

**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: MARCH 22, 2019

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. [18-14606](#)-A-13 **IN RE: KENNETH/JANE HOSTETLER**
[TCS-2](#)

MOTION TO CONFIRM PLAN
2-6-2019 [[29](#)]

KENNETH HOSTETLER/MV
TIMOTHY SPRINGER

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 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.

2. [18-12708](#)-A-13 **IN RE: JAMES/CELENA WATSON**
[MHM-4](#)

MOTION TO DISMISS CASE
2-6-2019 [[67](#)]

MICHAEL MEYER/MV
DAVID JENKINS

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The debtor has failed to confirm a plan causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). This

case has been pending without a confirmed plan since June 30, 2018, over six months. And, the debtor is in violation of the court's 75-day order entered on November 9, 2018, in connection with the trustee's objection to the confirmation of a previous plan. ECF No. 49.

The order specifically provides, "IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1)." ECF No. 49.

75 days from the November 1, 2018 hearing date on the trustee's confirmation objection is January 15, 2019. March 22 is not the first hearing date available for plan confirmation after January 15. The court has had several plan confirmation hearing dates since then. As such, there has been unreasonable delay in obtaining plan confirmation that is prejudicial to creditors. The debtor is no longer able to confirm a plan without violating the court's 75-day order.

For the reasons stated in the motion, cause exists to dismiss the case. 11 U.S.C. § 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.

3. [18-14713](#)-A-13 **IN RE: BRIAN/KARI COLEMAN**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
1-11-2019 [[28](#)]

SCOTT LYONS
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

4. [14-10416](#)-A-13 **IN RE: FELIX/ISABEL ALVAREZ**
[MHM-3](#)

MOTION TO DISMISS CASE
2-8-2019 [[66](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

No Ruling

5. [18-14917](#)-A-13 **IN RE: JONATHAN YU**
[PBB-2](#)

MOTION TO AVOID LIEN OF CAPITAL COLLECTIONS, LLC
2-4-2019 [[26](#)]

JONATHAN YU/MV
PETER BUNTING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$1,088.58

All Other Liens (non-avoidable): \$384,133.31

Exemption: \$100,000

Value of Property: \$451,000

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).

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.

6. [18-14719](#)-A-13 **IN RE: ROSALINDA GAYTAN**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
1-16-2019 [[22](#)]

MICHAEL MEYER/MV
MICHAEL AVANESIAN

Final Ruling

The motion withdrawn, the matter is dropped from calendar.

7. [19-10020](#)-A-13 **IN RE: DANIEL DOWELL AND MELISSA ROCHA**
DOWELL
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
2-21-2019 [\[14\]](#)

DANIEL DOWELL/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle 2014 Kia Forte EX]

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 Kia Forte EX. 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 \$10,667.

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 Kia Forte EX has a value of \$10,667. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,667 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.

8. [18-12827](#)-A-13 **IN RE: JOSE GALLEGOS**
[TOG-2](#)

MOTION TO CONFIRM PLAN
2-6-2019 [[42](#)]

JOSE GALLEGOS/MV
THOMAS GILLIS

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued

The trustee objects to confirmation, pointing out that the hearing date is less than 20 days after the March 12 meeting of creditors, in violation of section 1324(b). The trustee requests continuance of the hearing on this motion to April 11, 2019 at 9:00 a.m. The debtor has filed a non-opposition to the proposed continuance to April 11. Accordingly, the hearing on this motion will be continued to April 11, 2019 at 9:00 a.m.

9. [18-13732](#)-A-12 **IN RE: CHARMAINE BRANNAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-13-2019 [[76](#)]

\$25.00 FEE PAID 2/14/19; DISMISSED 3/4/19

Final Ruling

The fee paid, the order to show cause is discharged.

10. [18-13732](#)-A-12 **IN RE: CHARMAINE BRANNAN**

MOTION TO EXTEND TIME
3-4-2019 [[92](#)]

CHARMAINE BRANNAN/MV
CHARMAINE BRANNAN/ATTY. FOR MV.
DISMISSED 03/04/2019

Final Ruling

The case dismissed, the matter is dropped from calendar.

11. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-1](#)

CONTINUED OBJECTION TO CLAIM OF PORTFOLIO RECOVERY
ASSOCIATES, LLC, CLAIM NUMBER 25
10-25-2018 [[73](#)]

BRANDY BUMP/MV
JERRY LOWE

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

12. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-2](#)

CONTINUED OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM
NUMBER 18
10-25-2018 [[69](#)]

BRANDY BUMP/MV
JERRY LOWE

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

13. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-3](#)

CONTINUED OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM
NUMBER 16
10-25-2018 [[77](#)]

BRANDY BUMP/MV
JERRY LOWE

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

14. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-4](#)

CONTINUED OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM
NUMBER 14
10-25-2018 [[81](#)]

BRANDY BUMP/MV
JERRY LOWE

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

15. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-5](#)

CONTINUED OBJECTION TO CLAIM OF NAVIENT PC TRUST, CLAIM
NUMBER 12
10-25-2018 [[85](#)]

BRANDY BUMP/MV
JERRY LOWE

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

16. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-7](#)

CONTINUED OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM
NUMBER 20
10-25-2018 [[89](#)]

BRANDY BUMP/MV
JERRY LOWE

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

17. [18-14335](#)-A-13 **IN RE: JENNIFER PINTO**
[SL-1](#)

MOTION TO CONFIRM PLAN
2-11-2019 [[32](#)]

JENNIFER PINTO/MV
STEPHEN LABIAK

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 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.

18. [18-14037](#)-A-13 **IN RE: DESIREE MARTINEZ**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
1-14-2019 [[36](#)]

SCOTT LYONS
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped from calendar.

19. [18-11439](#)-A-7 **IN RE: BRANDON/LESLIE SMART**
[MBW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-8-2019 [[59](#)]

PENTAGON FEDERAL CREDIT
UNION/MV
TIMOTHY SPRINGER
DANIEL BURBOTT/ATTY. FOR MV.
CONVERTED 3/6/19

Final Ruling

Motion: Stay Relief

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

Disposition: Continued

Order: Civil minute order

This case was converted from chapter 13 to chapter 7 on March 7, 2019, after this motion was filed. Accordingly, the hearing on this motion will be continued to April 24, 2019 at 9:00 a.m., in order for the chapter 7 trustee to be noticed with the motion. The moving party shall give notice to all parties in interest of the continued hearing date and provide the chapter 7 trustee with notice of the motion and continued hearing date, no later than April 10, 2019. The stay will remain in effect until resolution of the motion.

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 Pentagon Federal Credit Union's motion for relief from the automatic stay has been presented to the court. Having determined that a continuance of the hearing on the motion is necessary,

IT IS ORDERED that the hearing on the motion is continued to April 24, 2019 at 9:00 a.m., in order for the chapter 7 trustee to be noticed with the motion. The moving party shall give notice to all parties in interest of the continued hearing date and provide the chapter 7 trustee with notice of the motion and continued hearing date, no later than April 10, 2019. The stay shall remain in effect until resolution of the motion.

20. [19-10139](#)-A-13 **IN RE: HAROLD/CONSTANCE LYONS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-22-2019 [[21](#)]

SCOTT LYONS
\$79.00 INSTALLMENT PAYMENT 3/7/19

Tentative Ruling

Although the installment payment of \$79 due March 7, 2019, has been paid, an installment payment of \$77 will come due March 19, 2019. Pursuant to the instructions in the Order to Show Cause, if the March 19, 2019 payment has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

21. [14-11045](#)-A-13 **IN RE: CATHERINE NELSON**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
2-20-2019 [\[80\]](#)

PETER FEAR

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Waddell, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,214.50 and reimbursement of expenses in the amount of \$261.22. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

Fear Waddell, P.C.'s application for allowance of final compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$4,214.50 and reimbursement of expenses in the amount of \$261.22. The aggregate allowed amount equals \$4,475.72. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4,475.72 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid directly by the debtor after completion of the plan's term. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

22. [18-14146](#)-A-13 **IN RE: JULIAN/GLORIA TORRES**
[MHM-3](#)

MOTION TO DISMISS CASE
2-6-2019 [[44](#)]

MICHAEL MEYER/MV
NIMA VOKSHORI

No Ruling

23. [18-15149](#)-A-13 **IN RE: MIGUEL FERNANDEZ**
[TOG-1](#)

MOTION TO CONFIRM PLAN
2-1-2019 [[27](#)]

MIGUEL FERNANDEZ/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 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.

