

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

Honorable Fredrick E. Clement  
Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**  
**DATE: AUGUST 5, 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. [15-11000](#)-A-13 ERNEST/BARBARA SANDOVAL MOTION TO DISMISS CASE  
MHM-1 6-30-15 [[57](#)]  
MICHAEL MEYER/MV  
DISMISSED

**Final Ruling**

The case dismissed, the motion is dropped as moot.

2. [14-15902](#)-A-13 BUFORD LAND MOTION TO VALUE COLLATERAL OF  
PK-2 BGK INVESTMENTS, INC.  
BUFORD LAND/MV 6-24-15 [[56](#)]  
PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Real Property; Not 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**

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); accord *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' *i.e.*, the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value real property collateral securing the respondent's claim. The real property is located at 9433 California City Blvd., California City, CA and is not the debtor's principal residence.

The court values the collateral at \$63,500. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. 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 9433 California City Blvd. California City, CA, has a value of \$63,500. Senior liens on the collateral secure debt in the amount of \$0.00. The respondent has a secured claim in the amount of \$63,500 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.

3. [14-15902](#)-A-13 BUFORD LAND  
PK-3  
BUFORD LAND/MV  
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
BGK INVESTMENTS, INC.  
6-24-15 [[62](#)]

#### **Final 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. The motion indicates service on "Attorney for Claimant" Prober and Raphael, a law corporation, but the proof of claim filed by the respondent does not indicate that this is the attorney for the respondent. Nor does the special notice request so indicate.

In addition, Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion does not state with particularity the grounds for the relief requested. The motion is ambiguous about whether the respondent's claim is secured by a first or a second deed of trust. See Mot. at ¶ 5. If the motion seeks to value a first deed of trust, then the relief sought is improper as the collateral does have value. Moreover, the chapter 13 plan attached as an exhibit reveals two claims held by the respondent in the amounts of \$252,620.46 and \$36,000 respectively. The only amount shown in this motion is \$233,193.36, which is inconsistent with both claims of the respondent shown in the plan.

4. [14-15902](#)-A-13 BUFORD LAND  
PK-4  
BUFORD LAND/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
6-24-15 [[69](#)]

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Denied without prejudice; other requests raised in the opposition are also denied without prejudice; 75 day order imposed

**Order:** Civil minute order

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. Carole Land also has filed an opposition to the motion.

### **NONCOMPLIANCE WITH LBR 3015-1(j)**

The plan proposes to reduce the Class 2 secured claim of BGK Investments to zero dollars based on the value of the collateral. But the failure to file a motion to value such collateral that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c).

## **OTHER CONFIRMATION ISSUES**

The trustee and Carole Land raise a number of grounds for objection, including failure to satisfy the liquidation requirement, failure to satisfy § 1325(a)(8) and § 1322(a)(2) with respect to domestic support obligations, and failure to pay all projected disposable income to unsecured creditors under the plan. The court notes that the debtor has indicated he is amenable to increasing his plan payment by \$243 per month in month 13. The trustee may or may not find this to be sufficient as of the next hearing date. The court encourages the debtor and objecting parties to make reasonable efforts to resolve these disputes during the period between this hearing date and the next hearing on confirmation.

## **REQUESTS FOR OTHER RELIEF**

Carole Land's opposition requests relief including lifting the stay and otherwise resolving issues of support and property division. Aside from the issue of the court's jurisdiction to consider the latter of these issues, the court finds that such requests are procedurally inappropriate in an opposition to a motion. See Fed. R. Bankr. P. 9013. The trustee's request for a review of fees, moreover, may be raised in opposition to any motion made for attorneys' fees and costs.

