

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**WEDNESDAY**

**FEBRUARY 19, 2014**

**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. [11-14914](#)-A-13 ROGELIO/IMELDA HERNANDEZ MOTION TO MODIFY PLAN  
DMG-3 12-6-13 [[73](#)]  
ROGELIO HERNANDEZ/MV  
D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING WITHDRAWN

**Tentative Ruling**

**Motion:** Modification of a Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

2. [13-17714](#)-A-13 MARK AGUILAR AND PATRICIA MOTION TO DISMISS CASE FOR  
MHM-1 RAMIREZ UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-30-14 [[25](#)]

**No tentative ruling.**

3. [13-16318](#)-A-13 ROGER/NICOLE PRATER CONTINUED MOTION TO CONFIRM  
TGF-1 PLAN  
ROGER PRATER/MV  
11-23-13 [[30](#)]  
VINCENT GORSKI/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

An order has been entered confirming the plan at docket number 57. The matter is dropped from calendar as moot.

4. [10-18022](#)-A-13 MARISSA URIAZ  
WDO-2  
MARISSA URIAZ/MV  
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
THE MORTGAGE HOUSE, INC.  
1-15-14 [[38](#)]

**Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by the 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). 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 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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

5. [10-14423](#)-A-13 MARY BRUCHER  
RSW-4  
MARY BRUCHER/MV  
1-31-14 [[46](#)]  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION

**Tentative Ruling**

**Motion:** Loan Modification Approval

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

**Disposition:** Granted

**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). 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 letter summarizing the terms of the agreement is attached to the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor and the holder of the loan to be modified 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 order shall state only that the court grants the motion and 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.

6. [13-13626](#)-A-13 DOXIE PALMA  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-31-14 [[59](#)]

**No tentative ruling.**

7. [13-15426](#)-A-13 DAVID/CHRISTINA  
MHM-1 VILLALPANDO  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-30-14 [[64](#)]

ROBERT WILLIAMS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

**No tentative ruling.**

8. [12-13027](#)-A-13 KEITH/MICHELLE LOGAN MOTION TO MODIFY PLAN  
WDO-2 1-6-14 [[34](#)]  
KEITH LOGAN/MV  
WILLIAM OLCOTT/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Section 6.02 of the proposed plan provides for a monthly payment of \$150.00 per month and states that the payment will start in month 52. However, no provision addresses months 1 to 51 of the plan. Accordingly, the provisions of the confirmed plan are binding as to the payment amount for these months. See 11 U.S.C. § 1327(a). Under the proposed plan, then, the monthly payment would be \$3,173.87 as stated in the order confirming the existing plan of the debtors.

Under this assumption that the existing confirmed plan supplies the payment amount for months 1 to 51, and that the payment going forward is \$150.00 per month, the debtors are delinquent in an amount indicated by the trustee. Tr.'s Opp'n to Confirmation at 3, ECF No. 42. Unless an evidentiary hearing is requested because the existence of such delinquency is disputed, the court will deny approval of the modification on grounds that the modified plan is not feasible. See 11 U.S.C. § 1325(a)(6).

The court will also deny on an alternative ground. The trustee asserts that the plan reclassifies the Class 1 mortgage claim to Class 4 but the proposed modified plan fails to state the effective date for when the Class 4 mortgage claim will start being paid directly. Because the proposed modified plan does not provide when the Class 4 mortgage claim begins to be paid, the inference is that it will be paid from months 1 to 60 since no provision of the existing confirmed plan likely addresses this point. This would also make the plan infeasible.

9. [13-16828](#)-A-13 ROBERT MOORE MOTION TO DISMISS CASE FOR  
MHM-1 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-31-14 [[23](#)]  
NEIL SCHWARTZ/Atty. for dbt.

**No tentative ruling.**

10. [13-17531](#)-A-13 BRETT/RENEE SMITH  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-27-14 [[21](#)]

KIM-LY CHAY/Atty. for dbt.

**No tentative ruling.**

11. [11-17232](#)-A-13 KERRY STEVENS  
RSW-3  
KERRY STEVENS/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

CONTINUED MOTION TO MODIFY PLAN  
11-19-13 [[67](#)]

**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.

12. [13-14334](#)-A-13 ANTONIO/ANAHEL AGUIRRE CONTINUED MOTION TO CONFIRM  
NES-4 PLAN  
ANTONIO AGUIRRE/MV 10-21-13 [[48](#)]  
NEIL SCHWARTZ/Atty. for dbt.

