

**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:** JANUARY 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**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. [16-13302](#)-A-13     **IN RE: LUIS ORTEGA AND NANCY NUNEZ**  
[PK-4](#)

MOTION TO MODIFY PLAN  
11-3-2017    [[82](#)]

LUIS ORTEGA/MV  
PATRICK KAVANAGH

**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 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. The court will grant the motion and approve the modification of the plan.

2. [13-10004](#)-A-13     **IN RE: BRANDON/CASEY HOWARD**  
[MHM-6](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
11-28-2017    [[107](#)]

MICHAEL MEYER/MV  
PETER BUNTING

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [12-15109](#)-A-13     **IN RE: EDUARDO/GLENDA VALLADARES**  
[MHM-6](#)

CONTINUED MOTION FOR DETERMINATION OF FINAL CURE FRBP  
3002.1(H)  
9-6-2017    [[146](#)]

MICHAEL MEYER/MV  
STEVEN ALPERT  
RESPONSIVE PLEADING

**Final Ruling**

The matter resolved by stipulation, the matter is dropped as moot.

4. [17-13211](#)-A-13     **IN RE: GORDIE GORDON**  
[PWG-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE  
CORPORATION  
11-10-2017    [[22](#)]

GORDIE GORDON/MV  
PHILLIP GILLET  
RESPONSIVE PLEADING

**No Ruling**

5. [17-13418](#)-A-13     **IN RE: GENE/ADRIENNE SMITH**  
[MHM-1](#)

MOTION TO DISMISS CASE  
11-14-2017    [[20](#)]

MICHAEL MEYER/MV  
D. GARDNER

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [17-13818](#)-A-13     **IN RE: ANTHONY FRACKOWIAK**  
[MHM-1](#)

MOTION TO DISMISS CASE  
11-14-2017    [[22](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

7. [17-13020](#)-A-13     **IN RE: TODD/MOLLY HANSEN**  
[RSW-4](#)

MOTION TO CONFIRM PLAN  
11-17-2017    [[50](#)]

TODD HANSEN/MV  
ROBERT WILLIAMS

**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 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.

8. [17-14537](#)-A-13     **IN RE: FREDDIE/EVELYN GARCIA**  
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF CHASE AUTO FINANCE  
12-18-2017    [\[13\]](#)

FREDDIE GARCIA/MV  
ROBERT WILLIAMS

### **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 2009 Lexus IS 250 AWD. 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 \$8500.

## 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 2009 Lexus IS 250 AWD has a value of \$8500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$8500 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.

9. [16-13343](#)-A-13     **IN RE: AIDE/JAMES BLANCO**  
[PK-6](#)

MOTION TO MODIFY PLAN  
11-3-2017    [\[117\]](#)

AIDE BLANCO/MV  
PATRICK KAVANAGH

### 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 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. The court will grant the motion and approve the modification of the plan.

10. [17-13543](#)-A-13    **IN RE: ELOY RODRIGUEZ AND ANGELA VASS-RODRIGUEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
11-14-2017    [[31](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [17-13146](#)-A-13    **IN RE: DANIEL AMADOR**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
10-13-2017    [[26](#)]

MICHAEL MEYER/MV  
RESPONSIVE PLEADING

#### **No Ruling**

12. [12-60252](#)-A-13    **IN RE: TIMOTHY COLLIER**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-14-2017    [[58](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH

#### **No Ruling**

13. [17-12356](#)-A-13     **IN RE: LARRY/SILVIA HULSEY**  
[KMR-1](#)

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-4-2017    [[65](#)]

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION/MV

WILLIAM OLCOTT  
NANCY LEE/ATTY. FOR MV.  
DISMISSED; WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

14. [17-13263](#)-A-13     **IN RE: JASON/DANELLE BLACK**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-15-2017    [[60](#)]

MICHAEL MEYER/MV  
D. GARDNER

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

15. [16-10073](#)-A-13     **IN RE: DONALD WILLIFORD**  
[RSW-7](#)

MOTION TO MODIFY PLAN  
11-6-2017    [[128](#)]

DONALD WILLIFORD/MV  
ROBERT WILLIAMS

**No Ruling**



16. [12-19978](#)-A-13     **IN RE: LINDA MCCULLAR**  
[VAG-4](#)

MOTION FOR COMPENSATION FOR VINCENT A. GORSKI, DEBTORS  
ATTORNEY(S)  
12-4-2017    [[74](#)]

VINCENT GORSKI

**Final Ruling**

A statement indicating whether the debtor consents to the fees and costs requested has not been filed. The court continues the hearing on this matter to February 7, 2018, at 9:00 a.m. The applicant may file a statement of the debtor's consent no later than 14 days before the continued hearing.

17. [17-12885](#)-A-13     **IN RE: RANDY LENOIR**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-28-2017    [[32](#)]

MICHAEL MEYER/MV  
STEVEN ALPERT

**Final Ruling**

The hearing on this motion will be continued to February 7, 2018, to coincide with the hearing on the debtor's motion to confirm the modified plan.

18. [16-12498](#)-A-13     **IN RE: PAMELA SUNIGA**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
11-9-2017    [[33](#)]

PAMELA SUNIGA/MV  
ROBERT WILLIAMS  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.