

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street
Department A, Courtroom 11
Fresno, California

THURSDAY

JULY 23, 2015

9:00 A.M. CHAPTERS 13 AND 12 CASES

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.

1. [15-10406](#)-A-13 ANGELITA CAMPA
ALS-3
FARMERS INSURANCE GROUP
FEDERAL CREDIT UNION/MV

TIMOTHY SPRINGER/Atty. for dbt.
A. SIMON/Atty. for mv.

No tentative ruling
 2. [15-10406](#)-A-13 ANGELITA CAMPA
TCS-1
ANGELITA CAMPA/MV
TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling
 3. [15-10406](#)-A-13 ANGELITA CAMPA
TCS-3
ANGELITA CAMPA/MV

TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling
 4. [15-11814](#)-A-13 DONALD O'BRIEN
RLF-1
DAWN O'BRIEN/MV

TIMOTHY SPRINGER/Atty. for dbt.
SHANE REICH/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling
 5. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON
DRJ-2
LARRY ANDERSON/MV
M. ENMARK/Atty. for dbt.
DISMISSED

No tentative ruling
- CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY FARMERS
INSURANCE GROUP FEDERAL CREDIT
UNION
5-29-15 [[60](#)]
- CONTINUED MOTION TO CONFIRM
PLAN
4-28-15 [[42](#)]
- MOTION FOR APPROVAL OF REVISED
STIPULATION FOR ADEQUATE
PROTECTION ORDER
7-8-15 [[70](#)]
- OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR DAWN RENEE
O'BRIEN
6-23-15 [[26](#)]
- MOTION TO MODIFY PLAN
6-9-15 [[137](#)]

6. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON MOTION FOR RELIEF FROM
DRJ-3 DISMISSAL ORDER
LARRY ANDERSON/MV 7-9-15 [[143](#)]
M. ENMARK/Atty. for dbt.
DEBTOR DISMISSED:
02/20/2015
JOINT DEBTOR DISMISSED:
02/20/2015

No tentative ruling

7. [11-63522](#)-A-13 CESAR/MARIA GUTIERREZ MOTION TO DISMISS CASE
MHM-3 6-11-15 [[116](#)]
MICHAEL MEYER/MV
CHRISTIAN YOUNGER/Atty. for dbt.
WITHDRAWN

Final Ruling

Having been withdrawn, the matter is dropped from calendar as moot.

8. [14-15324](#)-A-13 ADAM/KARALIN BERG MOTION FOR COMPENSATION BY THE
FLG-2 LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
6-22-15 [[39](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Fear Law Group, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3300.50 and reimbursement of expenses in the amount of \$358.58.

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.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Fear Law Group, P.C.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3300.50 and reimbursement of expenses in the amount of \$358.58. The aggregate allowed amount equals \$3659.08. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3659.08 shall be allowed as an administrative expense to be paid through the plan. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

9. [10-60036](#)-A-13 ROY/ALEJANDRA MCBREARTY MOTION TO DISMISS CASE
MHM-1 6-10-15 [[32](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

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

10. [15-10639](#)-A-13 RACHEL RIVERA
TCS-3
RACHEL RIVERA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES
6-25-15 [[37](#)]

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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 described as a 2001 PT Cruiser. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$1799.00.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2001 PT Cruiser has a value of \$1799.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1799.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

11. [15-11245](#)-A-13 WILLIAM O'BRIEN AND JILL ALVARADO-O'BRIEN ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-6-15 [[39](#)]
MARK SIEGEL/Atty. for dbt.
\$77.00 INSTALLMENT FEE PAID

Final Ruling

The past due \$77.00 installment fee having been paid, the order to show cause is discharged.

12. [15-10954](#)-A-13 KENNETH/JANE HOSTETLER OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN
6-18-15 [[23](#)]

Final Ruling

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

13. [14-13162](#)-A-13 ANTONIO/ANNETTE GUZMAN OBJECTION TO CLAIM OF MANTHEY ROAD STERLING PROPERTIES LLC, CLAIM NUMBER 9
MHM-2
MICHAEL MEYER/MV
6-4-15 [[59](#)]
NANCY KLEPAC/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained in part, denied in part

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition

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

BURDENS

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Litton Loan Servicing*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

The evidentiary presumption created by Rule 3001(f) "operates to shift the burden of going forward but not the burden of proof." See *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706 (B.A.P. 9th Cir. 2006) (citing *Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000); *Diamant*, 165 F.3d at 1248). But this evidentiary presumption is rebuttable. *Id.* at 706. "One rebuts evidence with counter-evidence." *Id.* at 707; see also *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009) ("[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it.").

The burden of proof, however, always remains on the party who carries the burden under applicable nonbankruptcy law. Because the burden of proof is "a substantive aspect of a claim," *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20-21 (2000) (internal quotation marks omitted), it is governed by nonbankruptcy law, usually state law, applicable to a claim, see *id.* ("[S]tate law governs the substance of claims [in bankruptcy]." (citing *Butner v. United States*, 440 U.S. 48, 57 (1979))); *Garvida*, 347 B.R. at 705. "That is, the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." *Raleigh*, 530 U.S. at 21.

