

**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**

**NOVEMBER 7, 2013**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

**ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [13-14205](#)-A-13 EDDIE NOLEN  
HDN-1  
EDDIE NOLEN/MV  
HENRY NUNEZ/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
OCWEN LOAN SERVICING LLC  
9-10-13 [[18](#)]

### **Tentative Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**Notice:** LBR 9014-1(f)(1); written comments by the Chapter 13 trustee filed

**Disposition:** Pending

**Order:** If the motion is denied, the court will prepare a civil minute order; if the motion is granted, the moving party will prepare the order

### **STANDARDS FOR VALUING A PRINCIPAL RESIDENCE**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

### **UNRESOLVED FACTUAL ISSUES**

The debtor asserts that the first deed of trust held by Green Tree LLC secures a loan with a balance of \$147,000.00, and that the second deed of trust secures a loan with a balance of \$44,000.00.

Here, the debtor asserts two different values for his residential real property. First, the debtor asserts that his opinion is that is property has a value of \$125,000.00 or less. Second, the debtor indicates that he obtained an appraisal of the property that indicated a value of \$140,500.00.

If the debt secured by the first deed of trust were clearly greater than both of these values, then the relief requested might have been granted. But as noted below, the trustee has raised questions about the balance owed to the first deed of trust holder. The first deed of trust holder filed a proof of claim for \$139,646.35, which is less than the valuation indicated by the appraisal obtained by the debtor.

Thus, the court cannot determine whether to grant the relief requested based on the facts provided relating to (i) the property's value, and (ii) the amount owed to the holder of the first deed of trust.

### **IMPROPER RELIEF REQUESTED**

However, the relief requested does not include a specific amount for the value of the property. Instead, the motion merely requests that

the court grant his motion. The motion further appears to request relief improperly sought in a motion, i.e., a request to determine the nature, extent, and validity of the first deed of trust held by Green Tree LLC. Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(2).

2. [13-15408](#)-A-13 HECTOR RUIZ MOTION TO CONFIRM PLAN  
PBB-1 9-24-13 [[17](#)]  
HECTOR RUIZ/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.

3. [13-13817](#)-A-13 BEATRICE HINSON CONTINUED MOTION TO DISMISS  
MHM-1 CASE FOR UNREASONABLE DELAY  
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
8-23-13 [[28](#)]  
NELLIE AGUILAR/Atty. for dbt.  
RESPONSIVE PLEADING

*[This matter will be called subsequent to the debtor's motion to value the collateral of Patelco Credit Union, NRA-2, Item No. 4.]*

## Tentative Ruling

**Motion:** Dismiss for Unreasonable Delay

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

**Disposition:** Denied

**Order:** Civil minute order

Chapter 13 trustee Michael H. Meyer presents a motion to dismiss under 11 U.S.C. § 1307(c)(1). The basis for the motion is the debtor's failure to value the credit of Patelco Credit Union, which in turn precluded confirmation. LBR 3015-1(j). The motion to value granted, the motion to dismiss is denied.

4. [13-13817](#)-A-13 BEATRICE HINSON MOTION TO VALUE COLLATERAL OF  
NRA-2 PATELCO CREDIT UNION  
BEATRICE HINSON/MV 9-25-13 [[35](#)]  
NELLIE AGUILAR/Atty. for dbt.

## Final Ruling

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by the moving party

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

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

5. [13-16218](#)-A-13 JOHN/LORIANN HUERTA  
KMM-1  
JOHN HUERTA/MV  
KARNEY MEKHITARIAN/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
DIGITAL FEDERAL CREDIT UNION  
10-2-13 [[8](#)]

### **Tentative Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D. Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). "Thus, to meet the requirements of the Rules and comply with considerations of due process, a Rule 3012 motion (either with or without a plan) must be served on the affected creditors in accord with Rule 7004." *Millspaugh*, 302 B.R. at 102 (emphasis added); see also *In re Pereira*, 394 B.R. 501, 506-07 (Bankr. S.D. Cal. 2008) (Chapter 13 plan containing lien stripping proposal must be served on the affected creditor pursuant to Rule 7004). Rule 3012 notice alone will not suffice for the motion. See *Pereira*, 394 B.R. at 506.

