

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

WEDNESDAY

JANUARY 22, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

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

MATTERS RESOLVED BEFORE HEARING

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

ERRORS IN FINAL RULINGS

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

9:00 a.m.

1. [13-11803](#)-A-13 JERZY BARANOWSKI CONTINUED OBJECTION TO CLAIM OF
PK-1 DENNIS VALDEZ, CLAIM NUMBER 8
JERZY BARANOWSKI/MV 6-3-13 [[30](#)]
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-11803](#)-A-13 JERZY BARANOWSKI CONTINUED MOTION TO COMPEL
PK-3 10-18-13 [[81](#)]
JERZY BARANOWSKI/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

3. [12-19905](#)-A-13 JEFFREY/JANET PAHLOW MOTION FOR COMPENSATION FOR
PK-3 PATRICK KAVANAGH, DEBTOR'S
PATRICK KAVANAGH/MV ATTORNEY(S), FEE: \$5663.50,
EXPENSES: \$86.50
12-11-13 [[51](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

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

Applicant: Patrick Kavanagh
Compensation approved: \$5,663.50
Costs approved: \$86.50
Aggregate fees and costs approved: \$5,750.00
Retainer held: \$2,000.00
Amount to be paid as administrative expense: \$3,750.00

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 13 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.

4. [13-15115](#)-A-13 REYMUNDO PACAS CONTINUED MOTION TO DISMISS
MHM-1 CASE FOR UNREASONABLE DELAY
MICHAEL MEYER/MV THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
10-22-13 [[19](#)]
- ROBERT WILLIAMS/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [13-17216](#)-A-13 RICKEY/JESSICA HOYER OBJECTION TO CONFIRMATION OF
SAS-1 PLAN BY FINANCE AND THRIFT
FINANCE AND THRIFT COMPANY/MV COMPANY
12-24-13 [[16](#)]
- ROBERT WILLIAMS/Atty. for dbt.
STEVEN SILVER/Atty. for mv.

Tentative Ruling

Objection: Confirmation Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: Chapter 13 Plan, filed November 8, 2013, ECF No. 5

Disposition: Overruled

Order: Civil minute order

OBJECTION TO CONFIRMATION

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).

Secured creditor Finance and Thrift Company objects to confirmation. It does so citing lack of adequate protection and improper Class 4 classification. Finance and Thrift Company holds a security interest in a 2007 Dodge Caliber. The plan classifies the car in Class 4 (direct pay) and provides for \$0.00 monthly payments. Chapter 13 Plan § 2.11, filed November 8, 2013, ECF No. 5. That plan also provides, "driven by and paid for sister." *Id.*

The secured creditor does not appreciate the operative language of Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or a third party. The plan provides that "[u]pon confirmation of the plan, all

bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." As a result, the creditors contractual rights remain unmodified and, upon confirmation, the stay is modified the creditor to exercise its applicable rights in the event of default.

VIOLATION OF LOCAL RULES

Local Bankruptcy Rule 9014-1 provides: "The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served." LBR 9014-1(e)(3). In this instance, the objecting creditor violated by attaching the Certificate of Service to the objection. Objection, filed December 24, 2013, ECF No. 16. Future violations of local rules may result in summary overruling of the objection or monetary sanctions against counsel for the objecting creditor.

6. [13-16318](#)-A-13 ROGER/NICOLE PRATER MOTION TO CONFIRM PLAN
TGF-1 11-23-13 [[30](#)]
ROGER PRATER/MV

VINCENT GORSKI/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

7. [12-13027](#)-A-13 KEITH/MICHELLE LOGAN MOTION TO APPROVE LOAN
WDO-1 MODIFICATION
KEITH LOGAN/MV 12-9-13 [[29](#)]
WILLIAM OLCOTT/Atty. for dbt.

Final Ruling

Motion: Loan Modification Approval

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

Disposition: Granted

Order: Prepared by moving party according to the instructions below

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement appears to accompany the motion. See Fed. R. Bankr. 4001(c).

The court will grant the motion and authorize the debtor and the holder of the loan to be modified to enter into the loan modification agreement subject to the parties' right to reinstatement of the

original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The order shall state only that the court grants the motion and that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

8. [13-16828](#)-A-13 ROBERT MOORE
SAS-1
FINANCE AND THRIFT COMPANY/MV

OBJECTION TO CONFIRMATION OF
PLAN BY FINANCE AND THRIFT
COMPANY
12-20-13 [[15](#)]

NEIL SCHWARTZ/Atty. for dbt.
STEVEN SILVER/Atty. for mv.

Tentative Ruling

Objection: Confirmation Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required
Plan: Chapter 13 Plan, filed October 21, 2013, ECF No. 5

Disposition: Sustained and 75 day order imposed

Order: Civil minute order

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN

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 Value Claim

The debtors plan purports to value secured creditor's claim for a 2003 Chevrolet Tahoe automobile. Chapter 13 Plan § 2.09, filed October 21, 2013, ECF No. 5. The debtor believes the creditor is owed \$11,432.00, and that the car has a value of \$9,000. *Id.* The secured creditor has filed a Proof of Claim indicating an amount owed of \$14,270.22. Proof of Claim No. 3.

Rule 3015-1 provides, "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing 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." LBR 3015-1(j). No motion to value has been filed. As a result, the objection will be sustained.

Interest Rate

The plan also proposes an interest rate of 4.00%. *Id.* The secured creditor objects to this interest rate, citing *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Were the plan otherwise confirmable, the court would schedule an evidentiary hearing as to the interest rate.

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

Local Bankruptcy Rule 9014-1 provides: "The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served." LBR 9014-1(e)(3). In this instance, the objecting creditor violated by attaching the Certificate of Service to the objection. Objection, filed December 20, 2013, ECF No. 15. Future violations of local rules may result in summary overruling of the objection or monetary sanctions against counsel for the objecting creditor.

9. [12-16029](#)-A-13 CRYSTAL JOHNSON MOTION TO MODIFY PLAN
PK-3 12-13-13 [87]
CRYSTAL JOHNSON/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Pending

Order: Pending

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

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

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

If such grounds are disputed, the moving party shall appear at the

hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

10. [13-16129](#)-A-13 MARIO/CANDELARIA CHAVEZ CONTINUED MOTION TO VALUE
WDO-1 COLLATERAL OF OLD REPUBLIC
MARIO CHAVEZ/MV INSURANCE COMPANY
9-17-13 [[10](#)]
WILLIAM OLCOTT/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The case dismissed, the matter is dropped as moot.

11. [13-16129](#)-A-13 MARIO/CANDELARIA CHAVEZ CONTINUED MOTION TO CONFIRM
WDO-2 PLAN
MARIO CHAVEZ/MV 10-29-13 [[29](#)]
WILLIAM OLCOTT/Atty. for dbt.

Final Ruling

The case dismissed, the matter is dropped as moot.

12. [11-17232](#)-A-13 KERRY STEVENS MOTION TO MODIFY PLAN
RSW-3 11-19-13 [[67](#)]
KERRY STEVENS/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Pending

Order: Pending

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

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

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt

not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

13. [13-11432](#)-A-13 HUBERT/JANET RABANAL CONTINUED MOTION FOR
PWG-1 COMPENSATION FOR PHILLIP W.
PHILLIP GILLET/MV GILLET JR., DEBTOR'S
ATTORNEY(S), FEE: \$5407.50,
EXPENSES: \$65.92
11-1-13 [[36](#)]
- PHILLIP GILLET/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Phillip Gillett, Jr.

Compensation approved: \$6,907.50

Costs approved: \$65.92

Aggregate fees and costs approved: \$6,973.42

Retainer held: \$1,500.00 (pre-petition)

Amount to be paid as administrative expense: \$5,473.42

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

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

14. [13-11432](#)-A-13 HUBERT/JANET RABANAL MOTION TO MODIFY PLAN
PWG-2 11-11-13 [[44](#)]
HUBERT RABANAL/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

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.

15. [13-13632](#)-A-13 ROMEO/ROSEMARY TUTOP PRE-TRIAL CONFERENCE RE:
MHM-1 OBJECTION TO CONFIRMATION OF
MICHAEL MEYER/MV PLAN BY MICHAEL H. MEYER
8-22-13 [[29](#)]

ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN, RESPONSIVE
PLEADING

Final Ruling

The trustee's objection to confirmation having been withdrawn, and an order confirming the plan having been entered, this matter is dropped from calendar as moot.

