

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge  
2500 Tulare Street, 5<sup>th</sup> Floor  
Department A, Courtroom 11  
Fresno, California

**THURSDAY**

**SEPTEMBER 12, 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. [13-13518](#)-A-13 JACK/CAROL PEERY MOTION TO CONFIRM PLAN  
RHB-1 7-29-13 [[27](#)]  
JACK PEERY/MV  
RICHARD BAMBL/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: First Modified Chapter 13 Plan, filed July 25, 2013, ECF No. 30

**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).

### **CONFIRMATION**

The debtor moves to confirm the First Modified Chapter 13 Plan, filed July 25, 2013, ECF No. 30. 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(b): Discrimination

Chapter 13 plans are governed by 11 U.S.C. §§ 1322, 1325. Section 1322(b)(1) provides, "Subject to subsections (a) and (c) of this section, the plan may--(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, *but may not discriminate unfairly* against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims." (emphasis added).

The Chapter 13 trustee objects because he contends that the debtors have failed to value a 2007 Ford F150 pickup, valued at \$9,000 and against which the debtor owes \$13,948.67. The claim is to be paid in full, notwithstanding the inapplicability of 11 U.S.C. § 1325(a) (hanging paragraph). In contrast, unsecured creditors will be paid only 1%. In the eyes of the Chapter 13 trustee, the disparate treatment is unfair discrimination.

In deciding unfair discrimination, courts ordinarily apply a four-part test: (1) whether the discrimination has a reasonable basis; (2) whether the debtor can execute the plan without the discrimination; (3) whether the discrimination is proposed in good faith; and (4) whether the degree of discrimination is directly related to the basis for the discrimination. *In re Wolff*, 22 B.R. 510, 512 (9th Cir. BAP 1982). Having offered no evidence on these factors, the debtors have not sustained their burden of proof.

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 debtors have not carried their burden of proof. The most recent Schedules I and J were filed May 17, 2013. Voluntary Petition, May 17, 2013, ECF No. 1. These schedules are too remote in time to support confirmation. The court is aware that the debtor has filed a letter H & R Block regarding Carol Peery and pay stubs. But these are not substitutes for Schedules I and J and provide insufficient information.

**LOCAL BANKRUPTCY RULE 3015-1(d)(1)**

Local Bankruptcy Rule 3015-1(d)(1) requires the debtor to file the plan. In this case, the First Modified Chapter 13 Plan, filed July 25, 2013, ECF No. 30, was only filed as an exhibit to the motion. See, Exhibits to Debtors' Motion to Confirm First Modified Chapter 13 Plan, July 29, 2013, ECF No. 30. While attaching the plan to the motion as an exhibit is an acceptable practice, the plan must also be filed separately.

**75 DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1). Failure to confirm a plan within the 75 day period described herein shall not form the basis of a motion to dismiss, if the debtor has pending: (1) a confirmable Chapter 13 plan noticed for hearing not later than the end of the 75 day period; and (2) all motions to value or avoid liens on which the plan is predicated have been noticed for hearing not later than the end of the 75 day period and the only reason that the plan has not been confirmed and that those motions have not been granted is opposition of the impacted creditor.

2. [13-15521](#)-A-13 ROSA CARRILLO MOTION TO EXTEND AUTOMATIC STAY  
YG-1 8-30-13 [[13](#)]  
ROSA CARRILLO/MV  
YELENA GUREVICH/Atty. for dbt.

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor 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. The court notes that two creditors requesting special notice do not appear on the proof of service for this motion.

3. [09-15228](#)-A-13 DAVID/SUSAN NANNINI MOTION TO MODIFY PLAN  
PLF-3 8-1-13 [[51](#)]  
DAVID NANNINI/MV  
PETER FEAR/Atty. for dbt.

#### **Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

4. [09-15228](#)-A-13 DAVID/SUSAN NANNINI MOTION TO PURCHASE VEHICLE

PLF-4  
DAVID NANNINI/MV  
PETER FEAR/Atty. for dbt.

