

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 30, 2015

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [11-12600](#)-A-13 KAREN OLSON MOTION TO DISMISS CASE
MHM-1 3-5-15 [[56](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [12-11600](#)-A-13 SCOTT/RENATTA NAPIER MOTION TO DISMISS CASE
MHM-3 3-5-15 [[97](#)]
MICHAEL MEYER/MV
JOSEPH ARNOLD/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [12-12202](#)-A-7 ISAAC/TERRY PEREZ MOTION TO DISMISS CASE
MHM-2 3-5-15 [[77](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
CONVERTED 3/12/15, MOTION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [13-17505](#)-A-13 SERGIO/MARTHA ROJAS MOTION TO DISMISS CASE
MHM-2 3-9-15 [[40](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [13-14006](#)-A-13 DENNIS NAJARIAN
MHM-1
MICHAEL MEYER/MV
THOMAS ARMSTRONG/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
3-9-15 [[44](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to June 9, 2015, at 9:00 a.m.

Order: Prepared by moving party

The trustee moves to dismiss this case asserting that cause exists under § 1307(c)(1) and (6) for failure to make payments due under the confirmed plan. Payments are delinquent in the amount of \$7952.64 as of February 28, 2015. The debtor responds by stating his intention to file a modified plan. But the debtor does not contest the motion's grounds or dispute that a delinquency exists. Accordingly, such facts regarding the material default in payment under the plan are established.

As of April 28, 2015, a modified plan was filed and noticed for hearing on June 9, 2015. The motion will be continued to June 9, 2015 to coincide with the modified plan.

6. [15-10808](#)-A-13 RAUL GALVAN AND MARIA
TOG-1 MARTINEZ
RAUL GALVAN/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
NATIONSTAR MORTGAGE, LLC
3-20-15 [[16](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence

should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1121 Fresno St., Madera, CA.

The court values the collateral at \$70,513. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 1121 Fresno St., Madera, CA, has a value of \$70,513. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

7. [11-16610](#)-A-13 SANDRA MONTEJANO
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
3-5-15 [[65](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

8. [11-61913](#)-A-13 MARTIN/ADRIANA VALENCIA MOTION TO MODIFY PLAN
DRJ-5 3-20-15 [[85](#)]
MARTIN VALENCIA/MV
DAVID JENKINS/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

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

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

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

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

Tentative Ruling

Motion: Extend Automatic Stay

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

Disposition: Granted

Order: Prepared by the movant

At the hearing on April 16, 2015, the court granted the debtors' motion to extend the automatic stay preliminarily. The court found that the filing of the current case is in good faith as to the creditors to be stayed.

The court further stated that unless opposition was presented at the continued hearing, the motion would be granted finally at the continued hearing except as to any creditor without proper notice of the motion. Therefore, for the reasons stated in the civil minutes from the initial hearing, the court intends to grant the motion unless a creditor appears at the hearing and opposes the motion, in which case the court will continue the hearing for further briefing by such opposing creditor.

10. [14-13016](#)-A-13 ANTHONY/VIRGINIA GONZALES MOTION TO DISMISS CASE
MHM-1 3-9-15 [[21](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [15-10017](#)-A-13 JAMES CULVER ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-13-15 [[61](#)]
DAVID JENKINS/Atty. for dbt.

Final Ruling

The installment paid, the order to show cause is discharged.

12. [15-10017](#)-A-13 JAMES CULVER CONTINUED MOTION FOR RELIEF
APN-1 FROM AUTOMATIC STAY
2-25-15 [[28](#)]
WELLS FARGO BANK, N.A./MV
DAVID JENKINS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [15-10017](#)-A-13 JAMES CULVER MOTION TO DISMISS CASE
MHM-1 3-6-15 [[35](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [14-15119](#)-A-13 JOHN/DIANE URIAS MOTION TO DISMISS CASE
MHM-1 3-9-15 [[20](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4101.52.