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

6. [13-16218](#)-A-13 JOHN/LORIANN HUERTA  
KMM-2  
JOHN HUERTA/MV  
KARNEY MEKHITARIAN/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
NATIONSTAR MORTGAGE, LLC.  
10-2-13 [[13](#)]

**Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by the moving party

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

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

7. [13-13922-A-13](#) MATTHEW/TAMARA TREBER  
PBB-2  
MATTHEW TREBER/MV

OBJECTION TO CLAIM OF REAL TIME  
RESOLUTIONS, INC., CLAIM NUMBER  
5  
9-11-13 [[24](#)]

PETER BUNTING/Atty. for dbt.

**Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## INSUFFICIENT LEGAL AUTHORITY

Here, no California law was cited or discussed in support of the principle that a deficiency should not be allowed in this case. In the future, counsel should provide the legal authority that supports the relief requested. LBR 9014-1(d)(5). The court may deny motions or objections that do not state with particularity the grounds therefor, including the legal basis for the relief requested as required by Rule 9013.

## MERITS OF THE CLAIM OBJECTION

The debtors object to the responding party's claim filed by Real Time Resolutions, Inc., as agent for JPMorgan Chase Bank, on grounds that the claim seeks a deficiency balance and should not be allowed. The debtors assert that the responding party's second deed of trust secured a loan for the purchase of the debtors' residence. The debtors state that both the first and second deeds of trust were part of a purchase money transaction that were funded on the same day.

The basis for the responding party's claim is a purchase money loan according to the debtor's declaration. The loan was secured by a single family dwelling that was occupied by the debtors soon after it was purchased. The dwelling has been sold by way of a short sale.

Under section 580b of the California Code of Civil Procedure, the responding party does not have an enforceable claim for a deficiency against the debtors. The California Supreme Court has held that section 580b is applicable to a standard purchase money deed of trust even if no foreclosure sale occurred as may be the case when the security has become exhausted. *See Brown v. Jensen*, 259 P.2d 425, 427, 41 Cal. 2d 193, 198 (1953); *see also Spangler v. Memel*, 498 P.2d 1055, 1059, 7 Cal. 3d 603, 610-611 (1972); *Hersch & Co. v. C & W Manhattan Assocs.*, 700 F.2d 476, 478 (9th Cir. 1982).

In addition, recently enacted section 580e of the California Code of Civil Procedure precludes a deficiency judgment after a short sale consented to by the holder of a deed of trust for a dwelling of not more than four units. Cal. Civ. Proc. Code § 580e. Although the objection does not assert specific facts regarding the responding party's consent to the short sale, the court finds it unlikely that such consent was not given as part of the short sale agreement.

8. [12-14926](#)-A-13 JOHN/KAREN LYSTAD MOTION TO MODIFY PLAN  
TCS-7 9-25-13 [[117](#)]  
JOHN LYSTAD/MV  
NANCY KLEPAC/Atty. for dbt.

## Final Ruling

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

9. [13-11740](#)-A-13 GILDARDO CRUZ AND AMPARO MOTION TO CONVERT CASE FROM  
ASW-4 LARA CHAPTER 13 TO CHAPTER 7  
AGUSTIN CENDEJAS/MV 10-2-13 [[65](#)]  
THOMAS GILLIS/Atty. for dbt.  
ADRIAN WILLIAMS/Atty. for mv.

*[This matter will be called at 10:30 a.m., along with the matter no. 1 on the 10:30 calendar.]*

#### **Tentative Ruling**

**Motion:** Motion to Convert Chapter 13 Case to Chapter 7; Motion for Rule 9011 Sanctions

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

**Disposition:** Granted in part (as to conversion); denied in part (as to sanctions)

**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).

The creditor Agustin Cendejas ("Cendejas") has filed a motion to convert the Debtors' chapter 13 case to one under chapter 7 based on bad faith and has also filed a motion for sanctions under Rule 9011. For the reasons set forth below, the court will grant Cendejas's motion to convert the case to chapter 7, but the court will deny his motion for Rule 9011 sanctions.

#### **CONVERSION UNDER § 1307**

On request of a party in interest and after notice and a hearing, the court shall dismiss a Chapter 13 case or convert it to a Chapter 7 case, "whichever is in the best interests of creditors and the estate," for cause shown. 11 U.S.C. § 1307(c). In deciding such motions, the court must engage in a two-step analysis. See *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 242 (4th Cir. 1994) (chapter 11 case). First, the

court must ascertain whether cause exists. *Id.* Second, if the court finds that cause exists, it must decide whether dismissal or conversion better serves the interests of creditors and the estate. *Shulkin Hutton, Inc., P.S. v. Treiger (In re Owens)*, 552 F.3d 958, 960-61 (9th Cir. 2009); *Superior Siding & Window*, 14 F.3d at 242.

