

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

WEDNESDAY

DECEMBER 3, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [14-14809](#)-A-13 RICKY/SHANNON SARGENT MDE-1 HARLEY-DAVIDSON CREDIT CORP./MV RABIN POURNAZARIAN/Atty. for dbt. MARK ESTLE/Atty. for mv. OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON CREDIT CORP. 10-31-14 [[25](#)]

No tentative ruling.

2. [14-14809](#)-A-13 RICKY/SHANNON SARGENT PLG-1 RICKY SARGENT/MV RABIN POURNAZARIAN/Atty. for dbt. MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 10-20-14 [[15](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). 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 respondent'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. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtors request that the court value real property collateral located at. The motion does not state that the collateral is the debtors' principal residence. But the debtors' address on the petition lists 4370 Silverado Court, Rosamond, CA, which is the same address provided in the present motion for the collateral to be valued. Accordingly, the court will find that the collateral is the

debtor's principal residence located at 4370 Silverado Court, Rosamond, CA, given the nature of the motion (valuing the collateral securing a second deed of trust on a property described as a residence).

In the future, the court prefers that counsel indicate whether the collateral is the *principal* residence of the debtors and provide appropriate legal authority in the motion for valuing the debtor's *principal* residence, in light of § 1322(b)(2), for purposes of determining the secured or unsecured status of the respondent creditor's claim.

The court values the collateral at \$160,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The real property collateral located at 4370 Silverado Court, Rosamond, CA, has a value of \$160,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

3. [13-14819](#)-A-13 TONI DUNN
SJS-1
TONI DUNN/MV

OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, INC. ON BEHALF OF
DEPARTMENT OF EDUCATION, CLAIM
NUMBER 11
10-22-14 [[24](#)]

SUSAN SALEHI/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Overruled without prejudice

Order: Prepared by objecting party

The debtor Toni Dunn objects to the allowance of a claim filed by respondent Navient Solutions, Inc. on behalf of the Department of Education. No opposition has been filed. The court will overrule the objection because it has not been properly noticed to the party holding the claim, the U.S. Department of Education. The claimant has not been noticed according to local rule and has not been sent to the

address specified on the *Roster of Governmental Agencies*, EDC 2-785 (rev. 5/28/14). See LBR 2002-1(a)-(b). The address of the respondent's agent, Navient Solutions, Inc., that appears on the proof of claim (in the box indicating where notices should be sent) should also be included on any subsequent proof of service for an objection to this claim.

In addition, the objection does not comply with Local Bankruptcy Rule 3007-1(a). The objection fails to include both the correct claim number and does not include the amount of the claim.

Lastly, the court will not rule on whether the claimant received notice of the debtor's bankruptcy case. If the court decides that the claim has been filed late, the objection must be sustained, but in sustaining the objection, the court will not address the issue whether the claimant received notice as described in § 523(a)(3) in time to permit a timely filing of a proof of claim, or whether the creditor had actual knowledge of the claim in time for such timely filing.

4. [11-61227](#)-A-13 GUILLERMO/ELVA RUBIO MOTION TO COMPEL ABANDONMENT
LKW-4 10-23-14 [[96](#)]
GUILLERMO RUBIO/MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(1); opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

PROCEDURAL MATTERS

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b). In this case, all creditors and parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion. The court will deny the motion without prejudice for lack of sufficient notice.

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

SUBSTANTIVE MATTERS

The confirmed plan does not provide whether property of the estate reverts in the Debtor on confirmation or does not revert in Debtor until such time as a discharge is granted. The form plan required the debtor to choose one of these two options. Neither option was chosen. The applicable statutory default therefore applies: property of the estate vested in the debtor on confirmation of the plan. Accordingly, the property cannot be abandoned. Section 554(a) and (b) permit abandonment only of property of the estate so long as the other requirements for abandonment are satisfied. 11 U.S.C. § 554(a)-(b).

Additionally, the court's authorization of any sale would be pursuant to the terms of the confirmed plan rather than § 363(b). Section 363(b) provides for sales only of property of the estate. But the confirmed plan requires court authorization before the debtor sells the subject property as it has a value greater than \$1000 if the sale is other than in the regular course of debtor's financial or business affairs. Ch. 13 Plan § 6.02, ECF No. 5. Even if the property were property of the estate that could be compelled to be abandoned, the abandonment procedure would not be necessary in order for a sale to be authorized in this case.

