

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

FRIDAY

JANUARY 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. [13-15103](#)-A-13 SYLVIA RODRIGUEZ PRE-TRIAL CONFERENCE RE: MOTION
SAH-1 TO VALUE COLLATERAL OF GMAC
SYLVIA RODRIGUEZ/MV MORTGAGE
9-10-13 [[15](#)]

SUSAN HEMB/Atty. for dbt.
ORDER 10/17, RESPONSIVE
PLEADINGS

No tentative ruling.

2. [13-16006](#)-A-13 ARTHUR/KAREN GONZALES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-9-13 [[19](#)]

GARY HUSS/Atty. for dbt.
\$70.25 PAID

Final Ruling

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

3. [10-61108](#)-A-13 CARLOS/ROSEMARY ARREAZOLA MOTION TO MODIFY PLAN
PBB-2 11-13-13 [[46](#)]
CARLOS ARREAZOLA/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

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

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

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

4. [10-61812](#)-A-13 FRANK/ROMELIA URIBE
PBB-1
FRANK URIBE/MV
PETER BUNTING/Atty. for dbt.

MOTION TO INCUR DEBT
12-2-13 [[37](#)]

Tentative Ruling

Motion: Incur Further Indebtedness for Purchase of Real Property

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

Disposition: Granted subject to the trustee's approval of the order as to form and content

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 trustee has not opposed the motion. The motion asserts that the elements of Local Bankruptcy Rule 3015-1(i)(2) have been met except for the requirements in LBR 3015-1(i)(2)(D) and (F).

Although the debt is a single loan incurred to purchase a residence that is reasonably necessary, the motion does not clearly state that the residence to be purchased with the new debt is reasonably necessary for the maintenance or support of the debtor and his or her family. Additionally, the monthly payment will exceed \$2,000.00, which is greater than the debtor's current rental payment of \$1300.00 shown on Schedule J filed on October 12, 2010.

However, the plan is not in default, and the requirements of LBR 3015-1(i)(2) other than subparagraphs (D) and (F) have been satisfied. The trustee has not opposed the motion. Finally, the debtors' confirmed plan, which pays 100 percent to unsecured creditors, will complete in 8 months or less according to the debtors' motion.

5. [13-17012](#)-A-13 JOSE PONCE
MBB-2
BANK OF AMERICA, N.A./MV
BRIAN TRAN/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-15-13 [[16](#)]

Final Ruling

The case has been dismissed for failure to timely file documents. The motion will be denied as moot.

6. [11-17816](#)-A-13 MARLOWE FOSSEN MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
U.S. BANK, N.A./MV 11-26-13 [[60](#)]
TIMOTHY SPRINGER/Atty. for dbt.
MARK ESTLE/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

At the request of the parties, the matter is continued to January 30, 2014, at 9:00 a.m.

7. [12-17916](#)-A-13 DENNIS/SAUNDRA ROBERTS MOTION TO MODIFY PLAN
PBB-1 11-12-13 [[23](#)]
DENNIS ROBERTS/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted

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

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

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

8. [13-16218](#)-A-13 JOHN/LORIANN HUERTA MOTION TO CONFIRM PLAN
KMM-3 11-19-13 [[39](#)]
JOHN HUERTA/MV
KARNEY MEKHITARIAN/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so renders any pending confirmation motion for the prior plan moot. The debtor has filed a modified plan, and the motion will be denied as moot.

9. [13-16218](#)-A-13 JOHN/LORIANN HUERTA
KMM-4
JOHN HUERTA/MV

AMENDED MOTION TO VALUE
COLLATERAL OF DIGITAL FEDERAL
CREDIT UNION
12-5-13 [[47](#)]

KARNEY MEKHITARIAN/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$5,257.00

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). 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.*

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.