PRIORITY OF CLAIM

The trustee objects to Claim No. 9 filed by Manthey Road Sterling Properties LLC in the amount of \$5900. The claimant has asserted priority for the full amount of the claim. But no documentation or explanation has been given for why the claim is entitled to priority. Further, the proof of claim is incomplete given that priority is asserted—none of the categories for the different types of priority have been selected as instructed on the form. The instructions specifically require the claimant to “check the box specifying the priority and state the amount.” Proof of Claim No. 9, section 5; see also Official Form B 10 (proof of claim), section 5. These instructions have not been followed.

The claim is therefore irregular on its face and does not enjoy the prima facie presumption of validity. Therefore, the burden of production never shifted, and any adequate legal ground for disallowing the priority of the claim will prevail. Further, the claimant has not met its burden of proof as a creditor to show that the rent owed should be given priority.

Given the lack of adequate response by the claimant to this objection, the trustee will prevail on its dispute over the priority of the claim. No supporting documentation is given for the claim and no evidence is provided as to why the claim should have priority. The claim has been rejected under the terms of the confirmed plan, but the court has no basis for concluding that the amounts claimed represent post-petition rent entitled to priority. The objection will be sustained as to the priority of the claim. The claim’s priority status will be disallowed.

AMOUNT OF CLAIM

The claim on its face states “Rent owed [p]er lease at [property address].” No factual basis has been given to reduce or disallow the claim based on the amount or enforceability of the claim. The court will treat the amount of the claim as separate from the section on priority for purposes of determining whether the claim is regular on its face. Accordingly, since no factual or legal basis has been given for disallowing the amount of the claim, the court will overrule the objection in part as to the amount and allow the claim in the amount of \$5900 as a general unsecured claim.

14. [15-10162](#)-A-13 JAIME/RUTH GARZA
PK-4
JAIME GARZA/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

CONTINUED MOTION TO CONFIRM
PLAN
5-12-15 [[90](#)]

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

This matter has been continued from July 8, 2015. Even though the parties have reached a resolution, the court has identified a procedural deficiency. The motion, notice and the plan will need to

be re-filed and served on all creditors and parties in interest. Federal Rule of Bankruptcy Procedure 3015(d) provides that "[t]he plan or a summary of the plan shall be included with each notice of the hearing on confirmation mailed pursuant to Rule 2002." The proof of service does not indicate that the plan or a summary of the plan was transmitted to all creditors or parties in interest.

15. [13-15181](#)-A-13 LINDSAY LEMONS
[13-1124](#)
STORMS ET AL V. LEMONS
GLEN GATES/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-12-13 [[1](#)]

No tentative ruling

16. [13-15181](#)-A-13 LINDSAY LEMONS
[13-1124](#) GEG-2
STORMS ET AL V. LEMONS

GLEN GATES/Atty. for mv.

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LINDSAY LEMONS
12-16-14 [[46](#)]

No tentative ruling

17. [13-15181](#)-A-13 LINDSAY LEMONS
SL-2
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
11-26-13 [[79](#)]

No tentative ruling

18. [13-15181](#)-A-13 LINDSAY LEMONS
SL-3
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

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

No tentative ruling

19. [13-15181](#)-A-13 LINDSAY LEMONS
SL-4
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

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

No tentative ruling

20. [13-15181](#)-A-13 LINDSAY LEMONS
SL-5
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF
WAYNE STORMS, CLAIM NUMBER 1
10-24-13 [[134](#)]

No tentative ruling

21. [15-11284](#)-A-13 ORA HOWARD
ALG-3
ORA HOWARD/MV

CONTINUED MOTION TO VALUE
COLLATERAL OF WINDSOR NORTH
OWNERS ASSOCIATION
5-20-15 [[35](#)]

JANINE ESQUIVEL/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted in part, denied in part without prejudice

Order: Civil minute order

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

VALUATION OF COLLATERAL

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) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). 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 respondent'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. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral securing the respondent's lien for HOA dues, assessments and other charges, recorded on December 29, 2014, and for which a notice of default was recorded on or about January 30, 2015. The collateral is the debtor's principal residence located at 1903 W. Santa Ana, Fresno, CA.

The court values the collateral at \$163,491. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim (for prepetition HOA dues, fees, and other charges owed to respondent) is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a). This ruling does not affect any HOA debts arising after the petition owed to the respondent.

