

**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: SEPTEMBER 28, 2017
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. [17-13401](#)-A-13 RICHARD/VERONICA ESPINOZA MOTION TO IMPOSE AUTOMATIC STAY
[TCS-1](#) 9-13-17 [8]
RICHARD ESPINOZA/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Impose 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).

IMPOSITION OF THE STAY

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. 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.

The present motion to extend the automatic stay has been presented to the court. 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 imposed in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

2. [17-12814](#)-A-13 DARIO/MARIA MENDOZA
[TOG](#)-1
DARIO MENDOZA/MV

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE AUTO FINANCE C/O
ASCENSION CAPITAL GROUP
8-12-17 [[17](#)]

THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

[The hearing on this matter will be concurrent with the hearing on Capital One, N.A.'s objection to confirmation in this case having docket control no. BDA-1, and appearing as no. 16 on this 9:00 a.m. calendar.]

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: Written opposition filed by responding party

Disposition: Continued for evidentiary hearing

Order: Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

3. [17-13320](#)-A-13 EUSTORGIO CRUZ-REYES MOTION TO EXTEND AUTOMATIC STAY
[YG-1](#) 9-9-17 [[11](#)]
EUSTORGIO CRUZ-REYES/MV
YELENA GUREVICH/Atty. for dbt.

No Ruling

4. [17-12521](#)-A-13 HENRY PEREZ CONTINUED OBJECTION TO
[BDA-1](#) CONFIRMATION OF PLAN BY EXETER
EXETER FINANCE CORP/MV FINANCE CORP
8-11-17 [[20](#)]

SUSAN HEMB/Atty. for dbt.
BRET ALLEN/Atty. for mv.

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

5. [17-12521](#)-A-13 HENRY PEREZ MOTION TO VALUE COLLATERAL OF
[SAH-2](#) EXETER FINANCE LLC
HENRY PEREZ/MV 8-10-17 [[16](#)]
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The parties have resolved the matter by stipulation. The matter will
be dropped from calendar as moot.

6. [17-12328](#)-A-13 CALVIN TRIPPETT MOTION TO DISMISS CASE
[MHM-1](#) 8-16-17 [[22](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to October 19, 2017, at 9:00 a.m.

Order: Civil minute order

The trustee moves to dismiss this chapter 13 case because the debtor
had not filed and set for hearing a motion to value the collateral
securing the second deed of trust held by Nationstar Mortgage LLC
pursuant to LBR 3015-1(j). The plan reduces Nationstar Mortgage LLC's
secured claim to \$0 based on the value of the collateral. The trustee
also moved to dismiss because the debtor has not confirmed a plan due
to his failure to comply with LBR 3015-1(j).

The debtor has filed a motion to value the collateral of Nationstar Mortgage LLC. The court will continue the hearing on this motion to dismiss to the date of the hearing on the motion to value collateral.

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.

IT IS ORDERED that the hearing on the motion is continued to October 19, 2017, at 9:00 a.m.

7. [14-16029](#)-A-13 DAGMAR VAUGHAN
[MHM](#)-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

OBJECTION TO CLAIM OF ALLY
FINANCIAL, CLAIM NUMBER 6
8-9-17 [[84](#)]

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Civil minute order

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 objection. 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 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.,* Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. *See* Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

The claimant, Ally Financial, filed Claim No. 1-1 in the amount of \$1876.19. The claimant then filed Claim No. 1-2 in the amount of \$0.00.

Communications between the trustee and the claimant revealed that the debtor had sent a payoff to the claimant. In addition to \$1381.55 disbursed by the trustee to the claimant, the payoff sent by the debtor satisfied the claimant's claim.

But the claimant then withdrew Claim No. 1-2. It then filed a claim in the amount of 1876.19 as Claim No. 6-1. Now, Claim No. 1-1 and

Claim No. 6-1 remain and are duplicate claims.

The court will sustain the objection to Claim No. 6-1.

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 chapter 13 trustee's objection to claim has been presented to the court. Having entered the default of the respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection to Claim No. 6-1 is sustained, and this claim will be disallowed in its entirety.