10. [13-12520](#)-A-13 MANUEL SUAREZ
RLF-7
MANUEL SUAREZ/MV
JEFF REICH/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
12-16-13 [[74](#)]

Tentative Ruling

Motion: Loan Modification Approval

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

Disposition: Granted

Order: Prepared by moving party according to the instructions below

EXHIBITS NOT COMPLIANT WITH LOCAL RULES

The exhibits do not comply with the court's Local Bankruptcy Rules and paragraph (6) of the Revised Guidelines for the Preparation of Documents applicable in the Eastern District of California. See LBR 9004-1(a). The exhibit was not filed as an exhibit document separate from the motion to which it relates. In addition, an exhibit index has not been filed, the exhibit is not properly numbered and identified at the bottom, and it is not appropriately titled. In the future, counsel should ensure the exhibits and all papers comply with the Local Bankruptcy Rules and the Revised Guidelines for the Preparation of Documents.

MORTGAGE LOAN MODIFICATION

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 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 and the holder of the loan to be modified 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.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the court grants the motion and that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

11. [13-16020](#)-A-13 BLANCA MARTINEZ CONTINUED OBJECTION TO
MHM-1 CONFIRMATION OF PLAN BY MICHAEL
H. MEYER
11-22-13 [[35](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

12. [13-16020](#)-A-13 BLANCA MARTINEZ MOTION TO CONVERT CASE FROM
MHM-2 CHAPTER 13 TO CHAPTER 7 AND/OR
MICHAEL MEYER/MV MOTION TO DISMISS CASE
11-26-13 [[42](#)]

THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

13. [13-16020](#)-A-13 BLANCA MARTINEZ OBJECTION TO DEBTOR'S CLAIM OF
MHM-3 EXEMPTIONS
MICHAEL MEYER/MV 12-4-13 [[50](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim of Exemption (Homestead Exemption)
Notice: Deemed noticed under LBR 9014-1(f)(2); no written opposition
required
Disposition: Sustained
Order: Prepared by objecting party

NOTICE

The objection was served on the debtor at the address shown in the original petition on December 4, 2013. But because the objection was served on the debtor at the address shown on the *amended* petition (426 Vineyard Ave., Madera, CA) on December 12, 2013, which date is less than 28 days before the hearing, the court will deem the matter as having been noticed under LBR 9014-1(f)(2). The address shown in the amended petition counts as the proper address for service as it is the most recent address designated by the debtor. Fed. R. Bankr. P. 7004(b)(9).

DEFAULT IN THE ABSENCE OF DEBTOR'S APPEARANCE

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). 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).

LEGAL STANDARDS

Article 4 of Part 2, Title 9 (Enforcement of Judgments), Division 2, Chapter 4 of the California Code of Civil Procedure provides for an exemption known as the "automatic" homestead exemption. See Cal. Civ. Proc. Code §§ 704.710-704.850; *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 17-20 (B.A.P. 9th Cir. 2003). This exemption is conceptually distinct from the declared homestead exemption provided in Article 5 of Part 2, Title 9, Division 2, Chapter 4 of the California Code of Civil Procedure. See §§ 704.910-704.995; *Kelley*, 300 B.R. at 18-19.

The automatic homestead exemption under Article 4 is limited to the "principal dwelling" of the debtor or the debtor's spouse. A "dwelling" is defined by statute to include any place a person "resides." Cal. Civ. Proc. Code § 704.710(a), (c). Section 704.710 further provides that the term "'homestead' means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." *Id.* § 704.710(c). Additionally, "the factors a court should consider in determining residence for homestead purposes are [(i)] physical occupancy of the property and [(ii)] the intention with which the property is occupied." *Kelley*, 300 B.R. at 21 (citing *Ellsworth v. Marshall*, 16 Cal. Rptr. 588, 589 (Cal. Ct. App. 1961)); *accord In re Pham*, 177 B.R. 914, 918 (Bankr. C.D. Cal. 1994).

