

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge  
2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California

**THURSDAY**

**AUGUST 1, 2013**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matter; 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 warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [13-10803](#)-A-13 CARLOS JACOBO  
TCS-1  
CARLOS JACOBO/MV

MOTION TO VALUE COLLATERAL OF  
COUNTRYWIDE BANK, N.A., REAL  
TIME RESOLUTIONS, INC., BAC  
HOME LOAN SERVICING; BANK OF  
AMERICA, N.A.  
6-25-13 [[34](#)]

TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

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

2. [13-12504](#)-A-13 ROEL/ALMA CALO  
SL-1  
ROEL CALO/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO CONFIRM PLAN  
6-7-13 [[18](#)]

**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 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)(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.

3. [10-14205](#)-A-13 GEORGE QUACH AND THAO LE OPPOSITION RE: NOTICE OF  
DEFAULT AND INTENT TO DISMISS  
CASE  
5-13-13 [[43](#)]

GARY HUSS/Atty. for dbt.

**No tentative ruling.**

4. [13-12305](#)-A-13 GREGORY/ROSA MOORE MOTION TO VACATE DISMISSAL OF  
DEB-1 CASE  
GREGORY MOORE/MV 7-15-13 [[53](#)]  
DONNY BRAND/Atty. for dbt.  
CASE DISMISSED

**Tentative Ruling**

**Motion:** Vacate Dismissal of Chapter 13 Case

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

**Disposition:** Denied

**Order:** Civil minute order

Debtors move under Rule 60(b) to vacate the dismissal of their Chapter 13 case. Debtors failed to provide the Chapter 13 trustee all documents necessary to evaluate their case prior to the meeting of creditors. To remedy the situation the trustee and the debtors agreed, and the court approved, to a stipulation to provide the six categories of missing documents by June 25, 2013. The stipulation provided that if the debtor did not do so the case could be dismissed on the declaration of the Chapter 13 trustee. Stipulation and Order, May 17, 2013, ECF No. 21, As the result of a "inadvertent calendar error" on the part of counsel, documents were not provided and the case dismissed.

The motion will be denied. First, the supporting declaration is not sufficiently specific to warrant relief under Rule 60(b). Its states

only that this occurred "inadvertent calendar error." Second, the debtors do not dispute that they, in fact, did not comply with the stipulation and order. Third, the debtors have still not provided the Class 1 Checklist and proof of charitable giving for April 2013. As a result, the motion will be denied.

5. [13-13008](#)-A-13 CAROL MITCHELL  
MLP-1  
CAROL MITCHELL/MV  
MARTHA PASSALAUQA/Atty. for dbt.

MOTION TO AVOID LIEN OF CAVALRY  
PORTFOLIO SERVICES LLC  
7-3-13 [[26](#)]

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

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

6. [13-13908](#)-A-13 FIDEL CAMACHO AND MOTION TO VACATE DISMISSAL OF  
TOG-6 GRACIELA RUVALCABA CASE  
FIDEL CAMACHO/MV 7-11-13 [[25](#)]  
THOMAS GILLIS/Atty. for dbt.  
CASE DISMISSED

**Tentative Ruling**

**Motion:** Vacate Dismissal of Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

Debtors Camacho and Ruvalcaba move to vacate the dismissal of their Chapter 13 case for mistake or excusable neglect. Fed. R. Civ. P. 60(b). Debtors filed a skeletal petition. Prior to the expiration of the time to file schedules, the debtors sought and received an extension of time to file the remainder of their schedules and statements. Order on Extension of Deadline, June 18, 2013, ECF No. 15. The extended deadline for filing schedules and statements was July 1, 2013. The debtors did file their schedules and statements on July 1, 2013, but did so in another case (no. 13-10112). The court finds mistake and will grant the motion.

7. [13-12212](#)-A-13 GARNEL OLIBRIS MOTION TO VALUE COLLATERAL OF  
JMA-2 WELLS FARGO BANK, N.A.  
GARNEL OLIBRIS/MV 6-26-13 [[25](#)]  
JOSEPH ARNOLD/Atty. for dbt.

**Final Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a),

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

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

8. [13-12520](#)-A-13 MANUEL SUAREZ  
RLF-6  
MANUEL SUAREZ/MV  
JEFF REICH/Atty. for dbt.

MOTION TO CONFIRM PLAN  
6-7-13 [[56](#)]

#### **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 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)(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.

9. [13-10721](#)-A-13 RALPH/ELVA AGUERO

ORDER TO SHOW CAUSE AS TO KEVIN  
O'CASEY AS TO WHY HE SHOULD NOT  
BE SANCTIONED  
7-11-13 [[59](#)]

NELLIE AGUILAR/Atty. for dbt.  
CASE DISMISSED

**Final Ruling**

The matter is dropped from calendar for insufficient service. The Clerk is directed not to close the case until the court has issued and heard further Order to Show Cause proceedings in this case.

