

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 5
JUDGE CHRISTOPHER B. LATHAM, PRESIDING
WEDNESDAY, DECEMBER 7, 2016

10:00 AM

1 - 11-10642-CL Ch 13 PATRICK C. & ALESSONDRA J. BOJADOR

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTORS

Tentative Ruling: The court has considered Debtors' motion to modify plan and the Trustee's withdrawal of his motion to enforce. The Trustee does not oppose the motion and asks that the matter be taken off calendar. Having received no other opposition, and good cause appearing, the court **grants** the motion, **approves** the modified plan, and excuses appearances at the December 7, 2016 hearing. Since Debtors' counsel does not explicitly request guideline fees, the court does not award them here. Debtors may submit an order consistent with this tentative ruling.

ATTORNEY: MICHAEL KOCH (PATRICK C. BOJADOR, ALESSONDRA J. BOJADOR)

2 - 11-15354-CL Ch 13 VICTORIA GASPAR DE ALPIZAR

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's motion to dismiss case, Debtor's opposition, and the Trustee's statement of case status. Debtor suggests that she can pay the case off by March or April 2017. The Trustee requests an order allowing him to dismiss the case if that does not happen by a date certain. Good cause appearing, the court **grants** that request and **directs** Debtor to remit monthly payments sufficient to pay the case off by **March 14, 2017**. Since Debtor's counsel does not explicitly request guideline fees, the court does not award them here.

If the Trustee is prepared to submit on this tentative ruling, he may notify opposing counsel and the courtroom deputy. The court will then excuse appearances at the December 7, 2016 hearing and prepare an order.

ATTORNEY: DAVID L. SPECKMAN (VICTORIA GASPAR DE ALPIZAR)

3 - 11-15546-CL Ch 13 CHRISTOPHER LAURENCE & STEPHANIE EILEEN LOCASCIO

MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: JEFFREY D. LARKIN (CHRISTOPHER LAURENCE LOCASCIO, STEPHANIE EILEEN LOCASCIO)

4 - 11-19168-CL Ch 13 GERALD ANDREW GRIMES

MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: JOHN C. COLWELL (GERALD ANDREW GRIMES)
ATTORNEY: DANIEL WIEDECKER (GERALD ANDREW GRIMES)

10:00 AM

5 - 12-09486-CL Ch 13 ROBERT S. & ARLENE S. MARVONEK

REVISED MOTION FOR AUTHORITY TO SELL REAL PROPERTY (RE 2167 VILLA SONOMA GLEN, ESCONDIDO CA 92029) FILED BY DEBTORS (ON SHORTENED TIME)

Tentative Ruling: The court has considered Debtors' motion to sell real property and the supporting evidence. Having received no opposition, and good cause appearing, the court **grants** the motion and excuses appearances at the December 7, 2016 hearing. Since Debtors do not request a § 363(m) good faith finding, waiver of Rule 6004(h)'s 14-day stay, or guideline fees, the court does not speak to those points. Debtors may submit an order consistent with this tentative ruling.

ATTORNEY: JEFFREY T. WILSON (ROBERT S. MARVONEK, ARLENE S. MARVONEK)

6 - 13-03354-CL Ch 13 MARIA ALFARO

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's motion to dismiss case, Debtor's opposition, and the parties' statements of case status. The Trustee requests, and Debtor agrees to, an order tracking the December 30, 2016, January 30, 2017, and February 30, 2017 plan payments. Good cause appearing, the court **grants** the request, **awards** Debtor's counsel \$490 in guideline fees, and excuses appearances at the December 7, 2016 hearing. The Trustee may submit an order consistent with this tentative ruling and his statement of case status.

ATTORNEY: EUGENIO RAMOS (MARIA ALFARO)

7 - 13-09066-CL Ch 13 JAIME G. RAQUINO

MOTION FOR ORDER AUTHORIZING LOAN MODIFICATION AGREEMENT W/BSI FINANCIAL SERVICES FILED BY DEBTOR

Tentative Ruling: The court has considered Debtor's motion for an order authorizing a loan modification agreement with BSI Financial Services and statement of case status. Having received no opposition, and good cause appearing, the court **grants** the motion, **awards** Debtor's counsel \$545 in guideline fees, and excuses appearances at the December 7, 2016 hearing. Debtor may submit an order consistent with this tentative ruling.

