

**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**

**SEPTEMBER 5, 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. [11-18901](#)-A-13 WILLIAM/SUSAN POWELL MOTION TO MODIFY PLAN  
THA-2 8-1-13 [[48](#)]  
WILLIAM POWELL/MV  
THOMAS ARMSTRONG/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required  
Plan: First Modified Chapter 13 Plan, filed August 1, 2013, ECF No. 51

**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 First Modified Chapter 13 Plan, filed August 1, 2013, ECF No. 51. 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.

The plan does not provide a sufficient monthly payment to fund in the remaining 37 months. 11 U.S.C. § 1322(a),(d). The debtors are 24 months into a 60 month plan. The plan provides for payment in full of a 2007 Toyota automobile and for a 35% dividend to general unsecured creditors. The plan proposes payments going forward of \$186.81 per month. At that rate, the plan will take an additional 162.91 months to fund. This exceeds the 60 month maximum specified in 11 U.S.C. § 1322(d). As a result, the motion is denied.

2. [09-19904](#)-A-13 GEORGE BARNES MOTION TO SELL  
PLF-6 8-6-13 [[106](#)]  
GEORGE BARNES/MV  
PETER FEAR/Atty. for dbt.

**Tentative Ruling**

**Motion:** Sell Property Free and Clear of California Employment Development Department's lien and on the all the terms previously ordered

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

**Disposition:** Granted

**Order:** Prepared by moving party pursuant to instructions below

**Property:** 11220 Road 32 ½, Madera, CA

**Buyer:** Dilko Sackdavone

–The buyer's name is unstated in the motion and notice of hearing.

–However, the court assumes the buyer is the same buyer as the one named in the order granting the debtor's prior motion to sell this same property. (The motion requests an order on the same terms as the prior order on a motion to sell the same property)

**Sale Price:** \$85,000.00

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

**Sale Free and Clear of Lien:** Relief granted as stated below

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).

### **SALE UNDER SECTION 363(b)**

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

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). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

### **SALE FREE AND CLEAR OF LIENS**

#### Judgment Liens in Prior Motion

The motion seeks a sale free and clear of the judgment liens pursuant to the terms of the previous order on this motion that was issued April 17, 2013. The sale will be free and clear of all the judgment liens identified in the previous order on this motion pursuant to the terms of such order.

#### California Employment Development Department's Lien

The motion also requests that the sale be free and clear of the lien of the State of California Employment Development Department (the "EDD"). Several bases for this relief are offered. The court will grant this relief on the basis of a bona fide dispute under § 363(f)(4).

The term "bona fide dispute" in § 363(f)(4) means that "there is an objective basis for either a factual or legal dispute as to the validity of the debt." *Union Planters Bank, N.A. v. Burns (In re Gaylord Grain L.L.C.)*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004); *see also 3 Collier on Bankruptcy* ¶ 363.06[5], at 363-53 (Alan N. Resnick &

Henry J. Sommer eds., 16th ed. rev. 2012) (citing cases). Under this subsection of § 363, the trustee has the burden of proof to show the existence of a bona fide dispute. See 3 *Collier on Bankruptcy*, supra, ¶ 363.06[5], at 363-53.

In *Burns*, the bankruptcy appellate panel for the Eighth Circuit found that an objective basis existed to avoid a bank's liens against two vehicles because the liens against those vehicles had not been perfected pursuant to the state statute governing perfection of liens against motor vehicles. *Burns*, 306 B.R. at 628-29. The panel held that the trustee would need to show "an objective basis for avoiding the liens, and thus establish a bona fide dispute for purposes of 11 U.S.C. § 363(f)(4)." *Id.* at 628.

Here, the motion presents sufficient facts showing that an objective factual or legal dispute exists as to the validity of the lien or the debt that the lien secures. The debtor has offered facts showing he is not liable personally for the tax debt owed to the EDD. The debt was owed by All America Trenching, Inc., the debtor's company that he owned and operated. The debtor did not guarantee any of the debts of this company. In the absence of a tax debt against the debtor, no lien can exist against the debtor. "The California courts have long recognized the maxim that a lien cannot survive (much less be created in the first place) absent the existence of an enforceable underlying obligation." *In re Thomas*, 102 B.R. 199, 201 (Bankr. E.D. Cal. 1989) (judgment lien); see also *Alliance Mortg. Co. v. Rothwell*, 10 Cal. 4th 1226, 1235 (1995) ("A security interest cannot exist without an underlying obligation, and therefore a mortgage or deed of trust is generally extinguished by either payment or sale of the property in an amount which satisfies the lien.").

Accordingly, a factual basis exists for disputing the validity of EDD's lien. Because EDD's lien is subject to a bona fide dispute, the court will grant relief under § 363(f)(4).

#### **CONCLUSION**

The sale will be free and clear of the judgment liens on the real property described above that were described in the prior motion to sell such real property and the order on such motion. The sale will also be free and clear of EDD's tax lien. Such liens shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f). The court will not approve the sale free and clear of any other lien or interest not identified in this paragraph.

