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

JANUARY 9, 2014

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. 13-16020-A-13 BLANCA MARTINEZ
TOG-1
BLANCA MARTINEZ/MV

THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

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

Final Ruling

At the suggestion of the parties, the matter is continued to January 30, 2014, at 9:00 a.m. Not less than 7 days prior to the continued hearing, the parties shall file a joint status report.

2. 12-19337-A-13 DARRIN/LISA CHILDERS
WC-4
DARRIN CHILDERS/MV
WILLIAM COLLIER/Atty. for dbt.

MOTION TO MODIFY PLAN
11-23-13 [58]

Final Ruling

The debtors having re-noticed the hearing for January 30, 2014, at 9:00 a.m., the matter is continued to that date.

3. 13-16237-A-13 JOSEFINA HURTADO

HERITAGE BANK OF COMMERCE/MV

SCOTT LYONS/Atty. for dbt.
WM. LEWIS/Atty. for mv.

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY HERITAGE BANK OF COMMERCE
11-12-13 [27]

Final Ruling

The matter has been resolved by stipulation of the parties and is dropped from calendar.

4. 13-12349-A-13 MICHAEL/ROSEMARY TALMADGE
JMA-5
MICHAEL TALMADGE/MV
JOSEPH ARNOLD/Atty. for dbt.
CONVERTED 9/9/13

MOTION TO CONFIRM PLAN
11-12-13 [69]

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.

5. 13-14655-A-13 LARRY VALENCIA
TCS-4
LARRY VALENCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
11-26-13 [70]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. 13-15961-A-13 ROBERT/HOLLY WOODS
JMA-3
ROBERT WOODS/MV
JOSEPH ARNOLD/Atty. for dbt.

CONTINUED AMENDED MOTION TO VALUE COLLATERAL OF HSBC BANK USA, N.A.
12-24-13 [49]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: Deemed noticed under LBR 9014-1(f)(2) pursuant to the court's civil minutes from the December 12, 2013 hearing on this motion; no written opposition required
Disposition: Granted
Order: Prepared by moving party

Collateral Value: $89,988.00
Senior Liens: $140,768.00

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).

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).

7. 13-16575-A-13 SARAH GATHRIGHT | MOTION TO CONFIRM PLAN
FJG-2 | 11-26-13 [32]
SARAH GATHRIGHT/MV
F. GIST/Atty. for dbt.

Tentative Ruling

Motion: Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Disposition: Denied
Order: Civil minute order

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.

ON THE MERITS

This plan cannot be confirmed for two reasons. First, a motion to confirm a Chapter 13 plan must be served on the Chapter 13 trustee and on all creditors. Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The record reflects no such Certificate of Service.

Second, the debtor has not provided a declaration addressing each of the elements of § 1325(a). Unless and until the debtor does so she has not sustained her burden of proof as to confirmation.

75 DAY ORDER

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

8. 13-17675-A-13 BARBARA WALDRON | MOTION FOR RELIEF FROM

KH-1
WELLS FARGO BANK, N.A./MV
KEVIN HARRIS/Atty. for mv.

AUTOMATIC STAY
12-9-13 [11]

Final Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Subject: 20522 Avenue 56, Exeter, California

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 362(d)(1) authorizes stay relief cause shown. In this case, there are two species of cause. The debtor lost this house to foreclosure prior to the date of the petition. A trustee deed recorded September 26, 2013. The Chapter 13 bankruptcy petition was not filed until December 3, 2013. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

9. 13-17076-A-13 RAQUEL ARROYO
TOG-1
RAQUEL ARROYO/MV

THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

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

Final Ruling

At the suggestion of the parties, the matter is continued to January 30, 2014, at 9:00 a.m. No later than 7 days prior to the continued hearing the parties shall file a Joint Status Report. The Joint Status Report shall suggest a mechanism for resolution of the motion (e.g. stipulation, evidentiary hearing).

10. [13-13978](#)-A-13 MARY REIMERS
GH-2
MARY REIMERS/MV

OBJECTION TO CLAIM OF HSBC MORTGAGE SERVICES, INC., CLAIM NUMBER 14
11-7-13 [26]

GARY HUSS/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 motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987).

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

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that “[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules.” Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). *See In re Gardenhire*, 209 F.3d 1145, 1148–49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432–33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); *see also* Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). *See Gardenhire*, 209 F.3d at 1148.

Here, none of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)–(6). The responding party’s claim was filed on October 24, 2013 in the amount of $44,977.89. The deadline for filing proofs of claim is 90 days after the first date set for the meeting of creditors. The first date set for the meeting of creditors was July 23, 2013, and 90 days after such date was October 21, 2013. The responding party’s proof of claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

If the debt for which such claim is made was not properly scheduled in time to permit a timely filing of a proof of claim, then the responding party may have a claim for nondischargeability under § 523(a)(3) if the responding party also did not have notice or actual knowledge of the case in time to permit such timely filing. The court takes no position on this issue as it is not before the court. Any claim for nondischargeability based on lack of notice must be brought by way of adversary proceeding. Fed. R. Bankr. P. 7001(6).

