

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
Bakersfield, California

**PLEASE TAKE NOTICE THAT ALL HEARINGS WILL BE HELD AT THE
BAKERSFIELD FEDERAL COURTHOUSE**

510 19TH STREET, SECOND FLOOR

BAKERSFIELD, CALIFORNIA

WEDNESDAY

SEPTEMBER 25, 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. [13-14804](#)-A-13 RIGO CHAVEZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-16-13 [[21](#)]

Tentative Ruling

Order to Show Cause: Dismissal of Case for Failure to Pay Fees
Date Issued: August 16, 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.

2. [12-19411](#)-A-13 RICHARD/MINDI FARRELL AMENDED MOTION FOR COMPENSATION
LKW-3 FOR LEONARD K. WELSH, DEBTOR'S
LEONARD WELSH/MV ATTORNEY(S), FEE: \$1112.50,
EXPENSES: \$0.00
8-21-13 [[72](#)]
- LEONARD WELSH/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: Leonard Welsh
Compensation approved: \$1,112.50
Costs approved: \$0.00
Aggregate fees and costs approved: \$1,112.50
Retainer held: \$0.00
Amount to be paid as administrative expense: \$1,112.50

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.

3. [09-15612](#)-A-13 GREGORY/PATRICIA JOHNSON MOTION TO INCUR DEBT
RSW-4 8-21-13 [[51](#)]
GREGORY JOHNSON/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Student Loan]

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

Disposition: Granted in part as to incurring new debt, denied in part as to attorney's cost recovery

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 to incur new debt to finance their daughter's education. The debtors' declaration states that they are current on their plan payments. The total amount of the loan is \$23,248, which will cover their daughter's first year of tuition. This debt will not affect the debtors' plan payment because repayment of the loan will begin after completion of the Chapter 13 plan. The court will grant the motion and the trustee will approve the order as to form and content.

The debtors are not authorized pay the actual costs of the preparation and mailing of the motion and supporting declaration. The plan does not provide for such costs to be paid. Further, fees and costs are only recoverable by separate application. See Fed. R. Bankr. P. 2016(a).

4. [13-11119](#)-A-13 SALVADOR LOPEZ AND CONNIE MOTION TO SELL
PK-3 LOZANO 8-28-13 [[50](#)]
SALVADOR LOPEZ/MV
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted subject to the condition that the sale is not made to nominee or designee of the buyer

Order: Prepared by moving party

Property: 132 10th Street, McFarland, California

Buyer: Smith and Theresa Efada, but not their undisclosed nominee

Sale Price: \$55,000.00 (short sale, all cash sale)

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).

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.

In the future, counsel should ensure that the notice of hearing contains all the material terms and conditions of the sale. *See* Fed. R. Bankr. P. 2002(c)(1) (requiring the terms and conditions of any private sale be included in the notice of hearing); *see also* LBR 9014-1(d)(4) ("When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set for the essential facts necessary for a party to determine whether to oppose the motion."). Here, the notice does not state that the sale is subject to overbid at the hearing.

5. [13-11119](#)-A-13 SALVADOR LOPEZ AND CONNIE MOTION TO APPROVE LOAN
PK-4 LOZANO MODIFICATION
SALVADOR LOPEZ/MV 8-28-13 [[56](#)]
PATRICK KAVANAGH/Atty. for dbt.

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.

6. [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 -
WITHDRAWN PER TRUSTEE

Tentative Ruling

The motion will be denied. On August 27, 2013, the court continued this matter to resolve a "*Till*" interest rate problem. See, *Till v. SCS Credit Corp.*, 541 U.S.C. 465 (2004). See, Civil minutes, August 27, 2013, ECF No. 70. The Status Conference Statement, September 18, 2013, ECF No. 73, is unclear as to the resolution, stating "Debtors will maintain the same interest rate to Ford Motor Credit on th two purchase money secured claim." *Id.* at 1a. But the Status Report is unclear as whether the "same interest rate" refers to the interest rate in the purchase contract or the plan. The record does not reflect the consent of the impacted secured creditor.

7. [09-18625](#)-A-13 RANDY/BRIDGETTE JONES MOTION TO MODIFY PLAN
RSW-1 7-26-13 [[41](#)]
RANDY JONES/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

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.

8. [12-13727](#)-A-13 GREGORY SCHULTZ MOTION TO CONFIRM PLAN
RSW-6 8-21-13 [[129](#)]
GREGORY SCHULTZ/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

[This matter will be called subsequent to the Motion to Incur Debt, RSW-7, Item No. 9]

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 August 21, 2013, ECF No. 133

Disposition: Denied

Order: Civil minute order

CONFIRMATION

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 August 21, 2013, ECF No. 133. 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.

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. There are two problems. First, the debtor has not obtained an order to value the vehicle financed with the Ventura County Credit Union and, without such an order valuing the vehicle, the plan will not fund. Second, the plan misstates the amount paid into the plan. The plan states the debtor has paid \$35,675.00; the debtor has actually only paid \$34,375.00. As a result, the motion will be denied.

MOTION TO DISMISS

The Chapter 13 trustee shall prosecute a motion to dismiss this case to be heard on the October 23, 2013, calendar. The case was filed April 25, 2012. The debtor has never confirmed a plan. This unreasonable delay that is prejudicial. 11 U.S.C. § 1307(c)(1). The motion shall not be withdrawn without leave of court. In the future, absent circumstances that are either compelling or beyond the debtor's control the Chapter 13 trustee shall prosecute a motion to dismiss not later than 75 days past the date of the original confirmation hearing.

9. [12-13727](#)-A-13 GREGORY SCHULTZ
RSW-7
GREGORY SCHULTZ/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING -
WITHDRAWN PER TRUSTEE

MOTION TO INCUR DEBT
8-21-13 [[134](#)]

Tentative Ruling

Motion: Incur Debt

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

Disposition: Granted, conditionally upon the written approval of the second deed of trust holder

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 court will grant the motion, subject to the holder of the second deed of trust holder consenting in escrow to the subordination of its loan. 11 U.S.C. § 364(d) provides, "The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if--(A) the trustee is unable to obtain such

credit otherwise; and (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. (2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection." No showing of adequate protection made, the court will grant the motion only if the holder of the second deed of trust consents, in escrow, to the subordination.

10. [13-12631](#)-A-13 MARK/FABIOLA BUTCHER
PK-5
MARK BUTCHER/MV
CONTINUED MOTION TO VALUE
COLLATERAL OF JPMORGAN CHASE
BANK, N.A./WELLS FARGO BANK,
N.A.
7-30-13 [[114](#)]
- PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING,
STIPULATION FILED

Final Ruling

The matter resolved by stipulated order, the motion is dropped as moot.

11. [13-12631](#)-A-13 MARK/FABIOLA BUTCHER
PK-6
MARK BUTCHER/MV
MOTION TO CONFIRM PLAN
8-21-13 [[138](#)]
- PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING,
STIPULATION FILED

Tentative Ruling

At the hearing on the matter, 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 disputed, material factual issues must be resolved before the court can rule on the relief requested. The court identifies the following factual issues: (1) *Till* interest; (2) discrimination/same treatment of class; and (3) projected disposable income.

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.

12. [11-17232](#)-A-13 KERRY STEVENS
RSW-2
KERRY STEVENS/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED 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.

