

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 6th Floor
Courtroom 34, Department A
Sacramento, 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. [19-24136](#)-A-13 **IN RE: CARMELITA/DANILO CARVAJAL**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [\[18\]](#)

LARS FULLER

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to be confirmed by this motion, the court will deny the motion as moot.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 confirm is denied as moot.

2. [19-24138](#)-A-13 **IN RE: ANN LORRAINE CARVAJAL**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [\[19\]](#)

LARS FULLER

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan

has superseded the plan to be confirmed by this motion, 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 confirm is denied as moot.

3. [19-24138](#)-A-13 **IN RE: ANN LORRAINE CARVAJAL**
[RDG-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-12-2019 [\[22\]](#)

LARS FULLER

Final Ruling

Objection: Objection to Claim of Exemptions for Homestead and Checking Accounts

Disposition: Overruled as moot

Order: Civil minute order

The debtor has claimed a homestead exemption of \$90,587.00 under section 704.730(a)(2) of the California Code of Civil Procedure. The trustee objected to the debtor's claim of exemption because the debtor is only entitled to an exemption amount of \$75,000.00. Additionally, debtor has claimed an exemption of \$1,286.74 under section 704.080 of the California Code of Civil Procedure which is not an account of the type included in that section.

But the debtor has filed an amended Schedule C. The objection will be overruled as moot.

4. [18-27740](#)-A-13 **IN RE: HENRIETTA DEBROUWER**
[MJD-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STUTZ LAW
OFFICE, P.C. FOR MATTHEW J. DECAMINADA, DEBTOR'S ATTORNEY(S)
8-7-2019 [\[90\]](#)

MATTHEW DECAMINADA

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Stutz Law Office, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,585.00 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

Stutz Law Office, P.C.'s application for allowance of final compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$5,585.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$5,585.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

5. [19-24650](#)-A-13 **IN RE: SHANE DOSIO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-28-2019 [\[40\]](#)

PETER MACALUSO

No Ruling

6. [16-21452](#)-A-13 **IN RE: MARIO ORTIZ**
[NFG-3](#)

CONTINUED MOTION TO ENFORCE TERMS OF CONFIRMED AMENDED PLAN
5-20-2019 [\[117\]](#)

NELSON GOMEZ

Final Ruling

No appearance necessary, hearing continued to October 22, 2019.
Dckt. 133.

7. [15-24153](#)-A-13 **IN RE: CYNTHIA DUTRA**
[CLH-2](#)

MOTION TO INCUR DEBT
8-28-2019 [\[21\]](#)

CHARLES HASTINGS

No Ruling

8. [19-23874](#)-A-13 **IN RE: JAMES MILLER**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D GREER
8-12-2019 [\[18\]](#)

KATHLEEN CRIST
RESPONSIVE PLEADING

No Ruling

9. [19-23777](#)-A-13 **IN RE: MARIO MENDEZ AND DEANNA**
DELOSSANTOS-MENDEZ
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [\[13\]](#)

PATRICK EDABURN

No Ruling

10. [19-23081](#)-A-13 **IN RE: FREDDIE FRAZIER**
[PGM-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF HARLEY DAVIDSON
CREDIT CORP.
7-2-2019 [\[23\]](#)

PETER MACALUSO

No Ruling

11. [19-23081](#)-A-13 **IN RE: FREDDIE FRAZIER**
[RDG-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D.
GREER
6-28-2019 [\[20\]](#)

PETER MACALUSO

No Ruling

12. [19-23886](#)-A-13 **IN RE: SEAN/NATALIE HAMILTON**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [\[20\]](#)

MUOI CHEA

No Ruling

13. [19-23990](#)-A-13 **IN RE: JOHN STEIGERWALD**
[HWW-1](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
9-3-2019 [\[20\]](#)

HANK WALTH

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

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.*

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).

Additionally, 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 personal property described as all items listed in Schedules A/B, including a motor vehicle described as a 1997 Volvo. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the non-vehicular collateral at \$2,270.00 and the motor vehicle at \$750.00.

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 non-vehicular, personal property collateral and 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 all items listed on Schedules A/B has a value of \$3,020.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$3,020.00 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.

14. [19-23990](#)-A-13 **IN RE: JOHN STEIGERWALD**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [\[17\]](#)

HANK WALTH

No Ruling

15. [17-27693](#)-A-13 **IN RE: ANTHONY MOORE**

COUNTER MOTION TO DISMISS CASE
9-3-2019 [[148](#)]

PETER MACALUSO
EDWARD SCHLOSS/ATTY. FOR MV.

No Ruling

16. [17-27693](#)-A-13 **IN RE: ANTHONY MOORE**
[PGM-3](#)

MOTION TO MODIFY PLAN
8-12-2019 [[138](#)]

PETER MACALUSO
RESPONSIVE PLEADING

No Ruling

17. [19-23994](#)-A-13 **IN RE: FLORENTINO GUERZO**
[RDG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [[21](#)]

MARK WOLFF

No Ruling

18. [19-23994](#)-A-13 **IN RE: FLORENTINO GUERZO**
[RDG-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-12-2019 [\[24\]](#)

MARK WOLFF

Final Ruling

Objection: Objection to Claim of Exemptions for Failure to File Spousal Waiver

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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 has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objects to the debtor's claim of exemptions because the debtor has not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

The debtor is married but has not filed a joint petition with debtor's spouse. The debtor may not claim exemptions under section 703.140(b) because both spouses have not filed the required spousal waiver described in section 703.140(a)(2).