24. [18-10750](#)-A-13 **IN RE: BIENVENIDO/TERESITA LADERAS**
[TCS-2](#)

MOTION TO VACATE DISMISSAL OF CASE
3-5-2019 [[54](#)]

BIENVENIDO LADERAS/MV
TIMOTHY SPRINGER
DISMISSED 02/20/19

Final Ruling

This motion will be denied without prejudice because only page one of the notice of hearing for the motion is in the record. ECF No. 55. The remaining pages, including the signature page of the notice, are missing. Given this deficiency in the record, the motion will be denied without prejudice.

25. [19-10752](#)-A-13 **IN RE: STEVEN CHAVEZ**
[SFR-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
3-7-2019 [[11](#)]

STEVEN CHAVEZ/MV
SHARLENE ROBERTS-CAUDLE

Final Ruling

The hearing on this motion will be continued to Judge Rene Lastreto's calendar on April 11, 2019 at 1:30 p.m.

26. [16-12253](#)-A-13 **IN RE: MARLENE LOPEZ**
[PBB-2](#)

MOTION TO MODIFY PLAN
2-13-2019 [[33](#)]

MARLENE LOPEZ/MV
PETER BUNTING

Final Ruling

The plan withdrawn, the matter is dropped from calendar.

27. [14-10854](#)-A-13 **IN RE: TIMOTHY/MIJHA LEASURE**
[MHM-3](#)

MOTION TO DISMISS CASE
2-4-2019 [[79](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN

Final Ruling

The motion withdrawn, the matter is dropped from calendar.

28. [18-13055](#)-A-12 **IN RE: MIKE WEBER**
[MHM-1](#)

MOTION TO DISMISS CASE
1-24-2019 [[54](#)]

MICHAEL MEYER/MV
DAVID JENKINS

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 confirm a plan within 45 days of filing his plan, in violation of 11 U.S.C. § 1224, which requires that "[e]xcept for cause, the hearing [on confirmation of the plan] shall be concluded not later than 45 days after the filing of the plan."

The debtor filed a chapter 12 plan last on November 23, 2018. ECF No. 26. The court denied confirmation of that plan on January 7, 2019. ECF No. 53. The failure to confirm a plan in violation of section 1224 is unreasonable delay that is prejudicial to creditors.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1208(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.

29. [18-14559](#)-A-13 **IN RE: CAROL DAVIS-MADISON**
[BDB-2](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL
SERVICES, INC.
2-4-2019 [[29](#)]

CAROL DAVIS-MADISON/MV
BENNY BARCO

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle 2013 Hyundai Sonata]

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

Disposition: Continued

Order: Civil minute order

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 Hyundai Sonata. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition.

The creditor secured by the vehicle, Americredit Financial Services, Inc. (dba GM Financial) opposes the motion, disputing the value of the vehicle, contending it has a value of \$8,075, and requesting an opportunity to inspect the vehicle. ECF No. 35 at 4.

The court will permit the creditor to inspect the vehicle. The hearing on the motion will be continued to April 25, 2019 at 9:00 a.m., in order for the creditor to have the opportunity to inspect the vehicle. The debtor shall make the vehicle available for inspection by the creditor no later than April 4.

The creditor may supplement its opposition to the motion no later than April 11. The debtor may file a reply to a supplement to the opposition no later than April 18. A reply shall be limited in scope to the issues raised by the supplement to the opposition. Otherwise, the record on the motion is closed.

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 has been presented to the court. Having determined that a continuance of the hearing on the motion is necessary,

IT IS ORDERED that the hearing on the motion is continued to April 25, 2019 at 9:00 a.m., in order for the creditor to have the opportunity to inspect the vehicle that is the subject of the motion. The debtor shall make the vehicle available for inspection by the creditor no later than April 4. The respondent creditor may supplement its opposition to the motion no later than April 11. The debtor may file a reply to a supplement to the opposition no later than April 18. A reply shall be limited in scope to the issues raised by the supplement to the opposition. The record on the motion is otherwise closed.

30. [18-14166](#)-A-13 **IN RE: DOUGLAS NEWHOUSE**
[DMG-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF BANK OF AMERICA,
N.A.
12-10-2018 [[28](#)]

DOUGLAS NEWHOUSE/MV
D. GARDNER

Final Ruling

The motion withdrawn, the matter is dropped from calendar.

31. [18-14166](#)-A-13 **IN RE: DOUGLAS NEWHOUSE**
[DMG-3](#)

MOTION TO CONFIRM PLAN
2-6-2019 [[82](#)]

DOUGLAS NEWHOUSE/MV
D. GARDNER

Final Ruling

The motion withdrawn, the matter is dropped from calendar.

