

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge  
1300 18<sup>th</sup> Street, First Floor  
Bakersfield, California

**TUESDAY**

**AUGUST 27, 2013**

**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. [12-17703](#)-A-13 PAUL/SUSAN ANTHONY MOTION TO MODIFY PLAN  
BCS-2 7-9-13 [[56](#)]  
PAUL ANTHONY/MV

BENJAMIN SHEIN/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.

2. [13-11803](#)-A-13 JERZY BARANOWSKI MOTION FOR COMPENSATION FOR  
PK-2 PATRICK KAVANAGH, DEBTOR'S  
PATRICK KAVANAGH/MV ATTORNEY(S), FEE: \$6204.50,  
EXPENSES: \$18.30.  
8-6-13 [[69](#)]

PATRICK KAVANAGH/Atty. for dbt.

**Tentative Ruling**

**Motion:** Application for Compensation and Expenses

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

**Disposition:** Approved

**Order:** Prepared by applicant

**Applicant:** Patrick Kavanagh

**Compensation approved:** \$6,204.50

**Costs approved:** \$18.30

**Aggregate fees and costs approved:** \$6,222.80

**Retainer held:** \$0.00

**Amount to be paid as administrative expense:** \$6,222.80

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.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

3. [13-10404](#)-A-13 ROBERT CASTANEDA MOTION TO CONFIRM PLAN  
JSM-1 7-16-13 [[48](#)]  
ROBERT CASTANEDA/MV  
JOHN MANZANO/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.

4. [11-16424](#)-A-13 KELLY/LORIEN MILLER CONTINUED MOTION TO MODIFY PLAN  
DMG-3 6-14-13 [[60](#)]  
KELLY MILLER/MV  
  
D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required  
Plan: Third Modified Chapter 13 Plan, filed June 14, 2013, ECF No. 63

**Disposition:** Denied

**Order:** Civil minute order

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 debtor moves to confirm the Third Modified Chapter 13 Plan, filed June 14, 2013, ECF No. 63. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

**SECTION 1322(a): DEVOTION OF SUFFICIENT INCOME**

Title 11 of the U.S.C. § 1322(a)(1) requires the plan to devote all or such portion of future earnings or other future income to the supervision and control of the trustee as is necessary for the execution of the plan.

There are two problems. First, the plan is short \$996.37 per month. The payment is \$1,991.00. From this amount the trustee is to pay: \$669.00 for the Ford F250; \$669.00 for the Ford Expedition; and \$1,500.00 for attorneys fees. After considering Chapter 13 trustee's fees, the payment is short of the amount required.

Second, the plan refers to a stipulation to pay Bridge Bank \$20,000 as a Class 7 claim. Neither the stipulation, nor an order thereon, is filed.

**SECTION 1325(a)(5)(B)(iii): EQUAL MONTHLY PAYMENTS**

Section 1325(a)(5)(B)(iii) calls for equal monthly payments to secured creditors. Prior plans paid 5% interest to the Class 2 vehicles. The current plan reduces that to 1%. This is not consistent with the Supreme Court's instruction in *Till v. SCS Credit Corp*, 541 U.S. 465 (2004), and violates Section 1325(a)(5)(B)(iii).

These problems cannot be fixed in the order confirming and the motion will be denied.

5. [13-14329](#)-A-13 IRENE RODRIGUEZ

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-26-13 [[29](#)]

**Tentative Ruling**

**Order to Show Cause:** Dismissal of Case for Failure to Pay Fees

**Date Issued:** July 26, 2013

**Disposition:** Case Dismissed

**Order:** Civil minute order

The debtor has failed to pay one or more installments of the filing or administrative fees according to the schedule specified in an order granting the debtor leave to pay such fees in installments. If the debtors have not paid all past due installments of filing or administrative fees by the date of the hearing, then the court will order that the case be dismissed.

6. [13-14329](#)-A-13 IRENE RODRIGUEZ

WDO-1

DENNIS VALDEZ/MV

WILLIAM OLCOTT/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-18-13 [[20](#)]

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:**

-Denied as moot (if the case has been dismissed pursuant to the court's order to show cause); or -Denied without prejudice (if the case has not been dismissed pursuant to such order to show cause)

**Order:** Prepared by moving party

**Subject:** 4735 Shadow Stone Street, Bakersfield, CA

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 stated in the tentative ruling on the court's order to show cause for failure to pay the filing fee, the court intends to dismiss the case at the hearing. If the case is dismissed, the matter will be dropped from calendar as moot.

If the case is not dismissed pursuant to such order to show cause, the court will deny the motion without prejudice. The motion and notice were not served on the debtor at the correct address. The zip code shown on the proof of service does not match the zip code on the voluntary petition.

7. [13-12631](#)-A-13 MARK/FABIOLA BUTCHER CONTINUED MOTION TO VALUE  
PK-2 COLLATERAL OF JPMORGAN CHASE  
MARK BUTCHER/MV  
BANK, N.A.  
6-11-13 [[41](#)]  
PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

Having been withdrawn, the matter is dropped from calendar as moot.

8. [13-12631](#)-A-13 MARK/FABIOLA BUTCHER FINAL PRE-TRIAL CONFERENCE RE:  
PK-4 MOTION TO VALUE COLLATERAL OF  
MARK BUTCHER/MV  
CHASE HOME FINANCE, LLC  
6-11-13 [[53](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING,  
STIPULATION FILED

**Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**Notice:** Written opposition filed by responding party

**Disposition:** Resolved by stipulation

**Order:** Civil Minute Order

Resolved by stipulation. If they have not already done so, the parties will submit an order approving the stipulation.

