

**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 17, 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 DISMISS CASE FOR  
MHM-1      FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV      3-27-14 [[22](#)]  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar as moot.

2. [13-18105](#)-A-13 CRAIG/SHEREE ALTOBELLE      MOTION TO DISMISS CASE FOR  
MHM-2      UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV      PREJUDICIAL TO CREDITORS AND/OR  
      MOTION TO DISMISS CASE  
      3-26-14 [[29](#)]  
  
SCOTT LYONS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar as moot.

3. [11-12509](#)-A-13 MARTIN/LUZ AMADOR      MOTION TO APPROVE LOAN  
GEG-2      MODIFICATION  
MARTIN AMADOR/MV      3-28-14 [[79](#)]  
GLEN GATES/Atty. for dbt.

**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.

4. [11-11215](#)-A-7 TY/JENNIFER HAWTHORNE CONTINUED MOTION TO MODIFY PLAN  
MNE-1 12-26-13 [[36](#)]  
TY HAWTHORNE/MV

M. ENMARK/Atty. for dbt.  
CONVERTED 3/10/14,  
RESPONSIVE PLEADING

**Final Ruling**

The case converted to chapter 7, the motion is denied as moot.

5. [14-10515](#)-A-13 AIDA VALENCIA MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS ,  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS , MOTION TO DISMISS  
CASE  
3-27-14 [[26](#)]

TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar as moot.

6. [14-10416](#)-A-13 FELIX/ISABEL ALVAREZ MOTION TO VALUE COLLATERAL OF  
TOG-1 SPRINGLEAF FINANCIAL SERVICES,  
FELIX ALVAREZ/MV INC.  
3-10-14 [[17](#)]

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:** \$98,100  
**Senior Liens:** \$140,000

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).

7. [13-18017](#)-A-13 TYNETTA SHABAZZ  
MHM-1  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR FAILURE TO MAKE PLAN  
PAYMENTS, AND/OR MOTION TO  
DISMISS CASE FOR FAILURE TO  
PROVIDE TAX DOCUMENTS,  
MOTION/APPLICATION TO DISMISS  
CASE FOR FAILURE TO FILE  
DOCUMENTS  
2-7-14 [[26](#)]

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

**No tentative ruling.**

8. [14-10217](#)-A-13 LESLIE RADDATZ  
MHM-2  
MICHAEL MEYER/MV  
JOEL WINTER/Atty. for dbt.  
DISMISSED
- MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
3-27-14 [[29](#)]

**Final Ruling**

The case dismissed, the motion is denied as moot.

9. [13-16020](#)-A-13 BLANCA MARTINEZ  
MHM-2  
MICHAEL MEYER/MV
- PRETRIAL CONFERENCE RE: MOTION  
TO CONVERT CASE FROM CHAPTER 13  
TO CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
11-26-13 [[42](#)]
- THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter has been resolved by pretrial order, and no appearance is necessary.

10. [13-16020](#)-A-13 BLANCA MARTINEZ  
MHM-3  
MICHAEL MEYER/MV
- PRETRIAL CONFERENCE RE:  
OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
12-4-13 [[50](#)]
- THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter has been resolved by pretrial order, and no appearance is necessary.

11. [13-16020](#)-A-13 BLANCA MARTINEZ  
TOG-1  
BLANCA MARTINEZ/MV
- CONTINUED MOTION TO VALUE  
COLLATERAL OF GREEN TREE  
SERVICING, LLC  
11-8-13 [[27](#)]
- THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Value Collateral [Real Property; Nonresidential]  
**Notice:** Written opposition filed by the responding party  
**Disposition:** Continued for an evidentiary hearing  
**Order:** Civil Minute Order

The motion seeks to value nonresidential real property that is the responding party's collateral. 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.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

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

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

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| 12. | <u>14-10422</u> -A-13 MANUEL/RISSY MONTOYA<br>APN-1<br>TOYOTA MOTOR CREDIT<br>CORPORATION/MV<br>ADRIAN WILLIAMS/Atty. for dbt.<br>AUSTIN NAGEL/Atty. for mv. | OBJECTION TO CONFIRMATION OF<br>PLAN BY TOYOTA MOTOR CREDIT<br>CORPORATION<br>3-24-14 [ <a href="#">15</a> ] |
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### **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:** Overruled

**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 will be overruled because plan's misstatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount of the

creditor's claim.

