

**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: FEBRUARY 3, 2017
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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.

1. [16-13709](#)-A-13 JO MORRISON
PLG-1
JO MORRISON/MV
RABIN POURNAZARIAN/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO CONFIRM PLAN
12-13-16 [[23](#)]

No tentative ruling.

2. [16-11025](#)-A-13 TIM/CHERIE WILKINS
MHM-3
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
SARAH VELASCO/Atty. for mv.
- MOTION TO DISMISS CASE
1-6-17 [[167](#)]

No tentative ruling.

3. [16-12828](#)-A-13 MARVITA SEAWELL
ETW-1
NEAL HORN, M.D./MV
PATRICK GREENWELL/Atty. for dbt.
EDWARD WEBER/Atty. for mv.
DISMISSED
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-15-16 [[60](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

4. [16-14637](#)-A-13 HARRY/LISA BARDIZBANIAN
- ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-10-17 [[11](#)]
- JOEL WINTER/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

5. [16-14351](#)-A-13 JESUS LANDEROS AND
TOG-1 VICTORIA BUENAVIDA
JESUS LANDEROS/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
1-4-17 [[15](#)]

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 2979 Pine Castle Dr., Hanford, CA.

The court values the collateral at \$147,537. 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 2979 Pine Castle Dr., Hanford, CA, has a value of \$147,537. 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.

6. [16-14470](#)-A-13 JAYCE/LISA LEWIS
PBB-2
JAYCE LEWIS/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
1-3-17 [[22](#)]

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 2013 Chrysler 200 Touring. 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 \$9728.00.

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 2013 Chrysler 200 Touring has a value of \$9728.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9728.00 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.

7. [13-15375](#)-A-13 ROSEMARY GARCIA
PLG-4
ROSEMARY GARCIA/MV
STEVEN ALPERT/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
12-30-16 [[100](#)]

Final Ruling

Motion: Modify Confirmed Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS

Chapter 13 debtors may modify a confirmed plan before completion of payments under the plan. 11 U.S.C. § 1329(a). The present motion requests approval of a modification of the confirmed plan. But this modification has been superseded by a subsequent modification. The subsequent modification moots the previous modification. Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). The motion will be denied as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to modify the plan is denied as moot.

8. [10-11779](#)-A-12 WILLIAM BUCHNOFF MOTION FOR ENTRY OF DISCHARGE
HDN-3 11-4-16 [[67](#)]
WILLIAM BUCHNOFF/MV
HENRY NUNEZ/Atty. for dbt.

Final Ruling

Motion: Entry of Discharge [Chapter 12 case]

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

Disposition: Granted

Order: Prepared by the movant

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).

The motion requests entry of discharge under § 1228 of the Bankruptcy Code. The court finds that the debtor has completed all payments under the plan in this chapter 12 case. The debtor has certified by declaration that the debtor has no domestic support obligations under a judicial or administrative order or statute.

The court finds that § 522(q)(1) is inapplicable to the debtor. The court also finds no proceeding is pending in which (1) the debtor may be found guilty of felony of the kind described in § 522(q)(1)(A), or (2) the debtor may be liable for a debt of the kind described in § 522(q)(1)(B). The court finds that a chapter 12 discharge should be entered in this case.

9. [16-14259](#)-A-13 CHARLES BROWN AND NATASHA MOTION FOR RELIEF FROM
JRC-1 DIXON-BROWN AUTOMATIC STAY
FRESNO MANAGEMENT CO./MV 1-20-17 [[17](#)]
TIMOTHY SPRINGER/Atty. for dbt.
JOHN CADWALADER/Atty. for mv.

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014.

The proof of service shows that the motion was not mailed to the debtor at the address indicated on the petition. Fed. R. Bankr. P. 7004(b)(9).

10. [16-14023](#)-A-13 RUBEN CHAVEZ AND SOCORRO CONTINUED MOTION TO CONFIRM
TOG-1 VILLEGAS PLAN
RUBEN CHAVEZ/MV 12-14-16 [[18](#)]
THOMAS GILLIS/Atty. for dbt.
OPPOSITION WITHDRAWN

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor 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.