

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

TUESDAY

MARCH 25, 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. [13-12804](#)-A-13 JUAN/KRISTINA FIERRO MOTION TO MODIFY PLAN
RSW-1 2-10-14 [[26](#)]
JUAN FIERRO/MV
ROBERT WILLIAMS/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.

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

No tentative ruling.

3. [13-17714](#)-A-13 MARK AGUILAR AND PATRICIA MOTION TO DISMISS CASE FOR
MHM-2 RAMIREZ FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 2-26-14 [[35](#)]
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

4. [13-17216](#)-A-13 RICKEY/JESSICA HOYER
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt. MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-26-14 [[31](#)]

No tentative ruling.

5. [13-16318](#)-A-13 ROGER/NICOLE PRATER
APN-2
HTD LEASING LLC/MV
VINCENT GORSKI/Atty. for dbt. MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-23-14 [[46](#)]
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the 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).

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 3. Class 3 secured claims are "secured claims satisfied by the surrender of collateral." Section 2.10 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. The motion will be denied as moot. No effective relief can be awarded.

6. [13-11119](#)-A-13 SALVADOR LOPEZ AND CONNIE MOTION TO APPROVE LOAN
PK-6 LOZANO MODIFICATION
SALVADOR LOPEZ/MV 1-30-14 [[96](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement. The order shall state only that the court 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.

7. [10-18022](#)-A-13 MARISSA URIAZ MOTION TO VALUE COLLATERAL OF
WDO-3 SAFE ONE CREDIT UNION
MARISSA URIAZ/MV 1-29-14 [[44](#)]
WILLIAM OLCOTT/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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). 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 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). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

8. [13-13626](#)-A-7 DOXIE PALMA CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR FAILURE TO MAKE PLAN
MICHAEL MEYER/MV PAYMENTS
1-31-14 [[59](#)]
- ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [13-15426](#)-A-13 DAVID/CHRISTINA CONTINUED MOTION TO DISMISS
MHM-1 VILLALPANDO CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV 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.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [13-15426](#)-A-13 DAVID/CHRISTINA MOTION TO CONFIRM PLAN
RSW-7 VILLALPANDO 2-13-14 [[68](#)]
DAVID VILLALPANDO/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

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.

11. [14-10027](#)-A-13 DANIEL/GAIL BOWMAN MOTION TO VALUE COLLATERAL OF
PK-1 KERN SCHOOLS FEDERAL CREDIT
DANIEL BOWMAN/MV UNION
1-27-14 [[18](#)]
PATRICK KAVANAGH/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: \$15,404.00

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).

Here, the motion did not state facts indicating whether the hanging paragraph applies to the respondent's claim that is secured by a motor vehicle. Facts relating to the applicability (or inapplicability) of the hanging paragraph are considered essential to such relief as valuation of a motor vehicle. In the future, debtors' counsel should state specific facts *in the motion* indicating that the collateral is not secured by a purchase money interest. In this case, the exhibits contained sufficient information for the court to make such a determination. But the court should not have to refer to the exhibits for such facts essential to the relief requested.

Nevertheless, the court finds that the debtor seeks to value collateral consisting of a motor vehicle, and that the debt owed to the responding party is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). 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.

12. [14-10027](#)-A-13 DANIEL/GAIL BOWMAN
PK-2
DANIEL BOWMAN/MV

MOTION TO VALUE COLLATERAL OF
KERN SCHOOLS FEDERAL CREDIT
UNION
1-27-14 [[24](#)]

PATRICK KAVANAGH/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: \$4,638.00

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).

Here, the motion did not state facts indicating whether the hanging paragraph applies to the respondent's claim that is secured by a motor vehicle. Facts relating to the applicability (or inapplicability) of the hanging paragraph are considered essential to such relief as valuation of a motor vehicle. In the future, debtors' counsel should state specific facts *in the motion* indicating that the collateral is not secured by a purchase money interest. In this case, the exhibits contained sufficient information for the court to make such a determination. But the court should not have to refer to the exhibits for such facts essential to the relief requested.

Nevertheless, the court finds that the debtor seeks to value collateral consisting of a motor vehicle, and that the debt owed to the responding party is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). 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.

13. [14-10027](#)-A-13 DANIEL/GAIL BOWMAN
PK-3
DANIEL BOWMAN/MV

MOTION TO VALUE COLLATERAL OF
KERN SCHOOLS FEDERAL CREDIT
UNION
1-27-14 [[30](#)]

PATRICK KAVANAGH/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: \$3,815.00

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).

Here, the motion did not state facts indicating whether the hanging paragraph applies to the respondent's claim that is secured by a motor vehicle. Facts relating to the applicability (or inapplicability) of the hanging paragraph are considered essential to such relief as valuation of a motor vehicle. In the future, debtors' counsel should state specific facts *in the motion* indicating that the collateral is not secured by a purchase money interest. In this case, the exhibits contained sufficient information for the court to make such a determination. But the court should not have to refer to the exhibits for such facts essential to the relief requested.

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The debt owed to the responding party is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court takes judicial notice of Claim No. 4 filed by the respondent creditor. In this claim, the respondent's admission regarding the value of the vehicle supports the valuation indicated above. 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.

14. [12-16029](#)-A-13 CRYSTAL JOHNSON
PK-4
CRYSTAL JOHNSON/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
1-21-14 [[95](#)]

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.

15. [12-16029](#)-A-13 CRYSTAL JOHNSON
VC-2
CALIFORNIA AUTO FINANCE/MV
PATRICK KAVANAGH/Atty. for dbt.
MICHAEL VANLOCHEM/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-20-14 [[106](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Continued to April 22, 2014, at 9:00 a.m. to allow service on the debtor; an amended proof of service shall be filed no later than April 8, 2014

Order: Prepared by moving party

Subject: 2006 Ford Explorer

Pursuant to the Interim Stipulation filed by the parties, the court will continue this matter for approximately one month to April 22, 2014, at 9:00 a.m. The stipulation indicates that the court previously modified the stipulation between the debtor and the moving party to delete the language allowing the moving party to obtain stay relief on an ex parte basis if the debtor did not have insurance coverage or pay the trustee in accordance with the plan. At the hearing, the court will discuss with the parties whether the court will accept another stipulation and proposed order containing such language.

