

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

FRIDAY

AUGUST 16, 2013

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. [13-12023](#)-A-13 DONALD/BRENDA SHERMAN
DRJ-2
DONALD SHERMAN/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
OCWEN LOAN SERVICING, LLC
7-11-13 [[41](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by the 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). 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 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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lien holders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Given that Ocwen Loan Servicing is one of the responding parties named as to the second deed of trust and also holds the senior first deed of trust on the collateral, the moving party shall draft the proposed order to specifically identify by book and page, instrument number, or other identifying information, the second deed of trust subject to this order.

2. [13-12023](#)-A-13 DONALD/BRENDA SHERMAN MOTION TO CONFIRM PLAN
DRJ-3 6-23-13 [[32](#)]
DONALD SHERMAN/MV
DAVID JENKINS/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. [13-13326](#)-A-13 DARREL/DARLENE HICKS MOTION TO VALUE COLLATERAL OF
SL-2 SPRINGLEAF FINANCIAL SERVICES,
DARREL HICKS/MV
INC.

7-31-13 [[25](#)]

SCOTT LYONS/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: Prepared by moving party

Collateral Value: \$75,000.00

Senior Liens: \$80,021.84

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.

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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lien holders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

4. [10-19130](#)-A-13 ROBERT HARPER
MNE-7
ROBERT HARPER/MV

CONTINUED OBJECTION TO CLAIM OF
JPMORGAN CHASE BANK, N.A.,
CLAIM NUMBER 3
5-8-13 [[131](#)]

M. ENMARK/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Section 502(b)(9) makes no exception for late-filed claims other than certain exceptions applicable in chapter 7 cases under § 726(a). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs

of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, none of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

5. [13-12932](#)-A-13 THONG NGUYEN
DAT-2
THONG NGUYEN/MV
6-11-13 [[20](#)]
ANH TRINH/Atty. for dbt.

CONTINUED MOTION TO VALUE
COLLATERAL OF DCFS USA LLC

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted or continued at the moving party's option to allow supplemental service on DCFS USA LLC
Order: Prepared by the moving party

SUPPLEMENTAL SERVICE

The court previously continued the hearing on this matter ordering that proper service be effectuated on DCFS USA LLC. The supplemental certificate of service does not name and agent or officer of DCFS USA LLC, but it does add one additional service address for Mercedes-Benz Financial Services USA LLC.

The supplemental proof of service and the original proof of service are substantially the same in that an authorized agent or officer of DCFS USA LLC has not been named. The proof of service does indicate, however, that Mercedes-Benz Financial Services USA LLC was formerly known as "DCFS USA," an entity that appears to be the same party as the respondent, DCFS USA LLC.

If the moving party is satisfied with the proof of service as it now stands, the court will grant the motion as discussed below. Otherwise, if the moving party wishes to re-serve the motion, the court will continue the hearing one more time to allow supplemental service not later than 28 days before the hearing.

MERITS OF VALUATION MOTION

Assuming the moving party does not opt to continue the hearing to allow for supplemental service, the ruling will be as follows:

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 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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lien holders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

6. [13-12932](#)-A-13 THONG NGUYEN
DAT-3
THONG NGUYEN/MV

MOTION TO CONFIRM PLAN
7-3-13 [[30](#)]

ANH TRINH/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Disposition: Denied as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so, renders any pending confirmation motion for the prior plan moot. The debtor has filed a modified plan and the motion will be denied as moot.

7. [12-14739](#)-A-13 MARK/BETTY BENOIT
TCS-2
MARK BENOIT/MV

MOTION TO MODIFY PLAN
7-9-13 [[27](#)]

TIMOTHY SPRINGER/Atty. for dbt.

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. [12-17945](#)-A-13 LEROY/KRISTIE GREEN MOTION TO MODIFY PLAN
BCS-6 7-3-13 [[104](#)]
LEROY GREEN/MV
BENJAMIN SHEIN/Atty. for dbt.

