

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

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

**THURSDAY**

**JUNE 5, 2014**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

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

**MATTERS RESOLVED BEFORE HEARING**

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

**ERRORS IN FINAL RULINGS**

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

9:00 a.m.

1. [13-13908](#)-A-13 FIDEL CAMACHO AND  
MHM-3 GRACIELA RUVALCABA  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS  
5-9-14 [[115](#)]  
  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar as moot.

2. [14-11110](#)-A-13 MELISSA OMOS  
SL-3  
MELISSA OMOS/MV  
5-21-14 [[32](#)]  
SCOTT LYONS/Atty. for dbt.  
MOTION TO VALUE COLLATERAL OF  
AUTO FINANCE LLC

**Tentative Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Collateral Value:** \$12,995

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).

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. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

3. [14-11820](#)-A-13 TONY/CARMEN BAIZA  
SL-3  
TONY BAIZA/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
GREEN TREE  
5-21-14 [[30](#)]

### **Tentative Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. One address on the proof indicates in a parenthetical that the address is an "Agent for Service of Process Address." This description of the address suggests that the motion was mailed to an address that is identified an agent's address. This is not sufficient because it does not indicate that the motion was actually mailed and addressed "to the attention of" the agent identified.

If the motion was in fact mailed "to the attention of" the agent identified, and such agent was clearly identified as the recipient to whom the mailing was addressed, then debtor's counsel may inform the court at the hearing of this fact and request a continuance to allow an amended proof of service to be filed.

4. [11-16726](#)-A-13 PAUL/KAREN WYNN  
DRJ-4  
PAUL WYNN/MV  
DAVID JENKINS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO SELL  
3-27-14 [[45](#)]

**No tentative ruling.**

5. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-3  
ROBERT RUCKER/MV

MOTION FOR ORDER INCORPORATING  
STIPULATIONS VERBALLY AGREED  
UPON IN OPEN COURT BY DEBTOR  
AND UNSECURED CREDITORS ROBERT  
RUCKER AND RUCKER CONSTRUCTION  
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.  
ELIZABETH WALDOW/Atty. for mv.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

6. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-3  
WADE WILLIAMS/MV  
BRIAN HADDIX/Atty. for dbt.  
CONTINUED TO 6/12 PER ORDER  
#231

MOTION TO CONFIRM PLAN  
2-4-14 [[85](#)]

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

7. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-4  
WADE WILLIAMS/MV

OBJECTION TO CLAIM OF RUCKER  
CONSTRUCTION, INC., CLAIM  
NUMBER 6  
3-4-14 [[94](#)]

BRIAN HADDIX/Atty. for dbt.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

8. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-4  
WADE WILLIAMS/MV

OBJECTION TO CLAIM OF ROBERT  
RUCKER AND RUCKER CONSTRUCTION,  
INC., CLAIM NUMBER 5  
3-4-14 [[99](#)]

BRIAN HADDIX/Atty. for dbt.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

9. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-4  
ROBERT RUCKER/MV

MOTION FOR ORDER INCORPORATING  
STIPULATIONS VERBALLY AGREED  
UPON IN OPEN COURT BY DEBTOR  
AND UNSECURED CREDITORS ROBERT  
RUCKER AND RUCKER CONSTRUCTION  
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.  
ELIZABETH WALDOW/Atty. for mv.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order  
dated May 15, 2014, ECF No. 231.

10. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-5  
ROBERT RUCKER/MV

MOTION FOR ORDER INCORPORATING  
STIPULATIONS VERBALLY AGREED  
UPON IN OPEN COURT BY DEBTOR  
AND UNSECURED CREDITORS ROBERT  
RUCKER AND RUCKER CONSTRUCTION  
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.  
ELIZABETH WALDOW/Atty. for mv.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order  
dated May 15, 2014, ECF No. 231.

11. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-5  
WADE WILLIAMS/MV

AMENDED OBJECTION TO CLAIM OF  
ROBERT RUCKER AND RUCKER  
CONSTRUCTION, INC., CLAIM  
NUMBER 5  
3-18-14 [[108](#)]

BRIAN HADDIX/Atty. for dbt.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order  
dated May 15, 2014, ECF No. 231.

12. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-6  
WADE WILLIAMS/MV

OBJECTION TO CLAIM OF ROBERT  
RUCKER AND RUCKER CONSTRUCTION,  
INC., CLAIM NUMBER 7

BRIAN HADDIX/Atty. for dbt.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

13. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-6  
ROBERT RUCKER/MV

MOTION FOR ORDER INCORPORATING  
STIPULATIONS VERBALLY AGREED  
UPON IN OPEN COURT BY DEBTOR  
AND UNSECURED CREDITORS ROBERT  
RUCKER AND RUCKER CONSTRUCTION  
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.  
ELIZABETH WALDOW/Atty. for mv.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

14. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-7  
ROBERT RUCKER/MV

MOTION FOR ORDER INCORPORATING  
STIPULATIONS VERBALLY AGREED  
UPON IN OPEN COURT BY DEBTOR  
AND UNSECURED CREDITORS ROBERT  
RUCKER AND RUCKER CONSTRUCTION  
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.  
ELIZABETH WALDOW/Atty. for mv.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

15. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-7  
WADE WILLIAMS/MV

MOTION TO PRECLUDE PRESENTATION  
OF INFORMATION IN CONTESTED  
MATTER  
4-11-14 [[165](#)]

BRIAN HADDIX/Atty. for dbt.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

16. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-8  
WADE WILLIAMS/MV

MOTION TO PRECLUDE PRESENTATION  
OF INFORMATION IN CONTESTED  
MATTER  
4-11-14 [[170](#)]

BRIAN HADDIX/Atty. for dbt.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

17. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-8  
ROBERT RUCKER/MV

MOTION FOR ORDER INCORPORATING  
STIPULATIONS VERBALLY AGREED  
UPON IN OPEN COURT BY DEBTOR  
AND UNSECURED CREDITORS ROBERT  
RUCKER AND RUCKER CONSTRUCTION  
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.  
ELIZABETH WALDOW/Atty. for mv.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

18. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-9  
ROBERT RUCKER/MV

MOTION FOR ORDER INCORPORATING  
STIPULATIONS VERBALLY AGREED  
UPON IN OPEN COURT BY DEBTOR  
AND UNSECURED CREDITORS ROBERT  
RUCKER AND RUCKER CONSTRUCTION  
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.  
ELIZABETH WALDOW/Atty. for mv.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

19. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-9  
WADE WILLIAMS/MV

MOTION TO PRECLUDE PRESENTATION  
OF INFORMATION IN CONTESTED  
MATTER  
4-11-14 [[175](#)]

BRIAN HADDIX/Atty. for dbt.  
CONTINUED TO 6/12 PER ORDER  
#231

**Final Ruling**

The matter has been continued to June 12, 2014, at 9:00 a.m., by order dated May 15, 2014, ECF No. 231.

20. [12-12146](#)-A-13 MANUEL/EDUVIJES INONG  
SL-1  
MANUEL INONG/MV  
STEPHEN LABIAK/Atty. for dbt.

MOTION TO MODIFY PLAN  
4-11-14 [[27](#)]

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

21. [13-15979](#)-A-13 JAIME HERNANDEZ  
JAIME HERNANDEZ/MV  
WITHDRAWN

MOTION TO VALUE COLLATERAL OF  
LOBEL FINANCIAL  
4-28-14 [[71](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar as moot.



22. [14-11682](#)-A-13 ANTONIO TINOCO

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-16-14 [[27](#)]

RANDY RISNER/Atty. for dbt.

**Final Ruling**

The fee paid in full, the order to show cause is discharged.

23. [13-17293](#)-A-13 KHAMMINH/BOUNMA RASAVONG  
RLF-3  
KHAMMINH RASAVONG/MV  
JEFF REICH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
4-23-14 [[51](#)]

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

10:00 a.m.

1. [09-18305](#)-A-12 JACK MCCLELLAN  
MNE-1  
M. ENMARK/MV

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
AND/OR MOTION TO DISMISS CASE  
4-23-14 [[272](#)]

PETER FEAR/Atty. for dbt.

**No tentative ruling.**