

**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: APRIL 13, 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. [17-10202](#)-A-13 LEONARD/SONYA HUTCHINSON MOTION TO DISMISS CASE
MHM-1 3-2-17 [[29](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

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 the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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.

2. [12-14604](#)-A-13 ARMANDO PEREZ
BCS-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP
DEBTORS ATTORNEY(S)
3-9-17 [[50](#)]

BENJAMIN SHEIN/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved in part, disapproved in part

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, Shein Law Group, PC has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3875.00 and reimbursement of expenses in the amount of \$239.12. 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 except for a small amount of compensated attributable to discharge and case closing procedures. The application represents that debtor is not eligible for a chapter 13 discharge at the completion of the plan. The court verified that the debtor received a discharge under chapter 7 in a case filed within the 4-year period before the order for relief in this case. The application, however, requests compensation for an estimated 2 hours for discharge-related work and case-closing services at the end of the case.

The court will allow the estimated time for case closing procedures (1.0 hours), because that should occur regardless of whether a discharge is entered. The court will not allow the time shown for discharge-related services in the approximate amount of 1.0 hours. The court will allow compensation in the amount requested with a reduction of \$250.00.

The court will approve compensation of \$3625.00, and reimbursement of expenses in the amount of \$239.12, 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.

Shein Law Group, PC'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 in part on a final basis and disapproved in part. The court allows final compensation in the amount of \$3625.00 and reimbursement of expenses in the amount of \$239.12. The court disallows compensation in the amount of \$250.00. The aggregate allowed amount equals \$3864.12. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$256.15 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 so long as debtor's plan indicates that such fees are not dischargeable after the plan's completion and entry of discharge. 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.

3. [16-14304](#)-A-13 TINA MORENO
MHM-1
MICHAEL MEYER/MV
MICHAEL ARNOLD/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

CONTINUED MOTION TO DISMISS
CASE
2-7-17 [[24](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [16-11906](#)-A-13 DANIEL/STACY BAGHDANOV
HDN-1
DANIEL BAGHDANOV/MV

OBJECTION TO CLAIM OF THE
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 4-1
2-23-17 [[44](#)]

HENRY NUNEZ/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Overruled without prejudice

Order: Civil minute order

The debtors object to the allowance of Claim No. 4-1 filed by the claimant, the IRS. Claim No. 4-1 has been filed in the amount of 114,162.72, with the amount of \$110,495.67 being claimed as secured and the balance as unsecured.

Specifically, the debtors object to the secured component of the claim, \$110,495.67. The basis for this objection is that the debtors' unencumbered personal property is worth much less than the secured amount of the claim. The debtors contend that they do not own any real estate and that their vehicles are fully secured (presumably by other liens that are consensual, though this is unclear from the objection and declaration). The objection itself requests a reduction of the secured claim of the IRS to \$6400, and the declaration, inconsistently, requests a reduction of the IRS's secured claim to \$57,897, which suggests that the vehicles are secured only by the IRS's lien. The debtors stated in their declaration that they own personal property, household items, valued at \$3900, total financial assets of \$500, and other personal property of \$2000, which aggregates about \$6400.

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); accord *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral." *Rash*, 520 U.S. at 961. "Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The proper procedure to value collateral in a chapter 13 case is by filing a motion to value collateral. Fed. R. Bankr. P. 3012. LBR 3015-1(j) also provides that "[i]f a proposed plan will reduce or eliminate a secured claim based on the value of its collateral . . . , the debtor must file, serve, and set for hearing a valuation motion" LBR 3007(d)(7) also describes the effect an order valuing collateral has on a proof of secured claim: the claimant's secured claim shall be the value of the collateral determined by the court.

CIVIL MINUTE ORDER

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.

7. [12-10318](#)-A-13 JAQUETTA WORTH CONTINUED MOTION FOR
SAH-11 COMPENSATION FOR SUSAN A. HEMB,
DEBTORS ATTORNEY(S)
1-3-17 [[178](#)]

SUSAN HEMB/Atty. for dbt.

No tentative ruling.

8. [16-14419](#)-A-13 STEVAN/ALBERTINA OGDEN MOTION TO VALUE COLLATERAL OF
TOG-2 SPECIALIZED LOAN SERVICING, LLC
STEVAN OGDEN/MV 3-14-17 [[31](#)]
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral.

The collateral is the debtor's principal residence located at 6915 Cindy Street, Winton, CA.

