

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 16, 2015

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. [10-17305](#)-A-13 GLEN/MARY CHANDLER MOTION TO DISMISS CASE
MHM-1 3-4-15 [[97](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [15-11005](#)-A-13 MARITZA LOPEZ MOTION TO VALUE COLLATERAL OF
SL-1 SELECT PORTFOLIO SERVICING,
MARITZA LOPEZ/MV INC.
3-30-15 [[10](#)]
SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

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). The default of the respondent 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).

VALUATION OF COLLATERAL

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) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). 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 respondent'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. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 2539 East La Vida Ave., Visalia, CA.

The court values the collateral at \$214,220.00. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 2539 East La Vida Ave., Visalia, CA, has a value of \$214,220.00. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

3. [11-13106](#)-A-13 JORGE TORO AND LIDIA MOTION FOR RELIEF FROM
TJS-1 VERDUZCO AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A./MV 3-6-15 [[100](#)]
THOMAS GILLIS/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

The movant seeks stay relief to exercise its rights and remedies against its collateral, a 2009 Nissan Maxima SE. The debtors have opposed the motion by asserting that they have brought their payments to the movant current.

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 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor

or a third party. Section 3.15 of the plan provides that "[e]ntry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation"

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. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

4. [15-10406](#)-A-13 ANGELITA CAMPA
ALS-1
FARMERS INSURANCE GROUP
FEDERAL CREDIT UNION/MV
TIMOTHY SPRINGER/Atty. for dbt.
A. SIMON/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY FARMERS INSURANCE GROUP
FEDERAL CREDIT UNION
3-19-15 [[16](#)]

No tentative ruling.

5. [10-11020](#)-A-13 JAVIER/ANITA TEMORES
MHM-3
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO DISMISS CASE
3-4-15 [[79](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (c)(6) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$8635.76.

The debtors have responded and have not disputed the delinquency and by implication have admitted that a default exists by stating that they would cure the default. However, debtors state that they will cure the default on or before the hearing date. Unless the default is cured before 9:00 a.m.—meaning that the trustee has received the full amount of the delinquency—the court will dismiss the case at the hearing.

6. [15-10420](#)-A-13 SYLVIA ARELLANO
SL-1
SYLVIA ARELLANO/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO VALUE COLLATERAL OF
ALLY FINANCIAL, INC.
3-26-15 [[31](#)]

for the debtor's motion to value collateral having docket control no. SL-1

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.

The objection of creditor Ally Financial is to the amount of its secured claim based on the value of the vehicular collateral and to the interest rate proposed. Because the objection's grounds depend on a disputed issue to be resolved by an evidentiary hearing on the debtor's motion to value collateral of Ally Financial, the court will continue the hearing on confirmation to the next hearing date scheduled for the debtor's valuation motion.

8. [14-14526](#)-A-13 JEFFERY/JENE SHIPMAN MOTION TO DISMISS CASE
MHM-1 2-19-15 [[41](#)]
MICHAEL MEYER/MV
BENNY BARCO/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [14-14933](#)-A-13 RAMON MARTINEZ CONTINUED MOTION TO CONFIRM
SL-1 PLAN
RAMON MARTINEZ/MV 1-14-15 [[29](#)]
SCOTT LYONS/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.

10. [15-10633](#)-A-13 MARICELA NEIBLAS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-31-15 [[20](#)]
FRANCISCO ALDANA/Atty. for dbt.

Tentative Ruling

If the installment payment due March 26, 2015, in the sum of \$79 has not been paid by the time of the hearing, the case will be dismissed without further notice or hearing.

11. [14-12234](#)-A-13 ALEXANDRA CHAMPAGNE MOTION TO DISMISS CASE
MHM-2 2-19-15 [[57](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [14-12535](#)-A-13 TAMARA STOCKS MOTION TO DISMISS CASE
MHM-2 2-19-15 [[34](#)]
MICHAEL MEYER/MV
JAMES MILLER/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$5,012

13. [14-15736](#)-A-13 OMAR MARTINEZ AND JUDIT MOTION TO VALUE COLLATERAL OF
GEG-1 LOPEZ CARMAX AUTO FINANCIAL
OMAR MARTINEZ/MV 3-10-15 [[32](#)]
GLEN GATES/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 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). Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D. Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). "Thus, to meet the requirements of the Rules and comply with considerations of due process, a Rule 3012 motion (either with or without a plan) must be served on the affected creditors in accord with Rule 7004." *Millspaugh*, 302 B.R. at 102 (emphasis added); see also *In re Pereira*, 394 B.R. 501, 506-07 (Bankr. S.D. Cal. 2008) (Chapter 13 plan containing lien stripping proposal must be served on the affected creditor pursuant to Rule 7004). Rule 3012 notice alone will not suffice for the motion. See *Pereira*, 394 B.R. at 506.

