

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: AUGUST 12, 2015
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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. [14-14703](#)-A-13 BEATRICE PENA
TCS-1
BEATRICE PENA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO INCUR DEBT
7-14-15 [[20](#)]

Final Ruling

Motion: Approve New Debt [New Student Loan]

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

Disposition: Granted

Order: Prepared by moving party

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

The debtor seeks to incur new debt to finance her education. The student loans are proposed to be paid after the debtor's education is complete and after a deferment period. Although it is unclear what date payments on the loan will begin, the payments will not begin for at least three semesters plus a deferment period of unknown duration.

2. [15-12203](#)-A-13 WILLIAM SEUELL
JLH-1
VALLEY OAK CREDIT UNION/MV
SCOTT LYONS/Atty. for dbt.
JOSEPH HORSWILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-22-15 [[21](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2008 Can-Am A18U Spyder GS

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "Where the property is declining in value or accruing interest and taxes eat up

the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

Here, stay relief is warranted for cause based on the debtor's failure to maintain insurance on the collateral. § 362(d)(1). In addition, the collateral is not included in the proposed plan, so the court finds that the collateral is not necessary to an effective reorganization. And the debtor has no equity in the collateral. Stay relief is warranted under § 362(d)(2) as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [11-60404](#)-A-13 FRANCIS/HARRIET SCHOTT MOTION TO SELL
JDR-2 7-2-15 [[52](#)]
FRANCIS SCHOTT/MV
JEFFREY ROWE/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received sufficient notice. Notice of a proposed sale other than in the ordinary course of business must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(2).

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing 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. The copy of the master mailing 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.

4. [11-60105](#)-A-13 PORFIRIO/SANDRA GARZA MOTION TO DISMISS CASE
MHM-1 6-11-15 [[50](#)]
MICHAEL MEYER/MV
GEOFFREY ADALIAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [15-11912](#)-A-13 ZAYDEE SANCHEZ MOTION TO CONFIRM PLAN
TOG-3 6-13-15 [[22](#)]
ZAYDEE SANCHEZ/MV
THOMAS GILLIS/Atty. for dbt.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

6. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON
DRJ-2
LARRY ANDERSON/MV
M. ENMARK/Atty. for dbt.
DISMISSED 2/20/15
- CONTINUED HEARING RE: MOTION TO
MODIFY PLAN
6-9-15 [[137](#)]

No tentative ruling.

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

No tentative ruling.

8. [12-10416](#)-A-13 ALEX HERRERA
MHM-1
MICHAEL MEYER/MV
RANDY RISNER/Atty. for dbt.
WITHDRAWN
- MOTION TO DISMISS CASE
6-15-15 [[52](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [11-14917](#)-A-13 LARRY/DIANA LOGUE
CJO-1
GREEN TREE SERVICING LLC/MV
- CONTINUED MOTION FOR CONSENT TO
ENTER INTO LOAN MODIFICATION
AGREEMENT
6-8-15 [[130](#)]
- M. ENMARK/Atty. for dbt.
CHRISTINA O/Atty. for mv.

Final Ruling

The parties have resolved the matter by stipulation and an order has been entered granting the motion. The matter will be dropped from calendar.

10. [14-13418](#)-A-13 ROBERT/LUCERO BISHOP
MHM-5
MICHAEL MEYER/MV
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
7-17-15 [[91](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors. This case was filed on July 7, 2014. A plan has not yet been confirmed.

On January 27, 2015, the court sustained the trustee's objection to confirmation. The court further ordered that a chapter 13 plan must be confirmed no later than the first hearing date available after the 120-day period that commenced on the date of that hearing on January 22, 2015. The date that 120-days after the January 22, 2015, hearing is May 22, 2015. The first hearing date available after such date was May 28, 2015.

The court notes that no motion to confirm a plan appears on its docket between January 22, 2015 and May 28, 2015. A motion to confirm a plan was filed on Jun 9, 2015. That motion was denied. Cause exists under § 1307(c) (1) to dismiss the case for unreasonable delay by the debtor that is prejudicial to creditors.

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 trustee's motion to dismiss this chapter 13 case has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

11. [14-15720](#)-A-13 RAFAEL CERVANTES
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO DISMISS CASE
6-19-15 [[38](#)]

Final Ruling

Motion: Dismiss Case

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 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$531.

