

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

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

TUESDAY

APRIL 22, 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. [14-10501](#)-A-13 HECTOR CASTANEDA AND LUCY MOTION TO DISMISS CASE FOR
MHM-1 REYES UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
3-31-14 [[20](#)]

PHILLIP GILLET/Atty. for dbt.

No tentative ruling.

2. [13-10804](#)-A-13 MATHEW/MELINDA PARHAM MOTION TO MODIFY PLAN
WDO-3 3-10-14 [[50](#)]
MATHEW PARHAM/MV
WILLIAM OLCOTT/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied without prejudice

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification on grounds that the plan's failure to fund, the plan's infeasibility, and the plan's lack of evidence in support.

The debtors have not supported the plan by filing recently amended Schedules I and J. Without those documents, the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

In addition, the plan does not provide a start date for the increase in the attorney's fee dividend from \$0.00 to \$50.00, which causes the dividend for the attorney to be effective as of the first month of the plan. The trustee points out that the plan is already in month 13, which means that under the modified plan \$650 should already have been paid towards the attorney's fees under section 2.07. The trustee says that there are insufficient funds to bring this claim current under the proposed modified plan.

Lastly, the plan has not been supported by a declaration addressing the elements of § 1325(a).

In proposing any further modified plan, the debtors shall address any funding problems raised by the trustee and ensure that any proposed modification properly covers all the monthly dividends proposed by the plan. If the Class 1 creditor has filed a Notice of Mortgage Payment Change, the debtors must ensure that any modification accounts for an increase, if any, in the Class 1 mortgage payment.

For the reasons discussed, the motion will be denied. The court will sustain the trustee's objection and disapprove the modification.

3. [09-13308](#)-A-13 CARL/CAROL PASCUZZO MOTION TO MODIFY PLAN
KDG-2 3-12-14 [[91](#)]
CARL PASCUZZO/MV
JACOB EATON/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.

4. [09-13308](#)-A-13 CARL/CAROL PASCUZZO MOTION FOR COMPENSATION BY THE
KDG-3 LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIEB &
KIMBALL, LLP FOR JACOB L.
EATON, DEBTOR'S ATTORNEY(S).
4-1-14 [[105](#)]
JACOB EATON/Atty. for dbt.

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Klein DeNatale
Compensation approved: \$4,957.00
Costs approved: \$279.64
Aggregate fees and costs approved: \$5,236.64
Retainer held: \$0.00
Amount to be paid as administrative expense: \$5,236.64

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

Section 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.

5. [11-14914](#)-A-13 ROGELIO/IMELDA HERNANDEZ MOTION TO MODIFY PLAN
DMG-4 2-25-14 [[94](#)]
ROGELIO HERNANDEZ/MV
D. GARDNER/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.

6. [14-10314](#)-A-13 DANIEL/LINDA MONTES
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
3-26-14 [[18](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

7. [13-16828](#)-A-13 ROBERT MOORE
NES-1
ROBERT MOORE/MV

MOTION TO CONFIRM PLAN
2-18-14 [[27](#)]

NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

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.

8. [12-16029](#)-A-13 CRYSTAL JOHNSON
VC-2
CALIFORNIA AUTO FINANCE/MV
PATRICK KAVANAGH/Atty. for dbt.
MICHAEL VANLOCHEM/Atty. for mv.
RESPONSIVE PLEADING
- CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
2-20-14 [[106](#)]
- No tentative ruling.**
9. [13-16632](#)-A-13 NOAH/MICHELLE JELLIE
MHM-1
MICHAEL MEYER/MV
- CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS , MOTION TO
DISMISS CASE
2-21-14 [[15](#)]
- NEIL SCHWARTZ/Atty. for dbt.
- No tentative ruling.**
10. [13-16632](#)-A-13 NOAH/MICHELLE JELLIE
NES-1
NOAH JELLIE/MV
- MOTION TO VALUE COLLATERAL OF
KERN SCHOOLS FEDERAL CREDIT
UNION
3-21-14 [[23](#)]
- NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Disposition: Denied without prejudice

Order: Civil minute order

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period

preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

11. [13-14334](#)-A-13 ANTONIO/ANAHEL AGUIRRE MOTION TO VALUE COLLATERAL OF
NES-6 BENEFICIAL FINANCIAL I
ANTONIO AGUIRRE/MV 3-25-14 [[100](#)]
NEIL SCHWARTZ/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 pursuant to the instructions below

Collateral Value: \$190,700

Senior Liens: \$235,458.31

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).

Given that the responding party holds both the first and second deeds of trust on the collateral, the moving party shall draft the proposed order to specifically identify by book and page number, instrument number, or other identifying information, the second deed of trust subject to this order.