#### Cause - Bad Faith

Lack of good faith in filing a petition may constitute cause. *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) (per curiam). Such a finding should be made after consideration of all of the facts and circumstances of the case. *Id.* In determining the issue of bad faith, the court should consider the following: (1) whether the debtor misrepresented facts in the petition or plan, unfairly manipulated the Code, or otherwise filed his petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor intended to defeat state court litigation; and (4) whether egregious behavior is present. *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 917-18 (B.A.P. 9th Cir. 2011).

Once the movant establishes an issue as to the lack of good faith, the debtor bears the burden of proving that the petition was filed in good faith. *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. June 28, 2013); *In re SGL Carbon Corp.*, 200 F.3d at 162 n.10. The quantum of proof is by the preponderance of the evidence. *In re Erkins*, 253 B.R. 470, 474 (Bankr. D. Idaho 2000).

Here, based on the facts alleged by Cendejas, he has established an issue of bad faith. First, this is the Debtors' third bankruptcy case in the past two years, and the previous two cases had resulted in dismissal. The first was a chapter 7 case, which was dismissed when the Debtors failed to appear at the § 341 meeting. The second was a chapter 13 case, which was dismissed when the Debtors failed to make payments to the Trustee and a plan had not yet been confirmed. Second, this third bankruptcy case has been pending for an extended amount of time (almost eight months) without a plan being confirmed. Third, these bankruptcies appear to be the Debtors' attempt to avoid having to pay Cendejas on a state court judgment. With Cendejas properly establishing the issue of bad faith, the burden then falls on the Debtors to show that the petition was filed in good faith. However, the Debtors have not filed an opposition to the motion and have therefore not met their burden.

Cause based on bad faith has therefore been established.

#### Dismissal or Conversion

If the court finds that cause exists, it must then decide whether dismissal or conversion better serves the interests of creditors and the estate. *Shulkin Hutton*, 552 F.3d at 960-61; *Superior Siding & Window*, 14 F.3d at 242. In this case, the court finds conversion is the more appropriate relief.

Here, if the case were converted to chapter 7, distributions can be made to unsecured creditors. According to the Debtors' Schedules, there are no secured creditors, and the Debtors may have non-exempt assets that can be liquidated. Specifically, Cendejas has stated that the restaurant, its good will, and related fixtures and equipment can be sold for \$75,000, and Cendejas has indicated that there are interested buyers. Since the Debtors have only exempted \$15,000 for

the restaurant and related assets, it appears that unsecured creditors could be paid in a chapter 7 case.

For these reasons, the court will convert the Debtors' case to chapter 7.

### **SANCTIONS**

For a motion for sanctions under Rule 9011, the motion cannot be filed with the court "unless, within 21 days after service of the motion . . . , the challenged paper . . . is not withdrawn or appropriately corrected." Fed. R. Bankr. P. 9011(c)(1)(A). Cendejas did not follow the proper procedures for the court to consider the sanctions.

First, Cendejas did not wait for the appropriate 21-day period to end before filing the motion with the court. The motion was filed on September 26, 2013, but the certificate of service shows that the motion was served on September 10, which only gave the Debtors 16 days. Second, Cendejas notes that his attorney "sent Mr. Thomas O. Gillis Esq. a Safe Harbor Letter as required," but even if this letter was sent on September 5 (allowing the 21-day period to run), Rule 9011 requires that the motion be served, rather than a letter be mailed. Lastly, the Debtors did not intentionally fail to list Cendejas on the Schedules. On Schedule F, it lists "Agustin Cendejas" being owed \$5,500 and "Ovidio Law Group c/o Agustin Cendejas" being owed \$54,000 on account of a lawsuit. This cannot be construed as an intentional omission of Cendejas's claim from the schedules, and the Debtors' listing of these two claims should have given Cendejas enough notice of the bankruptcy.

For these reasons, the motion for sanctions will be denied.