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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$531. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

12. [12-17922](#)-A-13 JUAN HERNANDEZ AND ANITA MOTION FOR RELIEF FROM
KAZ-1 MIGUEL AUTOMATIC STAY
U.S. BANK NA/MV 6-26-15 [[59](#)]
THOMAS GILLIS/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party (see specific instructions below)

Subject: 4933 Hamilton Street, Sacramento, CA

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party.

Subsection (d)(4) of § 362 allows a creditor having a claim secured by real property relief from stay "of an act against real property . . . if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme may involve either (i) unauthorized transfer of an interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such real property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The loan documents attached as exhibits show Ronald Guerra as the borrower. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedules A or D. In short, the court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the deed is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

The court will grant the motion in part and deny the motion in part. The order shall state as follows: "To the extent that the property may be property of the estate affected by the debtor's bankruptcy, relief from stay under § 362(d)(1) is granted. The request for relief under § 362(d)(4) is denied." No other relief will be awarded, and the order shall not state the debtor was part of a scheme to delay, hinder or defraud creditors.

13. [11-19929](#)-A-13 JOHN/NORMA PINEDO MOTION TO DISMISS CASE
MHM-5 6-11-15 [[112](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [13-13732](#)-A-13 REGINOLD MATHEWS MOTION TO DISMISS CASE
MHM-1 6-15-15 [[21](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [12-60233](#)-A-13 TREVOR HOOD MOTION TO DISMISS CASE
MHM-1 6-15-15 [[33](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [13-17533](#)-A-13 ALEX/PRISCILLA PANG MOTION TO DISMISS CASE
MHM-4 6-23-15 [[66](#)]
ALEX PANG/MV
JERRY LOWE/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4498.

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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$4498. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

17. [13-17835](#)-A-13 GERALD/SANDRA CARTER MOTION TO MODIFY PLAN
SL-1 6-30-15 [[27](#)]
GERALD CARTER/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any

disputed issues appropriate for resolution at the initial hearing, or
(2) treat the initial hearing as a status conference and schedule an
evidentiary hearing to resolve disputed, material factual issues or
schedule a further hearing after additional briefing on any disputed
legal issues.

18. [15-10135](#)-A-13 SERGIO/IRMA PIZARRO MOTION TO DISMISS CASE
MHM-1 6-26-15 [[34](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

19. [15-10935](#)-A-13 JOSEPH DIAZ MOTION TO DISMISS CASE
MHM-2 6-19-15 [[97](#)]
MICHAEL MEYER/MV
MATIN RAJABOV/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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 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).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a
delinquency in payments under the debtor's proposed chapter 13 plan.
For the reasons stated in the motion, cause exists under § 1307(c)(1),
(c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the
proposed plan are delinquent in the amount of \$1788.89.

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 trustee's motion to dismiss this chapter 13 case has been
presented to the court. Having entered the default of respondent

debtor 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 because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

20. [15-10639](#)-A-13 RACHEL RIVERA CONTINUED MOTION TO CONFIRM
TCS-2 PLAN
RACHEL RIVERA/MV 5-4-15 [[23](#)]
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

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.

21. [10-61240](#)-A-13 JOE/PHYLLIS MANCEBO MOTION TO MODIFY PLAN
PBB-3 6-24-15 [[60](#)]
JOE MANCEBO/MV
PETER BUNTING/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.

22. [14-10840](#)-A-13 SAMUEL/ISABEL CRUTCHFIELD AMENDED OBJECTION TO CLAIM OF
WSC-5 ROBERT URANTIA, CLAIM NUMBER 12
SAMUEL CRUTCHFIELD/MV 6-29-15 [[72](#)]
WILLIAM COLLIER/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim No. 12 as Duplicate 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 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).

The objection asserts that Claim No. 12 is a duplicate claim. The claim asserts the same type of obligation in the same amount as another claim, Claim No. 11 that the claimant has filed against the same debtor. Further, the objection represents that only one judgment is held by the claimant on a labor-related claims. The court will sustain the objection and disallow the duplicate claim. The duplicate claim will be disallowed and expunged in its entirety. The claimant shall retain only one claim incorporating the entire obligation owed to the claimant.