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.

9. [12-17945](#)-A-13 LEROY/KRISTIE GREEN
BCS-7
BENJAMIN SHEIN/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTOR'S ATTORNEY(S), FEE:
\$21494.00, EXPENSES: \$1099.76.
7-3-13 [[97](#)]

BENJAMIN SHEIN/Atty. for dbt.

No tentative ruling.

10. [13-10448](#)-A-13 EDWARD TAYLOR
RCP-1
EDWARD TAYLOR/MV
REYNALDO PULIDO/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BAC HOME LOAN SERVICING
7-1-13 [[40](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Prepared by the moving party

Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D. Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b).

Here, the motion is directed at "BAC Home Loan Servicing" based on the motion's caption and the body of the motion and the declaration refer to "Bank of America" generally. However, the proof of service is directed at Bank of America Corp., Bank of America N.A., and Bank of America.

It is unclear who the respondent in the motion is, but based on the caption, the respondent Bank of America Loan Servicing has not been served as that specific name does not appear on the proof of service. Any difference between the name of the entity against whom relief is sought and the name of the entity served suggests that service was insufficient and made on a party other than the party named in the motion.

In addition, although the motion names "Bank of America" in the body, there are likely many entities' names that contain the term "Bank of America" including a bank holding company, a national association, and perhaps subsidiaries and affiliates. Moreover, the proof of service does not indicate proper service for the specific name "Bank of America," serving an officer in connection with that specific name.

The proof of service does show the motion was sent by certified mail to an officer of "Bank of America Corp.," but that specific entity does not appear in the motion as the respondent. Bank of America, N.A. has been listed as well, but that specific entity also does not appear in the motion as the respondent, and no officer has been listed for the entity Bank of America, N.A.

11. [13-13051](#)-A-13 RALPH/REBECCA SALDANA
BCS-2
RALPH SALDANA/MV
BENJAMIN SHEIN/Atty. for dbt.

MOTION TO CONFIRM PLAN
6-28-13 [[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.

12. [12-18452](#)-A-13 DENISE O'CANTO
SAS-1
SHERYL STRAIN/MV

MOTION FOR COMPENSATION FOR
SHERYL ANN STRAIN, CHAPTER 7
TRUSTEE(S), FEE: \$1,820.00,
EXPENSES: \$5.02.
7-15-13 [[43](#)]

PATRICIA CARRILLO/Atty. for dbt.

Final Ruling

The motion is denied without prejudice. Such an application must be noticed to all creditors. Fed. R. Bankr. P. 2002(a)(6). The applicant has not done so. *Compare*, Certificate of Service, July 15, 2013, ECF NO. 47, with Certificate of Service, July 17, 2013, ECF No. 50.

13. [13-13157](#)-A-13 JOHN/LORIANN HUERTA
KMM-2
JOHN HUERTA/MV
KARNEY MEKHITARIAN/Atty. for dbt.

MOTION TO CONFIRM PLAN
7-1-13 [[33](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so, renders any pending confirmation motion for the prior plan moot. The debtor has filed a modified plan and the motion will be denied as moot.

14. [10-17564](#)-A-13 DORAN ROSSITER
TCS-7
DORAN ROSSITER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
7-2-13 [[118](#)]

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.

15. [13-13665](#)-A-13 HENRY/ARLENE LARA
BCS-1
HENRY LARA/MV
BENJAMIN SHEIN/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
TUCOEMAS FEDERAL CREDIT UNION
7-16-13 [[18](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Collateral Value: \$27,025.00

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 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). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The debt owed to the responding party is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

16. [12-16470](#)-A-13 JUAN GARCIA

MOTION FOR RELIEF FROM
AUTOMATIC STAY

6-28-13 [[44](#)]

LUIS LOZA/MV
THOMAS GILLIS/Atty. for dbt.
GILBERT ZAVALA/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Prepared by moving party

Subject: Loza v. Garcia, No. 13CECGG00707

NO CERTIFICATE OF SERVICE

Motions for stay relief must be served on the debtor, counsel and the Chapter 13 trustee. Fed. R. Bankr. P. 9013, 9014. A Certificate of Service must be filed in support of the motion. LBR 9014-1(e)(2). No Certificate of Service was file in support of the motion.

