

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

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

PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [17-14301](#)-A-13 **IN RE: HARRY/CHERRY COLES**
[TCS-3](#)

MOTION TO CONFIRM PLAN
2-27-2018 [[53](#)]

HARRY COLES/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

Final Ruling

The case converted, the matter is dropped as moot.

2. [17-14702](#)-A-13 **IN RE: MARIA WEE**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-6-2018 [[60](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA

Final Ruling

An amended Schedule C has been filed, and the claim of exemption to which the trustee objects has been amended. The objection will be overruled as moot.

3. [18-10103](#)-A-13 **IN RE: JOYCE FITZPATRICK**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF CARMAX BUSINESS SERVICES, LLC
3-14-2018 [[20](#)]

JOYCE FITZPATRICK/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2012 Infiniti G37 Coupe 2-Door. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$11,741.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2012 Infiniti G37 Coupe 2-Door has a value of \$11,741. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,741 equal to the value of the collateral that is unencumbered by senior liens.

The respondent has a general unsecured claim for the balance of the claim.

4. [18-10105](#)-A-13 **IN RE: SCOTT MARSH**
[MHM-2](#)

MOTION TO DISMISS CASE
3-8-2018 [[24](#)]

MICHAEL MEYER/MV
JERRY LOWE
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [17-13307](#)-A-13 **IN RE: CRYSTAL HYATT**
[SAH-2](#)

PRETRIAL CONFERENCE RE: MOTION TO VALUE COLLATERAL OF FAST
FCU
11-3-2017 [[38](#)]

CRYSTAL HYATT/MV
SUSAN HEMB
ORDER APPROVING STIPULATION, ECF NO. 93

Final Ruling

The matter resolved by order approving stipulation, ECF #92, the pretrial conference is concluded.

6. [17-14608](#)-A-13 **IN RE: ERIC/AMY CAMPBELL**
[CCR-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MANUFACTURED
HOME INVESTMENTS, INC.
1-23-2018 [[36](#)]

MANUFACTURED HOME INVESTMENTS,
INC./MV
SCOTT LYONS
CHERYL ROUSE/ATTY. FOR MV.

No Ruling

7. [17-14608](#)-A-13 **IN RE: ERIC/AMY CAMPBELL**
[SL-2](#)

CONTINUED MOTION TO CONFIRM PLAN
1-26-2018 [[41](#)]

ERIC CAMPBELL/MV
SCOTT LYONS
RESPONSIVE PLEADING

No Ruling

8. [17-14608](#)-A-13 **IN RE: ERIC/AMY CAMPBELL**
[SL-3](#)

CONTINUED MOTION TO VALUE COLLATERAL OF MANUFACTURED HOME
INVESTMENTS, INC.
1-29-2018 [[47](#)]

ERIC CAMPBELL/MV
SCOTT LYONS
RESPONSIVE PLEADING

No Ruling

9. [18-10210](#)-A-13 **IN RE: MIGUEL/MARIA GARCIA**
[TOG-1](#)

MOTION TO DISMISS DEBTOR MIGUEL GARCIA
3-21-2018 [[22](#)]

MARIA GARCIA/MV
THOMAS GILLIS

Tentative Ruling

Motion: Dismiss Deceased Joint Debtor

Notice: LBR 9014-1(f)(2); no 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). 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 requests dismissal of the joint debtor Miguel Garcia. This joint debtor is now deceased. The court will grant the motion under § 1307(b).

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 present motion to dismiss joint debtor Miguel Garcia 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. Joint debtor Miguel Garcia is hereby dismissed from this chapter 13 case. Maria Garcia's case shall remain pending.

10. [18-10415](#)-A-13 **IN RE: TERRILL/SUSAN COX**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-16-2018 [[36](#)]

\$80.00 INSTALLMENT PAYMENT ON 3/20/18

Final Ruling

The installment payment paid, the order to show cause is discharged.

