

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MARCH 16, 2016
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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.

1. [15-13701](#)-A-13 KEVIN GERHARDT
MHM-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
2-26-16 [[87](#)]

GABRIEL WADDELL/Atty. for dbt.

No tentative ruling.

2. [15-14410](#)-A-13 JESSE LOPEZ
JDW-1
JESSE LOPEZ/MV
JOEL WINTER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
2-1-16 [[41](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

CONFIRMATION

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

3. [15-14410](#)-A-13 JESSE LOPEZ
KEH-1
BALBOA THRIFT & LOAN/MV
JOEL WINTER/Atty. for dbt.
KEITH HERRON/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-17-16 [[47](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2011 Jeep Wrangler Unlimited Sport SUV 4D

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).

STAY RELIEF

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. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. *See id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. *See id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . .) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401). "Ninth Circuit courts generally divide the equity remaining (after subtracting liens of the movant and any liens *senior* to the movant from the property's fair market value) by the fair market value of the collateral." Kathleen P. March, Hon. Alan M. Ahart & Janet A.

Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1077, at 8(II)-7 (rev. 2015) (citing *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984)).

Here, the equity cushion in the vehicle is only 7.3% (\$1783.19 / \$24,432) of the property's fair market value, and as vehicular collateral, this value continues to decline at considerable pace. Two post-petition payments have been missed as well. The movant further asserts that evidence of post-petition insurance has not been provided. These facts together constitute cause for relief from the automatic stay. 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.

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.

Balboa Thrift & Loan's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2011 Jeep Wrangler Unlimited Sport SUV 4D, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

4. [15-14722](#)-A-13 ANTHONY JUAREZ
MHM-1
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
WITHDRAWN

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-5-16 [[12](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

5. [14-12234](#)-A-13 ALEXANDRA CHAMPAGNE
KGH-1
PLANET HOME LENDING, LLC/MV
TIMOTHY SPRINGER/Atty. for dbt.
CORI JONES/Atty. for mv.
RESPONSIVE PLEADING
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-17-16 [[65](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [15-14134](#)-A-13 CARLOS/LUZ DELGADO

CARLOS DELGADO/MV
PIERRE BASMAJI/Atty. for dbt.
DISMISSED 2/27/16
- MOTION TO CONFIRM PLAN
1-26-16 [[74](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

7. [15-14134](#)-A-13 CARLOS/LUZ DELGADO

I-5 PROPERTY SERVICES, INC./MV

PIERRE BASMAJI/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.
DISMISSED 2/27/16
- OBJECTION TO CONFIRMATION OF
PLAN BY I-5 PROPERTY SERVICES,
INC.
2-22-16 [[81](#)]

Final Ruling

The case dismissed, the matter is denied as moot.

8. [14-13043](#)-A-13 WILFREDO/YOLANDA FAELDO
TRM-58
DIAMOND RESORTS U.S.
COLLECTION DEVELOPMENT, LLC/MV
VARDUHI PETROSYAN/Atty. for dbt.
THOMAS MULALLY/Atty. for mv.
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-10-16 [[48](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Membership in Diamond Resorts U.S. Collection, which includes
(i) membership in the Diamond Resorts U.S. Collection Members
Association, a non-stock, non-profit Delaware corporation, whose

principal place of business is located in Clark County, NV, and (ii) the following points for use in the Collection: 38,000 Points.

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).

STAY RELIEF

The debtor has defaulted on a loan from the moving party secured by the property described above, and postpetition payments are past due. In addition, the confirmed plan provides that the failure to include a secured claim in Class 1, 2, 3, or 4 of the plan may be cause to terminate the automatic stay. The plan does not provide for the moving party's secured claim. Cause exists to grant relief from stay 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.

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.

Diamond Resorts U.S. Collection Development, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated as to all parties in interest with respect to the property described in the motion, commonly known as a "Membership in Diamond Resorts U.S. Collection, which includes (i) membership in the Diamond Resorts U.S. Collection Members Association, a non-stock, non-profit Delaware corporation, whose principal place of business is located in Clark County, NV, and (ii) the following points for use in the Collection: 38,000 Points." The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

9. [15-12763](#)-A-13 FRANK MOOSIOS
DRJ-3
LOUIS MOOSIOS/MV
TRUDI MANFREDO/Atty. for dbt.
DAVID JENKINS/Atty. for mv.
RESPONSIVE PLEADING
- PRETRIAL CONFERENCE RE: MOTION
TO DISMISS CASE
11-10-15 [[72](#)]

Final Ruling

The contested matter having been transferred to The Honorable W. Richard Lee, the pretrial conference is continued to March 16, 2016, at 1:30 p.m., in Courtroom 12, before Judge Lee.

10. [15-14575](#)-A-13 HECTOR ZAVALZA

ERIC ESCAMILLA/Atty. for dbt.
- ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-29-16 [[39](#)]

Final Ruling

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

11. [15-13184](#)-A-13 DEBBY RENNA
FJG-2
DEBBY RENNA/MV
- RESCHEDULED PRE-TRIAL
CONFERENCE RE: MOTION TO
CONFIRM PLAN
9-3-15 [[22](#)]
- F. GIST/Atty. for dbt.
OPPOSITION WITHDRAWN

No tentative ruling.

12. [10-65087](#)-A-13 IA XIONG
MHM-1
MICHAEL MEYER/MV
- MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
2-17-16 [[129](#)]
- PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Determination of Final Cure and Payment of Required Postpetition Amounts under Rule 3002.1(h)

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).

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response under subdivision (g)." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not timely file it. *Id.*

The holder of the claim then has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days' after service of the Notice of Final Cure). The response statement permits the holder of the claim to agree or dispute whether the debtor has paid in full the amount required to cure the default on the claim and whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion as an award of the "other appropriate relief" described in Rule 3002.1(i)(2). The court will determine that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

13. [11-15088](#)-A-13 MIGUEL/ARACELI FIGUEROA
FW-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
2-17-16 [[88](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Law Group, P.C., has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3884.50 and reimbursement of expenses in the amount of \$129.55. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis, which includes \$5500.50 of attorney's fees and \$308.53 of expenses incurred by debtor's attorney. In this case, a no-look fee of \$5000.00 was also charged and approved as part of plan confirmation, of which \$2525.00 was paid prepetition.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "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. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

The debtor's attorney has agreed to accept the amounts available through the chapter 13 plan for payment of the fees and costs approved by the court. This will be reflected in the order. The plan will fund as a result.

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.

Fear Law Group, P.C.'s application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3884.50 and reimbursement of expenses in the amount of \$129.55. The aggregate allowed amount equals \$4014.05. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4014.05 shall be allowed as an administrative expense to be paid through the plan but only to the extent that of available funds held by the trustee that may be paid to the debtor's attorney. Any the remainder of the allowed amounts shall not be paid after exhaustion of available funds held by the trustee.

IT IS FURTHER ORDERED that the court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis. The prior fees and costs total \$5809.03. Such interim amounts are approved in addition to the \$5000 no-look fee charged, \$2525 of which was paid prepetition, that the court approved as part of plan confirmation pursuant to LBR 2016-1(c).

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

14. [16-10591](#)-A-13 STEVEN/MARIA LUNA
MAZ-1
STEVEN LUNA/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
3-2-16 [[11](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by 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). 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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.*

(emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.