

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

DECEMBER 12, 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. [12-14602](#)-A-13 RAMON JIMENEZ AND ROSAURA MOTION FOR COMPENSATION BY THE
BCS-3 CALATA LAW OFFICE OF SHEIN LAW GROUP,
BENJAMIN SHEIN/MV PC FOR BENJAMIN C. SHEIN,
DEBTOR'S ATTORNEY(S), FEE:
\$1507.50, EXPENSES: \$109.71
11-21-13 [[69](#)]
- BENJAMIN SHEIN/Atty. for dbt.

Tentative Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Shein Law Group, PC
Compensation approved: \$1,507.50
Costs approved: \$109.71
Aggregate fees and costs approved: \$1,617.21
Retainer held: \$0.00
Amount to be paid as administrative expense: \$1,617.21

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).

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.

2. [09-13807](#)-A-13 DAVID/DEBORAH MARTINEZ MOTION TO MODIFY PLAN
DRJ-3 10-24-13 [[53](#)]
DAVID MARTINEZ/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.

3. [13-13908](#)-A-13 FIDEL CAMACHO AND MOTION TO CONFIRM PLAN
TOG-10 GRACIELA RUVALCABA 10-31-13 [[76](#)]
FIDEL CAMACHO/MV
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

4. [13-15313](#)-A-7 JERYL/MICHELLE DOUGLAS MOTION TO VALUE COLLATERAL OF
JDR-3 AMERICAN INTERNET MORTGAGE,
JERYL DOUGLAS/MV INC.
10-31-13 [[55](#)]
ADRIAN WILLIAMS/Atty. for dbt.
CONVERTED 11/13/13

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Denied as moot

Order: Prepared by the moving party

The case has been converted to a case under chapter 7. The motion will be denied as moot.

5. [13-15313](#)-A-7 JERYL/MICHELLE DOUGLAS MOTION TO CONFIRM PLAN
JDR-4 10-31-13 [[61](#)]
JERYL DOUGLAS/MV
ADRIAN WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING,
CONVERTED 11/13/13

Final Ruling

The motion will be denied as moot given the conversion of the case to a case under chapter 7.

6. [13-13518](#)-A-13 JACK/CAROL PEERY CONTINUED MOTION TO CONFIRM
RHB-2 PLAN
JACK PEERY/MV 10-3-13 [[52](#)]
RICHARD BAMBL/Atty. for dbt.
RESPONSIVE PLEADING

[This matter will be called subsequent to the motion to value collateral, RHB-3, Item No. 7.]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to January 30, 2014, at 9:00 a.m.

Order: Civil minute order, if appropriate

This matter is continued to January 30, 2014, at 9:00 a.m. to allow the debtor to re-file the motion to value collateral.

7. [13-13518](#)-A-13 JACK/CAROL PEERY
RHB-3
JACK PEERY/MV

MOTION TO VALUE COLLATERAL OF
EDUCATION EMPLOYEES CREDIT
UNION
11-13-13 [[61](#)]

RICHARD BAMBL/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Denied without prejudice

Order: Civil minute order

COMPLIANCE WITH RULE 9013

The motion does not comply with Rule 9013. This rule provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with the Rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds stated with particularity.

Reviewing only the motion, the court cannot determine what collateral is being valued. The motion to value itself does not contain sufficient grounds because the motion does not contain even a general description of the collateral being valued.

Further, from the declaration, the debtors seek to value a vehicle. But the motion does not contain sufficient legal grounds for such a valuation. See 11 U.S.C. § 1325(a) (hanging paragraph). The applicability of the hanging paragraph is not addressed in the motion itself.

MERITS OF THE REQUESTED VALUATION

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.*

Based on the declaration in support, the debtor seeks to value a vehicle. A motion to value of a vehicle should provide specific facts indicating whether the hanging paragraph of § 1325(a) is applicable.

