

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

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

**THURSDAY**

**APRIL 3, 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. [14-10502](#)-A-13 GUADALUPE/MARIA CASTILLO MOTION TO VALUE COLLATERAL OF  
TOG-1 BANK OF AMERICA, N.A.  
GUADALUPE CASTILLO/MV 2-16-14 [[11](#)]  
THOMAS GILLIS/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

**Collateral Value:** \$55,000

**Senior Liens:** \$66,000

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).

2. [13-15103](#)-A-13 SYLVIA RODRIGUEZ  
SAH-4  
SYLVIA RODRIGUEZ/MV  
SUSAN HEMB/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
1-29-14 [[51](#)]

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

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

### **CONFIRMATION**

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

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

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

### **ISSUE REGARDING NOTICE**

The list of creditors in the proof of service is not a copy of the court's master address list. For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address 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 address 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.

### **75 DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such

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

3. [11-62704](#)-A-13 NORMAN PIMENTEL MOTION TO MODIFY PLAN  
MNE-5 2-6-14 [[96](#)]  
NORMAN PIMENTEL/MV  
M. ENMARK/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

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

4. [13-18105](#)-A-13 CRAIG/SHEREE ALTOBELLE MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS,  
MOTION TO DISMISS CASE  
2-7-14 [[23](#)]  
SCOTT LYONS/Atty. for dbt.

**No tentative ruling.**

5. [12-19510](#)-A-13 JUAN SEGURA-JIMINEZ AND MOTION TO APPROVE LOAN  
GH-2 MARIA DE SEGURA MODIFICATION  
JUAN SEGURA-JIMINEZ/MV 2-18-14 [[51](#)]  
GARY HUSS/Atty. for dbt.

**Final Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Granted in part, denied in part

**Order:** Prepared by moving party according to the instructions below

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

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

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

6. [12-19510](#)-A-13 JUAN SEGURA-JIMINEZ AND MOTION TO MODIFY PLAN  
GH-3 MARIA DE SEGURA 2-18-14 [[58](#)]  
JUAN SEGURA-JIMINEZ/MV  
GARY HUSS/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.

7. [14-11110](#)-A-13 MELISSA OMOS  
SL-1  
MELISSA OMOS/MV

MOTION TO EXTEND AUTOMATIC STAY  
3-20-14 [[13](#)]

SCOTT LYONS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor without proper notice of this motion

**Order:** Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

If this case was filed under Chapter 13 of title 11, the court will extend the automatic stay subject to the condition that all plan payments are timely made to the Chapter 13 trustee for the next six months, and the order shall provide that (i) the debtor shall make such timely payments for the next six months to the Chapter 13 trustee, (ii) if the debtor fails to make any such monthly payment, the Chapter 13 trustee may file a certification of noncompliance with the order on this motion along with a proposed order, and (iii) upon

the filing of such certification, the court may then dismiss the case without further notice or a hearing.

8. [13-12212](#)-A-13 GARNEL OLIBRIS MOTION TO MODIFY PLAN  
JMA-3 1-20-14 [[39](#)]  
GARNEL OLIBRIS/MV  
JOSEPH ARNOLD/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

9. [13-18013](#)-A-13 MADELINE MEDINA MOTION TO CONFIRM PLAN  
PBB-1 2-19-14 [[14](#)]  
MADELINE MEDINA/MV  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local

Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

10. [13-18017](#)-A-13 TYNETTA SHABAZZ  
MHM-1  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS, MOTION TO DISMISS  
CASE FOR FAILURE TO FILE  
DOCUMENTS, MOTION TO DISMISS  
CASE FOR FAILURE TO MAKE PLAN  
PAYMENTS, MOTION TO DISMISS  
CASE FOR FAILURE TO PROVIDE TAX  
DOCUMENTS  
2-7-14 [[26](#)]

RANDY RISNER/Atty. for dbt.  
SARAH VELASCO/Atty. for mv.

**No tentative ruling.**

11. [14-10217](#)-A-13 LESLIE RADDATZ  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS , MOTION TO DISMISS  
CASE  
2-28-14 [[24](#)]

JOEL WINTER/Atty. for dbt.