13. [13-13632](#)-A-13 ROMEO/ROSEMARY TUTOP CONTINUED OBJECTION TO
MDE-1 CONFIRMATION OF PLAN BY U.S.
U.S. BANK NATIONAL BANK NATIONAL ASSOCIATION
ASSOCIATION/MV 6-12-13 [[11](#)]
ROBERT WILLIAMS/Atty. for dbt.
MARK ESTLE/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

The court will inquire as to the status of revised stipulation.

14. [13-13632](#)-A-13 ROMEO/ROSEMARY TUTOP OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY MICHAEL H. MEYER
MICHAEL MEYER/MV 8-22-13 [[29](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

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 May 22, 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).

The debtor moves to confirm the Chapter 13 Plan, filed May 22, 2013, ECF No. 5. 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.

There are two problems. First, the possible \$60,000 fraudulent transfer of a residence, which, if recovered would increase the amount payable under 11 U.S.C. § 1325(a)(4). Second, the plan includes disposition of asset in violation of Local Bankruptcy Rule 3015-1(i). As a result, the objection will be sustained.

15. [13-13633](#)-A-13 CRAIG/VICKI CARLSON
RSW-1
CRAIG CARLSON/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
9-10-13 [[23](#)]

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: \$100,000.00

Senior Liens: \$102,256.43

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).

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.

16. [10-12441](#)-A-13 JEFFREY BROWN
NES-3
JEFFREY BROWN/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SPECIALIZED LOAN SERVICING
7-31-13 [[55](#)]

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).

17. [10-12441](#)-A-13 JEFFREY BROWN
NES-4
JEFFREY BROWN/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GREEN TREE
7-31-13 [[61](#)]

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, service of the motion was insufficient. 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 of the *responding party* authorized to accept service. The first time the name Green Tree appears on the proof of service, it appears with the name Kara Taylor listed before the name Green Tree, but no indication of Taylor's status as an officer or other authorized agent is indicated. Although this address is the address found on the proof of claim as the address to which notices should be sent, an officer or authorized agent must nevertheless be served as required by Rule 7004(b)(3).

The second time Green Tree appears on the proof of service, it appears as "Green Tree Servicing LLC." Further, a copy of the California Secretary of State's information for "Green Tree Servicing LLC" and its agent for service is attached to the proof of service showing that CT Corporation System is the agent for service for this entity. However, the title of the motion shows the responding party as "Green Tree" and the declaration also refers only to "Green Tree." 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.

18. [13-14441](#)-A-13 STEPHEN/TERESA GALVAN
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY MICHAEL H. MEYER
8-22-13 [[16](#)]

ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

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 26, 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).

CONFIRMATION

The debtor moves to confirm the Chapter 13 Plan, filed June 26, 2013, ECF No. 5. 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. Local Bankruptcy Rule 3015-1(j) requires valuation motions to be resolved prior to confirmation.

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. [12-16549](#)-A-13 VANESSA WARD
RSW-1
VANESSA WARD/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO MODIFY PLAN
8-19-13 [[38](#)]

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.

20. [13-13550](#)-A-13 DANIEL MADRIAGA
PWG-1
PHILLIP GILLET/MV

MOTION FOR COMPENSATION FOR
PHILLIP W. GILLET JR., DEBTOR'S
ATTORNEY(S), FEE: \$1927.50,
EXPENSES: \$14.00
8-9-13 [[25](#)]

PHILLIP GILLET/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: Phillip Gillet, Jr.

Compensation approved: \$3,927.50

Costs approved: \$14.00

Aggregate fees and costs approved: \$3,941.50

Retainer held: \$2,000.00

Amount to be paid as administrative expense: \$1,941.50

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.

21. [13-14252](#)-A-13 JAIME VENTURA AND MARIA OBJECTION TO CONFIRMATION OF
NMB-1 AGUILAR PLAN BY DEUTSCHE BANK NATIONAL
DEUTSCHE BANK NATIONAL TRUST TRUST COMPANY
COMPANY/MV 8-22-13 [[15](#)]
ROBERT WILLIAMS/Atty. for dbt.
NATHAN BRODNAX/Atty. for mv.

Tentative Ruling

Objection: Confirmation Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required
Plan: Chapter 13 Plan, filed June 18, 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).

CONFIRMATION

Secured creditor Deutsche Bank objects to plan confirmation. It contends: (1) the debtor owes pre-petition arrears of \$7,166.10; and (2) monthly installment payment is incorrect; and (3) the mortgage is mis-classified in Class 4. The objection will be overruled. Local Rule 9014-1(d)(6) requires objections to be supported by evidence. No declaration is offered in support of the arrearage, which is the central question.

VIOLATION OF REVISED GUIDELINES FOR PREPARATION OF DOCUMENTS

Pleadings filed in the Eastern District of California Bankruptcy Court must be filed separately. Revised Guidelines for Preparation of Documents § 3, EDC 2-901. Future failure to comply with guidelines for preparation of documents or local rules may result in denial of the relief requested or sanctions against counsel.

22. [12-10955](#)-A-13 JEFFERY BAILEY
RSW-5
JEFFERY BAILEY/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

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

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.

23. [09-62859](#)-A-13 NEIL/JENNIFER WEITING
RSW-2
NEIL WEITING/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL
9-4-13 [[68](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Denied without prejudice

Order: Prepared by moving party

The motion and notice do not state the name of the buyer. Rule 2002(c)(1) requires that notice be given of the terms and conditions of any private sale. The buyer's name is a material term of a sale. In addition, the notice does not contain other material terms and conditions, such as a general description of the property (e.g., the location) and the price, although the declaration filed in support does contain such information, and was served on the master mailing list. The notice also does not contain language stating that the sale is subject to overbid opportunity at the hearing.

In addition, the debtors' attorney requests cost recovery outside the plan. The court will not authorize the debtors to pay the actual costs of the preparation and mailing of the motion and supporting declaration. The plan does not provide for such costs to be paid. In addition, pursuant to the Rights and Responsibilities executed by

counsel, counsel elected to be compensated pursuant to the opt-in fee under LBR 2016-1(c). Counsel has not shown that post-confirmation work requiring payment of such amount is substantial and unanticipated. Finally, fees and costs are only recoverable by separate application. See Fed. R. Bankr. P. 2016(a).

24. [11-62861](#)-A-13 ROBERT/LYUDMILA BARRAZA MOTION TO APPROVE LOAN
PK-4 MODIFICATION
ROBERT BARRAZA/MV 8-28-13 [[67](#)]
PATRICK KAVANAGH/Atty. for dbt.

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.

25. [11-17962](#)-A-13 GERARDO/MARIBEL RIVERA MOTION TO MODIFY PLAN
PWG-2 7-19-13 [[53](#)]
GERARDO RIVERA/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING -
WITHDRAWN PER TRUSTEE

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

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

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

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

26. [13-12265](#)-A-13 LETICIA GUTIERREZ MOTION TO VALUE COLLATERAL OF
TGF-2 ONEMAIN FINANCIAL
LETICIA GUTIERREZ/MV 8-28-13 [[40](#)]
VINCENT GORSKI/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

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

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

Service of the motion was insufficient. 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. The responding party, Onemain Financial, is some sort of corporate entity covered by Rule 7004(b)(3).