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

14. [13-18050](#)-A-13 JOEY/TERESE SAN NICOLAS MOTION TO DISMISS CASE
MHM-1 2-19-15 [[21](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [13-17051](#)-A-13 GUADALUPE MACIAS MOTION TO MODIFY PLAN

SL-2
GUADALUPE MACIAS/MV
STEPHEN LABIAK/Atty. for dbt.

2-23-15 [[28](#)]

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. [13-17051](#)-A-13 GUADALUPE MACIAS
SL-3
GUADALUPE MACIAS/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO RELEASE WAGE ORDER
2-23-15 [[34](#)]

No tentative ruling.

17. [14-11851](#)-A-13 MARK DAFFERN
MAZ-2
MARK DAFFERN/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO MODIFY PLAN
2-25-15 [[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.

18. [14-11553](#)-A-13 MATTHEW/ANGELA KNOTT CONTINUED MOTION TO DISMISS
MHM-2 CASE FOR FAILURE TO MAKE PLAN
MICHAEL MEYER/MV PAYMENTS
1-15-15 [[38](#)]

JAMES MILLER/Atty. for dbt.

No tentative ruling.

19. [13-10355](#)-A-13 MARY MIGLIORE MOTION TO DISMISS CASE
MHM-2 2-18-15 [[51](#)]
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion was not served on the debtor's attorney at the correct address. The debtor's attorney filed a change of address on February 17, 2015 on the court's docket. This motion was filed February 18, 2015. The motion will be denied without prejudice for insufficient service. See Fed. R. Bankr. P. 1017(f)(1), 9014(b), 7004(g) (requiring service on a represented debtor's attorney whenever service is made upon the debtor under the rule).

20. [13-12958](#)-A-13 EDWARD/HEIDI PARKS MOTION TO MODIFY PLAN
BDB-5 2-25-15 [[60](#)]
EDWARD PARKS/MV
BENNY BARCO/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.

21. [14-12362](#)-A-7 BENITO/MARTHA GALARZA MOTION TO DISMISS CASE
MHM-2 2-19-15 [[99](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
CONVERTED 2/27/15

Final Ruling

The case converted to chapter 7, the matter is dropped as moot.

22. [10-14164](#)-A-13 NOE MALDONADO FERNANDEZ MOTION FOR COMPENSATION BY THE
PLF-3 AND MARIA CISNEROS OROZCO LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S).
3-18-15 [[61](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

Fear Law Group, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2266.00 and reimbursement of expenses in the amount of \$211.25. These amounts are requested in addition to the amount of \$5000 approved as part of plan confirmation under LBR 2016-1(c).

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 "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 a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Fear Law Group, P.C.'s application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2266.00 and reimbursement of expenses in the amount of \$211.25. The aggregate allowed amount equals \$2477.25, and this amount is in addition to the amount of \$5000 that was previously approved as part of plan confirmation in this case. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2266.00 shall be allowed as an administrative expense to be paid through the plan.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

23. [14-15879](#)-A-13 VIRGINIA MOORE
TCS-1
VIRGINIA MOORE/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
3-3-15 [[29](#)]

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. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation. 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.

24. [15-10979](#)-A-13 BELEN VALENCIA
SJS-1
FRANCISCO VALENCIA/MV
MIKALAH LIVIAKIS/Atty. for dbt.
SCOTT SAGARIA/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-30-15 [[14](#)]

Tentative Ruling

Motion: Stay Relief

Disposition: Denied as moot

Order: Civil minute order

The moving party seeks relief from the automatic stay. This case, however, is subject to the Bankruptcy Code provisions that terminate or negate the stay in cases involving repeat individual bankruptcy filers. See 11 U.S.C. § 362(c)(3)-(4).