11. [18-10415](#)-A-13 **IN RE: TERRILL/SUSAN COX**
[MHM-2](#)

MOTION TO DISMISS CASE
3-23-2018 [[41](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

12. [18-10218](#)-A-13 **IN RE: ENOC GUTIERREZ AND KAREN RIVAS**
[MHM-2](#)

MOTION TO DISMISS CASE
3-8-2018 [[17](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Conditionally denied

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) because the debtors failed to attend a scheduled § 341 meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case on condition that the debtors attend the next creditors' meeting. But if the debtors do not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is conditionally denied. It is denied on the condition that both debtors attend the next continued § 341(a) meeting of creditors. But if both debtors do not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

13. [17-12521](#)-A-13 **IN RE: HENRY PEREZ**
[SAH-1](#)

MOTION TO AVOID LIEN OF COLLECTIBLES MANAGEMENT RESOURCES
2-15-2018 [\[44\]](#)

HENRY PEREZ/MV
SUSAN HEMB

Tentative Ruling

Motion: Avoid Lien on Personal Property

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

Disposition: Denied

Order: Civil minute order

On Schedule B, the debtor has listed a variety of personal property items with an aggregate value \$131,169.67. The personal property includes vehicles, household goods and furnishings, electronics, firearms, clothes, jewelry, dogs, deposits, retirement accounts, pension account, tax refunds, and claims against third parties. The debtor has claimed a variety of exemptions in such property.

The motion requests that the court avoid a lien on the debtor's personal property listed on Schedule B. The lien is purportedly held by respondent Collectibles Management Resources under § 522(f).

LEGAL STANDARDS

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) (emphasis added).

DISCUSSION

The motion requests avoidance of a judicial lien on personal property. The motion states that the judicial lien was created by an abstract of judgment issued on May 16, 2017, in Fresno Superior Court Case No. 17CECL00894. This abstract was recorded on May 22, 2017.

Recordation of an Abstract of Judgment Does Not Create a Judicial Lien on Personal Property

In general, an abstract of judgment may be recorded with a county recorder. But this act creates a judicial lien on all of the judgment debtor's **real property in the county**. Cal. Civ. Proc. Code

§§ 697.310(a); 697.340(a). Further, "[i]f any interest in **real property in the county** on which a judgment lien could be created . . . is acquired after the judgment lien was created, the judgment lien attaches to such interest at the time it is acquired." Cal. Civ. Proc. Code § 697.340(b).

A judicial lien on **personal property** is not created by the recording of an abstract of judgment in the real property records. Thus, the motion fails to show that the recording of the abstract of judgment in Kings County created a judicial lien on the debtor's personal property in that county.

Other Methods of Creating a Judicial Lien on Personal Property

Under the Bankruptcy Code, a "judicial lien" is a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). A lien is a "charge against or interest in property to secure payment of a debt or performance of an obligation." *Id.* § 101(37).

California statutory law provides for different methods of creating judicial liens on personal property. The different methods include (i) filing a notice of judgment lien with the Secretary of State's office, (ii) levying under writ of execution, and (iii) serving an order for a debtor's examination on the judgment debtor.

A judicial lien may be created on specific types of personal property by the filing of a notice of judgment lien in the California Secretary of State's office. Cal. Civ. Proc. Code § 697.510(a), 697.530(a). Unless a continuation statement is timely filed, the lien ceases to be effective after five years from the date of its filing. *See id.* § 697.510(b)-(e).

A judicial lien may also arise by levy under a writ of execution. "A levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of two years after the date of issuance of the writ unless the judgment is sooner satisfied." Cal. Civ. Proc. Code § 697.710. But "[a]n execution lien is created by a levy under a writ of execution. . . . Without a valid levy, there [is] no lien." *Grover v. Bay View Bank*, 104 Cal. Rptr. 2d 677, 682 (Ct. App. 2001) (citation omitted); *see also* Cal. Civ. Proc. Code § 697.710. For example, a valid levy on tangible personal property in a non-business judgment debtor's possession usually requires that the levying officer "take the property into custody." *See* Cal. Civ. Proc. Code §§ 700.030; 700.070. A valid levy on tangible personal property in a third person's possession or control necessitates that the levying officer "serve a copy of the writ of execution and a notice of levy on the third person." *Id.* § 700.040(a). A levy on a deposit account does not occur until the levying officer serves the writ of execution and notice of levy on the financial institution where the deposit account exists. *Id.* § 700.140(a)-(b). A levy on growing crops, timber, minerals or the similar property requires recording a copy of the writ and notice of levy with the county recorder. *See id.* § 700.020(a).