5. [11-19832](#)-A-13 JEAN MORGAN
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-15-14 [[95](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [14-13433](#)-A-13 ROBERT WHITEZELL
MHM-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
11-7-14 [[32](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

7. [14-14845](#)-A-13 PREMILYN BARROGA
MVF-1
THE BANK OF NEW YORK MELLON/MV

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
11-12-14 [[16](#)]

ROBERT WILLIAMS/Atty. for dbt.
MATTHEW VAN FLEET/Atty. for mv.

No tentative ruling.

8. [14-15045](#)-A-13 KEITH NOBLE

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-29-14 [[13](#)]

WILLIAM EDWARDS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

9. [14-14646](#)-A-13 SHIRLEY MOBLEY
JLG-1
RABOBANK, N.A./MV
ROBERT WILLIAMS/Atty. for dbt.
JESSICA GIANNETTA/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY RABOBANK, N.A.
11-12-14 [[26](#)]

No tentative ruling.

10. [09-19453](#)-A-13 JAMES/REBECCA WHITTON
MHM-2
MICHAEL MEYER/MV

MOTION TO DISMISS CASE, MOTION
TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS,
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-20-14 [[100](#)]

ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [12-16853](#)-A-13 PEDRO/ZENAIDA NAVEIRAS MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 10-15-14 [[129](#)]
NEIL SCHWARTZ/Atty. for dbt.

Final Ruling

Motion: Dismiss Chapter 13 Case (Failure to Make Plan Payments)

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

Disposition: Granted

Order: Civil minute order

DISCUSSION

The court may dismiss a Chapter 13 case for failure to make payments under the terms of a confirmed plan. 11 U.S.C. § 1307(c)(1),(6). As of October 15, 2014, the debtors are delinquent \$28,341.05, which does not include the November 2014, payment. The debtors' opposition impliedly concedes the allegations. The motion is granted.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The motion to dismiss filed by Chapter 13 trustee Michael H. Meyer having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) the motion is granted; and (2) debtors' Chapter 13 case is dismissed.

12. [14-13053](#)-A-13 JEFFREY HINOJOS MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 10-15-14 [[59](#)]
PATRICK KAVANAGH/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

13. [10-19454](#)-A-13 DAVID/RAQUEL STEBBINS MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 10-15-14 [[111](#)]
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [14-13761](#)-A-13 SHERRY SIMPSON ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
DISMISSED 10-23-14 [[57](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

15. [14-13669](#)-A-13 TIMOTHY DAVIS AND CAITLYN CONTINUED OBJECTION TO
BHT-1 KENEFSKY CONFIRMATION OF PLAN BY OCWEN
OCWEN LOAN SERVICING, LLC/MV LOAN SERVICING, LLC
9-8-14 [[25](#)]
ROBERT WILLIAMS/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Pending

Order: Pending

At the October 22, 2014, hearing, the court continued the hearing on this objection to this date so that Ocwen Loan Servicing, LLC, could decide whether to grant a permanent loan modification. At the continued hearing, the court will determine the status of this matter. More specifically, the court will determine whether the parties have resolved the objection by means of a final loan modification or, alternatively, whether the parties have not resolved the objection and would like either a further continuance of the hearing on this matter to January 7, 2015, at 9:00 a.m. or a ruling on the objection.

Based on the Joint Pre-hearing Statement for Secured Creditor's Objection to Confirmation of Plan, the parties appear to need additional time to resolve whether a final loan modification will be made. The parties indicated that the final trial loan modification payment was due November 1, 2014, and that all trial loan modification payments were made and the loan between the debtors and objecting creditor is being reviewed for a determination on final modification.

If the objection is not resolved but the parties would like the court to proceed with a ruling on the objection, the court may adopt the

tentative ruling set forth in the civil minutes for the initial hearing on October 22, 2014.

16. [14-14971](#)-A-13 CRYSTAL MARTIN ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-13-14 [[20](#)]
- PATRICK KAVANAGH/Atty. for dbt.
\$77.00 INSTALLMENT PAID
11/17/14

Final Ruling

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

17. [09-10374](#)-A-13 BERNICE MCCOY CONTINUED OBJECTION TO DISCHARGE BY MICHAEL H. MEYER
MHM-1 5-22-14 [[56](#)]
MICHAEL MEYER/MV
STEVEN STANLEY/Atty. for dbt.

[The hearing on this matter will be concurrent with the hearing on the debtor's motion to waive the § 1328 certification requirements in this case having docket control no. SMS-1.]

