

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

THURSDAY

OCTOBER 3, 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. [09-61006](#)-A-13 CRISTOBAL/SYLVA GALVAN TRUSTEE'S OBJECTION RE:
MHM-1 DEBTOR'S 11 U.S.C. SEC. 1328
CERTIFICATE
8-23-13 [[59](#)]

HENRY NUNEZ/Atty. for dbt.
OBJECTION WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

2. [10-18509](#)-A-13 FRED/JULIA MENDOZA MOTION TO MODIFY PLAN
GMA-1 8-26-13 [[37](#)]
FRED MENDOZA/MV

GEOFFREY ADALIAN/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.

3. [13-12809](#)-A-13 KENNETH/JAMIE SATTESON MOTION TO CONFIRM PLAN
PBB-1 8-2-13 [[37](#)]
KENNETH SATTESON/MV
PETER BUNTING/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.

4. [11-16610](#)-A-13 SANDRA MONTEJANO MOTION TO MODIFY PLAN
TCS-2 8-12-13 [[52](#)]
SANDRA MONTEJANO/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Granted, provided the order confirming specifies the date of: (1) increased payment to Finance Thrift; and (2) decrease of attorneys fees

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.

5. [12-60518](#)-A-13 JESSE/MARIA PEREZ
PBB-2
JESSE PEREZ/MV
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN
8-20-13 [[27](#)]

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.

6. [11-12120](#)-A-13 CELSO/JENNEN RACCA
SL-4
CELSO RACCA/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO MODIFY PLAN
8-19-13 [[95](#)]

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.

7. [13-13922](#)-A-13 MATTHEW/TAMARA TREBER MOTION TO CONFIRM PLAN
PBB-1 8-2-13 [[17](#)]
MATTHEW TREBER/MV
PETER BUNTING/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.

8. [10-14923](#)-A-13 TIMOTHY CALVERT MOTION TO DETERMINE FINAL CURE
MHM-1 AND MORTGAGE PAYMENT RULE
MICHAEL MEYER/MV 3002.1
8-30-13 [[43](#)]
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Determination of Final Cure FRBP 3002.1(h)

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

Disposition: Continued to November 13, 2013, at 9:00 a.m.

Order: Civil minute order

The matter is continued to November 13, 2013, at 9:00 a.m. Not later than 28 days prior to the continued hearing the Chapter 13 trustee shall serve respondent CitiMortgage with a: (1) notice of continued hearing, including verbiage requiring opposition not less than 14 days of the continued hearing; and (2) the motion and all supporting pleadings.

The Chapter 13 trustee has not effectuated service of process under Federal Rule of Civil Procedure 7004. A Motion for Determination of Final Cure under Federal Rule of Bankruptcy Procedure 3002.1(h) is a contested matter. A contested matter is a motion with an identifiable adverse party. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Motion Practice § 19:2 (Rutter Group 2012). Contested matters must be served in the manner prescribed in Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 9014(c). Because this motion seeks to deem the debtor's home mortgage with CitiMortgage

current as of the conclusion of the plan, the motion is a contested matter and service must be accomplished under Rule 7004.

Here the Certificate of Service fails to so indicate proper service of process. Certificate of Service, August 30, 2013, ECF No. 46. Three addresses were served: (1) Mark Hoag, CitiMortgage, Inc.; (2) CitiMortgage, Inc.; and (3) Pite Duncan, who requested notice. CitiMortgage is not an FDIC insured institution, apparently. The first two services are defective as not complying with Rule 7004(b)(3). The final service upon counsel is insufficient. *Compare, In re Villar*, 317 B.R. 88 (9th Cir. B.A.P. 2004), with Request for Notice ¶ b, June 16, 2010, ECF No. 14 (disclaiming authority to receive service of process).

9. [12-16024](#)-A-13 ANGIE PRENDEZ
PLF-2
ANGIE PRENDEZ/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
8-9-13 [[40](#)]

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Plan: Second Modified Chapter 13 Plan, filed August 9, 2013, ECF No. 44

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 Second Modified Chapter 13 Plan, filed August 9, 2013, ECF No. 44. 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.

SECTION 1322(a): DEVOTION OF SUFFICIENT INCOME

Title 11 of the U.S.C. § 1322(a)(1) requires the plan to devote all or such portion of future earnings or other future income to the supervision and control of the trustee as is necessary for the execution of the plan. The plan proposed to increase the payment to Aaron's Sales from \$43.36 per month to \$46.69 per month but fails to specify a start date. From that the court and the Chapter 13 trustee conclude that payments start in month 1 of the plan. There are no funds on hand to pay the amount due Aaron's from the commencement of the case to the date of modification. As a result, the plan is not confirmable.

SECTION 1325(a)(3): GOOD FAITH

The plan reduces the payment due Lobel Financial, resulting in a lower aggregate amount due that creditor. Since the trustee has already paid an amount greater, confirmation of the plan would result in the trustee being required to retrieve funds from the impacted creditor. The Chapter 13 trustee contends this lacks good faith.

The court disagrees. Good faith is a totality of the circumstances test, taking into consideration: (1) whether the debtor has misrepresented the facts, unfairly manipulated the code or otherwise acted in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the filing was intended solely to defeat state court litigation; and (4) egregious behavior. *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). Merely proposing a plan that would require the retrieval of funds does not rise to a finding of a lack of good faith.

LOCAL BANKRUPTCY RULE 2016-1(c)

The plan provides for opt in fees of \$7,000. Second Modified Chapter 13 Plan § 2.06, filed August 9, 2013, ECF No. 44. Local Bankruptcy Rule 2016-1(c)(1) provides for opt in fees of \$4,000. But Rule 2016-1(c)(3) provides that counsel may seek opt in fees above \$4,000 upon application. The court reads § 2.06 as signaling the debtor's estimate of total fees for the purposes of calculating feasibility but indicating that debtor's counsel will seeks fees under Rule 2016-1(c). As a result, the opposition is overruled on this point, provided the order confirming include language indicating that the Chapter 13 trustee will not pay fee above the opt in amount unless those fees are approved by the court.

10. [11-17325](#)-A-13 GARY/LINDA PHELPS MOTION TO MODIFY PLAN
BDB-2 8-21-13 [[40](#)]
GARY PHELPS/MV
BENNY BARCO/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.

11. [13-13925](#)-A-13 GREGORY BARKLEY ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-11-13 [[22](#)]
- MARK ZIMMERMAN/Atty. for dbt.
FINAL INSTALLMENT FEE PAID

Final Ruling

The fees paid, the order to show cause is discharged and the case shall remain pending.

12. [13-12727](#)-A-13 MARIA MUNOZ MOTION TO CONFIRM PLAN
TOG-2 8-13-13 [[31](#)]
MARIA MUNOZ/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [12-11928](#)-A-13 ANTONIO/ANNETTE GUZMAN MOTION TO MODIFY PLAN
TCS-2 8-12-13 [[45](#)]
ANTONIO GUZMAN/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan

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

Disposition: Continued to November 13, 2013, at 9:00 a.m.

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

The matter is continued to November 13, 2013, at 9:00 a.m.

14. [12-11928](#)-A-13 ANTONIO/ANNETTE GUZMAN MOTION TO SELL
TCS-2 8-12-13 [[50](#)]
ANTONIO GUZMAN/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Continued to November 13, 2013, at 9:00 a.m. and supplemental briefs and declarations may be filed no later than October

Order: Prepared by moving party

Property: 4 vehicles (1 of the 4 vehicles, a 1998 Freightliner Boxed Truck, has been sold)

Buyer: A specific buyer is not specified

Sale Price: The price is not specified, but debtors list the prices they are expecting, and the price at which the 1998 Freightliner Boxed Truck was sold

Sale Type: Private sale subject to overbid opportunity

AUTHORIZATION FOR THE SALE OF UNSOLD VEHICLES

Confirmation of a Chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); see also *In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303.

Sale is usually proper in one of three ways: (1) sale through confirmed plan, 11 U.S.C. §§ 1123(a)(5)(D), 1322 (b)(11); (2) public auction, Fed. R. Bankr. P. 6004(f)(1); or (3) private sale with opportunity for overbid, Fed. R. Bankr. P. 6004(f)(1), *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 505 (Bankr. E.D. Cal. 1999).

Here, the motion and notice of hearing appear to propose a private sale but do not indicate a specific buyer or a firm price. The court usually is presented with motions to approve private sales only after an overbid opportunity at the hearing. The proposed private sale price is the starting point for the bidding process, and any overbids ordinarily must exceed the proposed sale price.

The debtors may file an amended notice of the continued hearing date no later than October 16, 2013, and opposition may be filed pursuant to Local Bankruptcy Rule 9014-1(f)(1) no later than October 30, 2013. The amended notice must contain the identity of a buyer and the proposed price.

RETROACTIVE AUTHORIZATION FOR THE SALE OF THE PREVIOUSLY SOLD VEHICLE

Section 5.02 of the debtors' First Modified Chapter 13 Plan and Local Bankruptcy Rule 3015-1(i)(5) impose a duty on the debtors to obtain prior court authorization prior to transferring property or incurring additional debt.

The court continues the hearing on the matter to allow supplemental briefing and declarations on the issue of whether retroactive authorization should be granted for the sale. The factors a court should consider in determining whether to grant retroactive relief for a transaction or event requiring prior authorization are described in *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 523 (9th Cir. 2007) (discussing factors in the context of retroactive authorization of postpetition financing under 11 U.S.C. § 364(c)(2)). These factors were applied in the context of a postpetition financing under §364(c)(2), but apply by analogy here as follows: "(1) whether the [sale] transaction benefits the bankruptcy estate; (2) whether the [moving party] has adequately explained its failure to seek prior authorization or otherwise established that it acted in good faith when it failed to seek prior authorization; (3) whether there is full compliance with the requirements of section [363(b)]; and (4) whether the circumstances of the case present one of those rare situations in which retroactive authorization is appropriate." *Id.*

15. [13-13232](#)-A-13 FRANK/RACHEL RUIZ
KMM-2
FRANK RUIZ/MV
KARNEY MEKHITARIAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
7-30-13 [[39](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

CONFIRMATION

Motions to confirm a Chapter 13 plan must be served on the debtor, the trustee and all creditors. Fed. R. Bankr. P. 2002(b); see also, LBR 3015-1(d). Here, the movant has failed to effect service on all required parties. As a result, the motion will be denied.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

16. [11-17835](#)-A-13 SHARON MARTINEZ
MHM-2
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.

COUNTER MOTION TO DISMISS CASE
9-17-13 [[82](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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.

Title 11 U.S.C. § 1307(c)(1) authorizes dismissal of a Chapter 13 case for unreasonable delay that is prejudicial to creditors. The debtor is delinquent six months under the terms of the most recent confirmed plan and under the terms of the proposed plan. A prima facie case made the court will grant the motion.

17. [11-17835](#)-A-13 SHARON MARTINEZ
PLF-5
SHARON MARTINEZ/MV
PETER FEAR/Atty. for dbt.

MOTION TO MODIFY PLAN
8-7-13 [[75](#)]

No tentative ruling

18. [13-14738](#)-A-13 DIANA MADRID
KK-1
SUNTRUST MORTGAGE, INC./MV
ALLAN WILLIAMS/Atty. for dbt.
KIANA KHAJEH/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY SUNTRUST MORTGAGE, INC.
9-3-13 [[19](#)]

Tentative Ruling

Objection: Confirmation Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required
Plan: Chapter 13 Plan, filed July 9, 2013, ECF No. 5

Disposition: Overruled

Order: Civil minute order

Suntrust Mortgage objects to confirmation because Class 1 of the plan understates the amount of the arrearage due the debtor's mortgage. The plan states the arrearage as \$23,445.00 and Suntrust contends it is \$25,523.77.

The objection is overruled. First, Suntrust provides no supporting declaration as required by Local Bankruptcy Rule 9014-1(d)(6) and no proof of claim indicating a greater amount has been filed. Second, and more importantly, Suntrust misunderstands the plan. The Chapter 13 Plan § 2.04, filed July 9, 2013, ECF No. 5, provides that the Proof of Claim, not the plan, control the amount of the claim. As a result, the objection is overruled.

19. [12-11143](#)-A-13 JOAQUIN/PAMELA DENIZ
GMA-1
JOAQUIN DENIZ/MV
GEOFFREY ADALIAN/Atty. for dbt.

MOTION TO MODIFY PLAN
8-9-13 [[31](#)]

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.

20. [09-18244](#)-A-13 CLYDE AUSTON MOTION TO MODIFY PLAN
TCS-2 8-15-13 [[59](#)]
CLYDE AUSTON/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.

21. [13-10447](#)-A-13 JARRED/OLIVIA PIGG MOTION FOR COMPENSATION BY THE
PLF-12 LAW OFFICE OF PETER L. FEAR FOR
PETER FEAR/MV PETER L. FEAR, DEBTOR'S
ATTORNEY(S), FEE: \$11,594.50,
EXPENSES: \$282.83.
9-5-13 [[101](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Law Offices of Peter L. Fear

Compensation approved: \$11,594.50

Costs approved: \$282.83

Aggregate fees and costs approved: \$11,877.33

Retainer held: \$0.00

Amount to be paid as administrative expense: \$11,877.33

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 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 for "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 are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

Said fees cover the period of January 24, 2013, through June 30, 2013. The debtor's counsel was paid \$3,719.00, which are in addition to said amount. And the order shall so state.

22. [13-14750](#)-A-13 RICARDO/MELANIE ARROYO ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-13-13 [[18](#)]
GARY HUSS/Atty. for dbt.
PAID \$140.00

Final Ruling

The fees paid, the order to show cause is discharged and the case shall remain pending.

23. [12-18452](#)-A-13 DENISE O'CANTO MOTION FOR COMPENSATION FOR SHERYL ANN STRAIN, CHAPTER 7 TRUSTEE(S), FEE: \$1820.00, EXPENSES: \$5.02.
SAS-2
SHERYL STRAIN/MV
8-19-13 [[55](#)]
PATRICIA CARRILLO/Atty. for dbt.
SHERYL STRAIN/Atty. for mv.

Final Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Sheryl A. Strain, former Chapter 7 trustee
Compensation approved: \$1,820.00
Costs approved: \$5.02
Aggregate fees and costs approved: \$1,825.02
Retainer held: \$0.00
Amount to be paid as administrative expense: \$1,825.02

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a former Chapter 7 trustee in a case converted to Chapter 13 and for "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). No party in interest suggests that the cap of 11 U.S.C. § 326(a) applies.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

24. [13-14553](#)-A-13 JOHN/DONNA SPATAFORE MOTION TO CONFIRM PLAN
JMA-4 8-5-13 [[32](#)]
JOHN SPATAFORE/MV
JOSEPH ARNOLD/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.

25. [12-60155](#)-A-13 JOSE/LUCILLA GARCIA MOTION FOR APPROVAL OF NO-LOOK
PLF-3 FEE
JOSE GARCIA/MV 9-5-13 [[39](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Approval of No Look Fee

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).

Federal Rule of Civil Procedure 60(b) authorizes relief from an order based on mistake. On May 21, 2013, the debtor filed a Chapter 13 Plan, May 21, 2013, ECF No. 31. That plan § 2.06 failed to signal whether debtor's counsel opted in or opted out of the flat fee. See, LBR 2016-1(c). The order confirming also failed to address the problem. Order Confirming Plan, July 17, 2013, ECF No. 36. This is a consumer case and counsel pays the flat fee of \$4,000. The relief consistent with Local Rule 2016-1(c), the motion is granted.

26. [13-13157](#)-A-13 JOHN/LORIANN HUERTA MOTION TO CONFIRM PLAN
KMM-3 7-31-13 [[43](#)]
JOHN HUERTA/MV
KARNEY MEKHITARIAN/Atty. for dbt.
CASE DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

27. [11-13462](#)-A-13 DOMINGO/ERICA GARZA MOTION TO MODIFY PLAN
PBB-2 8-13-13 [[54](#)]
ERICA GARZA/MV
PETER BUNTING/Atty. for dbt.
CASE DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

28. [08-18065](#)-A-13 JOSE/TIFFANY CASTILLO MOTION TO APPROVE LOAN
PPR-1 MODIFICATION
BANK OF AMERICA, N.A./MV 8-21-13 [[71](#)]
PETER FEAR/Atty. for dbt.
NINA JAVAN/Atty. for mv.

Final Ruling

Motion: Loan Modification Approval

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

Disposition: Granted

Order: Prepared by moving party

IMPROPER DOCKET CONTROL NUMBER

The moving party has not provided a docket control number that complies with Local Bankruptcy Rule 9014-1(c)(3). The docket control number should have been one number higher than the docket control number used for the moving party's objection to confirmation filed on January 12, 2009. LBR 9014-1(c)(3); see also LBR 9001-1(n) (defining "motion" to include objections). The court requests counsel's compliance with the rules relating to docket control numbers in the future.

LOAN MODIFICATION

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).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

29. [13-14974](#)-A-13 WESLEY/SUSAN ROBERTSON ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
DAVID JENKINS/Atty. for dbt. 8-26-13 [[19](#)]
PAID \$70.00 9/16/13

Final Ruling

The fees paid, the order to show cause is discharged and the case shall remain pending.

30. [13-15476](#)-A-13 ROBERT TYRA
BCS-1
ROBERT TYRA/MV
BENJAMIN SHEIN/Atty. for dbt.

MOTION TO AVOID LIEN OF
DISCOVER BANK
8-15-13 [[7](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of-(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

31. [13-15979](#)-A-13 JAIME HERNANDEZ
JAIME HERNANDEZ/MV
JAIME HERNANDEZ/Atty. for mv.

MOTION TO EXTEND AUTOMATIC STAY
9-18-13 [[14](#)]

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.

32. [13-14781](#)-A-13 PHILLIP GIBSON
TCS-1
PHILLIP GIBSON/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO SELL
8-5-13 [[17](#)]

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(2) / continued date of the hearing; written opposition filed by Creditors Larry E. Stone, Carol E. Stone, David M. Stone and Toni J. Stone

Disposition: The court intends to authorize the sale subject to overbids at the hearing by the lienholder or any other prospective bidder pursuant to § 363(k); the debtor shall propose bidding procedures at the hearing, which the court may approve if reasonable

Order: Prepared by the moving party

Property: 111 N. Mooney Blvd., Tulare, CA

Proposed Buyer: Laura Ancheta

Sale Price: \$425,000.00

Sale Type: Private sale subject to overbid opportunity

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 and enter the default of the responding party. In entering such default, 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).

BACKGROUND

At the previous hearing, the court issued a tentative ruling that rejected the arguments initially raised by Creditors Larry E. Stone, Carol E. Stone, David M. Stone and Toni J. Stone (the "Stones"). The court incorporates the previous tentative ruling by reference in this tentative ruling. See Civ. Mins. Hr'g on Mot. Sell, Aug. 22, 2013, ECF No. 30.

At the previous hearing, the court also continued the hearing to allow further briefing. The debtor and the trustee have not filed briefs. The Stones' brief suggests that the Stones are to be permitted to credit bid their secured claim against the property under 11 U.S.C. § 363(k).

The Stones indicate in their supplemental brief that they "would not be opposed to the sale of the property with the option of overbidding, provided that any and all bidders become qualified by providing some sort of proof which establishes that they have the financing available to back up their bid." Stones' Am. Opp'n at 3, ECF No. 34. The debtor in his reply to Stones' initial opposition agreed to allow the sale to move forward with overbidding. Debtor's Reply at 5, ECF No. 29.

Other than the issue of allowing credit bidding, the Stones supplemental brief does not indicate objections to the sale being approved. However, the Stones request that the court establish minimum bidding procedures. The Stones also propose that "any and all bidders become qualified by providing some sort of proof which establishes that they have the financing available to back up their bid." Stones Am. Opp'n at 3 (emphasis added).

SALE UNDER § 363(b)

Confirmation of a Chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); see also *In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

CREDIT BIDDING AT THE SALE

Section 363(k) provides that "[a]t a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase

price of such property." 11 U.S.C. § 363(k).

No one has contested the fact that the Stones hold a lien on the property. Schedule D appears to indicate a first mortgage held by "A" Larry Stone. If the Stones hold a lien against the real property described above, they may credit bid at the sale. *Id.* § 363(k). The debtor does not oppose credit bidding by the Stones at the hearing on the sale as discussed above.

PROPOSAL THAT BIDDERS SUBMIT PROOF OF FINANCING

The Stones request that "any and all bidders become qualified by providing some sort of proof which establishes that they have the financing available to back up their bid." Stones' Am. Opp'n at 3.

The court will not adopt this proposal. "The standard procedure is to give the purchaser a reasonable amount of time to pay the cash price and to close the deal." *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 505 (Bankr. C.D. Cal. 1999) (rejecting trustee's attempt to impose a condition on the sale that winning bidder present cashier's check for entire purchase price).

33. [11-15284](#)-A-13 ROBERT/STACIE GABIJAN MOTION TO SELL
SL-3 9-9-13 [[46](#)]
ROBERT GABIJAN/MV
STEPHEN LABIAK/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 3504 W. Coppola Avenue, Visalia, California

Buyer: Giridhar and Aravinda Andhavarapu

Sale Price: \$147,000.00 (Short Sale)

Sale Type: Private sale subject to overbid opportunity

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 and enter the default of the responding party. In entering such default, 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).

SALE UNDER § 363(b)

Confirmation of a Chapter 13 plan reverts property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation. *See* Ch. 13 Plan § 6.01, ECF No. 5.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The court notes that the amount shown in the motion to be paid to Wells Fargo, the creditor having a first deed of trust on the property, appears inaccurate based on Exhibit C (Wells Fargo Short Sale Approval). The amount to be paid to Wells Fargo based on the proposed sale price of \$147,000.00 should be \$136,012.29 and not \$36,012.29. If this is not correct, the debtor should notify the court at the hearing.

NOTICE OF THE SALE

The notice does not state that the sale is subject to overbid at the hearing, which is a material term of the sale. The notice of a proposed private sale should contain all material terms and conditions of the sale. *See* Fed. R. Bankr. P. 2002(c)(1) (requiring the terms and conditions of any private sale be included in the notice of hearing); *see also* LBR 9014-1(d)(4) ("When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set for the essential facts necessary for a party to determine whether to oppose the motion.").

Conditioning a sale on the opportunity for higher and better bids is a material term of any private sale because it may substantially alter the price term and change the identity of the buyer. In the future, counsel should ensure that the notice of hearing contains all material terms and conditions of the sale.

34. [13-11484](#)-A-13 AUDREY CARTER
NEA-4
AUDREY CARTER/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

MOTION TO CONFIRM PLAN
7-24-13 [[43](#)]

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.

35. [10-18186](#)-A-13 IRMA LOPEZ
GMA-2
IRMA LOPEZ/MV
GEOFFREY ADALIAN/Atty. for dbt.