### **CONCLUSION**

For the reasons set forth above, the court will grant Cendejas's motion to convert the case to chapter 7, but the court will deny his motion for Rule 9011 sanctions.

10. [13-13841](#)-A-13 BRAD/TERESA BOULDEN MOTION TO CONFIRM PLAN  
GEG-1 9-17-13 [[43](#)]  
BRAD BOULDEN/MV  
GLEN GATES/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.

11. [11-11242](#)-A-13 DENISE WADE MOTION TO BORROW  
PLF-2 10-21-13 [[37](#)]  
DENISE WADE/MV  
PETER FEAR/Atty. for dbt.

#### **Tentative Ruling**

**Motion:** Approve New Debt [New Home 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 new home. 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.

12. [13-11742](#)-A-13 MICHAEL/DIANA YU MOTION FOR RELIEF FROM  
NLG-1 AUTOMATIC STAY  
FEDERAL NATIONAL MORTGAGE 9-27-13 [[35](#)]  
ASSOCIATION/MV  
PETER FEAR/Atty. for dbt.  
NICHOLE GLOWIN/Atty. for mv.

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Prepared by moving party

**Subject:** 6143 West Seeger Court, Visalia, California

The motion is denied as moot. The debtors have confirmed their plan. Civil minute, October 17, 2013, ECF No. 41. That plan provides for this debt in Class 4. First Modified Chapter 13 Plan § 2.11, August 23, 2013, ECF No. 31. That section provides for direct payments by the debtor to the creditor and also provides that confirmation modifies the automatic stay to allow the secured creditor to exercise its rights against the collateral. *Id.* The motion will be denied as moot.

13. [13-16445](#)-A-13 ABEL GONZALES MOTION FOR RELIEF FROM  
MRG-1 AUTOMATIC STAY  
NATIONAL ASSET ACQUISITION 10-17-13 [[12](#)]  
REO, INC./MV  
MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.  
DISMISSED

**Final Ruling**

The case dismissed, the motion is denied as moot.

14. [13-13646](#)-A-13 JANELLE JAMES MOTION TO CONFIRM PLAN  
PBB-2 9-12-13 [[33](#)]  
JANELLE JAMES/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.

15. [13-14155](#)-A-13 RALPH/ELVA AGUERO  
NRA-2  
RALPH AGUERO/MV  
NELLIE AGUILAR/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
9-27-13 [[44](#)]

**Final Ruling**

This matter is continued to December 12, 2013, at 9:00 a.m. to be heard with the Chapter 13 trustee's motion to dismiss. Not less than 7 days prior to the continued hearing date the Chapter 13 trustee shall file and serve a status report.

16. [13-14155](#)-A-13 RALPH/ELVA AGUERO  
NRA-3  
RALPH AGUERO/MV  
NELLIE AGUILAR/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA INC.  
10-1-13 [[54](#)]

**Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Notice:** Written opposition filed by responding party

**Disposition:** Continued for evidentiary hearing

**Order:** Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. At the hearing, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's valuation must be resolved before the court can rule on the relief requested.

Before the hearing, the parties shall attempt to meet and confer to determine: (i) whether the court has fully and fairly described the evidentiary issues requiring resolution; (ii) whether any party wishes to engage in discovery prior to the evidentiary hearing and the time necessary to complete discovery; (iii) the deadlines for any dispositive motions or evidentiary motions; (iv) the dates for the evidentiary hearing and the trial time that will be required; (v) whether the parties wish to use or waive the provisions of Local Bankruptcy Rule 9017-1; and (vi) any other such matters as may be necessary or expedient to the resolution of these issues.

17. [13-13665](#)-A-13 HENRY/ARLENE LARA  
BCS-2  
BENJAMIN SHEIN/MV

MOTION FOR COMPENSATION FOR  
BENJAMIN C. SHEIN, DEBTOR'S  
ATTORNEY(S), FEE: \$5,457.00,  
EXPENSES: \$429.65  
10-2-13 [[28](#)]

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:** \$5,457.00

**Costs approved:** \$429.65

**Aggregate fees and costs approved:** \$5,886.65

**Retainer held:** \$2,534.00

**Amount to be paid as administrative expense:** \$3,352.65

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.