*[The hearing on this matter will follow the hearing on the debtors' motion to value collateral in this case having docket control no. NES-5.]*

#### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice and 75 Day Order Imposed

**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

#### **CHAPTER 13 PLAN CONFIRMATION**

The debtors' Chapter 13 plan is posited on stripping the second deed of trust encumbering their residence. Modified Chapter 13 Plan § 2.09, October 21, 2013, ECF No. 53. Valuing that lien is a condition to confirmation. LBR 3015-1(j). If the court denies the debtors' Motion to Value, January 2, 2014, ECF No. 81, the plan will not qualify for confirmation and the motion will be denied.

#### **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 date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

13. [13-14334](#)-A-13 ANTONIO/ANAHEL AGUIRRE MOTION TO VALUE COLLATERAL OF  
NES-5 HSBC FINANCE COMPANY  
ANTONIO AGUIRRE/MV 1-2-14 [[81](#)]  
NEIL SCHWARTZ/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Denied without prejudice

**Order:** Prepared by the moving party

The court cannot decide who the responding party is. The title to the motion names HSBC Finance Company as the respondent. But paragraph 6 of the motion refers to the second deed of trust being "currently held" by Beneficial Finance.

Paragraph 7 explains that Beneficial was purchased by another entity that was in turn acquired by another entity, HSBC Group, which was made part of the HSBC Finance Company. Who now holds the deed of trust is unclear.

Paragraph 7 also states that the mortgage *servicer* is Beneficial, which is seemingly inconsistent with the statement suggesting that

Beneficial Finance currently holds the deed of trust—unless Beneficial is both the holder of the deed of trust and the servicer. Paragraph 7 finally states that “this lender is in fact a member of HSBC Finance Group.” Membership in a group of companies, moreover, does not mean that the member is necessarily one and the same corporate entity as the other companies in the group of affiliates or subsidiaries.

These paragraphs, and the motion’s title, suggest multiple possible conclusions regarding who the respondent is. In addition, the proof of service shows service on an entirely different (but similarly named) entity than the entities discussed in the motion: HSBC Finance Corporation.

As a result of this ambiguity, the motion possibly does not provide the respondent, whoever the respondent is, with “reasonable notice and opportunity for hearing.” See Fed. R. Bankr. P. 9014. Furthermore, a motion that does not clearly name a respondent does not set forth the relief or order sought. Fed. R. Bankr. P. 9013. Relief in the abstract cannot be granted.

Alternatively, the court must deny the motion because the motion may not have been properly served under Rule 7004(b)(3) given that the entity served differs in name from the entity in the motion’s title and the entities discussed in the motion.

14. [14-10136](#)-A-13 SALVADOR GUERRERO AND MARIA SILVA - GUERRERO MOTION FOR RELIEF FROM  
DGK-1 AUTOMATIC STAY  
EDWARD BERMUDEZ/MV 1-29-14 [[12](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
DIXON KUMMER/Atty. for mv.

#### **Tentative Ruling**

**Motion:** Relief from Stay

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, the motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). Contested matters require Rule 7004 service of the motion. Fed. R. Bankr. P. 9014(b).

In contested matters, “reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.” Fed. R. Bankr. P. 9014(a). The debtor is the party against whom relief is sought by the motion for stay relief. The motion must be served on the party against whom relief is sought in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(a)-(b).

In this case, the motion did not comply with Rule 7004 because service on the debtor or was insufficient. If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proofs of service do not indicate service was made on the debtor’s attorney.

In addition, the proofs of service do not contain the server’s declaration that the statements made in the proof of service are true

and correct. See, e.g., 28 U.S.C. § 1746; Fed. R. Civ. P. (1)(1), incorporated by Fed. R. Bankr. P. 7004(a)(1).

15. [09-18544](#)-A-13 JUAN/ANN PRIETO MOTION TO MODIFY PLAN  
DMG-4 1-7-14 [[132](#)]  
JUAN PRIETO/MV  
D. GARDNER/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.

16. [13-16947](#)-A-13 ENRIQUE GOMEZ MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-30-14 [[29](#)]  
IVETA OVSEPYAN/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

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

17. [09-19453](#)-A-13 JAMES/REBECCA WHITTON CONTINUED MOTION TO MODIFY PLAN  
RSW-4 11-26-13 [[62](#)]  
JAMES WHITTON/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

18. [13-14959](#)-A-13 JOSE/SALLY SAENZ CONTINUED MOTION TO DISMISS  
MHM-1 CASE  
MICHAEL MEYER/MV 1-3-14 [[73](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Chapter 13 Case

**Status:** Continued hearing date; the court continued the hearing to this date to allow further briefing

**Disposition:** Granted conditioned on compliance with § 1326(a)(2) through payment of any unpaid administrative expenses allowed under § 503(b).

