

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**WEDNESDAY**

**JUNE 3, 2015**

**9:00 A.M. CHAPTERS 13 AND 12 CASES**

**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.

1. [15-11000](#)-A-13 ERNEST/BARBARA SANDOVAL ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-21-15 [[25](#)]

**Tentative Ruling**

Unless the respondent has paid all fees due as of the date of the hearing (\$79 due 4/16/15 and \$77 due 5/18/15), the court will dismiss the case.

2. [15-11000](#)-A-13 ERNEST/BARBARA SANDOVAL ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-21-15 [[41](#)]

**Tentative Ruling**

Unless the respondent has paid all fees due as of the date of the hearing (\$79 due 4/16/15 and \$77 due 5/18/15) , the court will dismiss the case.

3. [12-13703](#)-A-13 NOEMI MORENO MOTION TO DISMISS CASE  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN  
4-17-15 [[52](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [15-10007](#)-A-13 GEORGE/SILVIA MARTINEZ MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
ALLY BANK SERVICED BY ALLY  
SERVICING LLC/MV  
PHILLIP GILLET/Atty. for dbt.  
TORIANA HOLMES/Atty. for mv.  
4-29-15 [[19](#)]

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2013 Cadillac Escalade

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).

### **CAUSE FOR 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. 2011). However, "[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)). Further, when a creditor is oversecured, 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)).

### **ANALYSIS**

The movant states that Exhibit C "is a complete accounting of the Debtor's post-petition payments and other obligations that have accrued, the amount and dates of all payments received post-petition, and the obligation(s) to which each of those post-petition payments was applied." Mot. Relief from Stay at 2-3. Exhibit C, however, is unclear about what post-petition payments have accrued, and the obligations to which each post-petition payment was applied. For example, a payment was made on 2/13/15 in the amount of \$1007.51. The accounting provided has no information about whether this payment was applied to a prior obligation from a previous month or whether it was applied to the month in which the payment was made. The same is true for the payment made 3/27/15.

However, the motion is unopposed. The movant has leased the subject property to the debtors, and the debtors are in default under the lease. The stay relief summary sheet states that 3 post-petition payments are past due and that the total past due amount of post-petition payments is \$3,243.02. The court will accept such well-pleaded facts.

In addition, the motion asserts that movant has been unable to verify whether appropriate insurance coverage on the vehicle exists. Then movant asserts the following fact: that the failure to maintain adequate insurance and acceptable insurance coverage is a default under the terms of the lease. Without any opposition by the debtors,

the court must accept the fact that inadequate insurance exists for the vehicle.

Further, this case was filed on January 3, 2015. Once confirmed, the chapter 13 plan, section 3.02, modifies the stay to allow the movant to obtain possession of the leased property and to dispose of it under applicable law. By the hearing date on this stay relief motion, 5 months will have passed since the petition date without a plan having been confirmed. No motion to confirm has been filed as of May 28, 2015. Even if a motion to confirm were on file as of June 1, 2015, the confirmation hearing would not be until July 13, 2015. This is too lengthy a period to allow the automatic stay to preclude the movant from obtaining possession of the leased property and disposing of it, especially when post-petition payments are being missed.

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. [12-15109](#)-A-13 EDUARDO/GLENDA VALLADARES MOTION TO DISMISS CASE  
MHM-2 4-17-15 [[66](#)]  
MICHAEL MEYER/MV  
FRANK RUGGIER/Atty. for dbt.  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [15-10914](#)-A-13 RICHARD/SUSAN BILL OBJECTION TO CONFIRMATION OF  
KRK-1 PLAN BY BANK OF AMERICA, N.A.  
BANK OF AMERICA, N.A./MV 5-8-15 [[20](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
KATELYN KNAPP/Atty. for mv.

#### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained

**Order:** Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

#### **CONFIRMATION**

The movant objects to confirmation because the plan does not provide for the curing of the default (arrearages) within a reasonable time or for maintenance of payments while the case is pending. See 11 U.S.C. §

1322(b)(5). But section 1322(b)(5) is an optional plan provision. The introductory language of § 1322(b) states: "Subject to subsections (a) and (c) of this section, the plan *may* . . . provide for the curing of any default . . . and maintenance of payments while the case is pending . . . . 11 U.S.C. § 1322(b)(5) (emphasis added).

The plan also objects to confirmation on the ground that § 1325(a)(5) has not been satisfied given that the plan fails to provide monthly mortgage payments to the movant.