**No tentative ruling.**

12. [14-10217](#)-A-13 LESLIE RADDATZ  
SW-1  
WELLS FARGO BANK N.A./MV  
JOEL WINTER/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK N.A.  
2-12-14 [[16](#)]

**No tentative ruling.**

13. [09-18222](#)-A-13 CARLOS/ROSALINDA GARCIA MOTION TO APPROVE LOAN  
KAZ-1 MODIFICATION  
NATIONSTAR MORTGAGE LLC/MV 3-3-14 [[61](#)]  
GEOFFREY ADALIAN/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.

**Final Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Granted in part, denied in part

**Order:** Prepared by moving party according to the instructions below

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

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

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

14. [09-19623](#)-A-13 LANCE/CHRISTINA CROW MOTION FOR COMPENSATION BY THE  
PLF-10 LAW OFFICE OF PETER L. FEAR FOR  
PETER FEAR/MV PETER L. FEAR, DEBTOR'S  
ATTORNEY(S), FEE: \$4,303.00,  
EXPENSES: \$700.00  
2-28-14 [[125](#)]
- PETER FEAR/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 Peter L. Fear  
**Compensation approved:** \$4303.00  
**Costs approved:** \$700.00  
**Aggregate fees and costs approved:** \$5003.00  
**Retainer held:** \$0.00  
**Amount to be paid as administrative expense:** \$5003.00

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).

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.

15. [12-11831](#)-A-13 LYDIA CLARY MOTION TO MODIFY PLAN  
JDR-8 2-21-14 [[135](#)]  
LYDIA CLARY/MV  
JEFFREY ROWE/Atty. for dbt.

### **Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

16. [13-17332](#)-A-13 LORENZO/MARIA TOVAR MOTION TO CONFIRM PLAN  
HDN-5 2-20-14 [[104](#)]  
LORENZO TOVAR/MV  
HENRY NUNEZ/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

17. [13-12433](#)-A-13 MARK SIDLEY MOTION TO MODIFY PLAN  
SL-2 2-12-14 [[37](#)]  
MARK SIDLEY/MV  
SCOTT LYONS/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.

18. [13-17533](#)-A-13 ALEX/PRISCILLA PANG OBJECTION TO DEBTOR'S CLAIM OF  
MHM-2 EXEMPTIONS  
MICHAEL MEYER/MV 3-6-14 [[28](#)]  
JERRY LOWE/Atty. for dbt.  
MOTION WITHDRAWN

**Final Ruling**

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

19. [13-17637](#)-A-13 BENJAMIN/SONIA VELO MOTION TO CONFIRM PLAN  
AAM-1 2-4-14 [[31](#)]  
BENJAMIN VELO/MV  
ANDREW MOHER/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

20. [14-10238](#)-A-13 GABRIEL/ELSA CERVANTES MOTION TO VALUE COLLATERAL OF  
TOG-1 CITIFINANCIAL SERVICING, LLC  
GABRIEL CERVANTES/MV 2-16-14 [[19](#)]  
THOMAS GILLIS/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

**Collateral Value:** \$188,026.00

**Senior Liens:** \$235,200.00

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 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).

21. [09-18142](#)-A-13 GREGORY/TERRY ROHLFES MOTION FOR COMPENSATION BY THE  
PLF-3 LAW OFFICES OF PETER L. FEAR  
PETER FEAR/MV FOR PETER L. FEAR, DEBTOR'S  
ATTORNEY(S), FEE: \$1382.00,  
EXPENSES: \$220.84  
3-6-14 [[61](#)]

PETER FEAR/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 Peter L. Fear

**Compensation approved:** \$1382.00

**Costs approved:** \$220.84

**Aggregate fees and costs approved:** \$1602.84

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$1602.84

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.

22. [13-11742](#)-A-13 MICHAEL/DIANA YU MOTION TO MODIFY PLAN  
PLF-2 2-3-14 [[48](#)]  
MICHAEL YU/MV  
PETER FEAR/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan  
**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

23. [10-65044](#)-A-13 JAIME/IRENE BERRELLEZA MOTION TO MODIFY PLAN  
PLG-4 2-3-14 [[67](#)]  
JAIME BERRELLEZA/MV  
CHELSEA RYAN/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.

24. [14-10544](#)-A-7 JONATHAN OCHOA MOTION TO VALUE COLLATERAL OF  
TOG-1 GREEN TREE SERVICING, LLC  
JONATHAN OCHOA/MV 2-21-14 [[11](#)]  
THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

The motion will be denied as moot. The case has been converted to a case under chapter 7.