8-1-13 [58]

### **Tentative Ruling**

**Motion:** Approve Debtor's Purchase of a Vehicle

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

The debtor seeks court authorization to purchase a vehicle. The debtor had 3 vehicles at the time the petition was filed, but one of the vehicles, a 1995 Ford Windstar, stopped working. This vehicle was joint debtor Susan M. Nannini's primary vehicle used as her primary commuting vehicle. The motion explains why the other two vehicles are not suitable replacements for joint debtor Susan M. Nannini.

Section 5.02 of the debtor's modified plan, which will be confirmed on September 12, 2013, and the Local Bankruptcy Rules require court authorization for the debtor to transfer property. See 1st Modified Ch. 13 Plan § 5.02, ECF No. 52; LBR 3015-1(i)(5). The vehicle will be purchased using only funds in the amount of \$11,992.60 that the debtor received for his services as an executor of an estate of a relative. The debtor also received \$22,068.79 as a beneficiary of such estate, and that amount is being paid to creditors under the debtor's chapter 13 plan. For these reasons, the court will grant the motion, and the trustee will approve the order as to form and content.

5. [13-12932](#)-A-13 THONG NGUYEN  
DAT-4  
THONG NGUYEN/MV

MOTION TO CONFIRM PLAN  
7-31-13 [52]

ANH TRINH/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.

6. [10-18237](#)-A-13 GEORGE/CYNTHIA ALVAREZ MOTION TO AVOID LIEN OF KELKRIS  
RLF-3 ASSOCIATES, INC.  
GEORGE ALVAREZ/MV 8-21-13 [[53](#)]  
SHANE REICH/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Pending

**Order:** Prepared by moving party

### **PROPERTY LOCATED AT 22 N. BLISS AVENUE, CLOVIS, CALIFORNIA**

**Liens Plus Exemption:** \$332,858.11

**Property Value:** \$226,000.00

**Judicial Lien Avoided:** \$10,950.11

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 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 court notes that the proof of service does not contain the correct spelling of the responding party's name as it appears in the motion.

Any difference between the name of the entity against whom relief is sought and the name of the entity served suggests that service was insufficient and made on a party other than the party named in the motion. At the moving party's option, the court will continue the hearing on the matter to allow for supplemental service.

If the moving party is satisfied with service of the motion based on the present proof of service, the court will grant the motion. 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.

**PROPERTY LOCATED AT 2368 S. HELM AVENUE, FRESNO, CALIFORNIA**

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

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

Here, no exemption has been claimed in the property subject to the responding party's lien. The most recently amended Schedule C was filed January 18, 2012. An exemption is claimed only as to the real property located at 22 N. Bliss Avenue, Clovis, California. Accordingly, a prima facie case has not been made for relief under § 522(f).

In addition, the property appears to be surrendered to a secured creditor by having been placed in Class 3 of the plan. The court does not understand why a motion to avoid a lien on such property is necessary.

7. [13-15341](#)-A-13 FOREST/DENEICE JOHNSON MOTION TO VALUE COLLATERAL OF  
GMA-2 CHASE  
FOREST JOHNSON/MV 8-14-13 [[15](#)]  
GEOFFREY ADALIAN/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).

8. [11-19746](#)-A-13 DARWIN/MARION ROBERTSON MOTION TO MODIFY PLAN  
ASW-6 8-12-13 [[87](#)]  
DARWIN ROBERTSON/MV  
ADRIAN WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

9. [13-10146](#)-A-13 MICHELLE MORENO MOTION TO MODIFY PLAN  
GMA-2 8-8-13 [[34](#)]  
MICHELLE MORENO/MV  
GEOFFREY ADALIAN/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.

