

**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: THURSDAY

DATE: FEBRUARY 1, 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. [17-13709](#)-A-13 **IN RE: CESAR CORTES AND NEREYDA OLEA**
[TOG-2](#)

MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL CREDIT UNION
12-30-2017 [\[40\]](#)

CESAR CORTES/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral

Notice: Written opposition filed by the responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The motion seeks to value real property collateral that is the moving party's principal residence. 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.

2. [17-14510](#)-A-13 **IN RE: ADRIAN VELAZQUEZ AND MARISELA PALAFOX**
[JDM-1](#)

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA INC.
12-16-2017 [\[13\]](#)

ADRIAN VELAZQUEZ/MV
JAMES MILLER

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 Chrysler 200 Series. 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 \$14,689.

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 Chrysler 200 Series has a value of \$14,689. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$14,689 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

3. [15-14121](#)-A-13 **IN RE: JONATHAN MEEKER**
[DRJ-4](#)

MOTION TO AVOID LIEN OF STELLA DZIENIUS
12-27-2017 [\[96\]](#)

JONATHAN MEEKER/MV
DAVID JENKINS

Final Ruling

Motion: Avoid Lien that Impairs 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).

COMPLIANCE WITH RULE 9013

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request. Under this rule, a

motion lacking proper grounds for relief (or lacking a statement of the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

The motion indicates that \$345,000 is the value of the real property subject to the judicial lien to be avoided. The declaration states that the property's value is no more than \$215,000. The disparity between these numbers is significant.

The court will assume that the declaration contains the correct value of the property in deciding this motion.

LIEN AVOIDANCE

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).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

4. [17-13721](#)-A-13 **IN RE: JOHN/NANCY ALVA**
[SDN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WHEELS
FINANCIAL GROUP, LLC
11-21-2017 [\[33\]](#)

WHEELS FINANCIAL GROUP, LLC/MV
JERRY LOWE
SHERYL NOEL/ATTY. FOR MV.

Final Ruling

The trustee objected to confirmation of the chapter 13 plan filed at docket no. 12 (the only plan on the docket). This objection was sustained by an order issued January 25, 2018. Because the court

has denied confirmation of this plan, Wheels Financial Group, LLC's objection to confirmation of the same plan will be overruled as moot.

5. [17-12729](#)-A-13 **IN RE: VIRGINIA SOTO**
[MHM-1](#)

MOTION TO DISMISS CASE
1-2-2018 [[21](#)]

MICHAEL MEYER/MV
JERRY LOWE

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case for failure to confirm a plan. The trustee moves to dismiss on grounds of unreasonable delay.

The debtors provided in Section 2.09(d) of their plan that the Class 2 claim of Travis Credit Union was to be reduced based on the value of the collateral, a 2000 Ford Ranger. The debtor opposes and contends that she set a motion to value this collateral for hearing on January 24, 2018.

The petition was filed July 17, 2017. This case has been pending for more than 6 months (199 days) yet a chapter 13 plan has not been confirmed.

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

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. The court hereby dismisses this case.

6. [17-14030](#)-A-13 **IN RE: ANGELA WOLF**
[BDA-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE
AUTO FINANCE
12-6-2017 [[18](#)]

CAPITAL ONE AUTO FINANCE/MV
MARK ZIMMERMAN
BRET ALLEN/ATTY. FOR MV.

No Ruling

7. [17-13446](#)-A-13 **IN RE: LEONEL TERA**
[FW-1](#)

MOTION TO CONFIRM PLAN
12-18-2017 [[28](#)]

LEONEL TERA/MV
PETER FEAR
RESPONSIVE PLEADING

No Ruling

8. [17-13263](#)-A-13 **IN RE: JASON/DANELLE BLACK**
[DMG-3](#)

MOTION TO CONFIRM PLAN
12-14-2017 [[83](#)]

JASON BLACK/MV
D. GARDNER
RESPONSIVE PLEADING

No Ruling

9. [18-10064](#)-A-13 **IN RE: DAVID HOLLINGSWORTH**
[SRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-15-2018 [[12](#)]

THE PHYLLIS J. HOLLINGSWORTH
TRUST/MV
STEVEN HRDLICKA/ATTY. FOR MV.

Final Ruling

The case dismissed, the matter is denied as moot.

10. [15-12675](#)-A-13 **IN RE: CARLOS/TAMMIE COSTALES**
[PBB-5](#)

MOTION TO MODIFY PLAN
12-27-2017 [[87](#)]

CARLOS COSTALES/MV
PETER BUNTING

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.