DECLARATIONS SIGNED BY THE WRONG PERSONS

The motion purports to be supported by the declarations of Luis Loza and Maria Loza. Declarations of Loza, June 28, 2013, ECF No. 46. But it is signed by the attorney, Gilbert Zavala. This is insufficient.

FRESNO COUNTY SUPERIOR COURT ACTION A VOID ACT

The debtors filed the instant case on July 25, 2013. Voluntary Petition, July 25, 2012, ECF No. 1. The action in Fresno County was filed on March 6, 2013. Doing so was a violation of the stay. 11 U.S.C. § 362(a)(a). Acts in violation of the stay are void. *In re Gruntz*, 202 F.3d 1074, 1081-1082 (9th Cir. 2000). Void acts have no force or effect and cannot be cured or ratified. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). As a result, the filing of the Fresno County action was of no legal force or effect.

VIOLATION OF LOCAL RULES

Movant has failed to include a docket control number as required by Local Bankruptcy Rule 9014-1(c). Future violations of local rules may result in denial of the motion without hearing or sanctions against counsel.

17. [13-10971](#)-A-13 JEREMY WINANS

MOTION TO VALUE COLLATERAL OF
HOAN NGUYEN

7-19-13 [[115](#)]

HDN-5
JEREMY WINANS/MV
HENRY NUNEZ/Atty. for dbt.
STIPULATION FILED ON 8/12/13

No tentative ruling.

18. [13-13978](#)-A-13 MARY REIMERS
GH-1
MARY REIMERS/MV
GARY HUSS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
OF HSBC MORTGAGE SERVICES
7-1-13 [[14](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by the 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). 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 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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lien holders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Given that the responding party holds both the first and second deeds of trust on the collateral, the moving party shall draft the proposed order to specifically identify by book and page, instrument number, or other identifying information, the second deed of trust subject to this order.

19. [13-11484](#)-A-13 AUDREY CARTER
NEA-3
AUDREY CARTER/MV

MOTION TO VALUE COLLATERAL OF
FRESNO COUNTY FEDERAL CREDIT
UNION
6-13-13 [[32](#)]

NICHOLAS ANIOTZBEHERE/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by the 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). 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 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). 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 responding party'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.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lien holders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

20. [13-15284](#)-A-13 CRISPIN/SILVIA RODRIGUEZ
DRJ-2
CRISPIN RODRIGUEZ/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
8-2-13 [[8](#)]

Tentative Ruling

Motion: Extend the Automatic Stay
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted except as to any creditor who was not noticed or served with the motion
Order: Prepared by moving party

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.

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case is in good faith as to the creditors to be stayed. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed and that the automatic stay should be extended. The motion will be granted except as to any creditor who was not noticed or served with the motion.

21. [12-17792](#)-A-13 GEORGETTE AVEDIKIAN
JDM-3
GEORGETTE AVEDIKIAN/MV

OBJECTION TO CLAIM OF
DEPARTMENT STORES NATIONAL
BANK/BLOOMINGDALES VISA, CLAIM
NUMBER 2
6-17-13 [[56](#)]

JAMES MILLER/Atty. for dbt.

Final 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 debtor objects to the respondent's claim because it was discharged in the debtor's prior chapter 7 bankruptcy case filed in 2010. The name of the creditor on the proof of claim form appears similar to the acronym used for a creditor whose claim is listed on the debtor's

Schedule F in the debtor's prior case.