**Order:** Prepared by the trustee

At the initial hearing, debtors did not oppose dismissal of their case. The hearing was continued to allow briefing on the issue of whether funds held by the trustee must be disbursed under § 1326(a)(2) to pay administrative expense claims allowed under § 503(b)(2).

The trustee's reply brief agrees that unpaid approved attorneys' fees approved under § 503(b) will be paid to debtors' attorney upon dismissal of this case. The motion is granted conditioned on the trustee's compliance with § 1326(a)(2) by payment of any unpaid administrative expenses allowed under § 503(b) (such as the fees and costs allowed to the debtors' attorney).

19. [11-14165](#)-A-13 CHRISTOPHER WEBB MOTION TO MODIFY PLAN  
RSW-4 1-8-14 [[76](#)]  
CHRISTOPHER WEBB/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). Amended Schedules I and J were too late to allow the trustee or unsecured creditors a meaningful chance to review them to determine whether the plan is feasible. They were filed February 14, 2014, which is only 5 days before the hearing on the modification and

post-dates the deadline for creditors to object to the modification. The court will deny the motion without prejudice.

20. [11-16866](#)-A-13 DARON NUNN MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
MAZDA AMERICAN CREDIT/MV 1-9-14 [[89](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2007 Mazda 3

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). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 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 moving party's claim is placed in Class 2 of the confirmed plan. The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due.

The debtor is delinquent in monthly payments to the Chapter 13 trustee and to the moving party. Although the total past due balance of principal and interest has not been set forth in the motion, the motion alleges that debtor is delinquent under the Chapter 13 plan for approximately \$10,243.12 in plan payments. This delinquency in the total plan payment equates to 5 missed plan payments. By inference, the debtor is delinquent to the moving party by approximately 5 payments.

The moving party asserts that the value of the vehicle is depreciating and continues to depreciate. Thus, the moving party is not being adequately protected due to the debtor's ongoing postpetition default.

See 11 U.S.C. § 1326(a)(1)(C) (requiring adequate protection payments to commence not later than 30 days after the petition as to any creditor secured by personal property).

Therefore, cause exists to grant relief 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.

21. [13-16578](#)-A-13 JUAN PANTOJA  
FJA-3  
JUAN PANTOJA/MV  
FRANK ALVARADO/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
TIDEWATER FINANCE  
1-14-14 [[48](#)]

### **Tentative Ruling**

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). The costs of sale or marketing may not be deducted. *Id.*

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 ability to value a secured claim for property other than a motor vehicle is limited to debts incurred more than one year prior to the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the motion requests that the court value collateral consisting of non-vehicular personal property. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6).

22. [13-16578](#)-A-13 JUAN PANTOJA  
FJA-3  
JUAN PANTOJA/MV  
FRANK ALVARADO/Atty. for dbt.  
THIS APPEARS TO BE A  
DUPLICATE OF THE ABOVE  
MOTION, DOCUMENT #48

MOTION TO VALUE COLLATERAL OF  
TIDEWATER FINANCE  
1-14-14 [[52](#)]

**Tentative Ruling**

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

**Disposition:** Denied as moot

**Order:** Civil minute order

This motion appears to be a duplicate of the immediately preceding motion to value collateral filed in this case. If the motion is a duplicate, seeking the same relief as to the same collateral, then the motion is denied as moot. If the motion is not a duplicate, then it is denied without prejudice for violating the Local Bankruptcy Rule 9014-1(c)(3) given that it has the same docket control number as the immediately preceding motion.

23. [13-16578](#)-A-13 JUAN PANTOJA  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-30-14 [[64](#)]

FRANK ALVARADO/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

24. [13-11681](#)-A-13 FIDEL/ELVIRA GONZALEZ  
WDO-2  
FIDEL GONZALEZ/MV  
WILLIAM OLCOTT/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

MOTION TO CONFIRM PLAN  
12-13-13 [[36](#)]

**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.

25. [13-17986](#)-A-13 SARAH MCKAY-WITT  
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  
1-30-14 [[14](#)]

**No tentative ruling.**

26. [13-17895](#)-A-13 BERTHA SANCHEZ  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-27-14 [[25](#)]

ROBERT WILLIAMS/Atty. for dbt.

**No tentative ruling.**

27. [13-14296](#)-A-13 JOSE SANCHEZ  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-30-14 [[40](#)]

PHILLIP GILLET/Atty. for dbt.