25. [14-10544](#)-A-7 JONATHAN OCHOA MOTION TO VALUE COLLATERAL OF  
TOG-3 HSBC BANK USA, N.A.  
JONATHAN OCHOA/MV 2-21-14 [[17](#)]  
THOMAS GILLIS/Atty. for dbt.  
STIPULATION

**Final Ruling**

The motion will be denied as moot. The matter was resolved by stipulation, but the case was subsequently converted to a case under chapter 7.

26. [14-10146](#)-A-13 LORRAINE GUPTON MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS  
2-28-14 [[24](#)]  
F. GIST/Atty. for dbt.

**Final Ruling**

The case dismissed, the motion is denied as moot.

27. [14-10054](#)-A-13 VINCENT/TERESA ODOM

JPMORGAN CHASE BANK, N.A./MV

ALLAN WILLIAMS/Atty. for dbt.  
TIMOTHY SILVERMAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY JPMORGAN CHASE BANK,  
N.A.  
2-24-14 [[19](#)]

### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

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

**Disposition:** Sustained and confirmation will be denied

**Order:** Civil minute order

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

### **ON THE MERITS**

The plan proposes to reduce a Class 2 secured claim based on the value of the collateral. However, the failure to file a motion to value such claim warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c). For this reason, the court will deny confirmation of the plan.

JPMorgan Chase Bank, N.A., the objecting party, contends that the value of the collateral is \$14,158.00. The court will not decide the value of the vehicle in ruling on this objection. Local Bankruptcy Rule 3015-1(j) provides the proper procedure for determining the value of collateral securing a claim provided for in a plan that reduces the claim based on such value.

### **75 DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

28. [12-16963](#)-A-13 JOSE/MARYANN ALCANTAR  
PPR-1  
BANK OF AMERICA, N.A./MV

DAVID JENKINS/Atty. for dbt.  
CASSANDRA RICHEY/Atty. for mv.

MOTION FOR CONSENT TO ENTER  
INTO LOAN MODIFICATION  
AGREEMENT  
2-24-14 [[37](#)]

### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

**Notice:** LBR 9014-1(f)(2); no 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

29. [13-16466](#)-A-13 ANDRE ALBA  
MHM-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
3-7-14 [[34](#)]

BRET ADAMS/Atty. for dbt.

**No tentative ruling.**

30. [13-17268](#)-A-13 CHRISTOPHER/NORMA ABLES

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-18-14 [[57](#)]

JERRY LOWE/Atty. for dbt.

**Final Ruling**

The filing fee having now been paid in full, the order to show cause is discharged.

31. [13-17668](#)-A-13 JULIAN/ANN SALINAS  
GH-2  
JULIAN SALINAS/MV

MOTION TO VALUE COLLATERAL OF  
AMERICREDIT FINANCIAL SERVICES,  
INC.  
2-9-14 [[36](#)]

GARY HUSS/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

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

**Notice:** Written opposition filed by responding party

**Disposition:** Continued for evidentiary hearing

**Order:** Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. 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 the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

Unless all parties are prepared at the hearing to establish relevant scheduling dates and deadlines, the court will continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, the joint status report will be filed 14 days in advance of the continued hearing date.

Alternatively, the parties may jointly address these issues orally at the continued hearing in lieu of a written joint status report.

32. [13-17668](#)-A-13 JULIAN/ANN SALINAS  
GH-3  
JULIAN SALINAS/MV

MOTION TO CONFIRM PLAN  
2-10-14 [[41](#)]

GARY HUSS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1)

**Disposition:** Continued to coincide with evidentiary hearing on the debtor's motion to value collateral

**Order:** Civil minute order if appropriate

The debtors' plan proposes to reduce the secured claim of Americredit Financial Services, Inc. d/b/a GM Financial ("GMF") to the value of the collateral securing its claim. The debtor's motion to value such collateral has been opposed, and the court will continue this confirmation hearing to coincide with further hearings on the debtor's motion to value collateral at docket number 36.