ATTORNEY: THOMAS K. SHANNER (JAIME G. RAQUINO)

8 - 14-00360-CL Ch 13 TROY L. & JENNIFER L. ANDERSON

MOTION FOR RELIEF FROM STAY, RS #EMM-1 FILED BY WILMINGTON SAVINGS FUND SOCIETY FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE FOR BCAT 2015-16TT, ITS ASSIGNEES AND/OR SUCCESSORS IN INTEREST

ATTORNEY: THOMAS K. SHANNER (TROY L. ANDERSON, JENNIFER L. ANDERSON)

ATTORNEY: ERIN MCCARTNEY (WILMINGTON SAVINGS FUND SOCIETY FSB)

10:00 AM

9 - 14-03306-CL Ch 13 NORBERTO & ANGELINA MARTINEZ

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY TRUSTEE (fr. 10/26/16)

Tentative Ruling: The court has considered the Trustee's motion for approval of modified plan and the parties' statements of case status. Debtors request that the motion be granted without prejudice to them filing a motion to modify at a later date. Having received no other opposition, and good cause appearing, the court **grants** the motion, **approves** the modified plan, and excuses appearances at the December 7, 2016 hearing. If Debtors wish to bring a further modified plan, they may do so in the normal course. Since Debtors' counsel does not explicitly request guideline fees for opposing the motion, the court does not award them here. The Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: DAYNA C. CHILLAS (NORBERTO MARTINEZ, ANGELINA MARTINEZ)

10 - 14-09394-CL Ch 13 LOUIE & DORIS Q. FONG

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's motion to dismiss case, Debtors' opposition, and the parties' statements of case status. The Trustee requests, and Debtors agree to, an order tracking the December 30, 2016, January 30, 2017, and February 30, 2017 plan payments. Good cause appearing, the court **grants** the request, **awards** Debtors' counsel \$490 in guideline fees consistent with their opposition and the Trustee's statement of case status, and excuses appearances at the December 7, 2016 hearing. The Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: BRIAN CROZIER WHITAKER (LOUIE FONG, DORIS Q. FONG)

11 - 15-02562-CL Ch 13 ELIZABETH C. DOYLE

MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: RONALD M. TOIGO (ELIZABETH C. DOYLE)

12 - 15-04622-CL Ch 13 HARRY MICHAEL DOOLEY

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's motion to dismiss case, Debtor's opposition, and the parties' statements of case status. The Trustee requests, and Debtor agrees to, an order tracking the December 12, 2016, January 12, 2017, and February 12, 2017 plan payments at \$2,202 per month. Good cause appearing, the court **grants** the request, **awards** Debtor's counsel \$490 in guideline fees, and excuses appearances at the December 7, 2016 hearing. The Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: HAROLD D. THOMPSON (HARRY MICHAEL DOOLEY)

10:00 AM

13 - 15-06224-CL Ch 13 **EVA MARIE BAILEY**
MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: MICHAEL KOCH (EVA MARIE BAILEY)

14 - 15-07822-CL Ch 13 **RICHARD & APRIL M. SYNNOTT**
1) OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 10/26/16)
2) OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY EAST BELL ROAD LLC

ATTORNEY: LARISSA L. LAZARUS (RICHARD SYNNOTT, APRIL M. SYNNOTT)
ATTORNEY: JEFFREY W. SHIELDS (EAST BELL ROAD LLC)

15 - 16-01130-CL Ch 13 **SHEILA E. DINE-ARTHUR**
MOTION FOR RELIEF FROM STAY, RS #AP-1 FILED BY U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO WACHOVIA BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR10 (fr. 11/9/16)

ATTORNEY: AHREN TILLER (SHEILA E. DINE-ARTHUR)
ATTORNEY: ROBERT ZAHRADKA (US BANK NA)

16 - 16-01568-CL Ch 13 **BRENDA MAE BURGESS**
MOTION TO DISTRIBUTE SETTLEMENT FUNDS FILED BY DEBTOR

Tentative Ruling: The court has considered Debtor's motion to distribute settlement funds and the Trustee's statement of case status. Having received no opposition, and good cause appearing, the court **grants** the motion, **awards** Debtor's counsel \$490 in guideline fees, and excuses appearances at the December 7, 2016 hearing. Debtor may submit an order consistent with this tentative ruling.