**No tentative ruling.**

28. [09-11498](#)-A-13 ROMEO/ELNORA CAYME  
PWG-5  
ROMEO CAYME/MV  
PHILLIP GILLET/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
1-10-14 [[105](#)]

**Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

The debtors' reply indicates that the remaining balance of attorneys' fees will be paid directly to the attorney by the debtors. Section 6.04 of the plan seems to confirm that attorneys' fees are not intended to be treated under the plan and thus not discharged.

However, Section 6.04 seems to conflict with section 2.06, which provides for additional fees of \$8,000.00 that will be paid through the plan. The order confirming may amend section 2.06 to state exactly what amounts have already been paid through the plan, and what amount will be paid directly by the debtors to their attorney post-discharge.

In addition, debtors agree that they must make their last two payments of \$1,004.00 to complete their plan. The court agrees with the parties that the debtors must be current by the hearing date in order for the court to confirm the modified plan.

29. [13-16115](#)-A-13 MIGUEL LOPEZ  
MHM-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS ,  
MOTION TO DISMISS CASE  
2-5-14 [[52](#)]

AMANDA BILLYARD/Atty. for dbt.

**No tentative ruling.**

30. [13-17216](#)-A-13 RICKEY/JESSICA HOYER  
RSW-1  
RICKEY HOYER/MV

MOTION TO VALUE COLLATERAL OF  
AMERICREDIT FINANCIAL SERVICES,  
INC.  
2-5-14 [[24](#)]

ROBERT WILLIAMS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Collateral Value:** \$17,625.00

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).

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. The debtor states that the vehicle was purchased on November 1, 2009, with a loan from the respondent. The court infers that the loan was made on the same date as the purchase of the vehicle and further concludes that the debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

31. [12-16550](#)-A-13 TOMAS/MARY NIEBLAS  
RSW-2  
TOMAS NIEBLAS/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO INCUR DEBT  
2-6-14 [[33](#)]

**Tentative Ruling**

**Motion:** Authority to Sign New Lease on Same Previously Leased Vehicle

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

**Disposition:** Granted

**Order:** Prepared by moving party

**New Debt Amount:** \$588.03 per month on a new vehicle lease, an increase of \$4.59 above the previous vehicle lease, which has expired

The debtors are requesting authorization to sign a new lease on their current leased vehicle. They affirm that they are current under their confirmed plan and that the plan is not in default. The new lease payment is only a few dollars higher than the previous lease payment under the debtors' vehicle lease that recently expired.

Lastly, the debtors state that their budget has changed, that they have filed an amended budget to show that this new lease payment will not affect their ability to pay their plan payment each month, given that this is the same vehicle with a lease payment only slightly higher than the prior lease payment.

If the trustee does not oppose the motion, the court will grant it and authorize the debtors to enter into a new vehicle lease agreement. The court does not approve the terms of the agreement but only authorizes the parties to enter into this agreement.

**9:15 a.m.**

1. [10-11963](#)-A-13 SANDRA REBESKE  
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 MAKE PLAN PAYMENTS  
1-17-14 [[85](#)]

PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

9:30 a.m.

1. [11-62587](#)-A-13 JUAN PIMENTEL  
[13-1138](#)  
PIMENTEL V. BANK OF AMERICA,  
N.A.  
MICHAEL FRANK/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT  
12-18-13 [[1](#)]

**No tentative ruling.**

10:30 a.m.

1. [13-17500](#)-A-7 REX/LINDA GLASS  
  
CURTIS FLOYD/Atty. for dbt.

REAFFIRMATION AGREEMENT WITH  
FINANCE AND THRIFT COMPANY  
1-29-14 [[14](#)]

**No tentative ruling.**

2. [13-16486](#)-A-7 DEANNA RODGERS  
  
CURTIS FLOYD/Atty. for dbt.

PRO SE REAFFIRMATION AGREEMENT  
WITH CAPITAL ONE AUTO FINANCE  
1-7-14 [[12](#)]

**No tentative ruling.**

3. [13-16288](#)-A-7 TIFFANY THOMPSON  
  
DISCHARGED

PRO SE REAFFIRMATION AGREEMENT  
WITH KERN SCHOOLS FEDERAL  
CREDIT UNION  
1-6-14 [[13](#)]

**No tentative ruling.**

4. [13-17792](#)-A-7 CHRISTOPHER VADNAIS AND  
DANA HAWKINS-VADNAIS  
  
ROBERT WILLIAMS/Atty. for dbt.

REAFFIRMATION AGREEMENT WITH  
FORD MOTOR CREDIT COMPANY  
1-27-14 [[13](#)]

**No tentative ruling.**

1:00 p.m.