## **75-DAY DEADLINE FOR CONFIRMATION**

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 date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

## **CIVIL MINUTE ORDER**

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

The debtor's motion to confirm first modified chapter 13 plan has been presented to the court. Given the procedural deficiencies relating to noncompliance with LBR 3015-1(j) as noted by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice. 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 date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

IT IS FURTHER ORDERED that requests for relief from the automatic stay and to resolve issues of support and property division, raised by Carole Land in her opposition are also denied without prejudice as procedurally improper. The trustee's request for review of attorneys' fees is denied as premature and may be raised in opposition to any application for fees made by the debtor's attorney.

5. [11-17103](#)-A-13 RANDALL BAKER MOTION TO DISMISS CASE  
MHM-2 6-23-15 [[47](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [15-10409](#)-A-13 GABRIEL DIAZ OBJECTION TO CONFIRMATION OF  
RDW-1 PLAN BY CAM VII TRUST  
CAM VII TRUST/MV 7-8-15 [[37](#)]  
RABIN POURNAZARIAN/Atty. for dbt.  
REILLY WILKINSON/Atty. for mv.  
WITHDRAWN

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

7. [15-11810](#)-A-13 SALVADOR TEJEDA ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
DISMISSED 7-8-15 [[51](#)]

**Final Ruling**

The case dismissed, the order to show cause is discharged.

8. [15-11810](#)-A-13 SALVADOR TEJEDA OBJECTION TO CONFIRMATION OF  
ASW-1 PLAN BY BUDGET FINANCE COMPANY  
BUDGET FINANCE COMPANY/MV 6-10-15 [[32](#)]  
MARK DOMEYER/Atty. for mv.  
DISMISSED

**Final Ruling**

The case dismissed, the objection is denied as moot.

9. [15-10914](#)-A-13 RICHARD/SUSAN BILL  
RSW-2  
RICHARD BILL/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
6-2-15 [[32](#)]

**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.

10. [12-19417](#)-A-13 PEDRO DURAN AND YOLANDA  
MHM-1 LOPEZ  
MICHAEL MEYER/MV  
JANINE ESQUIVEL/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
6-22-15 [[38](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [15-11917](#)-A-13 JUSTIN/DESIREE LAY  
RSW-2  
JUSTIN LAY/MV

MOTION TO VALUE COLLATERAL OF  
UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
6-30-15 [[22](#)]

ROBERT WILLIAMS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**Notice:** LBR 9014-1(f) (2); no 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). 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 13626 Foyers Falls Dr., Bakersfield, CA.

The court values the collateral at \$235,000. 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 13626 Foyers Falls Dr., Bakersfield, CA has a value of \$235,000. 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.

12. [11-16822](#)-A-13 RUBY TOMAS  
MHM-2  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE  
6-19-15 [[55](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to September 2, 2015

**Order:** Civil minute order

The trustee moves for dismissal arguing that cause exists under § 1307(c) (1) and (6) to dismiss the case. The trustee states that debtor has failed to make all payments due under the confirmed plan and that payments are delinquent in the amount of \$4666.15. The debtor's opposition does not dispute these contentions. Therefore, the court presumes the existence of the delinquency.

However, the debtor states that the debtor has filed a modified plan due to a decrease in her income as a result of health issues described in the debtor's declaration. The motion for approval of the modified plan will be heard on September 2, 2015.

The court will continue the hearing on the motion to dismiss to the date of the hearing on the modified plan. If the modified plan is not confirmed or does not cure the delinquency alleged by the trustee, the court may grant the motion to dismiss.

### **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.

IT IS ORDERED that the hearing on the motion is continued to September 2, 2015, at 9:00 a.m. If the debtor's modified plan set for hearing on September 2, 2015, is not approved or does not cure the delinquency described by the trustee's motion at ECF No. 55, the court may dismiss this case.

13. [14-16131](#)-A-13 CHARLTON/LAURA PROSSER MOTION TO CONFIRM PLAN  
RS-2 6-24-15 [[34](#)]  
CHARLTON PROSSER/MV  
RICHARD STURDEVANT/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

14. [11-17232](#)-A-13 KERRY STEVENS MOTION TO APPROVE LOAN  
RSW-4 MODIFICATION  
KERRY STEVENS/MV 7-21-15 [[93](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**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.

