

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

MAY 15, 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. [14-11110](#)-A-13 MELISSA OMOS
SL-2
MELISSA OMOS/MV
5-1-14 [[24](#)]
SCOTT LYONS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
TD AUTO FINANCE LLC

Tentative Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

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). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

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

2. [13-13912](#)-A-13 LUIS/RUBY BURGOS
MICHAEL MEYER/MV

CONTINUED MOTION OF
NON-COMPLIANCE AND REQUEST TO
RE-ISSUE COURT'S ORDER TO SHOW
CAUSE
12-20-13 [[50](#)]

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.

3. [13-12917](#)-A-13 JAMIE/MARY JANE GALVAN
PLF-1
JAMIE GALVAN/MV

MOTION TO MODIFY PLAN
3-26-14 [[24](#)]

PETER FEAR/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.

4. [14-10917](#)-A-13 JOEL MORENO AND LETICIA MOTION TO DISMISS CASE AND/OR
MHM-1 LOPEZ MOTION TO DISMISS CASE FOR
MICHAEL MEYER/MV FAILURE TO MAKE PLAN PAYMENTS
4-30-14 [[19](#)]

PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped from calendar as moot.

5. [14-11820](#)-A-13 TONY/CARMEN BAIZA MOTION TO VALUE COLLATERAL OF
SL-1 CITIFINANCIAL, INC.
TONY BAIZA/MV 4-29-14 [[8](#)]
SCOTT LYONS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$74,623.00

Senior Liens: \$81,681.63

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).

6. [14-11820](#)-A-13 TONY/CARMEN BAIZA
SL-2
TONY BAIZA/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GREEN TREE
4-29-14 [[13](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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 debtor seeks 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 sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

7. [09-19623](#)-A-13 LANCE/CHRISTINA CROW MOTION TO APPROVE LOAN
 KAZ-1 MODIFICATION
 NATIONSTAR MORTGAGE LLC/MV 4-9-14 [[136](#)]
 PETER FEAR/Atty. for dbt.
 KRISTIN ZILBERSTEIN/Atty. for mv.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

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 in part to authorize the debtor and the secured lender 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 motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only 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.

8. [10-15123](#)-A-13 RAUL/MARIA MIRELEZ MOTION TO MODIFY PLAN
 PBB-5 4-7-14 [[94](#)]
 RAUL MIRELEZ/MV

PETER BUNTING/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this 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, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

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 nondischargability 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 nondischargability based on lack of notice must be brought by way of adversary proceeding. Fed. R. Bankr. P. 7001(6).

9. [13-10327](#)-A-13 JOHN MCMURRAY
GH-2
JOHN MCMURRAY/MV

GARY HUSS/Atty. for dbt.

OBJECTION TO CLAIM OF JEFFERSON
CAPITAL SYSTEMS LLC., CLAIM
NUMBER 8
3-27-14 [[27](#)]

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, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

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).

10. [11-16733](#)-A-13 ALBERTO/MICAELA SALCEDO
PLF-4

MOTION FOR COMPENSATION FOR
PETER L. FEAR, DEBTOR'S
ATTORNEY(S),
4-16-14 [[76](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Law Offices of Peter L. Fear

Compensation approved: \$3556.00

Costs approved: \$177.13

Aggregate fees and costs approved in this application: \$3733.13

Retainer held: \$0.00

Amount to be paid as administrative expense: \$3733.13

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "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.

11. [14-11142](#)-A-13 KATHLEEN WILKINS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
4-22-14 [[21](#)]

No tentative ruling.

12. [14-10043](#)-A-13 OSCAR SOLIS
MHM-3
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
4-22-14 [[53](#)]

KARNEY MEKHITARIAN/Atty. for dbt.
NON-OPPOSITION

No tentative ruling.