The plan proposes to reduce the movant's Class 2 secured claim based on the value of the collateral, the debtors' residence located at 12000 Whippoorwill Lane, Bakersfield, California. But the failure to file a motion to value such collateral that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); *see also* Ch. 13 Plan § 2.09(c). Accordingly, the objection will be sustained for this reason.

#### **75 DAY ORDER**

The court will order that 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).

#### **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.

Bank of America, N.A., as service for The Bank of New York Mellon FKA The Bank of New York, as Successor Indenture Trustee of a loan trust, has presented its objection to confirmation to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained.

IT IS FURTHER ORDERED that 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).

7. [15-10914](#)-A-13 RICHARD/SUSAN BILL  
PPR-1  
BANK OF AMERICA, N.A./MV  
ROBERT WILLIAMS/Atty. for dbt.  
CASSANDRA RICHEY/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
4-14-15 [[15](#)]

### **Tentative Ruling**

Because the court will sustain the objection to confirmation at docket No. 20, having docket control number KRK-1, the court does not decide this objection to confirmation. The objection will be overruled as moot.

8. [15-11917](#)-A-13 JUSTIN/DESIREE LAY  
RSW-1  
JUSTIN LAY/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
5-20-15 [[8](#)]

### **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.

9. [10-62118](#)-A-13 BRIAN REESE MOTION TO DISMISS CASE  
MHM-2 4-10-15 [[35](#)]  
MICHAEL MEYER/MV  
WILLIAM OLCOTT/Atty. for dbt.

**Final Ruling**

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

10. [12-14922](#)-A-13 RONALD/SANDRA CHRISTY MOTION TO DISMISS CASE  
MHM-3 4-7-15 [[66](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE CONTINUED MOTION TO CONFIRM  
PK-5 PLAN  
ERIC LAFORTUNE/MV 11-26-14 [[127](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

The court having sustained the trustee' objection to the debtor's claim of exemption as to the inherited IRA, Civil Minutes, filed May 1, 2015, ECF # 187, the plan does not satisfy the liquidation test described in 11 U.S.C. s 1325(a)(4). The motion is denied.

12. [14-11231](#)-A-13 ERIC/CHRISTI LAFORTUNE AMENDED MOTION FOR COMPENSATION  
PK-6 FOR PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
5-14-15 [[197](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

The motion is denied without prejudice. The applicant bears the burden of proof on entitlement to fees. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *In re Roderick Timber Co.*, 185 B.R. 601,606 (9th Cir. B.A.P. 1995). Because the application is a welter of mathematical computations, the court finds the applicant has not sustained his burden of proof and denies the application: It(1) contains internally inconsistent representations, Amended Application

§ 1, filed May 14, 2015, ECF # 197 (which represents that fees of \$20,183.00 and costs of \$279.20 total \$20,477.54, when they actually total \$20,462.20); (2) does not appear to apply the pre-petition retainer of \$2,150 to the total fees; (3) is supported by time records that contradict each other, compare Exhibit B (which shows fees and costs of \$20,362.04 but is incomplete, with entries starting on 11/26/2014 and only totals \$11,3676.84), with Exhibit C (which shows fees of \$19,823.00); and (4) is not supported by a written consent of the client that shows the total amount of fees to which they consent.

13. [14-10134](#)-A-13 LEAH JONES  
MHM-3  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE  
4-17-15 [[62](#)]

### **Final Ruling**

**Motion:** Dismiss Case

**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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2400.

14. [15-10034](#)-A-13 LORI SILVA  
MHM-1  
  
ROBERT WILLIAMS/Atty. for dbt.

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
5-13-15 [[23](#)]

### **Tentative Ruling**

**Objection:** Confirm Chapter 13 Plan

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

**Disposition:** Sustained

**Order:** Civil minute order

Chapter 13 trustee Michael H. Meyer objection to confirmation citing feasibility and proper classification of the homeowners association dues. The debtor opposes the objection.



## **DISCUSSION**

The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

### Feasibility

A chapter 13 plan must be feasible. 11 U.S.C. § 1325(a)(6). This is a pragmatic test. The debtor claims income from her son \$315/month, soon to be ex-husband \$500/month and food stamps \$194/month. These total \$1,009/month. Expenses total \$523/month. Disposable income is \$486/month. She proposes a payment to the trustee of \$482/month. The court finds her plan feasible.