The court continues the hearing on the matter to April 22, 2014 at 9:00 a.m. No later than April 8, 2014, the moving party shall file a supplemental proof of service indicating that service has been made on the debtor individually at the proper address (at the address most recently designated by the debtor in a filed writing). See Fed. R. Bankr. P. 7004(b)(9).

16. [12-10230](#)-A-13 BRADLEY/SHARA BENSON MOTION TO VALUE COLLATERAL OF
WDO-1 BANK OF AMERICA
BRADLEY BENSON/MV 2-11-14 [[26](#)]
WILLIAM OLCOTT/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).

17. [12-10230](#)-A-13 BRADLEY/SHARA BENSON MOTION TO VALUE COLLATERAL OF
WDO-2 KEYBANK, N.A./VIKING CAPITAL,
BRADLEY BENSON/MV INC.
2-11-14 [[32](#)]
WILLIAM OLCOTT/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).

18. [12-13531](#)-A-13 DONALD/AIDA MORTON MOTION TO MODIFY PLAN
JDC-3 1-30-14 [[106](#)]
DONALD MORTON/MV
JOHN CARLSON/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

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.

FEASIBILITY

The court will deny approval of the modification. As the trustee's objection explains, the proposed modified plan provides for no funds to be paid to the attorney through the plan, and provides that no funds were paid to the attorney prior to filing the case.

But the trustee states that under the current confirmed plan, the trustee has paid \$1500 to debtors' counsel. Further, the trustee states that \$1000 was paid prior to the filing of the case.

The reply filed by the debtors explains that no provision was made for attorneys' fees because the purpose of the modified plan was to cover only a period that starts in January 2014, after which presumably no fees are to be paid. The implication is that no attorneys' fees are to be paid through the plan after this date. But this explanation reinforces the trustee's position by revealing that the debtors' assumption that the plan need not provide for attorneys' fees already paid prior to January 2014.

But the plan should provide for such fees already paid. Because the modified plan does specify the date that the plan's term starts, the plan runs from the original date of currently confirmed plan. Attorneys' fees have already been paid pursuant to the confirmed plan as well as paid before the filing of the case. Section 2.06 of the proposed modified plan, therefore, conflicts with the debtors' actual, completed performance under the provisions of the current, confirmed plan.

In short, if the court were to confirm the proposed modified plan, no attorneys' fees should be paid to the debtors' attorney. But the fees have already been paid, so the debtors' would not be able to comply with the modified plan. See 11 U.S.C. § 1325(a)(6). This result is surely not what the debtors' or the debtors' attorney intend.

SUPPORTING DECLARATIONS

Further, in any future modification, the court will also require a declaration addressing each element of § 1325(a). See LBR 9014-1(d)(6). Because the court will deny approval of the modification on the grounds discussed, the court will not address the trustee's points on whether the modification was proposed in good faith.

NOTICE INSUFFICIENT

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 motion being noticed. 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.

19. [13-17531](#)-A-13 BRETT/RENEE SMITH MOTION TO CONFIRM PLAN
MHM-1 1-29-14 [[33](#)]
BRETT SMITH/MV
KIM-LY CHAY/Atty. for dbt.
DISMISSED 3/18/14

Final Ruling

The case dismissed, the matter is dropped as moot.

20. [13-17531](#)-A-13 BRETT/RENEE SMITH MOTION TO VALUE COLLATERAL OF
MHM-1 OCWEN LOAN SERVICING, LLC
BRETT SMITH/MV AND/OR MOTION TO AVOID LIEN OF
OCWEN LOAN SERVICING, LLC
1-29-14 [[39](#)]
KIM-LY CHAY/Atty. for dbt.
DISMISSED 3/18/14

Final Ruling

The case dismissed, the matter is dropped as moot.

21. [13-17531](#)-A-13 BRETT/RENEE SMITH MOTION TO CONFIRM PLAN
MHM-1 2-14-14 [[46](#)]
BRETT SMITH/MV
KIM-LY CHAY/Atty. for dbt.
DISMISSED 3/18/14

Final Ruling

The case dismissed, the matter is dropped as moot.

22. [13-17531](#)-A-13 BRETT/RENEE SMITH MOTION TO CONFIRM PLAN
MHM-1 2-18-14 [[49](#)]
BRETT SMITH/MV
KIM-LY CHAY/Atty. for dbt.
RESPONSIVE PLEADING
DISMISSED 3/18/14

Final Ruling

The case dismissed, the matter is dropped as moot.

23. [13-17531](#)-A-13 BRETT/RENEE SMITH CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
1-27-14 [[21](#)]

KIM-LY CHAY/Atty. for dbt.
DISMISSED 3/18/14

Final Ruling

The case dismissed, the matter is dropped as moot.

24. [13-17531](#)-A-13 BRETT/RENEE SMITH MOTION TO DISMISS CASE FOR
MHM-2 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 2-26-14 [[60](#)]
KIM-LY CHAY/Atty. for dbt.
DISMISSED 3/18/14

Final Ruling

The case dismissed, the matter is dropped as moot.

25. [11-19832](#)-A-13 JEAN MORGAN MOTION TO MODIFY PLAN
PK-6 2-7-14 [[84](#)]
JEAN MORGAN/MV
PATRICK KAVANAGH/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.