9. [13-12631](#)-A-13 MARK/FABIOLA BUTCHER MOTION TO VALUE COLLATERAL OF  
PK-5 JPMORGAN CHASE BANK, N.A./WELLS  
MARK BUTCHER/MV  
FARGO BANK, N.A.  
7-30-13 [[114](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Value Collateral [Real Property; Nonresidential]

**Notice:** Written opposition filed by responding party

**Disposition:** Continued to September 25, 2013, at 9:00 a.m.

**Order:** Civil Minute Order

The motion seeks to value nonresidential real property that is the responding party's collateral. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set

an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's valuation must be resolved before the court can rule on the relief requested.

Before the continued date of the hearing, the parties shall meet and confer to determine: (i) whether an evidentiary hearing will be required; (ii) whether the court has fully and fairly described the evidentiary issues requiring resolution; (iii) whether any party wishes to engage in discovery prior to the evidentiary hearing and the time necessary to complete discovery; (iv) the deadlines for any dispositive motions or evidentiary motions; (v) the dates for the evidentiary hearing and the trial time that will be required; (vi) whether the parties wish to use or waive the provisions of Local Bankruptcy Rule 9017-1; and (vii) any other such matters as may be necessary or expedient to the resolution of these issues.

10. [11-17232](#)-A-13 KERRY STEVENS  
RSW-2  
KERRY STEVENS/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
7-19-13 [[39](#)]

#### **Tentative Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required  
Plan: Second Modified Chapter 13 Plan, filed July 19, 2013, ECF No. 43

**Disposition:** Denied

**Order:** Civil minute order

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 debtor moves to confirm the Second Modified Chapter 13 Plan, filed July 19, 2013, ECF No. 43. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

Chapter 13 plans must be proposed in good faith. 11 U.S.C. § 1325(a)(3). The debtor has removed the mortgage from Class 1 (trustee paid) and placed it in Class 4 (direct pay by the debtor), has modified his mortgage to reduce the payment and has reduced the payment to the trustee from \$2,030 to \$306. The debtor has also experienced a decrease in net income. The debtor contends that the \$306.00 per month in the plan is all of the debtor's disposable income. The trustee calculates the debtor's disposable income at \$1,396.29. Confirmation of the modified plan is denied.

11. [13-13632](#)-A-13 ROMEO/ROSEMARY TUTOP  
MDE-1  
U.S. BANK NATIONAL  
ASSOCIATION/MV  
ROBERT WILLIAMS/Atty. for dbt.  
MARK ESTLE/Atty. for mv.  
RESPONSIVE PLEADING

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
6-12-13 [[11](#)]

**No tentative ruling.**

12. [13-12734](#)-A-13 CHRISTOPHER/MELODY  
RSW-1 GEBHARDT  
CHRISTOPHER GEBHARDT/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING -  
OPPOSITION WITHDRAWN PER  
TRUSTEE

MOTION TO CONFIRM PLAN  
6-28-13 [[20](#)]

**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.

13. [13-12734](#)-A-13 CHRISTOPHER/MELODY  
RSW-2 GEBHARDT  
CHRISTOPHER GEBHARDT/MV

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, NATIONAL  
ASSOCIATION  
7-22-13 [[34](#)]

ROBERT WILLIAMS/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

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 lien holders 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).

14. [13-12734](#)-A-13 CHRISTOPHER/MELODY  
RSW-3 GEBHARDT  
CHRISTOPHER GEBHARDT/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
THE CITY OF WASCO  
7-22-13 [[38](#)]

#### **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

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 lien holders 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).

15. [13-12734](#)-A-13 CHRISTOPHER/MELODY MOTION TO VALUE COLLATERAL OF  
RSW-4 GEBHARDT CITIMORTGAGE, INC.  
CHRISTOPHER GEBHARDT/MV 8-6-13 [[42](#)]  
ROBERT WILLIAMS/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Value Collateral [Real Property; Nonresidential]  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

**Collateral Value:** \$164,000.00

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

The motion requests that the court value nonresidential real property that is the responding party's collateral. The court values the collateral at the amount set forth above. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

16. [13-10038](#)-A-13 FRANK/RACHEL ADKINS  
MHM-1  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
7-10-13 [[45](#)]

PATRICK KAVANAGH/Atty. for dbt.  
WITHDRAWN PER TRUSTEE

#### **Final Ruling**

The motion withdrawn at the request of the moving party, the matter is dropped from calendar.

17. [13-10038](#)-A-13 FRANK/RACHEL ADKINS  
PK-2  
FRANK ADKINS/MV  
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO CONFIRM PLAN  
7-18-13 [[49](#)]

#### **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.

18. [09-18544](#)-A-13 JUAN/ANN PRIETO  
DMG-2

CONTINUED OPPOSITION RE: NOTICE  
OF DEFAULT AND INTENT TO  
DISMISS CASE  
1-4-13 [[79](#)]

D. GARDNER/Atty. for dbt.

#### **Tentative Ruling**

The underlying dispute with Nationstar Mortgage resolved by stipulation, the court will inquire whether the matter can be dropped as moot.

