

**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: FRIDAY
DATE: APRIL 3, 2020
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. [19-11009](#)-A-13 **IN RE: KEVIN/TAMEKA BLUEBAUGH**
[DMG-4](#)

OBJECTION TO CLAIM OF CONTRA COSTA COUNTY DCSS-TITLE IV-D
ENFORCEMENT AGENCY, CLAIM NUMBER 1
2-19-2020 [[89](#)]

KEVIN BLUEBAUGH/MV
D. GARDNER/ATTY. FOR DBT.

No Ruling

2. [19-13914](#)-A-7 **IN RE: EDDIE/KRISTIE GEREKE**
[RSW-1](#)

MOTION TO CONFIRM PLAN
2-3-2020 [[38](#)]

EDDIE GEREKE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

3. [20-10119](#)-A-13 **IN RE: KENNETH/EVELYN HALLMAN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-28-2020 [[14](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

The debtor has failed to comply with this tax-filing requirement.
The debtor failed to file 2019 state and federal tax returns. The
returns must be filed before the 341 meeting on April 4, 2020. This
plan does not comply with 11 U.S.C. § 1325(a)(4), (9).

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

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

4. [19-15340](#)-A-13 **IN RE: EDGAR/GABRIELA RIVERA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
2-27-2020 [[18](#)]

WILLIAM OLCOTT/ATTY. FOR DBT.

No Ruling

5. [19-15340](#)-A-13 **IN RE: EDGAR/GABRIELA RIVERA**
[MHM-2](#)

MOTION TO DISMISS CASE
2-27-2020 [[21](#)]

MICHAEL MEYER/MV
WILLIAM OLCOTT/ATTY. FOR DBT.

No Ruling

6. [19-15045](#)-A-13 **IN RE: JESUS VELEZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-6-2020 [[39](#)]

MICHAEL MEYER/MV
STEVEN ALPERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

7. [19-15045](#)-A-13 **IN RE: JESUS VELEZ**
[PLG-1](#)

MOTION TO CONFIRM PLAN
2-26-2020 [[58](#)]

JESUS VELEZ/MV
STEVEN ALPERT/ATTY. FOR DBT.

No Ruling

8. [19-15345](#)-A-7 **IN RE: JUAN PENA**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-26-2020 [[22](#)]

WILLIAM OLCOTT/ATTY. FOR DBT.
CONVERTED 2/27/20

Final Ruling

This case having been converted to Chapter 7, and this objection being based off of when this was a Chapter 13 case, the court will drop this matter from the calendar as moot.

9. [19-15345](#)-A-7 **IN RE: JUAN PENA**
[MHM-3](#)

MOTION TO DISMISS CASE
2-26-2020 [[25](#)]

MICHAEL MEYER/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
CONVERTED 2/27/20

Final Ruling

This case having been converted to Chapter 7, and this motion being based off of when this was a Chapter 13 case, the court will drop this matter from the calendar as moot.

10. [19-15354](#)-A-13 **IN RE: CORINNA DE VELBISS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-28-2020 [[32](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

This plan does not comply with 11 U.S.C. § 1322(b). - Debtor deducts \$280.00 on Schedule J for payments to "student loans." ECF 23. The plan provides for a 0% payback to unsecured creditors. Debtors must demonstrate that paying student loans directly, in the amount of \$280.00 per month, does not unfairly discriminate against the other general unsecured creditors, who will receive 0% in the plan. See *Labib-Kiyarash v. McDonald (In re Labib-Kiyarash)*, 271 B.R. 189 (B.A.P. 9th Cir. 2001); *In re Wolff*, 22 B.R. 510 (B.A.P. 9th Cir. 1982); *In re Sperna*, 173 B.R. 654 (B.A.P. 9th Cir. 1994).

This plan is not feasible under 11 U.S.C. § 1325(a)(6). According to Schedule I, Debtor has no income from any source. ECF 23. Debtor testified at the 341 hearing on February 25, 2020 that she is now employed. Schedule I must be amended to reflect Debtor's current

income. In addition, the Trustee requested paystubs from Debtor's current employer to verify her income.

This plan does not comply with 11 U.S.C. § 1325(a)(9). Debtor has not filed her 2015-2017 tax returns.

This plan does not comply with 11 U.S.C. § 1325(b). Debtor is below median income. Trustee needs paystubs from her new employment and an amended Schedule I to verify her income.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

11. [17-14292](#)-A-13 **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE MEDINA**
[NES-6](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
2-21-2020 [[144](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

Final Ruling

Application: Compensation and Expenses

Disposition: Disapproved without prejudice

Order: Civil minute order

All creditors and parties in interest have not received sufficient notice. The hearing on an application for approval of compensation or reimbursement of expenses, when the application requests approval of an amount exceeding \$1000, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3). The movant indicated that a true and correct copy of the motion has been served to all parties in interest, stating "See Attached List." No list has been attached. ECF 147.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master

mailing 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 mailing list should indicate a date near in time to the date of service of the notice.

12. [18-12195](#)-A-13 **IN RE: JAY/BRENDA SINGLETON**
[PLG-4](#)

MOTION TO MODIFY PLAN
2-3-2020 [[86](#)]

JAY SINGLETON/MV
STEVEN ALPERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

13. [19-14498](#)-A-13 **IN RE: VICENTE/FLOR GONZALES**
[RSW-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE
SERVICE
2-19-2020 [[16](#)]

VICENTE GONZALES/MV
ROBERT WILLIAMS/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 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 debtor requests that the court value real property collateral and the personal property collateral of the Internal Revenue Service. The collateral is the debtor's principal residence located at 128 E. Center Street, Taft, CA.

The court values the collateral at \$58,000.00. 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 as to the real property is wholly unsecured, and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a). The court values the debtor's personal property collateral secured by the Internal Revenue Service at \$4,875.00.

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 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 128 E. Center Street, Taft, CA has a value of \$58,000.00. 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 as to the real property, and has a secured claim in the amount of \$4,875.00 as to the personal property.

14. [19-14498](#)-A-13 **IN RE: VICENTE/FLOR GONZALES**
[RSW-3](#)

MOTION TO AVOID LIEN OF LVNV FUNDING LLC
3-11-2020 [\[31\]](#)

VICENTE GONZALES/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$8,291.19

All Other Liens: \$65,574.35

Exemption: \$1.00

Value of Property: \$58,000.00

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The respondent's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.