"[T]he automatic homestead exemption can only be claimed by a debtor who resides (or who is related to one who resides) in the homestead property at the time of a forced judicial sale of the dwelling." *Kelley*, 300 B.R. at 21 (citing Cal. Civ. Proc. Code §§ 704.710(a)-(c), 704.720, 704.730, 704.740). The bankruptcy petition constitutes a "forced sale" for purposes of the Article 4 automatic exemption under sections 704.710-704.850. See *id.* at 17, 20, 21 (citing *In re Pike*, 243 B.R. 66, 70 (B.A.P. 9th Cir. 1999)). Thus, the residency requirement must be met on the petition date.

DISCUSSION

The debtor's original petition and schedules showed that she lived at 29321 Avenue 13 ½, Madera, California, ("Rental Property") on the date of the filing of the petition. The amended petition changed the debtor's street address to the Vineyard Property, and amended Schedule A now includes the Vineyard Property. However, amended Schedule B provides that her furniture and household goods, clothing and a 1997 Toyota Corolla are located at the address for the Rental Property.

Further, the debtor testified at the first § 341 meeting on October 22, 2013, that she did not own the Vineyard Property but that Richard Diaz owned it. Velasco Decl. ¶ 7, ECF No. 52. The debtor further testified at this meeting that "she did not know that she purchased residential property insurance for the Vineyard Property but that Mr. Diaz gave her documents to sign." *Id.*

At the § 341 meeting of creditors on October 22, 2013, the trustee's attorney believes she handed the debtor a document attached as Exhibit B to the objection in order to verify whether the address listed on the document, which was the address for the Rental Property, was the debtor's current mailing address. Velasco Decl. ¶ 5. This method of inquiring about the debtors' current mailing addresses is this

attorney's practice and procedure at § 341 meetings. *Id.* The trustee's attorney believes that the debtor confirmed that the address for the Rental Property was her current mailing address, and that the debtor testified that she pays rent in the amount of \$400 per month. *Id.*

At a continued meeting of creditors, the debtor was unresponsive to further questions regarding when she moved from the Rental Property to the Vineyard Property. She "testified that either she did not remember and/or she did not understand the question." Velasco Decl. ¶ 9. But she did admit that "she moved to the Vineyard Property after she had knowledge that Mr. Diaz put the Vineyard Property in her name." *Id.*

The court concludes based on all the facts that the debtor moved to the Vineyard Property after the first meeting of creditors. This conclusion is supported by the debtor's statements (1) at the first § 341 meeting that she did not know Diaz transferred the Vineyard Property to her, and (2) at the continued meeting of creditors that she moved to the Vineyard Property after having knowledge that Diaz had placed the property in her name.

Therefore, at the time of filing the bankruptcy petition, the debtor did not physically occupy the Vineyard Property. Further, because the petition date is the relevant date for determining the scope and validity of exemptions, and because the debtor did not own the Vineyard Property on that date and rented the Rental Property on that date, the debtor may not claim the homestead exemption in the Vineyard Property. *See Kelley*, 300 B.R. at 21.

14. [11-13343](#)-A-13 ELIA PEREZ
PBB-3
ELIA PEREZ/MV
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN
11-21-13 [[52](#)]

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.

15. [08-17849](#)-A-13 JOCELYN RAMIREZ
JTR-2
JOCELYN RAMIREZ/MV

CONTINUED MOTION FOR CONSENT TO
ENTER INTO LOAN MODIFICATION
AGREEMENT
11-27-13 [33]

JOCELYN RAMIREZ/Atty. for mv.

Final Ruling

Motion: Loan Modification Approval

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).

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 and the holder of the loan to be modified 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.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the court grants the motion and that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

16. [13-17152](#)-A-13 ISMAEL LOZANO ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-9-13 [[23](#)]

NICHOLAS ANIOTZBEHERE/Atty. for dbt.
\$70.00 PAID

Final Ruling

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

17. [13-17153](#)-A-13 ALEX/MARIA MORALES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-10-13 [[14](#)]

JOEL WINTER/Atty. for dbt.

