

**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: NOVEMBER 17, 2016
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [16-13101](#)-A-13 NANCY MCFADIN

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-31-16 [[32](#)]

SCOTT LYONS/Atty. for dbt.

Final Ruling

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

2. [16-13101](#)-A-13 NANCY MCFADIN

MOTION TO DISMISS CASE
10-18-16 [[25](#)]

MHM-1

MICHAEL MEYER/MV

SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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 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).

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

The debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

3. [16-13304](#)-A-13 GERALD STULLER AND
APN-1 BARBARA WIKINSON-STULLER
FORD MOTOR CREDIT COMPANY/MV
OBJECTION TO CONFIRMATION OF
PLAN BY FORD MOTOR CREDIT
COMPANY
10-5-16 [[14](#)]

SCOTT SAGARIA/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

No tentative ruling.

4. [12-12705](#)-A-13 JEFFREY DEMENT AND KARA
MHM-2 NORD-DEMENT
MICHAEL MEYER/MV
JOSEPH ARNOLD/Atty. for dbt.
OPPOSITION
MOTION TO MODIFY PLAN
10-4-16 [[103](#)]

No tentative ruling.

5. [16-12106](#)-A-13 EFRAIN CAMPOS AND
JES-2 CANDELARIA NAVA
JAMES SALVEN/MV
MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
10-7-16 [[34](#)]

SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final Compensation to a Former Chapter 7 Trustee

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

Disposition: Continued to December 15, 2016, at 9:00 a.m. to coincide with the confirmation hearing in this case

Order: Civil minute order

DEFAULT ENTERED

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 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).

FEES AND COSTS

Chapter 7 trustees are entitled to compensation for their work in a case under Chapter 7 that is converted to a case under Chapter 13. *In re Hages*, 252 B.R. 789, 794-95, 797-99 (Bankr. N.D. Cal. 2000). Subject to the statutory cap of § 326(a) of the Bankruptcy Code, *id.* at 795, "a chapter 7 trustee's compensation should be determined independently under § 330," *id.* at 798. Section 330 authorizes "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a)(1). In addition, "it is entirely appropriate to impute the moneys that will be distributed by the chapter 13 trustee to the chapter 7 trustee for purposes of computing the maximum fee the chapter 7 trustee can charge, and allowing interim fees up to that maximum." *In re Hages*, 252 B.R. at 794.

James Salven, the chapter 7 trustee in this case before it was converted to chapter 13, provided services that uncovered value in assets (real estate property that was the debtors' residence) that had been undervalued. The estimated value of non-exempt equity by the trustee is \$24,000 approximately (vehicles and tax refunds).

The court finds that the fees and costs are reasonable and necessary under § 330 and will not review the basis for the fees again.

But the court cannot approve and allow the fees and costs at this time. Until the plan is confirmed, a ruling on this application will be premature. The court would prefer to know the amount of money to be distributed under the confirmed plan so that it can calculate the maximum fees that the chapter 13 trustee can charge pursuant to § 326(a).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the application is continued to December 15, 2016, at 9:00 a.m. to coincide with the hearing on confirmation. If confirmation is delayed, then the court will continue the hearing again to coincide with the confirmation hearing.

6. [16-12713](#)-A-13 JASON ATHERTON AND MOTION TO VALUE COLLATERAL OF
TCS-2 GENZZIA DOVIGI-ATHERTON CARMAX BUSINESS SERVICES LLC
JASON ATHERTON/MV 10-18-16 [[27](#)]
TIMOTHY SPRINGER/Atty. for dbt.

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 2012 Toyota Sienna. 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 \$10,063.

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 2012 Toyota Sienna has a value of \$10,063. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,063 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.

7. [16-13015](#)-A-13 BARBARA LOPEZ POSADA SL-1 MOTION TO CONFIRM PLAN
9-30-16 [[23](#)]
BARBARA LOPEZ POSADA/MV
SCOTT LYONS/Atty. for dbt.
OPPOSITION

No tentative ruling.

8. [16-13015](#)-A-13 BARBARA LOPEZ POSADA WSS-1 MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-20-16 [[34](#)]
ALDERWOOD VENTURES, LP/MV
SCOTT LYONS/Atty. for dbt.
W. SHUMWAY/Atty. for mv.
OPPOSITION

No tentative ruling.

9. [14-11820](#)-A-13 TONY/CARMEN BAIZA SL-6 MOTION TO MODIFY PLAN
9-30-16 [[76](#)]
TONY BAIZA/MV
SCOTT LYONS/Atty. for dbt.

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 confirmation 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. 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. The court will grant the motion and approve the modification of the plan.