A judicial lien may also be created on personal property by serving an order for a debtor's examination on the judgment debtor. *Id.* § 708.110(d). This lien lasts for a period of one year from the date of the order unless extended or terminated by the court before the year ends. *Id.*

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." 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. It does not set forth sufficient facts indicating the existence of a judicial lien on personal property. The motion will be denied as a result.

CIVIL MINUTE ORDER

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

The debtor's motion to avoid a judicial lien on personal property has been presented to the court. Given the motion's failure to show the existence of a judicial lien,

IT IS ORDERED that the motion is denied.

14. [18-11021](#)-A-13 **IN RE: CHANNA DAVIS**
[ADR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-29-2018 [[10](#)]

KAVINDER SINGH/MV
ANTHONY ROWE/ATTY. FOR MV.

Final Ruling

The case has been dismissed. The motion will be denied as moot.

15. [15-14635](#)-A-13 **IN RE: CARLOS/SARA LAM**
[RSW-3](#)

MOTION TO SELL
3-20-2018 [\[78\]](#)

CARLOS LAM/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Sell Property [Real Property]

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

Disposition: Granted

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

Property: 3419 Blade Avenue, Bakersfield, CA

Buyer: Germar Enterprises, LLC

Sale Price: \$139,000

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).

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.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

16. [15-10639](#)-A-13 **IN RE: RACHEL RIVERA**
[MHM-3](#)

MOTION TO DISMISS CASE
2-9-2018 [[117](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [18-10241](#)-A-13 **IN RE: LINDA FORD**
[MHM-2](#)

MOTION TO DISMISS CASE
3-8-2018 [[20](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

18. [17-13543](#)-A-13 **IN RE: ELOY RODRIGUEZ AND ANGELA**
VASS-RODRIGUEZ
[PK-5](#)

MOTION TO VALUE COLLATERAL OF ALTA ONE CREDIT UNION
3-27-2018 [[78](#)]

ELOY RODRIGUEZ/MV
PATRICK KAVANAGH

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: LBR 9014-1(f)(2); no 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). 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 649 Maria Court, Ridgecrest, CA.

The court values the collateral at \$300,000. 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 649 Maria Court, Ridgecrest, CA, has a value of \$300,000. 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.

19. [17-13050](#)-A-13 **IN RE: DWIGHT/MARISSA ROSENQUIST**
[MEV-5](#)

MOTION TO CONFIRM PLAN
2-27-2018 [[83](#)]

DWIGHT ROSENQUIST/MV
MARC VOISENAT

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

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

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

20. [15-13154](#)-A-13 **IN RE: RUBEN FLORES AND ROSALBA**
FRANCO-FLORES
[TCS-3](#)

MOTION TO INCUR DEBT
3-29-2018 [[37](#)]

RUBEN FLORES/MV
TIMOTHY SPRINGER
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [12-19355](#)-A-13 **IN RE: PHELIX SELLERS**
[MHM-5](#)

CONTINUED MOTION TO DISMISS CASE
2-2-2018 [[70](#)]

MICHAEL MEYER/MV
SCOTT LYONS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

22. [14-12359](#)-A-13 **IN RE: ANDRES/BILLIE SALAZAR**
[TCS-5](#)

CONTINUED MOTION TO MODIFY PLAN
2-20-2018 [[83](#)]

ANDRES SALAZAR/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

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

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

23. [13-14768](#)-A-13 **IN RE: GREGORY/SUSAN ERNST**
[PLG-4](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 7
3-13-2018 [\[60\]](#)

GREGORY ERNST/MV
STEVEN ALPERT

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

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

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

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

24. [16-13873](#)-A-13 **IN RE: AMALIA ZUNIGA**
[JRL-5](#)

MOTION TO MODIFY PLAN
3-7-2018 [[80](#)]

