

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 13, 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. [13-17505](#)-A-13 SERGIO/MARTHA ROJAS MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 1-31-14 [[25](#)]
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-18107](#)-A-13 LAURA DIAZ MOTION TO VALUE COLLATERAL OF
DRJ-2 BANK OF AMERICA, N.A. AND/OR
LAURA DIAZ/MV MOTION TO VALUE COLLATERAL OF
OWNIT MORTGAGE SOLUTIONS INC.
1-21-14 [[15](#)]
DAVID JENKINS/Atty. for dbt.

Final 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).

3. [13-17008](#)-A-13 JASON/MONA MENDONCA MOTION FOR RELIEF FROM
JRL-3 AUTOMATIC STAY
SENTHIL KUHMAR/MV 1-31-14 [[39](#)]
NANCY KLEPAC/Atty. for dbt.
JERRY LOWE/Atty. for mv.

Final Ruling

The case dismissed, the matter is dropped from calendar as moot.

4. [10-61813](#)-A-13 JAMES/MARIANNE KELSEY MOTION TO REOPEN CHAPTER 13
WAM-1 BANKRUPTCY CASE
JAMES KELSEY/MV
1-21-14 [[131](#)]
WILLIAM COLLIER/Atty. for dbt.

Final Ruling

An order having been issued reopening the case (ECF #140), the matter is dropped as moot.

5. [10-63817](#)-A-13 ANIRUDH SUD MOTION TO MODIFY PLAN
HDN-6 1-3-14 [[102](#)]
ANIRUDH SUD/MV
HENRY NUNEZ/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: 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. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an

evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

6. [13-18017](#)-A-13 TYNETTA SHABAZZ
MHM-1
MICHAEL MEYER/MV
RANDY RISNER/Atty. for dbt.
SARAH VELASCO/Atty. for mv.
- MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 1307
2-7-14 [[26](#)]

No tentative ruling.

7. [10-16521](#)-A-13 WANDA SILVEIRA
TOG-12
WANDA SILVEIRA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO MODIFY PLAN
1-8-14 [[81](#)]

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.

"[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996). Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("Furthermore, § 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The debtor has not used the correct form plan, Form EDC 3-080 as revised effective May 1, 2012. See LBR 3015-1(a).

The debtor has also not filed a declaration addressing each element of § 1325(a). Lastly, the plan provides for payments to creditors for a period longer than 5 years, which is not permitted by § 1322(d).

These procedural violations preclude confirmation at this time. Because the court will deny confirmation on these procedural grounds, the court will not decide the other issues raised by the trustee's objection relating to the plan's funding and feasibility.

8. [12-14926](#)-A-13 JOHN/KAREN LYSTAD MOTION TO MODIFY PLAN
TCS-8 1-10-14 [[129](#)]
JOHN LYSTAD/MV
NANCY KLEPAC/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.

9. [13-16127](#)-A-13 RICHARD/KAREN WENDT MOTION TO CONFIRM PLAN
DRJ-2 12-10-13 [[22](#)]
RICHARD WENDT/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

CONFIRMATION

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the

hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

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).

10. [13-16127](#)-A-13 RICHARD/KAREN WENDT MOTION TO VALUE COLLATERAL OF
DRJ-3 SANTANDER CONSUMER LOANS, INC.
RICHARD WENDT/MV 1-5-14 [[28](#)]
DAVID JENKINS/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$5,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 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 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.

11. [13-17627](#)-A-13 GABRIELLE KIRKLAND MOTION TO CONFIRM PLAN
JMA-2 1-10-14 [[16](#)]
GABRIELLE KIRKLAND/MV
JOSEPH ARNOLD/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.

12. [13-17332](#)-A-13 LORENZO/MARIA TOVAR MOTION TO CONFIRM PLAN
HDN-2 1-15-14 [[45](#)]
LORENZO TOVAR/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Debtors have withdrawn the plan from consideration for confirmation and requested that the hearing be removed from calendar. The motion will be denied as moot.

