

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: FRIDAY

DATE: JANUARY 24, 2020

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. [19-13002](#)-A-13 **IN RE: ARNOLDO CASTRO**
[RAS - 1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-16-2019 [\[41\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
THOMAS GILLIS/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.

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 movant's claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: "Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any non-debtor in the event of a default under applicable law or contract"

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.

2. [19-10404](#)-A-13 **IN RE: MARIA VASQUEZ**
[BDB-1](#)

MOTION TO MODIFY PLAN
12-19-2019 [\[38\]](#)

MARIA VASQUEZ/MV
BENNY BARCO/ATTY. FOR DBT.

Final Ruling

Motion: Modification of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The moving party did not provide a sufficient period of notice of the hearing on the motion or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(h) requires not less than 21 days' notice of the time fixed for filing objections and the hearing to consider a proposed modification of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 3015(h) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. LBR 3015-1(d). Creditors and parties in interest received less than 21 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 35 days prior to the hearing.

Here, Movant stated in the proof of service, "See Attached List," indicating that Movant has noticed all interested parties to the motion (ECF 42). No such list was attached. The court does not find that Movant served interested parties in compliance with Rule 3015(h). This motion will be denied without prejudice.

3. [16-13905](#)-A-13 **IN RE: LUIS MORENO**
[SL-3](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, SUBSTITUTE PARTY, AND HARDSHIP DISCHARGE AS TO
DEBTOR
12-16-2019 [\[33\]](#)

DOLORES MORENO/MV
STEPHEN LABIAK/ATTY. FOR DBT.

Final Ruling

Motion: Substitution of Representative, Continued Administration,
Waiver of Personal Financial Management, Waiver of Certifications,
and Hardship Discharge

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 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).

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a **Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor.** The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. **A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, a Suggestion of Death, supported by a death certificate, has been filed.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. In a chapter 13 case the court is to consider whether further administration is possible and in the best interests of the parties. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

Here, Delores Moreno is appointed the personal representative.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.**

Fed. R. Bankr. P. 1016 (emphasis added).

Here, the debtor died after completing more completing more than 36 months of a 60-month plan and having paid unsecured creditors more

than they would have been paid if the debtor had filed a chapter 7 bankruptcy.

Hardship Discharge

A hardship discharge may be granted:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

11 U.S.C.A. § 1328.

Here, the requirements have been satisfied by the debtor's death and payment of the liquidation analysis amount.

Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability,** or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4).

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1

CIVIL MINUTE ORDER

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

Dolores Moreno's motion has been presented to the court. Having entered the default of the respondents and having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted, Dolores Moreno is appointed the representative, continued administration is appropriate, a hardship discharge may be granted, and 11 U.S.C. § 727(a)(11) is waived.

4. [18-14905](#)-A-13 **IN RE: TRACEY PRITCHETT**
[TCS-3](#)

MOTION TO MODIFY PLAN
11-27-2019 [\[57\]](#)

TRACEY PRITCHETT/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by 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.

5. [19-13914](#)-A-13 **IN RE: EDDIE/KRISTIE GEREKE**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
11-12-2019 [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

6. [19-13924](#)-A-13 **IN RE: ROBERT/DARLENE AGUINAGA**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
12-18-2019 [[44](#)]

ROBERT AGUINAGA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

At the request of the movant, the court will drop this motion from the calendar as moot.

7. [19-13924](#)-A-13 **IN RE: ROBERT/DARLENE AGUINAGA**
[MAZ-2](#)

MOTION TO VALUE COLLATERAL OF DITECH HOME LOANS
12-18-2019 [[50](#)]

ROBERT AGUINAGA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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 642 Imperial Dr. Hanford, CA 93230.

The court values the collateral at \$248,162.00. 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 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 642 Imperial Dr. Hanford, CA 93230. has a value of \$248,162.00. 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.

8. [19-13924](#)-A-13 **IN RE: ROBERT/DARLENE AGUINAGA**
[MHM-2](#)

MOTION TO DISMISS CASE
12-18-2019 [\[56\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

No Ruling

9. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[FW-3](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
7-19-2019 [[53](#)]

MIKAL JONES/MV
PETER FEAR/ATTY. FOR DBT.

Final Ruling

An order confirming has been entered and the matter is dropped from calendar.

10. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[WJH-1](#)

CONTINUED MOTION TO DISMISS CASE
10-1-2019 [[89](#)]

RUSSELL DILDAY/MV
PETER FEAR/ATTY. FOR DBT.
RILEY WALTER/ATTY. FOR MV.