### Proper Classification

The trustee also objects to classification of the Sunrise Estates Homeowners Association in the amount of \$1,729 in class 2, contending it should be classified in class 1. Class 2 is for claims that are modified by the plan or that have matured/will mature before completion. Class 1 claim is for claims that were delinquent and mature after completion of the plan. Because this payment was delinquent on the petition date and will continue to accrue as long as the debtor owns the home, the court will sustain the objection on that basis.

## **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).

## **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.

Michael H. Meyer's objection to plan confirmation 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 objection,

IT IS ORDERED that the objection is sustained.

IT IS FURTHER ORDERED that 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.

15. [14-15036](#)-A-13 DWAYNE/SHEILA WILSON MOTION TO DISMISS CASE  
MHM-2 4-9-15 [[32](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

**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).

For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$7200, which does not account for the April 25, 2015 payment.

16. [13-12637](#)-A-13 LARRY/ELFRIEDE QUEEN MOTION TO DISMISS CASE  
MHM-1 4-17-15 [[21](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

At the hearing, the court intends to convert this case. The matter will be denied as moot.

17. [13-12637](#)-A-13 LARRY/ELFRIEDE QUEEN MOTION FOR SUBSTITUTION AS THE  
RSW-1 REPRESENTATIVE FOR DECEASED  
LARRY QUEEN/MV DEBTOR  
5-20-15 [[31](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Notice of Death and Motion for Substitution As the Representative for Deceased Debtor

**Notice:** LBR 9014-1(f)(2); no 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). 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).

#### **SUBSTITUTION AS REPRESENTATIVE FOR DECEASED DEBTOR AND FOR CONTINUED ADMINISTRATION**

The court interprets the motion as requesting continued administration of the case for joint debtor Elfriede Queen in a *chapter 7* case, not a chapter 13 case as requested. The debtor has filed a motion to convert this case, so the court deems the motion as requesting continued administration in a chapter 7 case. For the reasons stated in the motion, the court will grant the motion.

#### **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.

Debtor Larry Queen's Notice of Death and Motion for Substitution As the Representative for Deceased Debtor has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument, if any, presented at the hearing,

IT IS ORDERED that the motion is granted. Larry Queen shall be substituted as the representative for debtor Elfriede Queen.

IT IS FURTHER ORDERED that when this bankruptcy case is converted to a case under chapter 7, Elfriede Queen's case shall continue to be administered so far as possible as though her death had not occurred.

18. [13-12637](#)-A-13 LARRY/ELFRIEDE QUEEN MOTION TO CONVERT CASE FROM  
RSW-2 CHAPTER 13 TO CHAPTER 7  
LARRY QUEEN/MV 5-20-15 [[26](#)]  
ROBERT WILLIAMS/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Convert Case from Chapter 13 to Chapter 7

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

**Disposition:** Granted

**Order:** Prepared by the movant

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).

For the reasons stated in the motion, the court will grant the motion. Both debtor Larry Queen and debtor Elfriede Queen's joint case will be converted to a joint case under chapter 7 of Title 11.

19. [12-19240](#)-A-13 ELIAZAR SANCHEZ  
LKW-4  
ELIAZAR SANCHEZ/MV

MOTION FOR AUTHORITY TO  
TRANSFER INTEREST IN REAL  
PROPERTY TO CO-OWNER  
5-11-15 [[77](#)]

LEONARD WELSH/Atty. for dbt.

### **Tentative Ruling**

**Motion:** For Authority to Transfer Interest in Real Property to Co-Owner

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

**Disposition:** Granted

**Order:** Civil minute order

**Property:** Debtor's undivided one-half interest in real property located at 467 Handel Avenue, Shafter, California

**Transferee:** Debtor's non-filing spouse

**Other Details:** The transfer is made to effectuate a refinance by debtor's non-filing spouse. The real property has no equity: Flagstar Bank's first deed of trust on the real property secures a balance of approximately \$246,629.86, and the real property's value is \$245,399.00.

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).

### **AUTHORIZATION OF PROPERTY TRANSFER**

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 not property of the estate because the debtor's confirmed plan provides that property of the estate shall revert in the debtor upon confirmation of the plan. Section 363, applicable to property of the estate, is therefore inapplicable here.

Nevertheless, the confirmed plan creates a duty on the part of the Debtor to obtain prior court authorization before transferring property. Ch. 13 Plan § 5.02, ECF, No. 5. The Local Rules also require court authorization when property with a value of \$1000 or more is to be transferred other than in the ordinary course of business. LBR 3015-1(b) (1).

