

**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 31, 2018

CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-10405](#)-A-13 **IN RE: MARIA GUARDADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-11-2018 [[29](#)]

THOMAS GILLIS
FINAL INSTALLMENT PAYMENT OF \$185 PAID 5/21/18

Final Ruling

The final installment paid, the order to show cause is discharged.

2. [16-12713](#)-A-13 **IN RE: JASON ATHERTON AND GENZZIA
DOVIGI-ATHERTON
[TCS-4](#)**

MOTION TO MODIFY PLAN
4-23-2018 [[57](#)]

JASON ATHERTON/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

3. [13-15815](#)-A-13 **IN RE: MICHELE BRASHEAR
[GH-1](#)**

MOTION TO MODIFY PLAN
4-18-2018 [[45](#)]

MICHELE BRASHEAR/MV
GARY HUSS
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by
the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

NON-COMPLIANCE WITH LOCAL RULES

Local Rule 3015-1(c) requires the use of this district's form chapter 13 plan. This district's form chapter 13 plan, Form EDC 3-080, has undergone revisions over the years. The most recent revision is the form that debtors are required to use.

In this case, the debtor has not proposed a chapter 13 plan on the correct form plan. The court will deny the motion and disapprove the modification on this ground.

CIVIL MINUTE ORDER

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

The debtor's motion to modify the chapter 13 plan in this case has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

4. [13-12631](#)-A-13 **IN RE: MARK/FABIOLA BUTCHER**
[MHM-2](#)

CONTINUED OBJECTION TO CLAIM OF JPMORGAN CHASE BANK, N.A.,
CLAIM NUMBER 6
3-21-2018 [[226](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling

5. [18-11131](#)-A-13 **IN RE: BLANCA ALVARADO**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF CHASE MORTGAGE
5-2-2018 [[17](#)]

BLANCA ALVARADO/MV
THOMAS GILLIS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

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. [18-11377](#)-A-13 **IN RE: ERIC/TARA BOHLANDER**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL
SERVICES, INC.
5-3-2018 [\[8\]](#)

ERIC BOHLANDER/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2012 Cadillac SRX Luxury Collection. 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 \$17,802.

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 Cadillac SRX Luxury Collection has a value of \$17,802. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$17,802 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. [18-11377](#)-A-13 **IN RE: ERIC/TARA BOHLANDER**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF FIRST ELECTRONIC BANK
5-3-2018 [\[13\]](#)

ERIC BOHLANDER/MV
PETER BUNTING

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of personal property described as a couch and bedroom set. The debt secured by such property was not incurred within the 1-year period

preceding the date of the petition. The court values the collateral at \$1,000.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a couch and bedroom set has a value of \$1,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1,000 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

8. [18-10179](#)-A-13 **IN RE: PETER LEON**
[MHM-3](#)

MOTION TO DISMISS CASE
4-30-2018 [[38](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

Final Ruling

The case having been dismissed, the motion is denied as moot.

9. [18-11384](#)-A-13 **IN RE: DAVID MOORE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-15-2018 [[20](#)]

Tentative Ruling

If the installment payment of \$79 due May 10, 2018, is not paid by the time of the hearing, the case may be dismissed without further notice or hearing.

10. [18-10990](#)-A-13 **IN RE: LEAH GARCIA**
[JDR-1](#)

MOTION TO DISMISS CASE
5-1-2018 [[34](#)]

JOHN GARCIA/MV
JEFFREY ROWE/ATTY. FOR MV.

[The hearing on this matter will follow the hearing on the trustee's motion to dismiss having docket control no. MHM-1.]

Tentative Ruling

The court has issued a ruling dismissing this case. The court will deny the motion as moot.

11. [18-10990](#)-A-13 **IN RE: LEAH GARCIA**
[MHM-1](#)

MOTION TO DISMISS CASE
5-3-2018 [[42](#)]

MICHAEL MEYER/MV

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 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 a required tax return (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).

The debtor has failed to provide a credit counseling certificate showing that the debtor received the required credit counseling within the 180-day period preceding the petition date. With exceptions not applicable here, an individual cannot be a debtor

under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). And credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

Lastly, the debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

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.

12. [18-10893](#)-A-13 **IN RE: JIMMIE/VELMA PERRYMAN**
[SL-2](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.
5-16-2018 [\[32\]](#)

JIMMIE PERRYMAN/MV
SCOTT LYONS

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

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 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 BMW 550i. 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 \$11,625.

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 BMW 550i has a value of \$11,625. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,625 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

13. [18-11029](#)-A-13 **IN RE: SYLVIA NICOLE**
[SSA-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY T2M
INVESTMENTS, LLC
4-25-2018 [[27](#)]

T2M INVESTMENTS, LLC/MV
STEPHEN LABIAK
STEVEN ALTMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling