

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

Thursday

September 25, 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. [13-14205](#)-A-13 EDDIE NOLEN MOTION TO MODIFY PLAN
HDN-2 8-12-14 [[46](#)]
EDDIE NOLEN/MV
HENRY NUNEZ/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.

2. [09-13807](#)-A-13 DAVID/DEBORAH MARTINEZ MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
U.S. BANK, N.A./MV 8-16-14 [[75](#)]
DAVID JENKINS/Atty. for dbt.
JOELY BUI/Atty. for mv.

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party (see specific instructions below)

Subject: 2840 Ball Court, Turlock, CA 95382

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The debtor does not oppose relief under § 362(d)(1) but object to relief under § 362(d)(4).

Subsection (d)(4) of § 362 allows a creditor having a claim secured by real property relief from stay "of an act against real property . . . if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme may involve either (i) unauthorized

transfer of an interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such real property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedules A or D. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the quitclaim deed is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Thus, the property may not even be property of the estate.

The court will grant the motion in part and deny the motion in part. The order shall state as follows: "To the extent that the property may be property of the estate affected by the debtor's bankruptcy, relief from stay under § 362(d)(1) is granted. The request for relief under § 362(d)(4) is denied." No other relief will be awarded, and the order shall not state the debtor was part of a scheme to delay, hinder or defraud creditors.

3. [14-12915](#)-A-13 JEANETTE TENA
TCS-1
JEANETTE TENA/MV

MOTION TO VALUE COLLATERAL OF
COUNTRYWIDE BANK, N.A. AND/OR
MOTION TO VALUE COLLATERAL OF
CENTRAL PACIFIC MORTGAGE
COMPANY , MOTION TO VALUE
COLLATERAL OF NATIONSTAR
MORTGAGE, LLC , MOTION TO VALUE
COLLATERAL OF THE BANK OF NEW
YORK MELLON CORPORATION
8-21-14 [[26](#)]

TIMOTHY SPRINGER/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 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).

RESPONDENTS

The title of the motion includes the name Countrywide Bank, N.A. However, this entity has not been served. In any event, the court will treat paragraph 2 of the motion and the prayer for relief as identifying the respondents. Paragraph 2 and the prayer expressly

identify the respondents and these parts of the motion do not include Countrywide Bank, N.A. as a respondent. The court will construe the last sentence of paragraph 2 and the prayer for relief as controlling as to the respondents.

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 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. "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 173 W. Stanley Ave., Reedley, California.

The court values the collateral at \$162,950. 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 responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted as to Central Pacific Mortgage Company, Nationstar Mortgage, LLC, and BNY Mellon. The real property collateral located at 173 W. Stanley Ave., Reedley, CA, has a value of \$162,950.00. The collateral is encumbered by senior liens securing claims that exceed its value. The responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

4. [11-61728](#)-A-13 FRANK GARCIA
DJD-1
SETERUS, INC./MV
JAMES MILLER/Atty. for dbt.
DARREN DEVLIN/Atty. for mv.
WITHDRAWN

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-30-14 [[96](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [11-19829](#)-A-13 AUGIE/PATRICIA BLANCAS
ER-3
AUGIE BLANCAS/MV

MOTION TO VALUE COLLATERAL OF
BAC HOME LOANS SERVICING/BANK
OF AMERICA, N.A.
8-13-14 [[53](#)]

EDDIE RUIZ/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 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).

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 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. "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 4865 E. Edna Ave., Fresno, CA.

The court values the collateral at \$135,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 4865 E. Edna Ave., Fresno, CA, has a value of \$135,000. The collateral is encumbered by senior liens securing claims that exceed its value. The responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

6. [10-10638](#)-A-13 ROBERT/RITA CUPPS
NLG-1
NATIONSTAR MORTGAGE LLC/MV
JEFF REICH/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-26-14 [[48](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

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).

MOOTNESS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

CLASSIFICATION OF MOVANT'S CLAIM

The confirmed chapter 13 plan in this case appears to provide for the moving party's claim in Class 4. Although the movant is Nationstar Mortgage, LLC, and the Class 4 claimant is identified as "Bac Home Loans (3541 N. Chance)," the motion asserts that the under the confirmed plan the debtors agreed to make regularly monthly payments "directly to the Movant."