16. [13-12734](#)-A-13 CHRISTOPHER/MELODY MOTION TO AVOID LIEN OF
RSW-5 GEBHARDT CITIBANK, NATIONAL ASSOCIATION
CHRISTOPHER GEBHARDT/MV 1-8-14 [[67](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Order: Prepared by moving party

Liens Plus Exemption: Consensual liens unstated in the motion

Property Value: Unstated in the motion

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).

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor" Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion does not state with particularity the grounds for the relief requested. The motion does not include a statement of the amount of the first or second deed of trust on the real property located at 2301 Poso Dr., Wasco, California.

The statutory formula for impairment requires that the court determine the amount of all liens against the property, and add such amount to the exemption amount, before determining whether such sum exceeds the value of the property in the absence of the liens by a sufficient amount. Although the schedules are attached, counsel for the movant should set forth the basic facts supporting relief rather than exhibits in which such information is included but not clearly identified.

17. [13-14334](#)-A-13 ANTONIO/ANAHEL AGUIRRE CONTINUED MOTION TO CONFIRM
NES-4 PLAN
ANTONIO AGUIRRE/MV 10-21-13 [[48](#)]
NEIL SCHWARTZ/Atty. for dbt.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to February 19, 2014, at 9:00 a.m.

Order: Civil minute order if necessary

This matter was continued to previously to this date to allow a motion to value collateral to be pursued. The matter will be continued again to the date above for the same reason.

18. [13-14438](#)-A-13 STEPHANIE LANCASTER MOTION FOR COMPENSATION FOR
PWG-1 PHILLIP W. GILLET JR., DEBTOR'S
PHILLIP GILLET/MV ATTORNEY(S), FEE: \$3860.00,
EXPENSES: \$31.00
11-24-13 [[19](#)]
PHILLIP GILLET/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Phillip Gillett, Jr.

Compensation approved: \$5,360.00

Costs approved: \$31.00

Aggregate fees and costs approved: \$5,391.00

Retainer held: \$1,500.00 (pre-petition)

Amount to be paid as administrative expense: \$3,891.00

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 13 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.

19. [13-13640](#)-A-13 DAVID/MARGARET SANCHEZ CONTINUED MOTION FOR
PWG-2 COMPENSATION FOR PHILLIP W.
PHILLIP GILLET/MV GILLET JR., DEBTOR'S
ATTORNEY(S), FEE: \$5,260.00,
EXPENSES: \$27.56
11-1-13 [[28](#)]
- PHILLIP GILLET/Atty. for dbt.

Tentative Ruling

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

Applicant: Phillip Gillet, Jr.
Compensation approved: \$5,260.00
Costs approved: \$27.56
Aggregate fees and costs approved: \$5,287.56
Retainer held: \$0.00
Amount to be paid as administrative expense: \$5,287.56

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

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

20. [13-17241](#)-A-13 JANET CHRISTIANSEN
PK-1
JANET CHRISTIANSEN/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
12-19-13 [[20](#)]

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).

21. [09-19453](#)-A-13 JAMES/REBECCA WHITTON
RSW-4
JAMES WHITTON/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO MODIFY PLAN
11-26-13 [[62](#)]

[This matter will be called in conjunction with the Chapter 13 trustee's motion to dismiss, MHM-1, at 9:15 a.m.]

No tentative ruling.

22. [10-19454](#)-A-13 DAVID/RAQUEL STEBBINS MOTION FOR COMPENSATION FOR
PK-7 PATRICK KAVANAGH, DEBTOR'S
PATRICK KAVANAGH/MV ATTORNEY(S), FEE: \$7508.50,
EXPENSES: \$506.26
12-23-13 [[96](#)]

PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

23. [10-62657](#)-A-13 RICK/SHAWN LOPEZ MOTION TO MODIFY PLAN
RSW-4 11-26-13 [[63](#)]
RICK LOPEZ/MV
ROBERT WILLIAMS/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.

24. [08-17558](#)-A-13 VICTOR/KARLA MOORE MOTION TO MODIFY PLAN
PK-10 12-13-13 [[136](#)]
VICTOR MOORE/MV
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Modify Chapter 13 Plan
Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required
Disposition: Denied
Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The plan proposed is the Fourth Modified Chapter 13 Plan. The court will deny the motion and disapprove the modification.

The court will deny the motion because the modified plan extends past the applicable 5-year period following the date the first payment was due under the original confirmed plan. Section 1329(c) provides that "[a] plan modified under this section may not provide for payments over a period of time that expires after the applicable commitment period under section 1325(b)(1)(B) after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time." 11 U.S.C. § 1329(c).

Here, the debtor requests what § 1329(c) precludes the court from allowing. The debtor requests that the court approve a period more than 5 years after the time that the first payment under the original confirmed plan was due.

The petition was filed November 20, 2008. As a result, the first payment under the original confirmed plan was due December 25, 2008. *Id.* § 1326(a)(1) (providing that plan payments shall commence not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier); LBR 3015-1(f)(1) (plan payments begin the month after the order for relief).

The 60-month period following the date of the first plan payment due December 25, 2008 ends on December 25, 2013. Thus, the motion seeks confirmation of the Fourth Modified Plan in month 61 following the date the first payment was due. The court is precluded from granting the motion by the express terms of § 1329(c).

25. [13-14959](#)-A-13 JOSE/SALLY SAENZ
PK-4
PATRICK KAVANAGH/MV

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTOR'S
ATTORNEY(S), FEE: \$5460.00,
EXPENSES: \$93.20
12-24-13 [[69](#)]

PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Application for Compensation and Expenses

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

Disposition: Approved

Order: Prepared by applicant

Applicant: Patrick Kavanagh

Compensation approved: \$5,460.00

Costs approved: \$93.20

Aggregate fees and costs approved: \$5,553.20

Retainer held: \$1,000.00

Amount to be paid as administrative expense: \$4,553.20

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

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

26. [11-62861](#)-A-13 ROBERT/LYUDMILA BARRAZA MOTION TO MODIFY PLAN
MHM-2 12-10-13 [87]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
SARAH VELASCO/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

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 factual issues: (1) good faith, including but not limited to the debtor's income and expenses; (2) feasibility; (3) the impact, if any, of 11 U.S.C. § 1329; and (4) whether changed circumstances exist such that the Chapter 13 trustee may move for plan modification.

The court also identifies the following legal issues: (1) whether 11 U.S.C. § 1329 limits ability of the proponent of a modified plan to those categories of changes enumerated; (2) whether the existence of changed circumstance are a pre-requisite to plan modification; and (3) burden of proof applicable to plan modification by Chapter 13 trustee.

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.

27. [11-16866](#)-A-13 DARON NUNN
MBW-1
SAFE 1 CREDIT UNION/MV
ROBERT WILLIAMS/Atty. for dbt.
JAMES BURBOTT/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-6-14 [[82](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Prepared by moving party

Subject: 2005 GMC Yukon Truck

The motion does not comply with Local Bankruptcy Rule 4001-1(b)(1) and (b)(2). Exhibit C does not comply with LBR 4001-1(b)(1)(A) because this exhibit does not clearly set forth the obligations to which each post-petition payment was applied. LBR 4001-1(b)(1)(B) and (C) and (b)(2) do not appear to have been satisfied based on the lack of any statement in the motion and declaration filed in support about whether these local rules have been satisfied.

28. [12-13966](#)-A-13 PATRICIA PULIDO
PK-4
PATRICIA PULIDO/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL
12-23-13 [[77](#)]

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(1); written opposition required; Wells Fargo Bank, N.A. has filed conditional non-opposition

Disposition: Granted but the provisions requested by Wells Fargo Bank, N.A. shall be included in the order; all other relief is denied, including any compensation or commission to be paid to any broker

Order: Prepared by moving party and approved as to form and content by the Chapter 13 trustee

Property: 216 Cesar Chavez Lane, Delano, CA

Buyer: Jorge Jimenez but not to this buyer's undisclosed nominee

Sale Price: \$152,000.00

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). 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).

