

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge  
Fresno, California

2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California

**MARCH 12, 2015**

**THURSDAY**

**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. [14-14902](#)-A-13 ALEJANDRO SOLORZANO  
MHM-2  
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  
1-20-15 [[45](#)]

SCOTT LYONS/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

**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).

For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. The trustee has not received a payment yet in this case. The first payment was due on November 25, 2014 in the amount of \$1020.00. As of the date of the motion, January 20, 2015, the debtor was 2 months delinquent for a total delinquency of \$2040.00.

2. [11-60404](#)-A-13 FRANCIS/HARRIET SCHOTT  
JDR-1  
FRANCIS SCHOTT/MV  
JEFFREY ROWE/Atty. for dbt.  
MOTION TO MODIFY PLAN  
1-22-15 [[38](#)]

**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



5. [14-14511](#)-A-13 ROSENDO/MARIA JAIME  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-16-15 [[38](#)]

THOMAS GILLIS/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

6. [14-14511](#)-A-13 ROSENDO/MARIA JAIME  
MHM-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS  
1-16-15 [[42](#)]

THOMAS GILLIS/Atty. for dbt.  
DISMISSED

**Final Ruling**

The case dismissed, the matter is denied as moot.

7. [11-61913](#)-A-13 MARTIN/ADRIANA VALENCIA  
DRJ-4  
MARTIN VALENCIA/MV  
DAVID JENKINS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
2-2-15 [[65](#)]

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

For the reasons stated in the reply filed by the debtors, the court will deny the motion without prejudice. Another modified plan may be filed to resolve the issues of the duplicative mortgage payments and the unspecified reduction in the dollar amount of the monthly plan payments that created a delinquency in the modified plan.



to § 1307(a). Their case has been converted as of the filing of the notice. Fed. R. Bankr. P. 1017(f)(3).

11. [15-10017](#)-A-13 JAMES CULVER

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-10-15 [[21](#)]

DAVID JENKINS/Atty. for dbt.

**Final Ruling**

The installments due having been paid, the order to show cause is discharged.

12. [12-10318](#)-A-13 JAQUETTA WORTH  
SAH-9  
JAQUETTA WORTH/MV  
SUSAN HEMB/Atty. for dbt.

MOTION TO MODIFY PLAN  
1-14-15 [[136](#)]

**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.

13. [10-11020](#)-A-13 JAVIER/ANITA TEMORES  
HDN-4  
JAVIER TEMORES/MV

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO FINANCIAL/WELLS  
FARGO BANK  
2-6-15 [[72](#)]

HENRY NUNEZ/Atty. for dbt.

### **Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 701 S. 2nd St., Kerman, CA.

The court values the collateral at \$100,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 701 S. 2nd St., Kerman, CA, has a value of \$100,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

14. [10-64121](#)-A-13 JAVIER/CARINA HINOJOSA MOTION TO DETERMINE FINAL CURE  
MHM-1 AND MORTGAGE PAYMENT RULE  
MICHAEL MEYER/MV 3002.1  
2-3-15 [[63](#)]  
  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

15. [14-10525](#)-A-13 PEDRO VELASQUEZ MOTION TO DISMISS CASE FOR  
MHM-1 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-15-15 [[41](#)]  
SCOTT LYONS/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

**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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2588.

16. [13-10131](#)-A-13 CESAR/MELISSA RODRIGUEZ MOTION TO DISMISS CASE FOR  
MHM-2 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-14-15 [[53](#)]  
MICHAEL MIRANDA/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

17. [11-16733](#)-A-13 ALBERTO/MICAELA SALCEDO MOTION TO APPROVE LOAN  
CJO-1 MODIFICATION  
U.S. BANK TRUST, N.A./MV 2-23-15 [[107](#)]  
PETER FEAR/Atty. for dbt.  
CHRISTINA O/Atty. for mv.

**Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

**Notice:** LBR 9014-1(f)(2); no 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

18. [11-19833](#)-A-13 ANITA HERNANDEZ  
MHM-1  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-12-15 [[43](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

19. [14-14933](#)-A-13 RAMON MARTINEZ  
SL-1  
RAMON MARTINEZ/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
1-14-15 [[29](#)]

**Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

**CONFIRMATION**

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.

