

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: THURSDAY**  
**DATE: JANUARY 11, 2018**  
**CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-14002](#)-A-13    **IN RE: ANTONIO LOZANO DE ANDA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-5-2017    [\[19\]](#)

MICHAEL MEYER/MV  
RICHARD STURDEVANT

**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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

**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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

2. [12-17603](#)-A-13     **IN RE: JOHN/KER VANG**  
[MHM-3](#)

MOTION TO DISMISS CASE  
12-11-2017   [[127](#)]

MICHAEL MEYER/MV  
PETER FEAR  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [17-14503](#)-A-13     **IN RE: JOEY/AUDREA ESTRADA**  
[DMG-1](#)

MOTION TO VALUE COLLATERAL OF NISSAN-INFINITY LT  
12-13-2017   [[18](#)]

JOEY ESTRADA/MV  
D. GARDNER

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

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

**VALUATION OF COLLATERAL**

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2013 Nissan Sentra. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$5000.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2013 Nissan Sentra has a value of \$5000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5000 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

4. [17-14503](#)-A-13 **IN RE: JOEY/AUDREA ESTRADA**  
[DMG-2](#)

MOTION TO VALUE COLLATERAL OF SAFE-1 CREDIT UNION  
12-13-2017 [[23](#)]

JOEY ESTRADA/MV  
D. GARDNER

#### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

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

#### **VALUATION OF COLLATERAL**

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2011 Nissan Armada. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$13,750.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2011 Nissan Armada has a value of \$13,750.

No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$13,750 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

5. [15-10004](#)-A-13    **IN RE: LARRY VALENCIA**  
[MHM-3](#)

MOTION TO DISMISS CASE  
11-29-2017    [[83](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [17-11605](#)-A-13    **IN RE: OFELIA GARCIA**  
[TOG-4](#)

MOTION TO CONFIRM PLAN  
11-30-2017    [[101](#)]

OFELIA GARCIA/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**No Ruling**

7. [16-13907](#)-A-13    **IN RE: MARGARET MONTIJO**  
[MHM-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1  
11-22-2017    [[37](#)]

MICHAEL MEYER/MV  
STEPHEN LABIAK

**Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this 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).

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 applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or on an oral contract, after two years, see Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the debtor had not made any payments or other transactions on the loan held by the respondent claimant within the four years prior to the petition date. The objection will be sustained. The claim will be disallowed.

8. [17-13307](#)-A-13    **IN RE: CRYSTAL HYATT**  
[APN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO  
BANK, N.A.  
10-4-2017    [\[13\]](#)

WELLS FARGO BANK, N.A./MV  
SUSAN HEMB  
AUSTIN NAGEL/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

9. [17-13307](#)-A-13     **IN RE: CRYSTAL HYATT**  
[SAH-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO  
BANK,N.A., DBA WELLS FARGO DEALER SERVICES  
11-3-2017   [[33](#)]

CRYSTAL HYATT/MV  
SUSAN HEMB  
RESPONSIVE PLEADING

**No Ruling**

10. [17-13307](#)-A-13     **IN RE: CRYSTAL HYATT**  
[SAH-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF FAST FCU  
11-3-2017   [[38](#)]

CRYSTAL HYATT/MV  
SUSAN HEMB  
RESPONSIVE PLEADING

**No Ruling**

11. [17-14013](#)-A-13     **IN RE: PEDRO/GUILLERMINA ESPINOZA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-6-2017   [[16](#)]

THOMAS GILLIS

**No Ruling**

12. [17-14214](#)-A-13     **IN RE: RONALD/RENEE TURBIN**  
[SMO-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY KEITH JOSEPH JONES  
12-26-2017   [[25](#)]

KEITH JONES/MV  
GLEN GATES  
STEVEN OLSON/ATTY. FOR MV.

**No Ruling**

13. [17-12815](#)-A-13     **IN RE: JEFFREY/CHRISTINA STANLEY**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-6-2017   [[36](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

**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 \$474.00.

**CIVIL MINUTE ORDER**

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

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

The 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.

14. [17-14516](#)-A-13     **IN RE: HUGO VILLALOBOS**  
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES  
12-2-2017    [8]

HUGO VILLALOBOS/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Notice:** Written opposition filed by responding party

**Disposition:** Continued for evidentiary hearing

**Order:** Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

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

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

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

15. [15-14121](#)-A-13     **IN RE: JONATHAN MEEKER**  
[RMP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-13-2017   [[88](#)]

SETERUS, INC./MV  
DAVID JENKINS  
RENEE PARKER/ATTY. FOR MV.

