

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: MAY 5, 2020
CALENDAR: 9:00 A.M. CHAPTERS 9 AND 11 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. [19-27921](#)-A-11 **IN RE: SAN JOAQUIN AIDS FOUNDATION**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
12-26-2019 [[1](#)]

DAVID JOHNSTON/ATTY. FOR DBT.

No Ruling

2. [19-23553](#)-A-11 **IN RE: SHAWN/HEATHER WHITNEY**
[JGD-8](#)

MOTION FOR COMPENSATION FOR JOHN GREGORY DOWNING, DEBTORS'
ATTORNEY
4-7-2020 [[208](#)]

JOHN DOWNING/ATTY. FOR DBT.
OPPOSITION

Final Ruling

Motion: First Interim Fee Application

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

Disposition: Denied without prejudice

Order: Civil minute order

Applications for compensation in excess of \$1,000 must be served on all creditors. Fed. R. Bankr. P. 2002(a)(6). The applicant has filed two Certificate of Service in support of this application. Proof of Service, ECF No. 212, 219. The following creditors were not served: (1) American Contractors Indemnity Company; (2) JP Morgan Chase; (3) LVNV Funding; (4) Wendy A. Locke; (5) Premier Bankcard, LLC; (6) Prosper Marketplace, Inc., c/o Weinstein & Riley; (7) Synchrony Bankr; and (8) Lisa M. Wilshire Alstead. The court will issue a civil minute order.

3. [19-23553](#)-A-11 **IN RE: SHAWN/HEATHER WHITNEY**
[JGD-9](#)

MOTION TO VALUE COLLATERAL OF AMERICA CREDIT UNION
4-14-2020 [[214](#)]

JOHN DOWNING/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Ford F-150

Value: \$19,000

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 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 11 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.*

In this case, the debtor seeks to value collateral consisting of a motor vehicle described above in the amount described above. The court values the vehicle at \$19,000.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value 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 2016 Ford F-150 has a value of \$19,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$19,000.00 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.

4. [13-23371](#)-A-11 **IN RE: JUAN/MARGARITA RAMIREZ**
[TCS-12](#)

MOTION FOR ENTRY OF DISCHARGE
3-18-2020 [[336](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.
THOMAS GILLIS/ATTY. FOR MV.

Final Ruling

Motion: Entry of Discharge

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

Disposition: Granted

Order: Civil minute order

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

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).

DISCHARGE

Individuals in Chapter 11 must show entitlement to discharge upon completion of their plan. Three subdivisions of 11 U.S.C. § 1141(d):

(d)(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan--

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind

specified in section 502(g), 502(h), or 502(i) of this title, whether or not--(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title; (ii) such claim is allowed under section 502 of this title; or (iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

11 U.S.C. § 1141(d)(1).

Subdivision (d)(3) excepts certain debtors and plans from discharge. It provides:

(3) The confirmation of a plan does not discharge a debtor if--

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

Subdivision (d)(5) provides further guidance on the issuance of discharge for individual Chapter 11 debtors. It provides:

In a case in which the debtor is an individual...unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan...

11 U.S.C. § 1141(d)(5)

Here, the debtors' plan provides for reorganization, rather than liquidation, and the debtors have now made all payments required by the plan. As a result, if the debtors otherwise qualify for discharge, the Clerk of the Court is authorized to issue an order of discharge.

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.

Juan Ramirez and Margarita Ramirez's motion 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, and the Clerk of the Court is authorized to issue an order of discharge, if the debtors otherwise satisfy the requirements for discharge under Chapter 11.