

**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**

**July 31, 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. [14-12701](#)-A-13 HECTOR/TERESA MORENO MOTION TO VALUE COLLATERAL OF  
TOG-1 BSI FINANCIAL SERVICES, INC.  
HECTOR MORENO/MV 6-10-14 [9]  
THOMAS GILLIS/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 the moving party consistent with this ruling's instructions

**Collateral Value:** \$156,510

**Senior Liens:** \$191,000

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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

2. [12-10210](#)-A-13 ANTHONY/VERONICA ROQUETA MOTION FOR COMPENSATION BY THE  
PLF-4 LAW OFFICE OF FEAR LAW GROUP,  
P.C. FOR PETER L. FEAR,  
DEBTOR'S ATTORNEY(S)  
6-30-14 [[73](#)]

PETER FEAR/Atty. for dbt.

### **Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Fear Law Group

**Compensation approved:** \$2552.00

**Costs approved:** \$152.12

**Aggregate fees and costs approved in this application:** \$2704.12

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$2704.12 (in addition to amounts previously paid under the plan as an administrative expense in the amount of \$2500.00)

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). 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 "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.

3. [13-15714](#)-A-13 LEONARD TURK AND BETTY MOTION TO MODIFY PLAN  
PBB-1 HALSTEAD-TURK 6-11-14 [[21](#)]  
LEONARD TURK/MV

PETER BUNTING/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. [14-10914](#)-A-13 ADAM GUTIERREZ MOTION TO CONFIRM PLAN  
MAZ-1 6-3-14 [[33](#)]  
ADAM GUTIERREZ/MV  
MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

5. [12-11221](#)-A-13 KELLY YOST  
PLF-2

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR LAW GROUP,  
P.C. DEBTOR'S ATTORNEY(S)  
6-18-14 [[51](#)]

PETER FEAR/Atty. for dbt.

**Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Fear Law Group, P.C.

**Compensation approved:** \$3331.50

**Costs approved:** \$49.09

**Aggregate fees and costs approved in this application:** \$3380.59

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$3380.59 (in addition to amounts previously paid pursuant to the plan as an administrative expense in the amount of \$1481.00)

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). 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 "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.

6. [14-10422](#)-A-13 MANUEL/RISSY MONTOYA  
ASW-1  
MANUEL MONTOYA/MV  
ADRIAN WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
6-5-14 [[50](#)]

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so renders any pending confirmation motion for the previously filed plan moot.

7. [14-10422](#)-A-13 MANUEL/RISSY MONTOYA  
MHM-2  
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  
6-6-14 [[56](#)]

ADRIAN WILLIAMS/Atty. for dbt.

**No tentative ruling.**

8. [14-10525](#)-A-13 PEDRO VELASQUEZ  
NLG-1  
SETERUS, INC./MV  
SCOTT LYONS/Atty. for dbt.  
NICHOLE GLOWIN/Atty. for mv.  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-18-14 [[26](#)]

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 1445 Blush Street, Manteca, CA

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)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Section 2.12 of the Plan confirmed in this case provides that "[t]he failure to provide for a secured claim in one of these classes may be cause to terminate the automatic stay." The moving party has alleged a secured claim against property transferred to the debtor. No opposition has been filed by the debtor. The court concludes that the plan does not provide for the movant's secured claim and that cause exists to grant relief from the stay to allow the movant to exercise its rights and remedies under its note and deed of trust on the property described above.

The property also has no equity as the loan secured by it exceeds the property's value. The property also does not appear in the debtor's Schedules A or D. The court concludes that the property is not

necessary for the debtor's reorganization given that it does not appear in the debtor's Schedules A and D. Relief under § 362(d)(2) is warranted.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

9. [11-63926](#)-A-13 LUCILA MEDINA  
RFM-1  
US BANK, N.A./MV  
THOMAS GILLIS/Atty. for dbt.  
RAYMOND MOATS/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-23-14 [[83](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**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 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).

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the moving party's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or a third party. Section 2.11 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral in the event of a default. The motion will be denied as moot. No effective relief can be awarded.

10. [10-63429](#)-A-13 CESAR CAMPOS MOTION TO VALUE COLLATERAL OF  
TCS-4 COUNTRYWIDE BANK, N.A.  
CESAR CAMPOS/MV 7-1-14 [[78](#)]  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

The parties have resolved the matter by stipulation. The matter will be dropped from calendar as moot.