**Final Ruling**

This matter has been continued to February 21, 2018, and will be dropped from this calendar.

16. [17-13721](#)-A-13     **IN RE: JOHN/NANCY ALVA**  
[SDN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WHEELS  
FINANCIAL GROUP, LLC  
11-21-2017   [[33](#)]

WHEELS FINANCIAL GROUP, LLC/MV  
JERRY LOWE  
SHERYL NOEL/ATTY. FOR MV.

**No Ruling**

17. [17-12824](#)-A-13     **IN RE: RAFAEL/MARTHA HERNANDEZ**  
[PBB-2](#)

MOTION TO CONFIRM PLAN  
11-27-2017   [[66](#)]

RAFAEL HERNANDEZ/MV  
PETER BUNTING

**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 the 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.

18. [16-13828](#)-A-13     **IN RE: SANTOS ARROYO AND SOCORRO GARCIA**  
[MHM-3](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1  
11-22-2017   [\[35\]](#)

MICHAEL MEYER/MV  
BENNY BARCO

#### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this 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).

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 applicable statute of limitations in California bars an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the debtors have not made any payments or other transactions on the loan held by the claimant within the four years prior to the petition date. The objection will be sustained. The claim will be disallowed.

19. [17-14030](#)-A-13     **IN RE: ANGELA WOLF**  
[BDA-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO  
FINANCE  
12-6-2017    [[18](#)]

CAPITAL ONE AUTO FINANCE/MV  
MARK ZIMMERMAN  
BRET ALLEN/ATTY. FOR MV.

#### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

#### **REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION**

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Capital One N.A.'s Class 2 secured claim based on the value of the collateral securing such claim.

But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

#### **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.

Capital One N.A.'s objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that 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).

20. [13-10033](#)-A-13     **IN RE: JAMES/JESSICA SILVA**  
[FW-8](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR  
WADDELL, P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
10-26-2017    [[86](#)]

PETER FEAR

#### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed.

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

## **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,889.50 and reimbursement of expenses in the amount of \$432.55. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

## **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$5,889.50 and reimbursement of expenses in the amount of \$432.55. The aggregate allowed amount equals \$6,322.05. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6,322.05 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid directly by the debtor after completion of the plan's term. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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

21. [16-13634](#)-A-13     **IN RE: ANDREW ESPARZA**  
[MHM-3](#)

OBJECTION TO CLAIM OF CAVALRY INVESTMENTS, LLC, CLAIM NUMBER  
7  
11-22-2017    [[65](#)]

MICHAEL MEYER/MV  
GLEN GATES

**Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this 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).

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 applicable statute of limitations in California bars an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the debtor has made no payments or other transactions on the claimant's loan account within the four years prior to the petition date. The objection will be sustained. The claim will be disallowed.

22. [17-13943](#)-A-13     **IN RE: STEVEN/ROSA DEBUSKEY**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
11-17-2017   [[22](#)]

MICHAEL MEYER/MV  
ERIC ESCAMILLA  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

23. [17-14244](#)-A-13     **IN RE: MANUEL/JINA VILLALOVOS**  
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC  
12-26-2017   [[23](#)]

NATIONSTAR MORTGAGE LLC/MV  
DANE EXNOWSKI/ATTY. FOR MV.

**Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition  
required

**Disposition:** Sustained

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

**REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION**

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Nationstar Mortgage LLC's Class 2 secured claim based on the value of the collateral securing such claim. But the debtors have not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

**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.

Nationstar Mortgage LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that 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).

24. [17-13649](#)-A-13     **IN RE: ANDREA SOUSA**  
[JRL-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
10-16-2017   [[16](#)]

ANDREA SOUSA/MV  
JERRY LOWE

#### **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 the 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.

25. [17-14549](#)-A-13     **IN RE: THOMAS WHEELER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-26-2017   [\[23\]](#)

\$31.00 FILING FEE PAID 12/27/17

**Final Ruling**

The fee paid, the order to show cause is discharged and the case shall remain pending.

26. [17-13050](#)-A-13     **IN RE: DWIGHT/MARISSA ROSENQUIST**  
[MEV-2](#)

MOTION TO CONFIRM PLAN  
11-14-2017   [\[53\]](#)

DWIGHT ROSENQUIST/MV  
MARC VOISENAT  
RESPONSIVE PLEADING

**Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

**REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION**

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce NCEP, LLC's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

**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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that 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).

