

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 17, 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. [11-18901](#)-A-13 WILLIAM/SUSAN POWELL MOTION TO MODIFY PLAN
THA-3 9-4-13 [[57](#)]
WILLIAM POWELL/MV
THOMAS ARMSTRONG/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.

2. [12-12202](#)-A-13 ISAAC/TERRY PEREZ OBJECTION TO CLAIM OF
GMA-4 SPECIALIZED LOAN SERVICING,
ISAAC PEREZ/MV LLC, CLAIM NUMBER 26
8-28-13 [[67](#)]
GEOFFREY ADALIAN/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

Claim: Proof of Claim No. 26, filed by Specialized Loan Servicing, LLC

Claim Filed: May 24, 2013

Claims Bar Date: July 23, 2012

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). 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).

3. [13-15103](#)-A-13 SYLVIA RODRIGUEZ MOTION TO VALUE COLLATERAL OF
SAH-1 GMAC MORTGAGE
SYLVIA RODRIGUEZ/MV 9-10-13 [[15](#)]
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

4. [10-14205](#)-A-13 GEORGE QUACH AND THAO LE OBJECTION TO NOTICE OF MORTGAGE
GH-3 PAYMENT CHANGE
GEORGE QUACH/MV
8-15-13 [[52](#)]
GARY HUSS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The debtors have filed an objection to the notice of mortgage payment change filed by the creditor JPMorgan Chase Bank on January 25, 2012. However, on October 2, 2013, JPMorgan Chase Bank withdrew its notice of mortgage payment change, so the matter is dropped as moot.

5. [10-60208](#)-A-13 JOE/MARY MORENO
DRJ-8
JOE MORENO/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO MODIFY PLAN
8-28-13 [[73](#)]

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. [13-13908](#)-A-13 FIDEL CAMACHO AND
TOG-8 GRACIELA RUVALCABA
FIDEL CAMACHO/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-29-13 [[51](#)]

[This matter will be called subsequent to the Continued Motion to Dismiss, MHM-1, Item No. 1 on the 9:15 a.m. calendar.]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: First Amended Plan, filed August 19, 2013, ECF No. 50

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 Plan. 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.

DEBTOR'S BURDEN OF PROOF

The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). Because the debtors have not provided all documentation requested by the trustee and their § 341 meeting has not been concluded, the debtors' financial situation is still uncertain. As a result, the debtor has not satisfied his burden as to each confirmation requirement, including good faith under § 1325(a)(7) and liquidation under § 1325(a)(4).

§ 1325(a)(1): COMPLIANCE WITH BANKRUPTCY CODE

Section 1325(a)(1) requires that a plan "complies with the provisions of this chapter and with the other applicable provisions of this title." Similarly, the plan must comply with the Bankruptcy Rules, the Local Rules, and Local Forms. Here, the debtors have improperly classified a business lease with Dana Butcher Associates in Class 2 (relating to modified secured claims), rather than under section 3.02 of the Plan (dealing with executory contracts and unexpired leases).

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).

7. [13-13912](#)-A-13 LUIS/RUBY BURGOS

ORDER DIRECTING ATTORNEY THOMAS
O. GILLIS, ESQ. TO APPEAR AND
SHOW CAUSE WHY FEES SHOULD NOT
BE DISGORGED
9-18-13 [[41](#)]

THOMAS GILLIS/Atty. for dbt.
CASE DISMISSED

No tentative ruling.

8. [13-15013](#)-A-13 JUDY EVANS
MET-1
EASTERN SAVINGS BANK, FSB/MV

OBJECTION TO CONFIRMATION OF
PLAN BY EASTERN SAVINGS BANK,
FSB
9-5-13 [[31](#)]

THOMAS ARMSTRONG/Atty. for dbt.
MARY TANG/Atty. for mv.

Tentative Ruling

Motion: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), LBR 9014-1(f)(2); no written opposition
required

Disposition: Sustained

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.

