

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

Honorable Fredrick E. Clement  
Modesto Federal Courthouse  
1200 I Street, Suite 4  
Modesto, California

**PRE-HEARING DISPOSITIONS**

**DAY:** TUESDAY  
**DATE:** SEPTEMBER 17, 2019  
**CALENDAR:** 11:00 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. [19-90600](#)-A-13     **IN RE: JANICE RATTEREE**  
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER  
8-26-2019    [[19](#)]

ROBERT FONG

**No Ruling**

2. [19-90604](#)-A-13     **IN RE: CURTIS/SHARI ESCOBAR**  
[CJO-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY M&T BANK  
8-23-2019    [[22](#)]

BRIAN HADDIX  
CHRISTINA O/ATTY. FOR MV.

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 28.

3. [19-90604](#)-A-13     **IN RE: CURTIS/SHARI ESCOBAR**  
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER  
8-26-2019    [[25](#)]

BRIAN HADDIX

**No Ruling**

4. [19-90415](#)-A-13     **IN RE: LEWIS/JOSEFA HAMPTON**  
[RDG-2](#)

MOTION TO DISMISS CASE  
9-3-2019    [[29](#)]

BRIAN HADDIX

**No Ruling**

5. [19-90615](#)-A-13     **IN RE: GREG/TAMMY LILLARD**  
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PINGORA LOAN SERVICING,  
LLC  
8-13-2019    [[16](#)]

BRIAN HADDIX  
ASYA LANDA/ATTY. FOR MV.

**No Ruling**

6. [19-90615](#)-A-13     **IN RE: GREG/TAMMY LILLARD**  
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER  
8-26-2019    [[21](#)]

BRIAN HADDIX

**No Ruling**

7. [18-90820](#)-A-13     **IN RE: KENNETH CRAWFORD**  
[SLH-1](#)

MOTION TO MODIFY PLAN  
7-31-2019    [[21](#)]

SETH HANSON  
RESPONSIVE PLEADING

**No Ruling**

8. [19-90627](#)-A-13     **IN RE: RALPH/KIMBERLEY MCCARDLE**  
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER  
8-26-2019    [\[17\]](#)

RICHARD KWUN

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c)(4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

Chapter 13 debtors may amend the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files an amended plan under § 1323, the amended plan becomes the plan. 11 U.S.C. § 1323(b). Filing an amended plan renders moot any objection to confirmation of the prior plan. The debtor has filed an amended plan after this objection to confirmation was filed. The objection will be overruled 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 objection to confirmation is overruled as moot.

9. [19-90738](#)-A-13     **IN RE: ANTHONY GODINEZ**  
[RDG-1](#)

MOTION TO DISMISS CASE  
9-3-2019    [\[9\]](#)

**No Ruling**

10. [19-90146](#)-A-13     **IN RE: LEVON GADSON**  
[LG-4](#)

MOTION TO CONFIRM PLAN  
8-12-2019    [\[69\]](#)

GARY SAUNDERS  
RESPONSIVE PLEADING

**No Ruling**

11. [17-90954](#)-A-13     **IN RE: DENNIS/BARBARA RILEY**  
[MSN-3](#)

MOTION TO MODIFY PLAN  
7-15-2019    [\[45\]](#)

MARK NELSON  
RESPONSIVE PLEADING

**No Ruling**

12. [17-90954](#)-A-13     **IN RE: DENNIS/BARBARA RILEY**  
[MSN-4](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES,  
INC.  
7-15-2019    [\[51\]](#)

MARK NELSON

**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 2005 Dodge Ram Truck and recreational trailer known as a 2006 Sierra Trailer. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicles at \$19,903.00.

#### **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 2005 Dodge Ram Truck and a 2006 Sierra Trailer have a value of \$19,903.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$19,903.00 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.

