

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

WEDNESDAY

DECEMBER 4, 2013

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [10-62600](#)-A-13 SIXTO/SUSANA ZANUDO
CJO-1
JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
M. ENMARK/Atty. for dbt.
CHRISTINA O/Atty. for mv.
NON-OPPOSITION
MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
11-4-13 [[47](#)]

Final Ruling

Motion: Loan Modification Approval

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

2. [13-14205](#)-A-13 EDDIE NOLEN
HDN-1
EDDIE NOLEN/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING
CONTINUED MOTION TO VALUE
COLLATERAL OF OCWEN LOAN
SERVICING LLC
9-10-13 [[18](#)]

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f)(2) for continued date of the hearing; written comments filed by Chapter 13 trustee in advance of initial hearing

Disposition: Granted

Order: Prepared by the moving party

Collateral Value: \$130,000.00

Senior Liens: \$139,646.35

The motion seeks to value the debtor's "personal residence" located at 501 Morton Avenue, Sanger, California. The court interprets "personal residence" to mean "principal residence."

The legal standards for valuing a principal residence are set forth in the court's civil minutes from the initial hearing on this matter dated November 7, 2013. Based on the supporting declarations filed by the debtor, counsel and an appraiser, the court finds that the value of the debtor's real property is the amount set forth above and such value is less than the amount owed to the holder of the first deed of trust. 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).

3. [13-17106](#)-A-13 DAVID/ROSE MURRAY CONTINUED MOTION TO USE CASH
BCS-1 COLLATERAL
DAVID MURRAY/MV
11-1-13 [7]
BENJAMIN SHEIN/Atty. for dbt.

No tentative ruling.

4. [12-18407](#)-A-13 MICHAEL ELLIS AND JULIE MOTION TO MODIFY PLAN
PBB-2 GOORABIAN-ELLIS 10-30-13 [[46](#)]
MICHAEL ELLIS/MV
PETER BUNTING/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.

5. [08-13509](#)-A-13 PORFIDIO/MARTINA DELGADO HEARING ON NOTICE OF DEFAULT
AND MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
10-10-13 [[59](#)]

PETER FEAR/Atty. for dbt.
WITHDRAWN 12/2/13

Final Ruling

The hearing on notice of default withdrawn, the matter is dropped as moot.

6. [13-13817](#)-A-13 BEATRICE HINSON CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
8-23-13 [[28](#)]

NELLIE AGUILAR/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

The motion to value collateral granted and the order signed, the motion is denied.

7. [13-16326](#)-A-13 ANA SANTOS OBJECTION TO CONFIRMATION OF
MRG-1 PLAN BY DEUTSCHE BANK NATIONAL
DEUTSCHE BANK NATIONAL TRUST TRUST COMPANY
COMPANY/MV 10-30-13 [[16](#)]
MICHAEL GONZALES/Atty. for mv.
CASE DISMISSED

Final Ruling

The case dismissed, the objection is dropped as moot.

8. [13-13231](#)-A-13 LAURA PASLEY
TCS-5
LAURA PASLEY/MV
11-13-13 [[38](#)]
NANCY KLEPAC/Atty. for dbt.

MOTION TO VACATE DISMISSAL OF
CASE

Final Ruling

Motion: Vacate Dismissal

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion is unsupported by a Certificate of Service. LBR 9014-1(e).
As a result, it is denied without prejudice.

9. [13-16237](#)-A-13 JOSEFINA HURTADO

HERITAGE BANK OF COMMERCE/MV

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

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

Tentative Ruling

Objection: Confirmation of Chapter 13 Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required
Plan: Chapter 13 Plan, filed October 3, 2013, ECF No. 9

Disposition: Sustained, 75 day Order imposed

Order: Civil minute order

ON THE MERITS

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).

Failure to Schedule Commercial Property

A Chapter 13 plan cannot be confirmed unless and until the debtor has complied with all applicable provisions of Title 11 of the United States Code. 11 U.S.C. § 1325(a)(1). Section 521(a)(1)(B)(i) requires the debtor to accurately schedule all assets.