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.

29. [13-17176](#)-A-13 CURTIS DUNMORE AND DEMETRIA JOHNSON
SAS-1 FINANCE AND THRIFT COMPANY/MV
ROBERT WILLIAMS/Atty. for dbt.
STEVEN SILVER/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY FINANCE AND THRIFT
COMPANY
12-24-13 [[24](#)]

Tentative Ruling

Matter: Objection to Chapter 13 Plan

Notice: LBR 3015-1(c)(4); no written opposition required

Disposition: Denied as moot

Order: Civil minute order

Creditors and the trustee may file an objection to confirmation of the Chapter 13 plan within 7 days after the first date set for the creditors' meeting held under § 341 of the Bankruptcy Code. LBR 3015-1(c)(4). If the debtor withdraws the plan or files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so renders moot any pending objection to confirmation of the previously filed plan. The debtor has either withdrawn the plan or filed a plan modification since the filing of this objection. The court will deny the objection as moot.

30. [11-61180](#)-A-13 JOHNNY/MONALISA MARAN
LKW-4 JOHNNY MARAN/MV
LEONARD WELSH/Atty. for dbt.
- MOTION TO MODIFY PLAN
11-20-13 [[72](#)]

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.

31. [13-11681](#)-A-13 FIDEL/ELVIRA GONZALEZ OBJECTION TO CLAIM OF BANK OF
WDO-1 AMERICA, N.A., CLAIM NUMBER 1-1
FIDEL GONZALEZ/MV 12-13-13 [[40](#)]
WILLIAM OLCOTT/Atty. for dbt.
WITHDRAWN

Final Ruling

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

32. [13-10286](#)-A-13 ALI TORKAMAN STATUS CONFERENCE RE: (12
[13-1026](#) (RECOVERY OF MONEY/PROPERTY -
TORKAMAN V. TORKAMAN 547 PREFERENCE)) : COMPLAINT
13-01026 BY ALI TORKAMAN
AGAINST FARGAH
3-11-13 [[1](#)]

SUSAN SALEHI/Atty. for pl.
ORDER 11/22/13, RESPONSIVE
PLEADING

Final Ruling

An order has been entered approving the compromise of the controversy in this case. The court concludes the status conference.

33. [13-10286](#)-A-13 ALI TORKAMAN STATUS CONFERENCE RE: MOTION TO
SJS-1 AVOID LIEN OF FARGAH TORKAMAN
ALI TORKAMAN/MV 3-11-13 [[27](#)]
SUSAN SALEHI/Atty. for dbt.
STIP & ORDER 11/21

Final Ruling

An order has been entered approving the compromise of the controversy in this case. The court concludes the status conference.

34. [10-19987](#)-A-13 ARIEL/MIRNA DIAZ
RSW-4
ARIEL DIAZ/MV

MOTION TO MODIFY PLAN AND/OR
MOTION TO APPROVE LOAN
MODIFICATION
12-13-13 [[80](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Confirm Modified Chapter 13 Plan / Approval of Loan
Modification

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

Disposition: Denied

Order: Civil minute order

CONFIRMATION OF CHAPTER 13 PLAN

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). Assuming there are no problems with notice, as discussed below, the court will find that the debtor has sustained that burden, and the court will approve modification of the plan.

There are two notices of hearing and two certificates of service for this matter. The first certificate of service indicates service of the motion, the plan, notice of hearing and supporting documents on a small list including one debtor and three other parties. (In the future, the motion and plan should be served on both joint debtors and the trustee. See Fed. R. Bankr. P. 9013.) The second certificate of service indicates service of the notice of hearing—though unclear which one—on what appears to be the master address list.

LBR 3015-1(d)(2) requires that a modified chapter 13 *plan* be served together with a motion to confirm it. The court construes this rule to require transmission of the plan and the motion to all creditors and parties in interest. The debtor has not transmitted the plan and motion to all creditors and parties in interest. The certificate of service filed at docket number 86, which shows that only the notice of hearing was sent to all creditors and parties in interest.

LOAN MODIFICATION

The motion seeks approval of a loan modification agreement. It appears that the loan modification will benefit the debtors given that a letter from the lender indicates the potential for principal forgiveness. However, the court will deny the motion without prejudice. The certificate of service indicates that the motion was not served on the trustee. Fed. R. Bankr. P. 9013.

In the future, counsel should clearly indicate in the motion what changes are being made by the loan modification sought to be approved, and how such changes benefit the debtors. If the attached lender's letter is not the actual loan modification agreement and there is a proposed loan modification agreement other than the letter, a form copy of the loan modification agreement sought to be approved should be attached as an exhibit. See Fed. R. Bankr. 4001(c).

35. [13-12891](#)-A-13 JOHN/JAYNE DESCHUTTER MOTION TO CONFIRM PLAN
PK-2 11-15-13 [[65](#)]
JOHN DESCHUTTER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

36. [11-19692](#)-A-13 CHARLES/MYLENE GABRIEL MOTION TO MODIFY PLAN
RSW-3 11-26-13 [[45](#)]
CHARLES GABRIEL/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Pending

Order: Pending

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

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

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

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

9:15 a.m.

1. [13-17109](#)-A-13 MIGUEL CAMPOS
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt. MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-3-14 [[19](#)]

No tentative ruling.

2. [13-16115](#)-A-13 MIGUEL LOPEZ
MHM-1
MICHAEL MEYER/MV
AMANDA BILLYARD/Atty. for dbt. MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-31-13 [[40](#)]

No tentative ruling.

3. [09-18544](#)-A-13 JUAN/ANN PRIETO
DMG-3
JUAN PRIETO/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING CONTINUED OBJECTION TO CLAIM OF
NATIONSTAR MORTGAGE, CLAIM
NUMBER 17
3-14-13 [[86](#)]

No tentative ruling.

4. [09-18544](#)-A-13 JUAN/ANN PRIETO
MHM-3
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.
WITHDRAWN, RESPONSIVE
PLEADING, CONTINUED MOTION TO DISMISS
CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
11-8-13 [[117](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [09-19453](#)-A-13 JAMES/REBECCA WHITTON
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt. MOTION TO DISMISS CASE
1-3-14 [[72](#)]

No tentative ruling.

6. [13-16858](#)-A-13 MANDY GRELL
MHM-1
MICHAEL MEYER/MV
MICHAEL BERGER/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-31-13 [[27](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [13-14959](#)-A-13 JOSE/SALLY SAENZ
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
- MOTION TO DISMISS CASE
1-3-14 [[73](#)]

No tentative ruling.

8. [13-14172](#)-A-13 KRISTA TWIST
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
12-17-13 [[53](#)]
- KRYSTINA TRAN/Atty. for dbt.

No tentative ruling.

9. [13-14172](#)-A-13 KRISTA TWIST
MHM-2
MICHAEL MEYER/MV
KRYSTINA TRAN/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-31-13 [[57](#)]

No tentative ruling.

10. [13-16875](#)-A-13 JENNIFER JOHNSON
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-31-13 [[14](#)]

No tentative ruling.

11. [13-16975](#)-A-13 DANIEL/TAMI FRENCH
MHM-1
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
12-23-13 [[20](#)]
- ROBERT WILLIAMS/Atty. for dbt.
- No tentative ruling.**
12. [13-16975](#)-A-13 DANIEL/TAMI FRENCH
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-31-13 [[26](#)]
- No tentative ruling.**
13. [13-12891](#)-A-13 JOHN/JAYNE DESCHUTTER
MHM-3
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
1-2-14 [[83](#)]
- PATRICK KAVANAGH/Atty. for dbt.
- No tentative ruling.**
14. [13-12891](#)-A-13 JOHN/JAYNE DESCHUTTER
MHM-4
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
1-2-14 [[87](#)]
- PATRICK KAVANAGH/Atty. for dbt.
- No tentative ruling.**
15. [13-16891](#)-A-13 BEATRICE CERDA
MHM-1
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
- MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
12-31-13 [[19](#)]
- No tentative ruling.**

9:30 a.m.