The debtor has not opposed the motion, and the movant has not explained the difference in names. The property for which stay relief is sought is 3541 North Chance Avenue, Fresno, California, which appears as the property partially identified in Class 4. The court will assume that the plan has either misidentified the claim holder, or that the movant is somehow affiliated with the named Class 4 claimant.

Further, the only other lien on the property at 3541 North Chance Avenue that is identified in the plan is the Class 2 claim of "Bac Home Loans," which appears to correspond to the second deed of trust against 3541 North Chance Avenue (described in the motion at p. 4 and on the stay relief summary sheet). Because the movant identifies itself as the first trust deed holder on the stay relief summary sheet, its claim could not have been placed in Class 2 and reduced based on the value of the collateral.

As a result, the court will treat the movant as having been placed in Class 4 based on the movant's interpretation of the plan as containing the debtors' agreement to pay the movant directly, which is what Class 4 treatment entails. In the future, counsel shall ensure that the stay relief summary sheet provides complete information and indicates clearly a response to Question No. 10.

STAYS MODIFIED FOR CLASS 4 CLAIMS

Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or a third party. Section 2.11 of the plan provides that "[u]pon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral in the event of a default. The motion will be denied as moot. No effective relief can be awarded.

7. [13-11742](#)-A-13 MICHAEL/DIANA YU
PLF-3

MOTION FOR COMPENSATION FOR
PETER L. FEAR, DEBTOR'S
ATTORNEY(S).
8-28-14 [[59](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: First Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Law Offices of Peter L. Fear

Compensation approved: \$9,449.00

Costs approved: \$311.56

Aggregate fees and costs approved in this application: \$9,760.56

Retainer held: \$0.00

Amount to be paid as administrative expense: \$9,760.56

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

DISCUSSION

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. The moving party is authorized to draw on any retainer held.

CIVIL MINUTE ORDER

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

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

The First Interim Application for Compensation filed by Law Offices of Peter L. Fear having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) the application is approved; (2) interim compensation of \$9,449.00 is approved; (3) interim reimbursement of costs of \$311.56 is approved; (4) the applicant holding no retainer, Chapter 13 trustee Michael H. Meyer shall pay

the sum of those amounts, \$9,760.56, to the applicant in a manner consistent with the terms of the then applicable Chapter 13 plan; and (5) said amounts shall be finalized by fee application prior to the close of the case.

8. [14-12945](#)-A-13 GEVORG ADAMYAN AND OBJECTION TO CONFIRMATION OF
MHM-2 VARDUHI KRDOTYAN PLAN BY TRUSTEE MICHAEL H.
MEYER
8-21-14 [[40](#)]

ARIS ARTOUNIANS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the objection is overruled as moot.

9. [14-11851](#)-A-13 MARK DAFFERN AMENDED MOTION TO CONFIRM PLAN
MAZ-1 8-12-14 [[40](#)]
MARK DAFFERN/MV

MARK ZIMMERMAN/Atty. for dbt.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). No one appeared in opposition to the motion, and 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, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) 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 confirmation of the plan.

10. [14-11857](#)-A-13 HAN/IN KIM
MHM-3

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-25-14 [[111](#)]

H. AHN/Atty. for dbt.

No tentative ruling.

11. [12-15161](#)-A-13 MARK WHITE AND SHEALON
PBB-2 HILLARD-WHITE
MARK WHITE/MV
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN
8-15-14 [[57](#)]

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.

12. [12-15161](#)-A-13 MARK WHITE AND SHEALON
PBB-3 HILLARD-WHITE
MARK WHITE/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
8-14-14 [[49](#)]

Tentative Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D.

Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

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

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent of the respondent identified in the motion, Real Time Resolutions, Inc. It may be the case that one of the addresses shown on the proof of service underneath the party identified generically as "Agent of Service" is an agent of Real Time Resolutions, Inc. But this is not clear from the proof.

13. [14-13366](#)-A-13 ALFRED/KATIE DELGADO
MHM-1
MICHAEL MEYER/MV

SCOTT LYONS/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
8-20-14 [[19](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [14-13367](#)-A-13 MARIA MADRIGAL
TJS-1
PENNYMAC HOLDINGS, LLC/MV
TYSON TAKEUCHI/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.
DISMISSED
- OBJECTION TO CONFIRMATION OF
PLAN BY PENNYMAC HOLDINGS, LLC
7-30-14 [[16](#)]

Final Ruling

The case dismissed, the objection is overruled as moot.