Even if the court had not denied the motion for noncompliance with Rule 9013, the court cannot determine from the papers filed in support whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. The court cannot value certain personal property collateral subject to the hanging paragraph. The fact that the vehicle is a 2005 model does not resolve whether the hanging paragraph applies. The 2005 vehicle could have been purchased

within the 910-day period before the petition rather than in the year indicated by the model. The court has no way of determining when the debt was incurred, or whether the debt is secured by a purchase money security interest. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6).

8. [13-16020](#)-A-13 BLANCA MARTINEZ
TOG-1
BLANCA MARTINEZ/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING, LLC
11-8-13 [[27](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Nonresidential]

Notice: Written opposition filed by the responding party

Disposition: Continued to January 9, 2014, at 9:00 a.m. at which time the court will hold a scheduling conference

Order: Civil Minute Order

The motion seeks to value nonresidential real property located at 912 Blocker Street, Madera, California, that is the responding party's collateral. The responding party has requested a continuance to obtain a broker's opinion, appraisal or other evidence of the collateral's value. The court will continue the motion to the date indicated. No later than 14 days before the continued date of the hearing, the parties will file a joint status report.

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be 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 continued date of the hearing, the parties shall meet and confer to determine: (i) whether an evidentiary hearing will be required; (ii) whether the court has fully and fairly described the evidentiary issues requiring resolution; (iii) whether any party wishes to engage in discovery prior to the evidentiary hearing and the time necessary to complete discovery; (iv) the deadlines for any dispositive motions or evidentiary motions; (v) the dates for the evidentiary hearing and the trial time that will be required; (vi) whether the parties wish to use or waive the provisions of Local Bankruptcy Rule 9017-1; and (vii) any other such matters as may be necessary or expedient to the resolution of these issues.

9. [13-12133](#)-A-13 CARL/MARI WHITFORD
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-13-13 [[42](#)]

MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [13-16633](#)-A-13 FERNANDO ARROYO AND
GH-1 ELIZABETH BROERS
FERNANDO ARROYO/MV
GARY HUSS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, NA
10-29-13 [[14](#)]

Tentative 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

MERITS OF THE MOTION TO VALUE COLLATERAL

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).

COMPLIANCE WITH RULE 9013

The motion does not comply with Rule 9013. This rule provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds stated with particularity.

The motion does not describe the collateral that is being valued. The motion refers to collateral of the responding party generally, but the motion does not contain a basic description of what is being valued or the type of collateral generally. The motion refers to the Chapter 13 Plan and Schedule A attached as exhibits incorporated by reference. But the motion to value itself does not contain sufficient grounds when it does not contain a particular statement of what is being valued.

The motion also does not set forth the relief sought sufficiently. It does not state the amount at which the court should value the real property, which is a critical component of any relief sought by a motion to value. The motion instead references the chapter 13 plan and Schedule A. From reviewing the motion itself, the relief is sought is unclear. In the future, the motion should more specifically describe the relief or order sought.

11. [13-16633](#)-A-13 FERNANDO ARROYO AND ELIZABETH BROERS
GH-2 FERNANDO ARROYO/MV
MOTION TO VALUE COLLATERAL OF EDUCATIONAL EMPLOYEES CREDIT UNION
10-29-13 [[19](#)]
GARY HUSS/Atty. for dbt.
RESPONSIVE PLEADING

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) value of a 2002 Ford F150 pickup truck; and (2) whether the hanging paragraph of §1325(a) applies.

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.

12. [13-14738](#)-A-13 DIANA MADRID
MHM-1
MICHAEL MEYER/MV
MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-13-13 [[22](#)]
- ALLAN WILLIAMS/Atty. for dbt.
CASE DISMISSED

Final Ruling

The case dismissed, the motion is dropped as moot.

13. [12-60546](#)-A-13 MICHAEL/DEBORAH FARSAKIAN
JMA-2
MICHAEL FARSAKIAN/MV
JOSEPH ARNOLD/Atty. for dbt.
MOTION TO MODIFY PLAN
10-10-13 [[29](#)]

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.

14. [13-15146](#)-A-13 BARBARA BRYAN
JDW-1
BARBARA BRYAN/MV
JOEL WINTER/Atty. for dbt.
RESPONSIVE PLEADING
MOTION TO CONFIRM PLAN
10-23-13 [[24](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Plan: Chapter 13 Plan, filed October 22, 2013, ECF No. 23

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).