27. [17-14050](#)-A-13     **IN RE: MARK/ROSENDA SILVA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-7-2017    [[17](#)]

PETER BUNTING

**Final Ruling**

Because the court has issued a final ruling dismissing this case, the objection will be overruled as moot.

28. [17-14050](#)-A-13     **IN RE: MARK/ROSENDA SILVA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-7-2017    [[21](#)]

MICHAEL MEYER/MV  
PETER BUNTING

**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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

#### **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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

29. [17-12451](#)-A-13     **IN RE: DAVID/DELIA HAYES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-26-2017 [[183](#)]

#### **Tentative Ruling**

If the fee of \$31 for filing the Amended Master Address List is not paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

30. [17-12451](#)-A-13     **IN RE: DAVID/DELIA HAYES**  
[DMH-6](#)

OMNIBUS OBJECTION TO CLAIMS  
11-14-2017    [[117](#)]

DAVID HAYES/MV

**Tentative Ruling**

**Objection:** Omnibus Objection to Claim  
**Notice:** LBR 3007-1(b)(1); written opposition required  
**Disposition:** Overruled without prejudice  
**Order:** Civil minute order

David and Delia Hayes, the debtors, object to the allowance of Claim Nos. 7, 8 and 9 filed by various claimants. The court will overrule the objection for the reasons discussed.

**SERVICE INSUFFICIENT**

Rule 3007 requires service of claim objections. It provides: "The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated[.]" Fed. R. Bankr. P. 3007.

The present objection has not been served on the claimant as required by Rule 3007.

Claim No. 7

The objection to Claim No. 7-1 has not been served at the proper address. The proof of service's address includes a P.O. Box number that is different from the one appearing on the address on the claim where notices should be sent. The proof of claim indicates that the post office box number is 41067. But the proof of service has a post office box number that is 41021.

Claim No. 8

The objection to Claim No. 8-1 has not been served to the *person most recently designated* on the claimant's proof of claim. Claim no. 8 shows that the person to whom notices should be sent is Bureaus Investment Group Portfolio No. 15 LLC c/o PRA Receivables Management LLC. But the proof of claim serves the objection only to the following person: PRA Receivables Management, LLC. The proof of claim does not include the more important name, Bureaus Investment Group Portfolio No. 15, in its mailing.

Claim No. 9

The objection to Claim No. 9-1 has not been served to the *person most recently designated* on the claimant's proof of claim. Claim no. 8 shows that the person to whom notices should be sent is

Bureaus Investment Group Portfolio No. 15 LLC c/o PRA Receivables Management LLC. But the proof of claim serves the objection to the following person: PRA Receivables Management, LLC. The proof of claim does not include the more important name, Bureaus Investment Group Portfolio No. 15, in its mailing.

**CONTENT OF NOTICE INSUFFICIENT**

The notice of hearing informs the claimant that "any response must be filed with the Bankruptcy Clerk within 30 days from the date of service or such other time period as may be permitted by Fed. R. Bankr. P. 9006(f)." This is an insufficient statement of the notice requirements that must be included in the notice of hearing.

The requirements for a notice of hearing are set forth in Local Rule 3007-1(b)(1) for objections to claim that are set on 44 days' notice. This court requires the notice of hearing to accurately inform the respondent of the time required for opposition.

In this case, the notice of hearing indicated that opposition was due 30 days from service of the objection, which would mean that opposition was due December 14, 2017. However, under the Local Rules, opposition was due December 28, 2017, which is 14 days before the hearing.

**LACK OF COMPLIANCE WITH RULE 3007(e)**

Rule 3007(e) sets forth a number of technical, procedural requirements for omnibus claims objections. The objection has not complied with all these procedures. The court believes that, if the debtors refile the objections, that they do so against each claimant individually.

**CIVIL MINUTE ORDER**

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

The debtors' omnibus claim objection has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

31. [17-12360](#)-A-13     **IN RE: KEITH DAVIS**  
[HDN-2](#)

CONTINUED MOTION TO MODIFY PLAN  
10-16-2017   [[43](#)]

KEITH DAVIS/MV  
HENRY NUNEZ  
RESPONSIVE PLEADING

**No Ruling**

32. [17-12360](#)-A-13     **IN RE: KEITH DAVIS**  
[HDN-3](#)

MOTION TO VALUE COLLATERAL OF OPPORTUNITY FUND NORTHERN  
CALIFORNIA  
11-27-2017   [[57](#)]

KEITH DAVIS/MV  
HENRY NUNEZ  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Value Collateral

**Notice:** Written opposition filed by the responding party

**Disposition:** Continued for an evidentiary hearing

**Order:** Civil minute order or scheduling order

The motion seeks to value real property collateral that is the moving party's principal residence. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d).