MOTION TO MODIFY PLAN
8-9-13 [[70](#)]

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.

36. [12-17792](#)-A-13 GEORGETTE AVEDIKIAN
JDM-4
GEORGETTE AVEDIKIAN/MV
JAMES MILLER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
8-9-13 [[62](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required
Plan: Second Modified Chapter 13 Plan, filed September 19, 2013, ECF
No. 72

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 Second Modified Chapter 13 Plan, filed September 19, 2013, ECF No. 72. 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.

The plan is not feasible. It requires the debtor pay the Chapter 13 trustee \$17,498.47, by the end of August 2013. As of that date, the debtor has paid only \$15,277.18. As a result, the plan is not feasible and cannot be confirmed.

37. [13-11095](#)-A-13 HOWARD/JUDITH TRIMBLE
BCS-2
BENJAMIN SHEIN/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTOR'S ATTORNEY(S), FEE:
\$11,533.00, EXPENSES: \$405.52.
9-4-13 [[38](#)]

BENJAMIN SHEIN/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Shein Law Group

Compensation approved: \$11,533.00

Costs approved: \$405.52

Aggregate fees and costs approved: \$11,938.52

Retainer held: \$5,331.00

Amount to be paid as administrative expense: \$6,607.52

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 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 for "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 are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

38. [11-15196](#)-A-13 TIM/CHRISTINA GARRISON MOTION TO MODIFY PLAN
HDN-5 8-8-13 [[97](#)]
TIM GARRISON/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Plan: First Modified Chapter 13 Plan, filed September 17, 2013, ECF No. 103

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 Modified Chapter 13 Plan, filed September 17, 2013, ECF No. 103. 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.

There are two problems. First, the plan is not feasible. 11 U.S.C. § 1325(a)(6). The debtors are delinquent \$2,970.42. Second, the most recent Schedules I and J were filed May 26, 2011. This is too remote in time to support confirmation and, hence, the debtors have not carried their burden of proof as to confirmation.

39. [12-17996](#)-A-13 NONIE/ZENAIDA MISAL
PBB-2
NONIE MISAL/MV
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF SALLIE
MAE INC., CLAIM NUMBER 14
8-7-13 [[38](#)]

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained or continued at the objecting party's option to allow supplemental service

Order: Prepared by objecting party

SERVICE OF THE OBJECTION

The court will continue the objection at the objecting party's option to allow supplemental service of the objection. Local Bankruptcy Rule 3007-1(c) requires that an objection to claim be served on the claimant at the proof of claim address and the address listed in the schedules if different from the proof of claim address. Here, it appears the claimant was served pursuant to Rule 7004(b)(3), and served at the claim address. However, the claimant does not appear to have been served at the address shown for Sallie Mae Inc. listed in the schedules, which is different from the address shown on the proof of claim. See Schedule F, ECF No. 1.

However, if the objecting party is satisfied with service as it stands, then the court will sustain the objection on the grounds below.

MERITS OF THE OBJECTION

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 motion. 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).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

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).

By disallowing this claim, the court does not make a determination of whether the claim is dischargeable under § 523(a)(8). If the claim is nondischargeable under such subsection, then disallowance of the claim does not affect its nondischargeability.

40. [12-17996](#)-A-13 NONIE/ZENAIDA MISAL
PBB-3
NONIE MISAL/MV
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF SALLIE
MAE INC., CLAIM NUMBER 15
8-7-13 [[43](#)]

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

SERVICE OF THE OBJECTION

The court will continue the objection at the objecting party's option to allow supplemental service of the objection. Local Bankruptcy Rule 3007-1(c) requires that an objection to claim be served on the claimant at the proof of claim address and the address listed in the schedules if different from the proof of claim address. Here, it appears the claimant was served pursuant to Rule 7004(b)(3), and served at the claim address. However, the claimant does not appear to have been served at the address shown for Sallie Mae Inc. listed in the schedules, which is different from the address shown on the proof of claim. See Schedule F, ECF No. 1.

However, if the objecting party is satisfied with service as it stands, then the court will sustain the objection on the grounds below.

MERITS OF THE OBJECTION

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 motion. 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).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

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).

By disallowing this claim, the court does not make a determination of whether the claim is dischargeable under § 523(a)(8). If the claim is nondischargeable under such subsection, then disallowance of the claim does not affect its nondischargeability.

41.	12-17996 -A-13	NONIE/ZENAIDA MISAL	OBJECTION TO CLAIM OF SALLIE
	PBB-4		MAE INC., CLAIM NUMBER 16
	NONIE MISAL/MV		8-7-13 [48]
	PETER BUNTING/Atty. for dbt.		