**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).

20. [11-60834](#)-A-13 JOSE CHAVEZ AND MARIA TRUSTEE'S OBJECTION TO NOTICE  
MHM-2 GARCIA OF WITHDRAWAL OF CLAIM NO. 2 BY  
CANDICA, LLC  
1-15-15 [[57](#)]
- GEOFFREY ADALIAN/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The objection withdrawn, the matter is dropped as moot.

21. [14-15936](#)-A-13 BRENT SCHAIBLE MOTION TO VALUE COLLATERAL OF  
DRJ-2 BANK OF AMERICA, NA  
BRENT SCHAIBLE/MV 2-8-15 [[23](#)]  
DAVID JENKINS/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Civil minute order

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

**VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1095 E. Fir St., Lindsay, CA.

The court values the collateral at \$154,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 1095 E. Fir St., Lindsay, CA, has a value of \$154,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

22. [08-18042](#)-A-12 WELLESLEY MAGAN  
THA-6  
WELLESLEY MAGAN/MV  
THOMAS ARMSTRONG/Atty. for dbt.

MOTION FOR ENTRY OF DISCHARGE  
1-22-15 [[59](#)]

#### **Final Ruling**

**Motion:** Entry of Discharge

**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).

Discharges in Chapter 12 are governed by 11 U.S.C. § 1228(a),(f). The debtor has made a prima facie case of entitlement to discharge. No party in interest has filed opposition to the motion. As a result, the motion will be granted.

23. [15-10243](#)-A-13 JERRY/SARA GARCIA  
MAZ-1  
JERRY GARCIA/MV  
MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF  
GM FINANCIAL  
2-3-15 [[11](#)]

### **Tentative Ruling**

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

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

**Disposition:** Denied (unless the debtors dispute at the hearing that the vehicle was acquired for a use other than a personal use)

**Order:** Civil minute order

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2012 Chevrolet Sonic. But the hanging paragraph factors appear to be applicable at least in part.

The debt secured by the vehicle was in fact incurred within the 910-day period preceding the date of the petition. The petition was filed on January 27, 2015, and the date 910 days before the petition is July 31, 2012. The creditor's opposition asserts that the debtors entered into the retail installment sale contract on February 5, 2013. But the debtor's motion at paragraph 6 admits that the creditor's claim was incurred within 910 days prepetition, so there is no need to consider the creditors' assertion or evidence on this point.

Next, the declaration of Jerry Garcia admits that the creditor's lien secured the repayment of the purchase price of the vehicle. The motion references the purchase money portion of the debt at paragraph 6. These statements admit that the creditor's lien is a purchase money security interest

Lastly, unless the debtors dispute at the hearing whether the vehicle was acquired for the debtor's personal use, the court will deny the motion as the debtors, the movants, have not sufficiently shown the inapplicability of the hanging paragraph. Thus, the court cannot conclude that the hanging paragraph does not apply for purposes of valuing the subject vehicle.

24. [15-10243](#)-A-13 JERRY/SARA GARCIA  
MAZ-2  
JERRY GARCIA/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SPRINGLEAF FINANCIAL SERVICES  
2-3-15 [[15](#)]

#### **Tentative Ruling**

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

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2003 GMC Envoy. But the motion at paragraph 6 states that the creditor's claim was incurred within 910 days prepetition. And the lien secured the repayment of the purchase price of the vehicle. Garcia Decl. ¶ 4. The court cannot value the collateral when the movant has not shown facts supporting the inapplicability of the hanging paragraph. While paragraph 6 of the motion regarding the 910-day period appears to be an error, the court cannot assume that the debtors are negating the debt having been incurred within the 910-day period.

25. [14-12645](#)-A-13 NANCY ADINOLFI

CONTINUED OBJECTION TO

MHM-2

CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
10-30-14 [[27](#)]

DAVID JENKINS/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

26. [14-15245](#)-A-13 MICHAEL CASE

LAURIE BLACK/MV

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

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY LAURIE  
D. BLACK  
12-23-14 [[23](#)]

**No tentative ruling.**

27. [14-13447](#)-A-13 TOULY VANGKHUE

MHM-1

MICHAEL MEYER/MV

THOMAS GILLIS/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-9-15 [[22](#)]

**Final Ruling**

**Motion:** Dismiss Case

**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). No opposition has been filed, and a non-opposition has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$800.

