

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, September 2, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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, and all parties will need to appear at the hearing unless otherwise ordered. 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.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [21-11703](#)-A-13 **IN RE: REYMUNDO GARZA**
[BDB-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
8-3-2021 [\[26\]](#)

REYMUNDO GARZA/MV
BENNY BARCO/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Reymundo A. Garza ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing the Debtor's 2016 Hyundai Veloster ("Vehicle"), which is the collateral of Wells Fargo Dealer Services ("Creditor"). Doc. #26.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "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).

Debtor asserts the Vehicle was purchased more than 910 days before the filing of this case. Decl. of Debtor, Doc. #28. Debtor asserts a replacement value of the Vehicle of \$15,000.00 and asks the court for an order valuing the Vehicle

at \$15,000.00. Doc. #28. Debtor is competent to testify as to the value of the Vehicle. Creditor filed a proof of claim on July 12, 2021, which asserted a secured claim of \$8,366.21. Claim 1. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. The value of the Vehicle will be fixed at \$15,000.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

2. [21-10171](#)-A-13 **IN RE: MICHELLE/MANUEL VALENCIA**
[EPE-2](#)

MOTION TO CONFIRM PLAN
7-16-2021 [\[67\]](#)

MANUEL VALENCIA/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to confirm the third modified chapter 13 plan. Tr.'s Opp'n, Doc. #78. Deutsche Bank National Trust Company, as Trustee for Morgan Stanley Capital I Inc. Trust 2006-HE2 Mortgage Pass-Through Certificates, Series 2006-HE2 by and through its authorized loan servicing agent PHH Mortgage Corporation ("Creditor") also filed written opposition. Doc. #74. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Michelle Diana Valencia and Manuel Fernando Valencia (together, "Debtors") filed their third modified chapter 13 plan ("Plan") on July 7, 2021. Doc. #58. Creditor objects to confirmation of the Plan on the ground that the Plan provides for inconsistent treatment of Creditor's secured claim and impermissibly modifies Creditor's rights as the holder of a claim secured only by an interest in Debtors' principal residence. Doc. #74. The Plan places Creditor in both Class 2(A) and Class 4. Plan, Doc. #58. Trustee objects to confirmation of the Plan because the Plan does not bring payments current, and, based on the increased payments proposed by the Plan, Debtors are delinquent by approximately \$11,869 through month six. Doc. #78. Trustee also objects because Debtors list a secured creditor as a holder of an unsecured claim. Doc. #78.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtors be able to make all payments under the plan and comply with the plan. 11 U.S.C.

§ 1325(a)(6). This is known as the feasibility requirement. Here, Debtors have not demonstrated that the Plan is feasible. Debtors are delinquent by at least \$11,869 in Plan payments and have classified Creditor in two distinct classes. Debtors have not demonstrated that they will be able to make payments under the Plan and comply with the Plan. Debtors have not responded to the objections raised by Trustee or Creditor.

Accordingly, the motion to confirm the Plan will be DENIED.

3. [21-10171](#)-A-13 **IN RE: MICHELLE/MANUEL VALENCIA**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
7-9-2021 [\[63\]](#)

MICHAEL MEYER/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion to dismiss was originally filed by the chapter 13 trustee ("Trustee") on July 9, 2021 and set for hearing on August 12, 2021 at 9:30 a.m. Doc. ##63-66. Michelle Diana Valencia and Manuel Fernando Valencia (together, "Debtors") never responded to the motion, but on July 16, 2021, Debtors moved to confirm their third modified chapter 13 plan and set that motion for hearing on September 2, 2021. Doc. ##67-71. On August 12, 2021, the court continued the hearing on Trustee's motion to dismiss to track with Debtors' motion to confirm the third modified chapter 13 plan. Civil Minutes, Doc. #75.

Debtors' motion to confirm the third modified chapter 13 plan is currently scheduled to be heard as matter no. 2, above. Unless the chapter 13 plan is confirmed or Trustee's motion is withdrawn, the court is inclined to grant the motion to dismiss.

Trustee moves to dismiss for: (1) unreasonable delay by the debtors that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1); and (2) failure to make all payments due under the plan under 11 U.S.C. § 1307(c)(4). Doc. #63. Trustee states that, as of July 9, 2021, Debtors were delinquent in the amount of \$7,898.01. Doc. #65. According to Trustee's objection to confirmation of Debtors' third modified plan, Debtors are delinquent by approximately \$11,869 through July 2021, and Debtors' third modified plan will not cure this default. Doc. #78. Debtors commenced this chapter 13 case on January 27, 2021 and have yet to confirm a chapter 13 plan. Debtors did not respond to Trustee's motion.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors

that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

Accordingly, this motion will be GRANTED. The case will be dismissed.

1. [20-11908](#)-A-13 **IN RE: BRIAN/STEPHANIE RICH**
[21-1003](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-1-2021 [\[1\]](#)

RICH ET AL V. ASPEN PROPERTIES GROUP, LLC AS TRUSTEE OF AG3
PETER BUNTING/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to November 3, 2021, at 2:00 p.m.

ORDER: The court will issue an order.

Pursuant to the plaintiff's status report filed on August 30, 2021, the status conference will be continued to November 3, 2021, at 2:00 p.m. Doc. #21.

The parties shall file either joint or unilateral status report(s) not later than October 27, 2021.

2. [19-14729](#)-A-13 **IN RE: JASON/JODI ANDERSON**
[19-1131](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-10-2019 [\[1\]](#)

ANDERSON ET AL V. NATIONAL ENTERPRISE SYSTEMS, INC.
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [21-10842](#)-A-7 **IN RE: JESUS FLORES AND LETICIA HERNANDEZ**
[21-1029](#)

STATUS CONFERENCE RE: COMPLAINT
7-7-2021 [\[1\]](#)

VOKSHORI LAW GROUP V. FLORES
NIMA VOKSHORI/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

At the adversary proceeding status conference, the parties should be prepared to explain to the court why they have not filed the discovery plan as required by the Order to Confer on Initial Disclosures and Setting Deadlines filed in this adversary proceeding on July 7, 2021. Doc. #5.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
7-8-2021 [[203](#)]

NICOLE V. ALTMAN ET AL
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to September 30, 2021, at 11:00 a.m.

NO ORDER REQUIRED.

On August 26, 2021, the court issued an order continuing the status conference to September 30, 2021, at 11:00 a.m. Doc. #252