19. [12-10955](#)-A-13 JEFFERY BAILEY  
RSW-5  
JEFFERY BAILEY/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
6-21-13 [[80](#)]

### **Tentative Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required  
Plan: Third Modified Chapter 13 Plan, filed June 21, 2013, ECF No. 84

**Disposition:** Denied

**Order:** Civil minute order

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 debtor moves to confirm the Third Modified Chapter 13 Plan, filed June 21, 2013, ECF No. 84. Secured creditor Bank of America objects, arguing that the plan, as proposed, does not satisfy the requirements for confirmation. Bank of America has the better side of the argument and confirmation is denied.

### **SECTION 1325(a)(6): NOT FEASIBLE**

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and otherwise comply with the plan. The most recent Schedules I and J were filed June 14, 2012. Amended Schedules I and J, June 14, 2012, ECF No. 59. This is too old to demonstrate feasibility.

### **POST-PETITION DELINQUENCIES**

The secured creditor also objects because the plan includes post-petition mortgage delinquencies. Third Modified Chapter 13 Plan § 6.08, filed June 21, 2013, ECF No. 84. But this is permissible under Section 1322(b)(3), which authorizes the plan to cure "any default," not just those prior to the date of the petition.

20. [13-13155](#)-A-13 DAVID MURBACH  
DMG-1  
DAVID MURBACH/MV  
D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
7-11-13 [[26](#)]

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required  
Plan: First Modified Chapter 13 Plan, filed July 11, 2013, ECF No. 28

**Disposition:** Granted

**Order:** Prepared by the 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). Only Finance and Thrift Company, a secured creditor, filed an objection to confirmation. The default all other responding parties is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Finance and Thrift objects on the basis that the petition was not filed in good faith. The essence of the argument is that the debtor sole reason for the filing was to reduce the interest on the debtor's vehicle from 16.99% to 4.5%. First Modified Chapter 13 Plan s 2.09, filed July 11, 2013, ECF No. 28. As proposed, the plan pays unsecured creditors 100% of allowed unsecured claims and debtor's counsel's fees. From this Finance and Thrift argues bad faith. The court disagrees.

Good faith should test the debtor's intentions and legal effect of the case and plan. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982). The court should consider the totality of the circumstances, including whether the debtor misrepresented the facts, unfairly manipulated the Bankruptcy Code, or otherwise proposed a plan in an inequitable manner; the history of filings dismissal; whether the debtor filed the case solely to defeat state court litigation; and whether the behavior is egregious. *In re Welsh*, 465 B.R. 843, 851 (9th Cir. BAP 2012); *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). The fact that the plan reduced the interest rate from 16.99% to 4.5% is insufficient evidence of bad faith. The court notes the following. First, none of the *Welsh* and *Leavitt* factors are present. Second, it fails to address the benefit of the stay described in Section 362(a) and the benefit of breathing room occasioned by the filing. And third, it fails to address the benefit the debtor may obtain through claims objections.

For each of these reasons, the opposition is overruled and the motion is granted.

21. [13-13660](#)-A-13 MICHAEL/VERONICA WHITE MOTION TO VALUE COLLATERAL OF  
LKW-1 JP MORGAN CHASE BANK  
MICHAEL WHITE/MV 7-12-13 [[14](#)]  
LEONARD WELSH/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

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 lien holders 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).

22. [11-17962](#)-A-13 GERARDO/MARIBEL RIVERA MOTION FOR RELIEF FROM  
JBM-1 AUTOMATIC STAY  
STATE FARM MUTUAL AUTOMOBILE 7-25-13 [[60](#)]  
INSURANCE COMPANY/MV  
PHILLIP GILLET/Atty. for dbt.  
ADAM MCNEILE/Atty. for mv.  
NON-OPPOSITION

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** Civil action brought by joint debtor Maribel Rivera against the moving parties

Under section 362(a)(1), the automatic stay prohibits "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding *against the debtor* that was commenced or could have been commenced before the commencement of the case under this title, or to recover a claim *against the debtor* that arose before the commencement of the case under this title[.]" 11 U.S.C. § 362(a)(1) (emphases added).

The stay also prohibits "the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case," and prohibits "any act to obtain possession of property of the estate or from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(2)-(3).

The automatic stay, however, does not apply to a non-debtor's defense of a prepetition lawsuit or claim. "[T]here is substantial authority that the stay is inapplicable to postpetition defensive action in a prepetition suit brought by the debtor." *Gordon v. Whitmore (In re Merrick)*, 75 B.R. 333, 336 (B.A.P. 9th Cir. 1994); *accord Groner v. Miller (In re Miller)*, 262 B.R. 499, 507 n.11 (B.A.P. 9th Cir. 2001).

The debtor or trustee may pursue the debtor's prepetition claims after the bankruptcy petition, and the automatic stay does not prevent such actions. "Given this freedom for the debtor or the trustee to prosecute the debtor's claims, an equitable principle of fairness requires a defendant to be allowed to defend himself from the attack . . . . The automatic stay should not tie the hands of a defendant while the plaintiff debtor is given free rein to litigate." *Gordon*, 175 B.R. at 338.

The court, however, will limit the stay relief to defensive action by the moving party. The relief from stay granted will not allow the moving party to seek any affirmative relief, bring any claim, or take any collection action against the debtor. It will also not allow the moving party to pursue attorney's fees or costs from the debtor in the underlying civil action.

23. [13-12265](#)-A-13 LETICIA GUTIERREZ MOTION TO CONFIRM PLAN  
TGF-1 7-7-13 [[31](#)]  
LETICIA GUTIERREZ/MV  
VINCENT GORSKI/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.