ON THE MERITS

The debtor moves to confirm the Chapter 13 Plan, filed October 22, 2013, ECF No. 23. 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. The plan provides for payments of \$456.31 per month. Chapter 13 Plan § 1.01, filed October 22, 2013, ECF No. 23. For the plan to fund the payment would need to be \$638.46 per month for 60 months. The debtor most recent schedules I and J, filed October 22, 2013, show the ability to pay \$456.31 per month, and no more.

Section 1325(a)(5)(B)(ii): *Till* interest

Section 1325(a)(5)(B)(ii) provides for interest to the secured creditor at prime plus a risk adjustment. *Till v. SCS Credit Corp.*, 541 US 465, 477-478 (2004). The debtor proposes payment to GM Financial on a 2011 Nissan Altima automobile at 1.96%. Chapter 13 Plan § 2.09, filed October 22, 2013, ECF No. 23. The debtor has not sustained her burden that the interest proposed complies with *Till*, *supra*.

Section 1325(a): Supporting Declaration

The debtor's motion is not supported by a declaration that meets the elements of Section 1325(a). As a result, the movant has not carried her burden of proof as to confirmation.

Section 1325(b): Projected Disposable Income

The plan fails to devote all of the debtor's projected disposable income to the plan. 11 U.S.C. § 1325(b). The debtor projected disposable income should devote \$12,548.00 to the plan; the plan proposes to pay unsecured creditors only \$2,532.56.

Inadequate Instructions to the Chapter 13 trustee

Debtors in the Eastern District of California must utilize Form EDC 3-080 standard form Chapter 13 plan. LBR 3015-1(a). Under the terms of that the form plan, requires debtor's counsel to opt-in or opt-out of the flat rate fee. Chapter 13 Plan § 2.06, filed October 22, 2013, ECF No. 23. The plan does not do so.

As a result, the plan cannot be confirmed.

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 declaration without further notice or hearing. See 11 U.S.C. § 1307(c)(1).

15. [13-12349](#)-A-13 MICHAEL/ROSEMARY TALMADGE MOTION TO CONFIRM PLAN
JMA-4 11-1-13 [[62](#)]
MICHAEL TALMADGE/MV
JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

The plan withdrawn, the motion is dropped as moot.

16. [13-10355](#)-A-13 MARY MIGLIORE OBJECTION TO CLAIM OF CAVALRY
GEG-1 PORTFOLIO SERVICES, LLC, CLAIM
MARY MIGLIORE/MV NUMBER 1
10-21-13 [[29](#)]
GLEN GATES/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained and the claim disallowed in the amount specified below

Order: Prepared by objecting party consistent with this ruling

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).

Based on the well-pled facts in the objection, the court will sustain the objection, but the court will not allow interest on the claim following the petition date. See 11 U.S.C. § 502(b). In California, interest accrues at the rate of 10% per annum on the principal amount of a money judgment remaining unsatisfied. Cal. Civ. Proc. Code § 685.010(a). Interest commences to accrue on the date of entry of the judgment. *Id.* § 685.020(a).

The objection alleges that the judgment on which the claimant's claim is based was entered against the debtor on September 5, 2008. Interest accrues until the filing of the petition in this case. See 11 U.S.C. § 502(b) (claim is determined as of the filing of the petition). The petition in this case was filed on January 18, 2013.

Based on the court's calculations, 1,596 days passed since the judgment was entered on September 5, 2008. The judgment amount is \$8,068.27. The allowable pre-petition interest is \$3,527.16. ((10% per annum x \$8068.27) / 365 = \$2.21 daily interest. 1,596 (number of days from Sept. 5, 2008 to January 18, 2013) x \$2.21 per day = \$3,527.16)

Accordingly, only \$3,527.16 of interest will be allowed. The total allowed claim of the respondent will be \$11,595.43. The remaining portion of the claim will be disallowed as unenforceable interest under California law.