28. [14-12348](#)-A-13 PAUL ELIZALDE  
PBB-1  
PAUL ELIZALDE/MV

OBJECTION TO CLAIM OF PACIFIC  
GAS AND ELECTRIC COMPANY, CLAIM  
NUMBER 4  
1-15-15 [[23](#)]

PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

The applicable statutes of 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. In addition, the attachment to the proof of claim filed by claimant implies that service was provided to the debtor until July 16, 2008 (The claimant's form shows "Service To" and then gives the date directly beneath). Four years after July 16, 2008 is July 16, 2012, which is before the petition date in this case, which was May 2, 2014. Thus, each of the statutes of limitation for written agreements, book accounts, or oral agreements bars enforcement of the claim. The claim will be disallowed.

29. [14-12348](#)-A-13 PAUL ELIZALDE  
PBB-2  
PAUL ELIZALDE/MV  
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF CITY OF  
CLOVIS, CLAIM NUMBER 5  
1-15-15 [[28](#)]

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

The applicable statutes of 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. In addition, the attachment to the claimant's proof of claim attached as an exhibit shows account activity, charges for service, penalties, and account balances, for dates in 2007 and 2008. The debtor's declaration indicates service was shut off November 6, 2008. Four years after this date is November 6, 2012. The petition was filed on May 2, 2014. The debtor affirms that he has made no charges, payments or signed any documents with City of Clovis for this claim in the four years prior to filing the petition. Thus, each of the statutes of limitation for written agreements, book accounts, or oral agreements bars enforcement of the claim. The claim will be disallowed.

30. [14-12348](#)-A-13 PAUL ELIZALDE  
PBB-3  
PAUL ELIZALDE/MV

OBJECTION TO CLAIM OF  
EDUCATIONAL EMPLOYEES CREDIT  
UNION, CLAIM NUMBER 2  
1-15-15 [[33](#)]

PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by the movant

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

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

For the reasons stated in the objection and supporting documents, the court will sustain the objection and disallow the claim as barred by the statute of limitations.

31. [14-12348](#)-A-13 PAUL ELIZALDE  
PBB-4  
PAUL ELIZALDE/MV

OBJECTION TO CLAIM OF EDUCATION  
EMPLOYEES CREDIT UNION, CLAIM  
NUMBER 3  
1-15-15 [[39](#)]

PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

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

For the reasons stated in the objection and supporting papers, the court will sustain the objection and disallow the claim as barred by the statute of limitations.

32. [14-12348](#)-A-13 PAUL ELIZALDE  
PBB-5  
PAUL ELIZALDE/MV  
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF LVNV  
FUNDING, LLC, CLAIM NUMBER 6  
1-15-15 [[45](#)]

### 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)).

Because the basis for the claim is shown as "Credit Card," the court presumes that a written credit agreement controlled this transaction or transactions. The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1).

Based on the objection's well-pleaded facts, the court will sustain the objection. In addition, the claimant's proof of claim attached as an exhibit shows the creditor's admission that the account was charged off by the original creditor on June 30, 2008.

From the fact that the account was charged off, the court infers that the entire debt was due and payable at some point before the date of charge off given that it would be an unlikely scenario for a creditor to charge off a debt not yet due and payable. Four years following the date of charge off was June 30, 2012. The petition date was May 2, 2014. The court finds that the statute of limitations expired on the entire debt before the petition date. The claim will be disallowed.

33. [10-16749](#)-A-13 DELANO/ELIZABETH THORPE  
PLF-6

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR LAW GROUP,  
P.C. FOR PETER L. FEAR, DEBTORS  
ATTORNEY(S)  
2-6-15 [[85](#)]

PETER FEAR/Atty. for dbt.

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

### **COMPENSATION AND EXPENSES**

Fear Law Group, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,622.50 and reimbursement of expenses in the amount of \$668.03 over and above the flat fee of \$3,500.00.

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

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

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3,622.50 and

reimbursement of expenses in the amount of \$668.03. The aggregate allowed amount equals \$4,290.53. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4,290.53 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

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

34. [14-15749](#)-A-13 NATHAN RODRIGUEZ MOTION TO VALUE COLLATERAL OF  
EPE-1 ONEMAIN FINANCIAL INC.  
NATHAN RODRIGUEZ/MV 1-29-15 [[25](#)]  
ERIC ESCAMILLA/Atty. for dbt.

#### **Final Ruling**

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently

demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6). Factual information relevant to the hanging paragraph of § 1325(a) is also an essential aspect of the grounds for the relief sought that should be contained in the motion itself and stated with particularity. See Fed. R. Bankr. P. 9013.