10. [13-12423](#)-A-13 VICTOR BENCOMO

MOTION TO APPROVE LOAN  
MODIFICATION  
6-20-13 [[27](#)]

JRL-2  
VICTOR BENCOMO/MV  
JERRY LOWE/Atty. for dbt.

**Final Ruling**

**Motion:** Loan Modification Approval

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

11. [13-12125](#)-A-13 TERRY/KATHRYN HORAK

MOTION TO CONFIRM PLAN  
6-13-13 [[38](#)]

GH-3  
TERRY HORAK/MV  
GARY HUSS/Atty. for dbt.

**Final Ruling**

The plan withdrawn by stipulation of the parties, and approved by order of the court, the matter is dropped as moot.

12. [13-14031](#)-A-13 ALFRED/MONICA SAUCEDA ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-12-13 [[29](#)]

PAID \$70.00

**Final Ruling**

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

13. [13-13232](#)-A-13 FRANK/RACHEL RUIZ MOTION TO CONFIRM PLAN  
KMM-1 6-17-13 [[20](#)]  
FRANK RUIZ/MV  
KARNEY MEKHITARIAN/Atty. for dbt.  
RESPONSIVE PLEADING,  
STIPULATION FOR WITHDRAWAL  
OF PLAN

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**DENIED AS MOOT**

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so, renders any pending confirmation motion for the prior plan moot. The debtor has filed a modified plan and the motion will be denied as moot.

**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 declaration without further notice or hearing. See 11 U.S.C. § 1307(c)(1).

14. [13-13232](#)-A-13 FRANK/RACHEL RUIZ COUNTER MOTION TO DISMISS  
MHM-1 CASE/PROCEEDING  
MICHAEL MEYER/MV 7-16-13 [[28](#)]  
KARNEY MEKHITARIAN/Atty. for dbt.  
WITHDRAWN 7/26/13

**Final Ruling**

The matter withdrawn, the motion is dropped as moot.

15. [10-14836](#)-A-13 TODD/CYNTHIA BLANC  
ASW-7  
TODD BLANC/MV  
ADRIAN WILLIAMS/Atty. for dbt.  
CASE DISMISSED AS TO TODD  
BLANC

MOTION TO CONFIRM PLAN  
6-24-13 [[83](#)]

### **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.

16. [13-12246](#)-A-13 EVANGELITO VALDEZ  
JDR-1  
EVANGELITO VALDEZ/MV  
JEFFREY ROWE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
6-28-13 [[21](#)]

### **Final Ruling**

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

**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).

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be

served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

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

17. [13-13055](#)-A-13 KENNETH/GERALDENE MOTION TO VALUE COLLATERAL OF  
JDM-1 PETERSON GREEN TREE SERVICING, LLC  
KENNETH PETERSON/MV 6-10-13 [[17](#)]  
JAMES MILLER/Atty. for dbt.

### Final Ruling

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

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

18. [13-14655](#)-A-13 LARRY VALENCIA  
TCS-1  
LARRY VALENCIA/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
7-20-13 [[15](#)]

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor who was not noticed or served with the motion

**Order:** Prepared by moving party

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

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the *later case* is in good faith as to the creditors to be stayed. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed and that the automatic stay should be extended. The motion will be granted except as to any creditor who was not noticed or served with the motion.

19. [12-18356](#)-A-13 EMANUEL RAMOS  
TCS-1  
EMANUEL RAMOS/MV  
NANCY KLEPAC/Atty. for dbt.  
CASE DISMISSED

OBJECTION TO CLAIM OF ASSET  
ACCEPTANCE LLC, CLAIM NUMBER 3  
6-15-13 [[31](#)]

**Final Ruling**

The case dismissed, the matter is dropped as moot.

20. [12-19056](#)-A-13 ROBERT OBERMIRE  
PBB-1  
ROBERT OBERMIRE/MV

OBJECTION TO CLAIM OF CAVALRY  
PORTFOLIO SERVICES, LLC, CLAIM  
NUMBER 1  
6-10-13 [[20](#)]

PETER BUNTING/Atty. for dbt.

### **Final Ruling**

**Objection:** Objection to Allowance of 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).

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 the claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since approximately 5 years prior to the debtor's filing the petition on October 29, 2012. 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. Thus, the responding party's claim is unenforceable under state law and should be disallowed. 11 U.S.C. § 502(b)(1).