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

SERVICE OF THE OBJECTION

The court will continue the objection at the objecting party's option to allow supplemental service of the objection. Local Bankruptcy Rule 3007-1(c) requires that an objection to claim be served on the claimant at the proof of claim address and the address listed in the schedules if different from the proof of claim address. Here, it appears the claimant was served pursuant to Rule 7004(b)(3), and served at the claim address. However, the claimant does not appear to have been served at the address shown for Sallie Mae Inc. listed in the schedules, which is different from the address shown on the proof of claim. See Schedule F, ECF No. 1.

However, if the objecting party is satisfied with service as it stands, then the court will sustain the objection on the grounds below.

MERITS OF THE OBJECTION

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 motion. 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).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

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).

By disallowing this claim, the court does not make a determination of whether the claim is dischargeable under § 523(a)(8). If the claim is

nondischargeable under such subsection, then disallowance of the claim does not affect its nondischargeability.

42. [13-11298](#)-A-13 OSCAR HERNANDEZ AND MOTION TO CONFIRM PLAN
TOG-2 LETICIA GIRON 8-21-13 [[54](#)]
OSCAR HERNANDEZ/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.

43. [13-11740](#)-A-13 GILDARDO CRUZ AND AMPARO AMENDED MOTION TO CONVERT CASE
ASW-1 LARA FROM CHAPTER 13 TO CHAPTER 7 ,
AGUSTIN CENDEJAS/MV MOTION FOR SANCTIONS AGAINST
DEBTOR'S ATTORNEY FOR
MISCONDUCT UNDER FRBP 9011
9-26-13 [[56](#)]

THOMAS GILLIS/Atty. for dbt.
ADRIAN WILLIAMS/Atty. for mv.
TO BE RENOTICED

Final Ruling

The order shortening time denied, the matter is dropped from calendar.

9:15 a.m.

1. [13-13817](#)-A-13 BEATRICE HINSON
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
8-23-13 [[28](#)]

NELLIE AGUILAR/Atty. for dbt.

Final Ruling

The matter is continued to November 7, 2013, at 9:00 a.m.

2. [13-14031](#)-A-13 ALFRED/MONICA SAUCEDA
MHM-3
MICHAEL MEYER/MV
CASE DISMISSED
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
8-30-13 [[59](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

3. [13-11834](#)-A-13 PAUL/DORIS ROMERO
MHM-1
MICHAEL MEYER/MV
- CONTINUED MOTION TO DISMISS
CASE AND/OR MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS
7-29-13 [[21](#)]

JOEL WINTER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [13-11740](#)-A-13 GILDARDO CRUZ AND AMPARO
MHM-2 LARA
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-13-13 [[46](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

5. [13-14773](#)-A-13 VICTOR FIGUEROA
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-18-13 [[27](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

6. [13-11486](#)-A-13 MANUEL/MARIA DIAS
MHM-1
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
6-13-13 [[21](#)]

TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [13-11298](#)-A-13 OSCAR HERNANDEZ AND
MHM-1 LETICIA GIRON
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
8-8-13 [[48](#)]

THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

A plan confirmed, the court believes the matter can be dropped as
moot.

9:30 a.m.

1. [08-16673](#)-A-13 ANA CONCEPCION CONTINUED STATUS CONFERENCE RE:
[13-1072](#) COMPLAINT
CONCEPCION V. ENMARK ET AL 6-28-13 [[1](#)]
GARY HUSS/Atty. for pl.
DISMISSED WITH PREJUDICE

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

10:00 a.m.

1. [12-16161](#)-A-12 FRANK/ELEONORA FERREIRA MOTION TO DISMISS CASE FOR
LKW-1 UNREASONABLE DELAY THAT IS
LEONARD WELSH/MV PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-10-13 [[161](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Trustee's Motion to Dismiss

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

Disposition: Granted

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 and enter the default of the responding party. In entering such default, 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 chapter 12 trustee Leonard Welsh (the "Trustee") has filed a motion to dismiss the debtors Frank and Eleonora Ferreira's (the "Debtors") case pursuant to § 1208(c) for cause. The Trustee has indicated that the Debtors' counsel has informed him that the Debtors do not intend to oppose the motion.

For the reasons set forth below, the court will grant the Trustee's motion and the case will be dismissed.

DISCUSSION

Under § 1208(c), on request of a party in interest, the debtor may dismiss a chapter 12 case for cause. The statute includes a non-exhaustive list of what constitutes "cause," including "unreasonable delay . . . by the debtor that is prejudicial to creditors" and

"continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." § 1208(c)(1), (9).