ATTORNEY: AARON LLOYD (BRENDA MAE BURGESS)

17 - 16-03766-CL Ch 13 **RONNIE M & MARQUETTA A BROWN**
OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: THOMAS K. SHANNER (RONNIE M BROWN, MARQUETTA A BROWN)

10:00 AM

18 - 16-03856-CL Ch 13 RODERICO A GRAHAM

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's objection to confirmation and motion to dismiss case, Debtor's reply, and the Trustee's statement of case status. Debtor does not oppose the Trustee's objection or motion. Good cause appearing, the court **sustains** the Trustee's objection, **grants** the motion, and **dismisses** Debtor's case. It **awards** Debtor's counsel \$3,600 in outstanding attorney's fees subject to funds on hand, and **approves** his prior guideline fee award of \$980 entered on October 28, 2016 (ECF No. 54). The court excuses appearances at the December 7, 2016 hearing, and the Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: JORGE HALPERIN (RODERICO A GRAHAM)

19 - 16-03920-CL Ch 13 JASON ANDREW & RENEE DENISE STRONG

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: MICHAEL S. MARTIN (JASON ANDREW STRONG, RENEE DENISE STRONG)

20 - 16-04098-CL Ch 13 GARY FELIX & MAYRA GEORGINA MONDESIR

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's objection to confirmation and motion to dismiss case, Debtors' declaration of unresolved objections, and the parties' statements of case status. The parties agree to a 30-day continuance to continue negotiations. In addition, Mr. Mondesir has a conflict on December 7, 2016 but wishes to be present at any hearing on this matter. Good cause appearing, the court **continues** this matter to **January 18, 2017 at 10:00 a.m.** and excuses appearances at the December 7, 2016 hearing.

ATTORNEY: LARISSA L. LAZARUS (GARY FELIX MONDESIR, MAYRA GEORGINA MONDESIR)

21 - 16-04558-CL Ch 13 ALVINO A. RAMIREZ

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's objection to confirmation and motion to dismiss case, Debtor's response, and the parties' statements of case status. It appears the parties have reached a resolution and will be submitting a PCM. To allow them an opportunity to do so, the court **continues** this matter to **December 21, 2016 at 10:00 a.m.** and excuses appearances at the December 7, 2016 hearing. If the parties file the PCM before the next hearing and it fully resolves the issue, the Trustee may submit a notice of withdrawal and the court will remove the matter from calendar.

ATTORNEY: CHARLES E. FOUGERON (ALVINO A. RAMIREZ)

10:00 AM

22 - 16-04626-CL Ch 13 DAN YANG

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY US BANK NATIONAL ASSOCIATION AS TRUSTEE FOR CMALT REMIC SERIES 2006-A2 - REMIC PASS-THROUGH CERTIFICATES SERIES 2006-A2, ITS ASSIGNEES AND/OR SUCCESSORS, BY AND THROUGH ITS SERVICING AGENT CITIMORGAGE INC (fr. 10/26/16)

ATTORNEY: BRIAN CROZIER WHITAKER (DAN YANG)
ATTORNEY: NANCY LEE (US BANK NATIONAL ASSOCIATION)

23 - 16-04768-CL Ch 13 ALFE LIM

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: ALLAN CATE (ALFE LIM)

24 - 16-05074-CL Ch 13 DARYL W. TILGHMAN

1) OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's objection to Debtor's claim of exemptions, Debtor's amended declaration in opposition, and amended Schedule C (ECF No. 20). The most recently amended Schedule C appears to moot the Trustee's objection. Good cause appearing, the court takes the matter **off calendar** and excuses appearances at the December 7, 2016 hearing.

2) OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 11/9/16)

Tentative Ruling: The court has considered the Trustee's objection to confirmation and motion to dismiss case, Debtor's opposition, the parties' statements of case status, and the notice of modified plan filed December 5, 2016 (ECF No. 41). The court acknowledges that Debtor filed the modified plan in response to the Trustee's concerns. But the opposition to this newly modified plan is not due until January 2, 2017. Accordingly, the court **continues** this matter to **January 18, 2017 at 10:00 a.m.** to allow notice to run. It excuses appearances at the December 7, 2016 hearing.

ATTORNEY: LARISSA L. LAZARUS (DARYL W. TILGHMAN)

25 - 16-05210-CL Ch 13 ROBERT E. & TAMMY A. MONROE

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY E*TRADE BANK, AS SERVICED BY SPECIALIZED LOAN SERVICING LLC (SLS)

Court Deputy Note: Matter off calendar. Creditor's Objection to Confirmation withdrawn 12/2/16 (re ECF No. 23).