26. [13-16632](#)-A-13 NOAH/MICHELLE JELLIE
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 ,
MOTION TO DISMISS CASE
2-21-14 [[15](#)]

NEIL SCHWARTZ/Atty. for dbt.

No tentative ruling.

27. [10-63933](#)-A-13 YOLANDA BALDERAS
PK-4
YOLANDA BALDERAS/MV
PATRICK KAVANAGH/Atty. for dbt.
OST DENIED 3/13
MOTION TO SET ASIDE DISMISSAL
OF CASE
3-12-14 [[117](#)]

Final Ruling

This matter is resolved by the order entered March 13, 2014, as ECF No. 124, and this hearing is dropped as moot.

28. [13-12734](#)-A-13 CHRISTOPHER/MELODY
RSW-6 GEBHARDT
CHRISTOPHER GEBHARDT/MV
ROBERT WILLIAMS/Atty. for dbt.
MOTION TO AVOID LIEN OF
CITIBANK, NATIONAL ASSOCIATION
3-3-14 [[74](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$168,827.39

Property Value: \$96,666.00

Judicial Lien Avoided: \$13,947.24

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 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.

29. [14-10136](#)-A-13 SALVADOR GUERRERO AND MARIA SILVA - GUERRERO
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE
2-20-14 [[28](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

30. [13-13747](#)-A-13 DAVID/MICHELE KING
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE
1-17-14 [[35](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

31. [13-13747](#)-A-13 DAVID/MICHELE KING
MHM-2
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
2-26-14 [[41](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

32. [13-16947](#)-A-13 ENRIQUE GOMEZ
MHM-2
- OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
2-20-14 [[37](#)]

IVETA OVSEPYAN/Atty. for dbt.

Final Ruling

An amended plan having been filed, this objection is overruled as moot.

33. [12-16549](#)-A-13 VANESSA WARD
RSW-2
VANESSA WARD/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO MODIFY PLAN
2-13-14 [[51](#)]

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.

34. [13-13660](#)-A-13 MICHAEL/VERONICA WHITE
LKW-4
LEONARD WELSH/MV

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTOR'S
ATTORNEY(S), FEE: \$1862.50,
EXPENSES: \$105.70
2-10-14 [[73](#)]

LEONARD WELSH/Atty. for dbt.

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 Leonard K. Welsh

Compensation approved: \$1,862.50

Costs approved: \$105.70

Aggregate fees and costs approved: \$4,640.73

Retainer held: \$0.00

Amount to be paid as administrative expense: \$4,640.73

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.

35. [10-11963](#)-A-13 SANDRA REBESKE CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV 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.
WITHDRAWN

Final Ruling

The motion withdrawn, this matter is dropped as moot.

36. [10-11963](#)-A-13 SANDRA REBESKE MOTION TO MODIFY PLAN
PK-4 2-13-14 [[91](#)]
SANDRA REBESKE/MV
PATRICK KAVANAGH/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.

37. [10-11864](#)-A-13 DANIEL/APRIL RODRIGUEZ MOTION TO SELL
CRS-5 3-10-14 [[93](#)]
DANIEL RODRIGUEZ/MV
CYNTHIA SCULLY/Atty. for dbt.

Tentative Ruling

Motion: Sell Property [Short Sale approved by Secured Lender]

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

Disposition: Granted

Order: Prepared by moving party and approved as to form and content by the Chapter 13 trustee

Property: 1732 Los Robles Drive, Bakersfield, CA

Buyer: Dale Thomas, Shelby Luna

Sale Price: \$165,000.00 [short sale approved by the secured lender]

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).

Confirmation of a Chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

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). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

38. [13-15569](#)-A-13 JOANNIE RIOS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
1-17-14 [[25](#)]

ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [13-14172](#)-A-13 KRISTA TWIST

ORDER TO SHOW CAUSE WHY FEES
SHOULD NOT BE DISGORGED
1-30-14 [[68](#)]

KRYSTINA TRAN/Atty. for dbt.
CASE DISMISSED

No tentative ruling.

40. [14-10072](#)-A-13 SHAWNA EVANS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE , MOTION
TO DISMISS CASE FOR FAILURE TO
PROVIDE TAX DOCUMENTS
2-20-14 [[20](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

41. [13-17176](#)-A-13 CURTIS DUNMORE AND
MHM-1 DEMETRIA JOHNSON
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-26-14 [[41](#)]

[The hearing on this matter will be concurrent with the hearing on the debtors' motion to confirm their chapter 13 plan in this case having docket control no. RSW-2.]

No tentative ruling.

42. [13-17176](#)-A-13 CURTIS DUNMORE AND MOTION TO CONFIRM PLAN
RSW-2 DEMETRIA JOHNSON 1-31-14 [[32](#)]
CURTIS DUNMORE/MV
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

43. [13-16977](#)-A-13 JOHNNY/PATRICIA MOTION TO DISMISS CASE FOR
MHM-1 VILLALOVOS FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 2-26-14 [[28](#)]
NEIL SCHWARTZ/Atty. for dbt.

No tentative ruling.

44. [13-16578](#)-A-13 JUAN PANTOJA MOTION TO CONFIRM PLAN
FJA-4 1-24-14 [[59](#)]
JUAN PANTOJA/MV
FRANK ALVARADO/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The case having been converted to chapter 7, this matter is dropped as moot.

45. [13-16578](#)-A-13 JUAN PANTOJA MOTION TO VALUE COLLATERAL OF
FJA-5 TIDEWATER FINANCE
JUAN PANTOJA/MV 2-19-14 [[73](#)]
FRANK ALVARADO/Atty. for dbt.

Final Ruling

The case having been converted to chapter 7, this matter is dropped as moot.

46. [13-16578](#)-A-13 JUAN PANTOJA CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
1-30-14 [[64](#)]

FRANK ALVARADO/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The case having been converted to chapter 7, this matter is dropped as moot.

