

**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: MARCH 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. [17-14702](#)-A-13 **IN RE: MARIA WEE**
[MHM-2](#)

MOTION TO DISMISS CASE
1-24-2018 [[39](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

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

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

CESAR CORTES/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

This matter is further continued to March 9, 2018, at 9:00 a.m. to allow the parties additional time to resolve it.

3. [17-14013](#)-A-13 **IN RE: PEDRO/GUILLERMINA ESPINOZA**
[TOG-2](#)

MOTION TO CONFIRM PLAN
1-15-2018 [[32](#)]

PEDRO ESPINOZA/MV
THOMAS GILLIS

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.

4. [17-14414](#)-A-13 **IN RE: ISAAC/TERESA NARANJO**
[TOG-3](#)

MOTION TO CONFIRM PLAN
1-18-2018 [[42](#)]

ISAAC NARANJO/MV
THOMAS GILLIS

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.

5. [18-10415](#)-A-13 **IN RE: TERRILL/SUSAN COX**
[BPC-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
2-15-2018 [[10](#)]

THE GOLDEN 1 CREDIT UNION/MV
JEANNIE KIM/ATTY. FOR MV.

Tentative Ruling

Motion: Confirm Absence of Automatic Stay

Notice: LBR 9014-1(f)(2); no 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). 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).

CONFIRMATION OF THE STAY'S TERMINATION

If a debtor who files a petition has had two prior bankruptcy cases pending within the preceding one-year period that were dismissed, then the automatic stay does not go into effect upon the filing of the later case. 11 U.S.C. § 362(c)(4)(A)(i). And a party in interest may request an order confirming that no stay is in effect. *Id.* § 362(c)(4)(A)(ii).

In this case, the debtors have had 2 cases pending within the preceding 1-year period that were dismissed. The automatic stay never went into effect upon the filing of the current 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 Golden 1 Credit Union's motion to confirm the termination of the stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The automatic stay is no longer in effect with respect to the debtors in this case.

6. [17-12639](#)-A-13 **IN RE: JOSE VELOZ**
[RWR-1](#)

MOTION FOR RELIEF FROM CO-DEBTOR STAY
1-30-2018 [[51](#)]

NOBLE FEDERAL CREDIT UNION/MV
THOMAS GILLIS
RUSSELL REYNOLDS/ATTY. FOR MV.

Final Ruling

Motion: Relief from Co-Debtor Stay [§ 1301(c)(2)]

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).

CO-DEBTOR STAY OF § 1301

The scope of the automatic stay is broader in chapter 13 and 12 cases than it is in chapters 7 and 11 cases. Section 1301(a) creates a co-debtor stay applicable in chapter 13 cases, and section 1201(a) creates a co-debtor stay applicable in chapter 12 cases. 11 U.S.C. §§ 1301(a), 1201(a).

"After a Chapter 12 or 13 petition is filed, the stay extends to individuals who are "codebtors" with the debtor on a consumer debt—e.g., relatives, friends and others who cosigned or guaranteed a note (or other obligation) with the debtor." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:145 (rev. 2018). "The codebtor stay only applies where the codebtor is liable on the consumer debt and liable with the debtor to a third party. Stated otherwise, both the debtor and the codebtor must be liable to a third party and liable on the particular debt the third party is trying to collect." *Id.* ¶ 8:147.

RELIEF FROM CO-DEBTOR STAY UNDER § 1301(c)(2)

A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c). The second ground for relief under both of these provisions is that "the plan filed by the debtor proposes not to pay such claim." *Id.* §§ 1301(c)(2), 1201(c)(2). Under these provisions, if the plan fails to provide any amount to the creditor on its claim for which the co-debtor is also liable, the creditor is entitled to relief from stay.

When the plan pays only a fraction of the amount owed to the creditor on the claim for which the co-debtor is liable, the creditor is nevertheless entitled to relief from the co-debtor stay. The bankruptcy appellate panel has held that the co-debtor stay should be lifted when the plan provided for only 15% of the creditor's claim. The panel reasoned, "There is no limitation on the creditor's right to sue the co-debtor for the amount not provided for by the plan. There is no requirement that suit be deferred while the debtor pays under the plan during a period of years." *In re Jacobsen*, 20 B.R. 648, 650 (B.A.P. 9th Cir. 1982).

"It would make little sense to defer such relief when it is known that the creditor will never receive the unprovided-for amount, under the plan, from the debtor. To put it otherwise, the debtor has in effect stated [in the plan] the respective dimensions of his liability and that of the co-maker. Section 1301(a)(2) provides the creditor with freedom to pursue, to the latter extent, its claim against a co-debtor." *Id.*

In this case, the confirmed plan fails to provide for payment in full of the movant's claim. It pays only a 5% dividend on unsecured claims such as the movant's deficiency claim. As a result, the movant is entitled to relief from the co-debtor stay in this 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.

Noble Federal Credit Union's motion for relief from the co-debtor 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 co-debtor stay is vacated as to the co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

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.

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

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

LEONEL TERA/MV
PETER FEAR
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.