35. [14-15749](#)-A-13 NATHAN RODRIGUEZ  
EPE-2  
NATHAN RODRIGUEZ/MV

MOTION TO VALUE COLLATERAL OF  
SPRINGLEAF FINANCIAL SERVICES,  
INC.  
1-29-15 [[29](#)]

ERIC ESCAMILLA/Atty. for dbt.

### **Final Ruling**

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

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

The ability to value a secured claim for property other than a motor vehicle is limited to debts incurred more than one year prior to the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the motion requests that the court value collateral consisting of non-vehicular personal property. The court cannot determine whether the hanging paragraph of 11 U.S.C. § 1325(a) applies to the respondent creditor's claim in this case. Thus, the motion does not sufficiently demonstrate an entitlement to the relief requested. See LBR 9014-1(d)(6).

36. [13-11651](#)-A-13 STEPHANIE VALDEZ-GARCIA MOTION TO DISMISS CASE FOR  
MHM-3 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-14-15 [[79](#)]  
JERRY LOWE/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

37. [14-14151](#)-A-13 SALVADOR/MADELINE NAVARRO OBJECTION TO CLAIM OF DEUTSCHE  
PLF-1 BANK NATIONAL TRUST COMPANY,  
SALVADOR NAVARRO/MV CLAIM NUMBER 13  
1-21-15 [[37](#)]  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

The debtors object to Claim No. 13 filed by Deutsche Bank National Trust Company, as Trustee (Deutsche Bank), because the claim represents a debt that the debtors did not incur that is secured by real property that the debtors do not own. Deutsche Bank has filed a response conceding that this claim was improperly filed under an incorrect belief that the borrower and debtor were the same person. Deutsche Bank has indicated it will withdraw the claim. However, the court will sustain the objection and disallow the claim to resolve this matter expeditiously.

38. [14-11553](#)-A-13 MATTHEW/ANGELA KNOTT MOTION TO DISMISS CASE FOR  
MHM-2 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-15-15 [[38](#)]  
JAMES MILLER/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

**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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1274.

39. [13-13655](#)-A-13 FROYLAN/MARGARET GARCIA CONTINUED MOTION TO DISMISS  
MHM-1 CASE FOR FAILURE TO MAKE PLAN  
MICHAEL MEYER/MV PAYMENTS  
11-14-14 [[27](#)]
- THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING, MOTION  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

40. [13-13655](#)-A-13 FROYLAN/MARGARET GARCIA MOTION TO MODIFY PLAN  
TOG-1 1-13-15 [[33](#)]  
FROYLAN GARCIA/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Modification of a Chapter 13 Plan  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 3015(g). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

41. [13-12958](#)-A-13 EDWARD/HEIDI PARKS MOTION TO MODIFY PLAN  
BDB-4 1-15-15 [[51](#)]  
EDWARD PARKS/MV  
BENNY BARCO/Atty. for dbt.  
RESPONSIVE PLEADING, PLAN  
WITHDRAWN

**Final Ruling**

The plan withdrawn, the matter is dropped as moot.

42. [14-11461](#)-A-13 ANDREA SOUSA MOTION TO DISMISS CASE FOR  
MHM-5 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-15-15 [[85](#)]  
RICHARD BAMBL/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

43. [14-13162](#)-A-13 ANTONIO/ANNETTE GUZMAN MOTION TO DISMISS CASE FOR  
MHM-1 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-22-15 [[41](#)]  
NANCY KLEPAC/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

44. [14-14570](#)-A-13 DAVID PENA MOTION TO DISMISS CASE FOR  
MHM-2 UNREASONABLE DELAY THAT IS  
MICHAEL MEYER/MV PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-22-15 [[29](#)]  
SCOTT LYONS/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Prepared by moving party



48. [14-14574](#)-A-13 ALEXANDER/ERLINDA MEJIA  
MHM-2  
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  
1-20-15 [[31](#)]

VARDUHI PETROSYAN/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

**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). No opposition has been filed, and a non-opposition has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1006.

49. [11-16475](#)-A-13 PAUL GRENSEMAN  
MHM-1  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-9-15 [[33](#)]

**Final Ruling**

**Motion:** Dismiss Case

**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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3741.70.

50. [13-15375](#)-A-13 ROSEMARY GARCIA MOTION TO DISMISS CASE FOR  
MHM-1 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-14-15 [[30](#)]  
FRANK RUGGIER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

51. [13-15181](#)-A-13 LINDSAY LEMONS MOTION BY SCOTT LYONS TO  
SL-6 WITHDRAW AS ATTORNEY  
2-23-15 [[306](#)]  
SCOTT LYONS/Atty. for dbt.