1. [12-10827](#)-A-13 JAMES HOOVER
[12-1025](#)
HOOVER V. BASSET ET AL
PHILLIP GILLET/Atty. for pl.
RESPONSIVE PLEADING
NOTICE OF SETTLEMENT FILED

CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT
11-21-12 [[74](#)]

Final Ruling

The adversary dismissed, the pre-trial/status conference is concluded.

10:30 a.m.

1. [13-16384](#)-A-7 JAMES KINCHELOE

ROBERT WILLIAMS/Atty. for dbt.

REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT CORPORATION
11-17-13 [[12](#)]

No tentative ruling.

1:00 p.m.

1. [11-60914](#)-A-7 WADE/CARRIE MOOR MOTION TO SELL AND/OR MOTION TO
KDG-4 PAY
JEFFREY VETTER/MV 12-31-13 [[54](#)]
D. GARDNER/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 20.23 acres of real property located in Lebec, California

Buyer: Esteban Tabares

Sale Price: \$40,000.00

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).

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). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

2. [10-16017](#)-A-7 LAURA WILLIAMS OMNIBUS OBJECTION TO CLAIMS
LRP-10 12-6-13 [[157](#)]
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

Final Ruling

Objection: Omnibus Objection to Claims

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).

This omnibus objection to respondents' claims is based solely on (1) the grounds provided in Rule 3007(d)(1) because the claims duplicate other claims, or (2) the grounds provided in Rule 3007(d)(3), because the claims have been amended by subsequently filed proofs of claim. See Fed. R. Bankr. P. 3007(d)(1), (3).

Each claim to which the objection has been filed asserts the same obligation in the same amount as another claim that has been filed against the same debtor. The court sustains the objection and disallows the duplicate claims and the claims that have been amended by subsequently filed claims. Each claimant shall retain only one claim incorporating the entire obligation owed to such claimant.

3. [10-16017](#)-A-7 LAURA WILLIAMS OBJECTION TO CLAIM OF VERIZON
LRP-11 WIRELESS, CLAIM NUMBER 6
JEFFREY VETTER/MV 12-6-13 [[162](#)]
LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

Tentative Ruling

Objection: Objection to Claim
Disposition: Overruled without prejudice
Order: Civil minute order

Although the objection was served on an agent of respondent Verizon Wireless, it was not mailed to the claimant at the address shown on the proof of claim. Local Bankruptcy Rule 3007-1(c) requires that an objection to a claim be served on the claimant at the address on the proof of claim and the address listed in the schedules. The ruling is without prejudice to the filing of another objection.

4. [10-16017](#)-A-7 LAURA WILLIAMS OBJECTION TO CLAIM OF NCO
LRP-4 FINANCIAL SYSTEMS INC., CLAIM
JEFFREY VETTER/MV NUMBER 2
12-6-13 [[151](#)]
LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

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 objection's well-pleaded facts show that the claim is based on services that were provided on September 1, 2006. No agreement or other form of contract was included with the claim.

If there is only an oral contract covering the services provided, the applicable statute of limitations in California bars an action on an oral contract after two years. Cal. Civ. Proc. Code § 339. From the face of the claim, it does not appear that any payments on this obligation were ever made. Thus, if the claim was based on an oral agreement, the claim is time barred. The services were provided September 1, 2006. The petition was filed May 28, 2010, over 3.5 years later.

Alternatively, if this claim is based upon a contract, obligation or liability founded upon an instrument in writing, then the writing has not been attached as required by Federal Rule of Bankruptcy Procedure 3001(c). The objection asserts that the trustee mailed a letter in June 2013 to the claimant describing deficiencies in the claim and the lack of information regarding the claim. Claimant did not respond to this letter or file an amended claim.

This failure to respond to the trustee's inquiries for further documentation to support the claim provides "an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 437 (B.A.P. 9th Cir. 2005) (quoting *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005)). Thus, if the claim is based on a written agreement or book account, then the claimant's failure to respond to the trustee's inquiries about the claim provides an evidentiary basis to disallow the claim.

5. [10-16017](#)-A-7 LAURA WILLIAMS
LRP-5
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

OBJECTION TO CLAIM OF AMERICAN
INFOSOURCE, LP, CLAIM NUMBER 3
12-6-13 [[168](#)]

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 objection asserts that no agreement or other form of contract was included with the claim. The proof of claim indicates that the basis for the claim was a credit card. The applicable statutes of limitation in California are the statute for actions based on a written contract or obligation, the statute for a book account, or the statute for oral agreements. These statutes bar an action on such obligations after two years (oral agreements) or at most four years (written contracts or obligations or book accounts). Cal. Civ. Proc. Code §§ 312, 337, 339.

Based on the objection's well-pleaded facts, the court will sustain the objection. The objection alleges that the account on which the claim is based was charged off and last active in 2001. Nothing in the proof of claim shows any activity after 2001 on the account. The petition in this case was filed May 28, 2010. The claim was last active over 9 years before the petition in this case. The claim will be disallowed.

6. [10-16017](#)-A-7 LAURA WILLIAMS
LRP-6
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

OBJECTION TO CLAIM OF QUANTUM3
GROUP LLC, CLAIM NUMBER 4
12-6-13 [[178](#)]

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 objection asserts that no agreement or other form of contract was included with the claim. The proof of claim indicates that the basis for the claim was "unsecured debt." The applicable statutes of limitation in California are the statute for actions based on a written contract or obligation, the statute for a book account, or the statute for oral agreements. These statutes bar an action on such obligations after two years (oral agreements) or at most four years (written contracts or obligations or book accounts). Cal. Civ. Proc. Code §§ 312, 337, 339.

Based on the objection's well-pleaded facts, the court will sustain the objection. The objection alleges that the account on which the claim is based was charged off and last active in 2001. Nothing in the proof of claim shows any activity after 2001 on the account. The petition in this case was filed May 28, 2010. The claim was last active over 8 years before the petition in this case. The claim will be disallowed.

7. [10-16017](#)-A-7 LAURA WILLIAMS
LRP-7
JEFFREY VETTER/MV

OBJECTION TO CLAIM OF ALL-CAL
COLLECTION SERVICES, INC.,
CLAIM NUMBER 5
12-6-13 [[173](#)]

LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Continued to February 19, 2014, at 1:00 p.m. with supplemental declarations filed no later than February 5, 2014, and a notice of continued hearing filed and mailed to the claimant no later than such date

Order: Prepared by objecting party

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)).

Here, the objection is unclear about what portion of the claim is based on an obligation that arose after the applicable statutes of limitations expired. Both the two-year statute for oral agreements and the four-year statute for written agreements have been cited.

At least a portion of the claim is based on some event that occurred in 2009, less than 2 years before the petition date on May 28, 2010. The objection asserts that these "additional charges" were "added on in March 2009." The memorandum in support states that this "most recent activity . . . appears to only involve []\$105.46 of the total claim and appears to stem from collection notes." Mem. P. & A. Supp. Obj. at 3, ECF No. 176.

From reviewing the objection, memorandum in support, and the proof of claim attachments, the court does not understand what obligation is represented by \$105.46, how that obligation is barred by the statute of limitations (whether the 2 or 4 year statutes) or whether any other portion of the obligation arose within 2 to 4 years of the petition date.

Supplemental declarations should be filed no later than February 5, 2014, explaining the following points with specificity: (1) whether the obligation represented by the claim is founded on a written agreement, oral agreement, or book account or other type of account, (2) after further review of the attachments to the proof of claim, what portions of the obligation are barred by the statute of limitations and what portions are not; and (3) whether any item or portion of the obligation that is not time barred prevents any other portion of the obligation from being time barred by the statute of limitations, see, e.g., *Gardner v. Rutherford*, 57 Cal. App. 2d 874 (Dist. Ct. App. 1943) ("[A] book account means the entire account between the parties at the time the action is commenced, and the period of the statute of limitations upon such an account must be computed from the date of the last item, even though there may have been a lapse of more than four years between some of the items.").

8. [10-16017](#)-A-7 LAURA WILLIAMS
LRP-8
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

OBJECTION TO CLAIM OF PYOD,
LLC, CLAIM NUMBER 9
12-6-13 [[146](#)]

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 objection asserts that no agreement or other form of contract was included with the claim. The proof of claim indicates that the basis for the claim was a credit card account.