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

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [14-15720](#)-A-13 RAFAEL CERVANTES MOTION TO CONFIRM PLAN
TOG-2 2-28-15 [[24](#)]
RAFAEL CERVANTES/MV
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

17. [12-16023](#)-A-13 AL REAGAN MOTION TO DISMISS CASE
MHM-1 3-6-15 [[25](#)]
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [13-12828](#)-A-13 MARTIN CERDA AND MONICA MOTION TO DISMISS CASE
MHM-3 GARZA 3-9-15 [[54](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [11-19929](#)-A-13 JOHN/NORMA PINEDO MOTION TO DISMISS CASE
MHM-4 3-5-15 [[100](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [13-12133](#)-A-13 CARL/MARI WHITFORD MOTION TO DISMISS CASE
MHM-2 3-9-15 [[55](#)]
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [13-17735](#)-A-13 ANTONIO/MARIA ROMERO MOTION TO DISMISS CASE
MHM-2 3-9-15 [[57](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3393.66.

22. [13-16739](#)-A-13 JOE/STEPHANIE ORDONEZ MOTION TO DISMISS CASE
MHM-2 3-9-15 [[37](#)]
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [09-62840](#)-A-13 MARTIN VAN RYN MOTION TO DISMISS CASE
MHM-1 3-4-15 [[55](#)]
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [15-10342](#)-A-13 JORGE GARCIA AND MARTHA MOTION TO VALUE COLLATERAL OF
TOG-1 ALMAGUER GREENTREE SERVICING, LLC
JORGE GARCIA/MV 3-17-15 [[16](#)]
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: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1401 Annadale Ave., Sanger, CA.

The court values the collateral at \$83,793. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral.

Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 1401 Annadale Ave., Sanger, CA, has a value of \$83,793. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

25. [10-13444](#)-A-13 IRA/EVANGELINE WHITE MOTION TO DISMISS CASE
MHM-2 3-6-15 [[94](#)]
MICHAEL MEYER/MV
ADRIAN WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied as moot

Order: Prepared by moving party

The trustee filed a motion to dismiss this case on March 6, 2015, based on a delinquency in payment under the plan of \$2943.54. The trustee indicated that March 2015 is month 60 of the plan's term, and that the plan required \$3,995.54 in additional payment before the case could be closed as completed.

On April 28, 2015, the trustee filed a Notice to Debtor of Completed Plan Payments and of Obligation to File Documents. In this notice, the trustee states that he "has determined that the Debtor has completed the payments required by the confirmed plan." Accordingly, it appears no delinquency exists as of this date. The court will deny the motion as moot.

26. [12-10146](#)-A-13 JOSE REYES MOTION TO DISMISS CASE
MHM-1 3-6-15 [[52](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [12-14748](#)-A-13 SHAIN/KIMBERLY BRAZIEL MOTION TO DISMISS CASE
MHM-1 3-6-15 [[37](#)]
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [14-15749](#)-A-13 NATHAN RODRIGUEZ MOTION TO CONFIRM PLAN
EPE-3 3-17-15 [[42](#)]
NATHAN RODRIGUEZ/MV
ERIC ESCAMILLA/Atty. for dbt.

Final Ruling

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

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

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

29. [13-17153](#)-A-13 ALEX/MARIA MORALES MOTION TO DISMISS CASE
MHM-1 3-9-15 [[32](#)]
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

30. [14-11553](#)-A-13 MATTHEW/ANGELA KNOTT CONTINUED MOTION TO DISMISS
MHM-2 CASE FOR FAILURE TO MAKE PLAN
MICHAEL MEYER/MV PAYMENTS
1-15-15 [[38](#)]
JAMES MILLER/Atty. for dbt.

Final Ruling

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

31. [14-11461](#)-A-13 ANDREA SOUSA MOTION TO DISMISS CASE
MHM-6 3-9-15 [[95](#)]
MICHAEL MEYER/MV
RICHARD BAMBL/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$8547.21.

32. [12-19562](#)-A-13 BRIAN/KERI MITCHELL MOTION TO DISMISS CASE
MHM-1 3-6-15 [[36](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

33. [12-11265](#)-A-13 EDWARD/TRACY AUSERMAN MOTION TO DISMISS CASE
MHM-2 3-5-15 [[34](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

34. [15-10765](#)-A-13 JOSE/ANGELINA ROMERO MOTION TO VALUE COLLATERAL OF
TOG-1 WELLS FARGO BANK, N.A.
JOSE ROMERO/MV 3-31-15 [[18](#)]
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Disposition: Denied without prejudice

Order: Civil Minute Order

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. But the motion has the following deficiencies. First, it does not state whether the property is the debtors' principal residence. Second, it does not provide a value for the property that is consistent with the declaration or Schedule D. The motion states that the property's value is \$102,100. The declaration and Schedule D show that the value is \$76,000. The court cannot value property with such inconsistent

values. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6).