13. [19-90463](#)-A-13     **IN RE: LLOYD/RENEE BETTENCOURT**  
[RDG-2](#)

MOTION TO DISMISS CASE  
9-3-2019    [\[38\]](#)

MARY ANDERSON

**No Ruling**

14. [17-90564](#)-A-13     **IN RE: DANIEL/GERARDEE DONNAN**  
[EGS-3](#)

MOTION TO DISMISS CASE  
8-12-2019    [[125](#)]

JESSICA DORN  
EDWARD SCHLOSS/ATTY. FOR MV.

**No Ruling**

15. [19-90375](#)-A-13     **IN RE: SALVADOR/EMELI RODRIGUEZ**  
[RDG-2](#)

MOTION TO DISMISS CASE  
9-3-2019    [[32](#)]

THOMAS GILLIS

**No Ruling**

16. [19-90475](#)-A-13     **IN RE: AJIT/ROSIE SANDHU**  
[RDG-2](#)

MOTION TO DISMISS CASE  
9-3-2019    [[47](#)]

YASHA RAHIMZADEH

**No Ruling**

17. [19-90675](#)-A-13     **IN RE: JEANETTE PIMENTEL**  
[RKW-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL  
9-3-2019    [\[16\]](#)

RANDALL WALTON

### **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 2016 Chevrolet Traverse. 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 \$14,909.00.



## 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 Chevrolet Traverse has a value of \$14,909.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$14,909.00 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.

18. [12-92478](#)-A-13     **IN RE: DANIEL/SUSAN AGUNDEZ**  
[JAD-4](#)

MOTION TO AVOID LIEN OF DISCOVER BANK O.S.T.  
9-4-2019    [\[89\]](#)

CHRISTIAN YOUNGER

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$8,777.02

**All Other Liens:** \$335,520.30

**Exemption:** \$75,000.00

**Value of Property:** \$400,000.00

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).

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 respondent'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 respondent's judicial lien will be avoided entirely.

19. [12-92478](#)-A-13      **IN RE: DANIEL/SUSAN AGUNDEZ**  
[JAD-5](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A. O.S.T.  
9-4-2019    [\[99\]](#)

CHRISTIAN YOUNGER

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$7,565.43

**All Other Liens:** \$335,520.30

**Exemption:** \$75,000.00

**Value of Property:** \$400,000.00

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).

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 respondent'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 respondent's judicial lien will be avoided entirely.

20. [19-90385](#)-A-13     **IN RE: MIGUEL GUTIERREZ**  
[RDG-3](#)

MOTION TO DISMISS CASE  
9-3-2019    [\[48\]](#)

THOMAS GILLIS

**No Ruling**

21. [19-90485](#)-A-13     **IN RE: MICHAEL/KATHLEEN RAMBERG**  
[RK-1](#)

MOTION TO CONFIRM PLAN  
8-4-2019    [\[18\]](#)

RICHARD KWUN  
RESPONSIVE PLEADING

**No Ruling**

22. [19-90492](#)-A-13     **IN RE: STEPHEN WEAVER**  
[RDG-1](#)

MOTION TO DISMISS CASE  
9-3-2019    [\[16\]](#)

DAVID JOHNSTON

**No Ruling**

23. [17-90695](#)-A-13     **IN RE: DEREK/JULIA DAVIS**  
[JAD-2](#)

MOTION TO SELL  
8-26-2019    [\[36\]](#)

JESSICA DORN

### **Tentative Ruling**

**Motion:** Sell Real Property

**Notice:** LBR 9014-1(f)(2); no 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:** 6236 High Mesa Way, Riverbank, California

**Buyer:** Victor Rodriguez and Veronica Rodriguez

**Sale Price:** \$300,000.00

**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). 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 property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation. Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

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.

24. [19-90496](#)-A-13     **IN RE: BRUCE/LESLIE DUDLEY**  
[RDG-2](#)

MOTION TO DISMISS CASE  
9-3-2019    [\[25\]](#)

SCOTT JOHNSON

**No Ruling**

25. [19-90599](#)-A-13     **IN RE: LINDA EXPOSE**  
[RDG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER  
8-26-2019    [\[29\]](#)

**No Ruling**