Josefina Hurtado has not done so. She has failed to include on Schedule A the commercial property to which secured creditor Heritage Bank of Commerce refers. See, Schedule A, filed October 3, 2013, ECF No. 11. But the property is referred to in Schedule D. Schedule D, filed October 3, 2013, ECF No. 11. Until she does so the plan cannot be confirmed.

Objections to Use of Form Plan

Secured creditor Heritage Commerce Bank has also objected to boilerplate provisions of the form plan. See, Objection, Parts III-IV, filed November 12, 2013, ECF No. 27. This objection will be overruled. Use of the form plan is, in most instances, obligatory. LBR 3015-1(a). And inapplicable portions, such as § 2.08(b)(4) in this case, are inapplicable to the parties in this case.

Interest Rate

Secured creditor Heritage Commerce Bank also objected to the inclusion of a 0% interest rate on the arrears. Compare, Chapter 13 Plan § 2.08, filed October 3, 2013, ECF No. 9, with Objection, Parts II, filed November 12, 2013, ECF No. 27. Had the plan been otherwise confirmable, the court would schedule an evidentiary hearing on entitlement to interest and the applicable rate. But the plan otherwise not confirmable, the court will not do so.

75 DAY ORDER

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

VIOLATION OF LOCAL RULES

Motions and objections to confirmation of Chapter 13 plans must be designated by a docket control number. LBR 9014-1(c), 3015-1(c)(4). In this case, counsel for secured creditor Heritage Commerce Bank has failed to include such a number. Future violations of local rules may result in summary denial of relief or sanctions against counsel.

10. 13-11639 -A-13 ALFRED/DORA CANALES PBB-2 ALFRED CANALES/MV PETER BUNTING/Atty. for dbt.	OBJECTION TO CLAIM OF AMERICAN EXPRESS BANK, FSB, CLAIM NUMBER 9 10-2-13 [36]
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Final Ruling

Objection: Objection to Proof of Claim No. 9

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). 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).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since March 2007. Thus, no payment has been made within the last four years before the filing of the petition on March 12, 2013. The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337.

11. [13-11639](#)-A-13 ALFRED/DORA CANALES
PBB-3
ALFRED CANALES/MV

OBJECTION TO CLAIM OF AMERICAN
EXPRESS BANK, FSB, CLAIM NUMBER
12
10-2-13 [[41](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Objection: Objection to Proof of Claim No. 12

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). 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).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since January 2008. Thus, no payment has been made within the last four years before the filing of the petition on March 12, 2013. The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337.

- ## Final Ruling

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

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. *See In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since December 2006. Thus, no payment has been made within the last four years before the filing of the petition on March 12, 2013. The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337.

13. [13-11639](#)-A-13 ALFRED/DORA CANALES
PBB-5
ALFRED CANALES/MV
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF LVNV
FUNDING LLC, CLAIM NUMBER 14
10-2-13 [[51](#)]

Final Ruling

Objection: Objection to Proof of Claim No. 14

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). 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).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since November 2005. Thus, no payment has been made within the last four years before the filing of the petition on March 12, 2013. The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337.

14. [13-11639](#)-A-13 ALFRED/DORA CANALES
PBB-6
ALFRED CANALES/MV
PETER BUNTING/Atty. for dbt.
- OBJECTION TO CLAIM OF LVNV
FUNDING LLC, CLAIM NUMBER 15
10-2-13 [[56](#)]

Final Ruling

Objection: Objection to Proof of Claim No. 15

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). 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).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since November 2006. Thus, no payment has been made within the last four years before the filing of the petition on March 12, 2013. The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337.

15. [13-11639](#)-A-13 ALFRED/DORA CANALES
PBB-7
ALFRED CANALES/MV
PETER BUNTING/Atty. for dbt.
- OBJECTION TO CLAIM OF LVNV
FUNDING LLC, CLAIM NUMBER 16
10-2-13 [[61](#)]

Final Ruling

Objection: Objection to Proof of Claim No. 16

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). 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).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since March 2007. Thus, no payment has been made within the last four years before the filing of the petition on March 12, 2013. The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337.