13. [14-10422](#)-A-13 MANUEL/RISSY MONTOYA      OBJECTION TO CONFIRMATION OF  
BHT-1      PLAN BY U.S. BANK NATIONAL  
U.S. BANK NATIONAL      ASSOCIATION  
ASSOCIATION/MV      3-25-14 [[19](#)]  
ADRIAN WILLIAMS/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.

**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

**Order:** Civil minute order

ON THE MERITS

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 objecting creditor states that the debtors' arrearage amount owed as of the petition date was \$4,229.98. The proposed plan appears to provide for the objecting creditor's claim in Class 4. The arrearages are not provided for in the plan. Class 4 is not the appropriate class in which to place the objecting creditor's claim given the existence of a default. Section 2.11 of the plan provides that Class 4 claims "are not in default, and are not modified by this plan."

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).

14. [14-10422](#)-A-13 MANUEL/RISSY MONTOYA      MOTION TO DISMISS CASE FOR  
MHM-1      FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV      3-27-14 [[23](#)]  
ADRIAN WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

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

15. [14-10525](#)-A-13 PEDRO VELASQUEZ  
MDE-1  
U.S. BANK NATIONAL  
ASSOCIATION/MV  
SCOTT LYONS/Atty. for dbt.  
MARK ESTLE/Atty. for mv.
- OBJECTION TO CONFIRMATION OF  
PLAN BY CREDITOR U.S. NATIONAL  
ASSOCIATION  
3-6-14 [[18](#)]

**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:** Overruled

**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 will be overruled because plan's misstatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount of the creditor's claim.

16. [11-16726](#)-A-13 PAUL/KAREN WYNN  
DRJ-4  
PAUL WYNN/MV  
DAVID JENKINS/Atty. for dbt.  
RESPONSIVE PLEADING
- MOTION TO SELL  
3-27-14 [[45](#)]

**No tentative ruling.**

17. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-3  
WADE WILLIAMS/MV  
BRIAN HADDIX/Atty. for dbt.  
RESPONSIVE PLEADING
- MOTION TO CONFIRM PLAN  
2-4-14 [[85](#)]

**Tentative 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. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-4  
WADE WILLIAMS/MV  
  
BRIAN HADDIX/Atty. for dbt.  
OST 4/10

OBJECTION TO CLAIM OF RUCKER  
CONSTRUCTION, INC., CLAIM  
NUMBER 6  
3-4-14 [[94](#)]

**No tentative ruling.**

19. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-5  
WADE WILLIAMS/MV  
  
BRIAN HADDIX/Atty. for dbt.  
OST 4/10

AMENDED OBJECTION TO CLAIM OF  
ROBERT RUCKER AND RUCKER  
CONSTRUCTION, INC., CLAIM  
NUMBER 5  
3-18-14 [[108](#)]

**No tentative ruling.**

20. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-6  
WADE WILLIAMS/MV  
  
BRIAN HADDIX/Atty. for dbt.  
OST 4/10

OBJECTION TO CLAIM OF ROBERT  
RUCKER AND RUCKER CONSTRUCTION,  
INC., CLAIM NUMBER 7  
3-18-14 [[104](#)]

**No tentative ruling.**

21. [13-15728](#)-A-13 WADE WILLIAMS  
MHM-3  
MICHAEL MEYER/MV  
BRIAN HADDIX/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
3-27-14 [[112](#)]

**Final Ruling**

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

22. [11-18734](#)-A-13 DRU/PEGGY SCOTT  
GEG-2  
DRU SCOTT/MV  
GLEN GATES/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
4-3-14 [[47](#)]

**No tentative ruling.**

23. [13-17637](#)-A-13 BENJAMIN/SONIA VELO  
MHM-1  
MICHAEL MEYER/MV  
ANDREW MOHER/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
3-27-14 [[42](#)]

**Final Ruling**

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

24. [14-10041](#)-A-13 RONALD/KAREN YARBROUGH  
MHM-1  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
3-27-14 [[17](#)]

