

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

THURSDAY

FEBRUARY 12, 2015

PRE-HEARING DISPOSITIONS

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.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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.

9:00 a.m.

1. [11-12801](#)-A-13 JAMES/JACKIE TIETZE MOTION TO APPROVE LOAN
PLG-2 MODIFICATION
JAMES TIETZE/MV
1-8-15 [[51](#)]
D. HARELIK/Atty. for dbt.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according 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). 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).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

2. [14-14902](#)-A-13 ALEJANDRO SOLORZANO OBJECTION TO DEBTOR'S CLAIM OF
MHM-1 EXEMPTIONS
MICHAEL MEYER/MV 1-12-15 [[41](#)]
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

3. [14-15102](#)-A-13 TONYA STRANE
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
12-3-14 [[24](#)]

RESPONSIVE PLEADING

No tentative ruling.

4. [11-60404](#)-A-13 FRANCIS/HARRIET SCHOTT
MHM-1
MICHAEL MEYER/MV
JEFFREY ROWE/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-9-14 [[32](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [13-17007](#)-A-13 DANNY/LORI CARRELL
MHM-2
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-10-14 [[74](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [11-63012](#)-A-13 LAWRENCE/MARY STRAMBI
MHM-1
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-10-14 [[92](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-9-14 [[82](#)]
M. ENMARK/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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). No opposition has been filed, and a non-opposition 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$9,471.85.

8. [14-13416](#)-A-12 JOAO/LUZIA VAZ CONTINUED MOTION TO CONFIRM
TCS-6 CHAPTER 12 PLAN
JOAO VAZ/MV 11-18-14 [[71](#)]
NANCY KLEPAC/Atty. for dbt.

No tentative ruling.

9. [13-12917](#)-A-13 JAMIE/MARY JANE GALVAN MOTION TO MODIFY PLAN
PLF-2 12-19-14 [[46](#)]
JAMIE GALVAN/MV

PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

10.	14-13417 -A-12	DIMAS/ROSA COELHO	MOTION FOR RELIEF FROM
	APN-1		AUTOMATIC STAY
	WELLS FARGO BANK, N.A./MV		12-29-14 [111]
	NANCY KLEPAC/Atty. for dbt.		
	AUSTIN NAGEL/Atty. for mv.		

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2010 Chevrolet Malibu

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Adequate protection is also required where the property is declining in value, but "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor has missed 6 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted,

and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

11. [14-13417](#)-A-12 DIMAS/ROSA COELHO
TCS-6
DIMAS COELHO/MV
NANCY KLEPAC/Atty. for dbt.
- CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
11-19-14 [[83](#)]

No tentative ruling.

12. [14-13418](#)-A-13 ROBERT/LUCERO BISHOP
SAH-1
ROBERT BISHOP/MV
SUSAN HEMB/Atty. for dbt.
- OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 2
12-19-14 [[46](#)]

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Overruled without prejudice

Order: Civil minute order

The court will overrule the objection because it has not been noticed in compliance with the court's local rules. LBR 2002-1(c) specifies three different addresses to which notices must be sent in adversary proceedings and contested matters relating to the IRS. A claim objection is a contested matter. See Fed. R. Bankr. P. 3007 advisory committee's note. But here only one address for the IRS appears on the proof of service. The other addresses specified in Rule 2002-1(c)(1) and (2) have not been used.

The court would also prefer that the language of the notice be revised in any future objection to this claim. The notice contains a reference to "the hearing on the objection to mortgage payment change." The objection does not relate to a mortgage payment change but is instead an objection to a proof of claim. The notice's third paragraph also refers to opposing the "motion" which creates further ambiguity because no motion has been filed.

13. [14-15720](#)-A-13 RAFAEL CERVANTES
ASW-1
THE BANK OF NEW YORK MELLON/MV
THOMAS GILLIS/Atty. for dbt.
JOELY BUI/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
1-20-15 [[16](#)]

No tentative ruling.