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). In such a case, the automatic stay may be extended only if both notice and the hearing on such motion are "completed before the expiration of" the 30-day period after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B). Otherwise, if notice and the hearing are not completed before the end of the 30-day period, "the automatic stay terminates in its entirety 30 days after the petition date for a repeat filer." *In re Reswick*, 446 B.R. 362, 365, 371-73 (B.A.P. 9th Cir. 2011).

The debtor has had a previous case pending within the one-year period prior to the filing of this case and such case was dismissed. The petition in this case was filed on March 14, 2015. But no motion to extend the stay has been filed, and the hearing on a motion to extend the stay has not been completed before the expiration of the 30-day period after the petition date. Accordingly, the automatic stay terminated 30 days after the petition date. See 11 U.S.C. § 363(c)(3)(A). The motion will be denied as moot.

25. [13-15181](#)-A-13 LINDSAY LEMONS
[13-1124](#)
STORMS ET AL V. LEMONS
GLEN GATES/Atty. for pl.
RESPONSIVE PLEADING
- CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-12-13 [[1](#)]
- No tentative ruling.**
26. [13-15181](#)-A-13 LINDSAY LEMONS
[13-1124](#) GEG-2
STORMS ET AL V. LEMONS
- CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LINDSAY LEMONS
12-16-14 [[46](#)]
- GLEN GATES/Atty. for mv.
- No tentative ruling.**
27. [13-15181](#)-A-13 LINDSAY LEMONS
SL-2
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED MOTION TO CONFIRM
PLAN
11-26-13 [[79](#)]
- No tentative ruling.**
28. [13-15181](#)-A-13 LINDSAY LEMONS
SL-3
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED OBJECTION TO CLAIM OF
WES STORMS, CLAIM NUMBER 2
11-7-13 [[49](#)]
- No tentative ruling.**
29. [13-15181](#)-A-13 LINDSAY LEMONS
SL-4
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED OBJECTION TO CLAIM OF
WAYLENCO, CLAIM NUMBER 3
11-7-13 [[54](#)]
- No tentative ruling.**
30. [13-15181](#)-A-13 LINDSAY LEMONS
SL-5
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED OBJECTION TO CLAIM OF
WAYNE STORMS, CLAIM NUMBER 1
10-24-13 [[134](#)]

No tentative ruling.

31. [13-17682](#)-A-13 EUGENE/MARILYN MORA MOTION TO DISMISS CASE
MHM-1 2-19-15 [[40](#)]
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

32. [11-62783](#)-A-13 BENIGNO MARMOLEJO ALCALA CONTINUED MOTION TO VALUE
SL-1 AND ISABEL VALLADARES DE COLLATERAL OF CITIMORTGAGE,
BENIGNO MARMOLEJO ALCALA/MV INC.
1-14-15 [[68](#)]
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Valuation of Collateral

Notice: Written response filed / Continued hearing date

Disposition: Pending

Order: Pending

The status report indicates that creditor's counsel has attempted to communicate with debtors' counsel unsuccessfully. It also states that a stipulation (with terms outlined in the status report) providing for respondent creditor's claim as unsecured along with other conditions was forwarded to the debtors' counsel, but respondent creditor never received an executed copy despite following up on the stipulation with debtors' counsel.

33. [13-14786](#)-A-13 SILVESTRE/KARLA OCHOA MOTION TO DISMISS CASE
MHM-2 2-18-15 [[32](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

34. [11-63889](#)-A-13 MATTHEW GARCIA AND MOTION TO MODIFY PLAN
MNE-1 MICHELLE AGUILAR 3-2-15 [[21](#)]
MATTHEW GARCIA/MV
M. ENMARK/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.

35. [13-14791](#)-A-13 MELISSA SILVEIRA MOTION TO DISMISS CASE
MHM-2 2-19-15 [[59](#)]
MICHAEL MEYER/MV
TRUDI MANFREDO/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

36. [12-60092](#)-A-13 GARY/CHRISTINA STAHL MOTION TO DISMISS CASE
MHM-1 2-18-15 [[31](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [13-16794](#)-A-13 MICHAEL VIVEROS MOTION TO DISMISS CASE
MHM-2 2-19-15 [[55](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$953.50.