23. [11-19742](#)-A-13 FRANCISCO/MICHELLE MOTION TO DISMISS CASE
MHM-1 SERRANO 6-11-15 [[40](#)]
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

24. [14-15245](#)-A-13 MICHAEL CASE
RAH-1
LAURIE BLACK/MV

RESCHEDULED PRE-TRIAL
CONFERENCE RE: OBJECTION TO
CONFIRMATION OF PLAN BY LAURIE
D. BLACK
12-23-14 [[23](#)]

HENRY NUNEZ/Atty. for dbt.
RICHARD HARRIS/Atty. for mv.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [15-11845](#)-A-13 ROBERT DOUGLAS
JBG-2
ROBERT DOUGLAS/MV

MOTION TO VALUE COLLATERAL OF
GREENLIGHT FINANCIAL SERVICES/
NATIONSTAR MORTGAGE LLC
7-10-15 [[40](#)]

JAMES BEIRNE/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: Written opposition filed by the responding party

Disposition: Continued to September 10, 2015, at 9:00 a.m.

Order: Civil minute order

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

If the parties have not resolved this matter, then the court will hold a scheduling conference on the continued date of the hearing and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

26. [14-11059](#)-A-13 JORGE VELAZQUEZ-JARACUARO OBJECTION TO CLAIM OF INTERNAL
ALG-3 AND ADRIANA OROPEZA REVENUE SERVICE, CLAIM NUMBER
JORGE VELAZQUEZ-JARACUARO/MV 10
6-26-15 [[80](#)]
JANINE ESQUIVEL/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim of IRS

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

Disposition: Denied without prejudice

Order: Civil minute order

On February 23, 2015, the IRS filed a notice of tax liability for tax year 2013, in the amount of \$4053.00. The reasons for the liability included cancellation-of-debt income, disputed Earned Income Credit calculations, and disputed income by one of the joint debtors. The IRS filed a proof of claim on April 6, 2015 showing a tax liability of \$4098 for 2013.

After debtors amended their tax return for 2013, which reflected an amount owing of \$1076, the IRS amended its claim on May 12, 2015 to reflect the amount listed on Debtors amended tax return.

The debtors object to this amended claim no. 10 filed by the Internal Revenue Service (IRS). However, the debtors assert this amended return was prepared incorrectly. The debtors state that they have amended their return again, and this amended return shows that debtors overpaid their taxes by \$5339 and owe the IRS nothing for the 2013 tax year. The debtors argue that the prior amended return did not properly account for the debtors' insolvency when cancellation of debt occurred and did not adequately provide for the Earned Income Tax Credit to which the debtors were entitled.

Without an expert opinion, the court cannot conclude that the debtors do not owe \$1076 to the IRS. Fed. R. Evid. 702. The court finds that the debtors are improperly offering factual opinions that are based on technical or other specialized knowledge within the scope of Fed. R. Evid. 702. Fed. R. Evid. 701, 702.

Even if the court were to accept as true that the debtors' cancellation-of-debt income and Earned Income Credits are as the debtors state, the court cannot without expert testimony reach any conclusion about how those factors affect the debtors' overall tax liability for 2013. There are multiple factors that affect a person's tax liability, and a change in one factor by a given amount may or may not affect the overall tax liability by the exact same amount.

27. [14-12359](#)-A-13 ANDRES/BILLIE SALAZAR MOTION TO DISMISS CASE
MHM-1 6-15-15 [[21](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [14-12359](#)-A-13 ANDRES/BILLIE SALAZAR MOTION TO MODIFY PLAN
TCS-1 7-7-15 [[26](#)]
ANDRES SALAZAR/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.

29. [14-13168](#)-A-13 ERIC/CHRISTINA PIERSON MOTION TO DISMISS CASE
MHM-2 6-15-15 [[70](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3191.02.

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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$3191.02. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

30. [11-62172](#)-A-13 RUBEN/NORA GONZALEZ MOTION TO DISMISS CASE
MHM-2 6-11-15 [[53](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

31. [15-12174](#)-A-13 VICTOR/EVILA NAJERA MOTION TO CONVERT CASE FROM
AOE-2 CHAPTER 13 TO CHAPTER 12
VICTOR NAJERA/MV 7-13-15 [[30](#)]
ANTHONY EGBASE/Atty. for dbt.

Tentative Ruling

Motion: Convert Case from Chapter 13 to Chapter 12

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

Disposition: Continued to September 16, 2015, at 9:00 a.m.

Order: Civil minute order if appropriate

Rule 9013 requires service on the trustee and the entities that the court directs. The trustee and the U.S. Trustee have not been served with the motion. The motion is continued to allow service on the trustee and the U.S. Trustee no later than September 19, 2015. In addition, a notice of continued hearing, using the notice procedure of LBR 9014-1(f)(1), shall be filed no later than September 19, 2015.