Further the notice of hearing provides conflicting information regarding who the responding party is. The notice indicates that the responding party is Citifinancial, the holder of the second deed of trust. The motion, however, names Onemain Financial as the responding party and the holder of the second deed of trust.

27. [13-14768](#)-A-13 GREGORY/SUSAN ERNST
BMO-1
DESERT VALLEYS FEDERAL CREDIT
UNION/MV
STEVEN ALPERT/Atty. for dbt.
BRANDON ORMONDE/Atty. for mv.
WITHDRAWN

OBJECTION TO CONFIRMATION OF
PLAN BY DESERT VALLEYS FEDERAL
CREDIT UNION
8-23-13 [[21](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

28. [13-14768](#)-A-13 GREGORY/SUSAN ERNST
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
STEVEN ALPERT/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
WITHDRAWN

OBJECTION TO CONFIRMATION OF
PLAN BY AMERICAN HONDA FINANCE
CORPORATION
8-6-13 [[15](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

29. [13-14172](#)-A-13 KRISTA TWIST
KTT-1
KRISTA TWIST/MV
KRYSTINA TRAN/Atty. for dbt.

MOTION TO CONFIRM PLAN
8-12-13 [[20](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

CONFIRMATION

The original notice of hearing incorrectly stated the hearing date as July 31, 2013. Notice of Hearing, August 12, 2013, ECF No. 21. An amended, and corrected, notice of hearing was filed. Amended Notice, August 13, 2013, ECF No. 25. But it was never served. LBR 9014-1(d).

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.

30. [13-14172](#)-A-13 KRISTA TWIST
KTT-2
KRISTA TWIST/MV
KRYSTINA TRAN/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
8-21-13 [[26](#)]

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).

31. [12-18773](#)-A-13 STEPHEN/FRANCES MENDEZ
PK-5
STEPHEN MENDEZ/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
8-28-13 [[76](#)]

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.

32. [10-18077](#)-A-13 FAITH TUBI MOTION TO DISMISS CASE
MHM-3 8-13-13 [[66](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to October 23, 2013, at 9:00 a.m.

33. [13-13383](#)-A-13 BOBBY MAXWELL OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY MICHAEL H. MEYER
MICHAEL MEYER/MV 8-22-13 [[41](#)]
PATRICK KAVANAGH/Atty. for dbt.

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 May 20, 2013, ECF No. 11

Disposition: Sustained

Order: Civil minute order

OBJECTION

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).

Chapter 13 trustee Michael Meyer objects to confirmation under §§ 1325(a)(4) (liquidation), 1325(a)(6) (feasibility) and 1325(a)(7) (good faith). The factual basis for each objection is the same. The debtor's schedules show a 50% interest in the estate of Iva Jean Maxwell, which he values at \$50,000. Additionally, the plan calls for a \$50,000 payment in the last month, presumably the source of which will be the trust. The trustee has requested, but has not received, documentation as to value the debtor's interest and the ability \$50,000 final payment. 11 U.S.C. § 521(a)(3). Because the debtor carries the burden of proof, 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.

34. [13-10286](#)-A-13 ALI TORKAMAN
SJS-2
ALI TORKAMAN/MV
SUSAN SALEHI/Atty. for dbt.
CORRECTED NOTICE FILED FOR
10/23/13 AT 9 A.M.
- OBJECTION TO CLAIM OF FARGAH
TORKAMAN, CLAIM NUMBER 8
8-19-13 [[49](#)]

Final Ruling

Pursuant to the corrected notice filed August 22, 2013 (ECF No. 57), the hearing on this matter will take place on October 23, 2013 at 9:00 a.m.

35. [13-14296](#)-A-13 JOSE SANCHEZ
PWG-1
JOSE SANCHEZ/MV
PHILLIP GILLET/Atty. for dbt.
- MOTION TO VALUE COLLATERAL OF
FORD MOTOR CREDIT COMPANY, LLC
9-10-13 [[34](#)]

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$28,080.00

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

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). Value is defined as "replacement value" on the date of the petition, which means the "price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* § 506(a)(2). The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

36. [12-15899](#)-A-13 CHRISTOPHER JEROME
RSW-2
CHRISTOPHER JEROME/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING -
WITHDRAWN

CONTINUED MOTION TO AVOID LIEN
OF CABRILLO CREDIT UNION
5-2-13 [[35](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9:15 a.m.

1. [13-14638](#)-A-13 STEPHEN/LAURA MANN
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
9-4-13 [[17](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

2. [13-13155](#)-A-13 DAVID MURBACH
MHM-2
MICHAEL MEYER/MV

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

D. GARDNER/Atty. for dbt.

No tentative ruling.

3. [13-14583](#)-A-13 DIXIE JOHNSON
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
9-4-13 [[17](#)]

STEPHEN LABIAK/Atty. for dbt.

No tentative ruling.

4. [13-10884](#)-A-13 DEWAYNE MORRIS
MHM-1
MICHAEL MEYER/MV

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

RABIN POURNAZARIAN/Atty. for dbt.

No tentative ruling.

9:30 a.m.

1. [13-10286](#)-A-13 ALI TORKAMAN CONTINUED STATUS CONFERENCE RE:
[13-1026](#) COMPLAINT
TORKAMAN V. TORKAMAN 3-11-13 [[1](#)]
SUSAN SALEHI/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-10286](#)-A-13 ALI TORKAMAN MOTION FOR SUMMARY JUDGMENT
[13-1026](#) SJS-1 8-17-13 [[20](#)]
TORKAMAN V. TORKAMAN
SUSAN SALEHI/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion for Summary Judgment

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

Disposition: Denied

Order: Civil minute order

The plaintiff-debtor Ali Torkaman (the "Debtor") has filed a motion for summary judgment against the defendant and former spouse Fargah Torkaman ("Torkaman"). The Debtor requests judgment on his preferential transfer claim under § 547(b), arguing that Torkaman's recording of an abstract of judgment against property constitutes an avoidable preferential transfer. The parties agree that the only issue in this action is whether Torkaman is an insider. If Torkaman is an insider, then her recordation of the abstract of judgment constitutes an avoidable preferential transfer. If she is not an insider, then her recordation of the abstract of judgment is not avoidable, falling outside 90-day look-back period for non-insider preferential transfers.

For the reasons set forth below, the Debtor's motion for summary judgment will be denied.

DISCUSSION

Summary Judgment

Federal Rule of Civil Procedure 56 requires the court to grant summary judgment on a claim or defense "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Civ. P. 56. "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *California v. Campbell*, 138 F.3d 772, 780 (9th Cir. 1998) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). "A fact is 'material' when, under the governing substantive law, it could affect the outcome of the case."

Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n, 322 F.3d 1039, 1046 (9th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

A shifting burden of proof applies to motions for summary judgment. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010). "The moving party initially bears the burden of proving the absence of a genuine issue of material fact." *Id.* Meeting this initial burden requires the moving party to show only "an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial." *Id.* The Ninth Circuit has explained that the non-moving party's "burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence." *Id.* "In fact, the non-moving party must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor." *Id.* at 387. Nevertheless, all reasonable inferences must be made in favor of the non-moving party. See *Anderson*, 477 U.S. at 255 ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.").