The applicable statutes of limitation in California are the statute for actions based on a written contract or obligation, the statute for a book account, or the statute for oral agreements. These statutes bar an action on such obligations after two years (oral agreements) or at most four years (written contracts or obligations or book accounts). Cal. Civ. Proc. Code §§ 312, 337, 339.

Based on the objection's well-pleaded facts, the court will sustain the objection. The objection alleges that the account on which the claim is based was last used in 1989 and charged off in 1990. The proof of claim shows the last transaction date as October 19, 1989. The petition in this case was filed May 28, 2010. The trustee asserts the claim was over 20 years old by the time of the petition date. The claim will be disallowed.

9. [10-16017](#)-A-7 LAURA WILLIAMS
LRP-9
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

OBJECTION TO CLAIM OF QUANTUM3
GROUP LLC, CLAIM NUMBER 10
12-6-13 [[183](#)]

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 objection asserts that no agreement or other form of contract was included with the claim. The proof of claim indicates that the basis for the claim is "unsecured debt." Box 3a of the proof of claim shows that the debtor may have scheduled the account as "Applied Bank."

The applicable statutes of limitation in California are the statute for actions based on a written contract or obligation, the statute for a book account, or the statute for oral agreements. These statutes bar an action on such obligations after two years (oral agreements) or at most four years (written contracts or obligations or book accounts). Cal. Civ. Proc. Code §§ 312, 337, 339.

Based on the objection's well-pleaded facts, the court will sustain the objection. The objection alleges that the account on which the claim is based was last active in January 2005 and was charged off on that date. The petition in this case was filed May 28, 2010. More than 5 years passed between the charge off date and the petition date. The claim will be disallowed.

10. [13-16531](#)-A-7 ROBERT/DANTE MANUEL
UST-1
TRACY DAVIS/MV
ROBIN TUBESING/Atty. for mv.

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
12-20-13 [[21](#)]

Tentative Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

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).

A motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8). Applicable only to above-median income debtors, the presumption of § 707(b)(2) is triggered when the debtor's current monthly income less specified expenses, 11 U.S.C. § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is not less than the lesser of 25% of the debtor's non-priority unsecured debt or \$7,475.00, whichever is greater, or \$12,475.00. The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b)(2)(B)(i).

This case involves an above-median income debtor whose debts are primarily consumer debts. After adjusting for any improperly claimed deductions from income raised by the U.S. Trustee, the debtor's monthly disposable income amount on Form B22A, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i).

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. There is no indication that special circumstances exist.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

11. [13-16141](#)-A-7 PETE/ELENA ESPINOZA
KDG-1
PETE ESPINOZA/MV
JACOB EATON/Atty. for dbt.

MOTION TO AVOID LIEN OF
COMMERCIAL TRADE, INC.
12-17-13 [[13](#)]

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.

12. [13-16841](#)-A-7 GEORGE GOMEZ

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-25-13 [[16](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Prepared by chapter 7 trustee

LEGAL STANDARDS

A motion to dismiss a Chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular Chapter 7 is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b) is applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8). Applicable only to above-median income debtors, the presumption of § 707(b)(2) is triggered when the debtor's current monthly income less specified expenses, 11 U.S.C. § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is not less than the lesser of 25% of the debtor's non-priority unsecured debt or \$7,475.00, whichever is greater, or \$12,475.00. The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. 11 U.S.C. § 707(b)(2)(B)(i).

DISCUSSION

Presumption of Abuse Based on Form B22A

This case involves an above-median income debtor whose debts are primarily consumer debts. As the U.S. Trustee has pointed out, the Debtor has improperly claimed expenses based on a household of three. The Debtor cannot include his two children in his household since they do not reside with him more than 50% of the time. Even the Debtor's declaration provides that his "two children . . . live with their mother," and his testimony at the § 341 meeting indicates that his children only stay with him one weekend a month. Therefore, he is limited to claiming expenses based on a household of one, rather than three.

Section 707(b)(2) reflects a presumption of abuse. The following changes must be made to Form B22A:

- \$48,415 on Line 14 (from \$67,401);
- \$583 on Line 19A (from \$1,234);
- \$60 on Line 19B (from \$180);
- \$414 on Line 20A (from \$513);
- \$1,126 on Line 20B (from \$1,393);
- \$ 2,625 on Line 24 (from \$3,135.37) (based on the U.S. Trustee's tax analysis);
- \$1,000 on Line 35 (from \$824) (based on the Debtor's declaration);
- \$108.71 on Line 45 (from \$0).

Altogether, the total deductions allowed under Line 47 would amount to \$7,758.28, rather than \$9,120.94 (as provided by the Debtor). Line 50 of Form B22A indicates monthly disposable income of \$1,413.31 (\$9,171.59 minus \$7,758.28). This amount multiplied by 60 is \$84,798.60, which exceeds the statutory limit of \$12,475 under § 707(b)(2)(A)(i).

Special Circumstances Exception

To rebut a presumption of abuse under the means test calculation under § 707(b)(2), the debtor may demonstrate special circumstances that justify additional expenses or an adjustment to income. See 11 U.S.C. §§ 707(b)(2)(B), 1325(b)(3); *Lanning*, 130 S. Ct. at 2477. "Special circumstances" is a defined term and is very narrow. 11 U.S.C. §

707(b)(2)(B). The statute offers as examples a serious medical condition or a call to active duty in the armed services. *Id.* Special circumstances must be beyond the debtor's control and must put a "strain on a debtor's household budget." *In re Egeberg*, 574 F.3d 1045, 1053 (9th Cir. 2009); 11 U.S.C. § 707(b)(2)(B). The statute provides, "to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide (i) documentation for such expense or adjustment to income; and (II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable." 11 U.S.C. § 707(b)(2)(B)(ii). The statute also requires that any information provided to show special circumstances shall be supported by the debtor's attestation under oath. *Id.* § 707(b)(2)(B)(iii).

Here, the Debtor has not proffered any special circumstances that would justify an adjustment to his income or expenses.

CONCLUSION

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted and the case dismissed.

14. [13-12066](#)-A-7 SCOTTIE BILLINGTON CONTINUED MOTION TO COMPEL
PK-1 ABANDONMENT
CHERYL BILLINGTON/MV 11-12-13 [[23](#)]
CYNTHIA SCULLY/Atty. for dbt.
PATRICK KAVANAGH/Atty. for mv.
WITHDRAWN

Final Ruling

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

15. [13-13967](#)-A-7 MOTEL IOSHPHE MOTION FOR STAY PENDING APPEAL
ASH-1 RE:
MAYTAL, LLC/MV 12-16-13 [[24](#)]
BARRY BOROWITZ/Atty. for dbt.
ANTHONY HAMASSIAN/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion for Stay Pending Appeal

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

Disposition: Denied

Order: Civil minute order

The party Maytal, LLC ("Maytal") has filed a motion for a stay pending appeal in order to stay the court's order authorizing the Trustee's sale of a 1/3 membership interest in Maytal and an LED billboard to the purchaser Phillip Gillet ("Gillet") (ECF No. 21) while Maytal seeks an appeal. The Trustee has filed an opposition to the motion, and Gillet has filed a declaration in opposition to the motion.

For the reasons set forth below, the court will deny the motion.

DISCUSSION

Capacity to Litigate

The capacity of a corporate litigant to sue or be sued is controlled by Civil Rule 17(b), which is expressly made applicable in bankruptcy proceedings pursuant to Bankruptcy Rules 7017 and 9014(c). Civil Rule 17(b) states, "Capacity to sue or to be sued is determined as follows . . . (2) for a corporation, by the law under which it was organized, and (3) for all other parties, by the law of the state where the court is located." Fed. R. Civ. P. 17(b)(2), (3). "For limited liability companies, federal courts have noted that the law of the state in which the district court is located should be applied in determining whether a LLC has capacity to sue or be sued." *Fox Hollow of Turlock Owner's Ass'n v. Sinclair*, 1:03-CV-AWI SAB, 2013 WL 1628260, at *2 (E.D. Cal. Apr. 15, 2013).

The Trustee has raised the issue that Maytal is an LLC that has been suspended by the California Secretary of State and is therefore unable to seek relief from this court or otherwise participate in litigation. The court turns to California law to determine what rights Maytal has as a suspended LLC.