14. [11-17827](#)-A-13 MICHAEL/JEANNYE MORGAN MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-9-14 [[59](#)]
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [13-12828](#)-A-13 MARTIN CERDA AND MONICA MOTION TO DISMISS CASE FOR
MHM-2 GARZA FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-11-14 [[38](#)]
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [11-19929](#)-A-13 JOHN/NORMA PINEDO MOTION TO DISMISS CASE FOR
MHM-3 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-9-14 [[93](#)]
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [13-17735](#)-A-13 ANTONIO/MARIA ROMERO MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-10-14 [[50](#)]
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [13-16237](#)-A-13 JOSEFINA HURTADO
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-10-14 [[66](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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). No opposition has been filed, and a non-opposition 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$5100.

19. [10-62939](#)-A-13 JEFFREY/BRANDI RAUEN
MHM-2
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-8-14 [[55](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [11-19746](#)-A-13 DARWIN/MARION ROBERTSON
MHM-1
MICHAEL MEYER/MV
ADRIAN WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

OBJECTION TO DISCHARGE BY
MICHAEL H. MEYER
1-2-15 [[113](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [14-15848](#)-A-13 LARRY/TEODORICA BALDWIN OBJECTION TO CONFIRMATION OF
MDE-1 PLAN BY CAPITAL ONE, N.A.
CAPITAL ONE, N.A./MV 12-18-14 [[17](#)]
PETER BUNTING/Atty. for dbt.
MARK ESTLE/Atty. for mv.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Secured creditor Capital One, N.A. objects to confirmation on the ground that the plan understates the amount of its claim by \$500. This creditor has not indicated that its claim has been reduced by a valuation motion, lien avoidance motion, or claim objection. Further, this creditor has stated that it has filed a proof of claim.

The objection will be overruled because any understatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section.

22. [14-15049](#)-A-13 JAMES/ESTHER KAYSER MOTION TO CONFIRM PLAN
GGL-1 12-15-14 [[21](#)]
JAMES KAYSER/MV
GEORGE LOGAN/Atty. for dbt.

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 Chapter 13 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.

23. [10-10550](#)-A-13 MITCHELL/SHARRON THORNTON MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-8-14 [[109](#)]
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [10-12752](#)-A-13 JOHN DUARTE MOTION TO MODIFY PLAN
TCL-1 1-8-15 [[173](#)]
JOHN DUARTE/MV
CHRISTIAN JINKERSON/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [12-10052](#)-A-13 LEONEL SALGADO AND MOTION TO DISMISS CASE FOR
MHM-1 ESTHELA MARTINEZ FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-10-14 [[37](#)]
CHRISTIAN YOUNGER/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [12-11265](#)-A-13 EDWARD/TRACY AUSHERMAN MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-10-14 [[27](#)]
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [14-13168](#)-A-13 ERIC/CHRISTINA PIERSON MOTION TO MODIFY PLAN
PBB-2 12-31-14 [[50](#)]
ERIC PIERSON/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

28. [10-13172](#)-A-13 LUIS/ADRIANA SOLIS MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-8-14 [[68](#)]
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

29. [11-62172](#)-A-13 RUBEN/NORA GONZALEZ MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 12-10-14 [[46](#)]
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

30. [10-15076](#)-A-13 KIMBERLY BIRD
MHM-2
MICHAEL MEYER/MV
M. ENMARK/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-8-14 [[88](#)]

No tentative ruling.

31. [11-15876](#)-A-13 JACK/TINA KLINE
MHM-1
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DELAY
DISCHARGE
11-19-14 [[64](#)]

Tentative Ruling

Objection: Objection to Entry of Chapter 13 Discharge

Disposition: Overruled as moot

Order: Civil minute order

The court at the hearing will grant the debtor's motion for order waiving requirement for debtor Jack Dean Kline to file a section 11 U.S.C. § 1328 certificate. Accordingly, this objection, brought on grounds that Debtor Jack Dean Kline failed to file a § 1328 certificate, will be denied as moot given that the § 1328 certification requirement has been waived for him.