8. [17-12539](#)-A-13 LUIS TAVARES

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-6-17 [[49](#)]

THOMAS GILLIS/Atty. for dbt.
\$170.00 FINAL INSTALLMENT
PAID 9/12/17

Final Ruling

The fee paid in full, the order to show cause is discharged and the case shall remain pending.

9. [17-13340](#)-A-13 LISA STANDLEE

MOTION TO EXTEND AUTOMATIC STAY
9-8-17 [[9](#)]

[SL-1](#)

LISA STANDLEE/MV
SCOTT LYONS/Atty. for dbt.

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.

The present motion to extend the automatic stay has been presented to the court. 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.

10. [17-10250](#)-A-13 SHENG/CHAO VANG
FW-3
SHENG VANG/MV
GABRIEL WADDELL/Atty. for dbt.

MOTION TO CONFIRM PLAN
8-11-17 [[82](#)]

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 bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

11. [17-13065](#)-A-13 AMANDEEP RANDHAWA
FW-1
AMANDEEP RANDHAWA/MV

MOTION TO VALUE COLLATERAL OF
STATE BANK OF INDIA
(CALIFORNIA)
8-30-17 [[12](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Not Principal Residence]

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

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); *accord Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' *i.e.*, the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's

opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value real property collateral securing the respondent's claim. The real property is located at 6410 S. Chestnut Avenue, Fresno, CA, and is not the debtor's principal residence.

The court values the collateral at \$275,000.00. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

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 real 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 real property collateral located at 6410 S. Chestnut Avenue, Fresno, CA, has a value of \$275,000.00. Senior liens on the collateral secure debt in the amount of \$228,319.20. The respondent has a secured claim in the amount of \$46,680.80 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.

12. [17-13473](#)-A-13 VICTOR/CLARISA CORCHADO MOTION TO IMPOSE AUTOMATIC STAY
[YLG-1](#) 9-13-17 [[8](#)]
VICTOR CORCHADO/MV
ARASH ARJANG/Atty. for dbt.

Tentative Ruling

Motion: Impose 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).

SERVICE ISSUE

Rule 9013 requires that every motion be served on the trustee. In this case, the proof of service does not show that service was made on the trustee. Unless the trustee raises the issue of lack of service (without also addressing the merits of the motion), the court will

grant the motion.

IMPOSITION OF THE STAY

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. 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.

The present motion to extend the automatic stay has been presented to the court. 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 imposed in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

13.	17-10474 -A-13 ALVARO DIAZ AND MARISELA MHM -2 LUA MICHAEL MEYER/MV THOMAS GILLIS/Atty. for dbt. RESPONSIVE PLEADING	CONTINUED MOTION TO DISMISS CASE 7-21-17 [52]
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No Ruling

14. [17-10474](#)-A-13 ALVARO DIAZ AND MARISELA
[TOG](#)-3 LUA MOTION TO CONFIRM PLAN
ALVARO DIAZ/MV 8-16-17 [[58](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

15. [17-12485](#)-A-13 BOB LONG CONTINUED MOTION TO DISMISS
[MHM](#)-1 CASE
MICHAEL MEYER/MV 8-4-17 [[18](#)]
STEVEN ALPERT/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [17-12814](#)-A-13 DARIO/MARIA MENDOZA CONTINUED OBJECTION TO
[BDA](#)-1 CONFIRMATION OF PLAN BY CAPITAL
CAPITAL ONE AUTO FINANCE/MV ONE AUTO FINANCE
8-17-17 [[22](#)]
THOMAS GILLIS/Atty. for dbt.
BRET ALLEN/Atty. for mv.

No Ruling

17. [17-13263](#)-A-13 JASON/DANELLE BLACK MOTION FOR RELIEF FROM ORDER
[DMG](#)-2 AND/OR MOTION TO IMPOSE
AUTOMATIC STAY
D. GARDNER/Atty. for dbt.
OST, ECF NO. 24

No Ruling