An evidentiary hearing is required because there are disputed, material factual issues that must be resolved before the court can rule on the relief requested. The disputed issues identified by the court are as follows:

- (1) the value of the collateral (a 2008 Freightliner and a 2010 Freightliner, and
- (2) the ownership status of the collateral (whether the debtor's business or the estate owns such collateral).

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

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;

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

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

33. [17-14064](#)-A-13     **IN RE: CARL/DEBRA DEAN**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-5-2017    [[17](#)]

MICHAEL MEYER/MV  
JANINE ESQUIVEL

**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 debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtors have failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

**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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

34. [17-13065](#)-A-13     **IN RE: AMANDEEP RANDHAWA**  
[FW-2](#)

MOTION TO CONFIRM PLAN  
11-21-2017    [[70](#)]

AMANDEEP RANDHAWA/MV  
PETER FEAR

**No Ruling**

35. [17-14067](#)-A-13     **IN RE: BARBARA STARKEY**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-5-2017    [[17](#)]

MICHAEL MEYER/MV  
PETER BUNTING

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

36. [17-13668](#)-A-13     **IN RE: DARRELL/DEBRA TOMLIN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-5-2017   [[43](#)]

MICHAEL MEYER/MV  
JESSICA DORN  
DISMISSED

**Final Ruling**

The case dismissed, the matter is dropped as moot.

37. [17-13868](#)-A-13     **IN RE: RICARDO/JESSICA MONTANO**  
[PBB-1](#)

MOTION TO AVOID LIEN OF KINGS FEDERAL CREDIT UNION  
12-8-2017   [[20](#)]

RICARDO MONTANO/MV  
PETER BUNTING

**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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

38. [17-13868](#)-A-13     **IN RE: RICARDO/JESSICA MONTANO**  
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF STERLING JEWELERS, INC.  
12-8-2017   [[25](#)]

RICARDO MONTANO/MV  
PETER BUNTING

#### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

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

#### **VALUATION OF COLLATERAL**

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

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one

year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as a wedding ring and necklace securing the claim of Sterling Jewelers, Inc. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$4,000.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a wedding ring and necklace securing the claim of Sterling Jewelers, Inc. has a value of \$4,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4,000 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

39. [17-13868](#)-A-13     **IN RE: RICARDO/JESSICA MONTANO**  
[PBB-3](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE  
12-11-2017 [[32](#)]

RICARDO MONTANO/MV  
PETER BUNTING

#### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true.

*TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **VALUATION OF COLLATERAL**

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2014 Toyota Camry. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$14,625.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2014 Toyota Camry has a value of \$14,625. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$14,625 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

40. [17-10269](#)-A-13     **IN RE: ELIDA ALMAGUER-CARRILLO**  
[PBB-2](#)

MOTION TO MODIFY PLAN  
11-29-2017   [[32](#)]

ELIDA ALMAGUER-CARRILLO/MV  
PETER BUNTING

**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 the 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.

41. [17-14069](#)-A-13     **IN RE: CARLOS/MELISSA PEREZ**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
12-6-2017   [[14](#)]

PETER BUNTING

**No Ruling**

42. [16-14470](#)-A-13     **IN RE: JAYCE/LISA LEWIS**  
[PBB-3](#)

MOTION TO MODIFY PLAN  
12-1-2017   [[52](#)]

JAYCE LEWIS/MV  
PETER BUNTING

**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 the 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.

43. [17-13274](#)-A-13     **IN RE: SERGIO/MARLEAN BRAVO**  
[MSN-1](#)

MOTION TO CONFIRM PLAN  
11-13-2017   [[39](#)]

SERGIO BRAVO/MV  
MARK NELSON

**Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Denied

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The court will deny the motion for the reasons discussed.

## **LACK OF FEASIBILITY**

The debtors, Sergio and Marlean Bravo, move to confirm their chapter 13 plan. The plan proposes a monthly payment that varies over the 38-month term of the plan. The lowest monthly payment is during the first 5 months of the plan at \$844 per month. The highest payment is August 2018, and the payment is \$70,000 in that month.

The additional provision provide that the sale of the debtors' residence will give them the ability to make the lump sum payment of \$70,000 in month 12.