ADDITIONAL 2010 LIEN

The supplemental brief in support of the motion identifies another assessment lien recorded by the respondent in 2010. To the extent that the brief requests relief relating to this additional assessment lien, an additional motion should have been filed and served. Rule 9013 requires a request for an order to be made by written motion, unless made during a hearing. Here, the additional lien recorded in 2010 has been identified in a supplemental brief. This does not provide adequate notice to the respondent that its other lien is being affected. This is true because the title of the brief and its major points do not imply that new relief is being requested beyond what was originally requested in the motion for which the brief was filed in support. It is not until the end of the brief that new relief is requested.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part. The real property collateral located at 1903 W. Santa Ana, Fresno, CA, has a value of \$163,491. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. For its assessment lien securing a debt of approximately \$19,464.32 recorded on December 29, 2014, and for which a notice of default was recorded on or about January 30, 2015, the respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

IT IS FURTHER ORDERED that the motion is denied in part without prejudice as to the relief requested in the supplemental brief filed by the movant, which was not requested in the original motion. The court does not value the collateral securing respondent's lien recorded on or about April 22, 2010. A separate motion must be filed to value such collateral for such purpose.

22. [14-14193](#)-A-13 TINA MCCOMB MOTION TO MODIFY PLAN
DRJ-2 6-18-15 [[35](#)]
TINA MCCOMB/MV
DAVID JENKINS/Atty. for dbt.

Final Ruling

Motion: Modify 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. The court will grant the motion and approve the modification of the plan.

23. [11-15196](#)-A-13 TIM/CHRISTINA GARRISON MOTION TO DISMISS CASE
MHM-3 6-10-15 [[124](#)]
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
WITHDRAWN

Final Ruling

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

24. [14-13899](#)-A-13 MIGUEL FLOREZ MOTION TO MODIFY PLAN
TCS-2 6-6-15 [[58](#)]
MIGUEL FLOREZ/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Modify 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. The court will grant the motion and approve the modification of the plan.

25. [15-12091](#)-A-13 MARICELA NIEBLAS

CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
6-30-15 [[28](#)]

FRANCISCO ALDANA/Atty. for dbt.

Final Ruling

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

26. [15-12685](#)-A-13 JAMES CULVER
PBB-1
JAMES CULVER/MV
PETER BUNTING/Atty. for dbt.
OST, ECF NO. 22

MOTION TO EXTEND AUTOMATIC STAY
7-17-15 [[11](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

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

Order: Prepared by moving party consistent with the ruling 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.*

Thirty days after the filing of the petition in this case is August 3, 2015. The notice and the hearing are timely.

The holder of the second deed of trust, ExpressLoan.com, has filed an opposition and amended opposition to the motion. The crux of the opposition is that the motion does not present evidence of a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case. The opposition points out how the debtor "merely admits that he perjured himself in the prior case but seeks absolution as he's now ready to tell the truth."

The court has reviewed the motion, declaration and opposition. The court finds that the filing of the later case is in good faith as to the creditors to be stayed. The debtor has admitted his mistake in the prior case in failing to disclose debt and paying that debt outside the bankruptcy process. The court reads the debtor's declaration as a good faith effort to resolve the debtor's missteps in the prior case. Further, the present case attempts to pay all unsecured creditors 100% of their claims as well as a car loan and Franchise Tax Board debts.

The debtor has also shown a significant change in circumstance that remains undisputed by the respondent. The Franchise Tax Board debt in the prior case was \$64,000. Although the FTB has not filed a claim yet in this case, the debtor represents that his actual liability has changed as he prepared his returns. The actual liability appears to be far less and is approximately \$8,828.15 (see Classes 2 and 5 of the plan).

However, the court will accept the creditor's suggestion to condition the continuation of the stay on the debtor's timely tender of all post-petition mortgage payments to the respondent (but not to the senior lienholder). If payment is not timely made to the respondent on the mortgage debt secured by the debtor's real property located at 852 Beauregard Lane, Clovis, CA, then the automatic stay shall terminate as to those creditors. The motion will be otherwise granted except as to any creditor without proper notice of this motion.

27. [15-12638](#)-A-13 RICKY/TAMERA RICE
PWG-1
RICKY RICE/MV
PHILLIP GILLET/Atty. for dbt.
OST 7/20/15

MOTION TO EXTEND AUTOMATIC STAY
7-16-15 [[18](#)]

No tentative ruling

28. [15-12639](#)-A-13 DAVID/MONICA GARZA
PWG-1
DAVID GARZA/MV
PHILLIP GILLET/Atty. for dbt.
OST 7/20/15

MOTION TO EXTEND AUTOMATIC STAY
7-16-15 [[19](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied for insufficient service

Order: Civil minute order

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.*

The proof of service for the motion, at ECF No. 24, states as follows: "A true and correct copy of the following document(s) . . . [Notice of hearing, motion, declaration in support, memorandum in support] was (were) mailed by first class U.S. mail or emailed to all persons in interest at the addresses and date set forth below, unless otherwise noted." The proof is signed under penalty of perjury.

However, the date of execution for the proof is July 15, 2015, and a further Certificate of Service by BAE Systems shows that notice by first class mail was sent on July 16, 2015. The BAE System's Certificate of Service was also signed under penalty of perjury. The proof of service's past tense statement made as of July 15, 2015 that the identified documents were mailed by first class mail predates and is inconsistent with the actual date of mailing shown on BAE System's certificate of service, which is 1 day later. It is impossible for the proof of service to be true if the actual date of mailing shown on BAE System's Certificate of Service is correct. The proof of service is internally inconsistent and facially invalid.