The order shall state that the sale is free and clear of only the liens identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale on the property sold.

3. [13-13008](#)-A-13 CAROL MITCHELL  
MLP-2  
CAROL MITCHELL/MV  
MARTHA PASSALAQUA/Atty. for dbt.

MOTION TO CONFIRM PLAN  
7-19-13 [[36](#)]

#### **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. [13-15411](#)-A-13 RICHARD/TERESA AVINA  
HDN-1  
RICHARD AVINA/MV  
HENRY NUNEZ/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
8-21-13 [[8](#)]

#### **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.

5. [13-13912](#)-A-13 LUIS/RUBY BURGOS  
TOG-1  
LUIS BURGOS/MV  
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
7-25-13 [[25](#)]

### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by the moving party pursuant to 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). 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.

6. [13-12125](#)-A-13 TERRY/KATHRYN HORAK  
GH-4  
TERRY HORAK/MV  
GARY HUSS/Atty. for dbt.

MOTION TO CONFIRM PLAN  
7-16-13 [[50](#)]

**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.

7. [13-14031](#)-A-13 ALFRED/MONICA SAUCEDA

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-12-13 [[53](#)]

*[This matter will be called concurrently with the Chapter 13 trustee's motion to dismiss at 9:15 a.m., having docket no. MHM-2 in this case.]*

**Tentative Ruling**

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

**Date Issued:** August 12, 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. On August 6, 2013, an installment of the filing fee in the amount of \$70.00 was due. On September 5, 2013, an installment in the same amount will be due. If the debtors have not paid these past due installments of filing or administrative fees by the date of the hearing, then the court will order that the case be dismissed.

8. [13-11834](#)-A-13 PAUL/DORIS ROMERO  
JDW-1  
PAUL ROMERO/MV  
JOEL WINTER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
NATIONSTAR MORTGAGE, LLC.  
8-7-13 [26]

[This matter will be called concurrently with the Chapter 13 trustee's motion to dismiss at 9:15 a.m., having docket no. MHM-1 in this case.]

### **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

### **PROCEDURAL ISSUES**

The court notes that exhibits 29 to 31 are improperly formatted. They do not contain a caption, docket control number and other pertinent information as required by paragraphs (4)(b) and (6)(b) of the *Revised Guidelines for the Preparation of Documents* (rev. Dec. 2008), Form EDC 2-901. The exhibits also do not comply with other requirements of these guidelines found in paragraph (6)(b), (c), (e) and (f) of the *Revised Guidelines for the Preparation of Documents*. The exhibits do not have an index as the first page listing each exhibit individually. The exhibit documents do not contain a title identifying the document to which the exhibits relate. The exhibit documents are not identified as exhibits at the bottom of the exhibit pages and consecutively numbered at the bottom of the pages.

### **VALUATION OF THE COLLATERAL**

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).

9. [13-14643](#)-A-13 CRISTY HULSEY

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-6-13 [[25](#)]

MARCUS TORIGIAN/Atty. for dbt.

[This matter will be called concurrently with the Chapter 13 trustee's motion to dismiss at 9:15 a.m., having docket no. MHM-1 in this case.]

### **Tentative Ruling**

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

**Date Issued:** August 6, 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. On August 1, 2013, an installment of the filing fee in the amount of \$70.00 was due. On September 3, 2013, an installment in the same amount was due. These installments have not been paid. 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.

10. [13-14348](#)-A-13 DANILO/JOSEPHINE ROLDAN  
JMA-2

AMENDED MOTION TO CONFIRM PLAN  
8-2-13 [[27](#)]

DANILO ROLDAN/MV  
JOSEPH ARNOLD/Atty. for dbt.  
RESPONSIVE PLEADING,  
OPPOSITION WITHDRAWN

### **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.

11. [13-10257](#)-A-13 RAYMOND/DEBRA BRIZENDINE MOTION FOR COMPENSATION BY THE  
BCS-2 LAW OFFICE OF SHEIN LAW GROUP,  
BENJAMIN SHEIN/MV PC FOR BENJAMIN C. SHEIN,  
DEBTOR'S ATTORNEY(S), FEE:  
\$6708.50, EXPENSES: \$398.15.  
7-29-13 [[27](#)]

BENJAMIN SHEIN/Atty. for dbt.

### **Final Ruling**

**Motion:** Application for Compensation and Expenses  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Approved  
**Order:** Prepared by applicant

**Applicant:** Shein Law Group  
**Compensation approved:** \$6,708.50  
**Costs approved:** \$398.15  
**Aggregate fees and costs approved:** \$7,106.65  
**Retainer held:** \$2,531.00  
**Amount to be paid as administrative expense:** \$4,575.65

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

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

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.

12. [12-17562](#)-A-13 DENNIS/LAURIE WAGNER MOTION TO MODIFY PLAN  
JMA-4 7-16-13 [[63](#)]  
DENNIS WAGNER/MV  
JOSEPH ARNOLD/Atty. for dbt.  
RESPONSIVE PLEADING,  
OPPOSITION WITHDRAWN

**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.

13. [10-65069](#)-A-13 LIDIA CONTRERAS MOTION TO MODIFY PLAN  
SL-2 7-29-13 [[40](#)]  
LIDIA CONTRERAS/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

**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 25, 2013, ECF No. 39

**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 25, 2013, ECF No. 39. 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.

