

**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: OCTOBER 3, 2018
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. [18-12500](#)-A-13 **IN RE: HOLLY EDBLAD**
[MHM-1](#)

MOTION TO DISMISS CASE
8-8-2018 [[28](#)]

MICHAEL MEYER/MV
DISMISSED 9/8/18

Final Ruling

The case dismissed, the matter is denied as moot.

2. [18-12600](#)-A-13 **IN RE: SALVADOR/JULIE CEJA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-15-2018 [[13](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

No Ruling

3. [18-12801](#)-A-13 **IN RE: JEREMY/SHIRRELL COOK**
[MHM-2](#)

MOTION TO DISMISS CASE
8-16-2018 [[28](#)]

MICHAEL MEYER/MV
GREGORY SHANFELD

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [18-13202](#)-A-13 **IN RE: NICHOLAS ANGELICA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-10-2018 [[32](#)]

PATRICK KAVANAGH

Final Ruling

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

5. [18-13202](#)-A-13 **IN RE: NICHOLAS ANGELICA**
[PK-2](#)

MOTION TO CONFIRM PLAN
8-30-2018 [[21](#)]

NICHOLAS ANGELICA/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Final Ruling

This matter is continued to December 5, 2018, at 9:00 a.m.

6. [18-13003](#)-A-13 **IN RE: JOHN/GINA LUCERO**
[PK-2](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
9-10-2018 [[20](#)]

JOHN LUCERO/MV
PATRICK KAVANAGH

Tentative Ruling

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

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

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

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 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 "all personal property of the debtor." 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 \$5,131.67.

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 all personal property of the debtor" has a value of \$5,131.67. No senior liens on the collateral have been identified. The respondent Internal Revenue Service has a secured claim in the amount of \$5,131.67 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.

7. [18-13003](#)-A-13 **IN RE: JOHN/GINA LUCERO**
[PK-3](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.
9-10-2018 [[26](#)]

JOHN LUCERO/MV
PATRICK KAVANAGH

Tentative Ruling

Matter: Value 2015 GMC Yukon [Vehicle]
Disposition: Continued for an evidentiary hearing
Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court

identifies the following disputed, material factual issues: value of 2015 GMC Yukon

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

8. [18-12814](#)-A-13 **IN RE: JIMMY JAMES**
[MHM-2](#)

MOTION TO DISMISS CASE
8-16-2018 [[19](#)]

MICHAEL MEYER/MV
LUKAS JACKSON
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [14-12223](#)-A-13 **IN RE: ANDRES ALVAREZ AND ELVIRA DE CAMPOS**
[LKW-11](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-23-2018 [[212](#)]

LEONARD WELSH

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Leonard K. Welsh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,310.00 and reimbursement of expenses in the amount of \$67.12.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Leonard K. Welsh's application for allowance of interim compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$2,310.00 and reimbursement of expenses in the amount of \$67.10. The aggregate allowed amount equals \$2,377.12. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,377.12 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

10. [18-11829](#)-A-13 **IN RE: FERNANDO LEYVA**
[MHM-3](#)

MOTION TO DISMISS CASE
8-16-2018 [[36](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

No Ruling

11. [13-16632](#)-A-13 **IN RE: NOAH/MICHELLE JELLIE**
[MHM-2](#)

MOTION TO DISMISS MICHELLE RENEE JELLIE
8-22-2018 [[45](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [18-10742](#)-A-13 **IN RE: F. OLIVER COOPER**
[MHM-4](#)

MOTION TO DISMISS CASE
8-21-2018 [[66](#)]

MICHAEL MEYER/MV

No Ruling

13. [18-12667](#)-A-13 **IN RE: SAMANTHA JOHNSON**
[MHM-1](#)

MOTION TO DISMISS CASE
8-16-2018 [[12](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

14. [18-11975](#)-A-13 **IN RE: KEITH/KRISTI BLACKETT**
[MHM-2](#)

MOTION TO DISMISS CASE
8-16-2018 [[49](#)]

MICHAEL MEYER/MV
D. GARDNER
DISMISSED 9/25/18

Final Ruling

The case dismissed, the motion is dropped as moot.

15. [18-12678](#)-A-13 **IN RE: MICHAEL PFEIFFER**
[MHM-2](#)

MOTION TO DISMISS CASE
8-15-2018 [[22](#)]

MICHAEL MEYER/MV
D. GARDNER
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [17-14784](#)-A-13 **IN RE: RICHARD/GINA ESPITIA**
[LKW-3](#)

MOTION TO CONFIRM PLAN
8-23-2018 [\[55\]](#)

RICHARD ESPITIA/MV
LEONARD WELSH

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.

17. [17-12885](#)-A-13 **IN RE: RANDY LENOIR**
[PLG-3](#)

AMENDED MOTION TO MODIFY PLAN
8-27-2018 [\[91\]](#)

RANDY LENOIR/MV
STEVEN ALPERT

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.

18. [18-12790](#)-A-13 **IN RE: ROBINSON/MARIA POLANCO**
[KR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CHALLENGE FINANCIAL
SERVICES
8-21-2018 [[19](#)]

CHALLENGE FINANCIAL
SERVICES/MV
RICHARD STURDEVANT
KAREL ROCHA/ATTY. FOR MV.

No Ruling

19. [18-12790](#)-A-13 **IN RE: ROBINSON/MARIA POLANCO**
[MHM-1](#)

MOTION TO DISMISS CASE
8-16-2018 [[15](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

No Ruling

20. [18-10194](#)-A-13 **IN RE: CHRISTOPHER CONNOLLY**
[RSW-2](#)

MOTION TO CONFIRM PLAN
7-31-2018 [[45](#)]

CHRISTOPHER CONNOLLY/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

This matter is continued to December 5, 2018, at 9:00 a.m.

21. [18-12195](#)-A-13 **IN RE: JAY/BRENDA SINGLETON**
[PLG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
7-30-2018 [[24](#)]

JAY SINGLETON/MV
STEVEN ALPERT
RESPONSIVE PLEADING WITHDRAWN,

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.