17. [13-14155](#)-A-13 RALPH/ELVA AGUERO CONTINUED MOTION TO CONFIRM
NRA-2 PLAN
RALPH AGUERO/MV 9-27-13 [[44](#)]
NELLIE AGUILAR/Atty. for dbt.
RESPONSIVE PLEADING, OPP BY
TRUSTEE WITHDRAWN,

The court will inquire as to the status and terms of settlement discussions between the debtor and Santander Consumer USA, Inc.

18. [13-14155](#)-A-13 RALPH/ELVA AGUERO CONTINUED MOTION TO VALUE
NRA-3 COLLATERAL OF SANTANDER
RALPH AGUERO/MV CONSUMER USA INC.
10-1-13 [[54](#)]
NELLIE AGUILAR/Atty. for dbt.
RESPONSIVE PLEADING

The court will inquire as to the status and terms of settlement discussions between the debtor and Santander Consumer USA, Inc.

19. [13-15961](#)-A-13 ROBERT/HOLLY WOODS MOTION TO CONFIRM PLAN
JMA-2 10-30-13 [[29](#)]
ROBERT WOODS/MV
JOSEPH ARNOLD/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

20. [13-15961](#)-A-13 ROBERT/HOLLY WOODS
JMA-3
ROBERT WOODS/MV
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
HSBS BANK USA, N.A.
11-13-13 [[36](#)]

Tentative Ruling

Motion: Value Collateral

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

Disposition: Continued to January 9, 2014, at 9:00 a.m. and an amended motion, amended proof of service, and notice of continued hearing filed no later than December 26, 2013

Order: Civil minute order

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).

Service of the motion appears insufficient to the court. The motion names HSBS Bank USA, N.A. as the respondent. The proof of service shows that the debtors served HSBC Bank USA, N.A. was served with the motion. Although the difference in the respondent entity's name in the motion and the proof of service may have been the result of an inadvertent transposition of a letter, any difference between the name of the entity against whom relief is sought and the name of the entity served suggests that service was insufficient and made on a party other than the party named in the motion. If HSBC Bank USA, N.A. is the intended respondent, then the motion does not state the relief sought sufficiently against the proper party. See Fed. R. Bankr. P. 9013.

The amended motion and notice of continued hearing may be filed pursuant to LBR 9014-1(f)(2). Opposition, if any, may be presented at the continued hearing date.

21. [11-11669](#)-A-13 SAM/DONNA HERNANDEZ
MAZ-3
SAM HERNANDEZ/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
11-8-13 [[46](#)]

Final Ruling

Motion: Loan Modification Approval

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

Disposition: Granted

Order: Prepared by moving party according to the instructions below

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor and the holder of the loan to be modified 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.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the court grants the motion and that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

22. [10-12470](#)-A-13 FRANK/MARIE SANCHEZ
MNE-3
FRANK SANCHEZ/MV
M. ENMARK/Atty. for dbt.

MOTION TO SELL
11-25-13 [[57](#)]

Tentative Ruling

Motion: Sell Real Property [Short Sale]

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

Disposition: Continued to January 3, 2014, at 9:00 a.m.

Order: Civil minute order

The moving party did not provide a sufficient period of notice of the proposed sale. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires not less than 21 days' notice of a proposed use, sale or lease of property of the estate other than in the ordinary course of business unless the court shortens the time for notice for cause. The

proof of service shows that the motion and notice were served on November 25, 2013, which is less than 21 days' notice of the hearing.

A notice of the continued hearing will be filed no later than December 13, 2013, which is 21 days before the continued hearing date.

Further, the notice of continued hearing shall comply with Rule 2002(c)(1) and (2). The notice of hearing for this December 12, 2013, calendar does not include the amount of the commission requested for the broker or the name of the broker. This information should be included in the notice.

In addition, the notice is inconsistent with the motion to the extent that the notice states that all proceeds from the sale will be paid to the secured creditor holding a lien against the property. The motion shows that proceeds from the sale will be distributed to pay the secured loan holder, a commission due, and closing costs due. This inconsistency should be resolved.