32. [18-13785](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-26-2019 [[60](#)]

TIMOTHY SPRINGER

No Ruling

33. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[MHM-4](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-5-2019 [\[59\]](#)

MICHAEL MEYER/MV
NICHOLAS ANIOTZBEHERE

Tentative Ruling

Objection: Objection to Claim of Exemption in a Lexus Vehicle
[C.C.P. § 704.060]

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

Disposition: Sustained

Order: Prepared by objecting party

EXEMPTIONS IN BANKRUPTCY

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

"[W]here a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). Hence, it is state law that governs who the evidentiary burden lies with in this case.

C.C.P. § 703.580(b) prescribes that "[a]t a hearing under this section, the exemption claimant (*i.e.*, the debtor) has the burden of proof" on the exemption claim.

ANALYSIS

The trustee objects to the exemption of a Lexus vehicle. The debtors have claimed an exemption in a 2016 Fiat 500X vehicle under C.C.P. § 704.010 in the amount of \$3,050. The debtors have also claimed an exemption in a 2007 Lexus vehicle under C.C.P. § 704.060(a) in the amount of \$5,861. The trustee contends that the Lexus vehicle is improperly exempt as the debtors are in breach of the restriction in section 704.060(c). The trustee says that the debtors have not satisfied their evidentiary burden to establish the section 704.060(a) exemption.

Under C.C.P. § 704.010:

- (a) Any combination of the following is exempt in the amount of two thousand three hundred dollars (\$3,050):
 - (1) The aggregate equity in motor vehicles.
 - (2) The proceeds of an execution sale of a motor vehicle.
 - (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

Under C.C.P. § 704.060:

- (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

- (1) Six thousand seventy-five dollars (\$15,975), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

- (2) Six thousand seventy-five dollars (\$15,975), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

. . .

- (c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is **reasonably adequate** for use in the trade, business, or profession for which the exemption is claimed under this section.

- (d) Notwithstanding subdivisions (a) and (b):

- (1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to four thousand eight hundred fifty dollars (\$9,700).

. . . .

The trustee's objection is limited to the restriction of C.C.P. § 704.060(c). He contends that the debtors have not shown why the

2016 Fiat vehicle - which is newer and in better condition than the 2007 Lexus - is not "reasonably adequate" for use in the debtor's business. "If the 2016 Fiat . . . meets the 'reasonably adequate' condition, then the limitation of Section 704.060 is triggered and [the] 2007 Lexus is not exempt under Section 704.060." ECF No. 59 at 3; C.C.P. § 704.060(c).

The debtors respond that: (1) their plan provides 100% dividend to unsecured creditors, contending that the objection should be overruled solely for this reason; and (2) they are both over 80 years of age and; the co-debtor Laura Jorgensen drives the Fiat vehicle to medical appointments in Fresno, while the debtor James Jorgensen uses the Lexus vehicle to commute to his office in Visalia, where he works as an account and transports clients and partners in his vehicle. As a consequence, the debtors argue, the Fiat vehicle is unavailable and not reasonably adequate for Mr. Jorgensen's use in his profession. ECF Nos. 77 & 78.

Initially, a 100% plan does not absolve the debtors from compliance with the applicable exemption statutes. There is no such exemption exception in the statutory scheme. Nor have the debtors cited any other authority for the court to ignore a lack of compliance with the exemption requirements.

Moreover, the debtors' plan is not confirmed yet and it may change several more times, prior to confirmation. A change in the plan may include decrease of dividend to unsecured creditors. Even if the debtors had a 100% plan confirmed, they may move to modify it post-confirmation, also decreasing the dividend to unsecured creditors. The debtors may also default under a confirmed plan, deciding to convert their case to chapter 7. On the other hand, the propriety of the debtors' exemption claims is directly responsible for the outcome of the hypothetical liquidation test analysis, which determines the ultimate dividend to unsecured creditors in both chapter 13 and chapter 7.

Further, the debtors' explanation that they need two vehicles does not address the requirements of C.C.P. § 704.060(c). The statute prohibits an exemption under section 704.060(a), if the vehicle exempted under section 704.010 is reasonably adequate for use in Mr. Jorgensen's business, as claimed by the debtors under C.C.P. § 704.060(a).

