

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 14, 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. [13-15103](#)-A-13 SYLVIA RODRIGUEZ OBJECTION TO DEBTOR'S CLAIM OF
MHM-1 EXEMPTIONS
MICHAEL MEYER/MV 10-10-13 [[26](#)]
SUSAN HEMB/Atty. for dbt.
DEANNA HAZELTON/Atty. for mv.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

2. [12-12705](#)-A-13 JEFFREY DEMENT AND KARA MOTION TO APPROVE LOAN
NLG-1 NORD-DEMENT MODIFICATION
SETERUS, INC./MV 10-17-13 [[82](#)]
JOSEPH ARNOLD/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

Final Ruling

Motion: Loan Modification Approval

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

Disposition: Granted

Order: Prepared by moving party

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).

PROPOSED LOAN MODIFICATION

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.

As requested, the order may state that the stay will not be violated by discussions relating to this proposed loan modification or by actions necessary to enter into the agreement between the parties and effectuate the loan modification.

PROCEDURAL ISSUES

The exhibits do not comply with the court's Local Bankruptcy Rules and paragraph (6) of the *Revised Guidelines for the Preparation of Documents* applicable in the Eastern District of California. See LBR

9004-1(a). The exhibits were not filed as an exhibit document separately from the motion to which they relate. In addition, no exhibit index has been filed, the exhibits are not numbered and identified properly at the bottom, and they are not appropriately titled.

3. [13-15313](#)-A-13 JERYL/MICHELLE DOUGLAS MOTION TO VALUE COLLATERAL OF
JDR-2 AMERICAN INTERNET MORTGAGE,
JERYL DOUGLAS/MV INC.
ADRIAN WILLIAMS/Atty. for dbt. 10-10-13 [[32](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Denied without prejudice

Order: Prepared by the moving party

The motion does not set for the relief sought with sufficient clarity. The motion requests that the court value property described in the motion, but the motion contains no such property description. In addition, the motion requests that the court value collateral "attached to the debtors' Chapter 13 Plan." Finally, the motion requests that the court value collateral in the Chapter 13 Plan. The court expects the motion to contain the grounds for relief to be stated with particularity. Here, the motion's request for relief is too vague for the court to grant it, and referring to a document not filed with the motion for a property description is not a sufficient statement of the grounds. See Fed. R. Bankr. P. 9013.

4. [13-15313](#)-A-13 JERYL/MICHELLE DOUGLAS CONTINUED OBJECTION TO
MDE-1 CONFIRMATION OF PLAN BY ONEWEST
ONEWEST BANK, FSB/MV BANK, FSB
ADRIAN WILLIAMS/Atty. for dbt. 8-23-13 [[19](#)]
MARK ESTLE/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

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

debtor has filed a modified plan, and the objection will be denied as moot.

5. [13-13518](#)-A-13 JACK/CAROL PEERY MOTION TO CONFIRM PLAN
RHB-2 10-3-13 [[52](#)]
JACK PEERY/MV
RICHARD BAMBL/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: First Modified Chapter 13 Plan, filed September 27, 2013, ECF
No. 51

Disposition: Denied

Order: Civil minute order

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

The debtor moves to confirm the First Modified Chapter 13 Plan, filed September 27, 2013, ECF No. 51. 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. Included in Class 2B of the debtors' plan is a 2005 Nissan Altima. First Modified Chapter 13 Plan § 2.08, filed September 27, 2013, ECF No. 51. The Proof of Claim filed by the secured lender, Educational Employees Credit Union, indicates secured debt of \$7,344.14. The value of the vehicle is \$5,010. The debtor has not yet filed a motion to value this collateral and, hence, the plan can not be confirmed. LBR 3015-1(j).

6. [10-14923](#)-A-13 TIMOTHY CALVERT CONTINUED MOTION TO DETERMINE
MHM-1 FINAL CURE AND MORTGAGE PAYMENT
MICHAEL MEYER/MV RULE 3002.1
8-30-13 [[43](#)]
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Determine Final Cure and Payment

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

Disposition: Granted

Order: Prepared by moving party

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

Chapter 13 debtor who provide for payment of their mortgage through the plan are entitled to the protections of Federal Rule of Bankruptcy Procedure 3002.1. Among those protections is a finding that any pre-petition default has been cured and all post-petition payments have been made. Fed. R. Bankr. P. 3002.1(h). The record supports such a finding and the motion will be granted.