Based on the motion and supporting papers, the debtor will no longer owe a debt to Flagstar after the transfer and refinance of the debt secured by the real property. Thus, the court finds a proper reorganization purpose for this sale. The motion will be granted.

### **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 Eliazar Sanchez's Motion For Authority to Transfer Interest in Real Property to Co-Owner has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument, if any, presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby authorizes the debtor to transfer his undivided one-half interest in real property located at 467 Handel Avenue, Shafter, California, to his non-filing spouse so that the non-filing spouse may effectuate a refinance of the existing loan debt secured by such property.

20. [13-17241](#)-A-13 JANET CHRISTIANSEN  
PK-4

MOTION FOR COMPENSATION FOR  
PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
5-13-15 [[50](#)]

PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

### **Final Ruling**

**Application:** Allowance of Interim 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, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3420.00 and reimbursement of expenses in the amount of \$12.93.

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 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.

## 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.

Patrick Kavanagh's application for allowance of interim 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 an interim basis. The court allows interim compensation in the amount of \$3420.00 and reimbursement of expenses in the amount of \$12.93. The aggregate allowed amount equals \$3432.93. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3432.93 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that 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 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.

21. [15-10043](#)-A-13 JON/KATHLEEN QUIJADA  
APN-1  
SANTANDER CONSUMER USA INC./MV  
NEIL SCHWARTZ/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.
- OBJECTION TO CONFIRMATION OF  
PLAN BY SANTANDER CONSUMER USA  
INC.  
4-22-15 [[37](#)]

### Tentative Ruling

**Objection:** Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Overruled

**Order:** Civil minute order

When the chapter 13 plan is filed within 14 days of the petition and no motion to confirm is required, see LBR 3015-1(c)(1), the court's local rules require an objection to plan confirmation to be filed and served within 7 days after the first date set for the meeting of creditors, see LBR 3015-1(c)(4). The notice of the meeting of creditors includes notice of this deadline.

The first date for the § 341 meeting of creditors was March 4, 2015. The deadline for filing an objection to confirmation was March 11, 2015. But the objection was filed on April 22, 2015. The court will overrule this objection as untimely.

22. [15-10043](#)-A-13 JON/KATHLEEN QUIJADA                      MOTION TO VALUE COLLATERAL OF  
NES-1                      KERN SCHOOLS FEDERAL CREDIT  
JON QUIJADA/MV                      UNION  
4-13-15 [[21](#)]  
  
NEIL SCHWARTZ/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).

### **PROCEDURE ISSUES**

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." 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 does not state with particularity the grounds for the relief requested. The declaration read together with the motion contains the necessary particularity. In the future, counsel for the debtors should ensure that the motion contains the essential and basic facts supporting the relief requested.

### **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 1125 Tangerine St., Bakersfield, CA.

The court values the collateral at \$105,368. 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 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 real property collateral located at 1125 Tangerine St., Bakersfield, CA, has a value of \$105,368. 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.

23. [12-11246](#)-A-13 VICKY/ANIBAL CABRERA MOTION TO MODIFY PLAN  
RSW-5 4-23-15 [[108](#)]  
VICKY CABRERA/MV  
ROBERT WILLIAMS/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323,



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

24. [14-10149](#)-A-13 JOHN/WANDA GRIFFIN  
RSW-3  
JOHN GRIFFIN/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO INCUR DEBT  
5-20-15 [[27](#)]

### **Tentative Ruling**

**Motion:** For Authorization to Incur Further Debt to Purchase a Vehicle  
*Nunc Pro Tunc*

**Notice:** LBR 9014-1(f)(2); no 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). 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).

### **AUTHORITY TO INCUR DEBT NUNC PRO TUNC**

For the reasons stated in the motion, the court will grant the motion. The debtors are authorized to incur debt *nunc pro tunc* in the amount of \$2500. The debt was incurred for a 2002 Volkswagen Beetle. Several monthly payments of \$500 each will be made in addition to a small down payment that debtors have already paid.

### **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 debtors' Motion For Authorization to Incur Further Debt to Purchase a Vehicle *Nunc Pro Tunc* has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument, if any, presented at the hearing,

IT IS ORDERED that the motion is granted. The court authorizes the debtors' incurrence of debt for a 2002 Volkswagen Beetle in the amount of \$2500, *nunc pro tunc* to the date the debt had been incurred, as well as their repayment of the debt in several installments of \$500 along with the down payment.