10. [13-13646](#)-A-13 JANELLE JAMES MOTION TO AVOID LIEN OF LVNV  
PBB-1 FUNDING LLC  
JANELLE JAMES/MV 7-24-13 [[18](#)]  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

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

11. [12-11763](#)-A-13 JOSE/MARY ARANA MOTION TO APPROVE LOAN  
JCW-1 MODIFICATION  
M AND T BANK/MV 8-13-13 [[60](#)]  
ADRIAN WILLIAMS/Atty. for dbt.  
JENNIFER WONG/Atty. for mv.  
NON-OPPOSITION

**Final Ruling**

**Motion:** Loan Modification Approval

**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 motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

12. [13-11576](#)-A-13 BENITO/MARTHA GALARZA CONTINUED OBJECTION TO  
PPR-1 CONFIRMATION OF PLAN BY  
DEUTSCHE BANK NATIONAL TRUST DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV COMPANY  
4-26-13 [[33](#)]  
THOMAS GILLIS/Atty. for dbt.  
BONNI MANTOVANI/Atty. for mv.  
LIMITED NON-OPPOSITION

[This matter will be called subsequent to the Motion to Value, TOG-1, Item No. 13.]

**Tentative Ruling**

The court will inquire as to the status of this matter.

13. [13-11576](#)-A-13 BENITO/MARTHA GALARZA CONTINUED MOTION TO VALUE  
TOG-1 COLLATERAL OF BANK OF AMERICA,  
BENITO GALARZA/MV N.A.  
4-5-13 [[20](#)]  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

The court will inquire into the status of settlement.

14. [13-14785](#)-A-13 MICHAEL WHITE MOTION TO VALUE COLLATERAL OF  
PBB-1 INTERNAL REVENUE SERVICE  
MICHAEL WHITE/MV 8-5-13 [[15](#)]  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Personal Property]  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

**Collateral Value:** \$10,280.42

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 motion requests that the court value the debtor's personal property described more fully in the motion and supporting papers. 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. See 11 U.S.C. § 506(a).

15. [13-14086](#)-A-13 IDA JONES MOTION TO VALUE COLLATERAL OF  
SAH-1 SPRINGLEAF FINANCIAL  
IDA JONES/MV 7-18-13 [[18](#)]

SUSAN HEMB/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D. Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). "Thus, to meet the requirements of the Rules and comply with considerations of due process, a Rule 3012 motion (either with or without a plan) must be served on the affected creditors in accord with Rule 7004." *Millspaugh*, 302 B.R. at 102 (emphasis added); see also *In re Pereira*, 394 B.R. 501, 506-07 (Bankr. S.D. Cal. 2008) (Chapter 13 plan containing lien stripping proposal must be served on the affected creditor pursuant to Rule 7004). Rule 3012 notice alone will not suffice for the motion. See *Pereira*, 394 B.R. at 506.

In this case, the motion did not comply with Rule 7004. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service.

16. [13-14086](#)-A-13 IDA JONES MOTION TO CONFIRM PLAN  
SAH-2 7-19-13 [[23](#)]  
IDA JONES/MV  
SUSAN HEMB/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The plan withdrawn by the moving party, the motion is dropped as moot.

17. [13-14086](#)-A-13 IDA JONES MOTION TO CONFIRM PLAN  
SAH-4 7-30-13 [[30](#)]  
IDA JONES/MV  
SUSAN HEMB/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The plan withdrawn by the moving party, the motion is dropped as moot.

18. [13-14592](#)-A-13 JESUS CASTELLANO AND OBJECTION TO CONFIRMATION OF  
RWR-1 ANGIE VEGA PLAN BY PACIFIC SERVICE CREDIT  
PACIFIC SERVICE CREDIT UNION  
UNION/MV 8-20-13 [[22](#)]  
JOEL WINTER/Atty. for dbt.  
RUSSELL REYNOLDS/Atty. for mv.