10. [13-13923](#)-A-13 LILLY JIMENEZ
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
OPPOSITION
WITHDRAWN

CONTINUED MOTION TO DISMISS
CASE
9-6-16 [[24](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [13-13923](#)-A-13 LILLY JIMENEZ
PBB-1
LILLY JIMENEZ/MV
PETER BUNTING/Atty. for dbt.
OPPOSITION

MOTION TO MODIFY PLAN
10-13-16 [[31](#)]

Tentative 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 confirmation 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. 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. The court will grant the motion and approve the modification of the plan.

12. [16-12828](#)-A-13 MARVITA SEAWELL
MHM-3

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
10-28-16 [[32](#)]

PATRICK GREENWELL/Atty. for dbt.

Final Ruling

This matter is continued to December 1, 2016, at 9:00 a.m.

13. [16-12930](#)-A-13 MOISES/SARA DUENAS
MHM-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

OBJECTION TO CONFIRMATION OF
PLAN BY MICHAEL H. MEYER
10-28-16 [[54](#)]

No tentative ruling.

14. [16-12136](#)-A-13 JEANETTE TENA
TCS-3
JEANETTE TENA/MV
TIMOTHY SPRINGER/Atty. for dbt.
OPPOSITION

AMENDED MOTION TO CONFIRM PLAN
10-28-16 [[56](#)]

No tentative ruling.

15. [15-10240](#)-A-13 JOHN/ROBERTA CARTER
MHM-3
MICHAEL MEYER/MV
CHRISTIAN YOUNGER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

CONTINUED MOTION TO DISMISS
CASE
8-5-16 [[63](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [16-12740](#)-A-13 BRUCE/DANIELLE CAMPBELL
JDR-1
BRUCE CAMPBELL/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO CONFIRM PLAN
10-4-16 [[24](#)]

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.

17. [16-10445](#)-A-13 DONALD/NANCY NEWSOME OBJECTION TO CLAIM OF PYOD,
VRP-2 LLC, CLAIM NUMBER 20
DONALD NEWSOME/MV 9-28-16 [[25](#)]
VARDUHI PETROSYAN/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Overruled without prejudice

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).

STANDARDS

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See Garvida*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Garvida*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

DISCUSSION

The debtors object to the claim due to an unreasonable increase in the amount of the claim between the date of a credit report for the debtors dated February 1, 2016, and the date the proof of claim was

filed, June 2, 2016. The debtors contend that the amount shown on the credit report, attached as Exhibit B, is only \$5,656.

PYOD, LLC's proof of claim is presumptively valid under Rule 3001(f). It is prima facie evidence of its claim against the debtors and the estate. It may only be rebutted with counter-evidence.

In general, the court does not give weight to an attorney's declaration made without personal knowledge. Fed. R. Evid. 602.

The credit report is not admissible evidence—it is hearsay. It has also not been authenticated by a person with personal knowledge. The authentication requirement may be met by "[t]estimony that an item is what it is claimed to be." Fed. R. Evid. 901(b)(1). Any testimony used to authenticate a document under Rule 901(b)(1) is subject to the requirement that the "authenticating witness" have personal knowledge. Fed. R. Evid. 901(b)(1). "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Fed. R. Evid. 602.

Even if the court were to consider the credit report, the debtors misread it. \$5656 is the amount of the "High Credit Balance Owing" as of December 2015 as shown by the column headers. But in the additional information below the claim, the charge off amount is shown as \$6964, which is closer to the amount of the claim.

The court will overrule the objection without prejudice. The proof of claim filed by the claimant, PYOD, LLC, fails to evidence that this particular debt was transferred as part of the "Accounts as set forth in the Account Schedule" on the Bill of Sale between Sherman Originator III LLC and LendingClub Corporation and any other sellers joined to that contract. The debtors assert that they scheduled this claim as owed to Lending Club Corp. The debtors might object to the claim if they can offer evidence that they do not know of any claim brought by this claimant.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtors claim objection has been presented to the court. Having considered the objection together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the claim objection is overruled without prejudice.

18. [16-13148](#)-A-13 EUSTORGIO REYES MOTION TO DISMISS CASE
MHM-2 10-18-16 [[26](#)]
MICHAEL MEYER/MV
LAUREN RODE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [16-13249](#)-A-13 MARK SNYDER MOTION TO DISMISS CASE
MHM-2 10-18-16 [[16](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [16-13250](#)-A-13 SONYA SIDHU MOTION TO DISMISS CASE
MHM-1 10-18-16 [[18](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [16-13752](#)-A-13 GURMIT SANDHU AND KARMIT MOTION TO EXTEND AUTOMATIC STAY
GEG-1 BRAR 10-26-16 [[13](#)]
GURMIT SANDHU/MV
GLEN GATES/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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).