The debtors' residence is listed in Schedule A at a value of \$493,921.00. Fed. R. Evid. 201(b)(2), (c). Schedule D lists the amount of debt secured by the property at \$420,744.00. *Id.* These statements of value and secured debt in the debtors' schedules constitute admissions by the debtors. Fed. R. Evid. 801(d)(2). And no party has questioned the authenticity of the schedules in this case. Fed. R. Evid. 901(a).

The difference between this residence's value and the secured debt against it equals \$73,177. But every home sale includes costs of sale of approximately 7% (including a 6% commission for a real estate broker). Costs of sale at 7% equal about \$34,574, leaving net proceeds of only \$38,602. With net proceeds of under \$40,000 after costs of sale are accounted for, the plan payment of \$70,000 cannot be made without other cash available.

Given that the motion fails to address the costs of sale (or how such ordinary and customary costs of sale are to be reduced for this sale), and given that the motion fails to identify another cash source for the shortfall from the sale of the residence, the plan is not feasible. See 11 U.S.C. § 1325(a)(6).

## **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 debtors' motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that 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).

44. [17-12677](#)-A-12     **IN RE: ANTONIO/MARIA TEIXEIRA**  
[FW-4](#)

CONTINUED MOTION TO AVOID LIEN OF A.L. GILBERT COMPANY  
10-31-2017   [[39](#)]

ANTONIO TEIXEIRA/MV  
PETER FEAR  
RESPONSIVE PLEADING

**Tentative Ruling**

The matter is resolved by stipulation and the parties may submit an order approving it. The order shall be approved as to form by the Chapter 12 trustee.

45. [17-14277](#)-A-13     **IN RE: AI SEECHAN AND EEHAI SAESEE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-12-2017   [[17](#)]

CHRISTOPHER FISHER  
\$310.00 FILING FEE PAID 12/19/17

**Final Ruling**

The fee paid in full, the order to show cause is discharged and the case shall remain pending.

46. [17-13979](#)-A-13     **IN RE: JENNIFER EASTER**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-5-2017   [[19](#)]

MICHAEL MEYER/MV  
DAVID JENKINS  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

47. [17-10280](#)-A-13     **IN RE: JON/AMBER ORTIZ**  
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I LLC, CLAIM NUMBER 5  
11-22-2017    [[29](#)]

MICHAEL MEYER/MV  
JANINE ESQUIVEL

**Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this 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).

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 applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the debtors have made no payments or other transactions on the claimant's loan account within the four years prior to the petition date.

Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant's claim based on this loan account is time barred and unenforceable under state law. The objection will be sustained. The claim will be disallowed.

48. [17-13681](#)-A-13     **IN RE: NORA CASAREZ**  
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE, N.A.  
12-14-2017    [[14](#)]

NORA CASAREZ/MV  
PETER BUNTING

#### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

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

#### **VALUATION OF COLLATERAL**

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

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as an Apple watch. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$300.

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as an Apple watch has a value of \$300. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$300 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

49. [12-17783](#)-A-13     **IN RE: EDWARD/THERESA AGUALLO**  
[MHM-4](#)

MOTION TO DISMISS CASE  
12-11-2017    [[90](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
WITHDRAWN

**Final Ruling**

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

50. [16-14486](#)-A-13     **IN RE: DANIEL/MELANIE HOLCOMB**  
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV II, LLC, CLAIM NUMBER 5  
11-22-2017   [\[18\]](#)

MICHAEL MEYER/MV  
PETER BUNTING

**Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this 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).

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 applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the debtor has made no payments or other transactions on the claimant's loan account within the four years prior to the petition date.

Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant's claim based on this loan account is time barred and unenforceable under state law. The objection will be sustained. The claim will be disallowed.

51. [16-14188](#)-A-13    **IN RE: ANTONIO/MARIA ROMERO**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-20-2017    [[53](#)]

WELLS FARGO BANK, N.A./MV  
SCOTT LYONS  
ARMIN KOLENOVIC/ATTY. FOR MV.

**Final Ruling**

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

52. [16-14188](#)-A-13    **IN RE: ANTONIO/MARIA ROMERO**  
[MHM-3](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 2  
11-22-2017    [[60](#)]

MICHAEL MEYER/MV  
SCOTT LYONS

**Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this 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).

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 applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The objection’s well-pleaded facts show that the debtor has made no payments or other transactions on the claimant’s loan account within the four years prior to the petition date. Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant’s claim based on this loan account is time barred and unenforceable under state law. The objection will be sustained. The claim will be disallowed.

