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.

1. <u>11-17816</u>-A-13 MARLOWE FOSSEN   MOTION TO MODIFY PLAN
    TCS-3   1-29-14 [<u>82</u>]
    MARLOWE FOSSEN/MV
    TIMOTHY SPRINGER/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.

2. <u>09-15034</u>-A-13 MANUEL/ERIKA PRADO   MOTION TO APPROVE LOAN
    GMA-1   MODIFICATION
    MANUEL PRADO/MV
    2-7-14 [<u>47</u>]
    GEOFFREY ADALIAN/Atty. for dbt.

    Final Ruling

    Motion: Loan Modification Approval
    Notice: LBR 9014-1(f)(1); 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). Written
    opposition to this motion was required not less than 14 days before
    the hearing on this motion. LBR 9014-1(f)(1)(B). None has been
    filed. The default of the responding party is entered. The court
    considers the record, accepting well-pleaded facts as true. *TeleVideo
    Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

    The motion seeks approval of a loan modification agreement. A copy of
    the loan modification agreement accompanies the motion. *See* Fed. R.
    Bankr. 4001(c). The court will grant the motion 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.

3.   13-15146-A-13 BARBARA BRYAN   MOTION TO DISMISS CASE FOR
      MHM-1   UNREASONABLE DELAY THAT IS
      MICHAEL MEYER/MV   PREJUDICIAL TO CREDITORS
                                                2-14-14 [53]
      JOEL WINTER/Atty. for dbt.

      No tentative ruling.

4.   13-17268-A-13 CHRISTOPHER/NORMA ABLES   CONTINUED MOTION TO CONFIRM
      JRL-1   PLAN
      CHRISTOPHER ABLES/MV   12-12-13 [20]
      JERRY LOWE/Atty. for dbt.
      RESPONSIVE PLEADING

      No tentative ruling.

5.   13-17076-A-13 RAQUEL ARROYO   MOTION TO CONFIRM PLAN
      TOG-2   1-18-14 [45]
      RAQUEL ARROYO/MV
      THOMAS GILLIS/Atty. for dbt.
      RESPONSIVE PLEADING

      Final Ruling

      The debtor has withdrawn her chapter 13 plan from consideration. The court denies the motion to confirm as moot.

6. [13-15181](#)-A-13 LINDSAY LEMONS   CONTINUED MOTION FOR RELIEF
    GEG-1   FROM AUTOMATIC STAY
    WAYNE STORMS/MV
    12-23-13 [[101](#)]
    SCOTT LYONS/Atty. for dbt.
    GLEN GATES/Atty. for mv.
    RESPONSIVE PLEADING

    No tentative ruling.

7. [13-17682](#)-A-13 EUGENE/MARILYN MORA   MOTION TO VALUE COLLATERAL OF
    GH-1   CITIFINANCIAL SERVICES
    EUGENE MORA/MV   1-20-14 [[18](#)]
    GARY HUSS/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).

8.   13-16984-A-13 CLIFFORD HARMON   CONTINUED MOTION TO DISMISS
     MHM-1   CASE FOR UNREASONABLE DELAY
     MICHAEL MEYER/MV   THAT IS PREJUDICIAL TO
                                                   CREDITORS, MOTION TO DISMISS
                                                   CASE FOR FAILURE TO MAKE PLAN
                                                   PAYMENTS, MOTION TO DISMISS
                                                   CASE FOR FAILURE TO PROVIDE TAX
                                                   DOCUMENTS, MOTION TO DISMISS
                                                   CASE
                                                   12-26-13 [37]

     No tentative ruling.

9.   13-14086-A-13 IDA JONES   CONTINUED MOTION TO CONFIRM
     SAH-13   PLAN
     IDA JONES/MV   11-19-13 [106]
     SUSAN HEMB/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.

10. 14-10706-A-13 SAMMY/ALVA MARTINEZ   MOTION TO EXTEND AUTOMATIC STAY
     TCS-1   2-25-14 [8]
     SAMMY MARTINEZ/MV
     TIMOTHY SPRINGER/Atty. for dbt.

     Tentative Ruling

     Motion: Extend the Automatic Stay
     Notice: LBR 9014-1(f)(2); no written opposition required
     Disposition: Granted except as to any creditor without proper notice
     of this motion
     Order: Prepared by moving party pursuant 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).

Upon request of a party in interest, the court may extend the
automatic stay where the debtor has had one previous bankruptcy case
that was pending within the 1-year period prior to the filing of the
current bankruptcy case but was dismissed. *See* 11 U.S.C. §
362(c)(3)(B). Procedurally, the automatic stay may be extended only
"after notice and a hearing *completed* before the expiration of the 30-
day period" after the filing of the petition in the later case. *Id.*
(emphasis added). To extend the stay, the court must find that the
filing of the *later case* is in good faith as to the creditors to be
stayed, and the extension of the stay may be made subject to
conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court
finds that the filing of the current case is in good faith as to the
creditors to be stayed. The motion will be granted except as to any
creditor without proper notice of this motion.

If this case was filed under Chapter 13 of title 11, the court will
extend the automatic stay subject to the condition that all plan
payments are timely made to the Chapter 13 trustee for the next six
months, and the order shall provide that (i) the debtor shall make
such timely payments for the next six months to the Chapter 13
trustee, (ii) if the debtor fails to make any such monthly payment,
the Chapter 13 trustee may file a certification of noncompliance with
the order on this motion along with a proposed order, and (iii) upon
the filing of such certification, the court may then dismiss the case
without further notice or a hearing.

10:00 a.m.

1. 12-12164-A-12 NATHAN SPARKMAN   MOTION TO DISMISS CASE
    MNE-1   1-29-14 [76]
    M. ENMARK/MV
    PETER FEAR/Atty. for dbt.
    M. ENMARK/Atty. for mv.
    RESPONSIVE PLEADING

    No tentative ruling.