California Corporations Code § 17701.05 provides, in relevant part, the following:

Subject to any limitations contained in the articles of organization and to compliance with this title and any other applicable laws, a limited liability company organized under this title shall have all the powers of a natural person in carrying out its business activities, including, without limitation, the power to:

. . .
(b) Sue, be sued, complain, and defend any action, arbitration, or proceeding, whether judicial, administrative, or otherwise, in its own name.

Cal. Corp. Code § 17701.05(b). However, in the event that an LLC is suspended, "except for the purpose of amending the articles of organization to set forth a new name, the powers, rights, and privileges of the limited liability company are suspended." Cal. Corp. Code § 17713.10(c). Since participating in litigation is one of the enumerated "powers, rights, and privileges" of an LLC, this means that Maytal, as a suspended LLC, cannot participate in this litigation. *Cf. Palm Valley Homeowners Ass'n, Inc. v. Design MTC*, 85 Cal. App. 4th 553, 560-61 (2000) (concluding that suspended corporation is "indeed disqualified from litigation and all other activities"); *Sacramento Mini Storage v. World Sav. & Loan Ass'n (In re Sacramento Mini Storage)*, 112 F.3d 517, at*1 (9th Cir. 1997) (unpublished table decision) (concluding that suspended corporation had no authority to cause related entity to file bankruptcy).

Since Maytal, as a suspended LLC, is precluded from participating in litigation pursuant to California law, the court finds that Maytal does not have the capacity to seek relief from this court. However, even if Maytal has the capacity to move for a stay pending appeal, the court would deny the motion on two other grounds.

Mootness

Rule 8005 governs a stay pending appeal. "A motion for a stay of the judgment, order, or decree of a bankruptcy judge . . . must ordinarily be presented to the bankruptcy judge in the first instance." Fed. R. Bankr. P. 8005. "Implicit in [Rule] 8005 is the requirement that a motion for stay pending appeal be timely filed. Failure to timely file the motion can result in denial." *Lafayette v. Kaplan (In re Kaplan)*, 373 B.R. 213, 215 (B.A.P. 1st Cir. 2007) (citation omitted).

Here, the motion for a stay pending appeal has been untimely filed because the sale of the personal property has already been consummated. The court's sale order, which was entered on December 2, 2013, waived the 14-day stay provided in Rule 6004(h), allowing the parties to complete the sale immediately upon entry of the order. According to the Report of Sale (ECF No. 19), the Trustee received the requisite funds from Gillet on November 30. The Trustee, in his opposition to Maytal's motion, then indicates that the sale has been completed (prior to Maytal filing a notice of appeal). As a result, there is nothing that can be stayed by granting Maytal's motion for a stay pending appeal. The relief requested by Maytal would require something other than simply staying the order; it would require that the court order the parties to unwind the sale and return the property back to the Trustee. This appears to be outside of the scope of a motion for stay pending appeal.

Stay Pending Appeal

A party seeking a stay pending appeal under Bankruptcy Rule 8005 must prove four elements: (1) that the appellant is likely to succeed on the merits of the appeal; (2) that the appellant will suffer irreparable harm if the stay is not granted; (3) that no substantial harm will come to the appellee if the stay is granted; and (4) that the public interest will be harmed if the stay is granted. See *Ohanian v. Irwin (In re Irwin)*, 338 B.R. 839, 843 (E.D. Cal. 2006). The moving party has the burden on each of these elements, and that party's failure to satisfy one prong of the standard requires denial of the motion. *Id.*

Here, even if Maytal has the capacity to move for a stay pending appeal and has filed the motion in a timely manner, the court still finds that Maytal is unable to meet the first prong of the applicable standard. Maytal cannot establish that it is likely to succeed on the merits of the appeal.

Maytal argues that the Debtor never owned the 1/3 membership interest in Maytal and the LED billboard and, as a result, that property never became estate property that could be sold under § 363. As provided under § 363(b), the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, *property of the estate.*" § 363(b)(1) (emphasis added). The trustee cannot sell non-estate property. However, even if the Debtor never owned the property and the property never entered the estate, that would not have any bearing on the court-ordered sale and would not result in the vacating of the sale order. This is because the court never made any findings that the estate actually had any kind of interest in the property to be sold. As stated on the record, the court said, "Again, I'm not making any adjudication about selling whatever interest the estate and debtor have and don't have. If they don't have anything, Mr. Gillet is buying nothing." This is also reflected in the sale order, which ordered that "the Trustee is authorized to sell to Phillip W. Gillet, Jr. for \$15,000.00 the

bankruptcy estate's interest in" the 1/3 membership interest and LED billboard. Whether the estate had an actual interest in the property was not resolved by the sale (nor was it intended to or needed to). Since the court believes that Maytal's appeal will not result in the appellate court vacating the sale order, the court finds that Maytal has not satisfied the first prong for obtaining a stay pending appeal.

CONCLUSION

For the reasons set forth above, the court will deny the motion.

16. [13-13967](#)-A-7 MOTEL IOSHPE MOTION TO DISQUALIFY COUNSEL
PWG-1 1-8-14 [[49](#)]
PHILLIP GILLET/MV
BARRY BOROWITZ/Atty. for dbt.
NON-OPPOSITION

No tentative ruling.

17. [13-13967](#)-A-7 MOTEL IOSHPE MOTION TO EMPLOY VINCENT A.
VG-2 GORSKI AS ATTORNEY(S)
VINCENT GORSKI/MV 12-27-13 [[36](#)]
BARRY BOROWITZ/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

Tentative Ruling

Motion: Employ Vincent Gorski and his law firm, The Gorski Firm, APC

Notice: Deemed to have been noticed under LBR 9014-1(f)(2); written opposition required

Disposition: Granted

Order: Prepared by moving party

The motion was filed and served less than 28 days prior to the hearing. The court will treat the motion as having been noticed under LBR 9014-1(f)(2).

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 trustee has applied for employment of The Gorski Firm, APC, and Vincent A. Gorski. Based on the motion and declaration filed in support, the court will grant the motion. The court will authorize the requested employment retroactively to December 16, 2013, the date a notice of appeal of an order authorizing a sale in this case was filed.

18. [13-17571](#)-A-7 HILARY MILLER ORDER TO SHOW CAUSE - FAILURE

TO PAY FEES
12-4-13 [[11](#)]

FILING FEE PAID IN FULL
12/12/13

Final Ruling

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

19. [13-14881](#)-A-7 JOSE/TERESA OLMEDO PRE-TRIAL CONFERENCE RE: MOTION
UST-1 FOR REVIEW OF FEES
AUGUST LANDIS/MV 10-18-13 [[23](#)]
OSCAR SWINTON/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
WITHDRAWN

Final Ruling

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

20. [05-15086](#)-A-7 RANDOLPH LOVEGREEN MOTION TO AVOID LIEN OF WELLS
DMG-3 FARGO BANK, N.A.
RANDOLPH LOVEGREEN/MV 1-8-14 [[52](#)]
D. GARDNER/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Liens Plus Exemption: \$157,000.00

Property Value: \$276,000 (at case filing) or \$160,000 (at the time of conversion)

Judicial Lien Avoided: \$0.00

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f).

See *Goswami*, 304 B.R at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien, all other liens, and the exemption amount, does not exceed the property's value. Accordingly, a prima facie case has not been made for relief under § 522(f).

21. [13-16857](#)-A-7 MENDOZA FAMILY PRACTICE, MOTION TO SELL
TSB-2 A MEDICAL CORPORATION 1-3-14 [[32](#)]
RANDELL PARKER/MV
CYNTHIA SCULLY/Atty. for dbt.
T. BELDEN/Atty. for mv.
OST 1/6

Final Ruling

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

1:15 p.m.

1. [13-11347](#)-A-7 CHRISTOPHER BURGONI MOTION FOR SUMMARY JUDGMENT
[13-1099](#) 11-19-13 [[10](#)]
BOARD OF TRUSTEES OF THE KERN
COUNTY ELECTRICAL PE V.
KERRY FENNELLY/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion for Summary Judgment
Notice: LBR 9014-1(f)(1); written opposition filed
Disposition: Denied
Order: Civil minute order

The Plaintiffs have filed a motion for summary judgment on their § 523(a)(2)(A) claim against the debtor/defendant Christopher Burgoni (the "Debtor"). The Plaintiffs argue that summary judgment in their favor is proper if the court applies *res judicata* based on the district court's default judgment entered against the Debtor. The Debtor has opposed the motion.

