

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement

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

Thursday

October 16, 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. [11-62704](#)-A-13 NORMAN PIMENTEL MOTION TO DISMISS CASE
MHM-1 8-18-14 [[121](#)]
MICHAEL MEYER/MV
M. ENMARK/Atty. for dbt.

No tentative ruling.

2. [14-14105](#)-A-13 LUIS MARQUEZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-19-14 [[23](#)]

Tentative Ruling

If all past due installments of filing fee have not paid as of the date of the hearing, the case will be dismissed.

3. [13-16207](#)-A-13 MICHAEL/NOREEN THACKREY MOTION TO MODIFY PLAN
PLF-3 9-2-14 [[58](#)]
MICHAEL THACKREY/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

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.

4. [14-13810](#)-A-13 ANTONIO MACEDO
TOG-1
ANTONIO MACEDO/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CITIMORTGAGE, INC.
9-15-14 [[18](#)]

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).

NOTICE PROCEDURE

The notice of hearing refers to LBR 9014-1(f)(2) but requires a written response on or before 14 days prior to the hearing. But requiring 14 days' notice prior to the hearing is inconsistent with the notice procedure of LBR 9014-1(f)(2). It is consistent with LBR 9014-1(f)(1). The court will permit oral opposition to be raised up to and including the hearing despite the language of the notice of hearing requiring opposition no later than 14 days prior to the hearing date.

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 1532 S. Myrtle Ave., Reedley, CA.

The court values the collateral at \$176,933.00. 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 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 considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The real property collateral located at 1532 S. Myrtle Ave., Reedley, CA, has a value of \$176,933.00. The collateral is encumbered by senior liens securing claims that exceed its value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

5. [11-63214](#)-A-13 TONY BETTENCOURT MOTION TO MODIFY PLAN
GMA-1 8-27-14 [[60](#)]
TONY BETTENCOURT/MV
GEOFFREY ADALIAN/Atty. for dbt.

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.

6. [14-12926](#)-A-13 RODERICK PRYOR
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
NON-OPPOSITION

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-17-14 [[29](#)]

Final Ruling

Objection: Claim of Exemptions

Notice: LBR 9014-1(f)(1) / LBR 3007-1(b)(1); written opposition
required

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. The debtor does not oppose the relief requested. No other opposition 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).

For the reasons stated in the objection, the court will sustain the objection. The amounts held in bank accounts are not exempt under 15 U.S.C. § 1673(a).

7. [09-15228](#)-A-13 DAVID/SUSAN NANNINI
NLG-1
THE BANK OF NEW YORK MELLON/MV
PETER FEAR/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-8-14 [[97](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 3. Class 3 secured claims are "secured claims satisfied by the surrender of collateral." Section 2.10 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

8. [14-13130](#)-A-13 GRACIELA CONDE
HDN-2
GRACIELA CONDE/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-28-14 [[40](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so renders any pending confirmation motion for the previously filed plan moot.

9. [14-13130](#)-A-13 GRACIELA CONDE
HDN-3
GRACIELA CONDE/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

MOTION TO VALUE COLLATERAL OF
U.S. BANK
8-28-14 [[46](#)]

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 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 3210 S. Willis Ct., Visalia, CA.

The court values the collateral at \$259,900.00. 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 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 considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The real property collateral located at 3210 S. Willis Ct., Visalia, CA, has a value of \$259,900.00. The collateral is encumbered by senior liens securing claims that exceed its value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

10. [14-14236](#)-A-13 EDGAR SANTANA
THA-1
EDGAR SANTANA/MV

MOTION TO VALUE COLLATERAL OF
CHECK INTO CASH OF CALIFORNIA,
INC.
9-12-14 [8]

THOMAS ARMSTRONG/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted in part, denied in part

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). 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 2004 Chevrolet Tahoe LS. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$4700.00.

MODIFICATION OF INTEREST RATE

The debtor proposes to modify the interest rate to 10%. First, joinder of independent claims is not authorized under the Federal Rules of Bankruptcy Procedure 9014(c). See Fed. R. Bankr. P. 9014(c) (not incorporating Fed. R. Bankr. P. 7018). Second, this is properly addressed through the form chapter 13 plan used in this district, §

2.09. Third, the debtor has not offered evidence to support the interest rate proposed. Fed. R. Bankr. P. 9014-1(d)(6).

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 considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted in part and denied in part. The motion is granted as to the value of the collateral and denied as to the modification of the interest rate. The personal property collateral described as a 2004 Chevrolet Tahoe LS has a value of \$4700.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4700.00 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.