25. [12-10955](#)-A-13 JEFFERY BAILEY  
MHM-4  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
4-7-15 [[112](#)]

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Prepared by moving party

The trustee's dismissal motion asserts the debtors are delinquent in the amount of \$5269.48 as of March 31, 2015. The debtors' response does not dispute this delinquency, effectively admitting its existence. The debtors state that \$5500 of payments posted in April. Other payments of \$2500 and \$1300 were scheduled or to be scheduled.

But the debtors state that "by the hearing date the debtor will have paid the delinquency, all of April and part of May." Response to Mot. Dismiss at 1, ECF No. 118 (emphasis added).

The trustee's motion, however, requests dismissal on several grounds including the event monthly plan payments that fall due between the filing of the motion and the hearing date on the motion are not paid. The May 25, 2015, monthly plan payment is specifically referenced as grounds for the motion to dismiss in the event that payment is not made.

Although the delinquency described in the trustee's motion may have been cured before the hearing date, another delinquency has arisen that is a specifically enumerated ground for dismissal. Because of this delinquency in the May 2015 plan payment, the court will dismiss the case.

26. [10-11362](#)-A-13 RONNIE/NICOLE SANCHEZ  
MHM-3  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
4-10-15 [[67](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

27. [10-11362](#)-A-13 RONNIE/NICOLE SANCHEZ MOTION TO DISMISS CASE  
MHM-4 4-17-15 [[74](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

28. [14-14165](#)-A-13 REBECCA SANCHEZ MOTION TO DISMISS CASE  
MHM-1 4-17-15 [[18](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

**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).

For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$600.

29. [11-62772](#)-A-13 JOHN/BETH NEMETH MOTION FOR RELIEF FROM  
KRG-1 AUTOMATIC STAY  
ANGEL SALAS/MV 5-12-15 [[302](#)]  
PHILLIP GILLET/Atty. for dbt.  
KELLY GARCIA/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Prepared by movant consistent with this ruling

**Subject:** Workers' compensation litigation before Workers' Compensation Appeals Board (WCAB) to obtain benefits from Uninsured Employers Benefits Trust Fund (UEBTF)

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 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Courts considering a request to pursue litigation in a collateral forum frequently consider: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling. Relief from stay to litigation before the WCAB as described above will not interfere with the bankruptcy case as any indemnification rights UEBTF may have against debtors will remain stayed by the automatic stay after the court grants relief from stay to the movant for the purpose requested.

Further, a specialized tribunal with the necessary expertise has been established, the WCAB, to resolve these issues. The litigation before the WCAB will not prejudice the interests of other creditors as any payment sought by movant will come from UEBTF and not from the debtors. Any indemnification action sought by UEBTF will continue to be subject to the stay. (The court notes that property of the estate has not reverted in the debtor pursuant to the terms of the confirmed plan.) UEBTF's rights to recover from the estate are governed by bankruptcy law and procedure just as other creditors' rights are.

The moving party shall have relief from stay to pursue the pending administrative litigation against UEBTF as identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals as against UEBTF. But no bill of costs may be

filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment as against the debtors by any party connected to the litigation, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

30. [10-11279](#)-A-13 THOMAS/JUDY RICHARDSON MOTION TO DISMISS CASE  
MHM-2 4-10-15 [[90](#)]  
MICHAEL MEYER/MV  
D. GARDNER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

31. [11-17479](#)-A-13 JOE/DIANA ZUNIGA MOTION TO DISMISS CASE  
MHM-1 4-17-15 [[59](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

32. [14-13981](#)-A-13 RICKY/TAMERA RICE MOTION TO DISMISS CASE  
MHM-2 4-1-15 [[49](#)]  
MICHAEL MEYER/MV  
PHILLIP GILLET/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

**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).

On January 10, 2015, the court issued a civil minute order that

required the debtors to confirm a chapter 13 plan within a stated time period. The civil minute order was issued at the January 7, 2015, hearing on the trustee's objection to confirmation of the debtor's proposed plan. The order stated that 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, i.e., the hearing on the trustee's objection to confirmation.

The hearing on the trustee's objection to confirmation was January 7, 2015. The date that is 75-days after such hearing is March 23, 2015. Two available hearings have passed since March 23, 2015—the court's Bakersfield calendar on April 8, 2015 and May 6, 2015, and this hearing. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The court will grant the motion.

33. [13-16684](#)-A-13 ROBERT/KAREN BAKER  
MHM-1  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
4-17-15 [[60](#)]

### **Final Ruling**

The motion with drawn, the matter is dropped as moot.