

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

October 30, 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. [10-63700](#)-A-13 JOSE/IRMA MALDONADO
MHM-3
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-9-14 [[97](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-15103](#)-A-13 SYLVIA RODRIGUEZ
SAH-5
SYLVIA RODRIGUEZ/MV
SUSAN HEMB/Atty. for dbt.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-9-14 [[68](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: Division of marital assets by the state court in a dissolution of marriage proceeding

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

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The movant has represented in the motion that the community property subject to division by the state court has been listed on the schedules and claimed exempt under § 703.140(b) of the California Code of Civil Procedure. In addition, the confirmed plan in this case revests property of the estate in the debtor upon confirmation of the plan, so the community property at issue is no longer property of the estate and the stay no longer affects such property, see § 362(c)(1).

The order may confirm that the stay no longer affects the property to be divided that has reverted in the debtor upon plan confirmation, see § 362(j), and the order may state that the court lifts the stay as to the debtor to allow division of marital assets.

3. [14-14105](#)-A-13 LUIS MARQUEZ
MHM-1
MICHAEL MEYER/MV
MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
10-1-14 [[29](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [10-17307](#)-A-13 ROY/FABIOLA CASTILLO
MHM-3
MICHAEL MEYER/MV
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
AND/OR MOTION TO DISMISS CASE
9-9-14 [[58](#)]
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [14-14415](#)-A-13 KRIS/KIMBERLY STOHL
BHT-1
U.S. BANK NATIONAL
ASSOCIATION/MV
MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-26-14 [[15](#)]
TIMOTHY SPRINGER/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2626 South Stevenson Street, Visalia, CA

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

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain

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.

- ## Final Ruling

7. [11-13920](#)-A-13 FELECIA NEDLEY MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 9-9-14 [[53](#)]
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

The motion withdrawn, the matter is dropped as moot.

- No tentative ruling.

9. [11-14825](#)-A-13 LARRY/CARLA NOLEN
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-12-14 [[35](#)]

SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

Chapter 13 trustee moves to dismiss this case under 11 U.S.C. § 1307(c)(1),(6). The debtors have filed a notice of non-opposition to the motion. The case is dismissed. A civil minute order will issue.

10. [12-17932](#)-A-13 CATHERINE ADAMS-ROSE
THA-2
CATHERINE ADAMS-ROSE/MV
THOMAS ARMSTRONG/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
9-18-14 [[38](#)]

No tentative ruling.

11. [11-16733](#)-A-13 ALBERTO/MICAELA SALCEDO
MHM-1
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
9-24-14 [[93](#)]

PETER FEAR/Atty. for dbt.

No tentative ruling.

12. [10-19939](#)-A-13 FRANCISCO/PATRICIA TORRES
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-9-14 [[29](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [11-13343](#)-A-13 ELIA PEREZ
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-9-14 [[61](#)]

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

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

Chapter 13 trustee Michael H. Meyer moves to dismiss this case under 11 U.S.C. § 1307(c)(1),(6), citing a payment delinquency of \$4,000.00. The motion is granted and the case dismissed. A civil minute order will issue.

14. [14-13043](#)-A-13 WILFREDO/YOLANDA FAELDO
VRP-2
WILFREDO FAELDO/MV
VARDUHI PETROSYAN/Atty. for dbt.

MOTION TO CONFIRM PLAN
9-11-14 [[32](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 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)(1), 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, 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.

15. [14-14444](#)-A-13 IAN/JENNIFER STRACHAN
PBB-1
IAN STRACHAN/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
MERCHANTS ACCEPTANCE CORP
9-26-14 [[16](#)]

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of personal property described as a Kirby vacuum. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$200.00.

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

IT IS ORDERED that the motion is granted. The personal property collateral described as Kirby vacuum has a value of \$200.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$200.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

16. [14-13945](#)-A-13 MARDONIO CRUZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-10-14 [[35](#)]

Final Ruling

The case being dismissed on trustee's motion, the order to show cause is moot and is discharged.

17. [14-13945](#)-A-13 MARDONIO CRUZ
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS
9-18-14 [[26](#)]

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

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

Chapter 13 trustee Michael H. Meyer moves to dismiss this case under 11 U.S.C. § 1307(c)(1), citing: (1) failure to provide § 521 documentation; (2) failure to file a complete Chapter 13 plan; and (3) failure to provide a credit counseling certificate. The motion is granted and the case dismissed. A civil minute order will issue.

18. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON
TCS-5
ERNEST SHELTON/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
9-15-14 [[81](#)]

No tentative ruling.