13. [13-17332](#)-A-13 LORENZO/MARIA TOVAR MOTION TO VALUE COLLATERAL OF
HDN-3 UNION BANK
LORENZO TOVAR/MV 1-17-14 [[51](#)]
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

[The hearing on this matter will follow the hearing on the trustee's motion to dismiss this case having docket control no. MHM-1, a matter that is set for hearing at item 15 on this calendar.]

No tentative ruling.

14. [13-17332](#)-A-13 LORENZO/MARIA TOVAR MOTION TO VALUE COLLATERAL OF
HDN-4 ELAINE CORY
LORENZO TOVAR/MV 1-20-14 [[58](#)]
HENRY NUNEZ/Atty. for dbt.

[The hearing on this matter will follow the hearing on the trustee's motion to dismiss this case having docket control no. MHM-1, a matter that is set for hearing at item 15 on this calendar.]

No tentative ruling.

15. [13-17332](#)-A-13 LORENZO/MARIA TOVAR MOTION TO DISMISS CASE
MHM-1 1-28-14 [[67](#)]
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING
JOINDER

No tentative ruling.

16. [13-17332](#)-A-13 LORENZO/MARIA TOVAR
MHM-2
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
1-28-14 [[71](#)]

No tentative ruling.

17. [13-17533](#)-A-13 ALEX/PRISCILLA PANG
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
AND/OR MOTION TO DISMISS CASE
1-31-14 [[19](#)]

No tentative ruling.

18. [14-10334](#)-A-13 CYNTHIA WALLERT
JDS-1
LUIS CARDENAS/MV
JOHN SUHR/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-4-14 [[11](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

19. [13-17147](#)-A-13 PAMELA HOOD
MHM-1
MICHAEL MEYER/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
AND/OR MOTION TO DISMISS CASE
1-31-14 [[19](#)]

No tentative ruling.

20. [10-62251](#)-A-13 RAYMOND/ROSEMARIE THOMAS
TCS-1
RAYMOND THOMAS/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
1-10-14 [[41](#)]

Final 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 debtors have filed a reply expressing agreement with the trustee's opposition and their request that the objection be sustained. The debtors are in the process of filing another modified plan. The court will deny the motion without prejudice.

21. [13-17651](#)-A-13 CLAUDE POISSON
MHM-1
MICHAEL MEYER/MV
MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
1-23-14 [[29](#)]

No tentative ruling.

22. [13-17651](#)-A-13 CLAUDE POISSON
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 PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
1-23-14 [[33](#)]

No tentative ruling.

23. [13-17651](#)-A-13 CLAUDE POISSON
PD-1
FLAGSTAR BANK, FSB/MV
JOSEPH DELMOTTE/Atty. for mv.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-24-14 [[38](#)]

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. No proof of service has been filed as required by Federal Rule of Civil Procedure 4(1). Fed. R. Civ. P. 4(1), *incorporated by* Fed. R. Bankr. P. 7004(a).

24. [13-18051](#)-A-13 JAIME/SANDRA HERNANDEZ
PBB-1
JAIME HERNANDEZ/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ALLY FINANCIAL
1-21-14 [[15](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$32,396

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 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 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. In the future, the court requests that debtor's attorney provide more precise information regarding the applicability of the hanging paragraph. For example, when the vehicle was purchased is not sufficient. The motion should state when the debt was incurred.

25. [13-14655](#)-A-13 LARRY VALENCIA
TCS-5
LARRY VALENCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
1-9-14 [[84](#)]

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.