A party may support or oppose a motion for summary judgment with affidavits or declarations that are "made on personal knowledge" and that "set out facts that would be admissible in evidence." Fed. R. Civ. P. 56(c)(4). The assertion "that a fact cannot be or is genuinely disputed" may be also supported by citing to other materials in the record or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

Failure "to properly address another party's assertion of fact as required by Rule 56(c)" permits the court to "consider the fact undisputed." Fed. R. Civ. P. 56(e)(2). If facts are considered undisputed because a party fails to properly address them, the court may "grant summary judgment if the motion and supporting materials—including facts considered undisputed—show the movant is entitled to it." Fed. R. Civ. P. 56(e)(3).

Requests for Admissions

First, the court considers an evidentiary issue. The Debtor argues that the matters contained in the Request for Admissions are deemed admitted based on Torkaman's untimely response. Civil Rule 36(a)(3) provides that a "matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter." Here, the Debtor served the Request for Admissions on July 1, 2013. Adding an additional 3 days as provided as Bankruptcy Rule 9006(f), the date in which Torkaman had to respond was August 3, 2013. However, the response was not served until August 9, 2013, 6 days after the deadline. Thus, the matters contained in the Request for Admissions are deemed admitted.

In her opposition to the motion for summary judgment, Torkaman has objected to the admissions of the matters contained in the Request for Admissions, arguing that such use would be prejudicial and that adjudication on the merits is favored. However, Torkaman has not raised this issue via the appropriate procedure. A request to withdraw or amend the admissions may only be pursued by motion

pursuant to Civil Rule 36(b). Here, Torkaman has not brought such a motion.

The matters contained in the Request for Admissions are conclusively established. As a result, any statements by Torkaman in her declaration that conflict or contradict with the admissions will be disregarded for purposes of the motion for summary judgment. Nevertheless, even if the admissions are conclusively established, the court still concludes that summary judgment in favor of the Debtor is improper in this instance.

Preferential Transfer to Insider

Section 547(b) of the Code authorizes a trustee to avoid preferential transfers made by a debtor within certain periods of time before the bankruptcy filing. *Miller v. Schuman (In re Schuman)*, 81 B.R. 583, 585 (B.A.P. 9th Cir. 1987). Where a creditor is an insider, the preference period is one year. *Id.* "The determination of insider status is a question of fact." *Friedman v. Sheila Plotsky Brokers, Inc. (In re Friedman)*, 126 B.R. 63, 67 (B.A.P. 9th Cir. 1991). Section 101(31)(A) provides a non-exhaustive list of entities that qualify as "per se insiders" of the debtor when the debtor is an individual. One such per se insider is a "relative of the debtor." § 101(31)(A)(i). A "relative" is further defined by the Code as an "individual related by affinity or consanguinity within the third degree as determined by the common law." § 101(45). Although a debtor's spouse qualifies as a relative of an individual debtor and is thus a per se insider, the B.A.P. has held that a former spouse, who is no longer related to the debtor by affinity, is not a per se insider of the debtor. See *Schuman*, 81 B.R. at 585-86.

Although an entity may not be a per se insider, that entity may still nevertheless qualify as a "non-statutory insider." *Wardo & Yonano, LLP v. Farrar (In re Bella Vista by Paramont, LLC)*, BAP EC-10-1191-DHKI, 2011 WL 3303258, at *5 (B.A.P. 9th Cir. Mar. 11, 2011). A non-statutory insider is "one who has a sufficiently close relationship with a debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor." *Schuman*, 81 B.R. at 586 (quoting S. Rep. No. 95-989, at 25 (1978), H.R. Rep. No. 95-595, at 312 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 5810, 6269). The BAP has summarized the proper analysis of this issue:

In determining whether a creditor qualifies as a non-statutory insider, courts look at the closeness of the parties and the degree to which the transferee is able to exert control or influence over the debtor. A transferee is a non-statutory insider if he or she exercises such control or influence over the debtor as to render their transaction not [arm's length]. Courts have assessed the creditor's presence or absence of control over the debtor and the creditor's access to inside information in making their determinations of non-statutory insider status. The inquiry thus boils down to whether there is a close relationship between the debtor and the creditor and whether there is anything other than closeness to suggest that any transactions were not conducted at arm's length. Non-statutory insiders are to be found by courts in particular cases, based on the specific facts.

Bella Vista by Paramont, LLC, 2011 WL 3303258, at *5.

Burden of Proof

Here, the court finds that the proffered evidence in support of the Debtor's motion does not support a finding that Torkaman, as the Debtor's former spouse, is a non-statutory insider. The only supporting facts offered by the Debtor on this issue are (1) that Torkaman recorded the abstract of judgment after the Debtor informed her that he was going to file bankruptcy, was having financial difficulties, and wanted to sell their co-owned vacant property; and (2) that Torkaman would not have recorded the abstract of judgment if the Debtor would not have informed her about these things.

Although those facts may show Torkaman's "access to inside information," the Debtor has offered no other evidence to show that the Debtor and Torkaman have a close relationship and that Torkaman was able to exert control or influence over the Debtor. In fact, their relationship after the divorce appears to have been hostile, rather than friendly. See *Schuman*, 81 B.R. at 587 (finding that former spouse's relationship with debtor was hostile, suggesting that she had no control over his financial decisions); *Barnhill v. Vaudreuil (In re Busconi)*, 177 B.R. 153, 159 (Bankr. D. Mass. 1995) (finding that former spouse was not insider based on acrimonious relationship with debtor); see also *Browning Interests v. Allison (In re Holloway)*, 955 F.2d 1008, 1011, 1015 (5th Cir. 1992) (concluding that former wife of debtor was insider based on their continuing friendly relationship and joint hostility against third party in other litigation). Even the facts that the Debtor has not paid Torkaman the \$50,000 ordered four years ago and that Torkaman filed an involuntary lien against their co-owned property suggest an acrimonious relationship. Thus, it is very unlikely that Torkaman had influence or control over the Debtor.

Additionally, the court rejects the Debtor's argument that Torkaman had control over the Debtor's ability to sell the vacant co-owned property. The Debtor cites Request for Admission No. 7, deemed conclusively established, as support for this conclusion. However, all that this deemed admission provides is that Torkaman recorded an abstract of judgment after the Debtor communicated his desire to sell the property. There was no admission that Torkaman had prevented or intended to prevent the Debtor from selling the property, and simply because she filed an abstract of judgment, this does not mean that the Debtor was precluded from selling the property. Nothing in the facts indicates that Torkaman did not consent to the sale of the co-owned property. All that she did was record an abstract of judgment; a sale was still possible.

Based on the evidenced proffered by the Debtor, the court finds that the Debtor did not meet his burden in establishing that Torkaman was a non-statutory insider.

Reasonable Inference

Alternatively, even if the Debtor's evidence is sufficient to satisfy his burden, the court can still draw the reasonable inference that Torkaman did not have a close relationship or maintain sufficient control over the Debtor. As mentioned above, on a motion for summary judgment, all reasonable inferences must be made in favor of the non-moving party. See *Anderson*, 477 U.S. at 255 ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor."). Here, the evidence as to Torkaman's insider status is circumstantial at best, and a court could reasonably infer that Torkaman did not have the ability to control the Debtor. The parties are divorced, the "transfer" at issue (i.e., the recording of

the judgment lien) was a unilateral transaction initiated by Torkaman, and Torkaman had a strained relationship with the Debtor, especially when trying to get him to comply with the state court's order. Since Torkaman is the non-moving party here, the court must infer that she was not an insider.

CONCLUSION

On the issue of Torkaman's insider status, the court finds that the Debtor did not meet his burden and, alternatively, the court can draw a reasonable inference in favor of Torkaman. Therefore, summary judgment in favor of the Debtor is not proper.

For the reasons set forth above, the Debtor's motion for summary judgment will be denied.

10:30 a.m.

1. [13-13266](#)-A-7 KEISHA KING - WROTEN PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.
8-21-13 [[20](#)]

DISCHARGED

No tentative ruling.
2. [13-14880](#)-A-7 JOSE/MAYRA SANCHEZ PRO SE REAFFIRMATION AGREEMENT
WITH TOYOTA MOTOR CREDIT
CORPORATION
8-28-13 [[13](#)]

OSCAR SWINTON/Atty. for dbt.

No tentative ruling.
3. [13-14880](#)-A-7 JOSE/MAYRA SANCHEZ PRO SE REAFFIRMATION AGREEMENT
WITH JPMORGAN CHASE BANK, N.A.
8-27-13 [[11](#)]

OSCAR SWINTON/Atty. for dbt.

No tentative ruling.
4. [13-14881](#)-A-7 JOSE/TERESA OLMEDO PRO SE REAFFIRMATION AGREEMENT
WITH AMERICAN HONDA FINANCE
CORP.
8-28-13 [[9](#)]

OSCAR SWINTON/Atty. for dbt.

No tentative ruling.

11:00 a.m.

1. [13-11058](#)-A-7 PAMELA CLAUSELL

ORDER TO SHOW CAUSE WHY STEVEN
A. ALPERT AND PRICE LAW GROUP
SHOULD NOT BE SANCTIONED AND
ORDERED TO DISGORGE FEES
8-6-13 [[27](#)]

STEVEN ALPERT/Atty. for dbt.
DROPPED 9/10/13 PER ORDER

Final Ruling

The matter resolved, the Order to Show Cause is discharged.

1:00 p.m.

1. [13-15802](#)-A-7 JOSHUA/SADIE TICKENOFF MOTION TO COMPEL ABANDONMENT
LKW-1 9-10-13 [[9](#)]
JOSHUA TICKENOFF/MV
LEONARD WELSH/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party

Businesses Description: A small painting business and a mail delivery service business

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 and enter the default of the responding party. In entering such default, 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).

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.

2. [12-18004](#)-A-7 LA BONITA, INC., A MOTION TO SELL
KDG-3 CALIFORNIA CORPORATION 9-4-13 [[161](#)]
JEFFREY VETTER/MV
D. GARDNER/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted in part to the extent relief is requested under § 363(b) and denied in part to the extent relief is requested under §363(f) unless evidence of the consent of any affected lienholder or interest holder is presented at or before the hearing

Order: Prepared by moving party

Property: Trade name, logos, tortilla recipes, and goodwill associated with the name "La Bonita"

Buyer: Robert Castaneda (the father-in-law of Debtor's principal, Albert Ornelas)

Sale Price: \$6,000.00

Sale Type: Private sale subject to overbid opportunity

Sale Free and Clear of EDD's Lien: Relief denied unless appropriate consent is given at or before the hearing

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 and enter the default of the responding party. In entering such default, 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.

Subject to the condition that the Employment Development Department of the State of California consents, the sale will be free and clear of its lien in the intangible property described above, and such security interest 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)(2). Evidence of such consent must be given at or before the hearing on this motion or by signature on the order granting this motion. 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 lien 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. [13-13410](#)-A-7 RONALD/JOYCE FINCH
TGF-3
JEFFREY VETTER/MV
R. BELL/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION TO SELL
9-4-13 [[26](#)]

Tentative Ruling

Motion: Sell Property and Compensate Real Estate Broker
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Property: 179 Garden Drive, Bakersfield, California
Buyer: Robin Nahouray
Sale Price: \$55,000.00
Sale Type: Private sale subject to overbid opportunity

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 and enter the default of the responding party. In entering such default, 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.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

The notice of hearing on any application must "identify the applicant and the amounts requested." Fed. R. Bankr. P. 2002(c)(2). Here, the motion was served as well as the notice, so creditors and parties in interest could determine the identity of the applicant. However, the name of any applicant for whom compensation is requested should appear in the notice of hearing.

4. [13-10814](#)-A-7 FL.INVEST.USA INC.
BH-1
VINCENT GORSKI/MV
RYAN ERNST/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION FOR TURNOVER
9-3-13 [[154](#)]

Tentative Ruling

Motion: Motion for Turnover of Property

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

Disposition: Denied without prejudice

Order: Civil minute order

The chapter 7 trustee has moved for an order requiring the firm Brumfield & Hagan to turn over a \$5,000 retainer, which the trustee asserts is property of the estate. However, the trustee has requested this relief in a procedurally improper manner. Under Rule 7001(1), a "proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee," is an adversary proceeding. Since an adversary proceeding requires the filing and serving of a complaint, the motion for turnover of property is improper and therefore will be denied without prejudice.

5. [13-10814](#)-A-7 FL.INVEST.USA INC.
BH-1
FL.INVEST.USA INC./MV
RYAN ERNST/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO EMPLOY ROBERT H.
BRUMFIELD, III AS ATTORNEY(S)
4-3-13 [[72](#)]

Tentative Ruling

Motion: Application to Employ Professional

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

Disposition: Granted

Order: Prepared by moving party

The law firm Brumfield & Hagan had previously filed on April 3, 2013, an ex parte application to employ the firm as general counsel for the debtor in possession while the case was still pending in chapter 11. The court had rejected Brumfield's order approving employment on the basis that the supporting declaration did not lay the proper foundation for being disinterested under Federal Rule of Evidence 602. Brumfield has now filed a supplemental declaration, which the court finds to be sufficient enough to approve the firm's employment.

Therefore, the court will approve the employment application. The order must state that the employment has been approved effective 30 days preceding the date that the firm filed the employment application (which was April 3, 2013).

Further, the court orders that Brumfield is to file an application for compensation and reimbursement of expenses pursuant to Rule 2016(a). The fee application must be heard no later than November 21, 2013 at

1:45 p.m., and must give at least 28 days' notice pursuant to LBR 9014-1(f)(1).

6. [13-13626](#)-A-7 DOXIE PALMA MOTION TO DISMISS CASE PURSUANT
UST-1 TO 11 U.S.C. SECTION 707(B)
AUGUST LANDIS/MV 8-20-13 [[22](#)]
ROBERT WILLIAMS/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

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 by asserting the existence of special circumstances warranting an adjustment to the means test formula. The debtor has filed Amended Form B22A, July 17, 2013, ECF No. 14, 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

Presumption of Abuse Based on Form B22A

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 Amended Form B22A indicates monthly disposable income of \$1,101.44. This amount multiplied by 60 is \$66,086.40,

which exceeds the statutory limit under § 707(b)(2)(A)(i).