For the reasons set forth below, the court will sustain the objection.

SECTION 1325(a)(6): NOT FEASIBLE

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to
make all payments under the plan and otherwise comply with the plan.

Under the Debtor's First Modified Plan, she places Eastern Savings
Bank's claim in Class 1, proposing to pay the arrears of \$28,944.20 in
monthly payments of \$536. However, the proof of claim controls the
amount of arrears, and Proof of Claim No. 3 shows \$56,816.90 in
arrears. Since the monthly payments of \$536 are not enough to pay
this greater amount, the Plan does not fund.

9. [13-15013](#)-A-13 JUDY EVANS
THA-2
JUDY EVANS/MV
THOMAS ARMSTRONG/Atty. for dbt.

MOTION TO CONFIRM PLAN
8-13-13 [[16](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: First Modified Plan, filed August 13, 2013, ECF No. 18

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 Plan. The creditor Eastern Savings Bank opposes confirmation, arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The creditor has the better side of the argument and confirmation is denied.

SECTION 1325(a)(6): NOT FEASIBLE

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and otherwise comply with the plan.

Under the Debtor's First Modified Plan, she places Eastern Savings Bank's claim in Class 1, proposing to pay the arrears of \$28,944.20 in monthly payments of \$536. However, the proof of claim controls the amount of arrears, and Proof of Claim No. 3 shows \$56,816.90 in arrears. Since the monthly payments of \$536 are not enough to pay this greater amount, the Plan does not fund.

10. [13-15313](#)-A-13 JERYL/MICHELLE DOUGLAS OBJECTION TO CONFIRMATION OF
MDE-1 PLAN BY ONEWEST BANK, FSB
ONEWEST BANK, FSB/MV 8-23-13 [[19](#)]
ADRIAN WILLIAMS/Atty. for dbt.
MARK ESTLE/Atty. for mv.

Tentative Ruling

Motion: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), LBR 9014-1(f)(2); no written opposition required

Disposition: Sustained

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.

For the reasons set forth below, the court will sustain the objection.

SECTION 1325(a)(5): TREATMENT OF SECURED CLAIMS

Section 1325(a)(5) governs the treatment of secured claims in chapter 13 plans. Under the Debtors' Plan, the Debtors intend to treat OneWestBank's junior lien as an unsecured claim since the value of the collateral appears to be less than the amount of the senior lien. However, a motion to value must be decided before or in conjunction with confirmation. See LBR 3015-1(j). Here, no motion has been filed. Therefore, confirmation would be inappropriate at this time.

11. [13-12727](#)-A-13 MARIA MUNOZ
TOG-3
MARIA MUNOZ/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-23-13 [[38](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Plan: Second Modified Plan, filed August 23, 2013, ECF No. 41

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 Plan. 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 1325(a)(6): NOT FEASIBLE

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and otherwise comply with the plan.

Here, the evidence to support the feasibility of the Plan is insufficient. As the Trustee points out, the Debtor's Schedule I was filed on April 18, 2013, nearly six months ago, but the Trustee cannot rely on schedules that are more than 60 days old. Without a more recent Schedule I, the Trustee is unable to determine whether the Plan will be feasible.

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).

12. [13-12932](#)-A-13 THONG NGUYEN
DAT-5
THONG NGUYEN/MV
ANH TRINH/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
10-1-13 [[71](#)]

Tentative Ruling

Motion: Loan Modification Approval

Notice: LBR 9014-1(f)(2); no 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). 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.

The court notes that the incorrect case number is listed in the caption of the motion. Counsel for the debtor should ensure that the correct case number is listed in the future on motions before this court.

13. [13-12133](#)-A-13 CARL/MARI WHITFORD
MAZ-2
CARL WHITFORD/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO CONFIRM PLAN
8-30-13 [[34](#)]

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.

