

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

JUNE 12, 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. [14-11600](#)-A-13 DANA/TERESA AUBLE
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS
5-21-14 [[20](#)]

STEVEN ALTMAN/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped from calendar as moot.

2. [14-10914](#)-A-13 ADAM GUTIERREZ
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
5-15-14 [[26](#)]

MARK ZIMMERMAN/Atty. for dbt.

Final Ruling

An amended plan filed and noticed for hearing, this objection is denied as moot.

3. [14-10515](#)-A-13 AIDA VALENCIA
TCS-2
AIDA VALENCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO CONFIRM PLAN
4-28-14 [[39](#)]

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.

4. [14-10416](#)-A-13 FELIX/ISABEL ALVAREZ
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE , MOTION
TO DISMISS CASE FOR FAILURE TO
PROVIDE TAX DOCUMENTS
5-21-14 [[29](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

5. [14-11516](#)-A-13 DANIEL ROYAL
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
5-21-14 [[21](#)]

JANINE ESQUIVEL/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped from calendar as moot.

6. [09-15228](#)-A-13 DAVID/SUSAN NANNINI
PLF-6
DAVID NANNINI/MV
PETER FEAR/Atty. for dbt.
- MOTION TO MODIFY PLAN
4-25-14 [[67](#)]

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

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

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

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

7. [13-15728](#)-A-13 WADE WILLIAMS
BSH-3
WADE WILLIAMS/MV
BRIAN HADDIX/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
2-4-14 [[85](#)]

No tentative ruling.

8. [13-15728](#)-A-13 WADE WILLIAMS
BSH-3
ROBERT RUCKER/MV

CONTINUED MOTION FOR ORDER
INCORPORATING STIPULATIONS
VERBALLY AGREED UPON IN OPEN
COURT BY DEBTOR AND UNSECURED
CREDITORS ROBERT RUCKER AND
RUCKER CONSTRUCTION
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.
ELIZABETH WALDOW/Atty. for mv.

No tentative ruling.

9. [13-15728](#)-A-13 WADE WILLIAMS
BSH-4
WADE WILLIAMS/MV

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

BRIAN HADDIX/Atty. for dbt.

No tentative ruling.

10. [13-15728](#)-A-13 WADE WILLIAMS
BSH-4
WADE WILLIAMS/MV

CONTINUED OBJECTION TO CLAIM OF
ROBERT RUCKER AND RUCKER
CONSTRUCTION, INC., CLAIM
NUMBER 5
3-4-14 [[99](#)]

BRIAN HADDIX/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

11. [13-15728](#)-A-13 WADE WILLIAMS
BSH-4
ROBERT RUCKER/MV

CONTINUED MOTION FOR ORDER
INCORPORATING STIPULATIONS
VERBALLY AGREED UPON IN OPEN
COURT BY DEBTOR AND UNSECURED
CREDITORS ROBERT RUCKER AND
RUCKER CONSTRUCTION
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.
ELIZABETH WALDOW/Atty. for mv.

No tentative ruling.

12. [13-15728](#)-A-13 WADE WILLIAMS
BSH-5
WADE WILLIAMS/MV

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

BRIAN HADDIX/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

13. [13-15728](#)-A-13 WADE WILLIAMS
BSH-5
ROBERT RUCKER/MV

CONTINUED MOTION FOR ORDER
INCORPORATING STIPULATIONS
VERBALLY AGREED UPON IN OPEN
COURT BY DEBTOR AND UNSECURED
CREDITORS ROBERT RUCKER AND
RUCKER CONSTRUCTION
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.
ELIZABETH WALDOW/Atty. for mv.

No tentative ruling.

14. [13-15728](#)-A-13 WADE WILLIAMS
BSH-6
WADE WILLIAMS/MV

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

BRIAN HADDIX/Atty. for dbt.

No tentative ruling.