1. [11-62509](#)-A-7 SHAVER LAKEWOODS OBJECTION TO CLAIM OF SIERRA  
KDG-7 DEVELOPMENT INC. PINES AT SHAVER LAKE HOMEOWNERS  
RANDELL PARKER/MV ASSOCIATION, CLAIM NUMBER 2  
1-6-14 [[112](#)]  
  
HENRY NUNEZ/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

**Tentative Ruling**

**Objection:** Objection to Claim No. 2  
**Disposition:** Continued for an evidentiary hearing  
**Order:** Civil minute order

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 disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material factual issues: (i) whether the claimant's estimate of fees for overhead, profits, supervision, and contingencies are reasonable repair costs.

Unless all parties are prepared at the hearing to establish relevant scheduling dates and deadlines, the court will 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, the joint status report will be filed 14 days in advance of the continued hearing date. Alternatively, the parties may jointly address these issues orally at the continued hearing in lieu of a written joint status report.

2. [14-10312](#)-A-7 AMBER LOWE

AMENDED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
1-29-14 [[15](#)]

### **Tentative Ruling**

**Order to Show Cause:** Dismissal of Case for Failure to Pay Fees in the amount of \$306.00

**Date Issued:** January 29, 2014

**Disposition:** Case Dismissed

**Order:** Civil minute order

The debtor has failed to pay one or more installments of the filing or administrative fees according to the schedule specified in an order granting the debtor leave to pay such fees in installments. If the debtors have not paid all past due installments of filing or administrative fees by the date of the hearing, then the court will order that the case be dismissed.

3. [11-60914](#)-A-7 WADE/CARRIE MOOR  
KDG-4  
JEFFREY VETTER/MV  
D. GARDNER/Atty. for dbt.  
LISA HOLDER/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION TO SELL AND/OR  
MOTION TO PAY  
12-31-13 [[54](#)]

### **Tentative Ruling**

**Motion:** Sell Property and Compensate Real Estate Broker

**Notice:** LBR 9014-1(f)(2) / continued hearing date; further briefing filed by the trustee and debtors

**Disposition:** Granted

**Order:** Prepared by the moving party

**Property:** 20.23 acres of real property located in Lebec, CA

**Buyer:** Esteban Tabares

**Sale Price:** \$40,000

**Sale Type:** Private sale subject to overbid opportunity

### **CARVE-OUT AND BIDDING ISSUES**

The court continued the hearing on the matter because issues were raised regarding a carve-out proposed to be paid to California Bank & Trust ("CBT"). One of the issues raised by the carve-out was whether it disturbed the parity between the stalking horse bidder and the debtors, who also appeared to bid on the subject property.

The trustee's supplemental brief reveals that the trustee will not be paying a carve-out to CBT. As a result, the issues related to the effect of this carve-out agreement are unnecessary to address, including whether payment of such carve-out disturbs the parity between bidders and whether the avoided lien is preserved for the estate or for the debtor.

The court notes that a lien that is avoided under § 522(f) is avoided for all purposes and ceases to exist as a lien on the property. But the lien may be preserved under § 522(i) for the debtor's benefit up

to the exemption amount. *See, e.g., In re Charnock*, 318 B.R. 720, 726-727 (B.A.P. 9th Cir. 2004) (rejecting judicial lien creditor's argument that a junior consensual lien creditor would receive a windfall by the avoidance of senior judicial lien because the debtor would be able to assert the debtor's homestead exemption in the amount of the avoided senior lien as against the junior consensual lienholder). A lien avoided under § 522(f) is "preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection [I]." 11 U.S.C. § 522(i)(2).

Further, if the lien were to be avoided by an order under § 522(f) but not treated as avoided in another order relating to the same property, inconsistent judgments could result from a lien for which an order was entered avoiding such lien. *See, e.g., In re Meyer*, 373 B.R. 84, 91-92 (B.A.P. 9th Cir. 2007) (Klein, J., concurring) ("Thus, it is an abuse of discretion to enter default judgments that are inconsistent with decisions as to other defendants."). Accordingly, the trustee is correct in not paying a carve-out to CBT based on a nonexistent lien.

As a result, the debtors may credit bid the amount of their exemption as debtors may do in the ordinary sale by a chapter 7 trustee. To the extent that the property's value exceeds the exemption amount, the debtors will have to pay that portion of the price to the trustee.