14. [10-18237](#)-A-13 GEORGE/CYNTHIA ALVAREZ CONTINUED MOTION TO AVOID LIEN
RLF-3 OF KELKRIS ASSOCIATES, INC.
GEORGE ALVAREZ/MV 8-21-13 [[53](#)]
SHANE REICH/Atty. for dbt.

Tentative Ruling

Motion: Continued Motion to Avoid Lien

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

Disposition: Granted in part (as to 22 N. Bliss property); denied in part (as to 2368 S. Helm property)

Order: Prepared by moving party

The court continued this matter to allow the moving party to give 28 days' notice of the continued hearing date.

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).

For the reasons set forth below, the court will grant the motion in part and will deny the motion in part. The judicial lien encumbering the property located at 22 N. Bliss Avenue, Clovis, California will be avoided. The judicial lien encumbering the property located at 2368 S. Helm Avenue in Fresno, California will not be avoided.

PROPERTY LOCATED AT 22 N. BLISS AVENUE, CLOVIS, CALIFORNIA

Liens Plus Exemption: \$332,858.11

Property Value: \$226,000.00

Judicial Lien Avoided: \$10,950.11

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 as to the property located at 22 N. Bliss Avenue in Clovis, California.

PROPERTY LOCATED AT 2368 S. HELM AVENUE, FRESNO, CALIFORNIA

Property must be listed on the schedules and claimed as exempt as a requirement for lien avoidance under § 522(f). See *Goswami*, 304 B.R. at 390 91 (deciding the unrelated issue of whether a debtor loses the ability to amend exemptions claimed upon case closure, and relying on the premise that property must be claimed exempt on the schedules for purposes of lien avoidance). "If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt. . . ." *In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (unpublished mem. decision). It follows that a debtor who has not claimed an exemption in property encumbered by a judicial lien or a nonpossessory, nonpurchase-money security interest may not use the protections of that section. See *Goswami*, 304 B.R. at 390 91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, no exemption has been claimed in the property subject to the responding party's lien. The most recently amended Schedule C was filed January 18, 2012. An exemption is claimed only as to the real property located at 22 N. Bliss Avenue, Clovis, California. Accordingly, a prima facie case has not been made for relief under § 522(f). In addition, the property appears to be surrendered to a secured creditor by having been placed in Class 3 of the plan. The court does not understand why a motion to avoid a lien on such property is necessary.

As a result, the responding party's judicial lien will not be avoided as to the property located at 2368 S. Helm Avenue in Fresno, California.

CONCLUSION

For the reasons set forth above, the court will grant the motion in part and will deny the motion in part. The judicial lien encumbering the property located at 22 N. Bliss Avenue, Clovis, California will be avoided. The judicial lien encumbering the property located at 2368 S. Helm Avenue in Fresno, California will not be avoided.

15. [13-11639](#)-A-13 ALFRED/DORA CANALES MOTION TO SELL
PBB-1 9-30-13 [[29](#)]
ALFRED CANALES/MV
PETER BUNTING/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: 945 West Tulare Street, Fresno, California

Buyer: Adrian Nuno

Sale Price: \$29,000.00

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the 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).

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.

16. [11-16642](#)-A-13 JOHN ARRIOLA MOTION TO MODIFY PLAN
DRJ-2 8-2-13 [[36](#)]
JOHN ARRIOLA/MV
DAVID JENKINS/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.

17. [13-11742](#)-A-13 MICHAEL/DIANA YU MOTION TO CONFIRM PLAN
PLF-1 8-23-13 [[28](#)]
MICHAEL YU/MV
PETER FEAR/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.

18. [13-14643](#)-A-13 CRISTY HULSEY MOTION TO CONFIRM PLAN
MAT-1 9-3-13 [[36](#)]
CRISTY HULSEY/MV
MARCUS TORIGIAN/Atty. for dbt.
CASE DISMISSED

Final Ruling

This case was dismissed on September 9, 2013 (ECF No. 45); this matter is therefore dropped as moot.