Final Ruling

Per Stipulation, ECF #161, and Order signed January 15, 2020, this Motion to Dismiss Case is withdrawn.

11. [19-15136](#)-A-13 **IN RE: BARBARA MARTIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-30-2019 [[15](#)]

PETER NISSON/ATTY. FOR DBT.
DISMISSED 1/8/2020

Final Ruling

This case having been dismissed on January 8, 2020, this order to show cause is discharged as moot.

12. [19-13841](#)-A-13 **IN RE: LOTTIE STEWART**
[JDR-1](#)

OBJECTION TO CLAIM OF PINNACLE SERVICE SOLUTIONS LLC, CLAIM
NUMBER 2
12-6-2019 [[19](#)]

LOTTIE STEWART/MV
JEFFREY ROWE/ATTY. FOR DBT.

No Ruling

13. [19-14642](#)-A-13 **IN RE: GARY/PATRICIA MARTINEZ**
[EPE-1](#)

MOTION TO CONFIRM PLAN
12-17-2019 [[22](#)]

GARY MARTINEZ/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that creditors (1) AT&T Mobility, (2) Deutsche Bank, and (3) U.S. Bank have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

14. [19-14642](#)-A-13 **IN RE: GARY/PATRICIA MARTINEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
12-18-2019 [[28](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

Final Ruling

This motion having been withdrawn, the court will drop this matter from the calendar as moot.

15. [19-14543](#)-A-13 **IN RE: EDGAR BAUTISTA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-6-2020 [[31](#)]

\$80.00 INSTALLMENT PAYMENT ON 1/6/2020

Final Ruling

The payment having been received January 6, 2020, the Order to Show Cause will be discharged.

16. [19-14543](#)-A-13 **IN RE: EDGAR BAUTISTA**
[MHM-2](#)

MOTION TO DISMISS CASE
12-12-2019 [[23](#)]

MICHAEL MEYER/MV

Final Ruling

Motion: Dismiss Case

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 responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1,100.00.

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 trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor 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 because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

17. [19-14543](#)-A-13 **IN RE: EDGAR BAUTISTA**
[MHM-3](#)

MOTION TO DISMISS CASE
12-17-2019 [[27](#)]

MICHAEL MEYER/MV

Final Ruling

This case already having been dismissed in Item 16, the court will drop this motion from the calendar as moot.

18. [19-14744](#)-A-13 **IN RE: KENNETH/TRISTA CARTER**
[MHM-1](#)

MOTION TO DISMISS CASE
12-26-2019 [[29](#)]

MICHAEL MEYER/MV
STEVEN ALPERT/ATTY. FOR DBT.
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

19. [19-14645](#)-A-13 **IN RE: ROGELIO VALENCIA**
[MHM-2](#)

MOTION TO DISMISS CASE
12-27-2019 [[19](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This motion having been withdrawn, the court will drop this matter from the calendar as moot.

20. [19-14446](#)-A-13 **IN RE: MOISES/JACQUELINE ARCE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-27-2019 [[27](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

21. [19-14446](#)-A-13 **IN RE: MOISES/JACQUELINE ARCE**
[MHM-1](#)

MOTION TO DISMISS CASE
12-18-2019 [\[23\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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 responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). Debtors have not provided Joint Debtor's 2017 - 2018 income in the Statement of Financial Affairs. Debtors' Credit Counseling Certificates were filed more than 180 days before filing of the bankruptcy case.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

22. [19-13352](#)-A-13 **IN RE: MARY ISLAS**
[TAM-1](#)

MOTION TO CONFIRM PLAN
12-12-2019 [\[37\]](#)

MARY ISLAS/MV
THOMAS MOORE/ATTY. FOR DBT.

Final Ruling

Motion: Confirmation of a Chapter 13 Plan
Disposition: Denied without prejudice
Order: Civil minute order

INSUFFICIENT SERVICE

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that (1) Capital One Bank (4515 N Santa Fe Ave, Oklahoma City, 73118), (2) Freedom Mortgage(PO Box 619063 Dallas, TX 75261), (3) Quantum3 Group LLC, agent for Comenity Bank, and (4) Synchrony Bank have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

RECYCLED DOCKET CONTROL NUMBERS

Here, the movant has filed another Motion to Confirm Plan (ECF 28), which has been withdrawn, under the same docket control number.