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 except as to any creditor without proper notice of this motion.

22. [16-11256](#)-A-13 SAMUEL/DIANE DOMINGUEZ MOTION TO VALUE COLLATERAL OF
FW-5 INTERNAL REVENUE SERVICE
SAMUEL DOMINGUEZ/MV 10-17-16 [[80](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

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

Disposition: Granted

Order: Prepared by movant

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.*

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). Motor vehicles operate under a different set of rules. 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 on Exhibit A to Exhibits in Support of the Motion to Value, October 17, 2016, ECF # 83. The debt secured by such property was not incurred within the 1-year period and, in appropriate cases 910 days, preceding the date of the petition. The court values the collateral at \$16,810.00.

23. 16-11256 -A-13 SAMUEL/DIANE DOMINGUEZ FW-6 SAMUEL DOMINGUEZ/MV PETER FEAR/Atty. for dbt. NON-OPPOSITION	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ROBERT STEVEN LAIRD AND MIRJAM RIJFKOGEL-LAIRD 10-17-16 [86]
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Final Ruling

Motion: Approve Compromise of Controversy

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 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).

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection;

(iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a dispute with Robert Laird and Mirjam Rijkogel-Laird. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 89. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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.

Debtor's motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 89.

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| 24. 16-11256 -A-13 SAMUEL/DIANE DOMINGUEZ
FW-7
SAMUEL DOMINGUEZ/MV
PETER FEAR/Atty. for dbt. | OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 7
10-17-16 [92] |
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No tentative ruling.

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| 25. 16-11256 -A-13 SAMUEL/DIANE DOMINGUEZ
JLW-4
ROBERT LAIRD/MV

PETER FEAR/Atty. for dbt.
JODY WINTER/Atty. for mv.
WITHDRAWN | CONTINUED PRE-TRIAL CONFERENCE
RE: OBJECTION TO CONFIRMATION
OF PLAN BY ROBERT STEVEN LAIRD
AND MIRJAM RIJFKOGEL-LAIRD
5-31-16 [44] |
|--|---|

Final Ruling

The objection withdrawn, the matter is dropped as moot.

26. [16-13162](#)-A-13 CARRIE RODRIGUEZ
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
10-18-16 [[23](#)]

Tentative Ruling

Motion: Dismiss Case

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 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).

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

27. [16-13480](#)-A-13 DANIEL CISNEROS TORRES
MHM-1 AND ANGELINA RODRIGUEZ
OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
10-27-16 [[18](#)]

SCOTT LYONS/Atty. for dbt.

No tentative ruling.

28. [16-10383](#)-A-13 HELEN MITCHELL
AP-1 MOTION FOR RELIEF FROM
AUTOMATIC STAY
DEUTSCHE BANK TRUST COMPANY
10-19-16 [[37](#)]
AMERICAS/MV
TIMOTHY SPRINGER/Atty. for dbt.
MARK ESTLE/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party (see specific instructions below)

Subject: 2546 - 2548 Pasadena Avenue, Long Beach, CA

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion in part and deny the motion in part.

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) an transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A, of which the court takes judicial notice. Fed. R. Evid. 201. In fact, the movant admits that "[t]he Debtor's Schedules do not report an interest in the Property, and the Movant is not provided for in the confirmed Chapter 13 Plan." Mot. Stay Relief at 3, ECF No. 40. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit (unauthenticated) is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

Given that some uncertainty exists about whether the stay applies, the court will grant stay relief for cause under § 362(d)(1) because the property may not be estate property and because the property's transfer was unauthorized.

The order shall state as follows: "To the extent that the property may be property of the estate affected by the debtor's bankruptcy, relief from stay under § 362(d)(1) is granted. The request for relief under § 362(d)(4) is denied." No other relief will be awarded, and the order shall not state the debtor's bankruptcy petition was part of a scheme to delay, hinder or defraud creditors.

29. [15-13184](#)-A-13 DEBBY RENNA
MHM-2
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
OPPOSITION

CONTINUED MOTION TO DISMISS
CASE
9-12-16 [[92](#)]

[This matter will be called subsequent to the trustee's motion to convert, MHM-3, below.]

No tentative ruling.

30. [15-13184](#)-A-13 DEBBY RENNA
MHM-3
MICHAEL MEYER/MV
11-1-16 [[100](#)]
JERRY LOWE/Atty. for dbt.

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE

No tentative ruling.