

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JULY 3, 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. [19-11101](#)-A-13 **IN RE: SERGIO LAZARO,**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-28-2019 [\[24\]](#)

SUSAN SALEHI
DISMISSED 6/6/19

Final Ruling

The case having been dismissed, the matter is dropped as moot.

2. [19-11101](#)-A-13 **IN RE: SERGIO LAZARO,**
 [MHM-1](#)

MOTION TO DISMISS CASE
5-23-2019 [\[20\]](#)

MICHAEL MEYER/MV
SUSAN SALEHI
DISMISSED 6/6/19

Final Ruling

The case having been dismissed, the matter is dropped as moot.

3. [17-12105](#)-A-13 **IN RE: ALEXANDER JOHNSON**
 [PK-6](#)

MOTION TO MODIFY PLAN
5-6-2019 [\[118\]](#)

ALEXANDER JOHNSON/MV
PATRICK KAVANAGH

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

4. [19-10719](#)-A-13 **IN RE: JAMESON/DAYNA SHEPHERD**
[PK-1](#)

MOTION TO CONFIRM PLAN
5-6-2019 [\[33\]](#)

JAMESON SHEPHERD/MV
PATRICK KAVANAGH

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

5. [16-14440](#)-A-13 **IN RE: THOMAS/JENNIFER HERNANDEZ**
[RSW-2](#)

MOTION TO SELL
6-12-2019 [\[34\]](#)

THOMAS HERNANDEZ/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Sell Property [Real Property]

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

Property: 7702 Valle De Baztan Drive, Bakersfield, California

Buyer: Charles and Sonja Hester

Sale Price: 376,000

Sale Type: Private sale subject to overbid opportunity

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).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is not property of the estate because the debtor's confirmed plan provides that property of the estate revests in debtor upon confirmation of the plan. However, the confirmed plan obligates the debtor to obtain court authorization prior to transferring property, so the plan provides the basis for the court's authority to decide whether to approve the sale.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

6. [19-11351](#)-A-13 **IN RE: NORMA YANEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-5-2019 [\[50\]](#)

Tentative Ruling

If the installment of \$77.00 due June 3, 2019 and the installment of \$77.00 due July 1, 2019 have not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

7. [14-12354](#)-A-13 **IN RE: CHAIRRALYN WASHINGTON**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-13-2019 [\[72\]](#)

SANTANDER CONSUMER USA INC./MV
RANDY RISNER
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied in part as moot

Order: Civil minute order

Subject: 2013 Chevrolet Captiva

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).

AS TO THE ESTATE

The motion will be dismissed as moot with respect to the estate. There is no automatic stay as to the estate because the movant's claim arose post-petition and after the court had already confirmed a plan revesting all property in the debtor. The loan underlying the movant's claim was made in December 2014, whereas the court confirmed debtor's plan on October 23, 2014. ECF No. 74 at 2; ECF No. 60.

AS TO THE DEBTOR

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as four postpetition payments are past due. The total postpetition delinquency is approximately \$1,641.

The motion will be granted as to the debtor 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 automatic 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 denied as moot as to the estate.

IT IS FURTHER ORDERED that the motion is granted as to the debtor. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Chevrolet Captiva vehicle, as to the debtor. 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, as to the debtor.

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.

8. [18-14254](#)-A-13 **IN RE: JOSEPH CLEVINGER**
[RSW-3](#)

MOTION TO MODIFY PLAN
5-15-2019 [\[59\]](#)

JOSEPH CLEVINGER/MV
ROBERT WILLIAMS

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

9. [19-11863](#)-A-13 **IN RE: DEBRA JARRETT**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
6-17-2019 [[13](#)]

ROBERT WILLIAMS

No Ruling

10. [19-10386](#)-A-13 **IN RE: JOSE RAMIREZ**

CONTINUED AMENDED/MODIFIED PLAN
4-15-2019 [[30](#)]

MICHAEL AVANESIAN

No Ruling

11. [19-10386](#)-A-13 **IN RE: JOSE RAMIREZ**
[JTL-1](#)

MOTION TO CONFIRM PLAN
5-28-2019 [[48](#)]