Tentative Ruling

The objection will be dropped as moot given the court's ruling granting the debtor's motion to waive the section 1328 certification requirement.

18. [09-10374](#)-A-13 BERNICE MCCOY CONTINUED MOTION WAIVING DEBTOR'S SECTION 1328 CERTIFICATION REQUIREMENT
SMS-1 6-5-14 [[59](#)]
BERNICE MCCOY/MV
STEVEN STANLEY/Atty. for dbt.

Tentative Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by the moving party

The court previously continued the hearing on this matter twice to resolve procedural matters under Rule 9037. The hearing on October 22, 2014 was continued to this date to resolve issues relating to insufficiently redacted copies of two documents filed on August 26, 2014. It appears these procedural problems have been solved by an order directed to the clerk's office to seal and restrict public access to the insufficiently redacted documents. Further, sufficiently redacted documents were filed at docket nos. 110 and 111.

Pursuant to the civil minutes dated August 20, 2014, the court will

grant the motion. The order shall state only the following: "The motion is granted as to the deceased debtor. The court waives the requirement that debtor Bernice McCoy complete and file certifications concerning compliance with § 1328."

19. [14-14077](#)-A-13 FRANCISCO LAGUNAS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS,
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS,
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
10-21-14 [[18](#)]

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

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

DISCUSSION

The court may dismiss a Chapter 13 case for failure to: (1) appear at the meeting of creditors; (2) make payments under the terms of the proposed plan; or (3) provide the Chapter 13 trustee with required documentation, i.e., Class 1 Mortgage Checklist, tax returns, and proof of income. 11 U.S.C. § 1307(c)(1),(4),(6). As of October 21, 2014, all of these problems exist in this case and the motion is granted.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The motion to dismiss filed by Chapter 13 trustee Michael H. Meyer having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) the motion is granted; and (2) debtor's Chapter 13 case is dismissed.

20. [14-14480](#)-A-13 MANUEL LAZO
RDN-1
WELLS FARGO DELAWARE TRUST
COMPANY, N.A./MV
FRANCISCO ALDANA/Atty. for dbt.
RANDALL NAIMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-17-14 [[23](#)]

Tentative Ruling

Motion: Relief from Automatic Stay

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

Disposition: At the movant's option, the court will either (i) grant the motion in part and deny the motion in part, or (ii) continue the hearing to January 7, 2015, only if the movant waives the time limitations of § 362(e)

Order: Civil minute order

Subject: 4418 Serene Oak Drive, Bakersfield, CA

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

SECTION 362(d)(1)

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. At this time, the court finds cause to grant the motion in part as to relief under § 362(d)(1).

SECTION 362(d)(4)

However, the motion also requests relief under § 362(d)(4), and the court cannot grant relief under § 362(d)(4) at the present time. In support of § 362(d)(4) relief, the movant offers evidence of one other bankruptcy petition affecting the property. The other petition was filed not by the present debtor, but by Oralia Pablo. Oralia Pablo's name appears on the Trustee's Deed Upon Sale, along with the present debtor Manuel Lazo, as the parties who executed the deed of trust that was foreclosed by the movant. Oralia Pablo's bankruptcy petition was dismissed voluntarily by Oralia Pablo as a result of the court's granting stay relief on "Debtor's home," and the order dismissing the case limited Oralia Pablo's right to file another case for 180 days under § 109(g)(2). The movant who obtained stay relief in Oralia Pablo's case was Wells Fargo Delaware Trust Company, N.A., as Trustee for Vericrest Opportunity Loan Trust 2011-NPL1. This is the same movant as the movant named in the present motion.

The order granting stay relief in Oralia Pablo's case affected the same real property for which stay relief is sought by the present motion in this case. But the debtor Manuel Lazo was not a joint debtor in that case, so the court is reluctant based solely on these facts to grant § 362(d)(4) relief.

The facts regarding Oralia Pablo's bankruptcy thus are insufficient to

grant relief under § 362(d)(4). However, the chapter 13 trustee in this case has moved to dismiss this case. The hearing on the motion is January 7, 2015. The grounds for the motion are (i) the debtor's failure to appear at the schedule § 341 meeting, (ii) the failure of the debtor to provide the trustee with required documentation including Class 1 Mortgage Checklist (which may be inapplicable given the foreclosure), tax returns for 2013, proof of all income, i.e. pay advices, profit and loss statements, rental income, unemployment compensation, social security income, disability and retirement for the six months prior to filing, and (iii) failure to provide a credit counseling certificate. If these factual grounds are accepted by the court as true whether by default or after an evidentiary hearing, the court will likely find that § 362(d)(4) relief is warranted considering such grounds together with the dismissal of Oralia Pablo's case after stay relief was granted in her case as to the subject real property.