*[This matter will not be called until 10:30 a.m.]*

**No tentative ruling.**

52. [11-17782](#)-A-13 RAMIL/MARIZA DAVID MOTION TO DISMISS CASE FOR  
MHM-1 FAILURE TO MAKE PLAN PAYMENTS  
MICHAEL MEYER/MV 1-12-15 [[40](#)]  
TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

53. [11-17782](#)-A-13 RAMIL/MARIZA DAVID MOTION TO MODIFY PLAN  
TCS-2 1-26-15 [[44](#)]  
RAMIL DAVID/MV  
TIMOTHY SPRINGER/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.

54. [11-62783](#)-A-13 BENIGNO MARMOLEJO ALCALA MOTION TO VALUE COLLATERAL OF  
SL-1 AND ISABEL VALLADARES DE CITIMORTGAGE, INC.  
BENIGNO MARMOLEJO ALCALA/MV 1-14-15 [[68](#)]  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Value Collateral [Real Property; Not Principal Residence]

**Notice:** Written response filed

**Disposition:** Continued to April 16, 2015, at 9:00 a.m.; a stipulation or a joint status report must be filed no later than 14 days in advance of the continued hearing date

**Order:** Civil minute order

The motion seeks to value residential real property that is the responding party's collateral. A response has been filed indicating the secured creditor, Citimortgage, Inc., has forwarded a stipulation to the debtor's counsel that would resolve this matter. A stipulation or a joint status report must be filed no later than 14 days in advance of the continued hearing date.

55. [14-12485](#)-A-13 FREDDIE/TERESITA MOTION TO MODIFY PLAN  
PBB-1 LEONGUERRERO 1-21-15 [[22](#)]  
FREDDIE LEONGUERRERO/MV  
PETER BUNTING/Atty. for dbt.

#### **Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

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

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

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

1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

56. [11-61987](#)-A-13 JOSE/LETICIA CERDA  
MHM-1  
MICHAEL MEYER/MV  
ADRIAN WILLIAMS/Atty. for dbt.  
WITHDRAWN
- MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-12-15 [[60](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

57. [14-14793](#)-A-13 PATRICIA ZUNIGA  
SCOTT LYONS/Atty. for dbt.
- ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-20-15 [[62](#)]

**Tentative Ruling**

**Motion:** Order to Show Cause for Dismissal (Failure to Pay Installment Fee)

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

**Disposition:** Granted

**Order:** Civil minute order

Debtor Patricia Zuniga filed Chapter 7 and filed an application for waiver of the filing fee. The court denied the fee waiver but did authorize payment of the fee in installments. Order on Debtor's Application for Waiver of Chapter 7 Filing Fee, filed October 7, 2014, ECF #17. The Clerk issued an installment fee order. Order Approving Payment of Filing Fee in Installments, filed October 8, 2015, ECF # 18. Of that amount \$252.00 remains unpaid. The debtor has since converted the case to Chapter 13. But doing so does not excuse payment of the fee. Unless the remainder of the filing fee is paid by the date/time of the hearing, the case will be dismissed.

58. [12-12196](#)-A-13 DOUGLAS/LYNDA POWELL  
TCS-1  
DOUGLAS POWELL/MV

OBJECTION TO CLAIM OF SANTANDER  
CONSUMER USA INC., CLAIM NUMBER  
9  
1-21-15 [[36](#)]

TIMOTHY SPRINGER/Atty. for dbt.

### 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 motion. 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).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. *See id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that “[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules.” Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). *See In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); *see also* Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). *See Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party’s claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

If the debt for which such claim is made was not properly scheduled in time to permit a timely filing of a proof of claim, then the responding party may have a claim for nondischargability under § 523(a)(3) if the responding party also did not have notice or actual knowledge of the case in time to permit such timely filing. The court takes no position on this issue as it is not before the court. Any

claim for nondischargeability based on lack of notice must be brought by way of adversary proceeding. Fed. R. Bankr. P. 7001(6).