15. [13-15728](#)-A-13 WADE WILLIAMS
BSH-6
ROBERT RUCKER/MV

CONTINUED MOTION FOR ORDER
INCORPORATING STIPULATIONS
VERBALLY AGREED UPON IN OPEN
COURT BY DEBTOR AND UNSECURED
CREDITORS ROBERT RUCKER AND
RUCKER CONSTRUCTION
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.
ELIZABETH WALDOW/Atty. for mv.

No tentative ruling.

16. [13-15728](#)-A-13 WADE WILLIAMS
BSH-7
WADE WILLIAMS/MV

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

BRIAN HADDIX/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

17. [13-15728](#)-A-13 WADE WILLIAMS
BSH-7
ROBERT RUCKER/MV

CONTINUED MOTION FOR ORDER
INCORPORATING STIPULATIONS
VERBALLY AGREED UPON IN OPEN
COURT BY DEBTOR AND UNSECURED
CREDITORS ROBERT RUCKER AND
RUCKER CONSTRUCTION
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.
ELIZABETH WALDOW/Atty. for mv.

No tentative ruling.

18. [13-15728](#)-A-13 WADE WILLIAMS
BSH-8
WADE WILLIAMS/MV

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

BRIAN HADDIX/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

19. [13-15728](#)-A-13 WADE WILLIAMS
BSH-8
ROBERT RUCKER/MV

CONTINUED MOTION FOR ORDER
INCORPORATING STIPULATIONS
VERBALLY AGREED UPON IN OPEN
COURT BY DEBTOR AND UNSECURED
CREDITORS ROBERT RUCKER AND
RUCKER CONSTRUCTION
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.
ELIZABETH WALDOW/Atty. for mv.

No tentative ruling.

20. [13-15728](#)-A-13 WADE WILLIAMS
BSH-9
WADE WILLIAMS/MV

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

BRIAN HADDIX/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

21. [13-15728](#)-A-13 WADE WILLIAMS
BSH-9
ROBERT RUCKER/MV

CONTINUED MOTION FOR ORDER
INCORPORATING STIPULATIONS
VERBALLY AGREED UPON IN OPEN
COURT BY DEBTOR AND UNSECURED
CREDITORS ROBERT RUCKER AND
RUCKER CONSTRUCTION
4-25-14 [[194](#)]

BRIAN HADDIX/Atty. for dbt.
ELIZABETH WALDOW/Atty. for mv.

No tentative ruling.

22. [14-10238](#)-A-13 GABRIEL/ELSA CERVANTES
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS
5-16-14 [[28](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

23. [14-11045](#)-A-13 CATHERINE NELSON
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
5-15-14 [[35](#)]

PETER FEAR/Atty. for dbt.

No Tentative Ruling

24. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON
TCS-4
ERNEST SHELTON/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
4-29-14 [[67](#)]

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.

25. [13-14553](#)-A-13 JOHN/DONNA SPATAFORE
JMA-5
JOHN SPATAFORE/MV
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO MODIFY PLAN
4-30-14 [[50](#)]

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.

26. [14-10854](#)-A-13 TIMOTHY/MIJHA LEASURE OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H MEYER
5-15-14 [[36](#)]

MARK ZIMMERMAN/Atty. for dbt.

No Tentative Ruling

27. [14-11857](#)-A-13 HAN/IN KIM MOTION TO AVOID LIEN OF BH
HJA-1 FINANCIAL SERVICES, LLC
HAN KIM/MV 4-25-14 [[12](#)]
H. AHN/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). *See Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the

purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, although the motion states that the debtors' interest in the real property has been claimed fully exempt, the court's review of Schedule C filed by the debtors reveals that no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a *prima facie* case has not been made for relief under § 522(f).

28. [14-11857](#)-A-13 HAN/IN KIM
HJA-2
HAN KIM/MV
H. AHN/Atty. for dbt.

MOTION TO AVOID LIEN OF TARGET
NATIONAL BANK
4-29-14 [[18](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial

lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, although the motion states that the debtors' interest in the real property has been claimed fully exempt, the court's review of Schedule C filed by the debtors reveals that no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

29. [14-11857](#)-A-13 HAN/IN KIM
HJA-3
HAN KIM/MV
H. AHN/Atty. for dbt.