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

23. [19-14954](#)-A-13 **IN RE: MARIO VASQUEZ AND MARIBEL ORTIZ**
[TOG-2](#)

MOTION TO CONFIRM PLAN
12-18-2019 [[24](#)]

MARIO VASQUEZ/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

24. [19-15354](#)-A-13 **IN RE: CORINNA DE VELBISS**
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
1-9-2020 [[11](#)]

CORINNA DE VELBISS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

No Ruling

25. [19-14755](#)-A-13 **IN RE: ANTHONY SMITH**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-2-2020 [[15](#)]

JEFFREY MEISNER/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan is not ready to be confirmed under 11 U.S.C. § 1325(a)(1). The Trustee has not yet concluded the Meeting of the Creditors as

Debtor failed to provide to the trustee with all required and requested documentation prior to the first meeting which was held on December 30, 2019. The continued meeting will be held on February 18, 2020.

Debtor has not demonstrated his plan is paying at least the amount unsecured claims would be entitled to if this were a Chapter 7 under 11 U.S.C. §1325(a)(4). Debtor is married and is taking California Civ. Proc. Rule 703 exemptions, but has not yet filed a spousal waiver.

Debtor has not shown this plan was proposed in good faith under 11 U.S.C. §1325(a)(3), (7). Debtor did not provide trustee with the last filed federal tax return as required under § 521. Debtor also did not provide Trustee with paystubs for the 60 days prior to filing, and did not provide documents requested to support certain expenses taken on the means test.

Debtor's schedules and statements do not accurately reflect the debtor's situation. Debtor's spouse earned unemployment compensation in the 6 months prior to filing and is now employed. Debtor's spouse apparently is a seasonal worker earning unemployment in the months she is not working. Schedules I, H, and Official Form 122C-1 do not reflect this anywhere.

Debtor's Official Form 122C-2 reflects over \$200,000.00 of priority debt, which is nowhere else in the schedules or the plan. The priority debt to date from the FTB and the IRS claims totals only \$51,741.82.

The plan does not provide for all of Debtor's projected disposable income under 11 U.S.C. §1325(b). Official Form 122C-1 fails to list income from Debtor's spouse, and Form 122C-2 improperly lists the line 35 priority debt and line 19 child support. The DSO checklist provided to the trustee indicates there are 4 years remaining on support order and he failed to amortize this expense over 60 months.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

26. [19-14956](#)-A-13 **IN RE: ISAURO CAMPOS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-2-2020 [[29](#)]

THOMAS GILLIS/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

27. [19-14956](#)-A-13 **IN RE: ISAURO CAMPOS**
[TOG-2](#)

MOTION TO CONFIRM PLAN
12-20-2019 [[24](#)]

ISAURO CAMPOS/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

28. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-12](#)

MOTION TO SELL
12-12-2019 [[103](#)]

FRANK FAGUNDES/MV
RILEY WALTER/ATTY. FOR DBT.

No Ruling

29. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-14](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
WANGER JONES HELSLEY PC FOR RILEY C. WALTER, DEBTORS
ATTORNEY(S)
11-27-2019 [[96](#)]

RILEY WALTER/ATTY. FOR DBT.

Final Ruling

The matter is continued to April 15, 2020, at 3:00 p.m.

30. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-4](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
9-5-2019 [[68](#)]

FRANK FAGUNDES/MV
RILEY WALTER/ATTY. FOR DBT.
ORDER, ECF NO. 94

Final Ruling

The matter is continued to April 15, 2020, at 3:00 p.m.

31. [19-14958](#)-A-13 **IN RE: MARIO OJEDA**

MOTION TO IMPOSE AUTOMATIC STAY
11-27-2019 [[9](#)]

MARIO OJEDA/MV
MARIO OJEDA/ATTY. FOR MV.
DISMISSED 12/16/19

Final Ruling

This case having been dismissed, the court will drop this matter
from the calendar as moot.

32. [19-14859](#)-A-13 **IN RE: SONIA JAUREGUI**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF TD AUTO FINANCE
12-9-2019 [\[14\]](#)

SONIA JAUREGUI/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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 2015 Mercedes CLA. 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 \$17,875.00.

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 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 2015 Mercedes CLA has a value of \$17,875.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$17,875.00 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.

33. [19-10660](#)-A-13 **IN RE: MICHAEL NELSON**
[RLF-1](#)

MOTION TO MODIFY PLAN
12-6-2019 [\[20\]](#)

MICHAEL NELSON/MV
SHANE REICH/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by 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.

34. [19-12961](#)-A-13 **IN RE: LEONARDO GONZALEZ**
[SL-1](#)

CONTINUED MOTION TO CONFIRM PLAN
10-24-2019 [[52](#)]

LEONARDO GONZALEZ/MV
SCOTT LYONS/ATTY. FOR DBT.