**No tentative ruling.**

25. [14-10043](#)-A-13 OSCAR SOLIS  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE , MOTION  
TO DISMISS CASE FOR FAILURE TO  
PROVIDE TAX DOCUMENTS  
3-27-14 [[39](#)]

KARNEY MEKHITARIAN/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

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

26. [14-10043](#)-A-13 OSCAR SOLIS  
MHM-2  
MICHAEL MEYER/MV  
KARNEY MEKHITARIAN/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
3-27-14 [[43](#)]

**Final Ruling**

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

27. [14-10544](#)-A-7 JONATHAN OCHOA  
MDE-1  
U.S. BANK TRUST, N.A./MV  
THOMAS GILLIS/Atty. for dbt.  
MARK ESTLE/Atty. for mv.  
CONVERTED 3/31/14,  
RESPONSIVE PLEADING

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK TRUST, N.A.  
2-26-14 [[28](#)]

**Final Ruling**

The case converted to chapter 7, the motion is denied as moot.

28. [14-10544](#)-A-7 JONATHAN OCHOA  
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 FILE DOCUMENTS  
3-27-14 [[43](#)]

THOMAS GILLIS/Atty. for dbt.  
CONVERTED 3/31/14

**Final Ruling**

The case converted to chapter 7, the motion is denied as moot.

29. [2-16046](#)-A-13 ERNEST/KATHERINE SHELTON  
TCS-3  
ERNEST SHELTON/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
3-13-14 [[52](#)]

**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.

30. [13-17754](#)-A-13 EDUARDO SOLIS AND ROSA  
MHM-1 CASTILLO  
MICHAEL MEYER/MV  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE , MOTION  
TO DISMISS CASE FOR FAILURE TO  
PROVIDE TAX DOCUMENTS  
3-27-14 [[33](#)]

THOMAS GILLIS/Atty. for dbt.

**No tentative ruling.**

31. [12-15358](#)-A-13 SHAWN/TINA IPSEN  
PLF-4  
PETER FEAR/MV  
MOTION FOR COMPENSATION FOR  
PETER L. FEAR, DEBTOR'S  
ATTORNEY(S), FEE: \$3546.50,  
EXPENSES: \$223.18  
3-12-14 [[66](#)]

PETER FEAR/Atty. for dbt.

### **Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Law Offices of Peter L. Fear

**Compensation approved:** \$3,546.00

**Costs approved:** \$223.18

**Aggregate fees and costs approved:** \$3,776.82

**Retainer held:** \$0

**Amount to be paid as administrative expense:** \$3,776.82

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.

32. [14-10360](#)-A-13 KRISTEN JONES  
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  
3-27-14 [[26](#)]

**No tentative ruling.**

33. [14-10360](#)-A-13 KRISTEN JONES  
PD-1  
WELLS FARGO BANK, N.A./MV  
JONATHAN CAHILL/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
3-24-14 [[21](#)]

**No tentative ruling.**

34. [13-17562](#)-A-13 SAMMY/ALVA MARTINEZ  
UST-1  
U.S. TRUSTEE/MV

CONTINUED MOTION AGAINST  
MELODIE FURTADO FOR FINES AND  
PAYMENT TO DEBTORS PURSUANT TO  
11 U.S.C. SECTION 110  
2-6-14 [[42](#)]

ROBIN TUBESING/Atty. for mv.  
ORDER 4/7

**Final Ruling**

The matter resolved by stipulation and order, the hearing is dropped from calendar as moot.

35. [13-17668](#)-A-13 JULIAN/ANN SALINAS  
GH-2  
JULIAN SALINAS/MV

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

GARY HUSS/Atty. for dbt.  
ORDER APPROVING STIPULATION  
4/14

**Final Ruling**

The matter resolved by stipulation and order, the hearing is dropped from calendar as moot.

36. [13-17668](#)-A-13 JULIAN/ANN SALINAS  
GH-3  
JULIAN SALINAS/MV  
GARY HUSS/Atty. for dbt.

