

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF IDAHO**

**IN RE** )  
 ) **Case No. 11-21636-TLM**  
**TIMOTHY ALLEN JOHNSON,** )  
 ) **Chapter 7**  
 ) **Debtor.** )  
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**SUMMARY ORDER**

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On December 27, 2011, Timothy Johnson (“Debtor”) filed a voluntary petition under chapter 7. Debtor’s discharge was entered on April 11, 2012. Though initially filed as a “no asset” case, the chapter 7 trustee, Ford Elsaesser (“Trustee”) requested, and the Court issued, a notice of possible assets on April 19, 2012. That notice established a claim bar date of July 18, 2012. The claims register reflects four proofs of claim have been filed, all of which are nonpriority unsecured claims, totaling \$16,501.45.

It is not clear what assets Trustee intends to administer, but it will not be Debtor’s real property. On February 6, 2013, Trustee filed a notice of intent to abandon Debtor’s real property located at 3431 7th St. E, Lewiston, Idaho. The notice of abandonment was served on all creditors under Rule 6007(a). No objections were filed. While Trustee did not submit a proposed order to the Court

for entry, the abandonment was effective under § 554(a) and Rule 6007(a) on February 25, 2013, when the notice period expired without objection.<sup>1</sup>

On January 17, 2013, Debtor filed a “Motion for Approval of Mortgage Modification and Notice of Opportunity to Object and for a Hearing.” Doc. No. 20 (“Motion”). In the Motion, Debtor asks the Court for an order “approving a mortgage modification with Wells Fargo Home Loans.” *Id.* at 2. The modification relates to the real property abandoned by Trustee. *See* Doc. No. 22-1 at 1. This real property is Debtor’s residence. *See* Doc. No. 1 at 1, 10, 16, 34. The modification is evidently under the Home Affordable Mortgage Program (or “HAMP”).

No objections to Debtor’s Motion were filed. However, absence of objection does not *perforce* require entry of an order. The Court must determine that relief is appropriate on the record presented and that an order is warranted and proper. *See, e.g., In re Central Idaho Forest Prods.*, 317 B.R. 150, 155 (Bankr. D. Idaho 2004).

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<sup>1</sup> *See* 5 Collier on Bankruptcy ¶ 554.02[4] at 554-7 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (“If the trustee proposes to abandon property under subsection (a) [of § 554], the property may be abandoned after notice and a hearing, unless a timely objection is made, without a court order.”), and ¶ 554-02[6] at 554-10 (“[I]f there is no objection to the proposed abandonment after notice, the court may dispense with a hearing and a court order is not necessary.”). *See also* 10 Collier on Bankruptcy, ¶ 6007.02[1][a] (noting that no order is required, but explaining the better procedure is to obtain an uncontested order). Of course, orders promote clarity, and it is the norm in this District that trustees obtain orders of abandonment. Were Trustee to submit such an order, it would be entered on the extant record. *Accord, In re Davis*, 2002 WL 33939739 at \*4 n.6 (Bankr. D. Idaho Feb. 14, 2002) (absence of submission of an order of abandonment did not vitiate the abandonment).

Debtor has received a discharge. While liens generally pass through bankruptcy unaffected, Debtor's discharge is effective as to, *inter alia*, any potential, unsecured deficiency claim owed to the mortgage creditor.<sup>2</sup> An agreement under which a debtor agrees to pay an otherwise discharged debt must meet the reaffirmation requirements of § 524(c). *See, e.g., Richardson v. Runge Fin. Co. (In re Richardson)*, 03.4 I.B.C.R. 216, 2003 WL 22670823 (Bankr. D. Idaho Oct. 21, 2003). In this case, no reaffirmation agreement was filed. The time for entering into such an agreement under § 524 ran as of April 11, 2012 (the date of discharge). *See* § 524(c)(1). The HAMP agreement supplied by Debtor contains his signature and a July 30, 2012 date. Doc. No. 22-1 at 4.<sup>3</sup> This is clearly not an effective reaffirmation.

The Motion and related submissions contain no citation to any authority supporting the Court's ability, or need, to enter the requested order. The Court declines to search on its own for the same, as that is a burden borne by Debtor and his counsel.

Therefore:

IT IS HEREBY ORDERED that the Motion, Doc. No. 20, is DENIED.

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<sup>2</sup> *See* Doc. No. 1 at 16 (sched. D, showing \$180,259 total debt on residence and a \$128,415 value for the residence, leaving a \$51,843 unsecured claim).

<sup>3</sup> This document, however, was not executed by the mortgage creditor. *Id.* Nor does the agreement otherwise satisfy the requirements for a reaffirmation agreement under § 524(c), nor comply with Official Form 27 and Procedural Form 240A.

DATED: April 18, 2013



A handwritten signature in black ink, appearing to read "Terry L. Myers".

TERRY L. MYERS  
CHIEF U. S. BANKRUPTCY JUDGE