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS BANK, FSB
4-29-14 [[24](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

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).

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390-91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt" *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, although the motion states that the debtors' interest in the

real property has been claimed fully exempt, the court's review of Schedule C filed by the debtors reveals that no exemption has been claimed in the property subject to the responding party's lien. Accordingly, a prima facie case has not been made for relief under § 522(f).

30. [14-11461](#)-A-13 ANDREA SOUSA
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
5-16-14 [[30](#)]

RICHARD BAMBL/Atty. for dbt.

Final Ruling

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

31. [13-16274](#)-A-13 JOSEPH DESROSIERS
JRL-3
JOSEPH DESROSIERS/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
4-28-14 [[95](#)]

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.

32. [13-14785](#)-A-13 MICHAEL WHITE
PBB-2
MICHAEL WHITE/MV
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN
5-7-14 [[34](#)]

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.

33. [12-14388](#)-A-13 JOHNNY/KATHLEEN NAJERA
GH-3
JOHNNY NAJERA/MV
GARY HUSS/Atty. for dbt.

MOTION TO MODIFY PLAN
4-23-14 [[61](#)]

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.

34. [13-16091](#)-A-13 VERENICE WARREN
GH-1
VERENICE WARREN/MV
GARY HUSS/Atty. for dbt. OBJECTION TO CLAIM OF CERASTES,
LLC, CLAIM NUMBER 10
4-23-14 [[40](#)]

Final Ruling

The claim withdrawn, the objection is denied as moot.

35. [14-10696](#)-A-13 CRECENCIANO CHAVEZ
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt. CONTINUED MOTION TO DISMISS
RESPONSIVE PLEADING
CASE
4-23-14 [[24](#)]

No tentative ruling.

36. [14-11696](#)-A-13 JOHN/LEA MCDERMOTT
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt. MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
5-21-14 [[19](#)]

Final Ruling

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

37. [14-11597](#)-A-13 TERRY/KELLEY CLEMENTS
MHM-1
MICHAEL MEYER/MV
SCOTT COBEN/Atty. for dbt.
WITHDRAWN MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
5-21-14 [[23](#)]

Final Ruling

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

38. [14-12747](#)-A-13 CHRYSTAL ABBOTT
NES-1
CHRYSTAL ABBOTT/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
6-3-14 [[8](#)]

Final Ruling

The motion having been renoticed for hearing June 25, 2014, at 9:00 a.m. in Bakersfield, this matter is dropped from calendar as moot.

9:30 a.m.

1. [09-16160](#)-A-13 JUAN HURTADO
[11-1102](#)
JONES V. HURTADO
SCOTT BURTON/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-23-12 [[72](#)]

Final Ruling

The status conference is continued to July 2, 2014, at 9:30 a.m. Not later than Monday, June 30, 2014, the parties shall file a joint status report addressing: (1) the additional time necessary for defendant Juan Hurtado to perform such additional discovery as is necessary with respect to the issues raised in the amended complaint; (2) whether a motion for summary judgment will be presented with respect to the issues presented in the amended complaint and the time necessary to accomplish that; (3) the time necessary for trial; and (4) proposed trial dates.

2. [09-16160](#)-A-13 JUAN HURTADO
[11-1102](#)
JONES V. HURTADO
SCOTT BURTON/Atty. for mv.
NON-OPPOSITION

MOTION TO AMEND
5-14-14 [[187](#)]

Final Ruling

Motion: File Third Amended Complaint

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

Disposition: Granted

Order: Civil Minute Order.

With leave of court, a party may amend a complaint filed in an adversary proceeding. Fed. R. Civ. Proc. 15(a), *incorporated by* Fed. R. Bankr. Proc. 7015. Plaintiff Patti Jones prays leave to file her Third Amended Complaint. Defendant Juan Hurtado has filed a notice of non-opposition.

Not later than close of business on Monday, June 16, 2014, plaintiff Patti Jones shall file and serve on defendant Juan Hurtado her amended complaint. Not later than Monday, June 30, 2014, defendant shall file a response to the amended complaint.