

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: FEBRUARY 8, 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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

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. [12-13703](#)-A-13 NOEMI MORENO MOTION TO DISMISS CASE
MHM-2 12-12-16 [[60](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-11803](#)-A-13 JERZY BARANOWSKI MOTION TO MODIFY PLAN
PK-6 12-5-16 [[182](#)]
JERZY BARANOWSKI/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING
OPPOSITION WITHDRAWN

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.

3. [13-17714](#)-A-13 MARK AGUILAR AND PATRICIA CONTINUED MOTION TO MODIFY PLAN
RSW-5 RAMIREZ 10-25-16 [[114](#)]
MARK AGUILAR/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
OPPOSITION WITHDRAWN

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.

4. [16-12618](#)-A-13 PAUL/JACKIE PENA CONTINUED OBJECTION TO
MHM-2 CONFIRMATION OF PLAN BY MICHAEL
MICHAEL MEYER/MV H. MEYER
11-4-16 [[32](#)]

PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

5. [16-12428](#)-A-13 SONIA GONZALEZ
RSW-1
SONIA GONZALEZ/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
OPPOSITION WITHDRAWN

MOTION TO MODIFY PLAN
12-28-16 [[17](#)]

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.

6. [16-14328](#)-A-13 GUILLERMO CONTRERAS
PWG-1
GUILLERMO CONTRERAS/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ALTONE FEDERAL CREDIT UNION
1-26-17 [[20](#)]

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Disposition: Denied

Order: Civil minute order

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, a 2012 Toyota Camry. This vehicle was purchased on June 28, 2014. The loan secured by this vehicle was extended on the same date. The 910-day period preceding the date of the petition extends back to June 4, 2014. Thus, the debt was incurred within the 910-day period preceding the date of the petition. The motion does not provide evidence or representations that the loan was not a purchase money loan or that the motor vehicle was not acquired for the debtor's personal use.

CIVIL MINUTE ORDER

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

The debtor's motion to value collateral has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

7. [14-16029](#)-A-13 DAGMAR VAUGHAN
RSW-1
DAGMAR VAUGHAN/MV

ROBERT WILLIAMS/Atty. for dbt.
ECF ORDER #67

OBJECTION TO CLAIM OF GREEN
TREE SERVICING LLC, CLAIM
NUMBER 13
9-11-15 [[32](#)]

No tentative ruling.

8. [16-13930](#)-A-13 DAVID SMITH
MHM-1

PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
12-12-16 [[13](#)]

Final Ruling

The opposition withdrawn, the matter is dropped as moot.

9. [16-13338](#)-A-13 MIGUEL/ADRIANA GONZALEZ OBJECTION TO DEBTOR'S CLAIM OF
MHM-2 EXEMPTIONS
MICHAEL MEYER/MV 1-10-17 [[61](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

The objection is overruled as moot given the filing of an Amended Schedule C on February 1, 2017, after this objection was filed.

10. [16-10642](#)-A-13 TIMOTHY MAYO MOTION TO VALUE COLLATERAL OF
PK-3 WHEELS FINANCIAL GROUP, LLC
TIMOTHY MAYO/MV 1-11-17 [[52](#)]
PATRICK KAVANAGH/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 2003 Buick Century. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$1740.00.

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 2003 Buick Century has a value of \$1740.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1740.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

11. [16-13343](#)-A-13 AIDE/JAMES BLANCO
PK-2
AIDE BLANCO/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING
OPPOSITION WITHDRAWN

MOTION TO CONFIRM PLAN
12-2-16 [[33](#)]

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.

12. [16-12652](#)-A-7 FRANCES HARRIS MOTION TO DISMISS CASE
MHM-3 12-12-16 [[37](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN, CONVERTED
12/13/16

Final Ruling

The motion withdrawn and the case converted, the matter is dropped as moot.

13. [16-14453](#)-A-13 ROBERT/SANDRA UMSTEAD ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-17-17 [[23](#)]

Tentative Ruling

If the installment payment of \$79 due January 12, 2017, has not been paid by the time of the hearing, the case may be dismissed without further notice of hearing.

14. [16-13854](#)-A-13 ANNE RODY CONTINUED OBJECTION TO
MHM-1 CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
12-13-16 [[18](#)]

PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

15. [10-12757](#)-A-13 LINDA SMITH MOTION TO COMPROMISE
RSW-3 CONTROVERSY/APPROVE SETTLEMENT
LINDA SMITH/MV AGREEMENT WITH BOSTON
SCIENTIFIC CORPORATION
1-11-17 [[70](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

16. [16-13064](#)-A-13 PAUL YANEZ
JHW-1
ACAR LEASING LTD/MV
NEIL SCHWARTZ/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-27-16 [[51](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 Chevrolet Traverse

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).

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make monthly payments to the moving party pursuant to a lease agreement by which the debtor leases the vehicle described above. The debtor has defaulted under such lease agreement with the moving party, and 3.3 postpetition payments are past due. The moving party's interest in the vehicle is not being adequately protected due to the debtor's postpetition default.

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

ACAR Leasing Ltd d/b/a GM Financial Leasing's motion for relief from

the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as a 2014 Chevrolet Traverse, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

17. [16-13064](#)-A-13 PAUL YANEZ
MHM-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
11-4-16 [[23](#)]

NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

18. [11-62772](#)-A-13 JOHN/BETH NEMETH
PWG-8
JOHN NEMETH/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
10-26-16 [[338](#)]

No tentative ruling.

19. [16-10074](#)-A-13 RONALD TAYLOR
RSW-1
RONALD TAYLOR/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
12-21-16 [[34](#)]

No tentative ruling.

20. [16-13278](#)-A-13 TERESA ROBERTS
MHM-1
MICHAEL MEYER/MV

CONTINUED MOTION TO CONVERT
CASE FROM CHAPTER 13 TO CHAPTER
7 AND/OR MOTION TO DISMISS CASE
11-9-16 [[25](#)]

NEIL SCHWARTZ/Atty. for dbt.

Final Ruling

The case having been dismissed, the matter is dropped as moot.

21. [16-13278](#)-A-13 TERESA ROBERTS
NES-3
TERESA ROBERTS/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO DISMISS CASE
1-9-17 [[40](#)]

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).

"On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, *the court shall dismiss a case* under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable. 11 U.S.C. § 1307(b) (emphasis added)."

The debtor moves to dismiss her own voluntary chapter 13 case. The case has not been converted under 11 USC §§ 706, 1112, or 1208.

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 dismiss her chapter 13 case 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.

22. [16-14084](#)-A-13 MICHAEL/JOANNA COUCH MOTION TO DISMISS CASE
MHM-1 1-5-17 [[15](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.