

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

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

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: NOVEMBER 2, 2017
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-11605](#)-A-13 OFELIA GARCIA
[MHM](#)-3
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
- OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
10-3-17 [[76](#)]

Final Ruling

After this objection was filed to the debtor's claim of exemption in the cash surrender value or loan value of a life insurance policy, the debtor filed an amended Schedule C. The amendment affected the exemption in the life insurance policy. The objection will be overruled as moot.

2. [17-13113](#)-A-13 FRANK/STEPHANIE HERNANDEZ MOTION TO DISMISS CASE
[MHM](#)-1 9-22-17 [[37](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [13-12023](#)-A-13 DONALD/BRENDA SHERMAN CONTINUED OBJECTION TO NOTICE
[DRJ](#)-4 OF MORTGAGE PAYMENT CHANGE
DONALD SHERMAN/MV 5-18-17 [[62](#)]
DAVID JENKINS/Atty. for dbt.

Final Ruling

Bayview has filed a response to the debtors' objection as of October 19, 2017, in which Bayview admits it made an incorrect calculation in the mortgage payment. Specifically, this error related to the monthly escrow fees. Bayview has also filed an amended Notice of Mortgage Payment Change for the time period beginning April 1, 2017, and a Notice of Mortgage Payment Change for future payments that contains the correct monthly amount starting November 1, 2017. The court will dismiss the objection as moot.

4. [17-12023](#)-A-13 J EFREN LARES-MORENO AND MOTION TO VALUE COLLATERAL OF
[TOG-2](#) IMELDA LARES INTERNAL REVENUE SERVICE
J EFREN LARES-MORENO/MV 9-18-17 [[33](#)]
THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted (with modifications)

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

The debtors have moved to value the collateral securing the IRS's lien, which is evidenced by the secured claim filed by the IRS as Claim No. 2-1. The IRS's lien secures tax debt totaling approximately \$123,819.03.

The proof of claim states that the lien has attached to all the debtors' right, title and interest to property under 26 U.S.C. § 6321.

Real Property

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 13727 E. Bulah Avenue, Parlier, CA.

The court values the collateral at \$105,016.00. 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 real property has no equity that secures respondent's claim. See 11 U.S.C. § 506(a).

Personal Property

The debtors state that they own personal property listed on Schedule B. The motion represents that the personal property "consists of a car worth \$7,081 with a secured loan to Loan Mart of \$5,896.92." Mot. Value Collateral ¶ 3, ECF No. 33.

However, the debtors have omitted items of personal property from their motion. Schedule B includes furniture and other personal property valued at approximately \$2510 in addition to the vehicle, a 2007 Toyota Highlander. Because the IRS's lien attaches to all the debtors' real and personal property, the debtors cannot exclude any personal property unless they can show that such property is not subject to the IRS's lien.

Accordingly, the value of the debtors' personal property as shown on Schedule B is \$9591.00. The consensual liens against the vehicle total \$5896.92. Therefore, the equity available for the IRS's lien equals \$3694.08. The IRS will have a secured claim in the amount of \$3694.08.

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 and personal 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 13727 E. Bulah Avenue, Parlier, CA, has a value of \$105,016.00. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value.

IT IS FURTHER ORDERED that the personal property collateral of the debtors has a total value of \$9591.00. The consensual lien against the personal property (a lien on a 2007 Toyota Highlander) totals \$5896.92. The respondent has a secured claim in the amount of \$3694.08 and a general unsecured claim for the balance of the claim.

5. [17-12023](#)-A-13 J EFREN LARES-MORENO AND MOTION TO CONFIRM PLAN
[TOG](#)-3 IMELDA LARES 9-18-17 [[37](#)]
J EFREN LARES-MORENO/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
TRUSTEE'S OPPOSITION WITHDRAWN

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the 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.

6. [17-12926](#)-A-13 PAUL/CARRIE COLVIN MOTION TO DISMISS CASE
[MHM](#)-1 9-26-17 [[17](#)]
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The trustee moves to dismiss this case for failure to provide Credit Counseling Certificates timely under § 109(h). The debtors oppose the motion.

The debtors admit in their opposition that their certificates were completed on September 18, 2017, i.e., their credit counseling was received on that date. The petition was July 31, 2017.

The debtors have failed to provide credit a counseling certificate showing that the debtor received the required credit counseling *within*

9. [17-13339](#)-A-13 ANDRES BAUTISTA
TOG-1
ANDRES BAUTISTA/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
DITECH
9-23-17 [[14](#)]

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 4140 W. Weldon Ave., Fresno, CA.

The court values the collateral at \$134,387. 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 4140 W. Weldon Ave., Fresno, CA, has a value of \$134,387. 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.

10. [17-12540](#)-A-13 EMILIO RUIZ
[RS-1](#)
EMILIO RUIZ/MV
RICHARD STURDEVANT/Atty. for dbt.

MOTION TO CONFIRM PLAN
9-15-17 [[23](#)]

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 the 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.

11. [17-12944](#)-A-13 MARIA BECERRA
[MHM-1](#)
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

MOTION TO DISMISS CASE
9-22-17 [[18](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [17-13050](#)-A-13 DWIGHT/MARISSA ROSENQUIST MOTION TO DISMISS CASE
[MHM](#)-1 9-22-17 [[30](#)]
MICHAEL MEYER/MV
MARC VOISENAT/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [17-12451](#)-A-13 DAVID/DELIA HAYES OBJECTION TO DEBTOR'S CLAIM OF
[MHM](#)-2 EXEMPTIONS
MICHAEL MEYER/MV 10-3-17 [[52](#)]
RESPONSIVE PLEADING

Final Ruling

The trustee has moved to dismiss this case, and the hearing on this motion is November 16, 2017. The court will resolve the motion to dismiss before this objection to exemptions, and the court continues the hearing on this objection to November 30, 2017, at 9:00 a.m.