11. [10-63429](#)-A-13 CESAR CAMPOS MOTION TO INCUR DEBT  
TCS-5 7-7-14 [[81](#)]  
CESAR CAMPOS/MV  
TIMOTHY SPRINGER/Atty. for dbt.

**No tentative ruling.**

12. [11-19829](#)-A-13 AUGIE/PATRICIA BLANCAS MOTION TO VALUE COLLATERAL OF  
ER-1 BAC HOME LOAN SERVICING/BANK OF  
AUGIE BLANCAS/MV AMERICA, N.A.  
6-19-14 [[43](#)]  
EDDIE RUIZ/Atty. for dbt.

**Tentative Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D. Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). "Thus, to meet the requirements of the Rules and comply with considerations of due process, a Rule 3012 motion (either with or without a plan) must be served on the affected creditors in accord with Rule 7004." *Millspaugh*, 302 B.R. at 102 (emphasis added); see also *In re Pereira*, 394 B.R. 501, 506-07 (Bankr. S.D. Cal. 2008) (Chapter 13 plan containing lien stripping proposal must be served on the affected

creditor pursuant to Rule 7004). Rule 3012 notice alone will not suffice for the motion. See *Pereira*, 394 B.R. at 506.

Service of the motion was insufficient as to one of the two respondents, BAC Home Loan Servicing. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party, BAC Home Loan Servicing. The court notes that service on the other respondent, Bank of America, N.A., appears facially sufficient.)

13. [11-19929](#)-A-13 JOHN/NORMA PINEDO  
PLF-5

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR LAW GROUP,  
P.C. FOR PETER L. FEAR,  
DEBTOR'S ATTORNEY(S)  
6-11-14 [[87](#)]

PETER FEAR/Atty. for dbt.

### **Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Fear Law Group, P.C.

**Compensation approved:** \$5641.00

**Costs approved:** \$408.81

**Aggregate fees and costs approved in this application:** \$6049.81

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$6049.81 (in addition to amounts already paid pursuant to the plan as an administrative expense in the amount of \$1275.00)

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). 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 "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.

14. [14-11233](#)-A-13 ALAN PATTERSON  
MAZ-2  
ALAN PATTERSON/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO CONFIRM PLAN  
6-7-14 [[34](#)]

**Final Ruling**

**Motion:** Confirmation of a Chapter 13 Plan  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

15. [14-11233](#)-A-13 ALAN PATTERSON  
MHM-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
5-30-14 [[31](#)]

MARK ZIMMERMAN/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

16. [14-12433](#)-A-13 RICHARD/MARIANNA RANDALL  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-27-14 [[22](#)]

JOEL WINTER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

17. [14-12535](#)-A-13 TAMARA STOCKS  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
6-30-14 [[16](#)]

JAMES MILLER/Atty. for dbt.

**Final Ruling**

An amended plan filed, ECF #21, and noticed for hearing, this objection is denied as moot.

18. [14-13237](#)-A-13 RICHARD/TERESA CESENA  
SL-1  
RICHARD CESENA/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF  
GREEN TREE  
7-1-14 [[10](#)]

**Tentative Ruling**

**Motion:** Value Collateral

**Notice:** LBR 9014-1(f)(2); trustee has filed a written opposition

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The trustee has opposed the motion on evidentiary grounds. First, the trustee objects to the evidentiary basis for the debtors' opinion of value as requiring an expert witness qualified by knowledge, skill, experience, training or education to provide specialized knowledge of how Tulare County assesses real property. See Fed. R. Evid. 702. An expert witness able to provide specialized knowledge of the county's assessment procedures is required for such evidence when an evidentiary objection has been made by the trustee. Moreover, a lay witness may not provide testimony in the form of an opinion when the testimony is based on "scientific, technical, or other specialized knowledge within the scope of Rule 702. Fed. R. Evid. 701.

The debtors may testify as to their opinion of the value of property. But because the debtors' opinion of value is expressly based only on the tax assessment by the county, the trustee's objection is sustained.

The trustee also objects because the tax assessment document is not authenticated. Fed. R. Evid. 901. The court sustains this objection as well. Moreover, the information provided by Zillow is incomplete and unauthenticated, and cannot be given any weight.

19. [12-12841](#)-A-13 THOMAS/SARAH CORREA  
PBB-1  
THOMAS CORREA/MV  
PETER BUNTING/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
6-10-14 [[33](#)]

**No tentative ruling.**

20. [10-16749](#)-A-13 DELANO/ELIZABETH THORPE MOTION TO PURCHASE VEHICLE  
PLF-4 6-20-14 [[67](#)]  
DELANO THORPE/MV  
PETER FEAR/Atty. for dbt.