The grounds for the dismissal motion, if proven as true in January 2015, tend to show the debtor's lack of intent to prosecute his present case to reorganization and use the Code for the proper purpose of reorganization. Combined with the stay relief motion in a related case of Oralia Pablo, in which stay relief was granted as to the subject real property, and the subsequent voluntary dismissal of Oralia Pablo's case, factual grounds supporting the trustee's dismissal motion circumstantially show that the debtor's present petition was part of a scheme to delay the movant creditor in obtaining the subject real property and such scheme involved multiple (2) filings affecting the property.

CONCLUSION

The court will continue the hearing to January 7, 2015, at 9:00 a.m. but only if the movant waives the time limitations of § 362(e). Otherwise, the court will grant the motion in part as to relief under § 362(d)(1) and deny the motion in part as to relief under § 362(d)(4).

21. [14-14785](#)-A-13 REY/JULITA SAMONTE MOTION TO VALUE COLLATERAL OF
PK-1 WELLS FARGO HOME MORTGAGE
REY SAMONTE/MV 11-4-14 [[15](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). 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 respondent'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. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 331 N. Eldorado Circle, Delano, CA.

The court values the collateral at \$147,002.00. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The real property collateral located at 331 N. Eldorado Circle, Delano, CA, has a value of \$147,002.00. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

22. [14-14785](#)-A-13 REY/JULITA SAMONTE
PK-2
REY SAMONTE/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BEST BUY CREDIT SERVICES
11-4-14 [[21](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean 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.* The costs of sale or marketing may not be deducted. *Id.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as a 55-inch Samsung T.V. The motion states that the collateral is not secured by a "purchase money interest" [sic]. The court wonders why a security interest would encumber the T.V. if it were not a purchase money security interest granted to enable the purchase money loan for the T.V., but the court need not explore that issue because the debtor states that the collateral was purchased "[a]pproximately three years ago." The court reads this statement to mean the collateral was purchased approximately three years before the date of the debtor's declaration. The declaration is dated October 20, 2014, and three years prior to such date would be approximately October 2011. One year prior to the petition date was September 29, 2013, so the hanging paragraph does not apply even if the collateral were subject to a purchase money security interest, assuming the debt was incurred in October 2011 when the collateral was purchased.

The court values the collateral at \$500.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value non-vehicular, personal property collateral has been presented to the court. Having considered the well-pleaded facts of the motion, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 55-inch Samsung T.V. has a value of \$500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$500 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

23. [10-12090](#)-A-13 CLARENCE/LINDA HORN MOTION TO MODIFY PLAN
RSW-6 10-24-14 [[128](#)]
CLARENCE HORN/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(2); opposition may be made at hearing

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). 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.

24. [14-15393](#)-A-13 SANDRA ALTAMIRANO MOTION TO EXTEND AUTOMATIC STAY
RSW-1 11-12-14 [[13](#)]
SANDRA ALTAMIRANO/MV
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

25. [11-10599](#)-A-13 KRAIG/MELANIE GRADOWITZ AMENDED OBJECTION TO CLAIM OF
MHM-2 FIA CARD SERVICES, N.A., CLAIM
MICHAEL MEYER/MV NUMBER 13
10-1-14 [[68](#)]
LEONARD WELSH/Atty. for dbt.

Final Ruling

Objection: Objection to Claim as Duplicate Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 objection asserts that the claim, Claim No. 13-1, is a duplicate claim. The claim asserts the same obligation in the same amount as another claim, Claim No. 14-1, that a different claimant has filed against the same debtor. The objection sets forth sufficient factual grounds to support the conclusion that Claim No. 13-1 is a duplicate claim of Claim No. 14-1.

Further, Claim No. 13-1 should be disallowed as between the two claims representing the same debt and account. The objection states that the attachments to Claim No. 14-1 state that Portfolio Recovery Associates (PRA) purchased the account from FIA Card Services, N.A., the claimant to whom this objection is directed.

The court will sustain the objection and disallow the duplicate Claim No. 13-1. The duplicate claim will be disallowed and expunged in its entirety.