11. 13-15181-A-13 LINDSAY LEMONS
MHM-1
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS CASE FOR UNREASONABLE DELAY THAT IS PREJUDICIAL TO CREDITORS AND/OR MOTION TO DISMISS CASE
11-22-13 [65]

SCOTT LYONS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. 13-15181-A-13 LINDSAY LEMONS
SL-2
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
11-26-13 [79]

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) plan not proposed in good faith, 11 U.S.C. § 1325(a)(3); (2) petition not filed in good faith, 11 U.S.C. § 1325(a)(7); and (3) feasibility, 11 U.S.C. § 1325(a)(6).

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.

13. 13-16683-A-13 SENG SAEPHAN AND INKHAM SAYAVONG MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 12-12-13 [22]
PLF-1
SENG SAEPHAN/MV
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted pursuant to the instructions below
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).

Given that the responding party holds both the first and second deeds of trust on the collateral, the moving party shall draft the proposed order to specifically identify by book and page number, instrument number, or other identifying information, the second deed of trust subject to this order.

14. 13-16683-A-13 SENG SAEPHAN AND INKHAM SAYAVONG
PLF-2
SENG SAEPHAN/MV
PETER FEAR/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
12-12-13 [26]

Final Ruling

Motion: Value Collateral [Real Property; Nonresidential]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Collateral Value: $39,000.00

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 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 requests that the court value nonresidential real property that is the responding party's collateral. 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 unencumbered by any senior liens. *See* 11 U.S.C. § 506(a).

15. 13-14086-A-13 IDA JONES
MHM-1
MICHAEL MEYER/MV
SUSAN HEMB/Atty. for dbt.

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

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. 13-14086-A-13 IDA JONES
SAH-13
IDA JONES/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO CONFIRM PLAN
11-19-13 [106]

Tentative Ruling

Motion: Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Disposition: Denied
Order: Civil minute order

A motion to confirm a Chapter 13 plan must be served on the Chapter 13 trustee and on all creditors. Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Certificate of Service reflects notice to 16 parties in interest. Certificate of Service, November 19, 2013, ECF No. 110. The court's matrix reflects 29 parties in interest. Among those missed, or in some cases served at an incorrect address are: Capital One Bank; capital One; Kristi Wells, RCO Legal; Union Bank, N.A.; Altair OH; Portfolio Recoveries; Bayview Loan Servicing; Chase; Franchise Tax Board; and JPMorgan Chase Bank. As a result, the motion will be denied.

17. 13-15686-A-13 RICKY/SUZETTE WIGGS
RDB-1
RICKY WIGGS/MV
RICK BANKS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
11-6-13 [22]

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

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). *See* 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtors seek to value collateral consisting of a motor vehicle. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. *See* LBR 9014-1(d)(6). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief requested that should be contained in the motion itself and stated with particularity. *See* Fed. R. Bankr. P. 9013.

Finally, Santander Consumer USA, Inc. is the creditor whose agent has been served as shown on the proof of service (and supporting documents attached to the proof of service. The motion names a respondent creditor that appears to be the same but has a slightly different name: Santander Consumer USA. An essential component of the relief requested is the precise name of the respondent. Here, the respondent named in the motion differs from the respondent served, suggesting either (i) service was insufficient, or (ii) the respondent has not been correctly identified in the motion.

18. 13-15686-A-13 RICKY/SUZETTE WIGGS MOTION TO CONFIRM PLAN
RDB-2 11-6-13 [26]
RICKY WIGGS/MV
RICK BANKS/Atty. for dbt.

Tentative Ruling

Motion: Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Disposition: Denied
Order: Civil minute order

Debtors Ricky Wiggs and Suzanne Wiggs move to confirm their First Amended Chapter 13 plan. That plan was not separately filed with the court, and was, instead, only filed as Exhibit A to the debtors' motion. Motion to Confirm Chapter 13 Plan, November 6, 2013, ECF No. 26. For the following reasons, the plan cannot be confirmed.

PROCEDURAL PROBLEMS

Notice Problems

A motion to confirm a Chapter 13 plan must be served on the Chapter 13 trustee and on all creditors. Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The debtor's certificate of service does not reflect service on all parties entitled to notice. Proof of Service, November 6, 2013, ECf No. 34. The following entities were not noticed or were noticed incorrectly: Bureaus Investment Group Portfolio; Altair Oh XIII, LLC; Internal Revenue Service (only one of three notices addresses required by LBR 2002-1(c)); HFC Beneficial Mortgage Services; HSBC Gotts; LVNV Funding, LLC; Dhruv Sharma; and debtors Ricky Wiggs and Suzanne Wiggs. As a result, the plan cannot be confirmed.