The Debtors, who operated a dairy business, filed their petition on July 12, 2012. Since then, the Debtors have sold off their dairy herd and personal property used in the dairy business and ceased operating this business. According to the Trustee, the Debtors have no intention to restart the business or to seek confirmation of a plan. Based on these facts, the court finds that cause exists for dismissal.

CONCLUSION

For the reasons set forth above, the court will grant the Trustee's motion and the case will be dismissed.

2. [10-63277](#)-A-12 DELVIN/DEBORAH GEORGESON MOTION FOR COMPENSATION BY THE
HAR-4 LAW OFFICE OF MCCORMICK,
HILTON RYDER/MV BARSTOW, SHEPPARD, WAYTE AND
CARRUTH, LLP FOR HILTON A.
RYDER, DEBTOR'S ATTORNEY(S),
FEE: \$3312.00, EXPENSES:
\$36.36.
8-19-13 [[61](#)]
- HILTON RYDER/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: McCormick Barstow
Compensation approved: \$3,312.00
Costs approved: \$36.36
Aggregate fees and costs approved: \$3,348.36
Retainer held: \$1,162.88
Amount to be paid as administrative expense: \$2,185.48

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 case and for "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 are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.

3. [12-19290](#)-A-12 DIMAS/ROSA COELHO MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
KUBOTA CREDIT CORPORATION/MV 9-3-13 [[138](#)]
THOMAS GILLIS/Atty. for dbt.
MARK ESTLE/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Subject: Kubota M110XDTC 4WD Tractor

Section 362(d)(1) authorizes stay relief for cause. The debtors' failure to make post-petition payments may constitute cause. *In re Delaney-Morin*, 304 B.R. 356, 369-70 (9th Cir. 2003); *In re Avila*, 311 B.R. 81 (Bankr. N.D. Cal. 2004). When the creditor is protected by an equity cushion, where the debtor would suffer substantial loss as a result, and where no economic hard to the creditor would result from denial of the motion, post-petition default should not automatically result in a finding of cause. In this case, the creditor seeks to repossess a tractor used in the debtor's business. The value is \$37,987.00. The amount owed the secured creditor is \$5,613.00. The debtor is delinquent ten payments of \$1,236.90. The secured creditor is adequately protected and the court does not find cause at this time.

4. [12-19290](#)-A-12 DIMAS/ROSA COELHO CONTINUED MOTION TO VALUE
TOG-7 COLLATERAL OF HAMILTON AND
DIMAS COELHO/MV
JOSEPHINE SANTOS
5-16-13 [[83](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

5. [12-19291](#)-A-12 JOAO/LUZIA VAZ
MDE-1
KUBOTA CREDIT CORPORATION/MV
THOMAS GILLIS/Atty. for dbt.
MARK ESTLE/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-3-13 [[158](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Subject: Kubota M110XDTC 4WD Tractor

Section 362(d)(1) authorizes stay relief for cause. The debtors' failure to make post-petition payments may constitute cause. *In re Delaney-Morin*, 304 B.R. 356, 369-70 (9th Cir. 2003); *In re Avila*, 311 B.R. 81 (Bankr. N.D. Cal. 2004). When the creditor is protected by an equity cushion, where the debtor would suffer substantial loss as a result, and where no economic hard to the creditor would result from denial of the motion, post-petition default should not automatically result in a finding of cause. In this case, the creditor seeks to repossess a tractor used in the debtor's business. The value is \$37,987.00. The amount owed the secured creditor is \$5,613.00. The debtor is delinquent ten payments of \$1,236.90. The secured creditor is adequately protected and the court does not find cause at this time.

1:30 p.m.

1. [13-11766](#)-A-11 500 WHITE LANE LP CONTINUED CHAPTER 11 STATUS
CONFERENCE
3-20-13 [[8](#)]
- D. GARDNER/Atty. for dbt.
ORDER RESCHEDULING TO
11/6/13 AT 1:30 PM

Final Ruling

The status conference has been rescheduled to November 6, 2013, at 1:30 p.m.

2. [13-11766](#)-A-11 500 WHITE LANE LP EVIDENTIARY HEARING RE: MOTION
DKE-1 TO DISMISS CASE
FIRST-CITIZENS BANK & TRUST 6-12-13 [[63](#)]
COMPANY/MV
D. GARDNER/Atty. for dbt.
DAVID ELDAN/Atty. for mv.
MOTION WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [13-11766](#)-A-11 500 WHITE LANE LP EVIDENTIARY HEARING RE: MOTION
UST-2 TO DISMISS CASE
AUGUST LANDIS/MV 4-18-13 [[29](#)]
D. GARDNER/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
MOTION WITHDRAWN BY
STIPULATION AND ORDER
9/20/13

Final Ruling

The motion withdrawn, the matter is dropped as moot.