**Final Ruling**

**Motion:** Authority to Purchase Vehicle

**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).

Debtors' vehicle has been totaled. The insurance proceeds for the loss will equal \$6640.81. The remaining secured claim (plus trustee's fees) equals about \$1500.00. The debtors' net payout, after paying the claim secured by the vehicle held by GMAC Financial Services and any trustee's fees, will be approximately \$5000.00. This amount may be used to purchase a replacement vehicle.

21. [14-12649](#)-A-13 DANIEL/MOLLY LAVILLA ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-25-14 [[19](#)]  
THOMAS GILLIS/Atty. for dbt.  
\$100 PAID ON 6/30/14

**Final Ruling**

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

22. [13-17754](#)-A-13 EDUARDO SOLIS AND ROSA MOTION TO DISMISS CASE  
MHM-3 CASTILLO 7-7-14 [[57](#)]  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

23. [13-17754](#)-A-13 EDUARDO SOLIS AND ROSA MOTION TO CONFIRM PLAN  
TOG-2 CASTILLO 6-11-14 [[49](#)]  
EDUARDO SOLIS/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

24. [13-17055](#)-A-13 KHRISTIE DOWING OBJECTION TO CLAIM OF MICHAEL  
THA-1 DOWING, CLAIM NUMBER 9  
KHRISTIE DOWING/MV 6-4-14 [[21](#)]  
THOMAS ARMSTRONG/Atty. for dbt.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(1); written opposition filed by Michael Dowing

**Disposition:** Sustained in part and the claim will be allowed as a general unsecured claim

**Order:** Prepared by objecting party

Debtor Khristie Dowing objects to claimant Michael Dowing's claim. The debtor argues that the claimant filed his claim as a priority claim when the documentation supporting the claim reveals that the claim is not entitled to priority. Instead, the debtor contends that the claim is for an equalization payment granted as part of a dissolution judgment. The claimant has filed an opposition. The court will sustain the objection.

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This

presumption is rebuttable. See *Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal of factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Litton Loan Servicing*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

The claim has been asserted as having priority under § 507(a)(1)(A) or (B) as a domestic support obligation. But the copy of the judgment of dissolution attached to the claim reveals that no spousal support was owed between the spouses. Further, no child support was awarded in the judgment. The judgment creates an obligation by the debtor to the claimant for an equalization payment as well as other obligations based on property division. Thus, the claim is not regular on its face as the attachments contradict the assertion of priority on the face of the claim.

The claimant's opposition concedes the grounds for the objection. The only argument the claimant makes is a hypothetical one based on speculative facts. The claimant argues that if the case is converted, the debt will not be dischargeable. But the claimant concedes that if the chapter 13 bankruptcy plan is properly completed, the claim will be discharged.

But dischargeability is an irrelevant legal issue in resolving this objection. The debtor objects to the claim's priority as a domestic support obligation. The issue is whether or not the claim is for domestic support.

The burden of production shifted to the claimant because the claim was not regular on its face. No facts have been presented in the opposition showing that the court should find that the claim is for domestic support. And the claimant has offered no evidence to rebut the argument made that the claim is for an equalization payment, not a support payment.

The claimant concedes the grounds for the objection by requesting that the claimant's claim be treated as a general unsecured claim. The court will not make the ruling conditional by stating in the order that the claim will remain nondischargeable if the case is converted.

For the reasons stated in the objection and supporting papers, the court will sustain the objection. The court will disallow the claim as a priority claim, and allow the claim as a general unsecured claim.

25. [14-13156](#)-A-13 CHRISTOPHER/MARLAINA MOTION FOR RELIEF FROM  
SW-1 RECEK AUTOMATIC STAY  
ALLY BANK/MV 7-17-14 [[14](#)]  
VARDUHI PETROSYAN/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2013 Chevrolet Camaro

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).

The debtor has filed a non-opposition. 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).

Subsection (d)(2) of § 362 of Title 11 allows relief from stay as against property of the debtor if the moving party shows that two elements are satisfied: (i) "the debtor does not have an equity in such property," and (ii) "such property is not necessary to an effective reorganization." *Id.* § 362(d)(2). Under the first element of this subsection, the moving party bears the burden of proof to show that the debtor lacks equity in the property. See 11 U.S.C. § 362(g)(1); *In re Bialac*, 712 F.2d 426, 432 (9th Cir. 1983). The responding party has the burden of showing that the property is necessary for an effective reorganization and all other issues. 11 U.S.C. § 362(g)(2); see also *In re Bonner Mall P'ship*, 2 F.3d 899, 902 (9th Cir. 1993).