For matters requiring notice to all creditors and parties in interest, the court suggests that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. Doing so will avoid the notice problems identified in the preceding paragraph. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. *See* Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

Plan Not Filed as Separate Document

A Chapter 13 plan must filed a separate document, and not merely as an exhibit to the motion. 11 U.S.C. § 1321 ("debtor shall file a plan"); Fed. R. Bankr. P. 3015(b); LBR 3015-1(c)(1).

75 DAY ORDER

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

19.	13-16686-A-13 CARLEEN KEMMERLING KAZ-1 PNC MORTGAGE/MV PETER BUNTING/Atty. for dbt. KRISTIN ZILBERSTEIN/Atty. for mv.	OBJECTION TO CONFIRMATION OF PLAN BY PNC MORTGAGE 12-10-13 [20]

Tentative Ruling

Objection: Confirmation of Modified Chapter 13 Plan
Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Plan: Chapter 13 Plan, filed October 15, 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 PNC objects to plan confirmation, citing a pre-petition delinquency on a mortgage against 33310 Tule Oak Drive, Springville, California. The debtor's plan provides for this property in Class 4 (directly paid by the debtor) and make no mention of the delinquency. PNC has not filed a Proof of Claim, nor has it submitted a declaration in support of its claimed delinquency.

The objection will be overruled. First, the allegation of delinquency is unsupported by Proof of Claim or declaration. LBR 9014-1(d)(6).

Second, even if the debtor is delinquent, the creditor is not harmed by confirmation of this plan. The Chapter 13 plan provides, "The proof of claim, not this plan or the schedules, shall determine the amount and classification of the claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Chapter 13 Plan § 2.04, filed October 15, 2013, ECF No. 5. Moreover, if the debtor achieves confirmation of the plan as proposed, the creditor will have stay relief to pursue its rights under applicable state law. The plan provides for the collateral in Class 4 of the Eastern District form Chapter 13 Plan. EDC 3-080. That class provides, "Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of the plan, are not in default, and are not modified by this plan. These claims shall be paid by

Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under the applicable law or contract." This provision binds the debtor and all creditors. *United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 2010).*

As a result, the objection will be overruled.

20. 12-14489-A-13 BASILIO LEDEZMA JRL-2 BASILIO LEDEZMA/MV JERRY LOWE/Atty. for dbt.

MOTION TO MODIFY PLAN 11-26-13 [50]

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan
Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Disposition: Denied
Order: Civil minute order

PROCEDURAL IRREGULARITIES AND VIOLATIONS OF LOCAL RULES THAT DO NOT PRECLUDE CONFIRMATION

This motion has two non-fatal procedural problems and/or violations of local rules. First, the moving party has recycled its docket control number. This motion was designated "JRL-2," which had previously been used. *Compare,* Motion to Confirm Plan, filed June 6, 2012, ECF No. 20, *with* Motion to Confirm Plan, November 26, 2013, ECF No. 50. This is a violation of Local Bankruptcy Rule 9014-1(c)(3). Future violations of local rules may result in summary denial of the motion or sanctions against counsel.

Second, there are noticing problems. The original Certificate of Service shows the hearing noticed for Department B. See, Certificate of Service, November 26, 2013, ECF No. 55. An amended notice was served correctly showing the hearing in Department A. *See,* Amended Notice, December 11, 2013, ECF No. 58. The problem is the Certificate of Service for the amended notice refers to an "attached list." See, Certificate of Service, filed December 11, 2013, ECF No. 59. No list was attached. But the original incorrect notice notifies creditors that opposition must be filed at least 14 days in advance of the hearing and because no opposition was filed, the court deems the procedural error to be of no practical detriment to creditors or other parties in interest.

NOTICE PROBLEMS THAT PRECLUDE CONFIRMATION

A motion to confirm a Chapter 13 plan must be served on the Chapter 13 trustee, debtor, and on all creditors. Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The debtor's certificate of service does not reflect service on all parties entitled to notice. Proof of Service, November 26, 2013, ECF No. 55. The following entities were not noticed or were noticed incorrectly: debtor Basilio Ledezma; Erica Lucas; and Joseph C. Delmonte. As a result, the plan cannot be confirmed.

For matters requiring notice to all creditors and parties in interest, the court suggests that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. Doing so will avoid the notice problems identified in the preceding paragraph. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. *See* Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

21. 10-13095-A-13 CHANNAK LIM — MOTION FOR RELIEF FROM AUTOMATIC STAY 12-2-13 [33]

U.S. BANK NATIONAL ASSOCIATION/MV
TIMOTHY SPRINGER/Atty. for dbt.
JOSH HARRISON/Atty. for mv.