19. [13-13051](#)-A-13 RALPH/REBECCA SALDANA
BCS-3
BENJAMIN SHEIN/MV

MOTION FOR COMPENSATION FOR
BENJAMIN C. SHEIN, DEBTOR'S
ATTORNEY(S), FEE: \$6,021.00,
EXPENSES: \$650.06
9-17-13 [[40](#)]

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, PC

Compensation approved: \$6,021.00

Costs approved: \$650.06

Aggregate fees and costs approved: \$6,671.06

Retainer held: \$2,531.00

Amount to be paid as administrative expense: \$4,140.06

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.

20. [13-14655](#)-A-13 LARRY VALENCIA
TCS-2
LARRY VALENCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
9-3-13 [[30](#)]

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Pending

Order: Prepared by moving party

Collateral Value: Asserted as \$9,327.00 for a 2008 Dodge Charger

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). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean 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.* 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).

Here, the debtor seeks to value collateral consisting of a motor vehicle. The motion refers to a 2008 Dodge Charger, and the Kelly Blue Book valuation also shows that the value was based on a data entry of 2008 as the year for the vehicle. However, Schedule D attached as an exhibit shows a 2004 Dodge Charger, and the loan secured by the vehicle on Schedule D was opened on June 6, 2008, which is more than 910 days before the petition date.

At the hearing, the debtor will clarify several points: (i) whether the debt secured by vehicle described in the motion was incurred within the 910-day period preceding the petition date, (ii) whether the 2004 Dodge Charger shown on Schedule D is the same as the 2008 Dodge Charger sought to be valued by the motion, and (iii) if the vehicle sought to be valued is actually a 2004 Dodge Charger, rather than a 2008 Dodge Charger as alleged in the motion, whether the valuation should be adjusted to take into account the fact that the vehicle is approximately 9 rather than 5 years old.

21. [13-14655](#)-A-13 LARRY VALENCIA
TCS-3
LARRY VALENCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO CONFIRM PLAN
9-3-13 [[34](#)]

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.

22. [12-15161](#)-A-13 MARK WHITE AND SHEALON
PBB-1 HILLARD-WHITE
MARK WHITE/MV
PETER BUNTING/Atty. for dbt.

MOTION TO INCUR DEBT
10-1-13 [[39](#)]

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Vehicle Loan]

Notice: LBR 9014-1(f)(2); no 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). 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 seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion and the trustee will approve the order as to form and content.

23. [13-13666](#)-A-13 JOHN COOK
BCS-1
BENJAMIN SHEIN/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTOR'S ATTORNEY(S), FEE:
\$4974.00, EXPENSES: \$329.47
9-17-13 [[16](#)]

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, PC
Compensation approved: \$4,974.00
Costs approved: \$329.47
Aggregate fees and costs approved: \$5,303.47
Retainer held: \$3,500.00
Amount to be paid as administrative expense: \$1,803.47

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.

24. [13-11268](#)-A-13 JERRY/BRENDA RUSSELL
JH-1
NATIONSTAR MORTGAGE, LLC/MV
GEOFFREY ADALIAN/Atty. for dbt.
JOSH HARRISON/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-27-13 [[31](#)]

Final Ruling

Motion: Motion for Relief from Stay
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied as moot
Order: Civil minute order

The creditor Nationstar Mortgage has moved for relief from the automatic stay to foreclose on the property located at 1795 Tahoe Avenue in Tulare, California. However, the debtor's confirmed plan places Nationstar's claim in Class 3, which provides, "Upon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral." Thus, the relief requested by Nationstar has been mooted by the confirmed plan, so its motion will be denied as moot.

25. [09-10371](#)-A-13 JOHNNY/ROBIN RODRIGUEZ MOTION TO AMEND ORDER DATED
SAH-3 8/21/13 AS TO CREDITOR/CLAIMANT
JOHNNY RODRIGUEZ/MV BANK OF THE WEST
9-16-13 [[104](#)]
SUSAN HEMB/Atty. for dbt.

