

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge  
Fresno, California

2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California

**Thursday**

**November 13, 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. [14-13501](#)-A-13 SERGIO/MARIA MARISCAL MOTION TO VALUE COLLATERAL OF  
TOG-1 BANK OF AMERICA, N.A.  
SERGIO MARISCAL/MV 10-1-14 [[25](#)]  
THOMAS GILLIS/Atty. for dbt.

### **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).

### **INSUFFICIENCIES IN THE MOTION**

The motion incorrectly refers to Rafael and Perla Maciel as the debtors. The court will assume the motion is being brought in this case by debtors Sergio and Maria Mariscal. If this assumption is not correct, counsel shall address at the hearing the erroneous filing of this motion in the wrong case and withdraw the motion.

The motion also does not whether the property is the debtor's principal residence. Although the outcome would be the same in this case whether the property was or was not the debtor's principal residence, the court prefers that counsel for the debtor identify whether the property is a principal residence of the debtors or not a principal residence.

The petition lists the address of the debtors as 35333 Ave. 12 1/2, Madera, CA. The motion lists the debtors' address as 35333 Ave. 12 1/2, Madera, CA. The court will take judicial notice of the petition and conclude that the address is the debtors' principal residence and treat this as a *Lam* motion.

### **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 35333 Ave. 12 1/2, Madera, CA.

The court values the collateral at \$274,000. 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 35333 Ave. 12 1/2, Madera, CA has a value of \$274,000. 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.

2. [14-13501](#)-A-13 SERGIO/MARIA MARISCAL MOTION TO CONFIRM PLAN  
TOG-2 9-26-14 [[18](#)]  
SERGIO MARISCAL/MV  
THOMAS GILLIS/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.

3. [09-18802](#)-A-13 CONRRADO/PETRA PRADO  
MHM-1  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.
- OBJECTION TO CLAIM OF CITIBANK  
NA, FSB, CLAIM NUMBER 17  
9-19-14 [[63](#)]

## Tentative Ruling

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b) (1); written opposition required

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 objection notes that the claimant's name was changed to CitiMortgage, Inc., but docket no. 44, which is referenced, appears to refer to a different claim, Claim No. 15, than the claim to which this objection is directed, Claim No. 17. The address change document at docket no. 45 appears to relate to a different account than the account for which Claim No. 17 was filed based on the last four digits of the account number shown on Claim No. 17 and the last four digits of the account shown on docket no. 45.

In any event, it appears that the correct name of the claimant is as stated in the proof of claim. The court will treat the objection as being directed at Citibank, N.A., holder of Claim No. 17. For the reasons stated in the objection, the objection will be sustained. The unsecured claim of the claimant will be allowed in the amount of \$1,526.07 which has been paid. The remaining balance will be disallowed. The claimant has admitted that no balance exists for the account on which the claim is based.

4. [14-14105](#)-A-13 LUIS MARQUEZ ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-20-14 [[35](#)]  
DISMISSED

## Final Ruling

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

5. [11-63012](#)-A-13 LAWRENCE/MARY STRAMBI  
JDW-6  
LAWRENCE STRAMBI/MV  
JOEL WINTER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
10-6-14 [[76](#)]

**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.

6. [12-10318](#)-A-13 JAQUETTA WORTH  
SAH-7  
JAQUETTA WORTH/MV  
SUSAN HEMB/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
9-25-14 [[120](#)]

**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.

7. [13-15961](#)-A-13 ROBERT/HOLLY WOODS  
JMA-5  
ROBERT WOODS/MV  
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO MODIFY PLAN  
10-8-14 [[77](#)]

### **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.

8. [11-17092](#)-A-13 KACY JOHNSON  
MHM-3  
MICHAEL MEYER/MV  
JOSEPH BOYD/Atty. for dbt.
- CONTINUED MOTION TO DISMISS  
CASE FOR FAILURE TO MAKE PLAN  
PAYMENTS  
9-9-14 [[78](#)]

**Final Ruling**

The motion withdrawn by the Chapter 13 trustee the matter is dropped  
as moot.

9. [14-14194](#)-A-13 FRANK VAZ, JR. AND LAURA  
VAZ  
DAVID JENKINS/Atty. for dbt.
- ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-27-14 [[36](#)]

**Tentative Ruling**

**Order to Show Cause:** Dismissal of Case for Failure to Pay Fees  
**Date Issued:** October 27, 2014  
**Disposition:** Case Dismissed  
**Order:** Civil minute order

The debtor has failed to pay one or more installments of the filing or  
administrative fees according to the schedule specified in an order  
granting the debtor leave to pay such fees in installments. If the  
debtor has not paid all past due installments of filing or  
administrative fees by the date of the hearing, then the court will  
order that the case be dismissed.

10. [12-11895](#)-A-13 BRENDA MOTTA  
PLF-3  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING
- MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR LAW GROUP,  
P.C. FOR PETER L. FEAR,  
DEBTOR'S ATTORNEY(S).  
10-6-14 [[53](#)]

**Tentative Ruling**

**Application:** Final Compensation and Expense Reimbursement  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Approved  
**Order:** Prepared by applicant

**Applicant:** Fear Law Group, P.C.  
**Additional Compensation approved:** \$3,653.00  
**Additional Costs approved:** \$155.80  
**Aggregate fees and costs approved in this application:** \$3,808.80  
**Retainer held:** \$0.00  
**Amount to be paid as administrative expense:** \$3,808.80

## 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 in this application over and above the flat fee of \$3,500.00 are reasonable, and the court will approve the application on a final basis.

No ruling is made on whether the plan will pay the administrative expense covered by this order. In the event funds paid to the Chapter 13 trustee are insufficient to cover the additional fees and costs, the plan may be modified, the payment increased or the fees discharged. Compare, *In re Johnson*, 344 B.R. 104 (9th Cir. BAP 2006) (requiring plan term authorizing payment of administrative expenses after discharge to avoid § 1328(a)) with confirmed Chapter 13 Plan, filed March 2, 2012, ECF #5 (omitting any such term)).

## 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 Final Application for Compensation filed by Fear Law Group, P.C. 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 flat fee of \$3,500.00 is finalized; (2) additional compensation of \$3,653.00 is approved on a final basis; (3) additional costs of \$155.80 are approved on a final basis; (4) aggregate fees and costs approved by this application are \$3,808.80; (5) no retainer exists; and (6) subject to the availability of funds and the terms of the confirmed Chapter 13 plan the trustee shall pay Fear Law Group \$3,808.80 as an administrative expense.

11. [14-13895](#)-A-13 VERONICA MARTINEZ  
MHM-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
10-16-14 [[47](#)]

RABIN POURNAZARIAN/Atty. for dbt.

## Tentative Ruling

**Matter:** Objection to Chapter 13 Plan

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

The debtor has filed a modified plan on October 22, 2014, after this objection was filed. This modification of the plan renders moot any pending objection to confirmation of the previously filed plan. The court will overrule the objection as moot.