For the reasons set forth below, the court will deny the motion for summary judgment.

DISCUSSION

Summary Judgment

Federal Rule of Civil Procedure 56 requires the court to grant summary judgment on a claim or defense "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Civ. P. 56. "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *California v. Campbell*, 138 F.3d 772, 780 (9th Cir. 1998) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). "A fact is 'material' when, under the governing substantive law, it could affect the outcome of the case." *Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 322 F.3d 1039, 1046 (9th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

A shifting burden of proof applies to motions for summary judgment. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010). "The moving party initially bears the burden of proving the absence of a genuine issue of material fact." *Id.* Meeting this initial burden requires the moving party to show only "an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial." *Id.* The Ninth Circuit has explained that the non-moving party's "burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence." *Id.* "In fact, the non-moving party must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor." *Id.* at 387.

A party may support or oppose a motion for summary judgment with

affidavits or declarations that are "made on personal knowledge" and that "set out facts that would be admissible in evidence." Fed. R. Civ. P. 56(c)(4). The assertion "that a fact cannot be or is genuinely disputed" may be also supported by citing to other materials in the record or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

Failure "to properly address another party's assertion of fact as required by Rule 56(c)" permits the court to "consider the fact undisputed." Fed. R. Civ. P. 56(e)(2). If facts are considered undisputed because a party fails to properly address them, the court may "grant summary judgment if the motion and supporting materials—including facts considered undisputed—show the movant is entitled to it." Fed. R. Civ. P. 56(e)(3).

Collateral Estoppel

While the Plaintiffs have asked in their motion that the court apply res judicata (or claim preclusion), the doctrine of res judicata does not apply in nondischargeability proceedings. See *Brown v. Felsen*, 442 U.S. 127, 135 (1979). The Plaintiffs' reply indicates that they want court to apply collateral estoppel (or issue preclusion) since principles of collateral estoppel "do indeed apply in discharge exception proceedings pursuant to § 523(a)." *Grogan v. Garner*, 498 U.S. 279, 284 & n.11 (1991). Although collateral estoppel was only raised in the reply, the court will nevertheless consider the issue given that the Debtor addressed collateral estoppel in his opposition. However, the court finds that the elements of collateral estoppel, particularly the "actually litigated" element, have not been satisfied in this case.

Because the prior judgment arose from the federal district court, the court must apply the federal collateral estoppel rules. Collateral estoppel is appropriate when the following elements have been met: (1) there was a full and fair opportunity to litigate the issue in the previous action; (2) the issue was actually litigated in that action; (3) the issue was lost as a result of a final judgment in that action; and (4) the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action. *IRS v. Palmer (In re Palmer)*, 207 F.3d 566, 568 (9th Cir. 2000).

In the Ninth Circuit, the general rule is that a federal default judgment is not entitled to preclusive effect because there was no actual litigation of the issues. See *IRS v. Palmer (In re Palmer)*, 207 F.3d 566, 568 (9th Cir. 2000); *United States v. Gottheiner (In re Gottheiner)*, 703 F.2d 1136, 1140 (9th Cir. 1983). However, the Ninth Circuit has carved out an exception, where the "actually litigated" element may be satisfied by the party's "substantial participation" in the prior litigation, despite the "default" label. See *FDIC v. Daily (In re Daily)*, 47 F.3d 365, 368 (9th Cir. 1995) (per curiam). In determining whether a party substantially participated, courts "consider the nature and extent of participation in the litigation by the party against whom issue preclusion is to be invoked." *Child v. Foxboro Ranch Estates, LLC (In re Child)*, 486 B.R. 168, 174 (B.A.P. 9th Cir. 2013) (applying Arizona's collateral estoppel rules). And finding substantial participation by a party has typically involved the party obstructing the proceedings or otherwise engaging in bad faith conduct. See *Palmer*, 207 F.3d at 568 (declining to apply

collateral estoppel where party "did not engage in any obstructive tactics that might result in collateral estoppel"); *Daily*, 47 F.3d at 468 ("A party who deliberately precludes resolution of factual issues through normal adjudicative procedures may be bound, in subsequent, related proceedings involving the same parties and issues, by a prior judicial determination reached without completion of the usual process of adjudication.").

Here, the court finds that the Debtor did not substantially participate in the prior litigation to the degree necessary to collaterally estop him from litigating the issues in this proceeding. The court acknowledges that the Debtor participated in the prior litigation for an extended amount of time. He answered the original complaint on May 27, 2008 and answered the amended complaint on July 22, 2010. However, the Debtor stopped participating after the district court granted the Debtor's counsel's request to withdraw as attorney of record on July 6, 2011. His counsel withdrew because the Debtor could not pay the outstanding attorney's fees. Once that withdrawal became effective, it appears that the Debtor neither filed any paper, appeared at any hearing in the district court, nor participated in discovery. The Debtor's declaration even suggests that he did not understand how to maneuver through the judicial process without the aid of counsel. Thus, the Debtor cannot be characterized as a party who actively participated in a case for an extended amount of time and then decided that the case is no longer worth his effort. See *Gottheiner*, 703 F.2d at 1140. In such a case, collateral estoppel would apply. See *In re Palombo*, 456 B.R. 48, 60 (Bankr. C.D. Cal. 2011) ("A 'second bite at the apple' is not deserved when a party knowingly chooses not to defend himself in the first instance.").

Instead, the court finds that this case is similar to *Marlee Elecs. Corp. v. Antonakis (In re Antonakis)*, 207 B.R. 201 (Bankr. E.D. Cal. 1997), which also involved a creditor seeking application of collateral estoppel in a § 523(a)(2) nondischargeability proceeding. There, the debtor was engaged in litigation before he filed bankruptcy. In that litigation, he aggressively litigated with the plaintiff, contesting the plaintiff's motion for preliminary injunction and disputing the court's subject matter jurisdiction (even taking an appeal on that issue). However, during the proceedings, he ran out of money and could no longer continue discovery or pay his counsel. His counsel successfully withdrew from representing the debtor before he had to file an answer to the complaint. The debtor then acquiesced in a default that resulted in the default judgment.

Although the debtor in *Antonakis* was heavily involved in the prior litigation, the bankruptcy court nevertheless declined to apply collateral estoppel, concluding that the "actually litigated" requirement had not been met. See *id.* at 205. It reasoned that the court in the prior litigation had no record to independently review the merits of the case and simply adopted the complaint's allegations in whole. See *id.* at 205-06 ("In other words, [the plaintiff's] claims were never tested in actual litigation; instead, the allegations of fraud, as drafted by [the plaintiff] itself, entered the court's findings of fact by default."). As a result, nothing had been actually litigated. The bankruptcy court also emphasized the circumstances that brought about the debtor's default: "Additionally, from all that appears in the record, the Debtor suffered a default judgment only after he ran out of funds with which to pay counsel. A debtor should not be denied the protection of the bankruptcy code due to the very fact that he or she is insolvent. Nor should a debtor be

denied a bankruptcy discharge until at least one court has ruled on the merits of any claim of improper conduct." *Id.* at 206.

The same rationale should apply in this case. In deciding the motion for entry of default judgment, it appears that the district court made findings based on allegations of the complaint, rather than on any kind of evidentiary record. Additionally, similar to the debtor in *Antonakis*, the Debtor suffered a default judgment only after he ran out of money to pay his counsel. The default cannot be attributed to the Debtor acting in bad faith or him voluntarily choosing to no longer participate in the litigation. Thus, the court finds that the Debtor did not substantially participate in the prior litigation to a level sufficient to apply collateral estoppel.

CONCLUSION

For the reasons set forth above, the court will deny the motion for summary judgment.

2. [09-13785](#)-A-7 COREY/STEPHANIE GOSS STATUS CONFERENCE RE: COMPLAINT
 [13-1127](#) 11-15-13 [[1](#)]
 GOSS ET AL V. AMERICAN EXPRESS
 TRAVEL RELATED SERVICES
 MARILYN THOMASSEN/Atty. for pl.