Tentative Ruling

Motion: Motion to Amend Order

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

Disposition: Denied without prejudice

Order: Civil minute order

The Debtors have moved to amend the court's civil minute order sustaining the Debtors' objection to Proof of Claim No. 41 on August 21, 2012 (ECF No. 103). Apparently, the disallowance of the secured claim entirely conflicts with the Debtors' confirmed plan, and the Debtors wish to provide for the secured portion of the claim through the plan.

The court will treat the Debtors' motion as a motion to vacate under Civil Rule 60(b), incorporated by Bankruptcy Rule 24. However, the court cannot grant the motion at this time. The motion does not specifically set forth the legal basis for the relief sought (e.g., mistake, inadvertence, etc.), and the motion has not been accompanied by evidence, such as a declaration. See LBR 9014-1(d)(6).

Therefore, the court will deny the Debtors' motion without prejudice. If and when the Debtors file a new motion with supporting evidence, the court will also order that the Chapter 13 Trustee file a response prior to the hearing that recommends the best course of action in this case.

26. [08-16673](#)-A-13 ANA CONCEPCION
GH-4 MOTION TO MODIFY PLAN
ANA CONCEPCION/MV 8-15-13 [[104](#)]
GARY HUSS/Atty. for dbt.

Final Ruling

The court entered an order withdrawing the proposed modified plan on September 13, 2013 (ECF No. 115); therefore, this matter is dropped as moot.

27. [08-16673](#)-A-13 ANA CONCEPCION
MHM-1 OBJECTION TO CLAIM OF TOYOTA
MICHAEL MEYER/MV FINANCIAL SERVICES, CLAIM
NUMBER 25
8-19-13 [[109](#)]
GARY HUSS/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
RESOLVED BY STIPULATION AND
ORDER

Final Ruling

The court entered an order approving the stipulation regarding Toyota's claim on September 13, 2013 (ECF Nos. 115 and 116); therefore, this matter is dropped as moot.

28. [13-11576](#)-A-13 BENITO/MARTHA GALARZA
PPR-1 CONTINUED OBJECTION TO
DEUTSCHE BANK NATIONAL TRUST CONFIRMATION OF PLAN BY
COMPANY/MV DEUTSCHE BANK NATIONAL TRUST
COMPANY
4-26-13 [[33](#)]
THOMAS GILLIS/Atty. for dbt.
BONNI MANTOVANI/Atty. for mv.
LIMITED NON-OPPOSITION

Tentative Ruling

Motion: Continued Objection to Confirmation of Plan

Notice: Continued date of hearing

Disposition: Overruled as moot

Order: Civil minute order

The secured creditor Deutsche Bank had objected to confirmation on the Debtors' plan, arguing that (1) the Debtors' valuation of the collateral was too low; (2) the proposed cramdown interest rate was too low; and (3) the Debtors' retention of the collateral property would be a burden on the estate.

On September 20, 2013, the court entered an order approving the stipulation between the Debtors and Deutsche Bank (ECF No. 95). The stipulation provided that Deutsche Bank would have a \$48,000 secured claim to be paid over the life of the plan, with interest of 7.375%, and that the remainder of Deutsche Bank's claim would be paid as a general unsecured claim. This stipulation appears to have resolved Deutsche Bank's objection.

Therefore, the court will overrule the objection as moot.

29. [13-11576](#)-A-13 BENITO/MARTHA GALARZA CONTINUED MOTION TO VALUE
TOG-1 COLLATERAL OF BANK OF AMERICA,
BENITO GALARZA/MV N.A.
4-5-13 [[20](#)]
- THOMAS GILLIS/Atty. for dbt.
RESOLVED BY STIPULATION AND
ORDER 9/20/13

Final Ruling

The court entered an order approving the stipulation between the parties resolving the motion to value (ECF No. 94 and 95); therefore, this matter will be dropped.