#### **SALE UNDER § 363(b)**

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

#### **COMPENSATION UNDER § 330(a)**

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

4. [12-17814](#)-A-7 ROGER/MONIQUE ROMERO  
RP-1  
RANDELL PARKER/MV  
CRAIG TRIANCE/Atty. for dbt.  
RANDELL PARKER/Atty. for mv.  
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
1-7-14 [[65](#)]

### **Tentative Ruling**

**Objection:** Objection to Claim of Exemptions

**Notice:** LBR 9014-1(f)(1); debtors have filed written opposition

**Disposition:** Pending

**Order:** Pending

The trustee has filed an objection to the debtors' claim of exemptions under § 703.140(b)(1) and (5) as exceeding the allowable amount of value for exemptions under such subsections. The trustee objects that the debtors claimed an exemption in \$13,066.22 of wages that were not disclosed in the original bankruptcy petition or under oath at the § 341 meeting of creditors. The trustee asserts that the debtors amended bankruptcy schedules were filed on March 28, 2013, and that the trustee was not aware that the amendments had been filed until December 10, 2013.

The debtors' response to the objection provides background information on the debtors' attempt to recover the \$13,066.22 in wages after the IRS had levied on such wages after the petition was filed. The debtors' response explains that the IRS returned the wages to the debtors' employer who then transferred the wages to the trustee. If the trustee agrees with these facts, the court does not find that the debtors were attempting to conceal the wages.

Furthermore, the debtors have shown their intent to file an amended Schedule C changing the exemptions claimed to exemptions under section 704 of the California Code of Civil Procedure. But the debtors state that they have not signed the amended Schedule C pending the outcome of this hearing. The court does not understand why the debtors have chosen to wait to amend Schedule C given that they may amend the schedules at any time. See Fed. R. Bankr. P. 1009(a).

If the debtors represent to the court at the hearing that they will file amended Schedule C no later than close of business on the date of the hearing, the court will deny the objection as moot. If the debtors represent that they are not planning on amending their schedules, the court may sustain the objection given that the debtors' response admits that "the proper exemption schedule to use was the exemptions set forth under Code of Civil Procedure Section 704 ...." Reply at 3, ECF No. 71.

5. [13-10814](#)-A-7 FL.INVEST.USA INC.  
KDG-4  
VINCENT GORSKI/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH MARIA ROSA  
NEMNI, ALDO NEMNI, AND MIRO'  
AMERICA LLC  
1-29-14 [[284](#)]

RYAN ERNST/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

### **Tentative Ruling**

**Motion:** Approve Compromise or Settlement of Controversy

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Parties to Compromise:** Vincent Gorski, Chapter 7 trustee ("Trustee") and Maria Rosa Nemni, Aldo Nemni and Miro America LLC ("Respondents")

**Dispute Compromised:** Appeal of default judgment held by Respondents and further state court litigation of the claims underlying the default judgments

**Summary of Material Terms:** In exchange for the trustee dismissing his appeal of Respondents' judgments, the Respondents have agreed to the following performances:

(1) If the sale of Pine Meadows is completed as proposed, then Respondents will release their liens for less than full payment (by any amount that exceeds \$4.7 million, which is a reduction in the Respondents' payoff of approximately \$51,964.50). The Respondents will also release their claim to approximately \$50,000 to \$60,000 of oil and gas royalties or fees paid from oil and gas production at Pine Meadows and they will waive their claims against the estate.

(2) If the sale of Pine Meadows is not completed as proposed, then Respondents will pay \$20,000 in cash to the trustee and will also release their claim to approximately \$50,000 to \$60,000 of oil and gas royalties or fees paid from oil and gas production at Pine Meadows and they will waive their claims against the estate.

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).

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.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

6. [13-16619](#)-A-7 JENNIE SIERRAS

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
12-27-13 [[15](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

**Notice:** LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

**Disposition:** Conditionally denied in part, granted in part unless the trustee does not appear or have notice of the hearing (given the lack of proper notice) in which event the court will rule appropriately

**Order:** Prepared by chapter 7 trustee

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

The court will conditionally deny the motion in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the trustee's ex parte declaration.

The court will grant the motion in part to the extent it requests extension of certain deadlines. Such deadlines will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is March 17, 2014. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

7. [13-16927](#)-A-7 ROMELIA FERREL  
FPS-1  
ROMELIA FERREL/MV  
FRANK SAMPLES/Atty. for dbt.

MOTION TO AVOID LIEN OF CREDIT  
VENTURES, LLC  
1-17-14 [[12](#)]

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**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). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 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 responding party'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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

8. [13-14530](#)-A-7 KATHRYN JONES  
PD-1  
WELLS FARGO BANK, N.A./MV  
RANDY RISNER/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
9-20-13 [[50](#)]

**No tentative ruling.**

9. [13-11347](#)-A-7 CHRISTOPHER BURGONI  
VG-3  
VINCENT GORSKI/MV  
LEONARD WELSH/Atty. for dbt.  
VINCENT GORSKI/Atty. for mv.