13. [14-11045](#)-A-13 CATHERINE NELSON
PLF-2
CATHERINE NELSON/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO AVOID LIEN OF
CITICORP VENDOR FINANCE, INC.
4-17-14 [[24](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption in Real Property

Notice: Written opposition filed by responding party

Disposition: Continued for an evidentiary hearing

Order: Civil minute order or scheduling order

The motion seeks to avoid the responding party's lien on the moving party's real property. At the hearing on this matter, the court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the real property's value must be resolved before the court can rule on the relief requested.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

14. [13-17754](#)-A-13 EDUARDO SOLIS AND ROSA
MHM-2 CASTILLO

THOMAS GILLIS/Atty. for dbt.

No tentative ruling.
15. [14-11058](#)-A-13 CHRISTOPHER/KRISTINA DELK
BHT-1
W.J. BRADLEY MORTGAGE CAPITAL,
LLC/MV
DAVID JENKINS/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

No tentative ruling.
16. [14-11059](#)-A-13 JORGE VELAZQUEZ-JARACUARO
RCO-1 AND ADRIANA OROPEZA
JPMORGAN CHASE BANK, N.A./MV

JANINE ESQUIVEL/Atty. for dbt.
KRISTI WELLS/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.
17. [14-10360](#)-A-13 KRISTEN JONES
MHM-1
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE FOR FAILURE TO
PROVIDE TAX DOCUMENTS , MOTION
TO DISMISS CASE
3-27-14 [[26](#)]

No tentative ruling.
18. [14-11461](#)-A-13 ANDREA SOUSA

RICHARD BAMBL/Atty. for dbt.

Final Ruling
- ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-29-14 [[20](#)]

The delinquent installment paid, the order to show cause is
discharged. No appearance is required.

19. [14-10577](#)-A-13 JONATHON ANDERSON
JMA-1
JONATHON ANDERSON/MV
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO CONFIRM PLAN
3-24-14 [[19](#)]

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. [14-11088](#)-A-13 PATRICIA TAYLOR
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE
4-18-14 [[22](#)]

RANDY RISNER/Atty. for dbt.

No tentative ruling.

21. [14-12086](#)-A-13 LEON COLE
JMA-2
LEON COLE/MV
MICHAEL ARNOLD/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
5-7-14 [[19](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

If this case was filed under Chapter 13 of title 11, the court will extend the automatic stay subject to the condition that all plan payments are timely made to the Chapter 13 trustee for the next six months, and the order shall provide that (i) the debtor shall make such timely payments for the next six months to the Chapter 13 trustee, (ii) if the debtor fails to make any such monthly payment, the Chapter 13 trustee may file a certification of noncompliance with the order on this motion along with a proposed order, and (iii) upon the filing of such certification, the court may then dismiss the case without further notice or a hearing.

9:30 a.m.

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

CONTINUED STATUS CONFERENCE RE:
COMPLAINT

No tentative ruling.

2. [08-11880](#)-A-13 WAYNE/JONALYN YOUNG CONTINUED STATUS CONFERENCE RE:
[13-1130](#) COMPLAINT
YOUNG ET AL V. BANK OF 11-22-13 [[1](#)]
AMERICA, N.A. ET AL
PETER FEAR/Atty. for pl.
DISMISSED, CLOSED

Final Ruling

The adversary proceeding dismissed and the case closed, the status conference is concluded.

10:00 a.m.

1. [12-19290](#)-A-12 DIMAS/ROSA COELHO MOTION TO CHAPTER 12 PLAN
TOG-14 3-31-14 [[172](#)]
DIMAS COELHO/MV

THOMAS GILLIS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

2. [12-19291](#)-A-12 JOAO/LUZIA VAZ MOTION TO CONFIRM CHAPTER 12
TOG-15 PLAN
JOAO VAZ/MV 3-31-14 [[180](#)]
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN, DISMISSED

Final Ruling

The motion withdrawn, the motion is dropped from calendar as moot.

3. [12-19291](#)-A-12 JOAO/LUZIA VAZ MOTION TO CONFIRM CHAPTER 12
TOG-17 PLAN
JOAO VAZ/MV 3-31-14 [[185](#)]
THOMAS GILLIS/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.