Final Ruling

The filing fee paid, the matter is dropped as moot.

18. [08-15370](#)-A-13 IRVIN/COLLEEN PANKEY MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
11-26-13 [[81](#)]

MHM-1
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [10-12470](#)-A-13 FRANK/MARIE SANCHEZ CONTINUED MOTION TO SELL
MNE-3
11-25-13 [[57](#)]

FRANK SANCHEZ/MV
M. ENMARK/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party and approved as to form and content by the Chapter 13 trustee

Property: 2320 W. Indianapolis Avenue, Fresno, CA 93705

Buyer: Vector Holdings, LLC

Sale Price: \$75,000.00 and proceeds to be distributed in accordance with notice of hearing

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). 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.

20.	13-14470 -A-13	JESUS/ANGELIQUE CITAL	MOTION FOR RELIEF FROM
	PPR-1		AUTOMATIC STAY
	ACCESS CAPITAL FINANCE		12-6-13 [73]
	PARTNERS/MV		
	JEFFREY ROWE/Atty. for dbt.		
	BONNI MANTOVANI/Atty. for mv.		

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Prepared by moving party

Subject: 2003 Hummer H2

Plan: Second Modified Chapter 13 Plan § 2.10, filed October 31, 2013, ECF No. 60

Confirmed: Order, filed December 16, 2013, ECF No. 82

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).

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997). "A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000). The test for deciding whether the question presented is moot is: whether there can be any effective relief. *West v. Secretary of Dept. of Transp.*, 206 F.3d 920, 925 (9th

Cir. 2000). If not, the action is moot. *City of Erie*, 529 U.S. at 287.

The respondent debtor has proposed, and confirmed, a Chapter 13 plan. The plan provides for the collateral in Class 3 of the Eastern District form Chapter 13 Plan. EDC 3-080. That class provides, "Class 3 includes all secured claims satisfied by the surrender of collateral. Upon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its right against its collateral..." This provision binds the debtor and all creditors. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). As a result, no effective relief can be granted and the motion will be denied as moot.

21. [10-17672](#)-A-13 BECKY FLORES CONTINUED AMENDED MOTION TO
RCO-1 APPROVE LOAN MODIFICATION
JPMORGAN CHASE BANK, NATIONAL 12-18-13 [[43](#)]
ASSOCIATION/MV
DAVID JENKINS/Atty. for dbt.
KRISTI WELLS/Atty. for mv.

Tentative Ruling

Motion: Loan Modification Approval

Notice: Deemed noticed under LBR 9014-1(f)(2) (motion served and filed on 12/18/13); no written opposition required

Disposition: Granted

Order: Prepared by moving party according to the instructions below

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

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the court grants the motion and that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

22. [13-11576](#)-A-13 BENITO/MARTHA GALARZA
TOG-4
BENITO GALARZA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

AMENDED MOTION TO CONFIRM PLAN
12-6-13 [[119](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: Second Amended Chapter 13 Plan, filed December 6, 2013, ECF No. 117

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 Amended Chapter 13 Plan, filed December 6, 2013, ECF No. 117. 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.

INSUFFICIENT NOTICE

In the Eastern District of California a motion to confirm a Chapter 13 plan requires 42 days notice. LBR 3015-1(d)(1). This motion was filed and served on December 6, 2013, and set for hearing on January 3, 2014, which is only 28 days notice.

INADEQUATE FUNDING

Title 11 of the U.S.C. § 1322(a)(1) requires the plan to devote all or such portion of future earnings or other future income to the supervision and control of the trustee as is necessary for the execution of the plan. As proposed in the Second Amended Chapter 13 Plan § 1.01, filed December 6, 2013, ECF No. 117, the debtors were to have paid \$10,040.00. As of that date they have paid only \$8,510.00.

As a result, the plan cannot be confirmed.