12. [14-10134](#)-A-13 LEAH 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 MAKE PLAN PAYMENTS ,
MOTION TO DISMISS CASE
3-31-14 [[22](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

13. [14-10136](#)-A-13 SALVADOR GUERRERO AND
MHM-2 MARIA SILVA - GUERRERO
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
3-31-14 [[41](#)]

Final Ruling

The case dismissed, the motion is denied as moot.

14. [14-10545](#)-A-13 TIMOTHY GEDDES
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
3-31-14 [[20](#)]

ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

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

15. [13-13747](#)-A-13 DAVID/MICHELE KING
RSW-2
DAVID KING/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
3-10-14 [[46](#)]

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).

16. [13-16947](#)-A-13 ENRIQUE GOMEZ
JRH-1
ENRIQUE GOMEZ/MV
IVETA OVSEPYAN/Atty. for dbt.
WITHDRAWN

MOTION TO CONFIRM PLAN
3-4-14 [[45](#)]

Final Ruling

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

17. [13-16947](#)-A-13 ENRIQUE GOMEZ MOTION TO DISMISS CASE FOR
MHM-3 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 3-28-14 [[54](#)]
IVETA OVSEPYAN/Atty. for dbt.
WITHDRAWN

Final Ruling

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

18. [14-10570](#)-A-13 RAYMUNDO DOMINGUEZ AND MOTION TO VALUE COLLATERAL OF
RSW-1 MARTHA SOLIS OCWEN LOAN SERVICING, INC.
RAYMUNDO DOMINGUEZ/MV 4-8-14 [[19](#)]
ROBERT WILLIAMS/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: Prepared by moving party

Collateral Value: \$159,000

Senior Liens: \$325,341

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

19. [09-10374](#)-A-13 BERNICE MCCOY
SMS-1
BERNICE MCCOY/MV
STEVEN STANLEY/Atty. for dbt.

MOTION FOR EXEMPTION FROM
FINANCIAL MANAGEMENT COURSE
4-4-14 [[41](#)]

Final Ruling

Motion: Exemption from Financial Management Course for Deceased Joint Debtor

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).

Completion of an approved course concerning personal financial management is a prerequisite for individuals' obtaining a chapter 7 discharge. 11 U.S.C. § 727(a)(11). Section 727(a)(11) provides for an exception to this requirement for a debtor whom the court determines is unable to complete the personal financial management course because of incapacity or disability as described in § 109(h)(4). *Id.* §§ 109(h)(4), 727(a)(11). Incapacity and disability are defined terms. *Id.* § 109(h)(4). Debtor qualifies for the exemption because of her death.

20. [10-63881](#)-A-13 MICKEY/KATHRYN HOWELL
RSW-5
MICKEY HOWELL/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
4-8-14 [[74](#)]

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).

LOAN MODIFICATION

The motion seeks approval of a loan modification agreement. A copy of a letter with the material terms 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.

ADDITIONAL COST RECOVERY

The debtors are not authorized pay the actual costs of the preparation and mailing of the motion and supporting declaration. Fees and costs are only recoverable by separate application. See Fed. R. Bankr. P. 2016(a). Further, the debtors have not shown that the plan permits such costs to be paid to the attorney.

21. [13-13383](#)-A-13 BOBBY MAXWELL
PK-1

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S).
3-25-14 [[83](#)]

PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Patrick Kavanagh

Compensation approved: \$18,991.00

Costs approved: \$861.90

Aggregate fees and costs approved: \$19,852.00

Retainer held: \$0.00

Amount to be paid as administrative expense: \$19,852.00

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). Except for the Chapter 13 trustee no party in interest has filed opposition. The default of all other responding parties 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).

To the extent the Chapter 13 trustee opposes motion on the grounds that granting fees of this amount renders the debtor's plan not feasible, the opposition is overruled. Feasibility of the Chapter 13 is not a basis to oppose fee motions. 11 U.S.C. s 330(a)(4)(B).

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.

Finally, absent a modification that provides for payment of administrative expenses after completion of the plan, any fees due Patrick Kavanagh but not paid by the plan will be discharged, even if Kavanagh consents to later payment. The plan does not provide for payment after plan completion. Chapter 13 plan, May 20, 2013, ECF No. 11. See, *In re Johnson*, 344 B.R. 104 (9th Cir. B.A.P. 2006).