18. [11-11567](#)-A-13 HERMAN STIDHAM  
MHM-2  
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF  
EMPLOYMENT DEVELOPMENT  
DEPARTMENT, CLAIM NUMBER 8  
9-18-13 [[71](#)]

JOEL WINTER/Atty. for dbt.  
WITHDRAWN

### Final Ruling

The objection withdrawn, the matter is dropped as moot.

19. [11-11567](#)-A-13 HERMAN STIDHAM  
MHM-3  
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF  
EMPLOYMENT DEVELOPMENT  
DEPARTMENT, CLAIM NUMBER 8  
9-23-13 [[78](#)]

JOEL WINTER/Atty. for dbt.

**Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

By filing a "claim satisfaction letter," the California Employment Development Department (EDD) has admitted that its claim has been paid fully notwithstanding that the trustee has distributed funds to EDD in an amount less than the amount of the EDD's proof of claim. After an opportunity to object, the EDD has not disputed the letter's authenticity. Because EDD has admitted that its claim has been fully satisfied and has requested no further payments, the court will sustain the trustee's objection.

20. [13-14470](#)-A-13 JESUS/ANGELIQUE CITAL  
JDR-2  
JESUS CITAL/MV  
JEFFREY ROWE/Atty. for dbt.

MOTION TO CONFIRM PLAN  
9-21-13 [[44](#)]

**Final Ruling**

The plan withdrawn by the moving party, the matter is dropped as moot.

21. [13-14470](#)-A-13 JESUS/ANGELIQUE CITAL  
JDR-3  
JESUS CITAL/MV  
JEFFREY ROWE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
CITIFINANCIAL SERVICES, INC.  
9-21-13 [[50](#)]

**Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by the moving party

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

opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

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

22. [08-16372](#)-A-13 DANA ROGERS  
NATIONSTAR MORTGAGE LLC/MV  
PETER FEAR/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION TO APPROVE LOAN  
MODIFICATION  
9-24-13 [[63](#)]

#### **Tentative Ruling**

**Motion:** Loan Modification Approval

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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).

Although the court finds it likely that the loan modification provides terms beneficial to the debtor, the motion does not state any facts that would support this conclusion. The motion offers no facts showing the changes in the interest rate, principal balance, payment amount, or other loan terms. The motion does not state with particularity the grounds for relief. Fed. R. Bankr. P. 9013.

Further, the motion does not comply with Local Bankruptcy Rule 9014-1(c) as no docket control numbers appear on the motion or any papers

filed in support. In addition, the exhibits do not comply with Local Bankruptcy Rule 9004-1(a) and section (6)(b) (exhibit index), (c) (exhibit title) and (e) (page numbering above or below to exhibit identification at bottom of page) of the *Revised Guidelines for the Preparation of Documents*, Form EDC 2-901.

23. [12-16773](#)-A-13 KATHRYN STONECIPHER MOTION TO MODIFY PLAN  
PLF-3 9-12-13 [[74](#)]  
KATHRYN STONECIPHER/MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter is continued to December 12, 2013, at 9:00 a.m. to be heard with the Chapter 13 trustee's motion to dismiss. Not less than 21 days in advance of the continued hearing date the debtor shall file a supplemental declaration addressing the factual issues raised by the Chapter 13 trustee. Failure to do so will result in denial of the motion. Not less than 7 days prior to the continued hearing date the Chapter 13 trustee shall file and serve a supplemental statement of its position on the question of confirmation.

24. [12-16974](#)-A-13 ELIZABETH GARZA MOTION TO MODIFY PLAN  
PBB-1 9-13-13 [[22](#)]  
ELIZABETH GARZA/MV  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

25. [13-15476](#)-A-13 ROBERT TYRA MOTION TO CONFIRM PLAN  
BCS-2 9-17-13 [[20](#)]  
ROBERT TYRA/MV  
BENJAMIN SHEIN/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion to confirm withdrawn, the matter is dropped as moot.

26. [13-11484](#)-A-13 AUDREY CARTER MOTION TO CONFIRM PLAN  
NEA-5 9-11-13 [[53](#)]  
AUDREY CARTER/MV  
NICHOLAS ANIOTZBEHERE/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** 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.