16. 13-11639 -A-13 ALFRED/DORA CANALES PBB-8 ALFRED CANALES/MV PETER BUNTING/Atty. for dbt.	OBJECTION TO CLAIM OF FRESNO CREDIT BUREAU FOR ALLIED WASTE SERVICES, CLAIM NUMBER 8 10-2-13 [66]
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Final Ruling

Objection: Objection to Proof of Claim No. 8

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). 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).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be

allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since June 2007. Thus, no payment has been made within the last four years before the filing of the petition on March 12, 2013. The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337.

17. [13-17239](#)-A-13 KEVIN/MICHELLE FOX
DRJ-2
KEVIN FOX/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
11-13-13 [[8](#)]

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

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. 11 U.S.C. § 362(c)(3)(B) (*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. *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 and that the automatic stay should be extended. The motion will be granted except as to any creditor without proper notice of this motion.

18. [13-15146](#)-A-13 BARBARA BRYAN
JDW-2
BARBARA BRYAN/MV

MOTION TO VALUE COLLATERAL OF
EDUCATIONAL EMPLOYEES CREDIT
UNION
10-23-13 [[28](#)]

JOEL WINTER/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Prepared by the moving party

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

19. [13-14750](#)-A-13 RICARDO/MELANIE ARROYO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-12-13 [[30](#)]

GARY HUSS/Atty. for dbt.

Final Ruling

An order has been entered dismissing the case. The matter will be dropped from calendar as moot.

20. [12-10166](#)-A-13 CATALINA MENDOZA
TOG-6
CATALINA MENDOZA/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO APPROVE LOAN
MODIFICATION
10-16-13 [[31](#)]

Final Ruling

Motion: Loan Modification Approval

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

21. [09-10369](#)-A-13 SEAN/PATRICIA ESPINOLA
PBB-2
SEAN ESPINOLA/MV

MOTION TO SELL AND/OR MOTION
FOR PAYMENT OF FEES AND COSTS
OF SALE
11-8-13 [[52](#)]

PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party pursuant to instructions below

Property: 3041 Pinot Noir Place, Atwater, CA

Buyer: Alejandro Jimenez

Sale Price: \$165,000.00

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

SALE OF PROPERTY

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); see also *In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990). Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. §§ 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

COMMISSION AND COSTS

The court approves the commission and title insurance costs to be paid as part of the sale. The court further approves the property and transfer taxes that must be paid for the sale to close.

However, the moving party should clearly identify the person or entity receiving the commission in the notice of hearing. The order shall identify the person receiving the commission.

EXHIBITS NOT COMPLIANT WITH LOCAL RULES

The exhibits do not comply with the court's Local Bankruptcy Rules and paragraph (6) of the Revised Guidelines for the Preparation of Documents applicable in the Eastern District of California. See LBR 9004-1(a). The exhibits were not filed as an exhibit document separate from the motion to which they relate. In addition, an exhibit index has not been filed, the exhibits are not properly numbered and identified at the bottom, and they are not appropriately titled.

22.	13-11576 -A-13 BENITO/MARTHA GALARZA TOG-2 BENITO GALARZA/MV THOMAS GILLIS/Atty. for dbt. RESPONSIVE PLEADING	MOTION TO CONFIRM PLAN 10-16-13 [98]
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Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: First Amended Chapter 13 Plan, filed October 16, 2013, ECF No. 101

Disposition: Denied

Order: Civil minute order

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994).

MERITS

The debtor moves to confirm the First Amended Chapter 13 Plan, filed October 16, 2013, ECF No. 101. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and otherwise comply with the plan. Payments made under the proposed plan should total \$8,785.00; debtors have only made \$7,255.00. As a result, the plan is not feasible and confirmation is denied.

75 DAY ORDER

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

23. [13-15181](#)-A-13 LINDSAY LEMONS
SL-2
LINDSAY LEMONS/MV
SCOTT LYONS/Atty. for dbt.

OBJECTION TO CLAIM OF WAYNE
STORMS, CLAIM NUMBER 1
10-24-13 [[44](#)]

Tentative Ruling

Objection: Objection to Claim No. 1 of Wayne Storms

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

Disposition: Continued for evidentiary hearing

Order: Civil minute order

At the hearing on the matter, the court will hold a scheduling conference and set an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because disputed, material factual issues must be resolved before the court can rule on the relief requested. The court identifies the following disputed, material factual issues: (1) whether the debtor is liable to the claimant based on all claims the claimant has against the debtor, and (2) what the liquidated amount of the debtor's total liability to the claimant is.