22. [13-10286](#)-A-13 ALI TORKAMAN
SJS-5
SUSAN SALEHI/MV

MOTION FOR COMPENSATION FOR
SUSAN J. SALEHI, DEBTOR'S
FORMER ATTORNEY(S).
3-24-14 [[107](#)]

PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Application: First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Susan J. Salehi

Compensation approved: \$9,000.00

Costs approved: \$0.00

Aggregate fees and costs approved: \$9,000.00

Retainer held: \$0.00

Amount to be paid as administrative expense: \$9,000.00

ON THE MERITS

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).

Debtor Ali Torkaman, through his new counsel, Patrick Kavanagh opposes the application, not on the grounds that the fees sought are unreasonable, but on the ground that the applicant initially opted-in to the flat fee and has not shown that additional fees were substantial and unanticipated, as required by Local Bankruptcy Rule 2016-1(c)(3). The court disagrees. This case has been acrimonious and the extent of this dispute could not reasonably be anticipated. The underlying case involved contested claim objection, motion to avoid lien and plan confirmation. An adversary proceeding was filed and prosecuted. *Torkaman v. Torkaman*, No. 13-1026 (Bankr. E.D. Cal. 2013). The applicant has recorded 109 billable hours and notes a customary hourly rate of \$250. Simple arithmetic suggests fees earned of \$27,250. Instead the applicant seeks \$13,000 (\$4,000 opt-in fees and \$9,000 additional fees).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

VIOLATIONS OF LOCAL RULES

Susan J. Salehi shall comply with Local Rule of Practice for the United States Bankruptcy Court, Eastern District of California 9014-1(c)(proper use of docket control numbers). The applicant has recycled docket number SJS-5. *Compare*, Motion to Withdraw, February 25, 2014, ECF No. 94-97, with Motion for Compensation, March 24, 2014, ECF No. 107). Future failures to comply with local rules, including Rule 9014-1(c), or Revised Guidelines for the Preparation of Documents (Revised January 17, 2014), EDC 2-901, may result in summary denial of the motion, summary overruling of the objection, monetary sanctions against the attorney and/or firm or an order to show cause requiring personal appearance.

23. [13-17895](#)-A-13 BERTHA SANCHEZ
MHM-1
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
1-27-14 [[25](#)]

ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

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

24. [13-17895](#)-A-13 BERTHA SANCHEZ
RSW-2
BERTHA SANCHEZ/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO CONFIRM PLAN
3-12-14 [[39](#)]

Final Ruling

The case dismissed, the motion is denied as moot.

25. [14-11826](#)-A-13 SHAWNA EVANS
RSW-1
SHAWNA EVANS/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
4-14-14 [[9](#)]

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.

26. [14-11754](#)-B-13 BRETT/RENEE SMITH
NES-1
BRETT SMITH/MV

MOTION TO EXTEND AUTOMATIC STAY
AND/OR MOTION FOR AN ORDER
CLARIFYING THAT THE AUTOMATIC
STAY REMAINS IN EFFECT AS TO
ALL CREDITORS WITH RESPECT TO
THE PROPERTY OF THE ESTATE.
4-15-14 [8]

NEIL SCHWARTZ/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

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.*

The notice of hearing improperly implies that written opposition must be filed by a potential respondent in order to avoid a waiver of any opposition. In addition, the motion does not contain a sufficient factual showing that the later case was filed in good faith. The facts asserted are too conclusory for the court to accept as true under the principles of default. For example, the motion asserts that the "debtor's financial condition has changed for the better" No factual premises have been offered in support of this conclusion. The debtors also contend that they have a more experienced attorney, but the motion does not explain why this fact is important concluding that the later case has been filed in good faith. Accordingly, the court will deny the motion.

27. [13-11803](#)-A-13 JERZY BARANOWSKI
PK-1
JERZY BARANOWSKI/MV

PATRICK KAVANAGH/Atty. for dbt.

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

No tentative ruling.

9:30 a.m.

1. [11-62587](#)-A-13 JUAN PIMENTEL
[13-1138](#)
PIMENTEL V. BANK OF AMERICA,
N.A.
ORDER 3/11/14, RESPONSIVE
PLEADING

ORDER TO SHOW CAUSE REGARDING
DISMISSAL OF ADVERSARY
PROCEEDING
3-11-14 [[24](#)]

No tentative ruling.

2. [11-62587](#)-A-13 JUAN PIMENTEL
[13-1138](#)
PIMENTEL V. BANK OF AMERICA,
N.A.
MICHAEL FRANK/Atty. for pl.

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

No tentative ruling.

10:30 a.m.

1. [13-17500](#)-A-7 REX/LINDA GLASS

CURTIS FLOYD/Atty. for dbt.

REAFFIRMATION AGREEMENT WITH
FINANCE AND THRIFT COMPANY
3-14-14 [[30](#)]

No tentative ruling.