33. [10-12470](#)-A-7 FRANK/MARIE SANCHEZ MOTION TO CONVERT CASE FROM  
JB-1 CHAPTER 13 TO CHAPTER 7 AND/OR  
STATE BOARD OF EQUALIZATION/MV MOTION TO DISMISS CASE  
2-21-14 [[73](#)]
- DAVID JENKINS/Atty. for dbt.  
JILL BOWERS/Atty. for mv.  
RESPONSIVE PLEADING

**Final Ruling**

The case having been voluntarily converted, the motion will be denied as moot.

34. [13-17874](#)-A-13 YGNACIO ROJAS MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS , MOTION TO DISMISS  
CASE  
2-7-14 [[19](#)]
- THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING, MOTION  
WITHDRAWN

**Final Ruling**

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

35. [13-16575](#)-A-13 SARAH GATHRIGHT MOTION TO CONFIRM PLAN  
FJG-3 2-20-14 [[51](#)]  
SARAH GATHRIGHT/MV  
F. GIST/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None

has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

36. [13-16575](#)-A-13 SARAH GATHRIGHT  
MHM-2  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
2-14-14 [[45](#)]  
F. GIST/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

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

37. [12-17979](#)-A-13 CARLOS SEGOVIA AND FLOR  
TOG-10 LARREYNAGA  
CARLOS SEGOVIA/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING  
CONTINUED MOTION TO INCUR DEBT  
2-26-14 [[41](#)]

**No tentative ruling.**

38. [13-12379](#)-A-13 DONALD/PAMELA GARCIA  
PBB-1  
DONALD GARCIA/MV  
PETER BUNTING/Atty. for dbt.  
MOTION TO MODIFY PLAN  
2-14-14 [[27](#)]

**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.

39. [10-15380](#)-A-13 RICHARD PAYSON  
PLF-3  
PETER FEAR/MV

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF LAW OFFICES OF  
PETER L. FEAR FOR PETER L.  
FEAR, DEBTOR'S ATTORNEY(S),  
FEE: \$3,203.50, EXPENSES:  
\$228.05  
3-4-14 [[65](#)]

PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

### **Final Ruling**

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

**Applicant:** Law Offices of Peter L. Fear  
**Compensation approved:** \$3203.50  
**Costs approved:** \$228.05  
**Aggregate fees and costs approved:** \$3431.55  
**Retainer held:** Unclear  
**Amount to be paid as administrative expense:** \$3431.55

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.

40. [12-15180](#)-A-13 LUIS/KELLIE LUJAN  
PLG-2  
LUIS LUJAN/MV  
RABIN POURNAZARIAN/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
2-7-14 [[39](#)]

**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.

41. [13-17780](#)-A-13 FRANK/RACHEL RUIZ  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
2-26-14 [[22](#)]

KARNEY MEKHITARIAN/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

42. [13-16984](#)-A-13 CLIFFORD HARMON

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-3-14 [[58](#)]

FINAL INSTALLMENT PAYMENT  
3/4/14, CASE DISMISSED

**Final Ruling**

The case dismissed, the order to show cause is discharged.

43. [14-10190](#)-A-13 MARIO/ZULEYKA NUNEZ

OBJECTION TO CONFIRMATION OF  
PLAN BY ALLY FINANCIAL INC.  
2-4-14 [[17](#)]

SW-1  
ALLY FINANCIAL INC./MV  
ERIC ESCAMILLA/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.

**Final Ruling**

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

44. [12-17792](#)-A-13 GEORGETTE AVEDIKIAN

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-25-14 [[78](#)]

RWR-1  
FRESNO COUNTY FEDERAL CREDIT  
UNION/MV  
JAMES MILLER/Atty. for dbt.  
RUSSELL REYNOLDS/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:** 4626 N. Emerson Ave., Fresno, CA

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

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above.

Cause exists to grant relief under § 362(d)(1). The debtor is in default under the terms of the Chapter 13 plan as of the filing of the motion in the amount of \$3,836.15. The court infers from this default that the debtor is delinquent in her obligation to maintain postpetition payments to the moving party. Such postpetition payments

are past due.

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

45. [13-17293](#)-A-13 KHAMMINH/BOUNMA RASAVONG MOTION TO CONFIRM PLAN  
RLF-2 1-30-14 [[30](#)]  
KHAMMINH RASAVONG/MV  
JEFF REICH/Atty. for dbt.