Finally, the court will not authorize a sale to an undisclosed nominee. If the debtors want to sell the property to a nominee of the named buyer, then the nominee shall be disclosed in a supplemental declaration filed no later than December 20, 2013.

23. [13-14470](#)-A-13 JESUS/ANGELIQUE CITAL MOTION TO CONFIRM PLAN
JDR-4 10-31-13 [[63](#)]
JESUS CITAL/MV
JEFFREY ROWE/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.

24. [08-16372](#)-A-13 DANA ROGERS
KAZ-2
NATIONSTAR MORTGAGE LLC/MV
PETER FEAR/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION TO APPROVE LOAN
MODIFICATION
11-12-13 [[70](#)]

Final Ruling

Motion: Loan Modification Approval

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

Disposition: Granted

Order: Prepared by moving party according to the instructions below

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor and the holder of the loan to be modified 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.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the court grants the motion and that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

25. [10-17672](#)-A-13 BECKY FLORES
RCO-1
JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
DAVID JENKINS/Atty. for dbt.
KRISTI WELLS/Atty. for mv.

MOTION TO APPROVE LOAN
MODIFICATION
11-13-13 [[36](#)]

Tentative Ruling

Motion: Loan Modification Approval

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

Disposition: Continued to January 3, 2014, and amended motion, notice of continued hearing, and declaration filed no later than December 20, 2013, in compliance with the court's local rules

Order: Prepared by moving party according to the instructions below

The moving party has filed the motion, notice, declaration and exhibits altogether as one document. This does not comply with the court's local rules. LBR 9004-1(a) (requiring all filed documents to conform with the court's *Revised Guidelines for the Preparation of Documents*, Form EDC 2-901); LBR 9014-1(d)(2) (every motion must be accompanied by a separate notice of hearing); U.S. Bankr. Ct., *Revised Guidelines for the Preparation of Docs.* ¶ 3(a), (n) (Bankr. E.D. Cal. rev. Dec. 29, 2008).

The exhibits also 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 separate from the motion to which they relate. In addition, an exhibit index has not been filed, the exhibits are not properly numbered and identified at the bottom, and they are not appropriately titled.

No later than December 20, 2013, the moving party may file an amended motion with amended supporting papers. The amended motion may seek the court's authorization for the parties to enter into the agreement. But the court will not approve the terms of the loan modification agreement, so such relief should not be sought.

However, the amended motion should *briefly* summarize the material terms the loan modification agreement actually modifies and provide the court with information on changes to the major terms (e.g., interest rate, principal balance, maturity date, monthly payment amount, and how much, if any, of the loan principal is deferred or forgiven). A simple chart comparing such terms under the current loan documents and under the proposed loan modification agreement would be useful to the court.

26. [12-16773](#)-A-13 KATHRYN STONECIPHER
PLF-3
KATHRYN STONECIPHER/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
9-12-13 [[74](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: Second Modified Chapter 13 Plan, filed September 12, 2013, ECF No. 77

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 12, 2013, ECF No. 77. 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.

Chapter 13 plans must be proposed in good faith. 11 U.S.C. § 1325(a)(3). In this case, the debtor has proposed a plan paying \$1,050 per month for the last 48 months of the plan. Second Modified Chapter 13 Plan § 7.02, filed September 12, 2013, ECF No. 77. The debtor concedes actual disposable income of \$1,350 per month. Supplemental Declaration of Stonecipher ¶ 6, November 21, 2013, ECF No. 89. As a result, the plan cannot be confirmed.

27. [09-15175](#)-A-13 JOHNNY/OUTHIDA CHAPTER 13 TRUSTEE'S OBJECTION
MHM-1 PHAKORNKHAM TO DEBTOR'S 11 U.S.C. SEC. 1328
CERTIFICATE
11-18-13 [[59](#)]

TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

[The hearing on this matter will be concurrent with the hearing on the debtors' motion for waiver of the § 1328 certification in this case having docket control no. TCS-4.]