19. [10-60549](#)-A-13 ROBERT/SANDRA FREEDENBURG MOTION TO DISMISS CASE FOR
MHM-1 FAILURE TO MAKE PLAN PAYMENTS
MICHAEL MEYER/MV 9-9-14 [[36](#)]
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [14-14151](#)-A-13 SALVADOR/MADELINE NAVARRO OBJECTION TO CONFIRMATION OF
PD-1 PLAN BY BANK OF AMERICA, N.A.
BANK OF AMERICA, N.A./MV 10-6-14 [[26](#)]
PETER FEAR/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

No tentative ruling.

21. [14-10855](#)-A-13 ELISEO OROZCO MOTION TO CONFIRM PLAN
JDR-2 9-9-14 [[62](#)]
ELISEO OROZCO/MV
JEFFREY ROWE/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 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)(1), 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, 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.

22. [12-15161](#)-A-13 MARK WHITE AND SHEALON CONTINUED MOTION TO MODIFY PLAN
PBB-2 HILLARD-WHITE 8-15-14 [[57](#)]
MARK WHITE/MV
PETER BUNTING/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.

23. [12-15161](#)-A-13 MARK WHITE AND SHEALON CONTINUED MOTION TO VALUE
PBB-3 HILLARD-WHITE COLLATERAL OF REAL TIME
MARK WHITE/MV RESOLUTIONS, INC.
8-14-14 [[49](#)]
PETER BUNTING/Atty. for dbt.

Tentative Ruling

The court will drop the motion from calendar as moot given the filing of a motion with docket control number PBB-4 that requests the same relief against the same respondent, Real Time Resolutions, Inc.

24. [12-15161](#)-A-13 MARK WHITE AND SHEALON MOTION TO VALUE COLLATERAL OF
PBB-4 HILLARD-WHITE REAL TIME RESOLUTIONS, INC.
MARK WHITE/MV 9-29-14 [[73](#)]
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 respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 4650 W. Celeste Ave., Fresno, CA.

The court values the collateral at \$241,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 4650 W. Celeste Ave., Fresno, CA, has a value of \$241,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

25. [13-12461](#)-A-13 VERONICA PEREZ
DRJ-2
VERONICA PEREZ/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO MODIFY PLAN
8-4-14 [[22](#)]

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.

26. [10-18465](#)-A-13 REYES/CECILIA QUINONEZ
MHM-1
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-9-14 [[71](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

27. [10-18465](#)-A-13 REYES/CECILIA QUINONEZ
MHM-2
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-9-14 [[77](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [13-10971](#)-A-13 JEREMY WINANS
HDN-6
JEREMY WINANS/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
9-12-14 [[143](#)]

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

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

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

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

29. [14-14085](#)-A-13 JOSE/ARACELI ROJAS
MDE-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
THOMAS GILLIS/Atty. for dbt.
MARK ESTLE/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
9-22-14 [[18](#)]

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: Overruled as moot

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.

Deutsche Bank National Trust Company, as Trustee for GSAMP Trust 2007-HSBC1 Mortgage Pass-Through Certificates, Series 2007-HSBCA ("Deutsche Bank") objects to confirmation of the plan on grounds that the plan fails to provide for the arrearage on its claim in the approximate amount of \$575.71. Deutsche Bank has filed a proof of claim, Claim No. 6, that includes an arrearage in this amount. Its claim states that it is secured by real property located at 1473 West Oleander Ave., Fresno, CA.

Section 2.04 of the proposed plan provides that the proof of claim controls the amount and classification of a claim unless a valuation motion, lien avoidance motion, or claim objection changes the amount or classification of the claim. Because of this provision, the plan already provides for the arrearages on Deutsche Bank's claim, and its objection will be overruled as moot.

30. [14-14085](#)-A-13 JOSE/ARACELI ROJAS
TOG-1
JOSE ROJAS/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
9-23-14 [[21](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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 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).

NOTICE PROCEDURE

The notice of hearing states, "This motion is being filed and served pursuant to Local Bankruptcy Rule 9014-1(f)(2)." It further states that a written opposition (response) is required on or before 14 calendar days prior to the hearing date. This problem has appeared in other motions filed by counsel on the court's October 16, 2014 calendar. This problem should not continue or the court may impose sanctions, such as to deny future motions without prejudice.

Requiring at least 14 days' written notice prior to the hearing is inconsistent with the notice procedure of LBR 9014-1(f)(2). It is consistent with LBR 9014-1(f)(1). The court will permit oral opposition to be raised up to and including the hearing despite the language of the notice of hearing requiring opposition no later than 14 days prior to the hearing date.