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

**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.

37. [13-17668](#)-A-13 JULIAN/ANN SALINAS  
MHM-1  
MICHAEL MEYER/MV  
GARY HUSS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
3-27-14 [[63](#)]

**Final Ruling**

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

38. [13-16274](#)-A-13 JOSEPH DESROSIERS  
MHM-3  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
3-27-14 [[88](#)]

**Final Ruling**

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

39. [13-15476](#)-A-13 ROBERT TYRA  
BCS-4

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF SHEIN LAW GROUP,  
PC FOR BENJAMIN C. SHEIN,  
DEBTOR'S ATTORNEY(S).  
3-19-14 [[57](#)]

BENJAMIN SHEIN/Atty. for dbt.

**Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Shein Law Group, PC

**Compensation approved:** \$13,160.00

**Costs approved:** \$578.16

**Aggregate fees and costs approved:** \$13,738.16

**Retainer held:** \$3,039.00 (including payment from debtor's legal ins.)

**Amount to be paid as administrative expense:** \$10,699.16

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. [13-17076](#)-A-13 RAQUEL ARROYO  
TOG-4  
RAQUEL ARROYO/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
3-6-14 [[70](#)]

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

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

### **CONFIRMATION**

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

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

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

### **75 DAY ORDER**

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

41. [13-15686](#)-A-13 RICKY/SUZETTE WIGGS  
RDB-4  
RICKY WIGGS/MV  
RICK BANKS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM  
PLAN  
1-30-14 [[50](#)]

**No tentative ruling.**



42. [13-17598](#)-A-13 DEBBY RENNA  
MHM-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS , MOTION TO DISMISS  
CASE  
3-25-14 [[38](#)]

BENNY BARCO/Atty. for dbt.

**No tentative ruling.**

43. [13-17598](#)-A-13 DEBBY RENNA  
MHM-3  
MICHAEL MEYER/MV  
BENNY BARCO/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
3-28-14 [[42](#)]

**Final Ruling**

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

44. [13-18099](#)-A-13 ROJELIO/JOANDREW ORTIZ  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
3-26-14 [[34](#)]

SCOTT LYONS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

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

45. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-7  
WADE WILLIAMS/MV  
  
BRIAN HADDIX/Atty. for dbt.  
OST 4/11

MOTION TO PRECLUDE PRESENTATION  
OF INFORMATION IN CONTESTED  
MATTER  
4-11-14 [[165](#)]

**No tentative ruling.**

46. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-8  
WADE WILLIAMS/MV  
  
BRIAN HADDIX/Atty. for dbt.  
OST 4/11

MOTION TO PRECLUDE PRESENTATION  
OF INFORMATION IN CONTESTED  
MATTER  
4-11-14 [[170](#)]

**No tentative ruling.**

47. [13-15728](#)-A-13 WADE WILLIAMS  
BSH-9  
WADE WILLIAMS/MV  
  
BRIAN HADDIX/Atty. for dbt.  
OST 4/11

MOTION TO PRECLUDE PRESENTATION  
OF INFORMATION IN CONTESTED  
MATTER  
4-11-14 [[175](#)]

**No tentative ruling.**

**9:30 a.m.**

1. [13-17055](#)-A-13 KHRISTIE DOWING  
[14-1024](#)  
DOWING V. DOWING  
GARY HUSS/Atty. for pl.  
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT  
2-17-14 [[1](#)]

**No tentative ruling.**

2. [13-17055](#)-A-13 KHRISTIE DOWING  
[14-1024](#)  
DOWING V. DOWING  
THOMAS ARMSTRONG/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS ADVERSARY  
PROCEEDING/NOTICE OF REMOVAL  
3-20-14 [[8](#)]

**No tentative ruling.**

3. [13-10971](#)-A-13 JEREMY WINANS  
[13-1054](#)  
DAVIS V. WINANS  
5-14-13 [[1](#)]  
THOMAS ARMSTRONG/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT

**No tentative ruling.**

10:00 a.m.

1. [13-15305](#)-A-12 ROGELIO CALDERON AND MOTION FOR COMPENSATION FOR  
TOG-6 LAURA BOBADILLA-DELGADO THOMAS O. GILLIS, DEBTOR'S  
ATTORNEY(S).  
3-19-14 [[36](#)]

THOMAS GILLIS/Atty. for dbt.