14. [17-12453](#)-A-13 ROBERT/SALLY MALY OBJECTION TO DEBTOR'S CLAIM OF
[MHM](#)-2 EXEMPTIONS
MICHAEL MEYER/MV 10-3-17 [[42](#)]
JERRY LOWE/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Continued to November 30, 2017, at 9:00 a.m.

Order: Civil minute order

The trustee objected to two different exemptions on Schedule C: (1) an exemption in household furniture and appliances and baby grand piano, and (2) an exemption in Robert P. Maly MD, Inc equipment and furnishings. An amended Schedule C has been filed, and the trustee has brought a renewed exemption only to Robert P. Maly MD, Inc. equipment and furnishings.

But the amended Schedule C does not amend the exemption in business equipment and furnishings, so the deadline to object does not begin anew. A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1). But this new 30-day period commences "only with respect to the exemptions added via the amendment." *In re Bernard*, 40 F.3d 1028, 1032 (9th Cir. 1994); accord *In re Buenviaje*, No. 2:16-BK-15191-VZ, 2016 WL 8467650, at *5 (B.A.P. 9th Cir. Mar. 10, 2016).

Therefore, to avoid inadvertently causing a loss of the trustee's time to object to the exemption, the court continues the hearing on this

objection to the date of the hearing on the renewed objection to exemptions, and consolidates the two objections.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing trustee's objection is continued to November 30, 2017, at 9:00 a.m. to be consolidated with the hearing on the trustee's objection to exemptions filed with docket control number MHM-4.

15. [17-12854](#)-A-13 CARL SOUZA AND MARIA MOTION TO AMEND ORDER
[MHM](#)-1 BAUTISTA CONFIRMING PLAN
MICHAEL MEYER/MV 10-12-17 [[14](#)]
JESSICA DORN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [17-12360](#)-A-13 KEITH DAVIS MOTION TO CONFIRM PLAN
[HDN](#)-1 9-19-17 [[26](#)]
KEITH DAVIS/MV
HENRY NUNEZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [17-13065](#)-A-13 AMANDEEP RANDHAWA MOTION TO DISMISS CASE
[MHM](#)-1 9-22-17 [[20](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [17-13065](#)-A-13 AMANDEEP RANDHAWA MOTION TO DISMISS CASE
[MHM](#)-2 10-5-17 [[41](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [17-13065](#)-A-13 AMANDEEP RANDHAWA MOTION FOR RELIEF FROM
[TGM](#)-1 AUTOMATIC STAY
TOYOTA MOTOR CREDIT 9-26-17 [[26](#)]
CORPORATION/MV
PETER FEAR/Atty. for dbt.
TYNEIA MERRITT/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: 2015 Lexus IS 250

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. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 2 postpetition payments are past due. The total past due balance of principal and interest is approximately \$636.02.

In addition, the plan, which has not yet been confirmed, provides for the claim of the movant in Class 3. This means that the movant's secured claim will be satisfied by surrender of collateral.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2015 Lexus IS 250, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

20. [17-12968](#)-A-13 JOHN/DIANE URIAS MOTION TO DISMISS CASE
[MHM](#)-1 9-22-17 [[22](#)]
MICHAEL MEYER/MV
BENNY BARCO/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [09-17972](#)-A-13 ARTHUR/MARIA AMARO MOTION TO COMPEL ABANDONMENT
[PBB](#)-2 10-16-17 [[66](#)]
MARIA AMARO/MV
PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

In this case, the debtors did not disclose a tort claim against Boston Scientific. The debtors have reopened their case. No trustee has been appointed.

Before this case was closed, however, the debtors confirmed and completed a plan that paid 100% of allowed unsecured claims. The debtors received a discharge. Accordingly, the newly disclosed tort claim is burdensome to the estate and of inconsequential value benefit to the estate. The court will issue an order abandoning this claim to the debtors.

22. [17-13274](#)-A-13 SERGIO/MARLEAN BRAVO MOTION TO DISMISS CASE
[MHM](#)-1 9-28-17 [[22](#)]
MICHAEL MEYER/MV
MARK NELSON/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [16-10383](#)-A-13 HELEN MITCHELL MOTION TO DISMISS CASE
[MHM](#)-1 9-5-17 [[61](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWAL

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [17-13886](#)-A-13 FRANK PUMA MOTION FOR RELIEF FROM
[LHL](#)-1 AUTOMATIC STAY
HSBC BANK USA, NATIONAL 10-11-17 [[8](#)]
ASSOCIATION/MV
GLEN GATES/Atty. for dbt.
LAURIE HOWELL/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1738 West Roberts Avenue, Fresno, CA

The debtor has filed a non-opposition to the relief requested. 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).

STAY RELIEF

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 possession of the subject property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1738 West Roberts Avenue, Fresno, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

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

25. [14-15493](#)-A-13 DANIEL/LYDIA WILLIAMS MOTION TO MODIFY PLAN
FW-4 9-12-17 [[100](#)]
DANIEL WILLIAMS/MV
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the 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. The court will grant the motion and approve the modification of the plan.

26. [16-10593](#)-A-13 JENNIFER TAFOYA- ORNELAS MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY,
JPMORGAN CHASE BANK, N.A./MV MOTION/APPLICATION FOR RELIEF
FROM CO-DEBTOR STAY
9-28-17 [[26](#)]

THOMAS GILLIS/Atty. for dbt.
JAMIE HANAWALT/Atty. for mv.
RESPONSIVE PLEADING

No Ruling