27. [13-14086](#)-A-13 IDA JONES OBJECTION TO CLAIM OF CURTIS  
SAH-10 BRYANT, CLAIM NUMBER 6  
IDA JONES/MV 10-2-13 [[72](#)]  
SUSAN HEMB/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); written comments filed by the Chapter 13 trustee

**Disposition:** Overruled

**Order:** Civil minute order

The debtor objects to Claim No. 6-1, filed by Curtis Bryant on grounds that the debtor has had a wage assignment under which the debtor's wages are withheld by her employer. Further, the debtor argues that to pay this priority claim through the plan would result in a double payment to Bryant.

The debtor's objection does not dispute the validity of Bryant's claim. The debtor's objection affirms the validity of Bryant's claim by agreeing that the debtor has a spousal support order in the amount of \$400.00 per month.

Further, the objection does not assert that the claim lacks sufficient support under Rule 3001(c) or that it was not filed in accordance with the Rules under Rule 3001(f).

Essentially, the debtor disputes the *method of payment* of this claim given that a wage assignment order is in effect with the debtor's employer and payment through the plan would result in a double payment. However, an argument directed at the manner of payment of a claim does not provide a basis for finding that the claim is invalid and should be disallowed. "[A] claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim . . . ." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 434 (B.A.P. 9th Cir. 2005).

28. [13-14086](#)-A-13 IDA JONES  
SAH-12  
IDA JONES/MV  
SUSAN HEMB/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SPRINGLEAF FINANCIAL  
10-3-13 [[75](#)]

### **Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Prepared by the moving party

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by

admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

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

29. [13-16091](#)-A-13 VERENICE WARREN ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-15-13 [[17](#)]
- GARY HUSS/Atty. for dbt.  
\$80.00 PAID

**Final Ruling**

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

30. [13-16093](#)-A-13 HECTOR VIGIL ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-16-13 [[17](#)]
- GARY HUSS/Atty. for dbt.  
\$70.25 PAID

**Final Ruling**

All past due filing fees have been paid. The order to show cause is discharged, and the case will remain pending. The court will issue a minute order.

31. [10-18694](#)-A-13 ROSENDO/SILVIA ABARCA MOTION TO MODIFY PLAN  
HDN-6 9-13-13 [[260](#)]  
ROSENDO ABARCA/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: Second Modified Chapter 13 Plan, filed September 13, 2013, ECF No. 259

**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 13, 2013, ECF No. 259. 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. First, the debtor has failed to devote sufficient income to the payment of the plan to adequately fund it. 11 U.S.C. § 1322(a). The mortgage as well as Class 2 claims to Bank of the West and Nissan Motors are delinquent. Second, the plan will not fund in 5 years. 11 U.S.C. § 1322(d).

32. [09-17899](#)-A-13 NICHOLAS LEON AND MARIA MOTION TO MODIFY PLAN  
SL-2 PADILLA-LEON 9-16-13 [[35](#)]  
NICHOLAS LEON/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING  
WITHDRAWN

#### **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.

33. [13-16794](#)-A-13 MICHAEL VIVEROS  
TCS-1  
MICHAEL VIVEROS/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
10-29-13 [[12](#)]

### **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

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).

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). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B) (*emphasis added*). To extend the stay, 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.

9:15 a.m.

1. [13-15728](#)-A-13 WADE WILLIAMS  
MHM-1  
MICHAEL MEYER/MV

BRIAN HADDIX/Atty. for dbt.  
RESPONSIVE PLEADING

No tentative ruling

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
10-15-13 [[33](#)]
  
2. [13-15730](#)-A-13 ALFREDO CORTEZ  
MHM-1  
MICHAEL MEYER/MV

No tentative ruling

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  
10-15-13 [[20](#)]
  
3. [13-14738](#)-A-13 DIANA MADRID  
MHM-3  
MICHAEL MEYER/MV  
ALLAN WILLIAMS/Atty. for dbt.

No tentative ruling

MOTION TO DISMISS CASE  
10-7-13 [[32](#)]
  
4. [13-15698](#)-A-13 MANUEL LARA  
MHM-1  
MICHAEL MEYER/MV

TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling

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  
10-16-13 [[27](#)]

9:30 a.m.

1. [09-16160](#)-A-13 JUAN HURTADO  
[11-1102](#)  
JONES V. HURTADO  
SCOTT BURTON/Atty. for pl.  
RESPONSIVE PLEADING

PRE-TRIAL CONFERENCE RE: SECOND  
AMENDED COMPLAINT  
3-23-12 [[72](#)]

No tentative ruling

10:00 a.m.