35. [14-14572](#)-A-13 ALFREDO/GRACIE LAZO MOTION TO DISMISS CASE
MHM-1 3-9-15 [[26](#)]
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

36. [15-10473](#)-A-13 ELOISA PEREZ OBJECTION TO CONFIRMATION OF
BRL-1 PLAN BY LEO KESSELMAN
LEO KESSELMAN/MV 4-6-15 [[46](#)]
GEORGE LOGAN/Atty. for dbt.
BENJAMIN LEVINSON/Atty. for mv.

[The hearing on this matter will follow the hearing on the trustee's motion to dismiss this case having docket control no. MHM-1.]

Tentative Ruling

The court will overrule this objection as moot at the hearing given the court's intention to dismiss the case.

37. [15-10473](#)-A-13 ELOISA PEREZ CONTINUED MOTION TO VALUE
GGL-1 COLLATERAL OF LEO KESSELMAN/PLM
ELOISA PEREZ/MV AND/OR MOTION TO CRAMDOWN THE
VALUE OF THE SENIOR LIEN ,
MOTION TO USE CASH COLLATERAL
3-3-15 [[17](#)]

GEORGE LOGAN/Atty. for dbt.
RESPONSIVE PLEADING

[The hearing on this matter will follow the hearing on the trustee's motion to dismiss this case having docket control no. MHM-1.]

Tentative Ruling

The court will drop this motion from calendar given the court's intention to dismiss the case.

38. [15-10473](#)-A-13 ELOISA PEREZ
MHM-1
MICHAEL MEYER/MV
GEORGE LOGAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
3-12-15 [[32](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

TRUSTEE'S MOTION

The chapter 13 trustee moves to dismiss this case on grounds that the debtor's amount of unsecured debt exceeds the eligibility limit for a case under chapter 13. The eligibility limit for an individual debtor is "noncontingent, liquidated, unsecured debts of less than \$383,175." 11 U.S.C. § 109(e).

The trustee has performed calculations showing the total unsecured debt of debtor as \$710,718, which far exceeds the applicable debt limit.

DEBTOR'S OPPOSITION

The debtor opposes but does not dispute any material fact asserted in the motion. The debtor simply states that the motion is premature because it depends on the outcome of the debtor's motion to value collateral.

But the debtor is incorrect. Importantly, Kesselman does not dispute the value of the Winton Property for purposes of the valuation motion. Thus, the outcome of the valuation motion will not change the result here, which relies on the same value as the undisputed value used in the debtor's valuation motion. Thus, the motion to dismiss is not premature.

UNSECURED DEBT EXCEEDS § 109(e) LIMIT

The debtor has filed a motion to value the real property collateral of Leo Kesselman, which consists of the debtor's restaurant, Tequila Café and the debtor's multi-unit apartment complex in Winton, California ("Winton Property"). The motion to value collateral on its face along with debtor's Schedules, of which the court takes judicial notice as to its contents and accepts as the authentic representations of the debtor in the absence of an authenticity objection, show that the debtor's unsecured debt exceeds the eligibility limits of § 109(e).

Schedule D shows that the secured claim of Leo Kesselman is not indicated as being contingent, unliquidated, or disputed. Thus, the \$745,000 claim of Kesselman secured by the Winton Property is noncontingent, liquidated, and undisputed by the debtor's admission. In addition, the value of the collateral shown on Schedule D is \$250,000. On Schedule F, the debtor has scheduled another unsecured claim owed to Leo Kesselman based on a "Former 2nd mortgage" on the Winton Property in the amount of \$123,366. This claim is not identified as being contingent, unliquidated, or disputed. Thus, this claim is noncontingent, liquidated, and undisputed. Based on Schedule

D and F, it would appear that the debtor's unsecured, noncontingent, liquidated debt is \$618,366, which exceeds the debt limit.