15. [11-19832](#)-A-13 JEAN MORGAN MOTION TO DISMISS CASE  
MHM-3 5-29-15 [[117](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [12-10834](#)-A-13 JOSE CONTRERAS CORTEZ AND MOTION TO DISMISS CASE  
MHM-3 NANCY DE CONTRERAS 5-28-15 [[75](#)]  
MICHAEL MEYER/MV  
PHILLIP GILLET/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

17. [15-11835](#)-A-13 JAMES/JAMIE CANNON MOTION TO CONVERT CASE FROM  
MHM-1 CHAPTER 13 TO CHAPTER 7 AND/OR  
MICHAEL MEYER/MV MOTION TO DISMISS CASE  
6-30-15 [[44](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

18. [15-11835](#)-A-13 JAMES/JAMIE CANNON CONTINUED MOTION TO DISMISS  
TGF-1 CASE  
CREATIVE REALTY MARKETING AND 6-17-15 [[35](#)]  
MORTGAGE/MV  
ROBERT WILLIAMS/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.  
RESPONSIVE PLEADING

**No tentative ruling.**

19. [13-17241](#)-A-7 JANET CHRISTIANSEN MOTION TO DISMISS CASE  
MHM-1 6-22-15 [[62](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

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

20. [12-16549](#)-A-13 VANESSA WARD MOTION TO DISMISS CASE  
MHM-4 6-22-15 [[70](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

21. [15-11654](#)-A-13 ELLIOT BADGER AND BRENDA CONTINUED MOTION TO DISMISS  
MHM-1 VAQUERA CASE  
MICHAEL MEYER/MV 6-9-15 [[19](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

22. [10-62657](#)-A-13 RICK/SHAWN LOPEZ MOTION TO DISMISS CASE  
MHM-3 6-19-15 [[96](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

23. [15-10162](#)-A-13 JAIME/RUTH GARZA CONTINUED MOTION FOR  
PK-5 COMPENSATION FOR PATRICK  
KAVANAGH, DEBTORS ATTORNEY(S)  
5-12-15 [[98](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

24. [15-11771](#)-A-13 ODIS/LAURIE BROWN  
PK-2  
ODIS BROWN/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM  
PLAN  
5-22-15 [[29](#)]

**No tentative ruling.**

25. [15-11771](#)-A-13 ODIS/LAURIE BROWN  
PK-4  
ODIS BROWN/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF  
PLAZA JEWELERS  
6-29-15 [[51](#)]

**No tentative ruling.**

26. [15-11771](#)-A-13 ODIS/LAURIE BROWN  
PK-5  
ODIS BROWN/MV  
  
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
AMERICREDIT FINANCIAL SERVICES,  
INC.  
7-6-15 [[57](#)]

### **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 2008 Cadillac Escalade ESV. 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 \$22,883.

#### **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 2008 Cadillac Escalade ESV has a value of \$22,883. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$22,883 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.

27. [15-11771](#)-A-13 ODIS/LAURIE BROWN  
PK-6  
ODIS BROWN/MV  
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
YOLANDA AVALOS  
7-7-15 [[64](#)]

#### **Tentative Ruling**

This matter appears duplicative of number 25 on this court's calendar, which has docket control number PK-4. The respondent appears to have opposed PK-4 rather than PK-6. Accordingly, the court will drop this matter from calendar as duplicative.

28. [15-11771](#)-A-13 ODIS/LAURIE BROWN MOTION FOR COMPENSATION FOR  
PK-7 PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
7-8-15 [[71](#)]  
  
PATRICK KAVANAGH/Atty. for dbt.