The court values the collateral at \$108,292. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 6915 Cindy Street, Winton, CA, has a value of \$108,292. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

9. [16-14020](#)-A-13 KURT/SABRINA PRINDIVILLE MOTION TO CONFIRM PLAN
JRL-1 2-17-17 [[38](#)]
KURT PRINDIVILLE/MV
JERRY LOWE/Atty. for dbt.

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.

10. [17-10427](#)-A-12 LUIS/ANGELA OLIVEIRA
WW-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WALTER WILHELM
LAW GROUP FOR RILEY C. WALTER,
DEBTORS ATTORNEY(S)
3-16-17 [[37](#)]

RILEY WALTER/Atty. for dbt.

Final Ruling

Application: Allowance of Interim 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 12 case, Walter Wilhelm Law Group has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$22,723.50 and reimbursement of expenses in the amount of \$1090.21.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 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 an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Walter Wilhelm Law Group's application for allowance of interim 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 an interim basis. The court allows interim compensation in the amount of \$22,723.50 and reimbursement of expenses in the amount of \$1090.21. The aggregate allowed amount equals \$23,813.71. As of the date of the application, the applicant held a retainer in the amount of \$20,943.75. The amount of \$2869.96 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 from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

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| 11. 12-13429 -A-13 RICHARD/KIMIE HUGHES
MHM-2
MICHAEL MEYER/MV
LEONARD WELSH/Atty. for dbt.
MICHAEL MEYER/Atty. for mv. | OBJECTION TO CLAIM OF SUNTRUST
MORTGAGE, INC., CLAIM NUMBER 3
2-15-17 [119] |
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Final Ruling

Objection: Objection to Claim No. 3

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

LEGAL STANDARDS

Deemed Allowance under § 502(a)

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.,* Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. *See* Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

State Law on Waiver

With limited exceptions, § 502(b)(1) of the Bankruptcy Code means that "any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

Under California state law, waiver can be asserted as a defense to a claim. "California courts will find waiver when a party intentionally relinquishes a right, or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." *Intel Corp. v. Hartford Acc. & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991) (citation omitted).

DISCUSSION

The respondent and claimant SunTrust Mortgage, Inc., has returned funds received from the trustee and/or has communicated to the trustee in writing that the loan has been charged off and has a \$0.00 balance.

But until an objection to the claim is brought, the claim remains allowed. And the trustee must continue to pay all allowed claims consistent with the plan. § 502(a).

By its return of funds and/or written statements, the claimant has waived its right to receipt of any further amounts on its claim. These acts are highly inconsistent with an intent to enforce the right to any unpaid balance of the claim. This also creates an impossibility for the trustee to pay the allowed claim consistent with the trustee's duties.

Given the claimant's waiver of its right to receive any remaining balance of its claim, the court will liquidate the amount of the claim at the amount paid by the trustee to the claimant.

The claim will be allowed as: an unsecured claim in the amount of \$11,158.83. The remaining balance of the claim will be disallowed.

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 chapter 13 trustee's objection to claim has been presented to the court. Having entered the default of the respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection to Claim No. 3 is sustained. The court liquidates the amount of the claim at the amount paid by the trustee on the claim. The claim will be allowed as an unsecured claim in the amount of \$11,158.83. The remaining balance of the claim will be disallowed.

12. [17-10334](#)-A-13 JENNIFER MOLINA
DJP-1
EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
MARK ZIMMERMAN/Atty. for dbt.
DON POOL/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY EDUCATIONAL EMPLOYEES
CREDIT UNION
3-21-17 [[22](#)]

No tentative ruling.

13. [17-10237](#)-A-13 SYLVIA ARELLANO
SW-1
ALLY FINANCIAL INC./MV
SCOTT LYONS/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY ALLY FINANCIAL INC.
2-27-17 [[21](#)]

No tentative ruling.

14. [17-10138](#)-A-13 GASPAR/FRANCISCA MENDEZ
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
3-2-17 [[28](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [15-10243](#)-A-13 JERRY/SARA GARCIA
MAZ-4
JERRY GARCIA/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO REFINANCE
3-13-17 [[58](#)]

Final Ruling

Motion: Approve Incurring of New Debt [Refinance Mortgage Loan]

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

Disposition: Granted

Order: Prepared by moving party

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

The debtor seeks to incur new debt to refinance an existing mortgage loan. The refinancing will pay off the debtor's existing mortgage loan and pay off all amounts owed under the confirmed chapter 13 plan.

Amended Schedules I and J have been filed indicating that the debtor can afford the refinanced debt. The court will grant the motion and approve the new debt.