24. [10-13472](#)-A-13 SALVADOR/MATILDE BANUELOS OPPOSITION RE: NOTICE OF DEFAULT AND INTENT TO DISMISS CASE  
6-27-13 [[78](#)]

RABIN POURNAZARIAN/Atty. for dbt.  
[76] WITHDRAWN, PER TRUSTEE

**Final Ruling**

The Chapter trustee's Notice of Default and Intention to Dismiss Case withdrawn, the matter is dropped s moot.

25. [13-14172](#)-A-13 KRISTA TWIST OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON  
MDE-1 THE BANK OF NEW YORK MELLON/MV  
7-31-13 [[16](#)]

KRYSTINA TRAN/Atty. for dbt.  
MARK ESTLE/Atty. for mv.

**Final Ruling**

The plan withdrawn, the matter is dropped as moot.

26. [12-18773](#)-A-13 STEPHEN/FRANCES MENDEZ OBJECTION TO CLAIM OF PORTFOLIO RECOVERY ASSOCIATES, LLC, CLAIM NUMBER 17  
PK-3 STEPHEN MENDEZ/MV  
7-3-13 [[48](#)]

PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

The objection has been withdrawn, as well as the claim to which the objection related. The matter is dropped from calendar as moot.

27. [12-18773](#)-A-13 STEPHEN/FRANCES MENDEZ MOTION TO MODIFY PLAN  
PK-4 7-22-13 [[59](#)]  
STEPHEN MENDEZ/MV  
PATRICK KAVANAGH/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.

28. [13-11784](#)-A-13 HAYES/MEREDITH MCKNIGHT CONTINUED OBJECTION TO  
MHM-1 CONFIRMATION OF PLAN BY MICHAEL  
MICHAEL MEYER/MV H. MEYER  
6-27-13 [[24](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN PER TRUSTEE

**Final Ruling**

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

29. [13-11784](#)-A-13 HAYES/MEREDITH MCKNIGHT MOTION TO VALUE COLLATERAL OF  
RSW-1 GREEN TREE SERVICING, LLC  
HAYES MCKNIGHT/MV 7-23-13 [[27](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Collateral Value:** \$204,000.00

**Senior Liens:** \$259,825.00

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.

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 lien holders 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).

30. [11-63685](#)-A-13 TRACY/KARI HUBBELL  
DMG-1  
TRACY HUBBELL/MV  
D. GARDNER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, NA  
7-12-13 [[23](#)]

#### **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

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 lien holders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

31. [13-10286](#)-A-13 ALI TORKAMAN CONTINUED MOTION TO AVOID LIEN  
SJS-1 OF FARGAH TORKAMAN  
ALI TORKAMAN/MV 3-11-13 [[27](#)]  
SUSAN SALEHI/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

32. [13-12089](#)-A-13 ROBERT BIGELOW MOTION TO CONFIRM PLAN  
CPB-2 6-29-13 [[75](#)]  
ROBERT BIGELOW/MV  
CHRISTOPHER BLAXLAND/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.

33. [13-14296](#)-A-13 JOSE SANCHEZ MOTION FOR RELIEF FROM  
HRH-1 AUTOMATIC STAY  
DE LAGE LANDEN FINANCIAL 8-13-13 [[19](#)]  
SERVICES, INC./MV  
PHILLIP GILLET/Atty. for dbt.  
RAFFI KHATCHADOURIAN/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(2); written opposition required

**Disposition:** Denied as moot

**Order:** Prepared by moving party

**Subject:** Funds in the amount of \$25,000.24 levied from debtor's company's bank account

This motion is governed by two sections of the Bankruptcy Code. Section 362(a) applies only to debtors and property of the estate. 11 U.S.C. § 362(a). Since the funds have been levied from the debtor's company, and not the debtor, this section is inapplicable by its terms. Section 1301(a) provides for a co-debtor stay, and applies only to consumer debts. See 11 U.S.C. § 1301(a). The co-debtor stay does not apply because the debt at issue is not a consumer debt, but a debt arising from equipment financing.

Because the stay does not apply to the debtor's company, the motion for relief from stay does not present a case or controversy. See U.S. Const. art. 3, § 2, cl. 1. Any ruling would not affect the matter at issue because the stay from which relief is sought does not exist. As a result, the motion will be denied as moot.

34. [13-13298](#)-A-13 AUGSTEEN/BONNIE MCSPERITT MOTION TO AVOID LIEN OF CAPITAL  
PK-1 ONE BANK  
AUGSTEEN MCSPERITT/MV 7-1-13 [[16](#)]  
PATRICK KAVANAGH/Atty. for dbt.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**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).

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

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

35. [13-13298](#)-A-13 AUGSTEEN/BONNIE MCSPERITT MOTION TO AVOID LIEN OF MIDLAND  
PK-2 FUNDING LLC  
AUGSTEEN MCSPERITT/MV 7-1-13 [[22](#)]  
PATRICK KAVANAGH/Atty. for dbt.

#### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the

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

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

36. [13-15313](#)-A-13 JERYL/MICHELLE DOUGLAS MOTION TO EXTEND AUTOMATIC STAY  
JDR-1 8-20-13 [[12](#)]  
JERYL DOUGLAS/MV  
ADRIAN WILLIAMS/Atty. for dbt.  
FRESNO CASE, OST 8/20/13

#### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor who was not noticed or served with the motion

**Order:** Prepared by moving party

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.