47. [11-61180](#)-A-13 JOHNNY/MONALISA MARAN
LKW-5
LEONARD WELSH/MV

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTOR'S
ATTORNEY(S), FEE: \$4,580.00,
EXPENSES: \$69.33
2-7-14 [[86](#)]

LEONARD WELSH/Atty. for dbt.

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 Leonard K. Welsh

Compensation approved: \$4,580.00

Costs approved: \$69.33

Aggregate fees and costs approved: \$8,891.33 (excludes \$1000 retainer)

Retainer held: \$0.00

Amount to be paid as administrative expense: \$8,891.83

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.

48. [13-10286](#)-A-13 ALI TORKAMAN
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-26-14 [[98](#)]

No tentative ruling.

49. [13-10286](#)-A-13 ALI TORKAMAN
SJS-3
ALI TORKAMAN/MV
PATRICK KAVANAGH/Atty. for dbt.
SUSAN SALEHI/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
1-29-14 [[86](#)]

Tentative Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

INSUFFICIENT NOTICE

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that at least one creditor or party in interest has not received notice or have not received notice at the correct address (Target National Bank c/o Weinstein and Riley PS or TD Bank USA, NA, see Claim No. 2-1).

For matters requiring notice to all creditors and parties in interest, the court prefers that a complete, 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.

INSUFFICIENT EVIDENCE

The trustee has objected because the debtor has not filed a declaration addressing each element of § 1325(a). The court will deny confirmation on this ground as well. See LBR 9014-1(d)(6) (requiring a motion to be accompanied by admissible evidence demonstrating the movant is entitled to the relief sought).

50. [13-10286](#)-A-13 ALI TORKAMAN
SJS-4
SUSAN SALEHI/MV

MOTION FOR COMPENSATION FOR
SUSAN J. SALEHI, DEBTOR'S
ATTORNEY(S), FEE: \$9000.00,
EXPENSES: \$0.00
2-25-14 [[90](#)]

PATRICK KAVANAGH/Atty. for dbt.
SUSAN SALEHI/Atty. for mv.

Tentative Ruling

Application: Compensation and Expenses

Disposition: Denied without prejudice

Order: Prepared by moving party

All creditors and parties in interest have not received sufficient notice. The hearing on an application for approval of compensation or reimbursement of expenses, when the application requests approval of an amount exceeding \$1000, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3).

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.

51. [13-10286](#)-A-13 ALI TORKAMAN MOTION BY SUSAN J. SALEHI TO
SJS-5 WITHDRAW AS ATTORNEY
2-25-14 [[94](#)]
- PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Patrick Kavanagh having been substituted in as attorney of record in place of Susan J. Salehi, this hearing is dropped as moot.

52. [10-19987](#)-A-13 ARIEL/MIRNA DIAZ MOTION TO APPROVE LOAN
RSW-5 MODIFICATION
ARIEL DIAZ/MV 2-10-14 [[92](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party according to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent

to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement. The order shall state only that the court 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.

53. [10-19987](#)-A-13 ARIEL/MIRNA DIAZ MOTION TO MODIFY PLAN
RSW-6 2-10-14 [[96](#)]
ARIEL DIAZ/MV
ROBERT WILLIAMS/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.

54. [13-14289](#)-A-13 PHILLIP RUSSELL MOTION FOR COMPENSATION FOR
LKW-2 LEONARD K. WELSH, DEBTOR'S
LEONARD WELSH/MV ATTORNEY(S), FEE: \$2215.00,
EXPENSES: \$52.64.
2-12-14 [[51](#)]
LEONARD WELSH/Atty. for dbt.

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 Leonard K. Welsh

Compensation approved: \$2215.00

Costs approved: \$52.64

Aggregate fees and costs approved: \$4925.14

Retainer held: \$239.00

Amount to be paid as administrative expense: \$4686.14 = [\$4925.14 - \$239 (retainer remaining in trust as of the date of the first fee appl.)]

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.

55. [13-12891](#)-A-13 JOHN/JAYNE DESCHUTTER
PK-3
PATRICK KAVANAGH/MV

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S), FEE: \$8712.50,
EXPENSES: \$167.86
2-6-14 [[107](#)]

PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

Final Ruling

Application: Interim Compensation and Expenses

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

Disposition: Approved in part only as to amount, denied in part as to payment

Order: Prepared by applicant

Applicant: Patrick Kavanagh

Compensation approved: \$8712.50

Costs approved: \$167.86

Aggregate fees and costs approved: \$8880.36

Retainer held: \$0

Amount to be paid as administrative expense: 8880.36

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 in part the application on a final basis as to the amounts requested. The court will deny the application in part to the extent it requests approval of the payment of the fees and expenses, a matter controlled by state law given the dismissal of the case.

56. [13-17895](#)-A-13 BERTHA SANCHEZ
MHM-1
MICHAEL MEYER/MV

CONTINUED 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.

57. [13-17895](#)-A-13 BERTHA SANCHEZ
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
2-26-14 [[32](#)]

No tentative ruling.

58. [13-14296](#)-A-13 JOSE SANCHEZ
MHM-1
MICHAEL MEYER/MV

CONTINUED 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.

59. [13-17796](#)-A-13 BALRAJ GILL
RSW-1
BALRAJ GILL/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF TRADE
ASSOCIATION, INC.
3-11-14 [[21](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$337,390.96

Property Value: \$190,000.00

Judicial Lien Avoided: \$7645.96

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 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.

60. [13-17796](#)-A-13 BALRAJ GILL
RSW-2
BALRAJ GILL/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ONEWEST BANK
3-11-14 [[25](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$190,000.00

Senior Liens: \$269,025.92

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 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).

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.
CONTINUED TO 4/22/14, ORDER
FILED 3/11/14

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

Final Ruling

The status conference has been continued to April 22, 2014, at 9:30 a.m.