15. [12-11368](#)-A-13 SALVADOR/MARIA MENDOZA MOTION TO INCUR DEBT
ASW-5 8-26-14 [[72](#)]
SALVADOR MENDOZA/MV
ADRIAN WILLIAMS/Atty. for dbt.

Tentative Ruling

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

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

Disposition: Conditionally 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing.

The court will conditionally grant the motion. The condition is that the debtors file a supplemental declaration in support of the motion showing that the vehicle purchase is reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor. The trustee will approve the order as to form and content.

16. [12-19074](#)-A-13 RUSSELL/SUSAN HAMILTON MOTION FOR RELIEF FROM
JDM-1 AUTOMATIC STAY
SAFE 1 CREDIT UNION/MV 9-11-14 [[96](#)]
SCOTT LYONS/Atty. for dbt.
JOHN MENDONZA/Atty. for mv.

No tentative ruling.

17. [14-13591](#)-A-13 IRENE CASTILLO MOTION TO VALUE COLLATERAL OF
PBB-1 GREEN TREE SERVICING, LLC
IRENE CASTILLO/MV 8-22-14 [[14](#)]
PETER BUNTING/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 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).

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 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. "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 904 F Street, Reedley, CA.

The court values the collateral at \$143,755. 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 responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 904 F Street, Reedley, CA, has a value of \$143,755. The collateral is encumbered by senior liens securing claims that exceed its value. The responding party has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

18. [09-17196](#)-A-13 RONALD/LYNETTE BINGHAM
PLF-6
LYNETTE BINGHAM/MV

CONTINUED MOTION FOR WAIVING
REQUIREMENT THAT DEBTOR RONALD
G. BINGHAM FILE DEBTOR'S
SECTION 11 U.S.C. 1328
CERTIFICATE
7-3-14 [[77](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

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). 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 requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c).

The debtor named in the motion has died. Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

The court finds that further administration is possible and in the best interests of the debtor and creditors in this case as no creditor or party in interest has presented grounds for dismissing the case or denying the waiver requested. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1001-1(f), the court will grant the motion and waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

The order shall state only the following: "The motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328."

19. [14-13396](#)-A-13 NOAH/GENEVA FARR
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE AND/OR
MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS
8-20-14 [[35](#)]

JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

9:15 a.m.

1. [13-15181](#)-A-13 LINDSAY LEMONS
[13-1124](#)
STORMS ET AL V. LEMONS
GLEN GATES/Atty. for pl.
RESCHEDULED TO 3/12/15 PER
ORDER, ECF NO. 27

PRETRIAL CONFERENCE RE:
COMPLAINT
11-12-13 [[1](#)]

Final Ruling

This pretrial conference is continued to March 12, 2015, at 9:15 a.m.
pursuant to Amended Scheduling Order, ECF #27.

2. [13-15181](#)-A-13 LINDSAY LEMONS
SL-3
LINDSAY LEMONS/MV

PRETRIAL CONFERENCE RE:
OBJECTION TO CLAIM OF WES
STORMS, CLAIM NUMBER 2
11-7-13 [[49](#)]

SCOTT LYONS/Atty. for dbt.
RESCHEDULED TO 3/12/15 PER
ORDER, ECF NO. 225

Final Ruling

This pretrial conference is continued to March 12, 2015, at 9:15 a.m.
pursuant to Amended Scheduling Order, ECF #27.

3. [13-15181](#)-A-13 LINDSAY LEMONS
SL-4
LINDSAY LEMONS/MV

PRETRIAL CONFERENCE RE:
OBJECTION TO CLAIM OF WAYLENCO,
CLAIM NUMBER 3
11-7-13 [[54](#)]

SCOTT LYONS/Atty. for dbt.
RESCHEDULED TO 3/12/15 PER
ORDER, ECF NO. 225

Final Ruling

This pretrial conference is continued to March 12, 2015, at 9:15 a.m.
pursuant to Amended Scheduling Order, ECF #27.