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). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the *later case* is in good faith as to the creditors to be stayed. *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 and that the automatic stay should be extended. The motion will be granted except as to any creditor who was not noticed or served with the motion.

9:15 a.m.

1. [13-13155](#)-A-13 DAVID MURBACH  
MHM-2  
MICHAEL MEYER/MV  
D. GARDNER/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-26-13 [[33](#)]

**No tentative ruling.**

2. [13-10884](#)-A-13 DEWAYNE MORRIS  
MHM-1  
MICHAEL MEYER/MV  
RABIN POURNAZARIAN/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-26-13 [[36](#)]

**No tentative ruling.**

9:30 a.m.

1. [13-13383](#)-A-13 BOBBY MAXWELL  
[13-1070](#)  
MAXWELL V. MAXWELL  
JOSEPH SOARES/Atty. for pl.  
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT  
6-18-13 [[1](#)]

10:30 a.m.

1. [13-14017](#)-A-7 MARK/MELODY WAYBRIGHT REAFFIRMATION AGREEMENT WITH  
FORD MOTOR CREDIT COMPANY  
7-17-13 [[12](#)]  
CYNTHIA SCULLY/Atty. for dbt.

**No tentative ruling.**

2. [13-13525](#)-A-7 FREDI JAIMEZ CONTINUED REAFFIRMATION  
AGREEMENT WITH AMERICREDIT  
FINANCIAL SERVICES, INC.  
6-21-13 [[11](#)]  
CYNTHIA SCULLY/Atty. for dbt.

**No tentative ruling.**

3. [13-12033](#)-A-7 WESLEY WILLINGHAM REAFFIRMATION AGREEMENT WITH  
FINANCE AND THRIFT COMPANY  
7-25-13 [[13](#)]  
SUSAN SALEHI/Atty. for dbt.  
SEE AMENDED REAFFIRMATION  
AGREEMENT #19

**No tentative ruling.**

1:00 p.m.

1. [13-11503](#)-A-7 REYNALDO MARTINEZ  
UST-1  
AUGUST LANDIS/MV  
JUSTIN GRAHAM/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.

MOTION TO DISMISS CASE PURSUANT  
TO 11 U.S.C. SECTION 707(B)  
6-28-13 [47]

### **Tentative Ruling**

**Motion:** Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

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

**Disposition:** Granted

**Order:** Prepared by moving party

The debtor filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code. The U.S. Trustee has moved to dismiss the debtor's case under § 707(b)(1) on grounds that the presumption of abuse arises under § 707(b)(2) and § 707(b)(3). The debtor opposes the motion arguing essentially that the debtor has a household size of 3, not 1 as the trustee's motion assumes. The debtor has filed Form B22A, a document of which the court takes judicial notice.

### **LEGAL STANDARDS**

A motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8). Applicable only to above-median income debtors, the presumption of § 707(b)(2) is triggered when the debtor's current monthly income less specified expenses, 11 U.S.C. § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is not less than the lesser of 25% of the debtor's non-priority unsecured debt or \$7,025.00, whichever is greater, or \$11,725.00. The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b)(2)(B)(i).

### **DISCUSSION**

This case involves an above-median income debtor whose debts are primarily consumer debts. Section 707(b)(2) reflects a presumption of abuse. Line 50 of Form B22A indicates monthly disposable income of \$0.00.

However, the U.S. trustee's motion asserts that a number of deductions should be reduced. The U.S. Trustee argues that three of the deductions should be reduced because the debtor has incorrectly claimed that his household size is three. (The U.S. Trustee contends that the debtor's household size should be one given that the debtor's original Schedule I and amended Schedule I reflect this household size.) One of the disputed deductions is based on the debtor's improper vehicle ownership deductions.

The U.S. Trustee also reserves the right to challenge (if an evidentiary hearing is required) the amount of the debtor's monthly

income in the amount of \$7,973.79 because the debtor's Schedule I discloses substantial overtime pay not reflected on Form B22A.

The debtor's opposition offers statements by the debtor under penalty of perjury that his household size is three, not one as the U.S. Trustee contends. The debtor's opposition does not, however, address the vehicle deductions.

The debtors have improperly claimed ownership deductions for vehicles for which no debt or lease payments are owed. See *Ransom v. FIA Card Servs.*, 131 S. Ct. 716, 725 (2011) ("The ownership category encompasses the costs of a car loan or lease and nothing more."). The two vehicle deductions are \$496 each for a total of \$992. If the improperly claimed vehicle deductions in the amount of \$992 are subtracted from the debtor's total deductions from income on Line 47, the correct figure for Line 47 is \$7,354.39.

After adjusting *only* for the improperly claimed vehicle deductions, Line 50 of Form B22A would show monthly disposable income of \$619.40. This amount multiplied by 60 is \$37,164.00, which exceeds the statutory limit under § 707(b)(2)(A)(i).

Thus, the court does not reach the issue of the debtor's household size and will not hold an evidentiary hearing on the issue. Even if the debtor's household size is assumed to be three so that the disputed deductions relating to the allegedly improper household size are not taken into account, the presumption of abuse arises given the improper vehicle deductions.