11. [14-12540](#)-A-13 ESTHER PALACIOS
FJG-1
ESTHER PALACIOS/MV
F. GIST/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL, INC.
8-28-14 [[30](#)]

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Denied without prejudice

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

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.*

Here, the exhibit attached in support of the motion shows that the value proposed for the collateral, \$1575, is a trade-in value based on "Clean" condition with mileage of 127,000. Even though the motion states it is valuing the vehicle at the replacement value, the exhibits are inconsistent with the motion and show that the incorrect

valuation standard is used. The court will deny the motion.

12. [14-12540](#)-A-13 ESTHER PALACIOS CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
7-29-14 [[20](#)]
- F. GIST/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

13. [12-12841](#)-A-13 THOMAS/SARAH CORREA MOTION TO MODIFY PLAN
PBB-2 9-3-14 [[57](#)]
THOMAS CORREA/MV
PETER BUNTING/Atty. for dbt.

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.

14. [14-12945](#)-A-13 GEVORG ADAMYAN AND
VARDUHI KRDOTYAN

ORDER TO SHOW CAUSE FOR
DISGORGEMENT
9-4-14 [[52](#)]

ARIS ARTOUNIANS/Atty. for dbt.
DISMISSED
RESPONSIVE PLEADING

No tentative ruling.

15. [12-10146](#)-A-13 JOSE REYES
TCS-1
JOSE REYES/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
9-10-14 [[42](#)]

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. 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.

16. [14-12649](#)-A-13 DANIEL/MOLLY LAVILLA
TOG-1
DANIEL LAVILLA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
CITIFINANCIAL, INC.
9-16-14 [[39](#)]

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

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).

TRUSTEE'S OPPOSITION

The trustee opposes the motion because the motion may incorrectly describe the model of the vehicle being valued. Assuming the debtors are correct that only one vehicle is financed with secured creditor, the court agrees with the debtor's reply in the absence of objection by the secured creditor. Although in general, the relief sought should be clearly stated, and the collateral being valued unambiguously described, in this case, the secured creditor will have sufficient information reasonably to know that its collateral is being valued. This clerical error can be remedied in the order.

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 2005 Ford Escape. 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 \$7360.00.

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 collateral consisting of a motor vehicle has been presented to the court. Having considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2005 Ford Escape has a value of \$7360.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7360.00 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.

17. [14-13156](#)-A-13 CHRISTOPHER/MARLAINA MOTION TO CONFIRM PLAN
VRP-1 RECEK 8-27-14 [[38](#)]
CHRISTOPHER RECEK/MV
VARDUHI PETROSYAN/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 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.

18. [11-17558](#)-A-13 JULIAN/LEAH DAUGHERTY MOTION TO MODIFY PLAN
PLG-10 8-27-14 [[164](#)]
JULIAN DAUGHERTY/MV
JOHN SARAI/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

19. [14-14158](#)-A-13 ANTONIO NAJERA AND GLORIA MOTION TO VALUE COLLATERAL OF
TOG-1 GUITIERREZ OLD REPUBLIC INSURANCE COMPANY
ANTONIO NAJERA/MV 10-1-14 [[23](#)]
THOMAS GILLIS/Atty. for dbt.

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. The proof shows service on the respondent "c/o Republic Equity Credit Services," but no indication is given that this entity is an agent authorized for service of process.

20. [13-15961](#)-A-13 ROBERT/HOLLY WOODS MOTION TO MODIFY PLAN
JMA-4 7-16-14 [[64](#)]
ROBERT WOODS/MV
JOSEPH ARNOLD/Atty. for dbt.
RESPONSIVE PLEADING, AMENDED
PLAN WITHDRAWN

Final Ruling

The amended plan withdrawn, the motion is denied as moot.

21. [14-13264](#)-A-13 WILLIAM ADDONIZIO
JMA-1
WILLIAM ADDONIZIO/MV
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO CONFIRM PLAN
8-7-14 [[16](#)]

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.

22. [14-13168](#)-A-13 ERIC/CHRISTINA PIERSON
PBB-1
ERIC PIERSON/MV
PETER BUNTING/Atty. for dbt.

MOTION TO CONFIRM PLAN
8-28-14 [[22](#)]

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.

23. [12-19074](#)-A-13 RUSSELL/SUSAN HAMILTON CONTINUED MOTION FOR RELIEF
JDM-1 FROM AUTOMATIC STAY
SAFE 1 CREDIT UNION/MV 9-11-14 [[96](#)]
SCOTT LYONS/Atty. for dbt.
JOHN MENDONZA/Atty. for mv.

No tentative ruling.

24. [14-13974](#)-A-13 FERNANDO POO AND PALOMA MOTION TO VALUE COLLATERAL OF
TOG-1 HERNANDEZ BANK OF AMERICA, N.A.
FERNANDO POO/MV 8-26-14 [[14](#)]
THOMAS GILLIS/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).

