

**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: DECEMBER 20, 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. [18-14012](#)-A-13 **IN RE: AARON/MARIA BOWDEN**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF TD BANK, N.A.
11-16-2018 [\[21\]](#)

AARON BOWDEN/MV
PETER BUNTING

Final Ruling

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

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.*

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).

In this case, the debtor seeks to value collateral consisting of personal property described as a bedroom set and mattress. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$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 non-vehicular, personal 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 personal property collateral described as a bedroom set and mattress has a value of \$500.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$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.

2. [18-14128](#)-A-13 **IN RE: JEROME LEWIS**
[MHM-1](#)

MOTION TO DISMISS CASE
11-19-2018 [[23](#)]

MICHAEL MEYER/MV

Final Ruling

The case dismissed, the motion will be denied as moot.

3. [18-14133](#)-A-13 **IN RE: CHARLES SMITH**
[MHM-2](#)

MOTION TO DISMISS CASE
11-16-2018 [[16](#)]

MICHAEL MEYER/MV
MICHAEL ARNOLD

No Ruling

4. [18-14037](#)-A-13 **IN RE: DESIREE MARTINEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
11-16-2018 [[24](#)]

MICHAEL MEYER/MV
SCOTT LYONS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [18-14146](#)-A-13 **IN RE: JULIAN/GLORIA TORRES**
[MHM-2](#)

MOTION TO DISMISS CASE
11-19-2018 [[24](#)]

MICHAEL MEYER/MV
NIMA VOKSHORI
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [18-13252](#)-A-13 **IN RE: JENNIFER SILVA**
[MRG-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SRP 2014-15
LLC
9-12-2018 [[22](#)]

SRP 2014-15 LLC/MV
SCOTT LYONS
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

No Ruling

7. [18-13252](#)-A-13 **IN RE: JENNIFER SILVA**
[SL-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF SN SERVICING
CORPORATION
10-3-2018 [[25](#)]

JENNIFER SILVA/MV
SCOTT LYONS

No Ruling

8. [18-13055](#)-A-12 **IN RE: MIKE WEBER**
[DRJ-3](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
11-23-2018 [[22](#)]

MIKE WEBER/MV
DAVID JENKINS
RESPONSIVE PLEADING

No Ruling

9. [18-13858](#)-A-13 **IN RE: GEORGE BAKER**
[MHM-2](#)

MOTION TO DISMISS CASE
11-16-2018 [[25](#)]

MICHAEL MEYER/MV

No Ruling

10. [18-13859](#)-A-13 **IN RE: RICKARDO/CINDY GONZALEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
11-19-2018 [[17](#)]

MICHAEL MEYER/MV
STEPHEN LABIAK
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [18-12661](#)-A-13 **IN RE: GEORGE WRIGHT**
[ALG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
8-16-2018 [\[24\]](#)

GEORGE WRIGHT/MV
JANINE ESQUIVEL
RESPONSIVE PLEADING WITHDRAWN

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.

12. [18-11467](#)-A-13 **IN RE: FRANKLIN BAER**
[KSB-3](#)

MOTION TO MODIFY PLAN
10-9-2018 [\[54\]](#)

FRANKLIN BAER/MV
KELLY BRESSO

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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

13. [18-14071](#)-A-13 **IN RE: JENNA BEAN**
[MHM-2](#)

MOTION TO DISMISS CASE
11-16-2018 [\[22\]](#)

MICHAEL MEYER/MV
JERRY LOWE
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [18-13684](#)-A-13 **IN RE: SANDRA BARBOZA**
[RMP-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DITECH
FINANCIAL LLC
11-8-2018 [[19](#)]

DITECH FINANCIAL LLC/MV
TIMOTHY SPRINGER
RENEE PARKER/ATTY. FOR MV.

No Ruling

15. [18-13785](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES
11-19-2018 [[35](#)]

KRISTIN VOOLSTRA/MV
TIMOTHY SPRINGER

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 2013 Dodge Journey SXT V. 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 \$9,006.00.

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 2013 Dodge Journey SXT V has a value of \$9,006.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,006.00 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.

16. [18-13785](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF PRESTIGE FINANCIAL SERVICES
11-19-2018 [\[40\]](#)

KRISTIN VOOLSTRA/MV
TIMOTHY SPRINGER

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 2013 Honda Fit Hatchback. 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 \$9,867.00.

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 2013 Honda Fit Hatchback has a value of \$9,867.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,867.00 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.

17. [18-14094](#)-A-13 **IN RE: CATALINO/DOMINGA HERNANDEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
11-16-2018 [[15](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

18. [18-13698](#)-A-13 **IN RE: FAUSTINO REYES AND MARIA ANICETO**
[MHM-2](#)

MOTION TO DISMISS CASE
11-6-2018 [[19](#)]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.