No Ruling

35. [19-12961](#)-A-13 **IN RE: LEONARDO GONZALEZ**
[SL-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF MATADORS COMMUNITY
CREDIT UNION
12-3-2019 [[61](#)]

LEONARDO GONZALEZ/MV
SCOTT LYONS/ATTY. FOR DBT.

No Ruling

36. [14-13562](#)-A-13 **IN RE: JAMES/MARGARET CHARLES**
[TCS-2](#)

MOTION TO AVOID LIEN OF CACH, LLC
12-19-2019 [\[92\]](#)

JAMES CHARLES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption

Notice: LBR 9014-1(f)(1); 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). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. *See In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. *See In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the

back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, Cach, LLC's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Cach, LLC's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$193,766.41. Pursuant to 11 U.S.C. § 522(f)(2)(B), the court's calculation does not account for the consensual lien held by USA Federal Savings Bank that has already been avoided (ECF 34). This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Cach, LLC's judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

RECYCLED DOCKET CONTROL NUMBERS

Here, the movant has filed a Motion to Value Collateral (ECF 17) using the same docket control number as for this matter.

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

37. [14-13562](#)-A-13 **IN RE: JAMES/MARGARET CHARLES**
[TCS-3](#)

MOTION TO AVOID LIEN OF TARGET NATIONAL BANK
12-19-2019 [\[95\]](#)

JAMES CHARLES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption

Notice: LBR 9014-1(f)(1); 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). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the

back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, Cach, LLC's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Cach, LLC's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$193,766.41. Pursuant to 11 U.S.C. § 522(f)(2)(B), the court's calculation does not account for the consensual lien held by USA Federal Savings Bank that has already been avoided (ECF 34). This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Cach, LLC's judicial lien may be avoided entirely. Therefore, Target National Bank's junior lien will also be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

RECYCLED DOCKET CONTROL NUMBERS

Here, the movant has filed an Objection to Claim (ECF 46) using the same docket control number as for this matter.

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

38. [17-14665](#)-A-13 **IN RE: VICKI/ANGELA VALENTYN**
[MHM-5](#)

MOTION TO DISMISS CASE
12-23-2019 [[114](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

No Ruling

39. [19-13966](#)-A-13 **IN RE: RANDY/EUFEMIA BROWN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-23-2019 [[26](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.
DISMISSED 12/27/19

Final Ruling

This case having been dismissed on December 27, 2019, the Order to Show Cause is discharged as moot.

40. [19-13168](#)-A-13 **IN RE: HORACIO GAYTAN AND IBET SANCHEZ**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
11-18-2019 [[27](#)]

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

41. [19-13168](#)-A-13 **IN RE: HORACIO GAYTAN AND IBET SANCHEZ**
[TOG-2](#)

MOTION TO CONFIRM PLAN
12-11-2019 [[34](#)]

HORACIO GAYTAN/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

42. [19-14571](#)-A-13 **IN RE: AURORA FERRELL**
[MHM-1](#)

MOTION TO DISMISS CASE
12-18-2019 [[16](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

No Ruling

43. [19-14971](#)-A-13 **IN RE: JAVIER/OLGA RODRIGUEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-2-2020 [[19](#)]

THOMAS GILLIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan is not ready to be confirmed under 11 U.S.C. § 1325(a)(1). The Trustee has not yet concluded the Meeting of the Creditors as Debtors did not provide the trustee with the required and requested information prior to the 341 hearing on December 30, 2019. The meeting of the creditors has been continued to February 18, 2020.

The plan is inaccurate and is requesting a no-look fee over and above what the local rules allow. 11 U.S.C. § 1325(a)(1). The plan, the schedules the statement of financial affairs, the Disclosure of Attorney Compensation, and the Rights and Responsibilities, all claim that prior to filing the debtor paid the attorney \$1,000.00 and that there is a balance of \$3,000.00 more to be paid. At the meeting of the creditors the debtors indicated that they paid the attorney \$2,000.00 prior to filing and that only \$2,000.00 is left to be paid through the plan.

In addition, Section 3.05 of the plan provides that Debtor's attorney of record was paid \$1,000.00 prior to filing and additional fees of \$3,000.00 shall be paid through the plan. Mr. Gillis is electing the no-look fees as specified in Local Bankruptcy Rule 2016- 1(c). Trustee requests that the objection compensation must be made in accordance with 11 U.S.C. §§329 and 330.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

44. [19-14473](#)-A-13 **IN RE: AMANDA KONG**
[MHM-2](#)

MOTION TO DISMISS CASE
12-17-2019 [[34](#)]

MICHAEL MEYER/MV
DISMISSED 12/27/19

Final Ruling

This case having been dismissed on December 27, 2019, this case is dropped as moot.