#### CONCLUSION

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

2. [12-11808](#)-A-7 JENNY SALMERON  
UST-1  
AUGUST LANDIS/MV  
ROBERT WILLIAMS/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
6-19-13 [[46](#)]

#### Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

3. [13-14426](#)-A-7 ERNEST/BARBARA SANDOVAL MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
ERNEST SANDOVAL/MV FEE  
7-22-13 [[28](#)]  
ERNEST SANDOVAL/Atty. for mv.  
NON-OPPOSITION

**Tentative Ruling**

**Application:** Waiver of Chapter 7 Filing Fee

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

**Disposition:** Granted

**Order:** Civil minute order

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

The Bankruptcy Court may waive the filing fee in a case under Chapter 7 of 11 U.S.C. for an individual if that individual "has income of less than 150% of income official poverty line . . . applicable to a family of the size involved and is unable to pay the fee in installments." 28 U.S.C. § 1930(f)(1).

The trustee has entered a statement of non-opposition on the docket. The court accepts the debtors' explanation that their income has decreased by \$800.00 per month resulting in their having a total income of \$1,793.00 per month. This income level qualifies the debtors for a fee waiver.

4. [12-11639](#)-A-7 JEFFREY STOLLER CONTINUED MOTION TO COMPEL  
LKW-1 ABANDONMENT  
JEFFREY STOLLER/MV 2-6-13 [[120](#)]  
LEONARD WELSH/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

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

5. [12-11639](#)-A-7 JEFFREY STOLLER  
LKW-2  
JEFFREY STOLLER/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH KAREN STOLLER  
AND RANDELL PARKER  
7-30-13 [[150](#)]

LEONARD WELSH/Atty. for dbt.

### **Final Ruling**

**Motion:** Approve Compromise or Settlement of Controversy

**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).

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant *A & C Properties* factors. The compromise will be approved.

6. [13-11952](#)-A-7 Wael/LESLIE SHISHANI  
FPS-1  
Wael SHISHANI/MV

MOTION TO AVOID LIEN OF EQUABLE  
ASCENT FINANCIAL, LLC AND/OR  
MOTION TO AVOID LIEN OF  
DISCOVER BANK  
7-9-13 [[22](#)]

FRANK SAMPLES/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Continued to August 25, 2013, at 1:00 p.m. and amended Schedule C filed not later than September 11, 2013.

**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).

### **NO EXEMPTION CLAIMED ON MOST RECENTLY AMENDED SCHEDULE C**

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). *See Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (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)).

The \$1,000.00 exemption described in the motion does not appear on the most recently filed amended Schedule C. *See* Am. Schedule C, ECF No. 14. Although an earlier version of Schedule C claimed the debtor's residential real property as exempt, the most recently amended Schedule C does not. The most recently amended Schedule C appears to correct a couple of exemptions in personal property, but it also lists other exemptions that have not been modified. Accordingly, it is reasonable to conclude that the most recently amended Schedule C purports to be a complete listing of all exemptions rather than a list of only those exemptions that have been modified in some way.

Assuming that an amended Schedule C has been filed no later than September 11, 2013, properly claiming the exemption described in the motion, and the court will adopt the remainder of this ruling as the final ruling on this motion.

**PROPOSED RULING AT CONTINUED HEARING DATE**

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).

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each lien in this case. Under the reverse-priority analysis, Discover Bank's judicial lien would be the last judicial lien to be avoided because it has a higher priority than the other judicial lien, though it is still subject to any senior consensual lien. In determining whether Discover Bank's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

Discover Bank's judicial lien, plus all other liens (excluding judicial liens lower in priority), plus the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by such judicial lien. As a result, Discover Bank's judicial lien may be avoided entirely.

All other judicial liens may be avoided as well because Discover Bank's avoidable judicial lien has a higher priority than such other liens. Stated differently, the sum of the debt secured by the consensual liens plus the debtors' exemption amount equals or exceeds the fair market value of the real property, so all judicial liens subject to this motion are properly avoidable under § 522(f).

7. [12-60459](#)-A-7 DAVID LEE  
TSB-2  
JEFFREY VETTER/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH JANET WILLIAMS  
8-6-13 [[25](#)]

T. BELDEN/Atty. for mv.

### **Tentative Ruling**

**Motion:** Approve Compromise or Settlement of Controversy

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Parties to Compromise:** Chapter 7 Trustee, Jeffrey Vetter, and Janet Williams

**Dispute Compromised:** Fraudulent transfer and preference claims brought by the Trustee against Williams arising out of Debtor's transfer to Williams of Debtor's interest in real property located at 327 S. Chester Avenue, Bakersfield, CA

**Summary of Material Terms:** Williams will pay \$60,000.00 to the trustee in exchange for a dismissal of Adversary Proceeding No. 13-1042. Williams has paid \$30,000.00 as a good faith deposit, and will provide the remaining amount within 30days of entry of the order on the motion

No responding party is required to file written opposition to the sustaining of the objection; opposition may be presented at the hearing. 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.

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant *A & C Properties* factors. The compromise will be approved.

8. [12-60459](#)-A-7 DAVID LEE CONTINUED STATUS CONFERENCE RE:  
[13-1042](#) COMPLAINT  
VETTER V. WILLIAMS 4-19-13 [[1](#)]  
T. BELDEN/Atty. for pl.

**Tentative Ruling**

The matter is continued to October 23, 2013, at 1:00 p.m. to allow the parties to conclude settlement.

9. [13-14571](#)-A-7 DINA TABOR MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
DINA TABOR/MV FEE  
6-29-13 [[5](#)]  
R. BELL/Atty. for dbt.  
PAID \$306.00

**Final Ruling**

The debtor has paid the filing fee in full, so the matter is dropped as moot.