No Tentative Ruling

Matter: Chapter 13 Trustee's Objection to Discharge

Notice: LBR 9014-1(f)(2); response filed by debtor

Disposition: Overruled

Order: Civil minute order

The Chapter 13 Trustee requests that the court deny joint debtor Johnny Phakornkham's discharge until an order waiving debtor's § 1328 certification requirement is issued. Because the next matter on calendar requests such an order, the court will consolidate the hearing on this matter with the debtor's motion for such a waiver.

28. [09-15175](#)-A-13 JOHNNY/OUTHIDA MOTION FOR WAIVER OF
TCS-4 PHAKORNKHAM CERTIFICATION UNDER 11 U.S.C.
OUTHIDA PHAKORNKHAM/MV 1328
11-22-13 [[64](#)]

TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Waiver of Certification under 11 U.S.C. § 1328

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

Disposition: Granted

Order: Prepared by the moving party

In this case, the debtors completed their payments under their Chapter 13 plan. The motion asserts that debtors completed and received certificates for both credit counseling and financial management requirements. Joint-debtor Johnny Phakornkham has passed away while abroad.

Based on the motion and supporting papers, and § 105, the court will grant the motion. The court finds that further administration of this Chapter 13 case is possible and in the best interest of the parties. Fed. R. Bankr. P. 1016. The § 1328 certificate may be submitted on joint debtor's behalf without Johnny Phakornkham's signature by his spouse, debtor Outhida Phakornkham.

The court notes that 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 separate from the motion to which they relate. In addition, an exhibit index has not been filed, the exhibits are not properly numbered, and they are not appropriately titled. In the future, counsel should comply with these guidelines.

29. [13-16575](#)-A-13 SARAH GATHRIGHT
FJG-1
SARAH GATHRIGHT/MV
F. GIST/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SPECIALIZED LOAN SERVICING, LLC
10-31-13 [[22](#)]

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).

30. [13-17076](#)-A-13 RAQUEL ARROYO
TOG-1
RAQUEL ARROYO/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
CALIFORNIA BANK AND TRUST
11-8-13 [9]

Tentative Ruling

Motion: Value Collateral [Real Property]

Notice: Written opposition filed by the responding party

Disposition: Continued for an evidentiary hearing

Order: Civil Minute Order

The motion seeks to value real property collateral that is the moving party's principal residence. 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.

Additionally, it may be that the real property to be valued is not the debtor's residence given that the petition shows an address for the debtor different from the address on Schedule A given for the subject real property. Schedule A notes that the debtor's parents live at the subject real property's address and "make monthly payment[s]." At the hearing, counsel for the debtor will confirm whether or not the subject property is the debtor's principal residence. If the subject property is not the debtor's principal residence, then the debtor may be entitled to relief even if the value of the property exceeds the debt secured by the senior lien.

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.

31. [13-15181](#)-A-13 LINDSAY LEMONS
SL-3
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF WES
STORMS, CLAIM NUMBER 2
11-7-13 [[49](#)]

Final Ruling

The matter is continued to January 30, 2014, at 9:00 a.m.

32. [13-15181](#)-A-13 LINDSAY LEMONS
SL-4
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF WAYLENCO,
CLAIM NUMBER 3
11-7-13 [[54](#)]

Final Ruling

The matter is continued to January 30, 2014, at 9:00 a.m.

33. [13-15284](#)-A-13 CRISPIN/SILVIA RODRIGUEZ
DRJ-3
CRISPIN RODRIGUEZ/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
10-8-13 [[23](#)]

Final Ruling

The matter is continued to January 30, 2014, at 9:00 a.m.

34. [13-14086](#)-A-13 IDA JONES
MHM-1
MICHAEL MEYER/MV

SUSAN HEMB/Atty. for dbt.

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-13-13 [[57](#)]

Tentative Ruling

The matter will be continued to January 9, 2014, at 9:00 a.m. to coincide with the pending motion to confirm.

35. [13-14086](#)-A-13 IDA JONES
SAH-11
IDA JONES/MV
SUSAN HEMB/Atty. for dbt.

OBJECTION TO CLAIM OF CURTIS
BRYANT, CLAIM NUMBER 6-1
11-12-13 [[93](#)]

No tentative ruling.

