM PLAN
2-25-2019 [[29](#)]

ALICIA GOMEZ/MV
ROBERT WILLIAMS

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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