10. [13-12272](#)-A-7 SAMUEL/MINERVA SANTIAGO MOTION TO SELL  
RP-1 7-26-13 [[13](#)]  
RANDELL PARKER/MV  
VINCENT GORSKI/Atty. for dbt.  
RANDELL PARKER/Atty. for mv.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2003 Ford Explorer XLT

**Buyer:** Debtors

**Sale Price:** \$4,510.00 (\$1,785.00 cash plus \$2,725.00 exemption credit)

**Sale Type:** Private sale subject to overbid opportunity

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

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§

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

11. [13-13474](#)-A-7 JUAN FLORES ACEVES AND MOTION TO COMPEL ABANDONMENT  
GRACIELA FLORES 7-10-13 [[14](#)]  
JUAN FLORES ACEVES/MV  
JAMES KING/Atty. for dbt.  
NON-OPPOSITION

### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

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

**Disposition:** Granted only as to the business and such business assets described in the motion

**Order:** Prepared by moving party

**Business Description:** Colibri Distributors (sole proprietorship) (the only asset is a 1998 truck)

### **LOCAL RULES VIOLATIONS**

The debtors' motion and supporting papers contain a number of violations of the court's local rules and document preparation guidelines. In the future, violations of this magnitude may be cause for the court to deny a motion filed by counsel.

The notice of hearing does not comply with the Local Bankruptcy Rules as it fails to inform parties in interest whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served. See LBR 9014-1(d)(3).

The motion and notice do not contain a docket control number as required by LBR 9014-1(c). The motion, memorandum in support and declaration in support have all been filed as one document, not separate documents as required by section 3(a) of the Revised Guidelines for the Preparation of Documents. The local rules require compliance with these Revised Guidelines. LBR 9004-1(a).

Lastly, For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address 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 address list should indicate a date near in time to the date of the motion and hearing being noticed. 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.

#### **ABANDONMENT OF THE BUSINESS**

The Chapter 7 trustee has indicated his non-opposition to the motion. No other 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.

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of the business and the assets of such business only to the extent described in the motion.

12. [13-13480](#)-A-7 CHAD SNELL  
VG-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
7-12-13 [[10](#)]

ALLAN WILLIAMS/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Deadlines

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

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

**Order:** Prepared by chapter 7 trustee

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion. The court will deny the motion to dismiss subject to the condition that debtor attend the continued meeting of creditors.

Certain deadlines will be extended so that they run from the continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The continued date of the meeting of creditors is September 9, 2013, at 11:00 a.m. The deadline for objecting to discharge under § 727 is extended to 60 days after this continued date. See Fed. R. Bankr. P. 4004(a). The deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other

than presumed abuse, is extended to 60 days after such date. See Fed. R. Bankr. P. 1017(e).

The motion will be granted in part and conditionally denied in part. The motion will be granted to the extent it requests extension of certain deadlines so that they run from the continued date of the meeting of creditors. The motion will be conditionally denied in part to the extent it requests dismissal of the case. The court will deny the motion to dismiss subject to the condition that the debtor appear at the continued meeting of creditors, but if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on the trustee's ex parte declaration.

13. [13-14586](#)-A-7 ANTOINE MCMULTRY

ANTOINE MCMULTRY/MV

R. BELL/Atty. for dbt.

PAID \$306.00

MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE

6-30-13 [[5](#)]

**Final Ruling**

The debtor has paid the filing fee in full, so the matter is dropped as moot.

1:30 p.m.

1. [13-13602](#)-A-7 RAFAEL/JOYCE HURTADO MOTION FOR RELIEF FROM  
JAB-1 AUTOMATIC STAY  
CMG MORTGAGE, INC./MV 7-23-13 [[11](#)]  
FRANK SAMPLES/Atty. for dbt.  
JENNIFER BENDER/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** CMG Mortgage, Inc.

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

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

2. [13-11922](#)-A-7 JOHN/TERRI ALEXANDER MOTION FOR RELIEF FROM  
WLA-2 AUTOMATIC STAY  
TERRY BEDFORD/MV 7-30-13 [[36](#)]  
ROBERT BRUMFIELD/Atty. for dbt.  
WILLIAM ALEXANDER/Atty. for mv.  
DISCHARGED

**Final Ruling**

The motion is denied without prejudice for lack of proper service. Motions for stay relief must be served on the debtor. Fed. R. Bankr. P. 9013-9014. The certificate of service merely shows, "Debtors, 11431 Reagan Road, Bakersfield, CA 93312." Certificate of Service, July 30, 2013, ECF No. 41. The debtors are not named.

3. [10-12546](#)-A-7 HWA CHUNG MOTION FOR RELIEF FROM  
JLG-2 AUTOMATIC STAY  
BANK OF THE SIERRA/MV 8-9-13 [[298](#)]  
THOMAS GILLIS/Atty. for dbt.  
HANNO POWELL/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 16529 Highline Road, Tehachapi, California and personal property including crops and equipment

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.