ATTORNEY: ADAM B. ARNOLD (ROBERT E. MONROE, TAMMY A. MONROE)
ATTORNEY: ERICA LOFTIS (E*TRADE BANK)

10:00 AM

26 - 16-05490-CL Ch 13 BARRI L. GROVES

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY WHEELS FINANCIAL GROUP LLC DBA LOANMART

Tentative Ruling: The court has considered Wheels Financial Group, LLC's ("WFG") objection to confirmation and Debtor's statement of case status. Debtor will be submitting a PCM allowing for full payment of WFG's claim. To allow him an opportunity to do so, the court **continues** this matter to **December 21, 2016 at 10:00 a.m.** and excuses appearances at the December 7, 2016 hearing. If Debtor files the PCM before the next hearing and it fully resolves the issue, WFG may submit a notice of withdrawal and the court will remove the matter from calendar.

ATTORNEY: CARL H. STARRETT (BARRI L. GROVES)

ATTORNEY: SHERYL D. NOEL (WHEELS FINANCIAL GROUP LLC)

27 - 16-05648-CL Ch 13 CURTIS J & ROXANNE D MCNIEL

1) OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY LEMON GROVE PAWN BROKER LLC,, DBA LEMON GROVE PAWNBROKER

2) OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY WELLS FARGO BANK NA AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II INC BEAR STEARNS MORTGAGE FUNDING TRUST 2007-AR4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-AR4, AS SERVICED BY SPECIALIZED LOAN SERVICING LLC (SLS)

ATTORNEY: KERRY A. DENTON (CURTIS J MCNIEL, ROXANNE D MCNIEL)

ATTORNEY: MARCO A. TORRES (LEMON GROVE PAWN BROKER LLC)

ATTORNEY: ERICA LOFTIS (WELLS FARGO BANK NA)

28 - 16-05720-CL Ch 13 FRANCINE JIMENEZ

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND REQUEST FOR DISMISSAL FILED BY FIRST INVESTORS SERVICING CORP, AN ASSIGNEE OF FIRST INVESTORS FINANCIAL SERVICES

Tentative Ruling: The court has considered First Investors Servicing Corp.'s objection to confirmation and motion to dismiss case, Debtor's response, and the parties' statements of case status. It appears they are still negotiating a resolution. Good cause appearing, the court **continues** this matter to **January 18, 2017 at 10:00 a.m.** and excuses appearances at the December 7, 2016 hearing.

ATTORNEY: BRIAN CROZIER WHITAKER (FRANCINE JIMENEZ)

ATTORNEY: JOHN H. KIM (FIRST INVESTORS SERVICING CORP)

MOTION TO VACATE DISMISSAL FILED BY DEBTORS

Tentative Ruling: The court has considered Debtors' motion to vacate dismissal, the Trustee's statement of opposition, and the parties' statements of case status. It **grants** the motion, and **directs** Debtors to pay the balance of their case in full by December 30, 2016.

In February 2016 the Trustee moved to dismiss Debtors' case for failure to complete their confirmed Chapter 13 plan within 60 months (ECF No. 68). The Trustee's motion was unopposed and the court ordered the case dismissed on March 25, 2016 (ECF No. 71). According to Debtors, they did not oppose the motion because they claim to have misunderstood the difference between "dismissal" and "discharge" - despite their attorney's numerous attempts to contact them (ECF No. 88). Upon realizing their mistake, they moved to vacate the court's dismissal of their case based on excusable neglect (ECF No. 76). The court denied the motion without prejudice for improper service (ECF No. 83). Debtors then brought this properly noticed motion to vacate (ECF No. 88). The Trustee opposes the motion (ECF No. 90).

Relief from an order under Federal Rule of Civil Procedure 60(b), incorporated by Federal Rule of Bankruptcy Procedure 9024, is available only upon a showing of: "(1) mistake, inadvertence, surprise, or excusable neglect" Fed. R. Civ. P. 60(b)(1). To the extent a party asserts "excusable neglect," the court must apply a four-factor equitable test, examining: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Because the four factors are non-exclusive, the court is permitted to take account of all relevant circumstances surrounding the party's omission in making an equitable determination. *Id.*

Debtors demonstrate that there is little danger of prejudice to the Trustee, that their delay was not lengthy and would not seriously impact the proceedings, and that they have acted in good faith. While the court is not completely convinced that the reasons for Debtors' delay in responding to are excusable, the other factors weigh sufficiently in Debtors' favor to grant the motion. The Trustee's argument that Debtors have shown bad faith by not continuing to make plan payments after their case is dismissed is not well taken, as Debtors had no obligation to do so.