OMNIBUS OBJECTION TO CLAIMS  
12-30-13 [[37](#)]

**Tentative Ruling**

**Objection:** Omnibus Objection to Claims

**Notice:** LBR 3007-1(b)(2); no written opposition required

**Disposition:** Sustained

**Order:** Prepared by objecting party

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). 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).

This omnibus objection is based solely on the grounds provided in Rule 3007(d)(1) because the claims duplicate other claims or the grounds provided in Rule 3007(d)(3), because the claims have been amended by subsequently filed proofs of claim. See Fed. R. Bankr. P. 3007(d)(1), (3).

Each claim to which the objection has been filed is duplicative of another claim, Claim No. 5-1, a claim in the same amount as the claims to which the objection is filed. The court sustains the objection and disallows the duplicate claims. Each claimant shall retain only one claim incorporating the entire obligation owed to such claimant.

10. [13-17950](#)-B-7 DAMIEON EBELING

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
1-21-14 [[23](#)]

\$30.00 FILING FEE PAID 1/27

**Final Ruling**

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

11. [13-16857](#)-A-7 MENDOZA FAMILY PRACTICE, MOTION TO EMPLOY GOULD AUCTION  
TSB-3 A MEDICAL CORPORATION AND APPRAISAL COMPANY AS  
RANDELL PARKER/MV AUCTIONEER, AUTHORIZING SALE OF  
PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF  
AUCTIONEER FEES AND EXPENSES  
1-29-14 [[41](#)]

CYNTHIA SCULLY/Atty. for dbt.  
T. BELDEN/Atty. for mv.

### **Tentative Ruling**

**Motion:** Sell Property and Employ and Compensate Auctioneer

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** Medical and office equipment more fully described on Exhibit  
A attached to the notice of hearing

**Sale Type:** Public auction

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 363(b)(1) of Title 11 authorizes sales of property of the  
estate "other than in the ordinary course of business." 11 U.S.C. §§  
363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.  
1983) (requiring business justification). The moving party is the  
Chapter 7 trustee and liquidation of property of the estate is a  
proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court  
will grant the motion. The stay of the order provided by Federal Rule  
of Bankruptcy Procedure 6004(h) will be waived.

The Chapter 7 trustee may employ an auctioneer that does not hold or  
represent an interest adverse to the estate and that is disinterested.  
11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the  
requirements of § 327(a), and the court will approve the auctioneer's  
employment.

Section 330(a) of Title 11 authorizes "reasonable compensation for  
actual, necessary services" rendered by a professional person employed  
under § 327 and for "reimbursement for actual, necessary expenses."  
11 U.S.C. § 330(a). Reasonable compensation is determined by  
considering all relevant factors. *See id.* § 330(a)(3). The court  
finds that the compensation sought is reasonable and will approve the  
application.

12. [13-17985](#)-A-7     FILOMENA CABRILLAS  
FPS-1  
FILOMENA CABRILLAS/MV  
FRANK SAMPLES/Atty. for dbt.

MOTION TO AVOID LIEN OF LVNV  
FUNDING LLC  
1-17-14 [[9](#)]

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**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). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 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 responding party'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 debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

13. [05-15086](#)-A-7     RANDOLPH LOVEGREEN  
DMG-3  
RANDOLPH LOVEGREEN/MV  
D. GARDNER/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN  
OF WELLS FARGO BANK, N.A.  
1-8-14 [[52](#)]

**No tentative ruling.**

14. [13-14530](#)-A-7 KATHRYN JONES  
DRJ-2  
JAMES SALVEN/MV  
RANDY RISNER/Atty. for dbt.  
DAVID JENKINS/Atty. for mv.

MOTION TO SELL FREE AND CLEAR  
OF LIENS  
2-4-14 [[185](#)]

### **Tentative Ruling**

**Motion:** Sell Real Property and Compensate Real Estate Broker

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

**Disposition:** Granted, subject to the lien attaching to the proceeds of all judicial lien holders

**Order:** Prepared by moving party

**Property:** 1408 South Alta Avenue, Reedley, California

**Buyer:** John Nipp

**Sale Price:** \$429,200

**Sale Type:** Private sale subject to overbid opportunity

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).