JOSE RAMIREZ/MV
MICHAEL AVANESIAN
RESPONSIVE PLEADING

No Ruling

12. [19-10386](#)-A-13 **IN RE: JOSE RAMIREZ**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
5-3-2019 [[39](#)]

MICHAEL MEYER/MV
MICHAEL AVANESIAN

No Ruling

13. [19-10791](#)-A-13 **IN RE: JASON/RANDI PATTERSON**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF SAFE 1 CREDIT UNION
6-3-2019 [\[23\]](#)

JASON PATTERSON/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle (2007 Toyota Tacoma 4WD)]

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

Disposition: Denied without prejudice

Order: Civil minute order

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2007 Toyota Tacoma 4WD. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition.

However, the court does not have probative or admissible evidence of value for the vehicle. The only evidence of value in the record is a statement from the debtors in their supporting declaration, stating that:

When we filed bankruptcy, the car had 130,000 miles on it and we believed it was worth no more than \$10,825.00 because of **some needed repairs**. We determined that value by **looking**

online to get an idea of the amount of money for which this type of vehicle was being sold at that time.

The creditor's Proof of Claim shows that we owe \$18,549.59 and that they believe it is worth that much. That is **probably not a possibility**, as that is **several thousand dollars higher** than the **online valuations** for a car that is in clean retail condition. Our car is **not in that condition**. We believe that the most it could be worth is \$12,125.00.

ECF No. 25 at 1-2 (emphasis added).

The standard for valuing vehicles is replacement value, defined as "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." 11 U.S.C. § 506(a)(2).

The evidence is inadmissible, vague, and ambiguous. The debtors are referring to "online valuations" and "looking online" but do not say what online valuations and where they were looking online. "Several thousand dollars" is vague. The court needs an exact figure. The reference that their vehicle is "not in that condition" begs the question of what is the condition of their vehicle. "Some needed repairs" does not tell the court the condition of the vehicle. The court does not understand the expression "probably not a possibility" either.

The court cannot value the vehicle at the proposed value by the debtors. There is no admissible evidence in the record.

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' 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 denied without prejudice.

14. [19-11496](#)-A-13 **IN RE: CHARISSA EDWARDS**
[RSW-1](#)

MOTION TO INCUR DEBT
6-4-2019 [\[16\]](#)

CHARISSA EDWARDS/MV
ROBERT WILLIAMS

Final Ruling

Motion: Approve New Debt [Vehicle Lease, Replacing Old Vehicle Lease]

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 finance a lease of a vehicle. The monthly payment on the new vehicle lease will be the same as the debtor's existing vehicle lease. As the debtor is not changing her monthly obligation on her vehicle lease, the debtor can afford both the plan payment and the proposed monthly lease payment of approximately \$390. The court will grant the motion, and the trustee will approve the order as to form and content.

15. [19-11496](#)-A-13 **IN RE: CHARISSA EDWARDS**
[RSW-2](#)

MOTION TO INCUR DEBT
6-18-2019 [\[20\]](#)

CHARISSA EDWARDS/MV
ROBERT WILLIAMS

No Ruling

16. [19-11864](#)-A-13 **IN RE: KIMBERLY CHANEY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
6-18-2019 [\[16\]](#)

ROBERT WILLIAMS

No Ruling

17. [19-11865](#)-A-13 **IN RE: MANUEL DURAN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
6-18-2019 [\[18\]](#)

ROBERT WILLIAMS

No Ruling

18. [19-12372](#)-A-13 **IN RE: THIESEN HERNANDEZ**
[RS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
6-19-2019 [\[14\]](#)

THIESEN HERNANDEZ/MV
RICHARD STURDEVANT

Tentative Ruling

Motion: Extend the Automatic Stay

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).

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the

30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

19. [14-12359](#)-A-13 **IN RE: ANDRES/BILLIE SALAZAR**
[TCS-7](#)

MOTION TO SELL AND/OR MOTION TO INCUR DEBT
6-21-2019 [[120](#)]

ANDRES SALAZAR/MV
TIMOTHY SPRINGER
OST

No Ruling