16. [16-14444](#)-A-13 STEVEN WILLIAMS MOTION TO CONFIRM PLAN
JT-1 3-1-17 [[52](#)]
STEVEN WILLIAMS/MV
MICHAEL AVANESIAN/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

17. [17-10244](#)-A-13 DANIEL AMADOR MOTION TO DISMISS CASE
MHM-1 3-20-17 [[28](#)]
MICHAEL MEYER/MV

Tentative 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 debtors have failed to provide credit counseling certificates. 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). Credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

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 the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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.

18. [16-11950](#)-A-13 GENE/EVELYN FOX
BDB-2
GENE FOX/MV
BENNY BARCO/Atty. for dbt.

MOTION TO SELL AND/OR MOTION TO
PAY
3-29-17 [[41](#)]

No tentative ruling.

19. [17-10157](#)-A-13 MARY HALL

DISMISSED

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-24-17 [[27](#)]

Final Ruling

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

20. [17-10357](#)-A-13 DEAN RACKLEY
PBB-1
DEAN RACKLEY/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
FRANCHISE TAX BOARD
3-13-17 [[14](#)]

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 all his personal property. The FTB does not have a purchase money security interest in debtor's personal property. The court values the collateral at \$3,935.

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. All the debtor's personal property has a value of \$3,935. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$3935 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.

21. [17-10357](#)-A-13 DEAN RACKLEY
PBB-2
DEAN RACKLEY/MV

MOTION TO VALUE COLLATERAL OF
DEPARTMENT OF THE
TREASURY-INTERNAL REVENUE
SERVICE
3-13-17 [[20](#)]

PETER BUNTING/Atty. for dbt.

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 all his personal property. The U.S. Department of the Treasury, Internal Revenue Service, does not have a purchase money security interest in debtor's personal property. The California FTB has a senior lien on this collateral that leaves no value remaining to secure the lien held by the respondent. The court values the collateral at \$3,935.

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. All the debtor's personal property has a value of \$3,935. The respondent has a secured claim in the amount of \$0.00 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.

22. [11-14859](#)-A-13 LUIS/MARIA ALVARADO
JDM-6
LUIS ALVARADO/MV

MOTION TO AVOID LIEN OF
COLLECTIBLES MANAGEMENT
RESOURCES
3-27-17 [[88](#)]

JAMES MILLER/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$331,982.17

Property Value: \$200,500.00

Judicial Lien Avoided: \$12,933.17

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).

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 debt secured by the responding party's

lien. As a result, the responding party's judicial lien will be avoided entirely.

23. [11-14859](#)-A-13 LUIS/MARIA ALVARADO
JDM-7
LUIS ALVARADO/MV
JAMES MILLER/Atty. for dbt.

MOTION TO AVOID LIEN OF FIA
CARD SERVICES, NA
3-27-17 [[92](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$329,729.07

Property Value: \$200,500.00

Judicial Lien Avoided: \$10,680.07

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).

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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

24. [16-13265](#)-A-13 MICHELLE KEVORKIAN
TCS-4
MICHELLE KEVORKIAN/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
3-7-17 [[58](#)]

No tentative ruling.

25. [17-10269](#)-A-13 ELIDA ALMAGUER-CARRILLO
PBB-1
ELIDA ALMAGUER-CARRILLO/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
TRAVIS CREDIT UNION
3-13-17 [[16](#)]

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 2012 Mazda CX-7 S Touring Sport. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$14,722.

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 2012 Mazda CX-7 S Touring Sport has a value of \$14,722. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$14,722 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.

26. [17-10374](#)-A-13 JESSE/LISA VASQUEZ
DWE-1
NATIONSTAR MORTGAGE LLC/MV
SCOTT LYONS/Atty. for dbt.
DANE EXNOWSKI/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY NATIONSTAR MORTGAGE LLC
3-7-17 [[16](#)]

No tentative ruling.

27. [17-10284](#)-A-13 JUAN/MARIA RAMIREZ
TGM-1
WELLS FARGO BANK, N.A./MV

THOMAS GILLIS/Atty. for dbt.
TYNEIA MERRITT/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
AND/OR MOTION TO DISMISS CASE
3-22-17 [[29](#)]

No tentative ruling.

28. [17-10284](#)-A-13 JUAN/MARIA RAMIREZ
TOG-1
JUAN RAMIREZ/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ONE MAIN FINANCIAL
3-9-17 [[15](#)]

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 2009 Chevy Tahoe. 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 \$10,806.

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 2009 Chevy Tahoe has a value of \$10,806. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,806 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.