7. [13-16326](#)-A-13 ANA SANTOS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-29-13 [[15](#)]

Tentative Ruling

Order to Show Cause: Dismissal of Case for Failure to Pay Fees

Date Issued: October 29, 2013

Disposition: Case Dismissed

Order: Civil minute order

The debtor has failed to pay one or more installments of the filing or administrative fees according to the schedule specified in an order granting the debtor leave to pay such fees in installments. If the debtors have not paid all past due installments of filing or administrative fees by the date of the hearing, then the court will order that the case be dismissed.

8. [12-11928](#)-A-13 ANTONIO/ANNETTE GUZMAN
MHM-2
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
10-7-13 [[59](#)]

No tentative ruling.

9. [12-11928](#)-A-13 ANTONIO/ANNETTE GUZMAN CONTINUED MOTION TO MODIFY PLAN
TCS-2 8-12-13 [[45](#)]
ANTONIO GUZMAN/MV
TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling.

10. [12-11928](#)-A-13 ANTONIO/ANNETTE GUZMAN CONTINUED MOTION TO SELL
TCS-3 8-12-13 [[50](#)]
ANTONIO GUZMAN/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

This is a continued hearing on the debtors' motion to sell. Civil minutes, October 3, 2013, ECF No. 58. The debtor was to file supplemental briefs and declarations. They have not done so. For the reasons specified in Civil minutes, October 3, 2013, ECF No. 58, the motion is denied.

11. [13-14348](#)-A-13 DANILO/JOSEPHINE ROLDAN OBJECTION TO DEBTOR'S CLAIM OF
MHM-1 EXEMPTIONS
MICHAEL MEYER/MV 10-10-13 [[39](#)]
JOSEPH ARNOLD/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

12. [13-17051](#)-A-13 GUADALUPE MACIAS MOTION TO EXTEND AUTOMATIC STAY
SL-1 11-1-13 [[8](#)]
GUADALUPE MACIAS/MV
STEPHEN LABIAK/Atty. for dbt.

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.

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

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

Final Ruling

Motion: Value Collateral [Personal Property]

Notice: LBR 9014-1(f)(1) / Continued date of the hearing; written opposition required

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$9,327.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the initial 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).

Based on the motion, supplemental declarations, and pursuant to the legal standards set forth in the court's civil minutes from the initial hearing on October 17, 2013, the court values the collateral at the amount set forth above. The responding creditor's claim is secured only to the extent of the collateral's value. See 11 U.S.C. § 506(a).

14. [13-14655](#)-A-13 LARRY VALENCIA
TCS-3
LARRY VALENCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.

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

Tentative 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. [11-14859](#)-A-13 LUIS/MARIA ALVARADO
JDM-2
LUIS ALVARADO/MV
JAMES MILLER/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
10-11-13 [[42](#)]

Final Ruling

Motion: Loan Modification Approval

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

Disposition: Granted

Order: Prepared by moving party

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

PROPOSED LOAN MODIFICATION

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.

PROCEDURAL ISSUES

The exhibits do not comply with the court's Local Bankruptcy Rules and paragraph (6) of the Revised Guidelines for the Preparation of Documents applicable in the Eastern District of California. See LBR 9004-1(a). The exhibit was not filed as an exhibit document separate from the motion (and separate from the declaration supporting the motion) to which it relates. In addition, an exhibit index has not been filed, the exhibits are not identified properly at the bottom, and they are not appropriately titled.

16. [13-14161](#)-A-13 LORI LUCAS
DRJ-2
LORI LUCAS/MV
MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC. DBA GM FINANCIAL
9-23-13 [[26](#)]
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Having been converted to chapter 7, the matter is dropped as moot.

17. [10-65069](#)-A-13 LIDIA CONTRERAS
SL-3
LIDIA CONTRERAS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING
MOTION TO MODIFY PLAN
10-10-13 [[53](#)]

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Plan: Third Modified Chapter 13 Plan, filed October 30, 2013, ECF No. 62

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 Chapter 13 Plan, filed October 30, 2013, ECF No. 62. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

SECTION 1322(a): DEVOTION OF SUFFICIENT INCOME

Title 11 of the U.S.C. § 1322(a)(1) requires the plan to devote all or such portion of future earnings or other future income to the supervision and control of the trustee as is necessary for the execution of the plan.

In this case, there are two manifestations of this problem. First, both the current and the modified plan require the trustee to pay Tucoemas Federal Credit Union \$150.97 per month from the inception of the plan. The debtor has defaulted under the terms of the current plan, leaving the creditor underpaid by \$1,274.81. This is not cured by the modified plan. Second, the current and proposed plan require the trustee to pay BAC Home Loans \$269.30 per month. This claim is delinquent \$2,274.01. And the modified plan does not cure th problem.