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 1473 W. Oleander Ave., Fresno, CA.

The court values the collateral at \$58,092. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 1473 W. Oleander Ave., Fresno, CA, has a value of \$58,092. 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.

31. [14-13287](#)-A-13 BLAS AVILA
GH-1
BLAS AVILA/MV
GARY HUSS/Atty. for dbt.

MOTION TO CONFIRM PLAN
9-15-14 [[24](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 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)(1), 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, 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.

32. [11-17092](#)-A-13 KACY JOHNSON
MHM-3
MICHAEL MEYER/MV
JOSEPH BOYD/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-9-14 [[78](#)]

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

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

Chapter 13 trustee Michael H. Meyer moves to dismiss this case under 11 U.S.C. § 1307(c)(1),(6), citing a payment delinquency of \$6,018.61. The motion is granted and the case dismissed. A civil minute order will issue.

33. [14-14194](#)-A-13 FRANK VAZ, JR. AND LAURA MOTION FOR RELIEF FROM
JLH-1 VAZ AUTOMATIC STAY
HOWARD LESTER/MV 10-7-14 [[27](#)]
DAVID JENKINS/Atty. for dbt.
JOSEPH HORSWILL/Atty. for mv.

No tentative ruling.

34. [14-13396](#)-A-13 NOAH/GENEVA FARR MOTION TO CONFIRM PLAN
JRL-2 9-11-14 [[44](#)]
NOAH FARR/MV
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 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)(1), 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, 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.

35. [14-13396](#)-A-13 NOAH/GENEVA FARR CONTINUED MOTION TO DISMISS
MHM-1 CASE AND/OR MOTION TO DISMISS
MICHAEL MEYER/MV CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS
8-20-14 [[35](#)]
JERRY LOWE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

36. [14-13499](#)-A-13 CARL/MICHIKO MILLER
JDM-1
CARL MILLER/MV
JAMES MILLER/Atty. for dbt.

MOTION TO CONFIRM PLAN
9-10-14 [[24](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 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)(1), 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, 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.

10:00 a.m.

1. [14-13417](#)-A-12 DIMAS/ROSA COELHO
TCS-3
DIMAS COELHO/MV
MORTGAGE ASSOCIATION
8-21-14 [[26](#)]
NANCY KLEPAC/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO VALUE
COLLATERAL OF FEDERAL NATIONAL

Tentative Ruling

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

Notice: Continued hearing date

Disposition: Continued to November 20, 2014 at 10:00 a.m.

Order: Civil minute order

At the hearing, the court would like to discuss a procedural issue with the parties. JPMorgan Chase Bank, N.A. is named as a respondent in the motion but is not a party to the stipulation. Although the opposition mentions that JPMorgan Chase Bank, N.A.'s interest was assigned to Fannie Mae, the court inquires whether JPMorgan Chase Bank, N.A. is being dismissed as a party or whether the order should state that JPMorgan Chase Bank, N.A. no longer holds an interest in the collateral.

The parties have filed a stipulation resolving the motion to value collateral of Federal National Mortgage Association. A motion to approve the stipulation is scheduled for November 20, 2014. The court will continue the hearing on this matter to November 20, 2014.

2. [14-13417](#)-A-12 DIMAS/ROSA COELHO
TCS-4
DIMAS COELHO/MV

CONTINUED MOTION TO VALUE
COLLATERAL OF HAMILTON AND
JOSEPHINE SANTOS
8-21-14 [[30](#)]

NANCY KLEPAC/Atty. for dbt.

Tentative Ruling

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

Notice: Continued hearing date

Disposition: Continued to November 20, 2014 at 10:00 a.m.

Order: Civil minute order

This motion requests relief valuing collateral of the Santos. This collateral is located at 435 E. Orange St., Hanford, CA.

The debtors have also filed a separate motion to value this same collateral but naming Federal National Mortgage Association ("Fannie Mae") and JPMorgan Chase Bank, N.A. as respondents. This separate motion is at docket no. 26 having docket control no. TCS-3.

The motion to value Fannie Mae and JPMorgan Chase Bank, N.A.'s collateral appears to have been resolved by stipulation. The court will continue this present motion to November 20, 2014, to coincide with the motion at docket no. 26. In light of value to be established by the order approving such stipulation, the court is considering whether granting this motion, which seeks to value the collateral at \$186,000, would result in an order inconsistent with the order on the motion to approve the stipulation, which resolves the motion to value Fannie Mae's collateral at docket 26.