The motion to value collateral identifies the collateral as the Winton Property. It admits that the value is \$250,000 for the Winton Property. It identifies both a first and second deed of trust held by Kesselman securing balances of \$745,000 and \$123,366 respectively. These numbers are consistent with the debtor's schedules and ineligibility under § 109(e).

Kesselman's opposition concedes the value of the Winton Property is \$250,000. But the opposition states, however, that the loan balances at the time of the petition for the first and second deeds of trust were \$540,747.93 and \$124,053.77 respectively. Even using this somewhat lower figure for the total loan balances secured by the Winton Property, the total unsecured balance of such loans is \$414,801.70.

The trustee's motion to dismiss contends that Schedule F shows total nonpriority, unsecured debt of \$50,751, and that Schedule E shows priority unsecured debt of \$41,601. But these figures increase the total unsecured debt to \$507,153.70 even using Kesseleman's lower loan balances. This amount exceeds the \$383,175 limit in § 109(e). Thus, the debtor is ineligible to be a debtor under chapter 13 of Title 11. The court will dismiss the case.

39. [13-16274](#)-A-13 JOSEPH DESROSIERS
MHM-5
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
3-9-15 [[124](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

40. [13-15583](#)-A-13 THOMAS MARINEZ
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
3-9-15 [[26](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

41. [14-14793](#)-A-13 PATRICIA ZUNIGA

OBJECTION TO CONFIRMATION OF
PLAN BY NYMT LOAN TRUST
2013-RP3
4-7-15 [[86](#)]

NYMT LOAN TRUST 2013-RP3/MV

SCOTT LYONS/Atty. for dbt.
REILLY WILKINSON/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Matter: Objection to Chapter 13 Plan

Notice: LBR 3015-1(c)(4); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

Creditors and the trustee may file an objection to confirmation of the Chapter 13 plan within 7 days after the first date set for the creditors' meeting held under § 341 of the Bankruptcy Code. LBR 3015-1(c)(4). But if the debtor withdraws the plan or files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot any pending objection to confirmation of the previously filed plan.

42. [14-16093](#)-A-13 ERIC FELDMAN

MOTION TO CONFIRM PLAN
3-18-15 [[30](#)]

JRL-2

ERIC FELDMAN/MV

JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

43. [10-18694](#)-A-13 ROSENDO/SILVIA ABARCA MOTION TO DISMISS CASE
MHM-5 3-5-15 [[303](#)]
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

The trustee has moved to dismiss this case on the ground that debtors have failed to make all payments due under the plan. A delinquency exists of \$15,534.27. The declaration filed in opposition by the debtor states that debtor will be making payments to cure the default by April 30, 2015. Accordingly, the opposition admits a default and does not contest the delinquency in this case.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$15,534.27.

44. [13-14594](#)-A-13 JUANITA MARTINEZ MOTION TO DISMISS CASE
MHM-1 3-9-15 [[27](#)]
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

45. [14-13895](#)-A-13 VERONICA MARTINEZ MOTION TO DISMISS CASE
MHM-2 3-9-15 [[78](#)]
MICHAEL MEYER/MV
RABIN POURNAZARIAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

46. [11-15196](#)-A-13 TIM/CHRISTINA GARRISON MOTION TO DISMISS CASE
MHM-2 3-5-15 [[114](#)]
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

47. [09-62097](#)-A-13 CHRISTOPHER/ERICA MOTION TO DISMISS CASE
MHM-2 MARANIAN 3-4-15 [[103](#)]
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

48. [12-18298](#)-A-13 STACEY CALK MOTION TO DISMISS CASE
MHM-1 3-6-15 [[54](#)]
MICHAEL MEYER/MV
NANCY KLEPAC/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1449.24.

49. [12-18298](#)-A-13 STACEY CALK
TCS-3
STACEY CALK/MV
NANCY KLEPAC/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
3-25-15 [[60](#)]

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

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.

The plan is facially not confirmable. The plan payment in section 1.01 references additional provisions. Section 6 also states that there are additional provisions. But no additional provisions are attached. A plan that contains monthly dividends to creditors for the trustee to pay but that does not provide for a plan payment by the debtor to the trustee cannot fund, see § 1322(a)(1), and is not feasible, see § 1325(a)(6).

50. [11-12799](#)-A-13 FELIX/GLORIA FERRER
MHM-2
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
3-5-15 [[67](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.