36. [13-14086](#)-A-13 IDA JONES
SAH-12
IDA JONES/MV
SUSAN HEMB/Atty. for dbt.
WITHDRAWN

MOTION TO CONFIRM PLAN
11-12-13 [[97](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

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

37. [13-15687](#)-A-13 ROMY DABRITZ
RDB-1
ROMY DABRITZ/MV
RICK BANKS/Atty. for dbt.

MOTION TO CONFIRM PLAN
10-31-13 [[20](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Plan: Chapter 13 Plan-Amended, filed October 31, 2013, ECF No. 20

Disposition: Denied

Order: 20

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).

ON THE MERITS

Filing deficiencies

Local Bankruptcy Rule 3015-1(d)(1) requires the plan to be filed as stand-alone document. This plan was only filed as an exhibit to the motion.

Service Deficiencies

Local Bankruptcy Rule 3015-1(d)(1) requires service of the plan and motion on all creditors. The debtor did not serve: Ally Bank, CitiBank; Lakeview Loan Servicing; Lakeview Loan Servicing; and Antio LLC.

As a result, the motion will be denied.

75 DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's declaration without further notice or hearing. See 11 U.S.C. § 1307(c)(1).

38. [13-14791](#)-A-13 MELISSA SILVEIRA
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-13-13 [[22](#)]
- TRUDI MANFREDO/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [13-14791](#)-A-13 MELISSA SILVEIRA
TGM-1
MELISSA SILVEIRA/MV
TRUDI MANFREDO/Atty. for dbt.
- MOTION TO CONFIRM PLAN
10-28-13 [[36](#)]

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.

The untimely objection to confirmation, filed by creditor John Scott Silveira, December 4, 2013, ECF No. 49, is disregarded. Objections to a motion to confirm must be filed and served not less than 14 days prior to the hearing date. LBR 3015-1(d)(1); see also, Notice of Hearing, p. 2, ¶ 2, October 28, 2013, ECF No. 37. Creditor John Scott Silveira was served with the motion. The hearing scheduled for

December 11, 2013, opposition was due November 27, 2013. This opposition was filed only 7 days prior to the hearing.

40. [08-17849](#)-A-13 JOCELYN RAMIREZ MOTION FOR CONSENT TO ENTER
JTR-2 INTO LOAN MODIFICATION
JOCELYN RAMIREZ/MV AGREEMENT
11-27-13 [[33](#)]
JOCELYN RAMIREZ/Atty. for mv.

Tentative Ruling

Motion: Loan Modification Approval

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

Disposition: Continued to January 3, 2014, at 9:00 a.m. to allow an amended proof of service (or a supplemental proof of service) to be filed no later than December 20, 2013

Order: Prepared by moving party according to the instructions below

The proof of service is unsigned. The moving party shall file an amended proof of service no later than December 20, 2013. But if the party who served the motion does not have sufficient memory or knowledge of service to sign the proof of service, then the motion should be re-served and a supplemental proof of service filed.

The amended (or supplemental) proof of service must be signed by the server's declaration under penalty of perjury pursuant to 28 U.S.C. § 1746 and Rule 4(1)(1) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 4(1), incorporated by Fed. R. Bankr. P. 7004(a).

41. [13-13231](#)-A-13 LAURA PASLEY MOTION TO VACATE DISMISSAL OF
TCS-7 CASE
LAURA PASLEY/MV 12-5-13 [[48](#)]
NANCY KLEPAC/Atty. for dbt.

Tentative Ruling

Motion: Vacate Dismissal

Notice: LBR 9014-1(f)(3) and order shortening time; no written opposition required

Disposition: Denied

Order: Civil minute order

The debtor moves to vacate the dismissal of the case under Rule 60(b) of the Federal Rules of Civil Procedure. The court will deny the motion for several reasons.

The debtor does not dispute the untimely payment. The debtor acknowledges that her payment was untimely for October 25, 2013. Pasley Decl. ¶ 10, 13.

Additionally, the case was dismissed previously, and an order dismissing the case was previously entered in this case and subsequently vacated. See Order Granting Debtor's Mot. Vacate Dismissal, May 23, 2013, ECF No. 27.