2. [14-10610](#)-A-7 GEORGE/VALENTINE RIPSOM

PATRICK KAVANAGH/Atty. for dbt.

REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT CORPORATION
3-19-14 [[12](#)]

No tentative ruling.

3. [14-10116](#)-A-7 ELISE BURKLAND

PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA INC
4-1-14 [[15](#)]

No tentative ruling.

4. [13-17623](#)-A-7 TODD DORROH REAFFIRMATION AGREEMENT WITH
FINANCE AND THRIFT COMPANY
3-27-14 [[35](#)]

PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.
5. [14-10040](#)-A-7 NORBERTO/LORETO CORONADO PRO SE REAFFIRMATION AGREEMENT
WITH AMERICREDIT FINANCIAL
SERVICES, INC.
4-2-14 [[15](#)]

CURTIS FLOYD/Atty. for dbt.

No tentative ruling.
6. [14-10356](#)-A-7 RAUL/CLAUDIA TAVAREZ REAFFIRMATION AGREEMENT WITH
AMERICREDIT FINANCIAL SERVICES,
INC.
3-10-14 [[18](#)]

PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.
7. [14-10575](#)-A-7 JOB TORRES-RIZO AND PRO SE REAFFIRMATION AGREEMENT
ROSALINDA TORRES WITH FINANCE AND THRIFT COMPANY
4-1-14 [[17](#)]

No tentative ruling.
8. [14-10575](#)-A-7 JOB TORRES-RIZO AND PRO SE REAFFIRMATION AGREEMENT
ROSALINDA TORRES WITH WELLS FARGO DEALER
SERVICES
4-3-14 [[19](#)]

No tentative ruling.
9. [13-17792](#)-A-7 CHRISTOPHER VADNAIS AND CONTINUED REAFFIRMATION
DANA HAWKINS-VADNAIS AGREEMENT
1-27-14 [[13](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

1:00 p.m.

1. [13-17500](#)-A-7 REX/LINDA GLASS CONTINUED MOTION TO AVOID LIEN
CEF-1 OF FLEET CARD FUELS
REX GLASS/MV 2-4-14 [[19](#)]
CURTIS FLOYD/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

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

2. [13-17909](#)-A-7 WILLIE BAKER CONTINUED OBJECTION TO DEBTOR'S
KDG-2 CLAIM OF EXEMPTIONS
RANDELL PARKER/MV 2-20-14 [[15](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

3. [11-63718](#)-A-7 TIMOTHY/ALLISON DOLAN MOTION TO SELL
TGM-7 3-13-14 [[230](#)]
RANDELL PARKER/MV
JACOB EATON/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 9995 Bluegill Drive, Paso Robles, California

Buyer: Stephen and Suzan Soruton

Sale Price: \$50,000

Sale Type: Private sale subject to overbid opportunity

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

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court

will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

4. [14-10625](#)-A-7 JACQUELYN GRAEF OPPOSITION RE: TRUSTEE'S MOTION
VG-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-24-14 [9]

TIMOTHY QUICK/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Pending

Order: Prepared by chapter 7 trustee

The Notice of Trustee's Motion to Dismiss at docket no. 10 indicates that the opposition to the trustee's motion must be served no later than 14 days before the hearing: "The opposition must also be mailed to the Chapter 7 Trustee, the U.S. Trustee, the debtor and the debtor's attorney 14 days before your scheduled hearing with the court."

The proof of service shows that the debtor's notice and opposition was not properly transmitted to the trustee. The proof of service attached to the debtor's notice of hearing and opposition shows that the debtor is relying on the court's "Notice of Electronic Filing." Such a notice of electronic filing is not sufficient notice as it only transmits notice to the person receiving the notice that a specified document has been electronically filed. Such a notice does not transmit the actual document to the person entitled to notice. Here, the notice of hearing and opposition should have been mailed to the trustee.

If the chapter 7 trustee waives this defect, the court will conditionally deny the motion in part, and grant the motion in part, as follows:

The court will conditionally deny the motion in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the trustee's ex parte declaration.

The court will grant the motion in part to the extent it requests extension of certain deadlines. Such deadlines will be extended so that they run from the continued date of the § 341(a) meeting of

creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is May 12, 2014 at 12:00 p.m. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

5. [12-14262](#)-A-7 ALAN STEVENS
RSW-2
ALAN STEVENS/MV
3-19-14 [[22](#)]
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS CENTURION BANK

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$187,456.41

Property Value: \$151,000.00

Judicial Lien Avoided: \$6,547.41

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

6. [12-14262](#)-A-7 ALAN STEVENS
RSW-3
ALAN STEVENS/MV
3-19-14 [26]
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$185,069.89

Property Value: \$151,000.00

Judicial Lien Avoided: \$4,160.89

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

7. [14-10064](#)-A-7 STEPHANIE YBARRA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-31-14 [[41](#)]

JUSTIN GRAHAM/Atty. for dbt.
FEES PAID 4/1/14

Tentative Ruling

An Order to Show Cause has issued indicating that the debtor failed to pay fees in the amount of \$25.00 for the filing of a Notice of Voluntary Conversion to Chapter 7. Although the docket shows the receipt of the conversion fee in this amount, the court will require the attorney to appear at the hearing on this matter.