32. [13-15375](#)-A-13 ROSEMARY GARCIA CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 4-7-15 [[40](#)]
FRANK RUGGIER/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

33. [13-15375](#)-A-13 ROSEMARY GARCIA MOTION TO MODIFY PLAN
PLG-2 7-8-15 [[74](#)]
ROSEMARY GARCIA/MV
FRANK RUGGIER/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.

34. [11-11178](#)-A-13 ISRAEL/NENITA GADDI CONTINUED MOTION FOR HARDSHIP
FJG-1 DISCHARGE
ISRAEL GADDI/MV 5-30-15 [[56](#)]
F. GIST/Atty. for dbt.

No tentative ruling.

35. [11-11178](#)-A-13 ISRAEL/NENITA GADDI CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 4-8-15 [[39](#)]
F. GIST/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

36. [14-15882](#)-A-13 DELIA GALLARDO MOTION TO DISMISS CASE
MHM-1 6-19-15 [[30](#)]
MICHAEL MEYER/MV
JEFFREY ROWE/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [11-13783](#)-A-13 KATHLEEN LA SALLE OPPOSITION TO NOTICE OF INTENT
TO PAY ADDITIONAL CLAIM
6-26-15 [[91](#)]
ADRIAN WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Notice of Intention to Pay Additional Claim
filed by Chapter 13 Trustee

Notice: Notice of Intention to Pay Additional Claim and Opposition to
Such Notice

Disposition: Continued to October 1, 2015, at 9:00 a.m.

Order: Civil minute order

OPPOSITION TO TRUSTEE'S NOTICE OF INTENTION TO PAY ADDITIONAL CLAIM

The chapter 13 trustee filed a notice of intention to pay additional
claim filed by Candica LLC as Claim No. 3. It appears from the
trustee's reply that the claim objected to is in fact Claim No. 22 in
this case. On July 29, 2015, a transfer of claim was filed at ECF No.
96. The transferor is Candica, LLC and the transferee is Vanda, LLC.
The claim transferred is claim no. 22 in the amount of \$3690.33.

The debtor objects to the notice of intention on the ground that the

claim should be disallowed because it fails to describe or establish the basis of the debt. The debtor further explains that she has no objection if the claim is based on a scheduled debt owed to Capital One or if Candica is a representative of Capital One.

PROCEDURAL PROBLEMS

The trustee and Vanda LLC have both filed replies. Both parties raise the same procedural counter objection to the debtor's opposition. The trustee and Vanda argue that the claim is allowed and valid unless and until a party in interest objects. See 11 U.S.C. § 501(a). They are correct.

Procedurally, the debtor's attempt to object to Claim No. 22 in an opposition to a notice of intention to pay an additional claim is improper. Federal Rule of Bankruptcy Procedure 3007 describes the procedures for objecting to proofs of claim. (LBR 3007-1 also contains further procedures governing claim objections.) These procedures should be followed for claim objections, and the court will not deem the opposition to the notice of intention as a "claim objection," especially since the claimant has raised the procedural problem.

CIVIL MINUTE ORDER

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

The debtor's opposition to the trustee's notice of intention to pay an additional claim has been presented to the court. Given the procedural deficiencies noted by the court in its ruling in determining the allowance of a claim in the absence of a formal claim objection,

IT IS ORDERED that the hearing on this matter is continued to October 1, 2015, at 9:00 a.m. to allow the debtor to file an objection to Claim No. 22 currently held by Vanda, LLC.

38. [15-11284](#)-A-13 ORA HOWARD
MHM-1
MICHAEL MEYER/MV
JANINE ESQUIVEL/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
6-26-15 [[45](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

39. [11-18789](#)-A-13 DAVID/BONNIE WHITEHEAD MOTION TO DISMISS CASE
MHM-1 6-11-15 [[31](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

40. [15-12996](#)-A-13 NIGEL MARIN MOTION TO EXTEND AUTOMATIC STAY
7-29-15 [[9](#)]
NIGEL MARIN/MV
NIGEL MARIN/Atty. for mv.

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: 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). 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).

Extension of the Stay

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *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.

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.

Debtor's motion to extend stay has been presented to the court.
Having entered the default of respondent creditors 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 except as to any creditor who
did not receive notice of the motion.

41. [10-62657](#)-A-13 RICK/SHAWN LOPEZ
MHM-3
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

CONTINUED MOTION TO DISMISS
CASE
6-19-15 [[96](#)]

No tentative ruling.