For the foregoing reasons, the court **grants** Debtors' motion, **vacates** its dismissal of the case, and **orders** that Debtors pay the balance of their case in full by **December 30, 2016**. If Debtors fail to pay their full balance by that date, the Trustee may file a declaration so attesting and submit an order of dismissal without further notice.

If the parties are willing to submit on this tentative, they should contact each other and the courtroom deputy. The court will then excuse appearances at the December 7, 2016 hearing, and Debtors may submit an order consistent with this tentative ruling.

ATTORNEY: DAYNA C. CHILLAS (HIPOLITO BAUTISTA, MELCHORA BAUTISTA)

2 - 11-05933-CL Ch 13 DAVID D WALKER

MOTION TO DETERMINE THAT THE IRS CLAIM HAS BEEN SATISFIED IN FULL (RE: COURT CLAIM #12, TRUSTEE'S CLAIM #7) FILED BY DEBTOR

Tentative Ruling: The court has considered the Debtor's motion to determine that the Internal Revenue Service's ("IRS") claim has been paid in full and the IRS' notice of non-opposition. It **grants** the motion.

Debtor's motion properly noticed and served the IRS as a government agency. *See* Fed. R. Bank. P. 9014(b); 7004(b)(5). But the court is dubious that a motion is the proper method of deeming the IRS' claim satisfied. Debtor's motion seeks declaratory relief. And Rule 7001(9) plainly mandates an adversary proceeding "to obtain a declaratory judgment." Fed. R. Bankr. P. 7001(9). Because an adversary proceeding would be inefficient - and since time is of the essence - the court will consider the motion in the interest of justice.

Having received no opposition, and good cause appearing, the court **grants** Debtor's motion, and **deems** the IRS' claim satisfied in full. The court excuses appearances at the December 7, 2016 hearing, and Debtor may submit an order consistent with this tentative ruling.

ATTORNEY: THOMAS B. GORRILL (DAVID D WALKER)

3 - 11-15735-CL Ch 13 KURT & CAROLYN SOMMERS

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's motion to dismiss, Debtors' opposition, and the Trustee's statement of case status. Debtors' opposition proposed to pay the case off by December 3, 2016 (ECF No. 72). The Trustee proposes an order allowing the Trustee to dismiss the case if Debtors do not pay off their case's remaining balance plus attorney's fees related to this motion by December 30, 2016 (ECF No. 73). Good cause appearing, the court **grants** the Trustee's request, and **awards** Debtors' counsel \$490 in guideline fees.

If Debtors are prepared to submit on this tentative ruling, they may notify the courtroom deputy and the Trustee, and the court will excuse appearances at the December 7, 2016 hearing. The Trustee may then submit an order consistent with this tentative ruling and his status report.

ATTORNEY: D.J. RAUSA (KURT SOMMERS, CAROLYN SOMMERS)

4 - 12-01593-CL Ch 13 LISA M. KLEIN-PHILLIPS

1) MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court will **hear** the matter.

2) MOTION FOR HARDSHIP DISCHARGE FILED BY DEBTOR

Tentative Ruling: The court will **hear** the matter. It has considered Debtor's opposition to the Trustee's motion to dismiss, Debtor's motion for hardship discharge, and the Trustee's opposition.

Under § 1328(b), the court may grant Debtors who have failed to complete plan payments a "hardship" discharge if they show: (1) "circumstances for which the debtor should not be justly be held accountable"; (2) the unsecured creditors have received as much as they would have in a Chapter 7; and (3) plan modification is impracticable. 11 U.S.C. § 1328(b); *In re Starski*, No. 13-10067, 2014 WL 2030702, at *1 (Bankr. N.D. Cal. May 15, 2014).

Granting a hardship discharge is in the court's discretion. *In re Starski*, 2014 WL 2030702, at *1 (Bankr. N.D. Cal. May 15, 2014) (citing *In re Bandilli*, 231 B.R. 836, 838 (B.A.P. 1st Cir. 1999)). Debtor bears the burden of proof, and must satisfy all three elements. *In re Starski*, 2014 WL 2030702, at *1 (citing *In re Spencer*, 301 B.R. 703, 733 (B.A.P. 8th Cir. 2003)). The court must base its determination on the facts of each individual case. *In re Starski*, 2014 WL 2030702, at *1.