The moving party has asserted that the value of the property is \$22,775 and that the total debt secured by the property is \$33,638.24. The debtor has no equity in the property. The debtor has the burden of showing that the property is necessary for an effective reorganization. The debtor's non-opposition will be treated as conceding that the property is not necessary for the debtor's reorganization.

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

26. [14-11857](#)-A-13 HAN/IN KIM  
MHM-1  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
6-4-14 [[46](#)]

H. AHN/Atty. for dbt.  
RESPONSIVE PLEADING,  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

27. [14-11058](#)-A-13 CHRISTOPHER/KRISTINA DELK  
DRJ-2  
CHRISTOPHER DELK/MV  
DAVID JENKINS/Atty. for dbt.  
STIPULATION

MOTION TO CONFIRM PLAN  
6-8-14 [[34](#)]

**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.

28. [14-12959](#)-A-13 LUZ/DIANA ARMENTA  
PBB-1  
LUZ ARMENTA/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
CITIFINANCIAL SERVICES, INC.  
6-26-14 [8]

### 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 consistent with this ruling's instructions

**Collateral Value:** \$57,240

**Senior Liens:** \$97,831.47

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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

29. [14-11461](#)-A-13 ANDREA SOUSA AMENDED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
7-1-14 [[45](#)]  
RICHARD BAMBL/Atty. for dbt.

**Final Ruling**

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

30. [14-12362](#)-A-13 BENITO/MARTHA GALARZA CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
DEUTSCHE BANK NATIONAL TRUST DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV COMPANY  
6-6-14 [[16](#)]  
THOMAS GILLIS/Atty. for dbt.  
MELISSA VERMILLION/Atty. for mv.

**Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Pending

**Order:** Pending

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

As noted in the court's previous civil minutes from the hearing on July 10, 2014, the objection to confirmation relates to the value of the collateral securing the objecting party's claim. The objection has been continued to this hearing date to coincide with the hearing on the debtor's motion to value collateral.

31. [14-12362](#)-A-13 BENITO/MARTHA GALARZA MOTION TO VALUE COLLATERAL OF  
TOG-1 BANK OF AMERICA, N.A.  
BENITO GALARZA/MV 6-13-14 [[25](#)]  
THOMAS GILLIS/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 the moving party consistent with this ruling's instructions

**Collateral Value:** \$72,799

**Senior Liens:** \$129,000

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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

32. [14-12362](#)-A-13 BENITO/MARTHA GALARZA MOTION TO VALUE COLLATERAL OF  
TOG-3 DEUTSCHE BANK, N.A. NATIONAL  
BENITO GALARZA/MV TRUST COMPANY  
6-13-14 [[30](#)]  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

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

The motion seeks to value nonresidential real property that is the responding party's collateral. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

The opposition raises an additional issue. The issue is whether the debtors may properly pay the creditor's secured claim, as determined by the motion to value the collateral securing such claim, when payment of such claim may require a monthly payment in excess of the

rental income obtained by such collateral. This issue is more properly resolved at the confirmation hearing, not in conjunction with the motion to value the collateral.

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

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

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

33. [14-12772](#)-A-13 CORINA BARRON  
ALG-1  
CORINA BARRON/MV  
JANINE ESQUIVEL/Atty. for dbt.  
WITHDRAWN

MOTION TO CONFIRM PLAN  
6-5-14 [[15](#)]

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

34. [14-12574](#)-A-13 THOMAS/DAHLIA BROWN  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-27-14 [[21](#)]

GRISELDA TORRES/Atty. for dbt.  
NON-OPPOSITION

### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f)(2); no 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor has filed a non-opposition to the motion. The court will therefore accept the factual allegations in the motion as true. The motion will be granted.

35. [14-12777](#)-A-13 RAY/SANDY TOLLISON  
UGB-78  
RAY TOLLISON/MV  
URSULA BARRIOS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
HSBC  
6-28-14 [[20](#)]

### **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 consistent with this ruling's instructions

**Collateral Value:** \$85,000

**Senior Liens:** \$106,082

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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

36. [12-15180](#)-A-13 LUIS/KELLIE LUJAN  
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  
7-14-14 [[69](#)]

RABIN POURNAZARIAN/Atty. for dbt.