10:30 a.m.

1. [14-14791](#)-A-7 XCHITL CASTREJON REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT CORPORATION
10-26-14 [[17](#)]
ASHTON DUNN/Atty. for dbt.

Final Ruling

The hearing vacated, no appearance is necessary.

1:00 p.m.

1. [14-14304](#)-A-7 GENOVEVA MELENDREZ MOTION TO AVOID LIEN OF
RSW-1 PORTFOLIO RECOVERY ASSOCIATES,
GENOVEVA MELENDREZ/MV LLC
10-28-14 [[13](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$48,255.60

Property Value: \$46,000.00

Judicial Lien Avoided: \$2255.60

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

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's

lien. As a result, the responding party's judicial lien will be avoided entirely.

2. [12-11008](#)-A-7 RAFAEL ALONSO MOTION TO COMPEL AND/OR MOTION
PWG-7 FOR SANCTIONS
MARKO ZUBCIC/MV 10-15-14 [[117](#)]
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
PHILLIP GILLET/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The matter is continued to January 21, 2015, at 11:00 a.m. in Fresno.

3. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR SANCTIONS AND/OR
PWG-8 MOTION FOR SANCTIONS AGAINST
MARKO ZUBCIC/MV DEBTOR'S ATTORNEY FOR
MISCONDUCT UNDER FRBP 9011
11-6-14 [[138](#)]
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
PHILLIP GILLET/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The matter is continued to January 21, 2015, at 11:00 a.m. in Fresno.

4. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR EXAMINATION
PWG-9 11-5-14 [[134](#)]
MARKO ZUBCIC/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
PHILLIP GILLET/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

5. [12-14508](#)-A-7 LAWRENCE/SHANNON MORRIS MOTION TO AVOID LIEN OF
PK-4 RIVERWALK HOLDINGS, LTD.
LAWRENCE MORRIS/MV 10-23-14 [[62](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

6. [13-17909](#)-A-7 WILLIE BAKER
KDG-7
RANDELL PARKER/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, RESENLIEB, AND
KIMBALL, LLP TRUSTEE'S
ATTORNEY(S).
11-6-14 [[111](#)]

NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Application: First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil Minute Order

Applicant: Klein DeNatale

Compensation approved: \$12,000.00

Costs approved: \$152.17

Aggregate fees and costs approved in this application: \$12,152.17

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

DISCUSSION

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis as to the amounts requested.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The First and Final Application for Final Compensation filed by Klein DeNatale having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) defaults of the respondents are entered; (2) compensation of \$12,000.00 is approved on a final basis; (3) costs of \$152.17 are approved on a final basis; and (4) if in the discretion of the Chapter 7 trustee the estate is administratively solvent, the trustee may pay the fees and costs approved herein forthwith and without further order of this court, provided that the trustee may recover the amounts paid if the estate turns out to be administratively insolvent.

7. [14-13839](#)-A-7 JENNIFER RUSH
PK-1
JENNIFER RUSH/MV

PATRICK KAVANAGH/Atty. for dbt.

MOTION TO AVOID LIEN OF
PORTFOLIO RECOVERY ASSOCIATES,
LLC
10-29-14 [[14](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

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

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

8. [14-13839](#)-A-7 JENNIFER RUSH MOTION TO AVOID LIEN OF MIDLAND
PK-2 FUNDING, LLC
JENNIFER RUSH/MV 10-29-14 [20]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of-(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there

were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

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

9. [14-12048](#)-A-7 RACHEL ROCHA
RSW-2
RACHEL ROCHA/MV

MOTION FOR AUTHORIZATION TO
RELEASE EXCESS FUNDS HELD BY
CHAPTER 7 TRUSTEE
11-19-14 [[20](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Authorization to Release Excess Funds Held by Chapter 7 Trustee

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

Disposition: Denied

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

Two problems prevent the court from authorizing the trustee to release "excess funds" he holds. First, the motion has not accounted for late-filed claims. Late-filed claims are paid before payment to the debtor (and if the funds held by the trustee are property of the estate, payment to the debtor's sister of property of the estate would have the same priority as payment to the debtor). Second, the court believes the correct procedure is a motion to compel the trustee to abandon property of the estate, *see* Fed. R. Bankr. P. 6007(b), even though whether the property is property of the estate may be a disputed factual issue.