1. [12-17270](#)-A-12 ANTONIO/IRENE CABRAL MOTION FOR COMPENSATION BY THE  
PLF-5 LAW OFFICE OF PETER L. FEAR FOR  
PETER FEAR/MV PETER L. FEAR, DEBTOR'S  
ATTORNEY(S), FEE: \$9067.00,  
EXPENSES: \$947.13.  
10-10-13 [[43](#)]

PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

### **Tentative Ruling**

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

**Applicant:** Peter L. Fear  
**Compensation approved:** \$9,067.00  
**Costs approved:** \$947.13  
**Aggregate fees and costs approved:** \$10,014.13  
**Retainer held:** \$5,956.00  
**Amount to be paid as administrative expense:** \$4,058.113

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 has received and reviewed the letter opposition of Mike Bettencourt. The court does not agree with Mr. Bettencourt's opposition. First, it was not served on counsel for the debtor. LBR 9014-1(f)(1)(B). Second, as the court understand Mr. Bettencourt's opposition, he believes that Mr. Fear should be treated as an unsecured creditor. Such an objection is resolved in favor of the applicant by 11 U.S.C. 1222(a)(2), 507(a)(2), 503(b)(2).

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.

10:30 a.m.

1. [13-11740](#)-A-13 GILDARDO CRUZ AND AMPARO CONTINUED MOTION TO DISMISS  
MHM-2 LARA CASE FOR UNREASONABLE DELAY  
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
9-13-13 [[46](#)]

THOMAS GILLIS/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.

### **Tentative Ruling**

**Motion:** Motion to Dismiss

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

**Disposition:** Pending

**Order:** Determined at the hearing

*[The court's ruling on this matter depends on the outcome of the creditor Agustin Cendejas's motion to convert. If the court grants that motion, then the court will adopt the first ruling as the ruling on this matter. Alternatively, if the court denies that motion, then the court will adopt the second ruling as the ruling on this matter.]*

### **[FIRST RULING]**

If the court grants the creditor Agustin Cendejas's motion to convert, this matter will be dropped as moot.

### **[SECOND RULING]**

If the court denies the creditor's motion to convert, the court will grant the Trustee's motion and the case will be dismissed.

### **DISMISSAL UNDER § 1307(c)**

On request of a party in interest and after notice and a hearing, the court shall dismiss a Chapter 13 case or convert it to a Chapter 7 case, "whichever is in the best interests of creditors and the estate," for cause shown. 11 U.S.C. § 1307(c). In deciding such motions, the court must engage in a two-step analysis. See *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 242 (4th Cir. 1994) (chapter 11 case). First, the court must ascertain whether cause exists. *Id.* Second, if the court finds that cause exists, it must decide whether dismissal or conversion better serves the interests of creditors and the estate. *Shulkin Hutton, Inc., P.S. v. Treiger (In re Owens)*, 552 F.3d 958, 960-61 (9th Cir. 2009); *Superior Siding & Window*, 14 F.3d at 242.

The moving party bears the burden of proving by a preponderance of the evidence that cause exists. *In re Creekside Senior Apartments, L.P.*, 489 B.R. 51, 60 (B.A.P. 6th Cir. 2013). Once the moving party has met its burden, it is incumbent on the debtor to show that relief is not warranted. See *In re Woodbrook Assocs.*, 19 F.3d 312, 317 (7th Cir. 1994).

### Cause

The term "cause" is not defined by the Bankruptcy Code, but § 1307(c) provides a non-exhaustive list of grounds that establish "cause" for

dismissal or conversion. Relevant here, cause includes unreasonable delay by the debtor that is prejudicial to creditors. § 1307(c)(1).

Here, there is such unreasonable delay. Not only have the Debtors failed to confirm a plan during the almost eight-month period that this case has been pending, but this is the Debtors' third bankruptcy case within the past two years. During that time, creditors have been waiting without any payment from the Debtors.

Cause has therefore been established.

#### Dismissal or Conversion

If the court finds that cause exists, it must then decide whether dismissal or conversion better serves the interests of creditors and the estate. *Shulkin Hutton*, 552 F.3d at 960-61; *Superior Siding & Window*, 14 F.3d at 242. Although conversion may be better for unsecured creditors, the Trustee has only prayed for dismissal.

Therefore, the court will dismiss the Debtors' chapter 13 case.