Finally, an order was entered in this case on May 28, 2013 requiring the debtor to make timely payments for the next 6 months to the chapter 13 trustee or the case would be dismissed. Order Extending Automatic Stay, May 28, 2013, ECF No. 28. This order covered the period from May 28, 2013 to November 28, 2013. The untimely payment that resulted in the case being dismissed was the October 25, 2013 plan payment.

42. [09-10447](#)-A-13 MATTHEW/JOYCE WAGNER MOTION TO SELL AND/OR MOTION
PBB-4 FOR PAYMENT OF FEES AND COSTS
MATTHEW WAGNER/MV OF SALE
12-5-13 [[78](#)]
PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Sell Property [Short Sale]

Notice: LBR 9014-1(f)(3) and order shortening time; no written opposition required

Disposition: Granted

Order: Prepared by moving party and approved as to form and content by the Chapter 13 trustee

Property: 343 East Audubon Drive, Fresno, CA 93720

Buyer: Robert Romanacce

Sale Price: 295,000

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 revests 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.

9:15 a.m.

1. [13-15411](#)-A-13 RICHARD/TERESA AVINA
MHM-1
MICHAEL MEYER/MV

HENRY NUNEZ/Atty. for dbt.
DISMISSED
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS
11-22-13 [[32](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

2. [13-16215](#)-A-13 JEFFREY PLUMB
MHM-1
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-27-13 [[33](#)]

No tentative ruling.

3. [13-16020](#)-A-13 BLANCA MARTINEZ
MHM-1

THOMAS GILLIS/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF
PLAN BY MICHAEL H. MEYER
11-22-13 [[35](#)]

No tentative ruling.

4. [13-15728](#)-A-13 WADE WILLIAMS
MHM-2
MICHAEL MEYER/MV

BRIAN HADDIX/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS
11-22-13 [[46](#)]

No tentative ruling.

5. [13-14155](#)-A-13 RALPH/ELVA AGUERO
MHM-2
MICHAEL MEYER/MV

NELLIE AGUILAR/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-23-13 [[35](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [13-14470](#)-A-13 JESUS/ANGELIQUE CITAL
MHM-1
MICHAEL MEYER/MV
JEFFREY ROWE/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS
9-23-13 [[56](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [13-16575](#)-A-13 SARAH GATHRIGHT
MHM-1
F. GIST/Atty. for dbt.
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
11-25-13 [[27](#)]

No tentative ruling.

8. [13-15181](#)-A-13 LINDSAY LEMONS
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
11-22-13 [[65](#)]

No tentative ruling.

10:00 a.m.

1. [12-19290](#)-A-12 DIMAS/ROSA COELHO
TOG-7
DIMAS COELHO/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
- PRETRIAL CONFERENCE RE: MOTION
TO VALUE COLLATERAL OF HAMILTON
AND JOSEPHINE SANTOS
5-16-13 [[83](#)]

No tentative ruling.

1:30 p.m.

1. [13-13908](#)-A-13 FIDEL CAMACHO AND CONTINUED MOTION TO DISMISS
MHM-1 GRACIELA RUVALCABA CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
8-15-13 [[46](#)]

THOMAS GILLIS/Atty. for dbt.
MOTION WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [11-12264](#)-A-7 GENEAL CHIMA CONTINUED MOTION TO COMPEL
WW-2 AND/OR MOTION FOR SANCTIONS
GENEAL CHIMA/MV 11-18-13 [[159](#)]
JEFF REICH/Atty. for dbt.

No tentative ruling

3. [11-12264](#)-A-7 GENEAL CHIMA CONTINUED PRE-TRIAL CONFERENCE
WW-1 RE: MOTION FOR SANCTIONS FOR
GENEAL CHIMA/MV VIOLATION OF THE AUTOMATIC STAY
AND/OR MOTION FOR SANCTIONS FOR
VIOLATION OF THE DISCHARGE
INJUNCTION
7-11-13 [[122](#)]

JEFF REICH/Atty. for dbt.

No tentative ruling