10:30 a.m.

1. [13-17500](#)-A-7 REX/LINDA GLASS CONTINUED REAFFIRMATION AGREEMENT
1-29-14 [[14](#)]

CURTIS FLOYD/Atty. for dbt.

No tentative ruling.

2. [14-10012](#)-A-7 MARY GARCIA PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
2-6-14 [[14](#)]

No tentative ruling.

3. [13-17623](#)-A-7 TODD DORROH PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO DEALER SERVICES
2-6-14 [[20](#)]

PATRICK KAVANAGH/Atty. for dbt.
NOTICE OF RESCISSION 2/18/14

Final Ruling

The reaffirmation agreement having been rescinded, the matter is dropped as moot.

4. [13-17642](#)-A-7 JOSE VELASQUEZ AND CLAUDIA RAMOS PRO SE REAFFIRMATION AGREEMENT WITH VW CREDIT, INC.
1-30-14 [[12](#)]

OSCAR SWINTON/Atty. for dbt.

No tentative ruling.

5. [14-10356](#)-A-7 RAUL/CLAUDIA TAVAREZ REAFFIRMATION AGREEMENT WITH WELLS FARGO DEALER SERVICES
3-7-14 [[15](#)]

PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

6. [13-17661](#)-A-7 LAWRENCE/JACQUELINE
LATINETTE REAFFIRMATION AGREEMENT WITH
CALIFORNIA REPUBLIC BANK
2-24-14 [[20](#)]

GINGER MARCOS/Atty. for dbt.

No tentative ruling.
7. [14-10486](#)-A-7 DONALD/TONIE MCCOOL PRO SE REAFFIRMATION AGREEMENT
WITH TOYOTA MOTOR CREDIT
CORPORATION
3-6-14 [[11](#)]

DAVID LOZANO/Atty. for dbt.

No tentative ruling.
8. [13-17792](#)-A-7 CHRISTOPHER VADNAIS AND CONTINUED REAFFIRMATION
DANA HAWKINS-VADNAIS AGREEMENT WITH FORD MOTOR
CREDIT COMPANY
1-27-14 [[13](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

1:00 p.m.

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

MOTION TO AVOID LIEN OF FLEET
CARD FUELS
2-4-14 [[19](#)]

Tentative Ruling

Motion: Avoid Judgment Lien

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: the value of the debtors' residential real property.

All parties shall appear at the hearing for the purpose of establishing relevant scheduling dates and deadlines. At the hearing, the court may 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. [13-17107](#)-A-7 CARL/MILDRED CARR
JMV-2
JEFFREY VETTER/MV
CURTIS FLOYD/Atty. for dbt.
JEFFREY VETTER/Atty. for mv.

MOTION TO SELL
2-23-14 [[34](#)]

Final Ruling

Motion: Sell Property and Compensate Auctioneer
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Property: 2007 Hyundai, 2002 flat trailer, 1990 Spectrum boat, 1990 Escort boat trailer
Sale Type: Public auction

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

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.

3. [11-62509](#)-A-7 SHAVER LAKEWOODS
KDG-7 DEVELOPMENT INC.
RANDELL PARKER/MV

CONTINUED OBJECTION TO CLAIM OF
SIERRA PINES AT SHAVER LAKE
HOMEOWNERS ASSOCIATION, CLAIM
NUMBER 2
1-6-14 [[112](#)]

HENRY NUNEZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

4. [13-17909](#)-A-7 WILLIE BAKER
KDG-2
RANDELL PARKER/MV
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-20-14 [[15](#)]

Final Ruling

Objection: Claim of Exemption in Real Property Proceeds

Notice: LBR 9014-1(f)(1); 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). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

Based on the motion's well-pleaded facts, the court finds that the debtor may not claim an exemption in the real property located at 1409 Lookout Lane, Bakersfield, California, or its proceeds, to the extent that the trustee recovers such property for the estate. Section 522(g) prohibits a debtor from claiming an exemption in property that the trustee recovers under certain specified Bankruptcy Code sections if the debtor voluntarily transferred the property. The facts allow the court to conclude that the debtor voluntarily transferred the property to her former husband by executing a quit claim deed in his favor. Even though the debtor amended her schedules to include the property voluntarily transferred, the debtor may not circumvent § 522(g)'s effect. See *Glass v. Hitt (In re Glass)*, 60 F.3d 565, 568-69 (B.A.P. 9th Cir. 1995).

5. [13-17909](#)-A-7 WILLIE BAKER
KDG-3
RANDELL PARKER/MV
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

MOTION TO COMPEL
3-4-14 [[20](#)]

Tentative Ruling

Motion: Compel Turnover

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

Disposition: Denied as procedurally improper

Order: Civil minute order

The motion requests an order compelling a bank to turn over \$39,490.84, plus interest, held in its account for William D. Baker. The motion is a "proceeding to recover money or property" but it is not directed at the debtor. Accordingly, a motion is the improper procedure to obtain the relief requested; an adversary proceeding is required. See Fed. R. Bankr. P. 7001(1).

6. [12-17814](#)-A-7 ROGER/MONIQUE ROMERO CONTINUED OBJECTION TO DEBTOR'S
RP-1 CLAIM OF EXEMPTIONS
RANDELL PARKER/MV 1-7-14 [[65](#)]
CRAIG TRIANCE/Atty. for dbt.
RANDELL PARKER/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Claim of Exemptions

Notice: Continued date of hearing; written opposition filed

Disposition: Overruled as moot

Order: Civil minute order

The debtors have amended their Schedule C that was filed on March 14, 2014. Pursuant to the civil minutes dated February 19, 2014, and the amended schedule, the court will overrule the objection as moot.

7. [13-16942](#)-A-7 JERALD/JEANETTE HOLLIS MOTION TO AVOID LIEN OF GERALD
RSW-2 BOETCSH
JERALD HOLLIS/MV 1-29-14 [[13](#)]
ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Lien Avoided: \$8000.00 (as discussed in third paragraph 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).