NOTICE PROCEDURE

The notice of hearing refers to LBR 9014-1(f)(2) but states, "on or before 14 calendar days prior to the hearing date, you or your attorney must: File with the Court a written response with supporting evidence" But requiring at least 14 days' written notice prior to the hearing is inconsistent with the notice procedure of LBR 9014-1(f)(2). It is consistent with LBR 9014-1(f)(1). The court will permit oral opposition to be raised up to and including the hearing despite the language of the notice of hearing requiring opposition no later than 14 days prior to the hearing date.

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 2409 N. Oaks St., Tulare, CA.

The court values the collateral at \$330,000. 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 considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The real property collateral located at 2409 N. Oaks St., Tulare, CA, has a value of \$330,000. The collateral is encumbered by senior liens securing claims that exceed its value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

25. [14-13777](#)-A-13 ELVA SILVA
TOG-1
ELVA SILVA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
8-27-14 [[16](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: Written opposition filed by the responding party

Disposition: Continued to November 20, 2014, at 9:00 a.m.

Order: Civil Minute Order

The motion seeks to value real property collateral that is the moving party's principal residence. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

The court presumes that the property being valued is the debtor's residence. But the moving papers do not state whether the real property is the debtor's residence. Because the petition list the address of the debtor as 2145 N. Thorne Avenue, Fresno, CA, the court will treat the real property as the debtor's principal residence unless one of the parties disputes this fact and raises such dispute

at the hearing on the record.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

26. [14-14387](#)-A-13 MARTIN MARTINEZ MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
WELLS FARGO BANK, NA/MV 9-11-14 [[9](#)]
JONATHAN DAMEN/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

27. [13-16794](#)-A-13 MICHAEL VIVEROS MOTION TO INCUR DEBT
TCS-3 9-24-14 [[46](#)]
MICHAEL VIVEROS/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Vehicle Loan]

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

Disposition: Granted

Order: Prepared by moving party

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 debtor seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing.

At the hearing, the debtor will address why no utilities appear on Schedule J. If the reason is that utilities are paid by another person, as the property rented is owned by a relative of the debtor, then the court will grant the motion. The debtor may purchase a 2010 Dodge Charger or similar vehicle for which the loan terms for such purchase are no less favorable than the terms proposed in the motion (i.e., monthly payment at or lower than the amount proposed, interest rate at or lower than rate proposed, and total debt at or lower than the amount proposed). The trustee will approve the order as to form and content.

28. [14-13895](#)-A-13 VERONICA MARTINEZ
PLG-1
VERONICA MARTINEZ/MV

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
9-17-14 [[26](#)]

RABIN POURNAZARIAN/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: Written opposition filed by responding party

Disposition: Continued for evidentiary hearing

Order: Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. 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 the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

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.

29. [14-14902](#)-A-13 ALEJANDRO SOLORZANO
SL-1
ALEJANDRO SOLORZANO/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
10-8-14 [[8](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant 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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

30. [14-14680](#)-B-13 ADAM RAMIREZ AND
PBB-1 CHRISTINA MENDOZA
ADAM RAMIREZ/MV
PETER BUNTING/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
10-9-14 [[14](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant 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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case

that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

10:00 a.m.

1. [13-15181](#)-A-13 LINDSAY LEMONS
[13-1124](#)
STORMS ET AL V. LEMONS
GLEN GATES/Atty. for pl.
No tentative ruling.
2. [13-15181](#)-A-13 LINDSAY LEMONS
SCOTT LYONS/Atty. for dbt.
No tentative ruling.
3. [13-15181](#)-A-13 LINDSAY LEMONS
GEG-3
WAYNE STORMS/MV
SCOTT LYONS/Atty. for dbt.
GLEN GATES/Atty. for mv.
No tentative ruling.

ORDER TO APPEAR AND NOTICE OF
INTENT TO APPOINT BDRP ADVOCATE
RE: COMPLAINT
9-3-14 [[29](#)]

ORDER TO APPEAR AND NOTICE OF
INTENT TO APPOINT BDRP ADVOCATE
RE: VOLUNTARY PETITION
9-3-14 [[229](#)]

CONTINUED MOTION FOR PRIOR
COURT APPROVAL FOR CREDITOR TO
BRING AN ACTION TO SET ASIDE A
FRAUDULENT TRANSFER UNDER
SECTION 548
8-13-14 [[184](#)]

4. [13-15181](#)-A-13 LINDSAY LEMONS
GEG-6
WAYNE STORMS/MV
8-21-14 [[209](#)]
SCOTT LYONS/Atty. for dbt.
GLEN GATES/Atty. for mv.

CONTINUED MOTION FOR FAILURE TO
ENGAGE IN DISCOVERY

No tentative ruling.