

**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: MAY 30, 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. [19-10806](#)-A-13 **IN RE: RANDY/EUFEMIA BROWN**
[MHM-1](#)

MOTION TO DISMISS CASE
4-29-2019 [\[24\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [19-10914](#)-A-13 **IN RE: ALTON/JEANNA ARNOLD**
[MHM-1](#)

MOTION TO DISMISS CASE
4-30-2019 [\[21\]](#)

MICHAEL MEYER/MV
MICHAEL ARNOLD
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [19-11419](#)-A-13 **IN RE: MARIANO SANCHEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-14-2019 [\[24\]](#)

CHRISTOPHER FISHER

Tentative Ruling

This order to show cause will be discharged as moot because the court is dismissing the case on the debtor's motion to dismiss (DCN CGF-2), set for hearing on this May 30, 2019 calendar.

4. [19-11419](#)-A-13 **IN RE: MARIANO SANCHEZ**
[CGF-2](#)

MOTION TO DISMISS CASE
5-16-2019 [\[25\]](#)

MARIANO SANCHEZ/MV
CHRISTOPHER FISHER

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The debtor seeks dismissal of this case pursuant to 11 U.S.C. § 1307(b). The case has not been converted. The motion will be granted and the case will be dismissed.

CIVIL MINUTE ORDER

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

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

The debtor's motion to dismiss has been presented to the court. Having considered the well-pleaded facts of the motion and considered responses to the motion, if any,

IT IS ORDERED that the motion is granted. The case is hereby dismissed.

5. [19-10920](#)-A-13 **IN RE: ADELA AGTARAP**
[MHM-1](#)

MOTION TO DISMISS CASE
4-29-2019 [\[22\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied as moot

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).

MOTION TO DISMISS

The chapter 13 trustee moves to dismiss this case, contending that the debtor has not provided the trustee with or filed:

(1) all pages of the most recent federal tax return; and

(2) a statement of the amount of monthly net income, as required by section 521(a)(1)(B)(v) (also known as Schedule I, item 8(a) statement).

The trustee also complains that the debtor has failed to set a plan confirmation hearing.

AUTOMATIC CASE DISMISSAL

Under 11 U.S.C. § 521(i)(1), "if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition."

Here, the debtor filed this case on March 13, 2019. The debtor had not filed the required section 521(a)(1)(B)(v) statement by the time this motion was filed on April 29, 2019 (47 days post-petition). Accordingly, this case was automatically dismissed on April 27, 2019, the 46th day post-petition. This makes the subject motion moot. It will be denied as moot.

Nevertheless, the court will confirm that the case was automatically dismissed on April 27, 2019, pursuant to section 521(i)(1).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to dismiss is denied as moot.

IT IS FURTHER ORDERED that the court confirms that the case was dismissed automatically under 11 U.S.C. § 521(i)(1) on April 27, 2019.

IT IS FURTHER ORDERED that the Clerk of the court shall note on the case docket the date of the automatic dismissal of the case.

6. [18-14037](#)-A-13 **IN RE: DESIREE MARTINEZ**
[SL-3](#)

MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL CREDIT UNION
5-14-2019 [\[84\]](#)

DESIREE MARTINEZ/MV
SCOTT LYONS

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle 2015 Chevrolet Impala]

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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 2015 Chevrolet Impala. 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 \$18,350.

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 2015 Chevrolet Impala vehicle has a value of \$18,350. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$18,350 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.

7. [19-11043](#)-A-13 **IN RE: SAMUEL MUNGUIA**
[MHM-1](#)

MOTION TO DISMISS CASE
4-29-2019 [\[15\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [19-10951](#)-A-13 **IN RE: JOHN MASTRO**
[MHM-2](#)

MOTION TO DISMISS CASE
5-1-2019 [\[18\]](#)

MICHAEL MEYER/MV
DAVID JENKINS
RESPONSIVE PLEADING

No Ruling

9. [18-14155](#)-A-13 **IN RE: SANDRA BOMBITA**
[TCS-3](#)

MOTION TO VALUE COLLATERAL OF BALBOA THRIFT AND LOAN
4-25-2019 [\[34\]](#)

SANDRA BOMBITA/MV
TIMOTHY SPRINGER
DISMISSED 5/3/18

Final Ruling

The case dismissed, the matter is dropped as moot.

10. [17-13863](#)-A-13 **IN RE: MARK GENTRY AND KATRINA MCDONALD**
GENTRY
[NES-3](#)

OBJECTION TO CLAIM OF COMMERCIAL TRADE, INC., CLAIM NUMBER 5
4-15-2019 [\[66\]](#)

MARK GENTRY/MV
NEIL SCHWARTZ

Final Ruling

Objection: Objection to Claim

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

Disposition: Overruled without prejudice

Order: Civil minute order

The court will overrule the objection without prejudice on the grounds of insufficient service of process on the respondent creditor. An objection to a proof of claim is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. *In re Ass'n of Volleyball Professionals*, 256 B.R. 313, 316 (Bankr. C.D. Cal. 2000); see also *Internal Revenue Service v. Taylor (In re Taylor)*, 132 F.3d 256, 260 (5th Cir. 1998); *RNI-NV, LP v.*

Field (In re Maui Indus. Loan & Fin. Co.), 580 B.R. 886, 894-95 (D. Haw. 2018). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. ECF No. 69 at 2.