59. [14-13899](#)-A-13 MIGUEL FLOREZ  
MHM-2  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN
- MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
1-9-15 [[28](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

60. [12-10815](#)-A-13 JOHN/JOSEPHINE RIGBY  
MHM-1  
MICHAEL MEYER/MV  
ADRIAN WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING
- MOTION TO VACATE DISMISSAL OF  
CASE  
2-26-15 [[46](#)]

**Final Ruling**

Judge Clement having recused himself, this matter is dropped as moot.

**9:15 a.m.**

1. [13-15181](#)-A-13 LINDSAY LEMONS  
[13-1124](#)  
STORMS ET AL V. LEMONS  
GLEN GATES/Atty. for pl.  
AMENDED ORDER 9/3/14,  
RESPONSIVE PLEADING
- PRETRIAL CONFERENCE RE:  
COMPLAINT  
11-12-13 [[1](#)]

*[This matter will not be called until 10:30 a.m.]*

**No tentative ruling.**

2. [13-15181](#)-A-13 LINDSAY LEMONS  
SL-2  
LINDSAY LEMONS/MV  
SCOTT LYONS/Atty. for dbt.  
AMENDED ORDER 9/3/14,  
RESPONSIVE PLEADING
- PRETRIAL CONFERENCE RE: MOTION  
TO CONFIRM PLAN  
11-26-13 [[79](#)]

*[This matter will not be called until 10:30 a.m.]*

**No tentative ruling.**

3. [13-15181](#)-A-13 LINDSAY LEMONS  
SL-3  
LINDSAY LEMONS/MV

PRETRIAL CONFERENCE RE:  
OBJECTION TO CLAIM OF WES  
STORMS, CLAIM NUMBER 2  
11-7-13 [[49](#)]

SCOTT LYONS/Atty. for dbt.  
AMENDED ORDER 9/3/14,  
RESPONSIVE PLEADING

*[This matter will not be called until 10:30 a.m.]*

**No tentative ruling.**

4. [13-15181](#)-A-13 LINDSAY LEMONS  
SL-4  
LINDSAY LEMONS/MV

PRETRIAL CONFERENCE RE:  
OBJECTION TO CLAIM OF WAYLENCO,  
CLAIM NUMBER 3  
11-7-13 [[54](#)]

SCOTT LYONS/Atty. for dbt.  
AMENDED ORDER 9/3/14,  
RESPONSIVE PLEADING

*[This matter will not be called until 10:30 a.m.]*

**No tentative ruling.**

5. [13-15181](#)-A-13 LINDSAY LEMONS  
SL-5  
LINDSAY LEMONS/MV

PRETRIAL CONFERENCE RE:  
OBJECTION TO CLAIM OF WAYNE  
STORMS, CLAIM NUMBER 1  
10-24-13 [[134](#)]

SCOTT LYONS/Atty. for dbt.  
AMENDED ORDER 9/3/14,  
RESPONSIVE PLEADING

*[This matter will not be called until 10:30 a.m.]*

**No tentative ruling.**

10:00 a.m.

1. [14-14912](#)-A-13 GEOFFREY ALLAN AND STATUS CONFERENCE RE: COMPLAINT  
[15-1004](#) FRANCES ALVAREZ 1-7-15 [[1](#)]  
ALLAN ET AL V. BOUDREAUX ET AL  
PETER BUNTING/Atty. for pl.  
STIPULATION

**Final Ruling**

Based on the Joint Stipulation, filed February 13, 2015, ECF 7, the status conference is concluded. Plaintiff shall lodge (1) an order approving the stipulation; and (2) a judgment thereon. In the event that judgment is not entered 90 days hereafter, the Clerk may dismiss the case without further notice or hearing.

2. [13-10971](#)-A-13 JEREMY WINANS CONTINUED PRE-TRIAL CONFERENCE  
[13-1054](#) DAVIS V. WINANS RE: AMENDED COMPLAINT  
11-21-14 [[95](#)]  
THOMAS ARMSTRONG/Atty. for pl.

**Final Ruling**

This matter is continued to May 21, 2015, at 10:00 a.m. Not later than 14 days prior to the continued hearing, the parties shall file a joint status report.

3. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUING STATUS CONFERENCE  
[13-1124](#) GEG-2 RE: MOTION/APPLICATION TO  
STORMS ET AL V. LEMONS COMPROMISE CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH  
LINDSAY LEMONS  
12-16-14 [[46](#)]

GLEN GATES/Atty. for mv.

*[This matter will not be called until 10:30 a.m.]*

**No tentative ruling.**