

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: DECEMBER 5, 2018
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.

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. [18-13202](#)-A-13 **IN RE: NICHOLAS ANGELICA**
[PK-2](#)

CONTINUED MOTION TO CONFIRM PLAN
8-30-2018 [[21](#)]

NICHOLAS ANGELICA/MV
PATRICK KAVANAGH
DISMISSED 11/9/18

Final Ruling

The case dismissed, the matter is dropped from calendar.

2. [18-13202](#)-A-13 **IN RE: NICHOLAS ANGELICA**
[PK-3](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 10
10-5-2018 [[57](#)]

NICHOLAS ANGELICA/MV
PATRICK KAVANAGH
DISMISSED 11/9/18

Final Ruling

The case dismissed, the matter is dropped from calendar.

3. [18-14107](#)-A-12 **IN RE: EVELYN RAQUEDAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-14-2018 [[14](#)]

PHILLIP GILLET

Tentative Ruling

If the installment payment in the amount of \$71 has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

4. [18-13312](#)-A-13 **IN RE: ARISTEO ALVAREZ**
[MHM-3](#)

MOTION TO DISMISS CASE
10-15-2018 [\[27\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
DISMISSED 11/9/18

Final Ruling

The case dismissed, the matter is dropped from calendar.

5. [18-12814](#)-A-13 **IN RE: JIMMY JAMES**
[NSV-1](#)

MOTION TO CONFIRM PLAN
10-2-2018 [\[33\]](#)

JIMMY JAMES/MV
LUKAS JACKSON
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied; 75-day order imposed

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Santander Consumer USA and Westlake Financial Services' Class 2 secured claims based on the value of the collateral securing such claims. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral, for each claim. Accordingly, the court must deny confirmation of the plan.

75-DAY ORDER

A chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 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 debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

6. [18-13030](#)-A-13 **IN RE: JESUS PORTILLO-VAQUERO AND ELSA GONZALEZ-PORTILLO**
[PK-3](#)

MOTION TO VALUE COLLATERAL OF WILSHIRE COMMERCIAL CAPITAL,
LLC
11-9-2018 [[53](#)]

JESUS PORTILLO-VAQUERO/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral

Notice: Written opposition filed by the responding party

Disposition: Continued to January 9, 2019, at 9:00 a.m.

Order: Civil minute order

The motion seeks to value nonresidential real property that is the responding party's collateral. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the

motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's valuation must be resolved before the court can rule on the relief requested.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the debtors' motion to value collateral of Wilshire Commercial Capital, LLC is continued to January 9, 2019, at 9:00 a.m. at the Bakersfield Federal Courthouse, 510 19th Street, Second Floor, Bakersfield, California.

IT IS FURTHER ORDERED that not later than 14 days before the continued date of the hearing, the parties will file a joint status report.

7. [18-13030](#)-A-13 **IN RE: JESUS PORTILLO-VAQUERO AND ELSA GONZALEZ-PORTILLO**
[PK-4](#)

MOTION TO VALUE COLLATERAL OF TRADING FINANCIAL CREDIT LLC
11-9-2018 [[59](#)]

JESUS PORTILLO-VAQUERO/MV
PATRICK KAVANAGH

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 2005 Toyota Tundra. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$2,500.00.

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 Toyota Tundra has a value of \$2,500.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2,500.00 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.

8. [18-13030](#)-A-13 **IN RE: JESUS PORTILLO-VAQUERO AND ELSA GONZALEZ-PORTILLO**
[PK-5](#)

MOTION TO AVOID LIEN OF KIRSCHENMAN ENTERPRISES, INC.
11-19-2018 [\[70\]](#)

JESUS PORTILLO-VAQUERO/MV
PATRICK KAVANAGH

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$24,260.43

All Other Liens: \$65,003.00

Exemption: \$100,000.00

Value of Property: \$165,000.00

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.

9. [18-13343](#)-A-13 **IN RE: EUGENE/ANDREA WILLIAMS**
[LKW-1](#)

MOTION TO CONFIRM PLAN
10-19-2018 [[23](#)]

EUGENE WILLIAMS/MV
LEONARD WELSH
ORDER DENYING ECF NO.31

Final Ruling

The motion having been denied pursuant to Order, ECF #31, the matter is dropped from calendar.

10. [18-13657](#)-A-13 **IN RE: MARTINA DUL**
[MHM-1](#)

MOTION TO DISMISS CASE
10-15-2018 [[23](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped from calendar.

11. [18-13385](#)-A-13 **IN RE: MARIDETTE SCHLOE**
[MHM-2](#)

MOTION TO DISMISS CASE
10-15-2018 [[21](#)]

MICHAEL MEYER/MV
STEVEN ALPERT
RESPONSIVE PLEADING

No Ruling

12. [18-10194](#)-A-13 **IN RE: CHRISTOPHER CONNOLLY**
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN
7-31-2018 [\[45\]](#)

CHRISTOPHER CONNOLLY/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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 has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

13. [18-13295](#)-A-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[MHM-2](#)

MOTION TO DISMISS CASE
10-15-2018 [\[17\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
WITHDRAWN

Final Ruling

The motion having been withdrawn, the matter is dropped from calendar.

14. [18-13295](#)-A-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL
SERVICES, INC.
11-16-2018 [\[23\]](#)

PATRICK TABAJUNDA/MV
ROBERT WILLIAMS

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.

15. [18-13295](#)-A-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[RSW-2](#)

MOTION TO VALUE COLLATERAL OF STATE OF CALIFORNIA FRANCHISE
TAX BOARD
11-16-2018 [\[28\]](#)

PATRICK TABAJUNDA/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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 strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1925 Montgomery Lane, Delano, California.

The court values the collateral at \$429,339.00. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. 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 1925 Montgomery Lane, Delano, California has a value of \$429,339.00. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.