The court is confident Debtor has satisfied the second and third elements, but it is unclear whether Debtor meets the first element. While subsection (b)(1)'s circumstances need not be catastrophic, they must be involuntary or unforeseeable. *Id.*; *In re Bandilli*, 231 B.R. 836 at 841. Debtor should come prepared to discuss why her estranged spouse's decreased support meets this standard.

ATTORNEY: MARCO A. TORRES (LISA M. KLEIN-PHILLIPS)

5 - 12-07525-CL Ch 13 ERIC M. FLOWERS

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's motion to dismiss, Debtor's opposition, and the parties' statements of case status. The parties agree to entry of an order: (1) increasing Debtor's plan payments to \$1,550 per month until plan completion; and (2) tracking Debtor's December 28, 2016, and January 28, 2017, and February 28, 2017, plan payments (ECF No. 67). Good cause appearing, the court **grants** the request, **awards** Debtor's counsel \$450 in fees, and excuses appearances at the December 7, 2016 hearing. The Trustee may submit an order consistent with this tentative ruling and his statement of case status.

ATTORNEY: BRUCE C. FETT (ERIC M. FLOWERS)

02:00 PM

6 - 12-11573-CL Ch 13 SHELLEY FRANCES HUGHES & GREGORY MICHAEL SANTIBANEZ
MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's motion to dismiss, Debtors' opposition, and the parties' statements of case status. The parties agree to an order tracking Debtors' December 22, 2016, January 22, 2017, and February 22, 2017, plan payments (ECF No. 80). Good cause appearing, the court **grants** the request, **awards** Debtors' counsel \$490 in guideline fees, and excuses appearances at the December 7, 2016 hearing. The Trustee may submit an order consistent with this tentative ruling and his statement of case status.

ATTORNEY: STEVEN J. DIAMOND (SHELLEY FRANCES HUGHES, GREGORY MICHAEL SANTIBANEZ)

7 - 12-11901-CL Ch 13 ROBERT MICHAEL MARTIN
MOTION FOR COURT CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT FILED JPMORGAN CHASE BANK NATIONAL ASSOCIATION

Tentative Ruling: The court has considered JPMorgan Chase Bank's motion for court consent to enter into a loan modification agreement and the Trustee's statement of non-opposition. Having received no opposition, and good cause appearing, the court **grants** the motion, and excuses appearances at the December 7, 2016 hearing. Movant may submit an order consistent with this tentative ruling.

ATTORNEY: ANDREW H. GRIFFIN (ROBERT MICHAEL MARTIN)
ATTORNEY: CHRISTINA O (JPMORGAN CHASE BANK NA)

8 - 12-13737-CL Ch 13 ANTWAN FAISAL NASRAWI & JAKLIN ANTONE QASIR
1) MOTION TO DISMISS CASE FILED BY TRUSTEE

2) MOTION TO APPROVE LOAN MODIFICATION W/US BANK NA FILED BY DEBTORS

ATTORNEY: JEFFERY R. MENARD (ANTWAN FAISAL NASRAWI, JAKLIN ANTONE QASIR)

9 - 13-02155-CL Ch 13 ABBY & NEFTALY ROJAS
MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: BRIAN CROZIER WHITAKER (ABBY ROJAS, NEFTALY ROJAS)

02:00 PM

10 - 13-09861-CL Ch 13 JIMMY SHANE BURLEW

- 1) MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTOR

Tentative Ruling: The court will **hear** the matter.

- 2) MOTION FOR RELIEF FROM STAY, RS #DHG-3, TO ENFORCE THE DEBTOR'S PAYMENT OF POST-PETITION DEBTS ORDERED TO BE PAID BY THE SUPERIOR COURT FILED BY HELEN E. BURLEW

Tentative Ruling: The court will **hear** the matter. It has considered Movant's motion for relief from stay, Debtor's response, the Trustee's limited opposition to Debtor's motion for approval of a modified plan, and Movant's reply.

It is unclear whether the Superior Court's orders enforcing the parties' dissolution judgment are domestic support obligations ("DSO") under 11 U.S.C. § 101(14A). If they are DSOs, then stay relief is unnecessary. 11 U.S.C. § 362(b)(2)(C). Otherwise, the court is still unconvinced that stay relief is necessary since the court has already granted stay relief for Movant to enforce the dissolution judgment (ECF No. 56). If stay relief to enforce the orders is necessary, Movant has, at a minimum, not effectively briefed whether the Debtor's income is necessary to an effective reorganization. *See In re Johnson*, 756 F.2d 738, 741 (9th Cir. 1985). The parties should come prepared to discuss these matters.