AMALIA ZUNIGA/MV
JERRY LOWE
RESPONSIVE PLEADING

No Ruling

25. [17-13274](#)-A-13 **IN RE: SERGIO/MARLEAN BRAVO**
[MSN-3](#)

MOTION TO CONFIRM PLAN
2-20-2018 [[60](#)]

SERGIO BRAVO/MV
MARK NELSON
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [17-13274](#)-A-13 **IN RE: SERGIO/MARLEAN BRAVO**
[MSN-4](#)

OBJECTION TO CLAIM OF UNCLE CREDIT UNION, CLAIM NUMBER 12
2-20-2018 [[66](#)]

SERGIO BRAVO/MV
MARK NELSON

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).

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. See *id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. See *id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. See *id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). 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.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. See *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None 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). Because this is not a chapter 7 case, the exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

CIVIL MINUTE ORDER

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

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

The debtors' objection to claim 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 objection,

IT IS ORDERED that the objection is sustained. Claim no. 12-1 will be disallowed.

27. [17-13274](#)-A-13 IN RE: SERGIO/MARLEAN BRAVO
[MSN-5](#)

MOTION TO SELL AND/OR MOTION TO PAY
3-27-2018 [[79](#)]

SERGIO BRAVO/MV
MARK NELSON

Final Ruling

Motion: Sell Property

Disposition: Denied without prejudice

Order: Civil minute order

The movant did not provide a sufficient period of notice of the proposed sale. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires not less than 21 days' notice of a proposed use, sale or lease of property of the estate other than in the ordinary course of business unless the court shortens the time for notice for cause. In this case, notice of the motion and proposed sale was transmitted only 16 days before the hearing.

28. [17-12677](#)-A-12 IN RE: ANTONIO/MARIA TEIXEIRA

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION
7-13-2017 [[1](#)]

PETER FEAR

No Ruling

29. [18-10179](#)-A-13 **IN RE: PETER LEON**
[MHM-2](#)

MOTION TO DISMISS CASE
3-8-2018 [[15](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

30. [13-17682](#)-A-13 **IN RE: EUGENE/MARILYN MORA**
[MHM-4](#)

OBJECTION TO CLAIM OF CITIFINANCIAL SERVICING LLC, CLAIM
NUMBER 9
2-15-2018 [[69](#)]

MICHAEL MEYER/MV
GARY HUSS

Final Ruling

Objection: Objection to Claim [Based on Waiver of the Right to the Remaining Balance]

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).

LEGAL STANDARDS

Deemed Allowance under § 502(a)

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.*, Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. *See* Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

State Law on Waiver

With limited exceptions, § 502(b)(1) of the Bankruptcy Code means that "any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

Under California state law, waiver can be asserted as a defense to a claim. "California courts will find waiver when a party intentionally relinquishes a right, or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." *Intel Corp. v. Hartford Acc. & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991) (citation omitted).

DISCUSSION

The respondent and claimant Citifinancial Servicing LLC has communicated to the trustee in writing requesting that the trustee no longer make any plan payments on its claim. But until an objection to the claim is brought, the claim remains allowed. § 502(a). And the trustee must continue to pay all allowed claims consistent with the plan.

By its return of funds and/or written statements, the claimant has waived its right to receipt of any further amounts on its claim. These acts are highly inconsistent with an intent to enforce the right to any unpaid balance of the claim. This also creates an impossibility for the trustee to pay the allowed claim consistent with the trustee's duties.

Given the claimant's waiver of its right to receive any remaining balance of its claim, the court will liquidate the amount of the claim at the amount paid by the trustee to the claimant.

The claim will be allowed as an unsecured claim in the amount of \$85.01. The remaining balance of the claim will be disallowed.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to claim has been presented to the court. Having entered the default of the respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection to Claim No. 4, as amended by Claim No. 9, is sustained. The court liquidates the amount of the claim at the amount paid by the trustee on the claim. The claim will be allowed as an unsecured claim in the amount of \$85.01. The remaining balance of the claim will be disallowed.

31. [18-10190](#)-A-13 **IN RE: RAFAEL PIMENTEL**
[MHM-2](#)

MOTION TO DISMISS CASE
3-8-2018 [[16](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.