Before the hearing, the parties shall attempt to meet and confer to determine: (i) whether the court has fully and fairly described the evidentiary issues requiring resolution; (ii) whether any party wishes

to engage in discovery prior to the evidentiary hearing and the time necessary to complete discovery; (iii) the deadlines for any dispositive motions or evidentiary motions; (iv) the dates for the evidentiary hearing and the trial time that will be required; (v) whether the parties wish to use or waive the provisions of Local Bankruptcy Rule 9017-1; and (vi) any other such matters as may be necessary or expedient to the resolution of these issues.

24. [11-16784](#)-A-13 MICHAEL/ANGELICA FALCON MOTION TO APPROVE LOAN
MODIFICATION
BANK OF AMERICA, N.A./MV 10-23-13 [[69](#)]
ADRIAN WILLIAMS/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

Tentative Ruling

Motion: Loan Modification Approval

Notice: LBR 9014-1(f)(2); 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).

LOAN MODIFICATION

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

PROCEDURAL DEFICIENCIES

The moving party has not complied with several procedural requirements in bringing this motion. First, the amended notice of hearing fails to state the relief requested and refers to a stay relief motion rather than a loan modification agreement. Because the original notice of hearing correctly describes the relief requested, the court will waive this procedural deficiency.

Second, the motion does not contain a docket control number as required by Local Bankruptcy Rule 9014-1(c). Failure to use a docket control number in the future may be grounds for sanctions described in

Local Bankruptcy Rule 1001-1(g).

Third, the motion does not contain any of the grounds supporting the relief requested. See Fed. R. Bankr. P. 9013 (requiring motion to state with particularity the grounds for the motion). It should at a minimum contain a summary of what effect the loan modification agreement has on the interest rate, principal balance, maturity date, and other material terms of the loan.

Fourth, the exhibits do not comply with the court's Local Bankruptcy Rules and paragraph (6) of the Revised Guidelines for the Preparation of Documents applicable in the Eastern District of California. See LBR 9004-1(a). An exhibit index has not been filed, the exhibits are not properly numbered and identified at the bottom, and they are not appropriately titled.

25.	13-14592 -A-13 JESUS CASTELLANO AND JDW-1 ANGIE VEGA JESUS CASTELLANO/MV JOEL WINTER/Atty. for dbt.	MOTION TO VALUE COLLATERAL OF WELLS FARGO FINANCIAL 10-28-13 [68]
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Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

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). Value is defined as "replacement value" on the date of the petition, which means 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.* § 506(a)(2). The costs of sale or marketing may not be deducted. *Id.*

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.*

The ability to value a secured claim for property other than a motor

vehicle is limited to debts incurred more than one year prior to the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the motion requests that the court value collateral consisting of non-vehicular personal property. 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).

Further, the description of the property is too vague. The motion and notice of hearing should more specifically identify the collateral being valued. Similarly, the content of the notice of hearing should more accurately describe the relief being sought.

26. [13-14592](#)-A-13 JESUS CASTELLANO AND MOTION TO VALUE COLLATERAL OF
JDW-2 ANGIE VEGA PACIFIC SERVICES CREDIT UNION
JESUS CASTELLANO/MV 10-28-13 [[73](#)]
JOEL WINTER/Atty. for dbt.
NON-OPPOSITION

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Prepared by moving party

Collateral Value: \$14,515.00

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

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 responding party has filed a non-opposition and agreed to accept the debtor's valuation of the vehicle and allow its secured claim to be reduced to the value of the collateral.

27. [13-14592](#)-A-13 JESUS CASTELLANO AND MOTION TO CONFIRM PLAN
JDW-3 ANGIE VEGA 10-16-13 [[56](#)]
JESUS CASTELLANO/MV
JOEL WINTER/Atty. for dbt.
RESPONSIVE PLEADING

[This matter will be called no earlier than 9:15 a.m. to coincide with the Chapter 13 trustee's motion to dismiss, item no. 6.]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: Chapter 13 Plan, filed October 2, 2013, ECF No. 39

Disposition: Denied, 75 Day Order imposed

Order: Civil minute order

MERITS

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994).