Other aspects of the proof of claim identify it as the same claim as the claim appearing on the debtor's Schedule F in her prior bankruptcy case. The last four digits of the account number shown on the respondent's proof of claim also appear on Schedule F for a claim scheduled as held by VISADSNB in the debtor's prior bankruptcy case. The debt amount on Schedule F in the prior case is \$3,384.00 and the debt amount appearing on the respondent's proof of claim is \$3,384.02. October 31, 2006 is the date shown on the proof of claim's attachments for the "Account Open Date." This date also appears on Schedule F for this claim filed in the debtor's prior chapter 7 case. The proof of claim's attachments show a date of the last payment on the account as July 21, 2009. Schedule F in the prior case also shows this date as the date the account was last active.

The respondent has not opposed the sustaining of the objection, and has not shown that its claim was neither listed nor scheduled in time to permit a timely filing of a proof of claim in the prior case, or that it did not have notice or actual knowledge of the case in time to permit it to file a timely claim in the prior case. See 11 U.S.C. § 523(a)(3). For the reasons stated in the objection and declaration filed in support, the court will sustain the objection.

22. [08-12194](#)-A-13 BRENT/ANNETTE PHILLIPS MOTION TO MODIFY PLAN
RDS-2 6-25-13 [[59](#)]
BRENT PHILLIPS/MV
RICHARD STEFFAN/Atty. for dbt.
JOINT DEBTOR DISMISSED,
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required

Plan: First Amended Chapter 13 Plan, filed June 25, 2013, ECF No. 64

Disposition: Denied

Order: Civil minute order

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 debtor moves to confirm the First Amended Chapter 13 Plan, filed June 25, 2013, ECF No. 64. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

A Chapter 13 plan may be modified at any time after confirmation but before completion of payments under the plan. 11 U.S.C. § 1329(a).

This was filed April 21, 2008, and the original plan confirmed June 27, 2008. It provided for 60 months of payments. The final payment was April 2013. The debtors filed this motion to modify on June 25, 2013, and is untimely. As a result the motion will be denied.

23. [10-18297](#)-A-13 KEITH/PAMELA VAN PAUL CONTINUED MOTION TO INCUR DEBT
ASW-4 7-16-13 [[67](#)]
KEITH VAN PAUL/MV
ADRIAN WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Incur Debt for Vehicle Purchase

Notice: LBR 9014-1(f)(2) / continued date of the hearing; no written opposition required

Disposition: Granted absent opposition by the trustee

Order: Prepared by moving party and the trustee to approve the order as to form and content

Proposed New Debt: \$15,000.00 or less

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.

The motion seeks court approval of the debtors' incurring new debt to purchase a vehicle. Previously, the court continued the motion to allow the debtor to file a proof of service showing proper notice of the motion. A proof of service has been filed.

Amended Schedules I and J indicate net monthly income of approximately \$1294.20. The chapter 13 plan payment is currently \$1,039.00. The debtor's monthly income exceeds the plan payment by approximately \$255.00. Incurring new debt that results in a monthly payment of \$200.00 to \$250.00 as the debtor proposes does not appear to make the plan infeasible. Assuming the trustee does not oppose the terms and amount of the new debt, then the court will grant the motion.

24. [12-18298](#)-A-13 STACEY CALK MOTION TO MODIFY PLAN
TCS-3 7-8-13 [[42](#)]
STACEY CALK/MV
NANCY KLEPAC/Atty. for dbt.

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.

25. [12-17699](#)-A-13 JOSHUA WESTLING MOTION TO MODIFY PLAN
TCS-3 7-11-13 [[87](#)]
JOSHUA WESTLING/MV
TIMOTHY SPRINGER/Atty. for dbt.

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.

9:15 a.m.

1. [13-11651](#)-A-13 STEPHANIE VALDEZ-GARCIA MOTION TO DISMISS CASE FOR
MHM-2 UNREASONABLE DELAY THAT IS
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE , MOTION
TO DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS
7-19-13 [[51](#)]

JERRY LOWE/Atty. for dbt.

No tentative ruling.