4. [13-15181](#)-A-13 LINDSAY LEMONS
SL-5
LINDSAY LEMONS/MV

PRETRIAL CONFERENCE RE:
OBJECTION TO CLAIM OF WAYNE
STORMS, CLAIM NUMBER 1
10-24-13 [[134](#)]

SCOTT LYONS/Atty. for dbt.
RESCHEDULED TO 3/12/15 PER
ORDER, ECF NO. 225

Final Ruling

This pretrial conference is continued to March 12, 2015, at 9:15 a.m.
pursuant to Amended Scheduling Order, ECF #27.

9:30 a.m.

1. [09-16160](#)-A-13 JUAN HURTADO
[11-1102](#)
JONES V. HURTADO
SCOTT BURTON/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
6-16-14 [[203](#)]

No tentative ruling.

10:00 a.m.

1. [14-13416](#)-A-12 JOAO/LUZIA VAZ
TCS-4
JOAO VAZ/MV

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A. AND/OR
MOTION TO VALUE COLLATERAL OF
SIERRA PACIFIC MORTGAGE
COMPANY, INC.
8-20-14 [[27](#)]

NANCY KLEPAC/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Real Property; Not Principal Residence]

Notice: Written opposition filed by the responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The motion seeks to value nonresidential real property that is the responding party's collateral. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

2. [14-13416](#)-A-12 JOAO/LUZIA VAZ
TCS-4
JOAO VAZ/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
HAMILTON AND JOSEPHINE SANTOS
8-20-14 [[31](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: Written opposition filed by the responding party

Disposition: Continued to coincide with the date of the evidentiary hearing on the debtors' motion to value collateral at docket no. 27

Order: Civil Minute Order

The motion seeks to value real property collateral that is the moving party's principal residence. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

3. [14-12917](#)-A-12 DJ DAIRY
TOG-6
DJ DAIRY/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM CHAPTER 12
PLAN
7-15-14 [[17](#)]

Tentative Ruling

Motion: Confirm Chapter 12 Plan

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. Preliminarily, the court identifies the following disputed, material factual issues: (i) eligibility of the debtor for relief under chapter 12, (ii) whether the plan meets the liquidation test as to unsecured creditors, and (iii) whether the plan's term complies with § 1222(c).

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

4. [14-13417](#)-A-12 DIMAS/ROSA COELHO
TCS-3
DIMAS COELHO/MV
ASSOCIATION

MOTION TO VALUE COLLATERAL OF
FEDERAL NATIONAL MORTGAGE

8-21-14 [[26](#)]

NANCY KLEPAC/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Real Property; Not Principal Residence]

Notice: Written opposition filed by the responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The motion seeks to value nonresidential real property that is the responding party's collateral. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

5. [14-13417](#)-A-12 DIMAS/ROSA COELHO
TCS-4
DIMAS COELHO/MV
8-21-14 [[30](#)]
NANCY KLEPAC/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
HAMILTON AND JOSEPHINE SANTOS

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: Written opposition filed by the responding party

Disposition: Continued to coincide with the date of the evidentiary hearing on the debtors' motion to value collateral at docket no. 27

Order: Civil Minute Order

The motion seeks to value real property collateral that is the moving party's principal residence. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

6. [14-12362](#)-A-13 BENITO/MARTHA GALARZA

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV

THOMAS GILLIS/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.
WITHDRAWN, ORDER 9/15/14
VACATED AS MOOT

EVIDENTIARY HEARING RE:
OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
6-6-14 [[16](#)]

Final Ruling

The evidentiary hearing has been vacated by Order entered September 15, 2014, ECF #76.

7. [14-12362](#)-A-13 BENITO/MARTHA GALARZA
TOG-3
BENITO GALARZA/MV

EVIDENTIARY HEARING RE: MOTION
TO VALUE COLLATERAL OF DEUTSCH
BANK, N.A. NATIONAL TRUST
COMPANY
6-13-14 [[30](#)]

THOMAS GILLIS/Atty. for dbt.
ORDER 8/14/14, RESPONSIVE
PLEADING, MOTION WITHDRAWN,
ORDER VACATING 9/15/14

Final Ruling

The evidentiary hearing has been vacated by Order entered September 15, 2014, ECF #76.