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 debtors' objection to proof of claim 5-1 has been presented to the court. Having considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the objection is overruled without prejudice.

11. [18-11467](#)-A-13 **IN RE: FRANKLIN BAER**
[KSB-4](#)

MOTION TO MODIFY PLAN
4-11-2019 [[64](#)]

FRANKLIN BAER/MV
KELLY BRESSO
RESPONSIVE PLEADING

No Ruling

12. [18-10772](#)-A-13 **IN RE: EDUARDO FELIX**
[JRL-4](#)

MOTION TO MODIFY PLAN
4-25-2019 [\[62\]](#)

EDUARDO FELIX/MV
JERRY LOWE
PLAN WITHDRAWN

Final Ruling

Motion: Modify Confirmed Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Denied as moot

Order: Civil minute order

THE MODIFIED PLAN HAS BEEN WITHDRAWN

Chapter 13 debtors may modify a confirmed plan before completion of payments under the plan. 11 U.S.C. § 1329(a). This motion requests approval of a modified plan under § 1329(a). But the requested modified plan has been withdrawn. Because the debtor has withdrawn the subject plan, the court will deny the motion as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to modify the plan is denied as moot.

13. [19-10875](#)-A-13 **IN RE: MARTHA JACKSON**
[MHM-1](#)

MOTION TO DISMISS CASE
4-30-2019 [\[13\]](#)

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [19-10975](#)-A-13 **IN RE: EDUARDO FRANCO**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF WESTERRA CREDIT UNION
5-1-2019 [\[17\]](#)

EDUARDO FRANCO/MV
THOMAS GILLIS

Final Ruling

Motion: Value Collateral
Disposition: Denied without prejudice
Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. See ECF No. 21. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h) (1)-(3).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the debtor's motion to value collateral is denied without prejudice.

15. [19-10787](#)-A-13 **IN RE: TERELL WAGGONER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-9-2019 [\[31\]](#)

ERIC ESCAMILLA
\$80.00 INSTALLMENT PAYMENT 5/14/19

Final Ruling

The installment payment having been paid, the order to show cause is discharged.

16. [19-10787](#)-A-13 **IN RE: TERELL WAGGONER**
[MHM-1](#)

MOTION TO DISMISS CASE
4-29-2019 [[18](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA
RESPONSIVE PLEADING

No Ruling

17. [19-10787](#)-A-13 **IN RE: TERELL WAGGONER**
[MHM-2](#)

MOTION TO DISMISS CASE
4-30-2019 [[22](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA
RESPONSIVE PLEADING

No Ruling

18. [19-10889](#)-A-13 **IN RE: ANTONIO VERA**
[MHM-1](#)

MOTION TO DISMISS CASE
4-30-2019 [[18](#)]

MICHAEL MEYER/MV
BENNY BARCO
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [16-14590](#)-A-13 **IN RE: RICHARD/KRISTINE WALLACE**
[MHM-1](#)

MOTION TO DISMISS CASE
4-26-2019 [[71](#)]

MICHAEL MEYER/MV
JEFFREY ROWE

No Ruling

20. [19-10797](#)-A-13 **IN RE: ARTHUR/LEANN LOPEZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-26-2019 [\[23\]](#)

SANTANDER CONSUMER USA INC./MV
PETER BUNTING
JENNIFER WANG/ATTY. FOR MV.
NON-OPPOSITION

Final Ruling

Motion: Relief from Debtor and Co-Debtor Stay
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order
Property: 2010 VW Tiguan vehicle

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

CO-DEBTOR STAY OF § 1301

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

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

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

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

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

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

In this case, the confirmed plan fails to provide for payment in full of the movant's claim. The debtor's plan provides for the surrender of the vehicle. ECF No. 2 at 4. The court also notes that the movant obtained possession of the subject vehicle pre-petition. ECF No. 27 at 3. As a result, the movant is entitled to relief from the co-debtor stay in this case.

For the same reasons, the movant is entitled to relief from stay also as to the debtor and the bankruptcy estate. In addition, the debtor has filed a non-opposition to the motion. Cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Santander Consumer USA, Inc.'s motion for relief from the co-debtor stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2010 VW Tiguan vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that the co-debtor stay is vacated as to the co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is also waived with respect to the vacating of the co-debtor stay.

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

21. [14-12359](#)-A-13 **IN RE: ANDRES/BILLIE SALAZAR**
[TCS-6](#)

MOTION TO SELL, AND/OR MOTION TO INCUR DEBT
5-20-2019 [[107](#)]

ANDRES SALAZAR/MV
TIMOTHY SPRINGER
NO OST

Final Ruling

The motion will be denied without prejudice because it was filed with the court on May 20, 2019, only 10 days prior to the May 30 hearing, without an order shortening the minimum 14-day notice required by the LBR 9014-1(f). See LBR 9014-1(f)(2).

22. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[NEA-1](#)

CONTINUED MOTION TO CONFIRM PLAN
1-9-2019 [[31](#)]

JAMES JORGENSEN/MV
NICHOLAS ANIOTZBEHERE
RESPONSIVE PLEADING

No Ruling