10. [13-16694](#)-A-7 BERNARD/BERTIE WINTERS
JMV-1
JEFFREY VETTER/MV
CYNTHIA SCULLY/Atty. for dbt.

MOTION FOR TURNOVER OF PROPERTY
10-16-14 [[27](#)]

Final Ruling

Motion: Compel Debtor's Turnover of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party

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

Section 542(a) of the Bankruptcy Code requires the debtor and third parties to turn over to the chapter 7 trustee property that the trustee may use or sell. See 11 U.S.C. § 542(a). Property that is of inconsequential value or benefit to the estate is not required to be turned over to the trustee. See *id.* Other narrow exceptions and defenses are described in § 542. See *id.* § 542(b)-(d). In addition, secured creditors turning over collateral may require adequate protection as a precondition to turning over the property. See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211-12 (1983).

Section 542(e) further provides for the court's ordering a person who "holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." See 11 U.S.C. § 542(e).

The trustee may compel the debtor to turn over property to the trustee by motion rather than by adversary proceeding. Fed. R. Bankr. P. 7001(1). The trustee bears the burden of proof, and must demonstrate that the property sought is property of the estate.

In this case, the trustee has made the requisite showing of the estate's interest in the property sought by turnover. The motion will be granted. The order shall be served upon the debtors and shall state that the property described in the motion and supporting papers shall be turned over to the trustee at once and no later than January 5, 2015, at 5:00 p.m.

11. [12-11899](#)-A-7 CRAIG/SANDRA SCHARPENBERG MOTION TO PAY
DMG-4 11-19-14 [[85](#)]
VINCENT GORSKI/MV
LEONARD WELSH/Atty. for dbt.
D. GARDNER/Atty. for mv.

Tentative Ruling

Motion: For Order Directing Chapter 7 Trustee to Pay Final Fees and Expenses

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party consistent with this ruling

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

The movant, attorney D. Max Gardner, represents that attorneys' fees of \$9,964 and costs of \$247.16 were previously approved by an order entered August 28, 2014. The movant further asserts that the case is administratively solvent and an approximate 34% dividend will be paid to unsecured creditors in the amount of \$377,000. For the reasons stated in the motion, the court will grant the motion in part and issue an order authorizing the trustee to pay the fees and costs described in the motion. But the court will deny the motion in part to the extent it seeks an order directing the chapter 7 trustee to pay the fees and costs. The trustee's decision as to when to pay fees and costs is governed by the priorities of the Code, by bankruptcy procedure, and by the U.S. Trustee's policies and oversight.

1:15 p.m.

1. [14-13805](#)-A-7 KIRKSEY/TERESA NEWTON STATUS CONFERENCE RE: COMPLAINT
[14-1110](#) 9-11-14 [[1](#)]
LBS FINANCIAL CU V. NEWTON,
JR.
THOMAS PRENOVOST/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

2. [14-13325](#)-A-7 JESUS BARAJAS STATUS CONFERENCE RE: COMPLAINT
[14-1119](#)
BARAJAS V. SEQUOIA CONCEPTS,
INC. ET AL
PATRICK KAVANAGH/Atty. for pl.
DISMISSED, CLOSED
10-2-14 [[1](#)]

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

3. [14-13041](#)-A-7 EVARISTO OLMOS STATUS CONFERENCE RE: COMPLAINT
[14-1114](#)
OLMOS V. UNION ADJUSTMENT
COMPANY, INC.
PATRICK KAVANAGH/Atty. for pl.
9-29-14 [[1](#)]

Final Ruling

The matter is continued to February 4, 2015, at 11:00 a.m. to allow the plaintiff to prove up a default judgment. If judgment has not been entered, not later than January 21, 2015, the plaintiff shall file a status report.

1:30 p.m.

1. [14-13305](#)-A-7 TRICIA JONES CONTINUED MOTION FOR RELIEF
TJP-1 FROM AUTOMATIC STAY
LBS FINANCIAL CREDIT UNION/MV 8-19-14 [[13](#)]
FRANK SAMPLES/Atty. for dbt.
THOMAS PRENOVOST/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(2) / continued hearing date; no written opposition required

Disposition: Granted

Order: Prepared by moving party

Subject: 2004 Warrior SLC 3705

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

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 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 the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [14-13314](#)-A-7 JENEE GUILLEN MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 10-21-14 [[17](#)]
STEVEN STANLEY/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted as to estate, denied as to debtor

Order: Prepared by moving party

Subject: 7810 Morningdew 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). 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.