32. [11-15876](#)-A-13 JACK/TINA KLINE
THA-4
JACK KLINE/MV

CONTINUED MOTION FOR ORDER
WAIVING REQUIREMENTS THAT
DEBTOR JACK DEAN KLINE FILE
DEBTOR'S SECTION 11 U.S.C.
§ 1328 CERTIFICATE
11-26-14 [[69](#)]

THOMAS ARMSTRONG/Atty. for dbt.

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

Notice: LBR 9014-1(f)(1); this hearing is the continued hearing; default entered a prior hearing on January 14, 2015

Disposition: Conditionally granted: the condition is that an order on the ex parte application to seal and restrict public access to certain documents be signed and entered on the docket before the order on this motion is submitted

Order: Prepared by moving party pursuant to the instructions given

The court at the prior hearing entered the default of the respondent. The court incorporates by reference the civil minutes from the prior hearing as they relate to default of the respondent.

WAIVER OF SECTION 1328 CERTIFICATION REQUIREMENT

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the waiver requested. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1001-1(f), the court will grant the motion and waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CONDITIONAL RULING AND ORDER

The debtor Jack Dean Kline is deceased. The motion will be conditionally granted. The condition is that the order on the motion to seal and restrict public access to certain documents be signed and entered before the order on this motion is submitted.

The order shall state only the following: "The motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328."

33. [11-60979](#)-A-13 SHAWN/DIANA MERICAL
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO DISMISS CASE
12-9-14 [[37](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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). No opposition has

been filed, and a non-opposition 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2400.54.

34. [13-15979](#)-A-13 JAIME HERNANDEZ
MHM-4
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-11-14 [[100](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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). No opposition has been filed, and a non-opposition 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$281.76.

35. [11-11983](#)-A-13 PRIMO/CYNTHIA BELMONTEZ
PLG-2
PRIMO BELMONTEZ/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO MODIFY PLAN
12-24-14 [[69](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 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, and the court will approve modification of the plan.

36. [11-62783](#)-A-13 BENIGNO MARMOLEJO ALCALA SL-1 AND ISABEL VALLADARES DE BENIGNO MARMOLEJO ALCALA/MV SCOTT LYONS/Atty. for dbt. MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC. 1-14-15 [[68](#)]

Final Ruling

The motion renoticed for March 12, 2015, at 9:00 a.m., this hearing is dropped as moot.

37. [14-14883](#)-A-13 RICHARDA ENG JDW-1 RICHARDA ENG/MV JOEL WINTER/Atty. for dbt. MOTION TO CONFIRM PLAN 12-17-14 [[19](#)]

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 Chapter 13 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.

38. [11-16885](#)-A-13 DAVID/DELIA HAYES
MHM-3
MICHAEL MEYER/MV
BENJAMIN SHEIN/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-9-14 [[57](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [13-14785](#)-A-13 MICHAEL WHITE
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-11-14 [[45](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

40. [13-14786](#)-A-13 SILVESTRE/KARLA OCHOA
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-11-14 [[25](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

41. [10-18694](#)-A-13 ROSENDO/SILVIA ABARCA
MHM-4
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-8-14 [[291](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

42. [14-13895](#)-A-13 VERONICA MARTINEZ
PLG-2
VERONICA MARTINEZ/MV
RABIN POURNAZARIAN/Atty. for dbt.

CONTINUED MOTION TO CONFIRM
PLAN
10-22-14 [[58](#)]

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 Chapter 13 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.

43. [14-15798](#)-A-13 EFRAIN/GUADALUPE VILLAFAN
TOG-1
EFRAIN VILLAFAN/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING
1-6-15 [[15](#)]

Final Ruling

Motion: Value Collateral [Real Property; 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

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 421 Rotan Ave., Madera, CA.

The court values the collateral at \$70,000. 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 421 Rotan Ave., Madera, CA, has a value of \$70,000. 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.

10:00 a.m.

1. [13-10971](#)-A-13 JEREMY WINANS
[13-1054](#)
DAVIS V. WINANS
11-21-14 [[95](#)]
THOMAS ARMSTRONG/Atty. for pl.

CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT

No tentative ruling.