Final Ruling

The matter is continued to February 19, 2014, at 1:15 p.m. Not later than February 12, 2014, the plaintiff shall lodge a judgment for execution by the court. Failure to do so may result in dismissal of the action for lack of prosecution.

1:30 p.m.

1. [13-17112](#)-A-7 JORGE/JEANNETTE MORALES MOTION FOR RELIEF FROM
HTP-1 AUTOMATIC STAY
BANK OF THE SIERRA/MV 1-8-14 [[12](#)]
CURTIS FLOYD/Atty. for dbt.
HANNO POWELL/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2221 Orpheus Court, Bakersfield, California

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).

Section 362(d)(1) authorizes stay relief cause. This note matured July 1, 2008, and the debtors now owe \$796,170.47. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [13-15916](#)-A-7 JOHN/DOLORES CORTEZ MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
MIDFIRST BANK/MV 11-26-13 [[19](#)]
R. BELL/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 3200 Harvard Drive, Bakersfield, California

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).

AS TO THE DEBTOR

The motion is denied as moot. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this

case, discharge has been entered. As a result, the motion is moot as to the debtor.

AS TO THE ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [13-17246](#)-A-7 CLARISSA CORONEL MOTION FOR RELIEF FROM
NMB-1 AUTOMATIC STAY
KERN SCHOOLS FEDERAL CREDIT 12-16-13 [[10](#)]
UNION/MV
CURTIS FLOYD/Atty. for dbt.
NATHAN BRODNAX/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 7074 Via Cecilia, Bakersfield, California

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 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

4. [12-10855](#)-A-7 MICHAEL WALKER
CJO-1
NATIONSTAR MORTGAGE LLC/MV
PATRICK KAVANAGH/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-5-13 [[178](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 11101 Southwales Court, Bakersfield, California

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 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

5. [13-17363](#)-A-7 MICHELLE HENRY
WDO-2
ROBERT HIRTENSTEINER/MV
WILLIAM OLCOTT/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-7-14 [[20](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 3000 Gosford #B, Bakersfield, California

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).

Section 362(d)(1) authorizes stay relief cause. The court finds cause. The debtor has failed to pay rent since September 1, 2013. The motion will be granted, and Federal Rule of Bankruptcy Procedure

4001(a)(3) will be waived. No other relief will be awarded.

6. [13-16484](#)-A-7 SANDRA WOOLLEY MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 12-2-13 [[12](#)]
CURTIS FLOYD/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 23309 Tak Court, Tehachapi, California

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 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

7. [13-17788](#)-A-7 PEDRO/MARTHA DAVALOS MOTION FOR RELIEF FROM
EGS-1 AUTOMATIC STAY
BAYVIEW LOAN SERVICING, LLC/MV 12-24-13 [[9](#)]
FRANK SAMPLES/Atty. for dbt.
EDWARD SCHLOSS/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 5001 Yellow Rose Court, Bakersfield, California

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).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

1:45 p.m.

1. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, MOTION FOR ADMINISTRATIVE
LKW-8 INC. EXPENSES
CENTRAL VALLEY SHORING, 12-3-13 [[134](#)]
INC./MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

2. [13-12358](#)-A-11 CENTRAL VALLEY SHORING, MOTION FOR RELIEF FROM
RAS-2 INC. AUTOMATIC STAY
HITACHI CAPITAL AMERICA 12-3-13 [[128](#)]
CORP./MV
LEONARD WELSH/Atty. for dbt.
RICHARD SOLOMON/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: Trail King Trailer

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 362(d)(1) authorizes stay relief cause. The parties have entered into a stipulation for stay relief and no party has filed opposition thereto. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [13-11766](#)-A-11 500 WHITE LANE LP CONTINUED CHAPTER 11 STATUS
CONFERENCE
3-20-13 [[8](#)]
D. GARDNER/Atty. for dbt.

No tentative ruling.

4. [13-11766](#)-A-11 500 WHITE LANE LP
DMG-8

CONTINUED DISCLOSURE STATEMENT
FILED BY DEBTOR 500 WHITE LANE
LP
12-16-13 [[170](#)]

D. GARDNER/Atty. for dbt.

Tentative Ruling

The court will drop the hearing on this matter as moot. At the hearing on January 8, 2014, the court continued the matter to this hearing date and ordered that an amended disclosure statement and plan be filed. See Civ. Min. Order, Jan. 8, 2014, ECF No. 193. The debtor has filed an amended disclosure statement having docket control number DMG-9 which has been set for hearing as matter no. 5 on this calendar. This matter no. 4 appears moot.

5. [13-11766](#)-A-11 500 WHITE LANE LP
DMG-9

DISCLOSURE STATEMENT FILED BY
DEBTOR 500 WHITE LANE LP
1-10-14 [[198](#)]

D. GARDNER/Atty. for dbt.

Tentative Ruling

Motion: Motion for Approve Disclosure Statement Dated January 10, 2014

Notice: Court-ordered shortened notice; written opposition required

Disposition: Continued to allow Debtor to file an amended disclosure statement and plan by January 29, 2014, with continued hearing on February 12, 2014

Order: Civil minute order

The debtor 500 White Lane LLP (the "Debtor") has filed a disclosure statement and plan dated January 10, 2014 (the "Disclosure Statement" and "Plan"), and now request court approval of the Disclosure Statement. For the reasons set forth below, the court will continue the matter to allow the Debtor to file another disclosure statement.

The Debtor is to file an amended disclosure state and plan, which must address the issues raised by the court in this ruling, by Wednesday, January 29, 2014, along with redlined versions of the documents. The continued hearing on approval of the amended disclosure statement will be held on Wednesday, February 12, 2014, at 1:30 p.m. Any opposition must be filed no later than 7 days before the continued hearing.

DISCUSSION

Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a plan of reorganization must contain adequate information "that would enable [an investor typical of holders of claims or interest of the relevant class] to make an informed judgment about the plan." § 1125(a)(1). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted). Further, "[i]t is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed." *In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) (citations

omitted).

The court now turns to its own issues with the Disclosure Statement and Plan.

Treatment of Class 1 (D/S p. 7). The Disclosure Statement's discussion regarding treatment of Class 1 appears to be based on the prior proposed treatment and should reflect the amended proposed treatment found in the new Plan (and the Stipulation for Relief from Automatic Stay).

Treatment of Class 6 (Plan p. 12). The treatment of Class 6 is unclear and there is a question of whether this class is impaired (and whether this class should be subdivided into two classes). The footnote indicates that Robert Hernandez will retain 100% interest in the Debtor, but it does not appear that he currently has a 100% interest in the Debtor. Edward Torino appears to have a 45% interest in the Debtor, and based on the Plan's language, he will lose his interest in the Debtor upon confirmation. Due to the loss of his equity interest, he does not appear to be an unimpaired equity interest holder. Further, Edward Torino's treatment under the Plan appears to differ from Robert Hernandez's treatment, who will retain an interest in the Debtor.

Treatment of Class 6 (D/S pp. 12-13). The Disclosure Statement omits any discussion about the treatment of Class 6 equity interest holders when it should discuss their treatment, especially with respect to the equity interest holders who will lose his or her interest.

"Solicitation of Acceptances and Voting" (D/S pp. 15-16). The Disclosure Statement has omitted Classes 5 and 6 from the list of classes who may or may not vote, causing some confusion as to the voting rights of Classes 5 and 6.

CONCLUSION

For the reasons set forth above, the court will continue the matter to allow the Debtor to file another disclosure statement.

The Debtor is to file an amended disclosure state and plan, which must address the issues raised by the court in this ruling, by Wednesday, January 29, 2014, along with redlined versions of the documents. The continued hearing on approval of the amended disclosure statement will be held on Wednesday, February 12, 2014, at 1:30 p.m. Any opposition must be filed no later than 7 days before the continued hearing.

3:00 p.m.

1. [12-10855](#)-A-7 MICHAEL WALKER
[12-1084](#)
WESTAMERICA BANK V. WALKER
CHARLES DOERKSEN/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED TRIAL RE: COMPLAINT
5-14-12 [[1](#)]