**No tentative ruling.**

29. [10-14874](#)-A-13 JARROD/KIMBERLY MOTION TO DISMISS CASE  
MHM-1 MCCLANAHAN 6-9-15 [[71](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

30. [14-11379](#)-A-13 ROBERTA CUMBERLAND MOTION TO DISMISS CASE  
MHM-2 6-22-15 [[73](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

31. [15-12283](#)-A-13 RYAN MCKAY MOTION TO VALUE COLLATERAL OF  
PK-3 AMERICAN FIRST  
RYAN MCKAY/MV FINANCE/FURNITURE (WEATHERBY'S  
FURNITURE)  
7-8-15 [[29](#)]  
  
PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). The costs of sale or marketing may not be deducted. *Id.*

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 ability to value a secured claim for property other than a motor vehicle is limited to debts incurred more than one year prior to the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the motion requests that the court value collateral consisting of non-vehicular personal property. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d) (6).

32. [15-11995](#)-A-13 JIMMY/GWENDOLYN CANNON MOTION FOR RELIEF FROM  
LKW-1 AUTOMATIC STAY  
BLACK GOLD ROAD, LLC/MV 7-16-15 [26]  
ROBERT WILLIAMS/Atty. for dbt.  
LEONARD WELSH/Atty. for mv.

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** Lots 7 through 14 of Parcel Map Waiver No. 4-08 as per Certificate of Compliance recorded 6/18/2009 in the Official Records of the Kern County Recorder

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "Where the property is declining in value or accruing interest and taxes eat up

the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

Here, the debtor has missed 2 post-petition payments (totaling \$11,258.54) that became due on the loan debt secured by the moving party's lien. Three pre-petition payments are also past due.

Because payments are not being made post-petition, there is cause for stay relief. The chapter 13 plan, moreover, states that a class 4 claim must be paid by a debtor or a third party whether or not the plan is confirmed.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted 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.

33. [11-14690](#)-A-13 DARREN/MARY ANN WHITE MOTION TO COMPROMISE  
SJS-1 CONTROVERSY/APPROVE SETTLEMENT  
DARREN WHITE/MV AGREEMENT WITH GENERAL MOTORS,  
LLC  
7-23-15 [[31](#)]

SUSAN SALEHI/Atty. for dbt.  
OST 7/31/15

### **Tentative Ruling**

**Motion:** Approve Compromise or Settlement of Controversy

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Parties to Compromise:** Debtor Darren Todd White (plaintiff) and General Motors LLC, General Motors Company, Motors Liquidation Company, and General Motors Corporation (defendants)

**Dispute Compromised:** Lemon law claim by debtor Darren White against the General Motors defendants named above

**Summary of Material Terms:** Debtor Darren White will provide the subject vehicle in salable condition along with registration, clear title and other documents and request dismissal of the entire lawsuit against the GM defendants. The GM defendants will pay Debtor \$39,698.00 in damages and \$25,000 in attorneys' fees for a total of \$64,698 plus an additional check payable to Ally Financial in the amount of \$4542.26 to satisfy Debtor's outstanding loan obligation with respect to the vehicle. Debtor shall also release all claims against the GM defendants.

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 ISSUES**

The movant has used an improper docket control number for a document related to the motion. The order shortening time for notice was SJS-3, the motion was SJS-1. Under LBR 9014-1(c)(4), the order shortening time should have had a docket control number of SJS-1. In the future, noncompliance with this local rule provision may result in some form of sanction.

Additionally, the declaration and exhibits were not filed as separate documents. The Guidelines for the Preparation of Documents require that declarations and exhibits be filed as separate documents.

### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a dispute relating to a 2009 GMC purchased by debtor Darren White and the alleged malfunctions and defects of such vehicle. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 31. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

## **COMPENSATION**

Counsel for the debtors, O'Connor and Mikhov, LLP did not need to be employed in chapter 13. In any event, the court approves the attorneys' fees of \$25,000.

## **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 debtors' motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the declaration of Darren White as Exhibit A and filed at docket no. 31. The court further approves the attorneys' fees of \$25,000 proposed to be paid to O'Connor & Mikhov, LLP as part of the settlement.