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. The debtor most recent income and expense schedules were filed June 2013. Amended Schedules I and J, filed June 3, 2013, ECF No. 30. This is too remote in time to support confirmation.

SECTION 1322(d): THE PLAN EXCEEDS 60 MONTHS

A Chapter 13 plan may not exceed 60 months. 11 U.S.C. § 1322(d). The plan will take 65 months to complete.

18. [13-13873](#)-A-13 FRANCISCO/REYNA REYES
JRL-1
FRANCISCO REYES/MV

MOTION TO VALUE COLLATERAL OF
SPECIALIZED LOAN SERVICING,
LLC.
9-24-13 [[18](#)]

JERRY LOWE/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 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).

19. [13-15476](#)-A-13 ROBERT TYRA
BCS-3
ROBERT TYRA/MV
BENJAMIN SHEIN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
10-2-13 [[30](#)]

Tentative Ruling

At the hearing on the matter, 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 disputed, material factual issues must be resolved before the court can rule on the relief requested. The court identifies the following factual issues: (1) projected disposable income, 11 U.S.C. § 1325(b); and (2) good faith, 11 U.S.C. § 1325(a)(3).

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.

20. [13-14086](#)-A-13 IDA JONES
SAH-2
IDA JONES/MV
CONTINUED MOTION TO VALUE
COLLATERAL OF SPRINGLEAF
FINANCIAL
9-13-13 [[61](#)]
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

The matter is dropped as moot.

21. [13-15698](#)-A-13 MANUEL LARA
PD-1
U.S. BANK NATIONAL
ASSOCIATION/MV
TIMOTHY SPRINGER/Atty. for dbt.
ROBERT ZAHRADKA/Atty. for mv.
OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
9-23-13 [[20](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

22. [13-16020](#)-A-13 BLANCA MARTINEZ
KK-1
GREEN TREE SERVICING LLC/MV
THOMAS GILLIS/Atty. for dbt.
KATELYN KNAPP/Atty. for mv.
OBJECTION TO CONFIRMATION OF
PLAN BY GREEN TREE SERVICING
LLC
11-1-13 [[20](#)]

Tentative Ruling

Objection: Confirmation Chapter 13 Plan

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

Plan: Chapter 13 Plan, filed September 6, 2013, ECF No. 5

Disposition: Overruled

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).

Secured creditor Green Tree Servicing objects to confirmation because the Chapter 13 Plan, filed September 6, 2013, ECF No. 5, fails to treat its secured claim in any fashion. But Section 1325(a)(5) does not so require; it states, "...with respect to each allowed secured claim provided for by the plan..." But the code does not mandate treatment of secured claims. The objection will be overruled.

23. [13-17008](#)-A-13 JASON/MONA MENDONCA
TCS-
JASON MENDONCA/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
11-6-13 [9]

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.

24. [13-17152](#)-A-13 ISMAEL LOZANO
NEA-1
ISMAEL LOZANO/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
11-7-13 [[10](#)]

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).

NOTICE OF HEARING

The notice of hearing fails to state whether and when written opposition is required. Here, the notice did not contain language stating that no written opposition is required. In the future, the notice of hearing for motions filed by counsel should contain such language. LBR 9014-1(d)(3).

EXTENSION OF THE STAY

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. [13-13908](#)-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. [13-15313](#)-A-13 JERYL/MICHELLE DOUGLAS
MHM-1
MICHAEL MEYER/MV
ADRIAN WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-30-13 [[47](#)]

No tentative ruling.

3. [13-12125](#)-A-13 TERRY/KATHRYN HORAK
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-18-13 [[56](#)]

GARY HUSS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

4. [13-13232](#)-A-13 FRANK/RACHEL RUIZ
MHM-1
MICHAEL MEYER/MV
KARNEY MEKHITARIAN/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-30-13 [[75](#)]

No tentative ruling.

5. [13-15837](#)-A-13 MICHAEL WADDLE
MHM-1
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-30-13 [[17](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [13-14655](#)-A-13 LARRY VALENCIA
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-30-13 [[51](#)]

No tentative ruling.

7. [13-14161](#)-A-13 LORI LUCAS
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-18-13 [[22](#)]
- DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Having been converted to chapter 7, the matter is dropped as moot.

8. [13-14161](#)-A-13 LORI LUCAS
MHM-2
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-30-13 [[36](#)]

Final Ruling

Having been converted to chapter 7, the matter is dropped as moot.

9. [13-14773](#)-A-13 VICTOR FIGUEROA
MHM-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-30-13 [[50](#)]

No tentative ruling.

10. [13-11484](#)-A-13 AUDREY CARTER
MHM-2
MICHAEL MEYER/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-30-13 [[67](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.