The debtor moves to confirm the Chapter 13 Plan, filed October 2, 2013, ECF No. 39. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

Not Sustained Burden of Proof

The debtor has the burden of proof as to each element of Section 1325(a). *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The debtor has failed to file a declaration demonstrating each element of that section.

Section 1325(a)(6): Not Feasible

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and otherwise comply with the plan. The debtors's most recent Schedule I was filed June 30, which is too remote in time to support confirmation.

Inadequate Instructions to the Chapter 13 trustee

Debtors in the Eastern District of California must utilize Form EDC 3-080 standard form Chapter 13 plan. LBR 3015-1(a). Under the terms of that the form plan, an attorney must opt-in or opt-out of the Chapter 13 flat fee. Chapter 13 Plan § 2.06, filed October 2, 2013, ECF No. 39. The debtor has not done so.

75 DAY ORDER

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

28. [12-18193](#)-A-13 JESUS/ELIAZAR GONZALEZ MOTION TO REFINANCE
RCP-3 11-5-13 [[64](#)]
JESUS GONZALEZ/MV
REYNALDO PULIDO/Atty. for dbt.

Tentative Ruling

Motion: Loan Modification Approval

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

Disposition: Granted unless the trustee opposes the motion

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). 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).

Assuming the trustee does not oppose the motion and consents to the modification, the court will grant the motion and authorize the debtor 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.

29. [13-15898](#)-A-13 WALTER/SHANNON OXBORROW MOTION TO CONFIRM PLAN
JRL-1 10-17-13 [[21](#)]
WALTER OXBORROW/MV
JERRY LOWE/Atty. for dbt.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: First Modified Chapter 13 Plan, filed October 17, 2013, ECF No. 20

Disposition: Denied

Order: Civil minute order

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994).

MERITS

A party moving to confirm the plan must serve the plan and motion to confirm on all creditors. Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). In this case, the debtor did not serve the following creditors: Department Stores National Bank/Macys; Antio, LLC; TD Bank USA, N.A.; CitiBank; KeyBank; and Union Bank. As a result, the plan cannot be confirmed.

75 DAY ORDER

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

30. [13-16198](#)-A-13 MARK/DELILAH TAYLOR MOTION TO VALUE COLLATERAL OF
JDP-1 U.S. BANK, N.A.
MARK TAYLOR/MV 10-29-13 [[20](#)]
CHRISTIAN YOUNGER/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Prepared by the moving party

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

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

31. [13-16198](#)-A-13 MARK/DELILAH TAYLOR
JDP-2
MARK TAYLOR/MV
CHRISTIAN YOUNGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
HERITAGE BANK OF COMMERCE
10-29-13 [[24](#)]

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Prepared by the moving party

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

The motion seeks to value real property collateral that is the moving party's principal residence. Because the amount owed to senior lienholders exceeds the value of the collateral, the responding party's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

32. [13-16198](#)-A-13 MARK/DELILAH TAYLOR
JDP-3
MARK TAYLOR/MV
CHRISTIAN YOUNGER/Atty. for dbt.

MOTION TO AVOID LIEN OF
STRATEGIC FUNDING SOURCE INC.
10-29-13 [[14](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

33. [09-10425](#)-A-13 JOSE/VERONICA GONZALEZ MOTION FOR ENTRY OF DISCHARGE
PBB-3 11-19-13 [[49](#)]
JOSE GONZALEZ/MV
PETER BUNTING/Atty. for dbt.

Tentative Ruling

Motion: Entry of Chapter 13 Discharge

Notice: LBR 9014-1(f)(2); written opposition filed by the Chapter 13 trustee

Disposition: Denied

Order: Civil minute order

The debtors have filed a motion for entry of discharge. The trustee agrees that the debtors have completed their plan payments as of July 29, 2013.

Discharge and case closure procedures in Chapter 13 have changed as of May 1, 2012. The motion will be denied because it does not follow the procedure for discharge under LBR 5009-1.

