

**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: THURSDAY
DATE: JUNE 11, 2020
CALENDAR: 10:30 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. [19-11701](#)-A-13 **IN RE: RAMON DIAZ**
[MJH-1](#)

CONTINUED MOTION TO MODIFY PLAN
3-16-2020 [[65](#)]

RAMON DIAZ/MV
MARK HANNON/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 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.

2. [19-15201](#)-A-13 **IN RE: TRAVALE/CAMELA SHORTER**
[JMM-2](#)

MOTION TO CONFIRM PLAN
5-5-2020 [[48](#)]

TRAVALE SHORTER/MV
JEFFREY MEISNER/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 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.

3. [19-15201](#)-A-13 **IN RE: TRAVALE/CAMELA SHORTER**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
4-17-2020 [[38](#)]

MICHAEL MEYER/MV
JEFFREY MEISNER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

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

The trustee moved to dismiss this chapter 13 case under § 1307(c)(1), stating that the debtor failed to confirm a plan within a reasonable time. The plan having been confirmed in this calendar (Item 2), the court will not dismiss the case.

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 this chapter 13 case has been presented to the court. Having considered the well-pleaded facts of the motion and the debtor's motion to confirm plan,

IT IS ORDERED that the motion is denied.

4. [20-10110](#)-A-13 **IN RE: ANGEL DIAZ**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-5-2020 [[45](#)]

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
DISMISSED 5/11/20

Final Ruling

The case having been dismissed, the matter is dropped as moot.

5. [20-10110](#)-A-13 **IN RE: ANGEL DIAZ**
[MJH-1](#)

MOTION TO CONFIRM PLAN
4-30-2020 [[38](#)]

ANGEL DIAZ/MV
MARK HANNON/ATTY. FOR DBT.
DISMISSED 5/11/20

Final Ruling

The case having been dismissed, the matter is dropped as moot.

6. [20-11415](#)-A-13 **IN RE: ALBERTO GALICIA FLORES AND JOANNA**
CANO

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-20-2020 [[17](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

Final Ruling

The installments having been paid in full, the order to show cause is discharged. The case will remain pending.

7. [20-11216](#)-A-13 **IN RE: MARSHA FLORES**
[MHM-1](#)

MOTION TO DISMISS CASE
5-7-2020 [[28](#)]

MICHAEL MEYER/MV
DISMISSED 5/22/20

Final Ruling

The case having been dismissed, the matter is dropped as moot.

8. [20-11242](#)-A-13 **IN RE: KHALID CHAOU**
[MHM-1](#)

MOTION TO DISMISS CASE
5-7-2020 [[27](#)]

MICHAEL MEYER/MV
WITHDRAWN, DISMISSED 5/22/20

Final Ruling

The case having been dismissed, the matter is dropped as moot.

9. [20-11242](#)-A-13 **IN RE: KHALID CHAOU**
[MHM-2](#)

MOTION TO DISMISS CASE
5-14-2020 [[33](#)]

MICHAEL MEYER/MV
DISMISSED 5/22/20

Final Ruling

The case having been dismissed, the matter is dropped as moot.

10. [20-11243](#)-A-13 **IN RE: ARTHUR/SONIA PINA**
[MHM-1](#)

MOTION TO DISMISS CASE
5-7-2020 [[17](#)]

MICHAEL MEYER/MV
THOMAS MOORE/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Conditionally denied

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) because the debtors failed to attend a scheduled § 341 meeting of creditors. Because the debtors' failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case on condition that the debtors attend the next creditors' meeting. But if the debtors do not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

CIVIL MINUTE ORDER

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is conditionally denied. It is denied on the condition that both debtors attend the next continued § 341(a) meeting of creditors. But if both debtors do not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

11. [18-11349](#)-A-13 **IN RE: ALVINA BURTNESS**
[TCS-1](#)

MOTION TO AVOID LIEN OF BH FINANCIAL SERVICES, L.L.C.
5-12-2020 [[25](#)]

ALVINA BURTNESS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject property: 28850 Deep Forest Ct., Coarsegold, CA 93614

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 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 responding party'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 responding party's judicial lien will be avoided entirely.

12. [20-11375](#)-A-13 **IN RE: EDWARD MARTIN**

OBJECTION TO CONFIRMATION OF PLAN BY FLAGSHIP CREDIT
ACCEPTANCE
5-19-2020 [[12](#)]

FLAGSHIP CREDIT ACCEPTANCE/MV
JOEL WINTER/ATTY. FOR DBT.
MICHAEL VANLOCHEM/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: 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.

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).

The creditor has a lien secured by the subject property 2017 Ford F150. The lien was incurred on December 2018. The lien is a purchase money security interest, the debt was incurred within the 910-day period preceding the date, and the vehicle was purchased for the debtor's personal use. The amount claimed by the creditor is \$30,7743.07 with an interest rate of 15.89%. The debtor's plan treats the creditor's claim as Class 2(B) and crams down the value of the claim to \$18,783.00 with an interest rate of 4.5%. ECF 2. The court agrees that the vehicle cannot be stripped down to the collateral value. The court will sustain the creditor's objection.

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.

Flagship Credit Acceptance'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.

13. [20-10286](#)-A-13 **IN RE: DONALD/JEANNIE SA**
[TCS-1](#)

OBJECTION TO CLAIM OF CITY CAPITAL MARKETS CORPORATION, CITY NATIONAL BANK, FIRST NATIONAL BANK OF CHARLESTON, CITY NATIONAL BANK OF WEST VIRGINIA, CLAIM NUMBER 4
4-16-2020 [[37](#)]

DONALD SA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 5/22/20

Final Ruling

The case having been dismissed, the matter is dropped as moot.

14. [20-10498](#)-A-13 **IN RE: MARCELINO/NATALIE HERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-18-2020 [[30](#)]

MARK HANNON/ATTY. FOR DBT.

Final Ruling

The case having been dismissed, the matter is dropped as moot.