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

4. [13-14147](#)-A-7 RICHARD/GUADALUPE SOTO MOTION FOR RELIEF FROM  
JCW-1 AUTOMATIC STAY  
BANK OF AMERICA, N.A./MV 7-12-13 [[10](#)]  
CURTIS FLOYD/Atty. for dbt.  
JENNIFER WONG/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 18231 Arosa Road, Tehachapi, California

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

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

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

5. [12-10564](#)-A-7 RAUL RODRIGUEZ MOTION FOR RELIEF FROM  
DMG-3 AUTOMATIC STAY  
BERNARD ROTHSCHILD/MV 7-31-13 [[129](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
D. GARDNER/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 5015 and 5017 Red Bank Road

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

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

6. [13-12271](#)-A-7 JAMIESON/CHRISTINE MOTION FOR RELIEF FROM  
MDE-1 JALVING AUTOMATIC STAY  
JPMORGAN CHASE BANK, NATIONAL 7-9-13 [[14](#)]

ASSOCIATION/MV  
VINCENT GORSKI/Atty. for dbt.  
MARK ESTLE/Atty. for mv.  
DISCHARGED

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 7608 Selkirk Drive, Bakersfield, California

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

**AS TO THE DEBTOR**

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

**AS TO THE ESTATE**

Section 362(d)(1),(2) authorizes stay relief cause shown or for lack of equity. There appears to be no equity. The value of the property is \$164,907. Lines total \$155, 159.88. After considering costs of sale there is no equity and the trustee does not oppose the motion. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

7. [13-13680](#)-A-7 CHARISSA THOMAS  
RCO-1  
BANK OF AMERICA, N.A./MV  
FRANK SAMPLES/Atty. for dbt.  
KRISTI WELLS/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-8-13 [[17](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 6811 Telford Court, Bakersfield, California

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

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

Section 362(d)(1) authorizes stay relief cause shown. Equity is marginal, if at all. Neither the debtor, nor the Chapter 7 trustee, opposes the motion. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

1:45 p.m.

1. [13-13501](#)-A-11 CANYONS, LLC CONTINUED CHAPTER 11 STATUS  
CONFERENCE  
5-22-13 [[11](#)]  
MATTHEW EASON/Atty. for dbt.

**Final Ruling**

The court granting the United States Trustee's motion to dismiss, the status conference is now moot.

2. [13-13501](#)-A-11 CANYONS, LLC MOTION FOR RELIEF FROM  
GSD-1 AUTOMATIC STAY  
CASCADE ACCEPTANCE 7-22-13 [[45](#)]  
CORPORATION/MV  
MATTHEW EASON/Atty. for dbt.  
DENNIS DAVIS/Atty. for mv.

**Final Ruling**

The court granting the United States Trustee's motion to dismiss, the motion for relief from the automatic stay is denied as moot.

3. [13-13501](#)-A-11 CANYONS, LLC  
UST-1  
AUGUST LANDIS/MV  
MATTHEW EASON/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.

MOTION TO DISMISS CASE  
7-24-13 [[52](#)]

### **Final Ruling**

**Motion:** United States Trustee's Motion to Dismiss

**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).

The United States Trustee requests dismissal of the Debtor's case pursuant to § 1112(b)(4)(A), which establishes a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation" as cause. The Debtor owns only one piece of undeveloped land and generates no income. In order to pay its administrative expenses, the Debtor has been receiving undisclosed and unauthorized loans from its representative Don Hancock, who expects to be paid for these advances. This represents a continuing diminution of the estate. Additionally, the Debtor has no viable investor in which to begin development of the land, which the Debtors states is necessary for any plan of reorganization, and, as noted above, the Debtor currently generates no income. As a result, there is no reasonable likelihood of rehabilitation within a reasonable amount of time. Based on these facts, the UST has established cause.

Next, dismissal, rather than conversion, is in the best interests of creditors. The only property that the Debtor owns is the undeveloped land, which is valued at \$8 million. However, the property is encumbered by multiple liens, the greatest of which amounts of \$38 million. Thus, there will be no equity to distribute to unsecured creditors.

Based on the foregoing, the court will grant the UST's motion to dismiss.

4. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, MOTION TO SELL  
LKW-5 INC. 7-23-13 [[64](#)]  
CENTRAL VALLEY SHORING,  
INC./MV  
LEONARD WELSH/Atty. for dbt.

**Tentative Ruling**

**Motion:** Sell Property

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 5000 newly issued shares of Debtor's stock

**Buyer:** Contractors Equipment Rentals, Inc.

**Sale Price:** \$770,000.00 (\$699,000.00 in cash and \$71,000.00 of equipment)

**Sale Type:** Private sale subject to overbid opportunity

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

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.*, 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

5. [13-13974](#)-A-11 LAGUNA EXPORTS, LLC CHAPTER 11 STATUS CONFERENCE  
T. BELDEN/Atty. for dbt. 6-13-13 [[8](#)]  
NOTICED FOR 2 P.M.

**Final Ruling**

The court granting the Debtor's motion to dismiss, the status conference is now moot.

6. [13-13974](#)-A-11 LAGUNA EXPORTS, LLC  
TSB-3  
LAGUNA EXPORTS, LLC/MV  
T. BELDEN/Atty. for dbt.

MOTION TO DISMISS CASE  
7-26-13 [[40](#)]

### **Final Ruling**

**Motion:** Debtor's Motion to Dismiss

**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).

The Debtor requests dismissal of this case stating that at this time the Debtor has no investment capital possibilities and that its main secured creditor is unwilling to negotiate a deal, either being a necessity for a plan of reorganization to be feasible. Since the Debtor's main secured creditor has a lien on all of the Debtor's assets, a conversion to chapter 7 would yield nothing to unsecured creditors (of which there are only two).

Based on the foregoing, the court will grant the Debtor's motion to dismiss.