ATTORNEY: LENNIE ANN ALZATE (JIMMY SHANE BURLEW)
ATTORNEY: THOMAS K. SHANNER (JIMMY SHANE BURLEW)
ATTORNEY: DIANE H. GIBSON (HELEN E. BURLEW)

11 - 13-11753-CL Ch 13 DOROTHY MARTINEZ MELLADO

MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: D.J. RAUSA (DOROTHY MARTINEZ MELLADO)

12 - 14-00775-CL Ch 13 NEAL P. & CAROL L. COOK

MOTION FOR RELIEF FROM STAY, RS MDE-1 FILED BY WELLS FARGO BANK NA (fr. 11/9/16)

ATTORNEY: AHREN TILLER (NEAL P. COOK, CAROL L. COOK)
ATTORNEY: MARK D. ESTLE (WELLS FARGO BANK NA)

13 - 15-04281-CL Ch 13 DANNY CANIZALES

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTOR

Tentative Ruling: The court has considered Debtor's motion for confirmation of modified plan and the Trustee's non-opposition. Having received no opposition, and good cause appearing, the court **grants** the motion, **approves** the modified Chapter 13 plan, and excuses appearances at the December 7, 2016 hearing. Since Debtor's counsel does not explicitly request guideline fees the court does not award them here. Debtor may submit an order consistent with this tentative ruling.

ATTORNEY: DAVID L. SPECKMAN (DANNY CANIZALES)

02:00 PM

14 - 15-05455-CL Ch 13 IAN R. BRINER

MOTION FOR RELIEF FROM STAY, RS # NL-1 FILED BY FREEDOM MORTGAGE CORPORATION, ITS ASSIGNEES AND/OR SUCCESSORS (fr. 10/17/16)

ATTORNEY: AHREN TILLER (IAN R. BRINER)
ATTORNEY: NANCY LEE (FREEDOM MORTGAGE CORPORATION)

15 - 15-07331-CL Ch 13 JENNIFER MICOLE POWELL-STEPHENS

1) MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 10/12/16)

Tentative Ruling: The court has considered the Trustee's motion to dismiss, Debtor's opposition, and the parties' statements of case status. The parties agree to an order tracking Debtor's December 16, 2016, January 16, 2017, and February 16, 2017 plan payments (ECF No. 42). Good cause appearing, the court **grants** the request, and excuses appearances at the December 7, 2016 hearing. The Trustee may submit an order consistent with this tentative ruling and his statement of case status.

2) MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTOR

Tentative Ruling: The court has considered Debtor's motion for confirmation of modified plan, the Trustee's limited opposition and his withdrawal, and the parties' statements of case status. Having received no other opposition, and good cause appearing, the court **grants** the motion, **approves** the modified Chapter 13 plan, and **awards** Debtor's counsel \$650 in guideline fees. It excuses appearances at the December 7, 2016 hearing, and Debtor may submit an order consistent with this tentative ruling.

ATTORNEY: CHRISTOPHER R. BUSH (JENNIFER MICOLE POWELL-STEPHENS)

16 - 15-07439-CL Ch 13 JOY A DAVIS

MOTION FOR RELIEF FROM STAY, RS #JCW-1 FILED BY BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE ALTERNATIVE LOAN TRUST 2005-51, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-51, ITS ASSIGNEES AND/OR SUCCESSORS (fr. 10/12/16)

ATTORNEY: KERRY A. DENTON (JOY A DAVIS)
ATTORNEY: JENNIFER C. WONG (BANK OF NEW YORK MELLON)

17 - 16-02409-CL Ch 13 RICARDO REYES

MOTION FOR RELIEF FROM STAY, RS #MDE-1 FILED BY WELLS FARGO BANK NA (fr. 10/26/16)

ATTORNEY: ANDREW MOHER (RICARDO REYES)
ATTORNEY: MARK D. ESTLE (WELLS FARGO BANK NA)

02:00 PM

18 - 16-02697-CL Ch 13 JOANNE P. WALLACE

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE WITH 180-DAY BAR FROM RE-FILING CHAPTER 13 FILED BY TRUSTEE

Tentative Ruling: The court has considered the Trustee's objection to confirmation and motion to dismiss case with a 180-day bar from re-filing, Debtor's response, and the parties' statements of case status. The parties agree to continue the hearing to allow the matter to be heard concurrently with U.S. Bank N.A.'s motion for relief from automatic stay (ECF No. 47). Good cause appearing, the court **continues** this matter to December 19, 2016 at 10:00 a.m. and excuses appearances at the December 7, 2016 hearing.