**Final Ruling**

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

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

46. [10-13895](#)-A-13 RICHARD/ANNABELLE FLORES MOTION FOR COMPENSATION BY THE  
PLF-3 LAW OFFICE OF PETER L. FEAR FOR  
PETER FEAR/MV PETER L. FEAR, DEBTOR'S  
ATTORNEY(S), FEE: \$1402.00,  
EXPENSES: \$256.64.  
2-19-14 [[64](#)]

PETER FEAR/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 Peter L. Fear  
**Compensation approved:** \$1402.00  
**Costs approved:** \$256.64  
**Aggregate fees and costs approved:** \$1658.64  
**Retainer held:** \$0.00  
**Amount to be paid as administrative expense:** \$1658.64

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.

47. [09-17196](#)-A-13 RONALD/LYNETTE BINGHAM MOTION FOR COMPENSATION BY THE  
PLF-5 LAW OFFICE OF PETER L. FEAR FOR  
PETER FEAR/MV PETER L. FEAR, DEBTOR'S  
ATTORNEY(S), FEE: \$3,989.00,  
EXPENSES: \$306.61  
3-3-14 [[67](#)]
- PETER FEAR/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 Peter L. Fear  
**Compensation approved:** \$3989.00  
**Costs approved:** \$306.61  
**Aggregate fees and costs approved:** \$4295.61  
**Retainer held:** \$0.00  
**Amount to be paid as administrative expense:** \$4295.61

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. [11-17897](#)-A-13 PAUL/JENNIFER LAZIO MOTION TO MODIFY PLAN  
PLF-2 2-3-14 [[62](#)]  
PAUL LAZIO/MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

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

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

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

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

49. [10-14399](#)-A-13 CHRISTOPHER/TANYA MCCLURE MOTION TO MODIFY PLAN  
PBB-3 2-10-14 [[51](#)]  
CHRISTOPHER MCCLURE/MV  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

50. [13-15181](#)-A-13 LINDSAY LEMONS RESCHEDULED HEARING RE: MOTION  
SL-2 TO CONFIRM PLAN  
LINDSAY LEMONS/MV 11-26-13 [[79](#)]  
SCOTT LYONS/Atty. for dbt.

**No tentative ruling.**

9:30 a.m.

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

**Final Ruling**

The motion for default judgment granted below, the status conference is concluded.

2. [13-15730](#)-A-13 ALFREDO CORTEZ MOTION FOR ENTRY OF DEFAULT  
[13-1125](#) UST-1 JUDGMENT  
U.S. TRUSTEE V. CORTEZ 2-19-14 [[19](#)]  
GREGORY POWELL/Atty. for mv.

**Final Ruling**

**Motion:** Entry of Default Judgment Dismissing Case with Prejudice and Enjoining Future Serial Filings for Two Years without Leave of Court

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

**Disposition:** Granted

**Order:** Prepared by moving party

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by Fed R. Bankr. P. 7055.*

The plaintiff has requested that the court enter default judgment against the defendant on its second claim for injunctive relief. The relief sought by plaintiff's first claim for relief cannot be granted because, as the plaintiff notes, the case has already been dismissed. Thus, the first claim is moot.

Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court will grant the motion and enter default judgment for the plaintiff on the claim for injunctive relief brought against defendant in this adversary proceeding.

The court has the authority to preclude serial, abusive bankruptcy filings. A number of remedies exist to redress such abuses: (1) dismissal with prejudice that bars the subsequent discharge of existing, dischargeable debt in the case to be dismissed, 11 U.S.C. § 349(a); (2) dismissal with prejudice that bars future petitions from being filed or an injunction against future filings, 11 U.S.C. §§ 105(a), 349(a); *see also Kistler v. Johnson*, No. 07-2257, 2008 WL 483605 (Bankr. E.D. Cal. Feb. 15, 2008) (McManus, J.) (unpublished decision). These provisions and remedies complement each other and are cumulative. *See In re Casse*, 198 F.3d. 327, 337-41 (2d Cir. 1999).

In cases where cause is found under § 349(a), a filing bar may exceed the 180-day limit described in § 109(g). *See, e.g., id.* at 341; *In re Tomlin*, 105 F.3d 933 (4th Cir. 1997). *But see In re Frieouf*, 938 F.2d

1099, 1103-04 (10th Cir. 1991). In *Leavitt*, the Ninth Circuit B.A.P. noted that § 349 was intended to authorize courts to control abusive filings, notwithstanding the limits of § 109(g). See *In re Leavitt*, 209 B.R. 935, 942 (B.A.P. 9th Cir. 1997).