However, the new discharge process described in Local Bankruptcy Rule 5009-1 has been delayed because a Final Report and Account has not been submitted for the reasons explained by the trustee. Once the trustee has resolved the outstanding issues, it appears that a Final Report and Account will be submitted and then the Clerk will be able to issue a Notice of Intent to Enter Chapter 13 Discharge, Form EDC 5-300.

34. [09-10447](#)-A-13 MATTHEW/JOYCE WAGNER MOTION TO SELL
PBB-3 11-20-13 [[66](#)]
MATTHEW WAGNER/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Approve Private Sale of Real Property

Disposition: Denied without prejudice

Order: Civil minute order

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

The moving party elected the notice procedure under Local Bankruptcy Rule 9014-1(f)(2). This rule provides that "unless additional notice is required by the Federal Rules of Bankruptcy Procedure or these Local Rules, the moving party may file and serve the motion at least fourteen (14) days prior to the hearing date. LBR 9014-1(f)(2). Here, the Federal Rules of Bankruptcy Procedure do require additional notice.

In addition, the exhibits do not comply with the court's Local Bankruptcy Rules and paragraph (6) of the Revised Guidelines for the Preparation of Documents applicable in the Eastern District of California. See LBR 9004-1(a). The exhibits were not filed as an exhibit document separate from the motion to which they relate. In addition, an exhibit index has not been filed, the exhibits are not properly identified at the bottom, and they are not appropriately titled.

Finally, the notice of hearing should clearly state that the sale is subject to overbid at the hearing. While the prospect of overbidding may be inferred from the notice's last paragraph, the court prefers clear language indicating that the sale is subject to an overbid at the hearing.

9:15 a.m.

1. [13-13908](#)-A-13 FIDEL CAMACHO AND
MHM-2 GRACIELA RUVALCABA
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-1-13 [[82](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [13-16326](#)-A-13 ANA SANTOS
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 MAKE PLAN PAYMENTS ,
MOTION TO DISMISS CASE ,
MOTION/APPLICATION TO DISMISS
CASE FOR FAILURE TO PROVIDE TAX
DOCUMENTS
11-8-13 [[25](#)]

CASE DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

3. [13-15728](#)-A-13 WADE WILLIAMS
MHM-1
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
10-15-13 [[33](#)]

BRIAN HADDIX/Atty. for dbt.
RESPONSIVE PLEADING, MOTION
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [13-14738](#)-A-13 DIANA MADRID
MHM-4
MICHAEL MEYER/MV
ALLAN WILLIAMS/Atty. for dbt.
CASE DISMISSED

MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-1-13 [[43](#)]

Final Ruling

The case dismissed, the matter is dropped as moot.

5. [13-16274](#)-A-13 JOSEPH DESROSIERS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITOR, MOTION
TO DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS, MOTION TO
DISMISS CASE FOR FAILURE TO
PROVIDE TAX DOCUMENTS , MOTION
TO DISMISS CASE FOR FAILURE TO
FILE DOCUMENTS, MOTION TO
DISMISS CASE
11-8-13 [[26](#)]

No tentative ruling.

6. [13-14592](#)-A-13 JESUS CASTELLANO AND
MHM-1 ANGIE VEGA
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
9-17-13 [[31](#)]

JOEL WINTER/Atty. for dbt.
DEANNA HAZELTON/Atty. for mv.

No tentative ruling.

10:00 a.m.

1. [12-14304](#)-A-12 JOSE/MARIA MENDONCA
PLF-8
PETER FEAR/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF PETER L. FEAR FOR
PETER L. FEAR, DEBTOR'S
ATTORNEY(S), FEE: \$4797.50,
EXPENSES: \$351.20
11-6-13 [[126](#)]

PETER FEAR/Atty. for dbt.
NON-OPPOSITION

Final Ruling

Motion: Application for Compensation and Expenses
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Prepared by applicant

Applicant: Law Offices of Peter L. Fear
Compensation approved: \$4,797.50
Costs approved: \$351.20
Aggregate fees and costs approved: \$5,148.70
Retainer held: \$16,282.42
Amount to be paid as administrative expense: \$0.00

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

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 case and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure. The moving party is authorized to draw on any retainer held.