**No tentative ruling.**

37. [11-14981](#)-A-13 LORENZO/MARIA BARRIOS  
SL-2  
LORENZO BARRIOS/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
7-16-14 [[61](#)]

**Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Granted in part, denied in part

**Order:** Prepared by moving party according to the instructions below

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is

inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

38. [14-11682](#)-A-13 ANTONIO TINOCO  
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  
6-30-14 [[40](#)]

RANDY RISNER/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

**No tentative ruling.**

39. [13-16683](#)-A-13 SENG SAEPHAN AND INKHAM  
PLF-3 SAYAVONG

MOTION FOR COMPENSATION FOR  
PETER L. FEAR, DEBTOR'S  
ATTORNEY(S)  
6-27-14 [[37](#)]

PETER FEAR/Atty. for dbt.

**Final Ruling**

**Application:** Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Fear Law Group, P.C.

**Compensation approved:** \$5365.00

**Costs approved:** \$68.47

**Aggregate fees and costs approved in this application:** \$5433.47

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$5433.47

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 "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

40. [13-16084](#)-A-13 JOHN/NANCY ALVA  
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  
7-14-14 [[51](#)]
- TIMOTHY SPRINGER/Atty. for dbt.

**No tentative ruling.**

41. [14-10190](#)-A-13 MARIO/ZULEYKA NUNEZ  
EPE-1  
MARIO NUNEZ/MV  
ERIC ESCAMILLA/Atty. for dbt.  
RESPONSIVE PLEADING,  
WITHDRAWN  
MOTION TO CONFIRM PLAN  
6-17-14 [[65](#)]

**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.

42. [14-10190](#)-A-13 MARIO/ZULEYKA NUNEZ  
MHM-1  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
4-7-14 [[32](#)]

ERIC ESCAMILLA/Atty. for dbt.

**No tentative ruling.**

43. [14-10190](#)-A-13 MARIO/ZULEYKA NUNEZ  
MHM-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-2-14 [[76](#)]

ERIC ESCAMILLA/Atty. for dbt.

**No tentative ruling.**

44. [14-11396](#)-A-13 BARBARA BRYAN  
JDW-1  
BARBARA BRYAN/MV

MOTION TO VALUE COLLATERAL OF  
EDUCATIONAL EMPLOYEES CREDIT  
UNION  
6-18-14 [[36](#)]

JOEL WINTER/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 consistent with this ruling's  
instructions

**Collateral Value:** \$163,000

**Senior Liens:** \$165,519

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).

The order shall state only that the court (i) grants the motion, (ii) values the property at the amount shown above, and (iii) determines that the responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim. The order shall not include any other additional findings or information.

45. [14-11396](#)-A-13 BARBARA BRYAN  
MHM-2  
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  
6-6-14 [[32](#)]

JOEL WINTER/Atty. for dbt.

**No tentative ruling.**

9:30 a.m.

1. [14-11515](#)-A-13 RICHARD/JUDEE MARTINEZ STATUS CONFERENCE RE: COMPLAINT  
[14-1054](#) 5-15-14 [[1](#)]  
MARTINEZ V. ASSET ACCEPTANCE,  
LLC  
PETER BUNTING/Atty. for pl.  
DISMISSED, CLOSED

**Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

2. [14-10917](#)-A-13 JOEL MORENO AND LETICIA STATUS CONFERENCE RE: COMPLAINT  
[14-1053](#) LOPEZ 5-12-14 [[1](#)]  
LOPEZ V. ATLANTIC CREDIT AND  
FINANCE, INC.  
PETER BUNTING/Atty. for pl.  
DISMISSED, CLOSED

**Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

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

**No tentative ruling.**

10:00 a.m.

1. [13-13912](#)-A-13 LUIS/RUBY BURGOS CONTINUED MOTION OF  
MICHAEL MEYER/MV NON-COMPLIANCE AND REQUEST TO  
RE-ISSUE COURT'S ORDER TO SHOW  
CAUSE  
12-20-13 [[50](#)]  
THOMAS GILLIS/Atty. for dbt.  
DISMISSED

**No tentative ruling.**

2. [14-13416](#)-A-12 JOAO/LUZIA VAZ MOTION TO EXTEND AUTOMATIC STAY  
TCS-1 7-24-14 [[15](#)]  
JOAO VAZ/MV  
NANCY KLEPAC/Atty. for dbt.

**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.

3. [14-13417](#)-A-12 DIMAS/ROSA COELHO  
TCS-1  
DIMAS COELHO/MV

MOTION TO EXTEND AUTOMATIC STAY  
7-24-14 [[14](#)]

NANCY KLEPAC/Atty. for dbt.

### **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.