Tentative Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied as moot
Order: Prepared by moving party

Subject: 1000 Harbor Court, Madera, California
Plan: Chapter 13 Plan § 2.11, filed March 25, 2010, ECF No. 5
Confirmed: Order Confirming Chapter 13 Plan, filed May 21, 2010, ECF No. 23

STAY RELIEF

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

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona,* 520 U.S. 43, 67 (1997). "A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.,* 529 U.S. 277, 287 (2000). The test for deciding whether the question presented is moot is: whether there can be any effective relief. *West v. Secretary of Dept. of Transp.,* 206 F.3d 920, 925 (9th Cir. 2000). If not, the action is moot. *City of Erie,* 529 U.S. at 287.

The respondent debtor has proposed, and confirmed, a Chapter 13 plan. The plan provides for the collateral in Class 4 of the Eastern District form Chapter 13 Plan. EDC 3-080. That class provides, "Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of the plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under the applicable law or contract." This provision binds the debtor and all creditors. *United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 2010).* The plan provides for this claim in Class 4 (though it does incorrectly refer to the creditor as "Moreequity"). As a result, no effective relief can be granted and the motion will be denied as moot.

VIOLATION OF LOCAL RULES

In the Bankruptcy Court for the Eastern District of California all motions must be identified by an appropriate docket control number. LBR 9014-1(c). This motion was not so identified. Future violations of local rules may result in summary denial of the motion or sanctions against counsel.

22. 11-12195-A-13 GARY/SABRENA FORD — MOTION TO REFINANCE
PLF-3 — 12-10-13 [50]
GARY FORD/MV
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Authority to Refinance Mortgage
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Continued to January 29, 2013, at 9:00 a.m.
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 debtors seek to refinance their home mortgage. For the reasons stated in the motion and supporting papers, the court will grant the motion at the continued hearing on this matter.

EXHIBITS TO THE MOTION

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 document to which they relate. In addition, an exhibit index has not been filed, and they are not appropriately titled.

COMPLIANCE WITH RULE 9037

The attorney filing the papers for this matter has not complied with Rule 9037 in filing the exhibits. The attorney shall file an ex parte motion under Rule 9037(c) or (d) no later than January 15, 2014. The court will continue the hearing on this matter until the attorney files a supplemental declaration that describes what actions were taken to comply with Rule 9037 for all papers filed in connection with this matter.

23.	10-62697-A-13 RLF-5 TERRY KIRKLAND/MV SHANE REICH/Atty. for dbt.	TERRY KIRKLAND AND DANIELLE JACOBS KIRKLAND	MOTION TO APPROVE LOAN MODIFICATION 12-17-13 [87]

Tentative Ruling

Motion: Loan Modification Approval
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party according to the instructions below

MORTGAGE LOAN MODIFICATION

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

NON-COMPLIANT EXHIBITS

The exhibit attached to the motion does 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 document to which it relates. In addition, an exhibit index has not been filed, the exhibit is not properly numbered and identified at the bottom, and it is not appropriately titled.

9:15 a.m.

1. 13-16794-A-13 MICHAEL VIVEROS
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H MEYER
12-5-13 [24]

TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling.

9:30 a.m.

1. 13-15730-A-13 ALFREDO CORTEZ
13-1125
U.S. TRUSTEE V. CORTEZ
GREGORY POWELL/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
11-12-13 [1]

Final Ruling

The matter is continued to February 26, 2014, at 9:15 a.m. to allow the plaintiff to move up the default.

2. 13-15181-A-13 LINDSAY LEMONS
13-1124
STORMS ET AL V. LEMONS
GLEN GATES/Atty. for pl.
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT
11-12-13 [1]

No tentative ruling.

10:00 a.m.

1. 13-15305-A-12 TOG-3 ROGELIO CALDERON/MV THOMAS GILLIS/Atty. for dbt. RESPONSIVE PLEADING

ROGELIO CALDERON AND LAURA BOBADILLA-DELGADO

MOTION TO CONFIRM CHAPTER 12 PLAN
11-21-13 [17]

Final Ruling

Motion: Confirm Chapter 12 Plan
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by debtor's counsel, approved by Chapter 12 trustee

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 12 plan confirmation is governed by 11 U.S.C. §§ 1222, 1225 and by Federal Rule of Bankruptcy Procedure 2002(a)(8). The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994) (applying burden in context of chapter 13 plan confirmation). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

11:00 a.m.

1. 10-16183-A-7 13-1086 AGHA V. CITIMORTGAGE, INC. ET AL

SALMA AGHA

MOTION VACATE LOCKOUT AND RESTORE SALMA AGHA TO POSSESSION OF 11622 HARRINGTON STREET, BAKERSFIELD, CA 93311, APN NUMBER 523-121-03-00-3
12-9-13 [42]

SALMA AGHA/Atty. for mv.
ORDER 12/17

No tentative ruling.