8. [17-14548](#)-A-12 **IN RE: BI-RITE AUTO TRANSPORT, INC.**
[WW-2](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
2-20-2018 [[28](#)]

RUSSELL DILDAY/MV
WILLIAM ROMAINÉ
RILEY WALTER/ATTY. FOR MV.
OST 2/16/18

No Ruling

9. [17-14749](#)-A-13 **IN RE: PATRICIA CHAMBERS**
[MHM-2](#)

MOTION TO DISMISS CASE
1-24-2018 [[20](#)]

MICHAEL MEYER/MV
DIANA CAVANAUGH

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).

The debtor has failed to provide a credit counseling certificate showing that the debtor received the required credit counseling within the 180-day period preceding the petition date. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). And credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

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.

10. [17-14550](#)-A-12 **IN RE: MIKAL JONES AND ANGELA ANDERSON**
[WW-2](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
2-20-2018 [\[35\]](#)

RUSSELL DILDAY/MV
WILLIAM ROMAINÉ
RILEY WALTER/ATTY. FOR MV.
OST 2/20/18

Final Ruling

Motion: Extend Deadline for Filing Nondischargeability Complaint
under section 523(c)

Notice: LBR 9014-1(f)(2); no 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). 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).

A party in interest may bring a motion for an extension of the deadline to file a complaint to determine the dischargeability of a debt under § 523(c), but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4007(c). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend Russell Dilday, Tanna Dilday, Mary Ann Ferrero, and the chapter 12 trustee's deadline for filing a nondischargeability complaint under § 523(c). The deadline will be extended through July 3, 2018.

11. [12-19355](#)-A-13 **IN RE: PHELIX SELLERS**
[SL-2](#)

MOTION FOR OMNIBUS RELIEF
2-9-2018 [[75](#)]

SCOTT LYONS

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

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.

CONTINUED ADMINISTRATION OF THE CASE

Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f 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."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will authorize further administration of this case.

SUBSTITUTION OF THE PROPER PARTY

Furthermore, the court will order substitution of the proper party. Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bankr. P. 7025; LBR 1016-1(b)(1). The court will substitute the deceased debtor's

attorney in the stead of the deceased debtor. The court will authorize the deceased debtor's attorney to serve as the deceased debtor's representative.

WAIVER OF POST-PETITION EDUCATION REQUIREMENT

The motion also requests a waiver of the requirement to complete, after the petition date, the personal financial management course described in § 111. See 11 U.S.C. § 1328(g)(1). But this post-petition requirement does not apply when the debtor is a person described in § 109(h)(4). *Id.* § 1328(g)(2). The court finds that the joint-debtor's death constitutes incapacity under § 109(h)(4) and will grant a waiver of the § 1328(g)(1) requirement.

ORDER INSTRUCTIONS

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. The court also waives the requirement that the debtor complete an instructional course concerning personal financial management as required by § 1328(g). It is further ordered that the court finds that continued administration of the estate is possible and in the best interests of the parties. The court substitutes [debtor's attorney's name] in the stead of the deceased debtor, and authorizes such attorney's service as the deceased debtor's representative."

12. [17-14855](#)-A-13 **IN RE: GREGG/WENDY SCHOFIELD**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
1-26-2018 [\[16\]](#)

GREGG SCHOFIELD/MV
PETER BUNTING

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 2014 Hyundai Sonata GLS. 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 \$7766.

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 2014 Hyundai Sonata GLS has a value of \$7766. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7766 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.

13. [14-12359](#)-A-13 **IN RE: ANDRES/BILLIE SALAZAR**
[TCS-4](#)

MOTION TO MODIFY PLAN
1-24-2018 [[74](#)]

ANDRES SALAZAR/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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 another, subsequent modification. The subsequent modification moots the previous modification. 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.

14. [17-14459](#)-A-13 **IN RE: VANESSA IBANEZ**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF TD RETAIL CARD SERVICES
1-26-2018 [[17](#)]

VANESSA IBANEZ/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

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.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as furniture (couches, bedroom set, and mattress). The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$1300.

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 non-vehicular, personal 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 personal property collateral described as a furniture (couches, bedroom set, and mattress) has a value of \$1300. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1300 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.

15. [17-12360](#)-A-13 **IN RE: KEITH DAVIS**
[HDN-2](#)

CONTINUED MOTION TO MODIFY PLAN
10-16-2017 [[43](#)]

KEITH DAVIS/MV
HENRY NUNEZ
RESPONSIVE PLEADING

Tentative 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.

16. [17-12360](#)-A-13 **IN RE: KEITH DAVIS**
[HDN-4](#)

MOTION TO VALUE COLLATERAL OF EQUIPMENT FINANCE GROUP
1-9-2018 [[78](#)]

KEITH DAVIS/MV
HENRY NUNEZ

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

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.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as 2003 Great Dane Trailer. The respondent creditor does not have a purchase money security interest in this collateral. The court values the collateral at \$2,000.

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 non-vehicular, personal 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 personal property collateral described as a 2003 Great Dane Trailer has a value of \$2,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2,000 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.

17. [17-13065](#)-A-13 **IN RE: AMANDEEP RANDHAWA**
[FW-3](#)

MOTION TO CONFIRM PLAN
1-16-2018 [[93](#)]

AMANDEEP RANDHAWA/MV
PETER FEAR
RESPONSIVE PLEADING

No Ruling

18. [17-14596](#)-A-13 **IN RE: ARDIS BROOKS**
[MHM-3](#)

MOTION TO DISMISS CASE
1-31-2018 [[32](#)]

MICHAEL MEYER/MV
KENUMI MAATAFALE
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.