**Tentative Ruling**

**Objection:** Confirmation of Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required  
Plan: Chapter 13 Plan, filed June 30, 2013, ECF No. 5

**Disposition:** Sustained

**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).

Secured creditor Pacific Service Credit objects to confirmation, arguing the plan does not pay the value of its claim, 11 U.S.C. § 1325(a)(5)(B)(ii), and the proposed rate of 4.5% does not comply with *Till v. SCS Credit Corp.*, 541 U.S. 465, 478-479 (2004). Pacific Service holds a purchase money security interest in the debtor's vehicle, a 2006 Chrysler 300 Touring Sedan. The debtor has not filed a response to the objection.

## OBJECTION

### Section 1325(a)(5)(B)(ii): Full Value

Debtors' Chapter 13 plan is posited on a valuation of the secured creditor's collateral. The plan attempts to cram down the value of the 2006 Chrysler from the amount owed, \$19,645.67 according to the creditor, to \$10,121.00, the value of the collateral. See, Chapter 13 Plan § 2.09, filed June 30, 2013, ECF No. 5. Local Bankruptcy Rule 3015-1(j) mandates that such a valuation must be accomplished by motion, not plan confirmation, and that the motion be granted prior to plan confirmation. But no such valuation motion has been filed or prosecuted. As a result, the objection will be sustained.

### Till Interest Rate

In *Till v. SCS Credit Corp.*, 541 U.S. 465, 478-479 (2004), the Supreme Court held that a debtor cramming down the value of collateral pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii) must pay the secured creditor "prime-plus" a risk factor. Here, the debtor proposes to pay the secured creditor 4.5% interest. But the debtors have offered no evidence that this interest rate satisfies the *Till* requirements. As a result, the objection will be sustained.

## 75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1). Failure to confirm a plan within the 75 day period described herein shall not form the basis of a motion to dismiss, if the debtor has pending: (1) a confirmable Chapter 13 plan noticed for hearing not later than the end of the 75 day period; and (2) all motions to value or avoid liens on which the plan is predicated have been noticed for hearing not later than the end of the 75 day period and the only reason that the plan has not been confirmed and that those motions have not been granted is opposition of the impacted creditor.

19. [13-14397](#)-A-13 VERNON REYNOLDS  
MBB-1  
BANK OF AMERICA, N.A./MV  
PETER BUNTING/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.  
RESPONSIVE PLEADING

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
8-20-13 [[16](#)]

## Tentative Ruling

**Objection:** Confirmation of Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required  
Plan: Chapter 13 Plan, filed June 25, 2013, ECF No. 5

**Disposition:** Overruled

**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).

Secured creditor Bank of America objects, citing feasibility and failure to cure the pre-petition arrearage of \$2,121.49. Claim No. 3, July 24, 2013.

#### **ARREARAGE**

Bank of America also argues that the plan fails to cure the arrearage in a reasonable time. The objection will be overruled. First, the debtor has cured the arrearage. See, Declaration of Vernon Reynolds ¶¶ 45, August 30, 2013, ECF No. 22. But more importantly, the mortgage is provided for in Class 4. Chapter 13 Plan 2.11, filed June 25, 2013, ECF No. 5. Class 4 of the plan provides, "Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract. As a result, upon confirmation, the secured creditor will have the same rights as it had prior to the filing of the petition and the objection will be overruled.

#### **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 plan payment is \$800 per month. Chapter 13 Plan § 1.10, filed June 25, 2013, ECF No. 5. Schedules I and J reflect disposable income of \$802.66. Line 20c of Schedule J, June 25, 2013, ECF No. 1. The court fails to appreciate the creditor's argument that the plan is not feasible.

9:15 a.m.

1. [13-14155](#)-A-13 RALPH/ELVA AGUERO  
MHM-1  
MICHAEL MEYER/MV  
NELLIE AGUILAR/Atty. for dbt.