### **Tentative Ruling**

**Application:** First and Final Application for Compensation and Expense Reimbursement

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

**Disposition:** Approved in part; disapproved in part

**Order:** Civil minute order

**Applicant:** Thomas O. Gillis

**Compensation requested:** \$9,449.50

**Costs requested:** \$52.00

**Compensation approved:** \$3,364.00

**Costs approved:** \$52.00

**Aggregate fees and costs approved:** \$3,416.00

**Retainer held:** \$8,000

### **DISCUSSION**

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 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 [applicant] applying for fees bears the burden of proving the reasonableness of those fees." *Dallessio v. Pauchon (In re Dallessio)*, 74 B.R. 721, 724 (9th Cir. B.A.P. 1987) (§ 506(b) context). As a prerequisite, the Chapter 12 debtor's attorney must be employed by the estate under § 327 in order to request compensation and reimbursement for expenses from the estate. See § 330(a); *In re Swenson*, Case No. 09-41687, 2013 WL 3776318, at \*2-5 (Bankr. D. Kans. July 16, 2013).

#### Application Period

First, the court considers the application period of the fees requested. The Applicant requests compensation for fees incurred from July 25, 2013, to January 27, 2014. However, part of this application period falls outside the effective date of the Applicant's employment in this case.

The employment order (ECF No. 32) does not state when the Applicant's employment became effective. Unless the court expressly approves employment nunc pro tunc, this court typically allows employment of a professional to be effective 30 days prior to the date of the filing of the employment application. See Fed. R. Bankr. P. 6003 advisory committee's note (2011). In this case, the Applicant filed his employment application on December 5, 2013, so his employment was approved effective November 5, 2013.

As a result, any fees that were incurred from July 25, 2013 to November 4, 2013 must be disapproved without prejudice. This means that the Applicant's attorney's fees are reduced by \$3,862.50 (10.3

hours) and his paralegal's fees are reduced by \$315 (2.1 hours). However, the court notes that the Applicant is not precluded from seeking employment nunc pro tunc back to July 25, 2013, and recovering these disapproved fees.

#### Counsel's Rate

Next, the court considers the Applicant's hourly rate of \$375 an hour for himself. To determine what constitutes a reasonable hourly rate under the lodestar, the court turns to the "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). This requires looking at the "rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997) (emphasis added); see also *Blum*, 465 U.S. at 898 ("[T]he special skill and experience of counsel should be reflected in the reasonableness of the hourly rates.").

The court finds that the Applicant has not met his burden in showing that his hourly rate is similar to the rates of attorneys of comparable skill, experience, and reputation. In justifying his \$375 an hour rate, the Applicant has cited that the attorney Daniel Egan, who has 23 years less experience than the Applicant, bills at \$370 an hour and that the attorney Riley Walter, who has 11 years less experience than the Applicant, bills at \$395 an hour. However, this comparison only addresses the "experience" factor. The Applicant has not shown that he is of similar skill and reputation as these two attorneys.

As a result, the court finds that it is proper to reduce the Applicant's hourly rate from \$375 to \$250 an hour. This means that the Applicant's attorney's fees are further reduced by \$1,450 (thereby allowing \$2,900 in attorney's fees based on 11.6 hours billed at \$250 an hour).

#### Paralegal's Rate

Similarly, the court considers the Applicant's hourly rate of \$150 an hour for his paralegal. This court does not typically allow a paralegal to bill at a rate that is more than 1/3 that of the attorney. Because the Applicant's own hourly rate has been reduced, the paralegal's hourly rate must also be reduced. As a result, based on the Applicant's new hourly rate of \$250 an hour, the paralegal's hourly is reduced to \$80 an hour (roughly 1/3 of \$250). This means that the Applicant's paralegal's fees are further reduced by \$406 (thereby allowing \$464 in paralegal's fees based on 5.8 hours billed at \$80 an hour).

#### **CONCLUSION**

For the reasons set forth above, the court will approve compensation in the amount of \$3,364.00 and reimbursement of expenses in the amount of \$52.00.

1:30 p.m.

1. [13-11803](#)-A-13 JERZY BARANOWSKI  
PK-1  
JERZY BARANOWSKI/MV

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

PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING, VACATED  
BY ORDER #126

**Final Ruling**

The trial was vacated by Order entered April 7, 2014, (ECF No. 126),  
and a hearing set on the April 22, 2014, calendar at 9:00 a.m. for  
rescheduling of the trial.