23. [13-17293](#)-A-13 KHAMMINH/BOUNMA RASAVONG MOTION TO VALUE COLLATERAL OF
RLF-1 BANK OF AMERICA
KHAMMINH RASAVONG/MV 11-22-13 [8]
JEFF REICH/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted as to both liens held by the responding party

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

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claims are 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 second and third 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 and third deeds of trust subject to this order.

24. [13-15898](#)-A-13 WALTER/SHANNON OXBORROW MOTION TO VALUE COLLATERAL OF
JRL-2 KEYBANK, NA
WALTER OXBORROW/MV 11-4-13 [[26](#)]
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted in part, denied in part

Order: Prepared by the moving party

VALUATION OF COLLATERAL

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders 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).

OTHER RELIEF REQUESTED

The court will not grant the other relief requested in the motion. In determining the value of the collateral, the court is not deciding the nature, extent or validity of the lien. Any such determination requires an adversary proceeding. Fed. R. Bankr. P. 7001(2). The court is also not determining that the lien of the responding party should be extinguished or making any ruling regarding distributions under debtors' chapter 13 plan. In the future, these types of relief should not be included as part of the relief sought in motions to value.

RULE 9013

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor" Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other

papers in support together can be read as containing the required grounds.

The motion itself does not state the grounds with sufficient particularity. The motion does not include a general description of the real property to be valued. Further, the court would prefer that motions to value contain such basic material facts as the value of the collateral, and the amount of senior liens.

25. [13-17268](#)-A-13 CHRISTOPHER/NORMA ABLES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-13 [[26](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

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

Date Issued: December 18, 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.

26. [13-13912](#)-A-13 LUIS/RUBY BURGOS MOTION OF NON-COMPLIANCE AND
REQUEST TO RE-ISSUE COURT'S
ORDER TO SHOW CAUSE
12-20-13 [[50](#)]

MICHAEL MEYER/MV

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

9:15 a.m.

1. [13-16902](#)-A-13 MARK GROSSMAN
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
12-4-13 [[22](#)]

No tentative ruling.

2. [11-16344](#)-A-13 ROSEMARIE LINDBECK
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
12-6-13 [[43](#)]
- M. ENMARK/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, this matter is dropped as moot.

3. [13-16796](#)-A-13 EDWARD/MARGARET EHA
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO FILE DOCUMENTS ,
MOTION TO DISMISS CASE
12-4-13 [[24](#)]

No tentative ruling.

9:30 a.m.

1. [13-17008](#)-A-13 JASON/MONA MENDONCA STATUS CONFERENCE RE: COMPLAINT
[13-1122](#) 11-5-13 [[1](#)]
MENDONCA ET AL V. RUIZ
NANCY KLEPAC/Atty. for pl.

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

2. [13-14791](#)-A-13 MELISSA SILVEIRA STATUS CONFERENCE RE: COMPLAINT
[13-1116](#) 10-28-13 [[1](#)]
SILVEIRA V. SILVEIRA
BRIAN FRAY/Atty. for pl.

Final Ruling

At the request of the parties, the adversary proceeding is dismissed and the status conference concluded.

3. [13-14791](#)-A-13 MELISSA SILVEIRA MOTION TO DISMISS ADVERSARY
[13-1116](#) TGM-1 PROCEEDING/NOTICE OF REMOVAL
SILVEIRA V. SILVEIRA 11-26-13 [[6](#)]
TRUDI MANFREDO/Atty. for mv.

Final Ruling

This matter has been resolved by stipulation.

10:00 a.m.

1. [13-15305](#)-A-12 ROGELIO CALDERON AND MOTION TO EMPLOY THOMAS O.
TOG-4 LAURA BOBADILLA-DELGADO GILLIS AS ATTORNEY(S)
ROGELIO CALDERON/MV 12-5-13 [[23](#)]
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Employ Thomas O. Gillis as Attorney for the Debtors

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).

For the reasons stated in the motion and supporting declaration, the court will grant the motion and approve the employment of Thomas Gillis as attorney for the debtors in this case.