Special Circumstances Exception

To rebut a presumption of abuse under the means test calculation under § 707(b)(2), the debtor may demonstrate special circumstances that justify additional expenses or an adjustment to income. See 11 U.S.C. §§ 707(b)(2)(B), 1325(b)(3); *Lanning*, 130 S. Ct. at 2477. "Special circumstances" is a defined term and is very narrow. 11 U.S.C. § 707(b)(2)(B). The statute offers as examples a serious medical condition or a call to active duty in the armed services. *Id.* Special circumstances must be beyond the debtor's control and must put a "strain on a debtor's household budget." *In re Egeberg*, 574 F.3d 1045, 1053 (9th Cir. 2009); 11 U.S.C. § 707(b)(2)(B). The statute provides, "to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide (i) documentation for such expense or adjustment to income; and (II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable." 11 U.S.C. § 707(b)(2)(B)(ii). The statute also requires that any information provided to show special circumstances shall be supported by the debtor's attestation under oath. *Id.* § 707(b)(2)(B)(iii).

In this case, the debtor offers three special circumstances: (1) the need to support her 80 year old mother at the rate of \$1,600 per month; (2) her husband's diagnosis with Post-traumatic stress disorder and temporary hiatus from work; and (3) the need for a second residence (an apartment near her spouse's children's school). This is an insufficient showing. First, the debtor deducted \$1,600 from Line 35 of Amended Form B22A. Though this is a questionable deduction, the debtor has taken it and Form B22A still shows income of sufficient amount to trigger the presumption of abuse. Second, the work hiatus is, even by the debtor's admission, temporary. Third, the need for the apartment does not fit the definition of special circumstances.

Moreover, the debtor admits that she and her husband have each received a 5% increase (actually return of former wage cuts). Her pay rose from \$8,041.49 to \$8,684, and her husband's rose from \$5,997.52 to \$6,519.00. By the court's calculation this is an increase, on a gross basis, of \$1,163.99.

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.

7. [13-10247](#)-A-7 FLIGHT TEST ASSOCIATES, MOTION TO SELL
KDG-8 INC. 9-4-13 [[86](#)]
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Motion: Sell Aircraft Hangars and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: Two aircraft hangars as described below:

-Hangar 68 located at 1224 Flight Line, Mojave Air & Space Port with ancillary offices and outbuildings ("Hangar 68")

-Hangar 100 located at 1031 Mobley, Mojave Air & Space Port with ancillary offices and outbuildings ("Hangar 100")

Buyer: Flight Test Aerospace, LLC

Sale Price:

-Hangar 68: \$868,000.00

-Hangar 100: \$600,000.00

Sale Type: Private sale subject to overbid opportunity

Additional Term of Sale: Buyer's purchase of either hangar is contingent on its purchase of the other hangar, so the Buyer listed above must win both hangars or will not take either hangar

Sale Free and Clear of IRS and EDD's Lien: Relief granted as stated below

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 and enter the default of the responding party. In entering such default, 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 § 363(b)

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.

COMPENSATION UNDER § 330(a)

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

SALE FREE AND CLEAR UNDER § 363(f)(2)

The motion's title and the notice of hearing indicate that the trustee seeks free and clear relief as to all liens on the Hangars. However, the prayer for relief seeks only free and clear relief as to the Internal Revenue Service and the California Employment Development Department's liens.

Only the IRS and the EDD have filed their written consent to the sale being free and clear of their liens. The court construes the motion as requesting a sale free and clear of only the IRS and EDD's liens, and that the other lienholders will, as the motion states, release their liens in escrow after payment of the amounts agreed to be paid to each lienholder.

The sale will be free and clear of the Internal Revenue Service and the California Employment Development Department's liens on the real and personal property described above, and such lien 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)(2). 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 lien 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.

8. [13-10347](#)-A-7 JOHNNY/SHANNON LASSETTER MOTION TO SELL
VG-1 8-31-13 [[27](#)]
VINCENT GORSKI/MV
WILLIAM OLCOTT/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(3) and order shortening time for notice; no written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: 2008 Nissan Altima and 2002 Chevrolet Suburban

Buyer: Debtors

Sale Price: \$8,589.20 for both vehicles (\$5,864.20 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.

9. [13-11347](#)-A-7 CHRISTOPHER BURGONI MOTION TO SELL
VG-1 8-22-13 [[19](#)]
VINCENT GORSKI/MV
LEONARD WELSH/Atty. for dbt.
VINCENT GORSKI/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: 2010 Honda Accord and 2005 Dodge Ram Truck 2500

Buyer: Debtor

Sale Price: \$17,725.00 for both vehicles (\$15,000.00 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.

10. [13-11347](#)-A-7 CHRISTOPHER BURGONI
VG-2
VINCENT GORSKI/MV

MOTION TO EMPLOY GOULD AUCTION
& APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
9-4-13 [[24](#)]

LEONARD WELSH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2004 Terry Trailer

Sale Type: Public auction

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 and enter the default of the responding party. In entering such default, 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.

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

11. [13-11952](#)-A-7 WAE/LESLIE SHISHANI CONTINUED MOTION TO AVOID LIEN
FPS-1 OF EQUABLE ASCENT FINANCIAL,
WAE SHISHANI/MV LLC AND/OR MOTION TO AVOID LIEN
OF DISCOVER BANK
7-9-13 [[22](#)]

FRANK SAMPLES/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).

The court continued the hearing on the motion because the \$1,000.00 exemption described in the motion had not appeared on the most recently filed Schedule C. The court allowed an amended Schedule C to be filed claiming the exemption.

The debtors have timely filed an amended Schedule C claiming an exemption for \$1,000.00 in the real property located at 1615 Lisle Street, Bakersfield, California. For the reasons stated in the civil minutes from the hearing on August 27, 2013, the court will grant the motion. Civ. Mins. Hr'g on Mot. Avoid Lien, Aug. 27, 2013, ECF No. 29.

12. [13-13952](#)-A-7 BRENT/KISH SCHWEBEL MOTION TO SELL
TGF-3 9-4-13 [[36](#)]
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 9906 Polo Trail Avenue, Bakersfield, California

Buyer: Kelly Luu

Sale Price: \$349,000.00

Sale Type: Private sale subject to overbid opportunity

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 and enter the

default of the responding party. In entering such default, 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.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

Federal Rule of Bankruptcy Procedure 2002(c)(2) requires that the identity of the applicant and the amounts requested be included in the notice of hearing on compensation required by Rule 2002(a)(6). See Fed. R. Bankr. P. 2002(a)(6), (c)(2). Here, the notice of hearing does not refer to the name of the broker who is the applicant. Because the motion was served on the master mailing list, this error is harmless. But the court requests that the trustee ensure that notices of hearing on motions requesting compensation comply with Rule 2002(c)(2).

13. [13-12066](#)-A-7 SCOTTIE BILLINGTON MOTION TO SELL
RP-1 9-4-13 [[14](#)]
RANDELL PARKER/MV
CYNTHIA SCULLY/Atty. for dbt.
RANDELL PARKER/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2008 Ford F150 Supercab FX2 2WD

Buyer: Debtor

Sale Price: \$9,670.00 (\$5,000.00 cash plus \$2,725.00 exemption credit; the sale is also subject to a lien in the amount of \$1,945.00)

Sale Type: Private sale subject to overbid opportunity

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 and enter the default of the responding party. In entering such default, 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.