30. [13-15181](#)-A-13 LINDSAY LEMONS MOTION TO CONFIRM PLAN
SL-1 8-28-13 [[23](#)]
- LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: First Modified Plan, filed August 12, 2013, ECF No. 14
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 Plan. Chapter 13 trustee Michael H. Meyer and creditors Wayne and Wes Storms oppose confirmation.

DEBTOR'S BURDEN OF PROOF

The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). Because the debtor has not provided all documentation requested by the trustee and his § 341 meeting has not been concluded, the debtor's financial situation is still uncertain. As a result, the debtor has not satisfied his burden as to each confirmation requirement, including good faith under § 1325(a)(7) and liquidation under § 1325(a)(4). Therefore, the court cannot confirm the debtor's plan at this time, and his motion to confirm will be denied.

31. [13-14086](#)-A-13 IDA JONES
SAH-2
IDA JONES/MV
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL
9-13-13 [[61](#)]

No tentative ruling.

32. [13-14086](#)-A-13 IDA JONES
SAH-5
IDA JONES/MV
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-28-13 [[45](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: Third Modified Plan, filed August 28, 2013, ECF No. 47

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 Third Modified Plan. 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.

SERVICE

First, the debtor is required to provide notice to all creditors regarding confirmation of a chapter 13 plan. See Fed. R. Bankr. P. 2002(b). The Debtors did not use the court-generated creditors' matrix to serve all creditors. As a result, certain creditors who had filed proofs of claim were not served at the address on their proofs of claim. See Fed. R. Bankr. P. 2002(g)(A).

SECTION 1322(a): TREATMENT OF PRIORITY CLAIMS

Section 1322(a) requires that a plan "provide for the full payment, in deferred cash payments, of all claims entitled to priority . . . unless the holder of a particular claim agrees to a different treatment of such claim." Here, the creditor Curtis Bryant has filed a \$400 priority claim based on a domestic support obligation. However, the Plan improperly lists this claim under Class 4 as a secured claim to be paid direct. And until the debtor obtains an order disallowing Curtis Bryan's priority claim, the claim is valid and allowed and must be treated in accordance with the Code.

TREATMENT OF SECURED TAX CLAIMS

For a secured tax claim, a plan must provide the appropriate interest rate under applicable nonbankruptcy law. See § 511(a); *In re Fowler*, 493 B.R. 148 (Bankr. E.D. Cal. 2012). Here, the applicable interest rate would be 18%, but the debtor has improperly provided for the County of Fresno's secured tax claim with 0% interest under Class 2.

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).

33. [12-18193](#)-A-13 JESUS/ELIAZAR GONZALEZ MOTION TO REFINANCE
RCP-2 9-20-13 [[52](#)]
JESUS GONZALEZ/MV
REYNALDO PULIDO/Atty. for dbt.
WITHDRAWN

Final Ruling

The debtors have filed a notice of withdrawal of their motion to refinance (ECF No. 59); therefore, this matter will be dropped as moot.

34. [12-18193](#)-A-13 JESUS/ELIAZAR GONZALEZ MOTION TO APPROVE LOAN
RCP-3 MODIFICATION
JESUS GONZALEZ/MV 9-24-13 [[55](#)]
REYNALDO PULIDO/Atty. for dbt.

Tentative Ruling

Motion: Motion to Approve Loan Modification

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

Disposition: Denied for insufficient service

Order: Civil minute order

The motion is denied without prejudice for insufficient service. The Debtors did not use the court-generated creditors' matrix to serve all creditors. As a result, certain creditors who had filed proofs of claim were not served. See Fed. R. Bankr. P. 2002(g).

35. [10-62302](#)-A-13 DARTHA KINCADE MOTION TO APPROVE LOAN
JRJ-2 MODIFICATION
DARTHA KINCADE/MV 10-2-13 [[60](#)]
J. JARRETT/Atty. for dbt.