45. [19-14377](#)-A-13 **IN RE: ERIC/MARIE MENDEZ**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF EDUCATIONAL EMPLOYEES CREDIT
UNION
12-26-2019 [[23](#)]

ERIC MENDEZ/MV
THOMAS GILLIS/ATTY. FOR DBT.

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 FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

46. [19-14977](#)-A-13 **IN RE: JOSE/MARIA CHAVARRIA**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST,
NATIONAL ASSOCIATION
1-6-2020 [[21](#)]

WILMINGTON TRUST, NATIONAL
ASSOCIATION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan
Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required
Disposition: Sustained and confirmation denied
Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing

schedule. Absent such opposition, the court will adopt this tentative ruling.

Debtors' 60 month plan proposes monthly payment of \$6,238.91, making the total payment of plan \$374,334.60. But the total amount to be paid to Class 1 claims alone is \$389,693.30. This plan is therefore unfeasible under 11 U.S.C. § 1325(a)(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.

Wilmington Trust National Association's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

47. [19-14578](#)-A-13 **IN RE: STEVE/SANDY GONZALES**
[MHM-2](#)

MOTION TO DISMISS CASE
12-27-2019 [[32](#)]

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

Final Ruling

This motion having been withdrawn, the court will drop this matter from the calendar as moot.

48. [19-12788](#)-A-13 **IN RE: JOHNNY/MARY MORALES**
[MAZ-4](#)

MOTION TO CONFIRM PLAN
12-5-2019 [\[97\]](#)

JOHNNY MORALES/MV
MARK ZIMMERMAN/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 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.

49. [19-12788](#)-A-13 **IN RE: JOHNNY/MARY MORALES**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
11-20-2019 [\[91\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

CASE DISMISSAL

The trustee moved to dismiss this chapter 13 case under § 1307(c)(1) solely for the Debtors' failure to confirm a plan. However, this plan having been confirmed (Item 48), the court will deny trustee's 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.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor 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 denied.

50. [11-19090](#)-A-13 **IN RE: JASON/ROBIN MYERS**
[JDW-5](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
1-9-2020 [\[78\]](#)

JASON MYERS/MV
JOEL WINTER/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

INSUFFICIENT SERVICE

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "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 motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

FAILURE TO MAKE PRIMA FACIE CASE

The movant has not filed an Abstract of Judgment as an exhibit supporting this motion. The court therefore does not find that the movant made a prima facie case for a motion to avoid lien.

RECYCLED DOCKET-CONTROL NUMBERS

Here, the movant has twice used the same docket control number for filing other motions. These were a Motion to Value Collateral (ECF 39) and a Motion to Reopen Chapter 13 Case (ECF 76).

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

51. [14-12891](#)-A-13 **IN RE: ARLETHIA WAFFORD JONES**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-22-2019 [[71](#)]

DITECH FINANCIAL LLC/MV
PHILLIP GILLET/ATTY. FOR DBT.
MEHRDAUD JAFARNIA/ATTY. FOR MV.

No Ruling

52. [18-14592](#)-A-13 **IN RE: MICHAEL/RANDI KESTNER**
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2019 [[89](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
STEPHEN LABIAK/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

53. [19-14698](#)-A-13 **IN RE: DUSTIN MAJCHEN AND CLAUDIA VELIT DE**
MAJCHEN
[MHM-2](#)

MOTION TO DISMISS CASE
12-20-2019 [[25](#)]

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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 responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). Debtor did not provide a complete and accurate Schedule A/B, and did not provide requested documents including licenses, List of Accounts receivables, business case questionnaire, employee quarter taxes, insurance policies, balance sheet, and profit and loss statements for May and August.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

54. [19-15405-A-13](#) IN RE: MA ERIKA FERNANDO
[EPE-1](#)

MOTION TO EXTEND AUTOMATIC STAY
1-10-2020 [[12](#)]

MA ERIKA FERNANDO/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

No Ruling

55. [12-60578-A-13](#) **IN RE: JOSE GARCIA**
[TOG-5](#)

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE
INJUNCTION AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE
AUTOMATIC STAY , MOTION FOR AN AWARD OF COMPENSATORY
DAMAGES, PUNITIVE DAMAGES, ATTORNEY FEES AND COSTS
1-10-2020 [[80](#)]

JOSE GARCIA/MV
THOMAS GILLIS/ATTY. FOR DBT.

No Ruling