14. [12-19399](#)-A-7 KENNETH LEWIS CONTINUED OBJECTION TO DEBTOR'S
WLA-1 CLAIM OF EXEMPTIONS
GORDON DOLE/MV 1-17-13 [[14](#)]
R. BELL/Atty. for dbt.
WILLIAM ALEXANDER/Atty. for mv.
OBJECTION WITHDRAWN, CASE
CLOSED

Final Ruling

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

1:15 p.m.

1. [13-11922](#)-A-7 JOHN/TERRI ALEXANDER STATUS CONFERENCE RE: COMPLAINT
[13-1080](#) 7-18-13 [[1](#)]
TERRY BEDFORD CONCRETE
CONSTRUCTION, INC. V.
WILLIAM ALEXANDER/Atty. for pl.
STIPULATION AND JUDGMENT

Final Ruling

Judgment entered, the status conference is concluded.

1:30 p.m.

1. [13-15003](#)-A-7 FRANK LAMAR MOTION FOR RELIEF FROM
JCW-1 AUTOMATIC STAY
RANDOM PROPERTIES ACQUISITION 8-19-13 [[19](#)]
CORP. III/MV
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: 6613 Weldon Avenue, 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 for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The moving party may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages), to obtain possession of the subject 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. [13-14019](#)-A-7 SHERRY CORPUS MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 8-5-13 [[21](#)]
ROBERT CERVANTES/Atty. for dbt.
KRISTI WELLS/Atty. for mv.
MOTION WITHDRAWN

Final Ruling

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

3. [13-11922](#)-A-7 JOHN/TERRI ALEXANDER CONTINUED MOTION FOR RELIEF
WLA-2 FROM AUTOMATIC STAY
TERRY BEDFORD/MV 7-30-13 [[36](#)]
ROBERT BRUMFIELD/Atty. for dbt.
WILLIAM ALEXANDER/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: Tribute Way, 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)(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. [13-15722](#)-A-7 SCOTT THOMAS MOTION FOR RELIEF FROM
MET-1 AUTOMATIC STAY
BANK OF THE WEST/MV 9-11-13 [[9](#)]
NEIL SCHWARTZ/Atty. for dbt.
MARY TANG/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: 2011 Keystone Fuzion -302 Travel Trailer

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.

5. [13-14254](#)-A-7 AARON MOSBY MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A./MV 8-20-13 [[11](#)]
STEVEN STANLEY/Atty. for dbt.
TIMOTHY SILVERMAN/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: 2007 Honda Accord SDN

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. [12-10855](#)-A-7 MICHAEL WALKER
BBM-3
UNION BANK, N.A./MV
PATRICK KAVANAGH/Atty. for dbt.
BYRON MAUSS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-27-13 [[168](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied in part

Order: Prepared by moving party

Subject: 4601 Hughes Lane, 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 ESTATE

The motion is denied as moot. The stay that protects the estate terminates once the asset is no longer property of the estate. 11 U.S.C. § 362(c)(1). Property ceases to be property of the estate once it is sold or abandoned. *In re D. Papagni Fruit Co.*, 132 B.R. 42, 45 (Bankr. E.D. Cal. 1991). Here, the estate has abandoned the property. Order on Motion to Compel Abandonment, September 6, 2012, ECF No. 156. As a result, the estate no longer has any interest in 4601 Hughes Lane, Bakersfield, California, and the motion will be denied as moot.

AS TO THE DEBTOR

The estate having abandoned its interest, the property has reverted to the debtor. *In re D. Papagni Fruit Co.*, 132 B.R. 42, 45 (Bankr. E.D. Cal. 1991).

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.

7. [13-13869](#)-A-7 OLLIE/VERA SPATES
PD-1
NATIONSTAR MORTGAGE, LLC/MV
CRAIG STREED/Atty. for dbt.
JOSEPH DELMOTTE/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-12-13 [[23](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2357 Bavarian Avenue, Rosamond, 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)(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.

8. [13-14170](#)-A-7 HAROLD/DEBORAH DANSBY
JCW-1
NATIONSTAR MORTGAGE, LLC/MV
D. GARDNER/Atty. for dbt.
JENNIFER WONG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-5-13 [[12](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 9713 Green Oak Place, 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)(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.

9. [13-14872](#)-A-7 CHARLES WILLIAMS MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
SUNTRUST MORTGAGE, INC./MV 8-21-13 [[12](#)]
CURTIS FLOYD/Atty. for dbt.
JOELY BUI/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: 6014 Summer Springs 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).

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.

10. [13-15076](#)-A-7 WILLIAM/CLARINE CONNORS MOTION FOR RELIEF FROM
JLH-1 AUTOMATIC STAY
ALTAONE FEDERAL CREDIT 9-3-13 [[11](#)]
UNION/MV
NEIL SCHWARTZ/Atty. for dbt.
JOSEPH SOARES/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: 21 Tillie Creek Road, Wofford Heights, California

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.

11. [13-14579](#)-A-7 JESSE STAUFFER MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 8-6-13 [[13](#)]
CURTIS FLOYD/Atty. for dbt.
KRISTI WELLS/Atty. for mv.
MOTION WITHDRAWN

Final Ruling

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

12. [13-14486](#)-A-7 ANGELA CAPODANNO
PD-1
WELLS FARGO BANK, N.A./MV
STUART PRICE/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-14-13 [[12](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 3745 Mt. Pinos Way, Frazier Park, 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.

13. [13-15392](#)-A-7 MANUELA GONZALEZ
PK-1
NEWPORT POWER PROVIDERS,
INC./MV
PATRICK KAVANAGH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-28-13 [[19](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied in part

Order: Prepared by moving party

Subject: 930 Maitland 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).

SECTION 362(d)(1)

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The moving party may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages), to obtain possession of the subject property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

SECTION 362(d)(4)

Section 362(d)(4) authorizes in rem relief as real property for up to two years if the court finds that the debtor's petition was part of a "a scheme to delay, hinder or defraud creditors" that involved either: (1) transfer of all or part ownership of the real property without the secured creditors consent or court approval; or (2) multiple bankruptcy filings affecting such real property. The court must affirmatively find each of these elements before granting in rem relief. *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012).

There are two problems that preclude in rem relief. First, the motion was not properly noticed as to this relief. Federal Rule of Bankruptcy Procedure 9013 requires that the motion "state with particularity the grounds therefor" and "set forth the relief or order sought." The motion does not do so. Motion, August 28, 2013, ECF No. 19. In rem relief was not raised except in the Memorandum of Points and Authorities, August 28, 2013, ECF No. 25, and the Declaration of McCormack, August 28, 2013, ECF NO. 23.

Second, there has been no showing of either a transfer of ownership or multiple bankruptcy filings. LBR 9014-1(d)(6).

No other relief will be awarded.

1:45 p.m.

1. [08-11200](#)-A-11 BALDO CISNEROS MOTION TO REOPEN CHAPTER 11
JB-2 BANKRUPTCY CASE
CALIFORNIA STATE BOARD OF 8-6-13 [[538](#)]
EQUALIZATION/MV

D. GARDNER/Atty. for dbt.
JILL BOWERS/Atty. for mv.

Tentative Ruling

Motion: Motion to Reopen Chapter 11 Case

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

Disposition: Granted

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 and enter the default of the responding party. In entering such default, 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 creditor State of California Board of Equalization ("BOE") has moved to reopen the chapter 11 case of the debtor Baldo Cisneros (the "Debtor"). Upon the filing of a motion by a party in interest, a case may be reopened for cause. See § 350(b); Fed. R. Bankr. P. 5010. Here, the BOE requests that the case be reopened to allow it to file a motion to dismiss or convert the Debtor's case based on the alleged failure to pay BOE's administrative expense claim and priority tax claim pursuant to the Debtor's Fifth Amended Plan. The court finds that this constitutes sufficient cause and will reopen the case to allow the adjudication of the BOE's motion to convert or dismiss.