38. [10-14399](#)-A-13 CHRISTOPHER/TANYA MCCLURE MOTION TO DISMISS CASE
MHM-1 3-4-15 [[62](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [14-13899](#)-A-13 MIGUEL FLOREZ MOTION TO MODIFY PLAN
TCS-1 2-27-15 [[34](#)]
MIGUEL FLOREZ/MV
TIMOTHY SPRINGER/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.

40. [15-11215](#)-A-13 JOSE/MARIA INES TAFOLLA MOTION TO EXTEND AUTOMATIC STAY
DRJ-2 4-12-15 [[9](#)]
JOSE TAFOLLA/MV
DAVID JENKINS/Atty. for dbt.
OST 4/13/15

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted preliminarily and continued to April 30, 2015, at 9:00 a.m.

Order: Prepared by moving party

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.*

NOTICE

Before the continued hearing, the motion, and a notice of continued hearing along with the order shortening time for hearing on the motion, must be noticed to all creditors affected by the relief sought. In addition, notice should comply with the order shortening time for notice of hearing. A certificate of service showing notice should be filed no later than April 22, 2015.

PRELIMINARY RELIEF

For the reasons stated in the motion, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. But given that the motion was filed only 4 days prior to the hearing, and given the terms of the order shortening time, the court's ruling will be preliminary. The court will order that the automatic stay will remain in effect preliminarily until the final hearing on April 30, 2015. The court will enter a final ruling on April 30, 2015, at 9:00 a.m.

Unless opposition is presented at the continued hearing, the motion

will be granted finally at the continued hearing except as to any creditor without proper notice of this motion.

10:00 a.m.

1. [14-14912](#)-A-13 GEOFFREY ALLAN AND MOTION FOR ORDER APPROVING
[15-1004](#) FRANCES ALVAREZ PBB-1 JOINT STIPULATION IN SETTLEMENT
ALLAN ET AL V. BOUDREAUX ET AL OF COMPLAINT FOR TURNOVER ORDER
3-16-15 [[8](#)]
PETER BUNTING/Atty. for mv.

No tentative ruling.

2. [08-18616](#)-A-13 HER YANG AND PA VUE STATUS CONFERENCE RE: COMPLAINT
[15-1016](#) YANG ET AL V. WELLS FARGO BANK 2-9-15 [[1](#)]
ET AL
GABRIEL WADDELL/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to June 17, 2015, at 10:00 a.m. to allow the parties to complete their settlement agreement.

3. [14-15245](#)-A-13 MICHAEL CASE STATUS CONFERENCE RE: COMPLAINT
[15-1018](#) BLACK V. CASE 2-17-15 [[1](#)]
RICHARD HARRIS/Atty. for pl.

Final Ruling

The status conference is continued to May 21, 2015, at 10:00 a.m.

4. [15-10085](#)-A-13 PEDRO SANDOVAL CONTINUED STATUS CONFERENCE RE:
[15-1015](#) COMPLAINT
U.S. TRUSTEE V. SANDOVAL 1-29-15 [[1](#)]
ROBIN TUBESING/Atty. for pl.

No tentative ruling.

5. [15-10085](#)-A-13 PEDRO SANDOVAL MOTION FOR ENTRY OF DEFAULT

Final Ruling

Motion: Entry of Default Judgment

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 moved for default judgment.

Under Federal Rule of Civil Procedure 8(b)(6), the allegations of the complaint are admitted except for allegations relating to the amount of damages. Fed. R. Civ. P. 8(b)(6), *incorporated by* Fed. R. Bankr. P. 7008(a). Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed. R. Bankr. P. 7055.

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. Between October 9, 2012 and the present, four cases, including the present case, filed by the debtor have been dismissed for failure to file documents. In four of the cases filed by the debtor, including the current case that was recently dismissed by order dated February 2, 2015, the debtor has failed to disclose one or more previously filed cases within the 8-years preceding the filing in which the failure to disclose occurred.

The claim seeking dismissal with prejudice is denied as moot given the dismissal of the current case already.

However, the court will enter default judgment on the claim seeking an injunction. 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.