26. [09-16856](#)-A-13 JOHN/RENEE KUTUMIAN
PLF-3
PETER FEAR/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF PETER L. FEAR FOR
PETER L. FEAR, DEBTOR'S
ATTORNEY(S), FEE: \$4592.00,
EXPENSES: \$42.32
1-30-14 [[89](#)]

PETER FEAR/Atty. for dbt.
STIPULATION AND ORDER

Final Ruling

Application: Interim Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Law Offices of Peter Fear

Compensation approved: \$4,592.00

Costs approved: \$42.32

Aggregate fees and costs approved: \$4,634.32 + \$3,500.00 approved as part of the plan confirmation process under LBR 2016-1(c) = \$8,134.32

Retainer held: N/A

Amount to be paid as administrative expense: \$3,275.00 per the stipulation between the trustee, the debtors and the attorney for the debtors

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 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

27. [11-17662](#)-A-13 FABIAN/JAN SANCHEZ MOTION TO MODIFY PLAN
JMA-9 1-7-14 [[92](#)]
FABIAN SANCHEZ/MV
JOSEPH ARNOLD/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. [13-17562](#)-A-13 SAMMY/ALVA MARTINEZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-30-14 [[37](#)]

DISMISSED 2/5/13

Final Ruling

The case dismissed, the matter is dropped as moot.

29. [12-14165](#)-A-13 ALEESHA FRAGA MOTION TO MODIFY PLAN
TCS-1 1-8-14 [[21](#)]
ALEESHA FRAGA/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

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.

30. [13-16466](#)-A-13 ANDRE ALBA
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
1-27-14 [[26](#)]

BRET ADAMS/Atty. for dbt.

Tentative Ruling

Objection: Confirmation of Chapter 13 Plan

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

Disposition: Sustained and confirmation denied without prejudice

Order: Civil minute order

The court will sustain the trustee's objection and deny confirmation without prejudice. The trustee asserts that debtors are above-median income. The proposed plan's term, however, is 3 years. Pursuant to § 1325(b)(4), the debtor must propose a plan that is not less than 5 years. Because the court sustains the objection because the plan's term is impermissible, the court does not consider the other grounds supporting the trustee's objection to confirmation.

31. [13-15979](#)-A-13 JAIME HERNANDEZ
MHM-2
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-31-14 [[43](#)]

No tentative ruling.

32. [13-16391](#)-A-13 JOSHUA/SOMMER RITTER
MHM-1
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-31-14 [[55](#)]

No tentative ruling.

33. [13-16391](#)-A-13 JOSHUA/SOMMER RITTER
TMT-2
TRUDI MANFREDO/MV

MOTION FOR COMPENSATION FOR
TRUDI MANFREDO, CHAPTER 7
TRUSTEE(S), FEE: \$1650.00,
EXPENSES: \$31.07
1-14-14 [[47](#)]

JOEL WINTER/Atty. for dbt.
CONVERTED 11/16/13,
RESPONSIVE PLEADING

Final Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Trudy G. Manfredo
Compensation approved: \$1,650.00
Costs approved: \$31.07
Aggregate fees and costs approved: \$1,681.07
Retainer held: \$0.00
Amount to be paid as administrative expense: \$1,681.07

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).

Subject to the cap of § 326, § 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a former Chapter 7 trustee in a case converted to Chapter 13. *In re Flying S Land & Cattle Co.*, 23 B.R. 56, 58 (Bankr. C.D. Cal. 1982). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable and within the cap of § 326(a). As a result, the court will approve the application on a final basis.

34. [13-17598](#)-A-13 DEBBY RENNA
MHM-1
MICHAEL MEYER/MV
BENNY BARCO/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-31-14 [[27](#)]

No tentative ruling.

9:30 a.m.

1. [13-15730](#)-A-13 ALFREDO CORTEZ CONTINUED STATUS CONFERENCE RE:
[13-1125](#) COMPLAINT
U.S. TRUSTEE V. CORTEZ 11-12-13 [[1](#)]
GREGORY POWELL/Atty. for pl.

Final Ruling

The matter is continued to April 2, 2014, at 9:30 a.m.

10:30 a.m.

1. [14-10851](#)-A-11 JOHN/BETTY VAN DYK MOTION TO USE CASH COLLATERAL
WW-1 2-26-14 [[10](#)]
RILEY WALTER/Atty. for dbt.

No tentative ruling.