2. [08-11200](#)-A-11 BALDO CISNEROS MOTION TO DISMISS CASE AND/OR
JB-3 MOTION TO CONVERT CASE FROM
CALIFORNIA STATE BOARD OF CHAPTER 11 TO CHAPTER 7
EQUALIZATION/MV
8-6-13 [[542](#)]
D. GARDNER/Atty. for dbt.
JILL BOWERS/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Dismiss or Convert

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

Disposition: Granted in part; case is dismissed

Order: Prepared by moving party

The creditor State of California Board of Equalization ("BOE") moves to dismiss or convert the debtor Baldo Cisneros's (the "Debtor") case under § 1112(b) for cause. The Debtor has opposed the motion and requests an evidentiary hearing based on his dispute with certain facts.

For the reasons set forth below, the court will grant BOE's motion in part and the case will be dismissed. However, to the extent the motion requests a 180-day bar from refileing, the court will not grant such relief.

DISCUSSION

On request of a party in interest and after notice and a hearing, the court shall dismiss a Chapter 11 case or convert it to a Chapter 7 case, "whichever is in the best interests of creditors and the estate," for cause shown. 11 U.S.C. § 1112(b)(1). In deciding such motions, the court must engage in a two-step analysis. See *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 242 (4th Cir. 1994). First, the court must ascertain whether cause exists. *Id.* Second, if the court finds that cause exists, it must decide whether dismissal or conversion better serves the interests of creditors and the estate. *Shulkin Hutton, Inc., P.S. v. Treiger (In re Owens)*, 552 F.3d 958, 960-61 (9th Cir. 2009); *Superior Siding & Window*, 14 F.3d at 242.

The moving party bears the burden of proving by a preponderance of the evidence that cause exists. *In re Creekside Senior Apartments, L.P.*, 489 B.R. 51, 60 (B.A.P. 6th Cir. 2013). Once the moving party has met its burden, it is incumbent on the debtor to show that relief is not warranted. See *In re Woodbrook Assocs.*, 19 F.3d 312, 317 (7th Cir. 1994).

Cause

The term "cause" is not defined by the Bankruptcy Code, but § 1112(b)(4) provides a non-exhaustive list of grounds that establish "cause" for dismissal or conversion. Relevant here, cause includes "material default by the debtor with respect to a confirmed plan."

The BOE has an administrative expense claim in the amount of \$116,688.94 and a priority tax claim in the amount of \$233,997.93. The BOE alleges that the Debtor has not made the appropriate plan payments on account of these two claims. Specifically, under the Plan, the administrative expense claim was to be paid in full on the effective date of the Plan (September 4, 2009), and the priority tax claim was to be paid in five annual payments of \$68,280, with interest rate of 7%.

The Debtor makes two arguments for why relief is not proper. First, the Debtor argues that the BOE has accepted payments pursuant to a stipulation that was never executed and finalized, thereby modifying the Debtor's obligations under the Plan. Second, the Debtor argues that he has made payments and that there is a factual question about how those payments have been applied. However, the court rejects both arguments.

First, as the Debtor acknowledges, the proposed stipulation never became a binding agreement between the parties. And the fact that the BOE accepted the Debtor's payments does not represent some form of acceptance or agreement by BOE of the proposed stipulation. Instead,

the Debtor owed the BOE a substantial amount of money pursuant to the Plan, so it was appropriate for the BOE to accept any payments made by the Debtor, in whatever amount, as a way for the Debtor to pay off what he already owed the BOE. The BOE did not need to receive the exact payment amounts required by the Plan.

Second, while they may be a factual question of how the Debtor's payments were applied (i.e., whether to pay the administrative expense claim, the priority tax claim first, or a post-confirmation tax debt), there is no question that the BOE has not been paid what it needs to be paid pursuant to the Plan at this time. At this time, the Debtor should have paid the administrative expense claim in full and should have made the first four annual payments. Thus, by now, the Debtor should have paid \$389,808.94 to the BOE on account of the two claims (a fifth annual payment of \$68,280 would be due December 2013).

The BOE acknowledges that it received \$65,146.76 on July 6, 2009 from the sale of the Debtor's personal property, which was applied to the administrative expense claim (this brought the administrative expense claim down from \$116,188.94 to \$55,318.01). No other payments on account of the administrative expense claim have been made. Additionally, the BOE acknowledges that it received 6 payments on account of the priority tax claim, amounting to \$69,376.48 (this brought the priority tax claim down from \$233,997.93 to \$164,621.45). Further, the BOE also notes that it has received roughly \$157,000 from the Debtor representing payments on account of post-confirmation taxes not provided for by the Plan.

While the Debtor acknowledges the same \$65,146.76 reduction in the administrative expense claim, his declaration slightly differs in how much has been paid on the priority tax claim. The Debtor's declaration indicates that he has made monthly payments of \$7,494 beginning May 2013 (the court assumes that five such payments have been made thus far) and that he has also made a \$40,000 payment. This amounts to \$77,470 paid on account of the priority tax claim, a slightly higher figure than what the BOE acknowledges.

Even assuming that the Debtor's declaration represents the true facts, what the Debtor has already paid to the BOE on account of the two claims (roughly \$143,000) is still drastically lower than what the Debtor should have paid the BOE by now pursuant to the Plan (\$389,808.94). And even if the payments for post-confirmation taxes (not provided for under the Plan) were taken into account as payment on his Plan obligations, the Debtor is still short. As a result, the court disagrees with the Debtor that there is a dispute of material fact that would warrant an evidentiary hearing.

The court finds that there has a material default by the Debtor with respect to his confirmed Plan. This establishes cause for either dismissal or conversion.

Dismissal or Conversion

If the court finds that cause exists, it must then decide whether dismissal or conversion better serves the interests of creditors and the estate. *Shulkin Hutton*, 552 F.3d at 960-61; *Superior Siding & Window*, 14 F.3d at 242. Here, the court finds dismissal is the more appropriate relief.

The Plan provides, "Confirmation of the Plan shall cause the vesting of all property of the estate in the reorganized Debtor except as may

otherwise be provided for in the Plan." The Plan does not provide that property of the estate would be revested in the estate upon conversion of the case. Thus, in a converted chapter 7 case, there would be no estate property to distribute because such property has already vested in the Debtor via the Plan. With no assets to administer, it would be more appropriate for the court to dismiss the case.

Lastly, in the notice of hearing, the BOE states that it is requesting that a 180-day bar from refiling be imposed against the Debtor. However, the motion does not pray for this relief and the memorandum of points and authorities does not argue why this relief is warranted. Therefore, the court will not impose a 180-day bar.

CONCLUSION

For the reasons set forth above, the court will grant BOE's motion in part and the case will be dismissed. However, to the extent the motion requests a 180-day bar from refiling, the court will not grant such relief.