Tentative Ruling

Motion: Loan Modification Approval

Notice: LBR 9014-1(f)(2); no 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). 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.

36. [13-13232](#)-A-13 FRANK/RACHEL RUIZ
KMM-3
FRANK RUIZ/MV
KARNEY MEKHITARIAN/Atty. for dbt.

MOTION TO CONFIRM PLAN
10-10-13 [[65](#)]

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

Federal Rule of Bankruptcy Procedure 2002(b) requires not less than 28 days' notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 42 days' notice of the motion. LBR 3015-1(d).

The court rejected an order shortening time for notice on this motion. Accordingly, the moving party did not provide a sufficient period of notice of the hearing on the motion or the time fixed for filing objections. Creditors and parties in interest received less than 28 days' notice of the time fixed for filing objections, and the motion and notice of hearing were filed and served less than 42 days before the hearing. Creditors and parties in interest received only 7 days' notice of the motion and hearing and only 7 days' notice of the time fixed for filing opposition.

9:15 a.m.

1. [13-13908](#)-A-13 FIDEL CAMACHO AND
MHM-1 GRACIELA RUVALCABA
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
8-15-13 [[46](#)]

THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-14738](#)-A-13 DIANA MADRID
MHM-2
MICHAEL MEYER/MV
ALLAN WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-26-13 [[26](#)]

No tentative ruling.

3. [13-15195](#)-A-13 MANUEL LOPEZ
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
9-26-13 [[24](#)]

No tentative ruling.

4. [13-14204](#)-A-13 RAUL/THERESA CASTRO
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
AND/OR MOTION TO DISMISS CASE
10-3-13 [[19](#)]

HENRY NUNEZ/Atty. for dbt.

No tentative ruling.

5. [13-15316](#)-A-13 JOEY PEREZ
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS ,
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION/APPLICATION
TO DISMISS CASE
10-3-13 [[24](#)]

No tentative ruling.

9:30 a.m.

1. [13-10971](#)-A-13 JEREMY WINANS
[13-1054](#)
DAVIS V. WINANS
5-14-13 [[1](#)]
THOMAS ARMSTRONG/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT

No tentative ruling.

2. [12-17896](#)-A-13 BRIAN/LINDA RIDDLE
[13-1062](#)
RIDDLE ET AL V. ROBINSON ET AL
PETER BUNTING/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-4-13 [[1](#)]

No tentative ruling.

3. [12-17896](#)-A-13 BRIAN/LINDA RIDDLE MOTION FOR SUMMARY JUDGMENT
[13-1062](#) PBB-2 9-18-13 [[28](#)]
RIDDLE ET AL V. ROBINSON ET AL
PETER BUNTING/Atty. for mv.

Final Ruling

The court having entered an order approving the parties' stipulation, this matter will be taken off calendar as moot.

4. [09-16160](#)-A-13 JUAN HURTADO MOTION TO CONTINUE TRIAL RE:
[11-1102](#) JONES V. HURTADO SECOND AMENDED COMPLAINT AND
ALL PRE-TRIAL HEARINGS, MOTIONS
AND FILING DEADLINES
10-9-13 [[131](#)]
SCOTT BURTON/Atty. for mv.

Tentative Ruling

Motion: Ex Parte Motion for Continuance of Trial and All Pre-trial Hearings, Motions and Filing Deadlines

Notice: Less than 14 days' notice; no written opposition required

Disposition: Denied without prejudice

Order: Prepared by moving party

The motion will be denied without prejudice. No request has been made for an order shortening time for notice. See LBR 9014-1(f)(3). In the absence of an order shortening time, motions in adversary proceedings must be set on 28 days' notice. LBR 9014-1(f)(1)-(3). This motion was filed 8 days before the hearing, and the amended notice filed 7 days before the hearing. This is insufficient notice.