3. [14-14249](#)-A-7 SHAYLENE CARSON MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
FIRST INVESTORS SERVICING 11-4-14 [[12](#)]
CORP./MV
NEIL SCHWARTZ/Atty. for dbt.
JENNIFER WANG/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: 2012 Nissan Altima (leased vehicle)

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Adequate protection is also required where the property is declining in value, but "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." *See id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor has missed 2 post-petition payments due on the debt owed for the leased property described above. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

4. [14-13865](#)-A-7 DAVID BROWN
CJO-1
GREEN TREE SERVICING LLC/MV
ROBERT WILLIAMS/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-30-14 [[23](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 5908 Cedar Glen Lane, Bakersfield, CA

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

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). Adequate protection is also required where the property is declining in value, but "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." *See id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor has missed 3 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

5. [14-14791](#)-A-7 XCHITL CASTREJON
TJS-1
JPMORGAN CHASE BANK, N.A./MV
ASHTON DUNN/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-9-14 [[9](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2012 Acura MDX

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. [14-14899](#)-A-7 RUTH GARZA
D GK-1
ROBERT HARTLEY/MV
DIXON KUMMER/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-29-14 [[9](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

The motion will be denied without prejudice for noncompliance with the court's local rules. The following are the local rule violations identified by the court. First, no Relief from Stay Summary Sheet has been filed and served as a separate document. LBR 4001-1(a)(3) (see Form EDC 3-468). Second, the proof of service is attached to the notice and not to the motion. The proof of service must be filed separately. See LBR 9014-1(d)(2) (requiring separate notice of hearing); LBR 9014-1(e)(3) (requiring proof of service to be filed as a separate document). Lastly, the movant has not filed a declaration in support of the motion. LBR 9014-1(d)(6).

1:45 p.m.

1. [14-12637](#)-A-11 TOURE/ROLANDA TYLER CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-21-14 [[1](#)]
LEONARD WELSH/Atty. for dbt.

No tentative ruling.

2. [14-12637](#)-A-11 TOURE/ROLANDA TYLER CONTINUED MOTION TO VACATE
PK-1 9-13-14 [[93](#)]
INOCENCIO MADERA/MV
LEONARD WELSH/Atty. for dbt.
PATRICK KAVANAGH/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

3. [14-14241](#)-A-11 ARTHUR FONTAINE MOTION FOR COMPENSATION FOR
DMG-7 HALLE PORTER NEWLAND & RICKETT
HALLE PORTER NEWLAND & RICKETT LLP, ACCOUNTANT(S).
LLP/MV 11-12-14 [[83](#)]
D. GARDNER/Atty. for dbt.

Tentative Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

COMPENSATION APPLICATION

Applicant: Halle Porter Newland & Rickett LLP

Compensation approved: \$4340.00

Costs approved: \$0.00

Aggregate fees and costs approved in this application: \$4340.00

Retainer held: \$0.00

Amount to be paid from non-retainer source as administrative expense:
\$4340.00

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). 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.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Halle Porter Newland & Rickett LLP's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$4340.00 and reimbursement of expenses in the amount of \$0.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4340.00 shall be allowed as an administrative expense to be paid on or before the effective date of a confirmed plan. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from the available funds to the extent the estate is administratively solvent and consistent with the priorities of the Bankruptcy Code.

4. [14-14241](#)-A-11 ARTHUR FONTAINE
DMG-8

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF YOUNG WOOLDRIDGE,
LLP FOR D. MAX GARDNER,
DEBTOR'S ATTORNEY(S).
11-12-14 [86]

D. GARDNER/Atty. for dbt.

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

COMPENSATION APPLICATION

Applicant: Law Offices of Young Wooldridge, LLP

Compensation approved: \$15,815.00

Costs approved: \$533.47

Aggregate fees and costs approved in this application: \$16,348.47

Retainer held: \$11,414.50

Amount to be paid from non-retainer source as administrative expense:
\$11,414.50

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). 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.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Law Offices of Young Wooldridge LLP's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$15,815.00 and reimbursement of expenses in the amount of \$533.47. As of the date of the application, the applicant held a retainer in the amount of \$11,414.50. The amount of \$16,348.47 shall be allowed as an administrative expense to be paid on or before the effective date of a confirmed plan. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from the available funds to the extent the estate is administratively solvent and consistent with the priorities of the Bankruptcy Code.