ATTORNEY: ADAM B. ARNOLD (JOANNE P. WALLACE)

19 - 16-03765-CL Ch 13 MYRON TAYLOR

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY BANK OF AMERICA NA (fr. 10/26/16)

Tentative Ruling: The court has considered Bank of America's objection to confirmation, Debtor's opposition, Debtor's amended plan, and the parties' recent statements of case status. Good cause appearing, the court **continues** this matter to January 18, 2017 at 2:00 p.m. in order to allow the opposition period on Debtor's motion to value to run, and excuses appearances at the December 7, 2016 hearing.

ATTORNEY: DAVID L. SPECKMAN (MYRON TAYLOR)
ATTORNEY: ROBERT ZAHRADKA (BANK OF AMERICA NA)

20 - 16-03815-CL Ch 13 NATIVIDAD CONTRERAS LOPEZ

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 10/26/16)

Tentative Ruling: The court has considered the Trustee's objection to confirmation and motion to dismiss case, Debtor's opposition, and the parties' recent statements of case status. The parties agree to continue the hearing to allow notice to run on Debtor's motion to value (ECF No. 34). Good cause appearing, the court **continues** this matter to January 18, 2017 at 2:00 p.m. and excuses appearances at the December 7, 2016 hearing.

ATTORNEY: JEFFERY R. MENARD (NATIVIDAD CONTRERAS LOPEZ)

21 - 16-04679-CL Ch 13 SVETLANA V MARTINEZ

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: AHREN TILLER (SVETLANA V MARTINEZ)

02:00 PM

22 - 16-05725-CL Ch 13 DENISE F. HUGHES

AMENDED OBJECTION TO CONFIRMATION OF AMENDED CHAPTER 13 PLAN FILED BY U.S. BANK TRUST NA, AS TRUSTEE FOR LSF9 MASTER PARTICIPATION, ITS ASSIGNEES AND/OR SUCCESSORS, BY AND THROUGH ITS SERVICING AGENT CALIBER HOME LOANS INC

Tentative Ruling: The court has considered U.S. Bank N.A.'s ("U.S. Bank") unopposed objection to confirmation of Debtor's amended chapter 13 plan. Good cause appearing, the court **sustains** U.S. Bank's objection, and excuses appearances at the December 7, 2016 hearing. U.S. Bank may submit an order consistent with this tentative ruling.

ATTORNEY: SHAWN A. DOAN (DENISE F. HUGHES)
ATTORNEY: NANCY LEE (US BANK NA)

23 - 16-05875-CL Ch 13 PATERNO L. SORIANO

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY BMW BANK OF NORTH AMERICA

Tentative Ruling: The court has considered BMW of North America's objection to confirmation, Debtor's opposition, Debtor's amended Chapter 13 plan, and the parties' statements of case status. Opposition on Debtor's amended plan is not due until December 28, 2016. Accordingly, the court **continues** this matter until **January 18, 2017 at 10:00 a.m.** to allow notice to run. It excuses appearances at the December 7, 2016 hearing.

ATTORNEY: MICHAEL A. FELDMAN (PATERNO L. SORIANO)
ATTORNEY: AUSTIN P. NAGEL (BMW BANK OF NORTH AMERICA)

24 - 16-04403-CL Ch 13 JUNE A. QUICHOCHO

MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF WELLS FARGO BANK NA FILED BY DEBTOR

Tentative Ruling: Debtor's motion to value real property, treat claim as unsecured, and avoid junior lien of Wells Fargo Bank N.A. is **granted**. Per unopposed evidence, the residence is valued at \$248,401. Pursuant to 11 U.S.C. § 506(a), the court finds that the junior lienholder's lien is wholly unsecured by the residence's value. Pursuant to 11 U.S.C. § 1322(b), the claim may be treated as unsecured for purposes of this case, and the lien may be stripped off following plan confirmation, completion of the plan, and resulting discharge, if applicable.

As this motion is unopposed, appearances are excused and Debtor may upload an order that substantially conforms to Local Form CSD 1171.2. Once the court enters the order, Debtor is directed to serve it in accordance with FRBP 7004 and LBR 9013-10(c), and then promptly file a proof of service. Since Debtor's counsel does not explicitly request guideline fees, the court does not award them here.

ATTORNEY: AHREN TILLER (JUNE A. QUICHOCHO)