8. [13-16578](#)-A-7 JUAN PANTOJA

MOTION TO APPROVE LOAN
MODIFICATION

FJA-6

JUAN PANTOJA/MV

3-24-14 [[93](#)]

FRANK ALVARADO/Atty. for dbt.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification in Chapter 7 Case

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

Disposition: Denied

Order: Civil minute order

Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. *See In re Roderick*, 425 B.R. 556, 563-565 (Bankr. E.D. Cal. 2010). Unless the debt secured by a mortgage is nonrecourse, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

Court approval is not required to reaffirm a consumer debt secured by real property. 11 U.S.C. § 524(c)(6)(B). Nevertheless, "compliance with the other five essential elements of an enforceable reaffirmation agreement" is not excused. *See Roderick*, 425 B.R. at 566; 11 U.S.C. § 524(c)(1)-(5).

In addition, the court will not grant declaratory relief stating that any proposed loan modification does not violate the automatic stay or any other provision of the Code. This would constitute an impermissible advisory opinion on a hypothetical state of facts. The Declaratory Judgment Act provides that federal courts may grant declaratory relief "whether or not further relief is or could be sought" but only if the relief is sought "[i]n a case of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). The Supreme Court has recognized the potential for declaratory relief to present a non-justiciable case that "fall[s] outside the constitutional definition of a 'case' in Article III." *Calderon v. Ashmus*, 523 U.S. 740, 746 (1998). A party may not seek declaratory relief that would constitute "an opinion advising what the law would be upon a hypothetical state of facts." *Id.* (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937)). For example, federal courts must preclude "federal-court litigants from seeking by

declaratory judgment to litigate a single issue in a dispute that must await another lawsuit for complete resolution." *Id.* at 748.

Furthermore, to ensure that a declaratory relief action presents a justiciable case or controversy, federal courts apply ripeness principles. To be constitutionally ripe, "[t]he issues presented must be definite and concrete, not hypothetical and abstract. Where a dispute hangs on future contingencies that may or may not occur, it may be too impermissibly speculative to present a justiciable controversy." *Educ. Credit Mgmt. Corp. v. Coleman (In re Coleman)*, 560 F.3d 1000, 1005 (9th Cir. 2009) (citations omitted) (internal quotation marks omitted). "The constitutional ripeness of a declaratory judgment action depends upon whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id.* (quoting *United States v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003) (internal quotation marks omitted).

9. [13-18095](#)-A-7 FLORENTINO/IRENE VELLIDO MOTION TO SELL
JMV-1 3-27-14 [[21](#)]
JEFFREY VETTER/MV
STEVEN STANLEY/Atty. for dbt.
JEFFREY VETTER/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property:

-2006 Honda Ridgeline

-2002 Toyota Tundra

-1995 Ford Windstar Minivan

Buyer: Debtors

Sale Price: \$8500 aggregate price for all 3 vehicles (\$5600 cash plus \$2900 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

10. [12-19399](#)-A-7 KENNETH LEWIS
PWG-2
KENNETH LEWIS/MV
R. BELL/Atty. for dbt.

MOTION TO AVOID LIEN OF GORDON
DOLE
4-8-14 [[55](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$180,394.50

Property Value: \$100,000.00

Judicial Lien Avoided: \$80,394.50

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

1:15 p.m.

1. [12-11008](#)-A-7 RAFAEL ALONSO CONTINUED PRE-TRIAL CONFERENCE
[12-1095](#) RE: AMENDED COMPLAINT
ZUBCIC V. ALONSO 5-9-13 [[36](#)]
JOHN DULCICH/Atty. for pl.
ORDER RESCHEDULING TO
6/25/14

Final Ruling

The hearing has been rescheduled to June 25, 2014, at 1:15 p.m.

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

Final Ruling

The status conference is continued to May 20, 2014 at 1:15 p.m.

3. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION TO DISMISS MRS.
[14-1003](#) DEVELOPMENT INC. KDG-1 RODRIGUEZ'S THIRD, FOURTH, AND
PARKER V. RODRIGUEZ FIFTH CLAIM AND/OR MOTION TO
STRIKE MRS. RODRIGUEZ'S FIRST,
SECOND, AND FIFTH CLAIMS ,
MOTION TO STRIKE
3-5-14 [[11](#)]

KALEB JUDY/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Due to the filing of the first amended counterclaim (ECF No. 15) and the motion to dismiss the first amended counterclaim (ECF No. 21, KDG-2), this motion to dismiss is now denied as moot.

4. [11-62509](#)-A-7 SHAVER LAKEWOODS CONTINUED STATUS CONFERENCE RE:
[14-1004](#) DEVELOPMENT INC. COMPLAINT
PARKER V. LOO 1-6-14 [[1](#)]
KALEB JUDY/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to May 20, 2014 at 1:15 p.m.

5. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION TO DISMISS MR. LOO'S
[14-1004](#) DEVELOPMENT INC. KDG-1 SECOND, THIRD, AND FOURTH
PARKER V. LOO CLAIMS AND/OR MOTION TO STRIKE
MR. LOO'S FIRST AND FIFTH
CLAIMS , MOTION TO STRIKE
3-5-14 [[11](#)]

KALEB JUDY/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Due to the filing of the first amended counterclaim (ECF No. 15) and the motion to dismiss the first amended counterclaim (ECF No. 21, KDG-2), this motion to dismiss is now denied as moot.

6. [11-62509](#)-A-7 SHAVER LAKEWOODS CONTINUED STATUS CONFERENCE RE:
[14-1005](#) DEVELOPMENT INC. COMPLAINT
PARKER V. NUNEZ 1-6-14 [[1](#)]
KALEB JUDY/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to May 20, 2014 at 1:15 p.m.

7. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION TO DISMISS CAUSE(S) OF
[14-1005](#) DEVELOPMENT INC. KDG-1 ACTION FROM COUNTERCLAIM AND/OR
PARKER V. NUNEZ MOTION TO STRIKE, MOTION TO
STRIKE
2-28-14 [[9](#)]

KALEB JUDY/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Due to the filing of the first amended counterclaim (ECF No. 13) and the motion to dismiss the first amended counterclaim (ECF No. 15, KDG-2), this motion to dismiss is now denied as moot.

8. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION TO DISMISS CAUSE(S) OF
[14-1005](#) DEVELOPMENT INC. KDG-2 ACTION FROM FIRST AMENDED
PARKER V. NUNEZ COUNTERCLAIM AND/OR MOTION TO
STRIKE , MOTION TO STRIKE
3-25-14 [[15](#)]

KALEB JUDY/Atty. for mv.

Final Ruling

This matter is continued to May 20, 2014 at 1:15 p.m.

The defendant Henry Nunez is permitted to file an opposition to the motion to dismiss the first amended counterclaim (ECF No. 15, KDG-2) no later than 14 days before the continued hearing date. The

plaintiff Randell Parker is permitted to file a reply to the opposition no later than 7 days before the continued hearing date.

9. [13-17117](#)-A-7 PAUL BARNETT STATUS CONFERENCE RE: COMPLAINT
[14-1020](#) 2-10-14 [[1](#)]
PENSION INCOME, LLC V. BARNETT
THOMAS FEHER/Atty. for pl.

Final Ruling

The status conference is continued to May 20, 2014, at 1:15 p.m.

10. [10-12546](#)-A-7 HWA CHUNG STATUS CONFERENCE RE: NOTICE OF
[14-1018](#) REMOVAL
CHUNG ET AL V. BANK OF SIERRA 2-6-14 [[1](#)]
ET AL
UNKNOWN TIME OF FILING/Atty. for pl.

Final Ruling

The court dismissed the complaint with 14 days leave to amend. Order, March 28, 2014, ECF No. 17. The 14 days ran from service of the order. *id.* The order was served April 2, 2014. Certificate of Service, April 2, 2014, ECF No. 18. The time to file an amended complaint expired and no complaint filed, the case is dismissed and the status conference concluded. The court will issue a minute order.

11. [13-17448](#)-A-7 ARMANDO/AMERICA MENDOZA STATUS CONFERENCE RE: COMPLAINT
[14-1025](#) 2-17-14 [[1](#)]
DISCOVER BANK V. MENDOZA
RAYMOND MOATS/Atty. for pl.
STIPULATION

Final Ruling

Judgment entered, the status conference is concluded.

12. [13-13967](#)-A-7 MOTEL IOSHPHE STATUS CONFERENCE RE: COMPLAINT
[14-1026](#) 2-18-14 [[1](#)]
MAYTAL, LLC V. GORSKI ET AL
ANTHONY HAMASSIAN/Atty. for pl.