The debtors have not explained why Mr. Jorgensen cannot use the Fiat vehicle to commute to his office in Visalia and transport his clients and partners, while Mrs. Jorgensen uses the Lexus vehicle for medical appointments. This is a chapter 13 proceeding, meaning that they can keep both vehicles, even if they do not claim them both as exempt. This is especially so given that they are proposing to pay a 100% dividend to unsecured creditors.

However, the fact that they need two vehicles does not figure into the section 704.060(c) analysis. All section 704.060(c) asks is whether the use of the Fiat vehicle is reasonably adequate for Mr. Jorgensen's business. His response that it is not because his wife needs a vehicle too makes no sense in the context of section

704.060(c). For instance, the opposition does not say that there is a difference in the two vehicles, preventing Mr. Jorgensen from using the Fiat vehicle for the purposes of which he uses a vehicle in his business. The debtors have not met their burden of persuasion on establishing entitlement to the exemptions. Accordingly, the court will sustain the objection as to the Lexus vehicle.

34. [18-11388](#)-A-13 **IN RE: RAYMOND AVILES**
[JDR-3](#)

MOTION TO MODIFY PLAN
2-15-2019 [\[67\]](#)

RAYMOND AVILES/MV
JEFFREY ROWE

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 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.

35. [18-14190](#)-A-13 **IN RE: ADRIANE ASHFORD**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-19-2019 [[20](#)]

MARK ZIMMERMAN
\$77.00 FINAL INSTALLMENT PAYMENT 2/22/19

Final Ruling

The filing fee paid, the order to show cause is discharged.

36. [17-14292](#)-A-13 **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE
MEDINA
[NES-4](#)**

MOTION TO MODIFY PLAN
2-1-2019 [[100](#)]

JUAN MEDINA- HERRERA/MV
NEIL SCHWARTZ

No Ruling

37. [18-11292](#)-A-13 **IN RE: ANGEL PEREZ
[TCS-2](#)**

CONTINUED MOTION TO MODIFY PLAN
10-2-2018 [[40](#)]

ANGEL PEREZ/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING WITHDRAWN,

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed but then withdrawn

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 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.

38. [18-14592](#)-A-13 **IN RE: MICHAEL/RANDI KESTNER**
[SL-2](#)

MOTION TO CONFIRM PLAN
2-11-2019 [\[53\]](#)

MICHAEL KESTNER/MV
STEPHEN LABIAK

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 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.

39. [18-14896](#)-A-13 **IN RE: ROBERT DAY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-13-2019 [\[18\]](#)

MARK ZIMMERMAN
\$60.00 INSTALLMENT PAYMENT 2/13/19

Tentative Ruling

Although the balance of the installment payment due March 7, 2019, has been paid, an installment payment of \$77 will come due March 11, 2019. Pursuant to the instructions in the Order to Show Cause, if the March 11, 2019 payment has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

40. [18-12797](#)-A-13 **IN RE: ANTONIO LOZANO DE ANDA**
[MHM-7](#)

MOTION TO DISMISS CASE
2-12-2019 [\[87\]](#)

MICHAEL MEYER/MV
RICHARD STURDEVANT

Tentative Ruling

Motion: Dismiss Case
Notice: LBR 9014-1(f)(1); written opposition filed
Disposition: Granted
Order: Civil minute order

CASE DISMISSAL

The debtor has failed to confirm a plan causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). This case has been pending without a confirmed plan since July 10, 2018, over six months. And, the debtor is in violation of the court's 75-day order entered on November 19, 2018, in connection with the trustee's objection to the confirmation of a previous plan. ECF No. 58.

The order specifically provides, "IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1)." ECF No. 58.

75 days from the November 15, 2018 hearing date on the trustee's confirmation objection is January 29, 2019. March 22 is not the first hearing date available for plan confirmation after January 29.

The court has had several plan confirmation hearing dates in February. As such, there has been unreasonable delay in obtaining plan confirmation that is prejudicial to creditors. The debtor is no longer able to confirm a plan without violating the court's 75-day order.

For the reasons stated in the motion, cause exists to dismiss the case. 11 U.S.C. § 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.

41. [18-12797](#)-A-13 **IN RE: ANTONIO LOZANO DE ANDA**
[RS-2](#)

MOTION TO CONFIRM PLAN
2-15-2019 [[91](#)]

ANTONIO LOZANO DE ANDA/MV
RICHARD STURDEVANT

No Ruling