53. [17-13991](#)-A-13     **IN RE: JESUS CORTEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-6-2017 [[24](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

54. [12-60092](#)-A-13     **IN RE: GARY/CHRISTINA STAHL**  
[FW-2](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR  
WADDELL, P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
10-31-2017   [\[87\]](#)

PETER FEAR

**Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

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

**COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Waddell has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3,335.00 and reimbursement of expenses in the amount of \$215.58. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3,335.00 and reimbursement of expenses in the amount of \$215.58. The aggregate allowed amount equals \$3,550.58. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3,550.58 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid directly by the debtor after completion of the plan's term. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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

55. [16-11792](#)-A-13     **IN RE: MICHAEL/LEAH CADY**  
[RLF-3](#)

MOTION TO MODIFY PLAN  
12-5-2017   [[51](#)]

MICHAEL CADY/MV  
SHANE REICH

### **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 the 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.

56. [17-14095](#)-A-13     **IN RE: KEITH HORTON AND JENNIFER ROGERS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-6-2017   [[24](#)]

MICHAEL MEYER/MV  
GLEN GATES

**Final Ruling**

Having been withdrawn, the matter is deemed voluntarily dismissed.  
The court drops the matter from calendar.

57. [17-13498](#)-A-13     **IN RE: DUSTY/SONJA THOMAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-18-2017   [[34](#)]

SCOTT LYONS  
\$77.00 INSTALLMENT PAYMENT PAID 12/18/17

**Final Ruling**

The installment payment paid, the order to show cause is discharged  
and the case shall remain pending.

58. [17-14598](#)-A-13     **IN RE: ALEJANDRO TAPIA AND MAYRA IBARRA**  
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL  
12-13-2017   [[12](#)]

ALEJANDRO TAPIA/MV  
THOMAS GILLIS

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

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

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

#### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2).

For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2015 Dodge Challenger. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$11,647.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2015 Dodge Challenger has a value of \$11,647. No senior liens on the collateral have been identified.

The respondent has a secured claim in the amount of \$11,647 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

59. [17-14702](#)-A-13     **IN RE: MARIA WEE**  
[EPE-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
12-28-2017   [\[12\]](#)

MARIA WEE/MV  
ERIC ESCAMILLA

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Denied

**Order:** Civil minute order

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B).

Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B) (emphasis added). Otherwise, if notice and the hearing are not completed before the end of the 30-day period, "the automatic stay terminates in its entirety 30 days after the petition date for a repeat filer." *In re Reswick*, 446 B.R. 362, 365, 371-73 (B.A.P. 9th Cir. 2011).

The debtor has had a previous case pending within the one-year period prior to the filing of this case. Although the motion to extend the stay and notice of hearing on such motion were filed and served before the expiration of the 30-day period after the petition date, the hearing on this matter has not been completed before such deadline. The 30th day following the petition date was January 10, 2018. The stay has already terminated.

Accordingly, the court has no authority to grant the relief requested. The motion will be denied.

60. [17-14818](#)-A-13     **IN RE: CLINTON/CYNTHIA RUTHERFORD**  
[JRL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
1-3-2018    [\[12\]](#)

CLINTON RUTHERFORD/MV  
JERRY LOWE  
OST 1/4/18

### **Tentative Ruling**

**Motion:** Extend Stay, 11 U.S.C. § 362(c)(3)  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Denied  
**Order:** Civil minute order

Debtors move under 11 U.S.C. § 362(c)(3) to extend the stay.

### **DISCUSSION**

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). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II). When the dismissal was caused by the debtor's failure to file or amend the petition or other documents, mere inadvertence or negligence is not a substantial excuse *unless* the dismissal was caused by the negligence of debtor's attorney. *Id.* § 362(c)(3)(C)(i)(II)(aa).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or

[(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed . . . ." *Id.* § 362(c)(3)(C)(i)(III).

Here, the presumption of a lack of good faith has been triggered, i.e., the previous case was dismissed for failure to make payments. The only evidence offered of good faith is an explanation of the reasons the previous case was dismissed. Rutherford Decl. ¶ 6, Jan. 3, 2018, ECF # 14. This evidence does not rise to the level of clear and convincing evidence. Moreover, the instant case was filed as a skeletal petition, and the debtors sought and received an order authorizing payment of the filing fee in installments.

**CIVIL MINUTE ORDER**

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

Clinton Rutherford and Cynthia Rutherford's motion has been presented to the court. Having considered the motion together with papers filed in support, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion denied.