Final Ruling

The status conference is continued to May 20, 2014, at 1:15 p.m.

1:30 p.m.

1. [14-10211](#)-A-7 MELCHOR/MARIA ALMODIEL MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
CALIFORNIA HOUSING FINANCE 3-14-14 [[14](#)]
AGENCY/MV
ASHTON DUNN/Atty. for dbt.
JOSEPH GARIBYAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 1329 Porter Street, Ridgecrest, California 93555

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

AS TO THE DEBTOR

The motion is denied as moot. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

AS TO THE ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [13-18118](#)-A-7 BYRON/LINDA BARNES
PPR-1
BANK OF AMERICA, N.A./MV
BARRY BOROWITZ/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-13-14 [[13](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 354 20th Street West, Rosamond, California

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

AS TO THE DEBTOR

The motion is denied as moot. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

AS TO THE ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [13-18135](#)-A-7 IRENE CARRILLO
BHT-1
THE BANK OF NEW YORK MELLON/MV
R. BELL/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-26-14 [[14](#)]

Final Ruling

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

4. [14-10953](#)-A-7 THERESA CUNNINGHAM
JHW-1
TD AUTO FINANCE LLC/MV
STEVEN STANLEY/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-13-14 [[12](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2014 Mazda CX-5

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

5. [14-10163](#)-A-7 ADRIAN CEBALLOS
MBB-1
BANK OF AMERICA, N.A./MV
VINCENT GORSKI/Atty. for dbt.
L. JAQUEZ/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-4-14 [[14](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 601 Pacheco Road, Unit 28, Bakersfield, California

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

6. [14-11277](#)-A-7 RYCKAYLA COPELAND
VVF-1
KING OF CREDIT FINANCIAL,
INC./MV
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-26-14 [[14](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2003 Chevrolet Malibu

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

1:45 p.m.

1. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, MOTION TO CONVERT CASE FROM
UST-1 INC. CHAPTER 11 TO CHAPTER 7
TRACY DAVIS/MV 3-19-14 [[180](#)]
LEONARD WELSH/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-11766](#)-A-11 500 WHITE LANE LP MOTION FOR COMPENSATION BY THE
DMG-12 LAW OFFICE OF YOUNG WOOLDRIDGE,
LLP FOR D. MAX GARDNER,
DEBTOR'S ATTORNEY(S).
4-1-14 [[266](#)]
D. GARDNER/Atty. for dbt.

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Young Wooldridge, LLP

Compensation approved: \$34,633.00

Costs approved: \$975.53

Aggregate fees and costs approved: \$35,608.53

Retainer held: \$0.00

Amount to be paid as administrative expense: \$35,608.53

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

3. [13-14894](#)-A-11 JORENE MIZE CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-17-13 [[1](#)]
ROSEANN FRAZEE/Atty. for dbt.

No tentative ruling.

ROSEANN FRAZEE/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Approve Amended Disclosure Statement

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

Disposition: Continued to allow Debtor to file amended disclosure statement and plan by May 7, 2014, with continued hearing on May 28, 2014

Order: Civil minute order

The debtor Jorene Mize (the "Debtor") has filed an amended disclosure statement (the "Disclosure Statement") and plan (the "Plan") and now requests court approval of the Disclosure Statement. The creditor Lester Fry ("Fry") has filed an objection raising a number of issues. For the reasons set forth below, the court will continue the matter to allow the Debtor to file a second amended disclosure statement and plan.

The Debtor is to file a second amended disclosure statement and plan, which must address the issues raised by the court in this ruling by Wednesday, May 7, 2014, along with redlined versions of the documents. The continued hearing on approval of the second amended disclosure statement will be held on Wednesday, May 28, 2014, at 1:30 p.m. Any opposition must be filed no later than 14 days before the continued hearing.

DISCUSSION

Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a plan of reorganization must contain adequate information "that would enable [an investor typical of holders of claims or interest of the relevant class] to make an informed judgment about the plan." § 1125(a)(1). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted). Further, "[i]t is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed." *In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) (citations omitted).

The court now turns to its own issues with the Disclosure Statement and Plan, incorporating the objecting creditor's pertinent objections.

Settlement Agreement. The new plan must incorporate the provisions of the recent settlement agreement between the Debtor and Fry.

Classes of Secured Claims. It is unclear whether the secured creditors will retain their liens on the Debtor's property until their secured claims are fully paid or whether the property will vest free and clear of such liens upon confirmation. This must be clarified.

Payment of Administrative Expenses. Throughout the Plan and Disclosure Statement, the Debtor provides that she has enough cash on hand to pay administrative expenses on the effective date. There are two issues with this.