Section 349(a) invokes a "cause" standard. In *Leavitt*, the panel held that "egregious" conduct must be present to find "cause" under § 349, but "a finding of bad faith constitutes such egregiousness." *Id.* at 939 (upholding the bankruptcy court's decision that debtors' inequitable proposal of Chapter 13 plan merely to avoid an adverse state court judgment was an unfair manipulation of the Code). In this circuit, a finding of bad faith is sufficient "cause" for barring future filings pursuant to § 349(a). *Id.* at 939. The overall test used to determine bad faith is to consider the totality of the circumstances. See, e.g., *In re Leavitt*, 209 B.R. at 939; *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). In determining whether bad faith exists, "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed [a plan] in an inequitable manner." *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The court concludes that a filing bar may be ordered pursuant to § 349 if the appropriate objective factors are found. The court may find cause to bar a debtor from re-filing if the debtor: (1) acted inequitably in filing a case or proposing a plan, (2) misrepresented the facts, (3) unfairly manipulated the Code, or (4) proposed a plan in an inequitable manner. These factors are disjunctive.

Based on the undisputed facts, the court finds cause to impose a filing bar exceeding the 180-day limit in § 109(g). The facts show debtor has unfairly manipulated the Code without genuine intent to prosecute the debtor's cases to discharge or reorganization.

The debtor will be enjoined from filing another bankruptcy petition in the Eastern District of California without leave of court for a two-year period commencing on the entry of the order dismissing the debtor's bankruptcy case. During such time, leave of court will not be granted to file a petition unless the following conditions have been met: (1) the request for leave of court to file a petition is accompanied by a cashier's check made payable to the Clerk of Court for the full amount of the filing fee and documents that include the completed schedules and statements prepared and ready to be filed, (2) reasonable assurances are provided that debtor will appear at the § 341 meeting, and (3) the debtor shows a material change in circumstances that warrant the filing of a subsequent petition.

3. [08-11880-A-13](#) WAYNE/JONALYN YOUNG CONTINUED STATUS CONFERENCE RE:  
[13-1130](#) COMPLAINT  
YOUNG ET AL V. BANK OF 11-22-13 [1]  
AMERICA, N.A. ET AL  
PETER FEAR/Atty. for pl.

### **Final Ruling**

The status conference is continued to May 15, 2014, at 9:30 a.m. In the even the matter has not been dismissed or judgment entered, not later than May 8, 2014, the plaintiff shall file a status report.

10:00 a.m.

1. [12-12164](#)-A-12 NATHAN SPARKMAN  
MNE-1  
M. ENMARK/MV  
PETER FEAR/Atty. for dbt.  
M. ENMARK/Atty. for mv.  
RESPONSIVE PLEADING  
  
**No tentative ruling.**
  
  2. [12-12164](#)-A-12 NATHAN SPARKMAN  
PLF-7  
NATHAN SPARKMAN/MV  
PETER FEAR/Atty. for dbt.  
  
**No tentative ruling.**
  
  3. [12-19290](#)-A-12 DIMAS/ROSA COELHO  
MHM-1  
MICHAEL MEYER/MV  
  
THOMAS GILLIS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
  
**No tentative ruling.**
  
  4. [12-19291](#)-A-12 JOAO/LUZIA VAZ  
MHM-1  
MICHAEL MEYER/MV  
  
THOMAS GILLIS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
  
**No tentative ruling.**
- CONTINUED MOTION TO DISMISS  
CASE  
1-29-14 [[76](#)]
- MOTION TO MODIFY CHAPTER 12  
PLAN  
2-20-14 [[80](#)]
- MOTION TO DISMISS CASE AND/OR  
MOTION FOR AN ORDER TO SHOW  
CAUSE WHY FEES PAID SHOULD NOT  
BE DISGORGED  
3-7-14 [[168](#)]
- MOTION TO DISMISS CASE AND/OR  
MOTION FOR ORDER TO SHOW CAUSE  
WHY FEES PAID SHOULD NOT BE  
DISGORGED  
3-7-14 [[176](#)]