### **SALE UNDER § 363(b)**

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

### **SALE UNDER § 363(f)**

The term "bona fide dispute" in § 363(f)(4) means that "there is an objective basis for either a factual or legal dispute as to the validity of the debt." *Union Planters Bank, N.A. v. Burns (In re Gaylord Grain L.L.C.)*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004); *see also 3 Collier on Bankruptcy* ¶ 363.06[5], at 363-53 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2012) (citing cases). Under this subsection of § 363, the trustee has the burden of proof to show the existence of a bona fide dispute. *See 3 Collier on Bankruptcy, supra*, ¶ 363.06[5], at 363-53.

In *Burns*, the bankruptcy appellate panel for the Eighth Circuit found that an objective basis existed to avoid a bank's liens against two vehicles because the liens against those vehicles had not been perfected pursuant to the state statute governing perfection of liens against motor vehicles. *Burns*, 306 B.R. at 628-29. The panel held that the trustee would need to show "an objective basis for avoiding the liens, and thus establish a bona fide dispute for purposes of 11 U.S.C. § 363(f)(4)." *Id.* at 628.

The request for free and clear relief shall be denied as Wells Fargo Bank (first deed of trust) and Pascuzzi, Moore & Stoker (second deed of trust), which shall be paid through escrow. As to all judicial



1:30 p.m.

1. [13-17107](#)-A-7 CARL/MILDRED CARR MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 2-3-14 [[22](#)]  
CURTIS FLOYD/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.  
DISCHARGED

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2011 Kia Sedona

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).

**AS TO DEBTOR**

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtors. The stay that protects the debtors terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtors.

**AS TO ESTATE**

Section 362(d)(1) authorizes stay relief for cause shown. The summary sheet shows that the debtors have missed 3 payments postpetition and that the vehicle is a rapidly depreciating asset. The motion indicates that the debtors have payment defaults totaling \$1,155.32 plus attorneys' fees and costs.

The moving party asserts that it is not receiving adequate protection for the decline of its interest in the collateral. By inference from the moving party's figures on valuation and the outstanding debt owed to the moving party, an equity cushion of approximately 4.64% exists. Because the vehicle is "rapidly depreciating asset" as alleged, this already small equity cushion will further decrease unless adequate protection payments are made to the moving party. Thus, the court finds cause to grant stay relief.

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.

2. [14-10108](#)-A-7 MISTY LETSCH  
VVF-1  
AMERICAN HONDA FINANCE  
CORPORATION/MV  
NEIL SCHWARTZ/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.  
AMERICAN HONDA FINANCE  
CORPORATION VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-31-14 [[9](#)]

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Pending

**Order:** Pending

**Subject:** 2010 Honda Insight

The proof of service shows that the motion, notice, memorandum, declaration and exhibits were served properly. However, an amended notice of hearing was filed. The moving party shall confirm at the hearing whether the amended notice of hearing was served on the debtor and the debtor's hearing. Service of the original notice of hearing will not suffice. Only if the amended notice of hearing was served properly on the debtor, the debtor's attorney, and the trustee will the court adopt the following ruling granting the motion:

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 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

3. [14-10123](#)-A-7 CHAD CROSBY MOTION FOR RELIEF FROM  
BHT-1 AUTOMATIC STAY  
KERN SCHOOLS FEDERAL CREDIT 1-28-14 [[15](#)]  
UNION/MV  
BRIAN TRAN/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 1752 Camino Primavera, Bakersfield, CA

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 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

4. [13-17379](#)-A-7 LISA LINARES MOTION FOR RELIEF FROM  
EAT-1 AUTOMATIC STAY  
FEDERAL NATIONAL MORTGAGE 1-3-14 [[24](#)]  
ASSOCIATION/MV  
DARLENE VIGIL/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:** 3205 Dartmouth Street, Bakersfield, CA

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).

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The

motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. 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.

5. [14-10084](#)-A-7 KERRY JEFFERSON  
PK-1  
RALPH FREEDMAN/MV  
PATRICK KAVANAGH/Atty. for mv.  
RALPH FREEDMAN VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-3-14 [[14](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 3512 Sampson Ct. #12, Bakersfield, CA

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). The movant alleges that he filed an unlawful detainer complaint in state court. The complaint is attached as an exhibit. In support, the movant asserts by declaration that the complaint was not listed in the Statement of Financial Affairs and that the movant was not scheduled as a creditor.

The unlawful detainer complaint has been attached as an exhibit. It alleges that monthly rent is \$700.00 and that the debtor is delinquent for past-due rent in the amount of \$1400.00. The court finds that these missed rent payments, combined with the failure to schedule the pending lawsuit, constitute cause to grant stay relief.

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.