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 amount of the debt secured by respondent's lien is ambiguous. The motion indicates that the amount is \$5302.00. The motion also incorporates a copy of Schedule D by reference. Schedule D shows that the debt secured by the lien is \$8000.00. The court will treat the motion as requesting to avoid the respondent's lien in the amount of \$8000.00. In the future, counsel should more clearly indicate the amount of the lien to be avoided.

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. [12-19251](#)-A-7 DAVID RONQUILLO AND REINA MOTION TO AVOID LIEN OF WELLS
CEF-2 VALLE FARGO FINANCIAL NATIONAL BANK
DAVID RONQUILLO/MV 2-6-14 [[29](#)]
CURTIS FLOYD/Atty. for dbt.

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.

9. [13-13952](#)-A-7 BRENT/KISH SCHWEBEL MOTION TO COMPEL
LKW-1 3-4-14 [[52](#)]
BRENT SCHWEBEL/MV
LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Motion: For Order Compelling Trustee to Pay Priority Tax Claims
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

The motion requests that the chapter 7 trustee be required to pay \$1608.74 to the Franchise Tax Board of the State of California (FTB) and \$26,750.78 to the IRS. The chapter 7 trustee has entered a statement of non-opposition on the docket. Payment of these claims will satisfy the debtors' nondischargeable tax debts owed to the FTB and the IRS. For the reasons stated in the motion, the court will grant the relief requested.

10. [13-16258](#)-A-7 JAMES/ETHEL ANTHONY MOTION TO SELL
TGF-3 2-22-14 [[29](#)]
RANDELL PARKER/MV
PATRICK KAVANAGH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Property: 901 T Street, Bakersfield, CA
Buyer: Zilco, LLC
Sale Price: \$59,000
Sale Type: Private sale subject to overbid opportunity

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

SALE OF REAL PROPERTY

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

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.

In the future, counsel should ensure that the name of the applicant (here, the broker) is included in the notice of hearing. See Fed. R. Bankr. P. 2002(c)(2) (requiring notice to identify the applicant and the amounts requested). Because all creditors received a copy of the motion, the court will allow the compensation requested to the broker identified in the motion.

11. [14-10161](#)-A-7 SUSAN PARKER MOTION TO COMPEL ABANDONMENT
SFR-1 1-30-14 [[11](#)]
SUSAN PARKER/MV
STEPHEN RUDIN/Atty. for dbt.
NON-OPPOSITION

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: Sole proprietorship (hair stylist business)

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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon

property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

12. [13-17869](#)-A-7 ALFREDO/IRENE CASTANON OPPOSITION RE: TRUSTEE'S MOTION
VG-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
2-10-14 [[10](#)]

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

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 April 14, 2014, at 12:00 p.m. 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).

13. [14-10279](#)-A-7 DONNIE PRICE
RP-1
RANDELL PARKER/MV

MOTION TO EMPLOY GOULD AUCTION
AND APPRAISAL COMPANY LLC AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
3-4-14 [[16](#)]

ROBERT BRUMFIELD/Atty. for dbt.
RANDELL PARKER/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: Vehicles, equipment and inventory described in 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.

14. [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](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(2) / continued date of the hearing; no written opposition filed

Disposition: Denied

Order: Civil minute order

BACKGROUND FACTS

The movant sought to avoid the lien of respondent Wells Fargo Bank, N.A. pursuant to § 522(f)(1). The respondent's lien is a judicial lien on property located at 1401 Christella Ct., Bakersfield, California. The motion asserted that the property was scheduled at a value of \$276,000 in Schedule A but that the property was later valued at \$160,000 when the case was converted.

The court continued the hearing on this matter to resolve the issue of which value is the relevant value to use in the lien-avoidance analysis: the value as of the petition date or the value as of the conversion date.

APPLICABLE LAW ON LIEN AVOIDANCE

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).

APPLICABLE LAW REGARDING VALUATION DATE

Section 522(f) does not explicitly refer to the operative date for determining the value of the debtor's property or the amount of the liens on the property. However, the B.A.P. has indicated that the focus should be "the petition date, not the current date." *Mbaba v. Clark Fergus & Assocs. (In re Mbaba)*, No. CC-05-1401-PaBK, 2006 WL 6810948, at *5 (B.A.P. 9th Cir. Aug. 15, 2006). The BAP has also provided the following discussion:

[T]he well-established rule [is] that the critical date for determining exemption rights is the petition date. "[E]xemptions . . . are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt

property[.]” A debtor’s § 522(f) lien avoidance rights are also determined as of the petition date. “Because lien avoidance is part and parcel of the exemption scheme, the right to avoid a judicial lien must also be determined as of the petition date.”

Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 391-92 (B.A.P. 9th Cir. 2003) (third, fourth, and fifth alterations in original) (citations omitted) (quoting *Culver, LLC v. Chiu (In re Chiu)*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001), *aff’d*, 304 F.3d 905 (9th Cir. 2002)).

Thus, “[i]t is well settled that the petition date is the operative date to value the debtor’s residence and the homestead [exemption] for section 522(f) purposes.” *Mbaba*, 2006 WL 6810948, at *5 (citing *In re Salanoa*, 263 B.R. 120, 124 (Bankr. S.D. Cal. 2001); *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994)). “This approach is consistent with *Dewsnup* because it allows a lien creditor to enjoy the increase in value if the lien is not avoided. However, it also preserves the parties’ rights as they existed on the petition date to the extent the lien is avoidable under § 522(f).” *Salanoa*, 263 B.R. at 124. It is also consistent with Ninth Circuit precedent that allows a debtor to avoid a lien under § 522(f) even when the debtor “[no longer has] an interest in the property at the time it moves to avoid.” *Chiu*, 304 F.3d at 908.