Debtors in the Eastern District of California must utilize Form EDC 3-080 standard form Chapter 13 plan. LBR 3015-1(a). Under the terms of that the form plan, Class 4 is only intended to accommodate secured claims. The debtor has placed two unsecured claims, American Finco and Sallie Mae in Class 4. As a result, confirmation will be denied.

The court makes no finding on the Chapter 13 trustee's other objection: that the plan seeks to pay more than the required amount on the debtor's home mortgage, \$1,046.01, rather than \$911.22.

14. [13-14773](#)-A-13 VICTOR FIGUEROA MOTION TO VALUE COLLATERAL OF  
TOG-1 CITIFINANCIAL, INC.  
VICTOR FIGUEROA/MV 8-6-13 [[19](#)]  
THOMAS GILLIS/Atty. for dbt.

#### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** 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. [13-11486](#)-A-13 MANUEL/MARIA DIAS CONTINUED MOTION TO VALUE

TCS-1  
MANUEL DIAS/MV

COLLATERAL OF AEGIS WHOLESALE  
CORPORATION AND/OR MOTION TO  
VALUE COLLATERAL OF THE BANK OF  
NEW YORK MELLON , MOTION TO  
VALUE COLLATERAL OF BANK OF  
AMERICA, N.A.  
6-20-13 [26]

TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN 8/27/13

[This matter will be called concurrently with the Chapter 13 trustee's motion to dismiss at 9:15 a.m., having docket no. MHM-1 in this case.]

### **Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]  
**Notice:** LBR 9014-1(f)(1) / continued date of the hearing; written opposition withdrawn  
**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).

The responding parties named in the motion include Bank of America as well as the party filing opposition, which is Bank of New York Mellon. Given that one of the responding parties named in the motion is Bank of America, N.A., and given that Bank of America, N.A. also holds both the first 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.

16. [10-10791](#)-A-13 JOHN LAYFIELD  
MBJ-1  
THE GOLDEN 1 CREDIT UNION/MV  
PETER BUNTING/Atty. for dbt.  
JAMES BURBOTT/Atty. for mv.  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-20-13 [[36](#)]

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2008 Suzuki SX4

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)(1) authorizes stay relief for cause shown. The debtor has signaled his non-opposition to the motion and the court finds that to be cause. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

9:15 a.m.

1. [13-13908](#)-A-13 FIDEL CAMACHO AND  
MHM-1 GRACIELA RUVALCABA  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
8-15-13 [[46](#)]

THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**
  
2. [13-14031](#)-A-13 ALFRED/MONICA SAUCEDA  
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 PROVIDE TAX  
DOCUMENTS , MOTION TO DISMISS  
CASE  
8-5-13 [[46](#)]

**No tentative ruling.**
  
3. [13-11834](#)-A-13 PAUL/DORIS ROMERO  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE AND/OR  
MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS  
7-29-13 [[21](#)]

JOEL WINTER/Atty. for dbt.

**No tentative ruling.**
  
4. [13-14643](#)-A-13 CRISTY HULSEY  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE , MOTION  
TO DISMISS CASE FOR FAILURE TO  
PROVIDE TAX DOCUMENTS  
8-15-13 [[30](#)]

MARCUS TORIGIAN/Atty. for dbt.  
DEANNA HAZELTON/Atty. for mv.

**No tentative ruling.**

5. [13-11651](#)-A-13 STEPHANIE VALDEZ-GARCIA  
MHM-2  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE , MOTION TO  
DISMISS CASE FOR FAILURE TO  
MAKE PLAN PAYMENTS  
7-19-13 [[51](#)]

JERRY LOWE/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

6. [13-14255](#)-A-13 LEONID DUBINSKIY  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO PROVIDE TAX  
DOCUMENTS , MOTION TO DISMISS  
CASE FOR FAILURE TO FILE  
DOCUMENTS , MOTION/APPLICATION  
TO DISMISS CASE  
7-31-13 [[25](#)]

**No tentative ruling.**

7. [13-10971](#)-A-13 JEREMY WINANS  
MHM-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
7-19-13 [[111](#)]

HENRY NUNEZ/Atty. for dbt.  
MOTION WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

8. [13-11486](#)-A-13 MANUEL/MARIA DIAS  
MHM-1  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
6-13-13 [[21](#)]

TIMOTHY SPRINGER/Atty. for dbt.

**No tentative ruling.**

9. [13-14693](#)-A-13 DONALD/MARGARET HALL  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
8-15-13 [[29](#)]

**No tentative ruling.**

**9:30 a.m.**

1. [08-16673](#)-A-13 ANA CONCEPCION  
[13-1072](#)  
CONCEPCION V. ENMARK ET AL  
GARY HUSS/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT  
6-28-13 [[1](#)]

**Final Ruling**

The status conference is continued to October 3, 2013, at 9:30 a.m.