First, the estimated amount of the cash on hand should be consistent throughout the Disclosure Statement and Plan and should reflect the amount from the most recent monthly operating report. Currently, the Debtor either uses cash on hand from the end of December 2013 (\$26,444.88) or estimates her cash on hand to be \$37,956.36. However, it is unclear where the latter figure originates from since it does not appear to match any cash balance from Exhibit C. Whatever the amount, the estimated cash on hand should be consistent through the Disclosure Statement and Plan.

Second, the estimated cash on hand is not enough to pay administrative expenses on the effective date. The Debtor has revised her estimated attorney's fees to increase to \$45,000 but has still stated that her estimated administrative expenses are only \$27,820 throughout the Disclosure Statement and Plan. This figure must be updated to reflect the increase in attorney's fees. When taking into account the attorney's fees, it becomes inaccurate for the Debtor to state that she will have enough cash on hand to pay administrative expenses on the effective date.

Lastly, one of the sentences from the Plan dealing with administrative expenses, "The claim will be paid as soon as the Court enters an order approving the fees," must be deleted.

Feasibility Analysis. The feasibility analysis does not incorporate payments for administrative expenses, and such payments must be included. This is particularly important because it appears that the amount of the Debtor's bankruptcy attorney's fees exceeds the estimated cash on hand and cannot be paid in full on the effective date of the Plan. Thus, unless the attorney's fees are reduced, the Debtor will likely have to incorporate deferred payments into the feasibility analysis.

Additionally, it is unclear from Exhibit C where the historical figures end and the projected figures begin and when the effective date is. These should be unambiguously indicated.

Case Closure. The Plan provides, "Debtor anticipates that the case will be closed within two years of the Effective Date and that U.S. Trustee fees will cease accruing at that time." However, this is inconsistent with other portions of the Plan, which provide for plan payments for at least five years. Thus, it is unclear how the case can be closed before plan payments are completed and a discharge is entered, so discussion about when the case will be closed should be modified.

CONCLUSION

For the reasons set forth above, the court will continue the matter to allow the Debtor to file a second amended disclosure statement and plan.

The Debtor is to file a second amended disclosure statement and plan, which must address the issues raised by the court in this ruling by Wednesday, May 7, 2014, along with redlined versions of the documents. The continued hearing on approval of the second amended disclosure

statement will be held on Wednesday, May 28, 2014, at 1:30 p.m. Any opposition must be filed no later than 14 days before the continued hearing.

5. [14-11991](#)-A-11 CENTRAL AIR PRELIMINARY MOTION FOR USE OF
CONDITIONING, INC. CASH COLLATERAL
HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Use Cash Collateral [Preliminary Hearing]

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

Disposition: To be determined

Order: Prepared by moving party

Creditor: Carlos DeOchoa

The trustee or debtor in possession may not use cash collateral unless each entity that has an interest in the collateral consents or the court, after notice and a hearing, authorizes the use on specified terms and finds that the impacted creditor is adequately protected. 11 U.S.C. §§ 363(c)(2),(e), 361; Fed. R. Bankr. P. 4001(b). If the court conducts a preliminary hearing, "the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2).

At the hearing, the court will inquire: (1) whether the motion has been resolved by stipulation and, if so, the terms of the stipulation, including those specified in Federal Rule of Bankruptcy Procedure 4001(b)(1)(B); or (2) if the matter is not resolved by stipulation, whether the matter is (a) ripe for resolution, (b) not ripe for resolution but may be resolved without resort to Federal Rule of Bankruptcy Procedure 9014(d), or (c) not ripe for resolution but requires an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). The court will also inquire as to the appropriate date for a final hearing on the motion and set a briefing schedule.

Orders approving the use of cash collateral, whether by stipulation or after hearing, shall: (1) specify the duration of the order approving the use of cash collateral; (2) comply with Federal Rule of Bankruptcy Procedure 4001(b)(1)(B)(1)-(3); (3) comply with LBR 4001-1(c)(3)-(4); (4) attach as an exhibit a specific and itemized budget; (5) expressly reserve the right of any party to proceed under 11 U.S.C. §§ 506(c), 552(b)(1); and (6) be approved as to form by each appearing impacted creditor and any other party in interest so requesting approval.

3:00 p.m.

1. [09-18544](#)-A-13 JUAN/ANN PRIETO
DMG-3
JUAN PRIETO/MV

TRIAL RE: OBJECTION TO CLAIM OF
NATIONSTAR MORTGAGE, CLAIM
NUMBER 17
3-14-13 [[86](#)]

D. GARDNER/Atty. for dbt.
SETTLED, OBJECTION DISMISSED
WITHOUT PREJUDICE

Final Ruling

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