ANALYSIS

The motion avers that the secured claims in the amount of \$145,000 encumber the property. The declaration in support of the motion indicates that the respondent’s judgment lien secures an amount equal to \$10,106.18, but the debtor later amended this judgment debt to \$14,496.88 (including post-judgment interest). The exemption claimed is in the amount of \$2000.

Assuming \$160,000 were the correct value for the property, the lien would only be avoidable in part. The lien, all other liens, and the exemption amount together equal \$161,496. Even if the \$160,000 value were applicable (the court concludes it is not) the respondent’s lien would only be avoidable in part to the extent of \$1496. The reasoning for this result is that under § 522(f)(1), a lien may be avoided only “to the extent that such lien impairs an exemption.” It follows that a lien may not be avoided to the extent that it does not impair an exemption. Section 522(f)(2)(A) provides that a lien impairs an exemption only “to the extent that the sum of” the liens and the exemption “exceeds the value that the debtor’s interest in the property would have in the absence of any liens.” Because the respondent’s lien does not impair the debtor’s exemption under the statutory formula beyond the amount of \$1496, the respondent’s lien would—even if the \$160,000 value for the property were used—not be avoidable beyond such extent.

As discussed, however, the petition date is the applicable date for valuation of the property. Under this approach, the value of the property is \$276,000. Using this value for the property, the respondent’s lien may not be avoided. The respondent’s lien, plus all other liens and the exemption amount, together do not exceed the value of the property. Because the respondent’s lien does not impair the debtors’ exemption in any amount, the respondent’s lien may not be avoided in any amount.

The debtors’ focus on the right to amend their schedules reduce the

property's value is misplaced. The debtors take the position that the schedules may be amended to reflect the property's increase in value after the petition date. But the schedules reflect the value of the property on the petition date, not thereafter. Accordingly, since the debtors concede in their supplemental brief filed at docket 59 that the \$160,000 valuation was as of the conversion date, not the petition date, the court finds that the best evidence of value on the petition date is the amount originally asserted in the debtors' Schedule A.

15. [13-17987](#)-A-7 JIMMY REED
RP-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
1-31-14 [[18](#)]

JIMMY REED/Atty. for mv.

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; the creditors' meeting will be continued to a date that is at least 30 days after March 25, 2014

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 on grounds that the debtor is incarcerated and therefore unable to attend the creditors' meeting.

Section 343 provides that "[t]he debtor *shall* appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title." 11 U.S.C. § 343 (emphasis added). But the court does not have statutory authority to waive this statutory requirement to appear at the § 341 creditors' meeting. The court will not construct an exception not provided by the statute that only debtors who are not incarcerated are subject to the requirement of an appearance at the § 341 meeting.

The U.S. Trustee Program's Handbook for Chapter 7 Trustees provides, however, for rare circumstances, including a debtor's incarceration, as a basis for allowing a debtor's *telephonic* appearance at the meeting of creditors. See U.S. Trustee Program, U.S. Dep't of Justice, Handbook for Ch. 7 Panel Trustees 3-9 (Oct. 1, 2012).

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—telephonically or in person—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 will be a date that is at least 30 days from March 25, 2014, which is the date initially selected by the trustee for the continued meeting of creditors. This will allow the debtor a chance to attend the meeting of creditors telephonically or in person. The deadline for objecting to discharge under § 727 is extended to 60 days after the 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).

16. [10-12395](#)-A-7 CLAYTON WALSH MOTION TO COMPEL ABANDONMENT
PK-4 2-26-14 [[123](#)]
CLAYTON WALSH/MV
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

Real Property Description: 21201 Carriage Drive, Tehachapi, 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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

1:15 p.m.

1. [12-11008](#)-A-7 RAFAEL ALONSO MOTION TO EXTEND TIME TO
[12-1095](#) PWG-4 DISCOVERY CUT OFF DATES
ZUBCIC V. ALONSO 3-11-14 [[82](#)]
JOHN DULCICH/Atty. for mv.

No tentative ruling.

2. [11-62509](#)-A-7 SHAVER LAKEWOODS STATUS CONFERENCE RE: COMPLAINT
[14-1003](#) DEVELOPMENT INC. 1-6-14 [[1](#)]
PARKER V. RODRIGUEZ
KALEB JUDY/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to April 22, 2014, at 1:15 p.m.

3. [11-62509](#)-A-7 SHAVER LAKEWOODS STATUS CONFERENCE RE: COMPLAINT
[14-1004](#) DEVELOPMENT INC. 1-6-14 [[1](#)]
PARKER V. LOO
KALEB JUDY/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to April 22, 2014, at 1:15 p.m.

4. [11-62509](#)-A-7 SHAVER LAKEWOODS STATUS CONFERENCE RE: COMPLAINT
[14-1005](#) DEVELOPMENT INC. 1-6-14 [[1](#)]
PARKER V. NUNEZ

KALEB JUDY/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to April 22, 2014, at 1:15 p.m.

5. [13-16141](#)-A-7 PETE/ELENA ESPINOZA CONTINUED STATUS CONFERENCE RE:
[13-1137](#) COMPLAINT
MYERS V. ESPINOZA, JR. ET AL 12-16-13 [[1](#)]
STEVEN KARCHER/Atty. for pl.

No tentative ruling.

6. [10-12546](#)-A-7 HWA CHUNG MOTION TO DISMISS ADVERSARY
[14-1018](#) HTP-1 PROCEEDING/NOTICE OF REMOVAL
CHUNG ET AL V. BANK OF SIERRA 2-25-14 [[9](#)]
ET AL
HANNO POWELL/Atty. for mv.

No tentative ruling.