MOTION TO DISMISS CASE  
8-2-13 [[25](#)]

**No tentative ruling.**

2. [13-11484](#)-A-13 AUDREY CARTER  
MHM-1  
MICHAEL MEYER/MV  
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

CONTINUED MOTION TO DISMISS  
CASE FOR FAILURE TO MAKE PLAN  
PAYMENTS  
8-8-13 [[47](#)]

**No tentative ruling.**

9:30 a.m.

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

**No tentative ruling.**

2. [12-17896](#)-A-13 BRIAN/LINDA RIDDLE CONTINUED STATUS CONFERENCE RE:  
[13-1062](#) COMPLAINT  
RIDDLE ET AL V. ROBINSON ET AL 6-4-13 [[1](#)]  
PETER BUNTING/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling.**

3. [12-17896](#)-A-13 BRIAN/LINDA RIDDLE MOTION FOR ENTRY OF DEFAULT  
[13-1062](#) PBB-1 JUDGMENT  
RIDDLE ET AL V. ROBINSON ET AL 8-30-13 [[13](#)]  
PETER BUNTING/Atty. for mv.

**Tentative Ruling**

**Motion:** Entry of Default

**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 motion for entry of default will be granted.

10:00 a.m.

1. [12-19290](#)-A-12 DIMAS/ROSA COELHO CONTINUED MOTION TO VALUE  
TOG-7 COLLATERAL OF HAMILTON AND  
DIMAS COELHO/MV  
JOSEPHINE SANTOS  
5-16-13 [[83](#)]  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Continued Motion to Value Collateral Real Property

**Notice:** Continued date of hearing

**Disposition:** Continued for evidentiary hearing

**Order:** Civil minute order

**Property:** Real property located at 435 East Orange Street, Hanford, California

The Debtors move to value collateral that is their principal residence for the purpose of classifying Hamilton and Josephine Santos's (the "Santos") junior lien as an unsecured claim. The Debtors had previously entered into a stipulation with the senior lienholder Federal National Mortgage Association ("FNMA"). See First Amended Stipulation on Debtors' Motion to Value Collateral (ECF No. 77). The court requested supplemental briefs from the Debtors and the Santos on the issue of the effect of the stipulation on the present motion. The Santos have filed a brief, but the Debtors have not.

Turning to the stipulation, the court finds that not only did the Debtors and FNMA stipulate to a value of the collateral (\$182,500) (which is not binding on the Santos), the parties also stipulated to the amount of FNMA's allowed secured claim (also at \$182,500). As the stipulation reads, "Creditor's claim for the Subject Loan shall be allowed as a non-priority general unsecured claim in the amount per Creditor's Proof of Claim EXCEPT for \$182,500.00 which is secured and to be paid at 4.75%." As a result, for purposes of this bankruptcy case, FNMA only has a secured claim in the amount of \$182,500, and this is the figure that should be used in determining whether there is equity for Santos' junior lien. Since FNMA, by the stipulation, has essentially waived the secured status of its claim above the \$182,500 amount (again, only for purposes of this bankruptcy case), the court must treat FNMA's lien as being valued at only \$182,500. If the court relied on the actual value of FNMA's entire claim in this matter to determine that the Santos' junior lien is completely undersecured, then that would produce a windfall of equity to the Debtors.

Because there appears to be some equity for the Santos' junior lien, valuation of the collateral will be necessary. At the hearing, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's valuation must be resolved before the court can rule on the relief requested.

Before the hearing, the parties shall attempt to meet and confer to determine: (i) whether the court has fully and fairly described the evidentiary issues requiring resolution; (ii) whether any party wishes to engage in discovery prior to the evidentiary hearing and the time necessary to complete discovery; (iii) the deadlines for any

dispositive motions or evidentiary motions; (iv) the dates for the evidentiary hearing and the trial time that will be required; (v) whether the parties wish to use or waive the provisions of Local Bankruptcy Rule 9017-1; and (vi) any other such matters as may be necessary or expedient to the resolution of these issues.