7. [13-11347](#)-A-7 CHRISTOPHER BURGONI PRETRIAL CONFERENCE RE:
[13-1099](#) BOARD OF TRUSTEES OF THE KERN COMPLAINT (62 (DISCHARGEABILITY
COUNTY ELECTRICAL PE V. - 523(A)(2), FALSE PRETENSES,
FALSE REPRESENTATION, ACTUAL
FRAUD))
9-11-13 [[1](#)]
KERRY FENNELLY/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

1:30 p.m.

1. [11-63718](#)-A-7 TIMOTHY/ALLISON DOLAN MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK/MV 2-12-14 [[224](#)]
JACOB EATON/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 2005 Fleetwood Revolution LE Motorhome

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).

AS TO THE DEBTOR

The motion is denied as moot. The stay that protects the debtor 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 debtor.

AS TO THE ESTATE

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 Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [13-18124](#)-A-7 BOYD BEASTROM MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 1-29-14 [[11](#)]
ALLAN WILLIAMS/Atty. for dbt.
JONATHAN CAHILL/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: 5510 Segovia Way, Bakersfield, California

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)(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 Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

1-28-14 [[11](#)]

HUGHES FEDERAL CREDIT UNION/MV
R. BELL/Atty. for dbt.
TIMOTHY BURKE/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Subject: 2012 Toyota Tacoma

LEGAL STANDARDS FOR STAY RELIEF

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)).

Subsection (d)(2) of § 362 of Title 11 allows relief from stay as against property of the debtor if the moving party shows that two elements are satisfied: (i) "the debtor does not have an equity in such property," and (ii) "such property is not necessary to an effective reorganization." *Id.* § 362(d)(2). Under the first element of this subsection, the moving party bears the burden of proof to show that the debtor lacks equity in the property. See 11 U.S.C. § 362(g)(1); *In re Bialac*, 712 F.2d 426, 432 (9th Cir. 1983). The responding party has the burden of showing that the property is necessary for an effective reorganization and all other issues. 11 U.S.C. § 362(g)(2); see also *In re Bonner Mall P'ship*, 2 F.3d 899, 902 (9th Cir. 1993).

ANALYSIS

The moving party requests relief from stay pursuant to § 362 of the Bankruptcy Code to exercise its rights as to collateral consisting of a vehicle. Based on the value of the collateral asserted in the motion and supporting papers, the debtor has equity in the vehicle. See 11 U.S.C. § 362(d)(2). Relief from stay is not warranted based on any lack of equity.

In addition, only one payment has been missed post-petition. The court does not find that one post-petition payment having been missed supports cause, or a lack of adequate protection. See 11 U.S.C. § 362(d)(1). The motion is denied without prejudice. In the event that the creditor is able to make a stronger showing for stay relief in the future, the creditor may re-file the motion and seek stay relief at

such time.

PROCEDURAL PROBLEMS

The motion does not comply with Local Bankruptcy Rule 9014-1(c). No docket control numbers have been used for this motion.

Further, the motion does not state with particularity the grounds for the relief requested.

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion itself contains no specific factual assertions regarding lack of equity or adequate protection from which the court could draw the conclusion that stay relief is warranted. The motion generally asserts that the debtor is delinquent and that the creditor is without adequate protection. But the court finds these assertions to be too conclusory to meet the requirements of Rule 9013 and Rule 9014(a).

4. [14-10455](#)-A-7 MAKTHENG BUN
SW-1
WELLS FARGO BANK, N.A./MV
FRANK SAMPLES/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-26-14 [[14](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2009 GMC Yukon

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)(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 Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

5. [13-17773](#)-A-7 WILLIAM LARIMORE MOTION FOR RELIEF FROM
RMD-1 AUTOMATIC STAY
GMAC MORTGAGE, LLC/MV 1-23-14 [[12](#)]
NEIL SCHWARTZ/Atty. for dbt.
RYAN DAVIES/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: 20578 Schout Road, Tehachapi, California

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).

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6. [13-16975](#)-A-7 DANIEL/TAMI FRENCH MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
WELLS FARGO BANK N.A./MV 2-27-14 [[56](#)]
ROBERT WILLIAMS/Atty. for dbt.
TORIANA HOLMES/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: 2011 Chevrolet Cruze

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 Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

7. [13-18096](#)-A-7 DANIEL/TARA MARTINEZ MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE LLC/MV 2-10-14 [[17](#)]
STEVEN STANLEY/Atty. for dbt.
KRISTIN ZILBERSTEIN/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: 10719 Tivoli Court, 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)(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 Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

1:45 p.m.

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

No tentative ruling.

2. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, MOTION FOR COMPENSATION FOR
LKW-10 INC. LEONARD K. WELSH, DEBTOR'S
LEONARD WELSH/MV ATTORNEY(S), FEE: \$14232.50,
EXPENSES: \$398.74
2-7-14 [[171](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

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

Applicant: Leonard K. Welsh
Compensation approved: \$14,232.50
Costs approved: \$398.74
Aggregate fees and costs approved: \$14,631.24
Retainer held: \$0.00
Amount to be paid as administrative expense: \$14,631.24

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 counsel for the debtor in possession in a Chapter 11 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). 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.

3. [13-11766](#)-A-11 500 WHITE LANE LP

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-15-13 [[1](#)]

D. GARDNER/Atty. for dbt.

Final Ruling

This matter is continued to April 22, 2014, at 1:15 p.m.

4. [13-11766](#)-A-11 500 WHITE LANE LP
DMG-10

CONFIRMATION OF PLAN
1-24-14 [[208](#)]

D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

2:30 p.m.

1. [13-11803](#)-A-13 JERZY BARANOWSKI
PK-1
JERZY BARANOWSKI/MV
PATRICK KAVANAGH/Atty. for dbt.
2 HOURS

TRIAL RE: OBJECTION TO CLAIM OF
DENNIS VALDEZ, CLAIM NUMBER 8
6-3-13 [[30](#)]