The proof of claim does not attach the written agreement upon which the claim is based. It includes a "Statement of Account," which is not an agreement but a summary of the amount owed. In any event, even if the agreement were oral, the applicable statute of limitations in California for oral contracts would bar an action on an oral contract after two years. Cal. Civ. Proc. Code § 339.

21. [10-18661](#)-A-13 KEVIN/ROSEMARY REEDER MOTION TO MODIFY PLAN  
ALG-3 6-17-13 [[59](#)]  
KEVIN REEDER/MV  
JANINE ESQUIVEL/Atty. for dbt.  
RESPONSIVE PLEADING -  
WITHDRAWN 7/26/13

**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.

22. [13-12761](#)-A-13 ADAM/FAVIOLA SUAREZ MOTION TO CONFIRM PLAN  
SL-5 6-11-13 [[58](#)]  
ADAM SUAREZ/MV  
SCOTT LYONS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Doing so, renders any pending confirmation motion for the prior plan moot. The debtor has filed a modified plan and the motion will be denied as moot.

23. [13-12761](#)-A-13 ADAM/FAVIOLA SUAREZ  
SL-7  
ADAM SUAREZ/MV

MOTION TO VALUE COLLATERAL OF  
SPRINGLEAF FINANCIAL SERVICES,  
INC.  
7-17-13 [[77](#)]

SCOTT LYONS/Atty. for dbt.

### **Tentative Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Collateral Value:** \$6,965.00

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

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

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 loan does not appear to be secured by a purchase money security interest given the debtors' assertion that the loan was a title loan. The title loan was made more than one year before the petition was filed in this case. In the absence of any opposition to the motion, the court finds that the replacement value of the vehicle is the amount set forth above.

24. [13-12164](#)-A-13 DONALD/RACHEL FEAGIN CONTINUED MOTION TO CONFIRM  
JRL-1 PLAN  
DONALD FEAGIN/MV 5-23-13 [[27](#)]  
JERRY LOWE/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling.**

Continued to August 22, 2013, at 9:00 a.m.

25. [13-12164](#)-A-13 DONALD/RACHEL FEAGIN MOTION TO VALUE COLLATERAL OF  
JRL-2 SANTANDER CONSUMER USA  
DONALD FEAGIN/MV 6-19-13 [[38](#)]  
JERRY LOWE/Atty. for dbt.

**Tentative Ruling**

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

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

**Disposition:** Continued to August 22, 2013, at 9:00 a.m. to allow the filing of a supplemental declaration no later than 14 days prior to the date of the continued hearing

**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.*

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 debtors seek 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).

The hearing is continued to allow the debtor to provide additional evidence in support of the motion. In particular, the supplemental declaration should state whether the respondent creditor has a purchase money security interest in the vehicle to secure its claim and whether the debt owed on such claim was incurred within the 910-

day period preceding the date of the debtors' petition.

26. [11-11368](#)-A-13 ALEX/CHRISTINA CANTU MOTION TO INCUR DEBT  
ASW-2 7-16-13 [[52](#)]  
ALEX CANTU/MV  
ADRIAN WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Incur Debt for Vehicle Purchase

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

**Disposition:** Granted subject to the chapter 13 trustee's approval of the order as to form and content

**Order:** Prepared by moving party

**Proposed New Debt:** \$14,990.00 (\$3,000.00 down payment made by mother of joint debtor Christina Cantu)

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

Local Bankruptcy Rule 3015-1(i) allows the court to approve debtors' vehicle loans not greater than \$15,000.00 on an ex parte motion provided the trustee has consented in writing to the new debt and the other requirements of the local rule are met. LBR 3015-1(i). Amended Schedules I and J have been filed showing net income exceeding the monthly plan payment of \$677.00. Absent opposition at the hearing by the Chapter 13 trustee or any other interested party, the court will grant the motion.

27. [13-12168](#)-A-13 DANIEL KILBERT OBJECTION TO DEBTOR'S CLAIM OF  
MHM-2 EXEMPTIONS  
MICHAEL MEYER/MV 6-28-13 [[46](#)]  
THOMAS ARMSTRONG/Atty. for dbt.  
DEANNA HAZELTON/Atty. for mv.  
CASE DISMISSED

**Final Ruling**

The case dismissed, the matter is dropped as moot.

28. [08-14170](#)-A-13 ALFONSO/MARY ESPARZA MOTION TO MODIFY PLAN  
PBB-1 6-17-13 [[28](#)]  
ALFONSO ESPARZA/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.

29. [11-62172](#)-A-13 RUBEN/NORA GONZALEZ MOTION TO VALUE COLLATERAL OF  
SL-1 WELLS FARGO BANK, N.A.  
RUBEN GONZALEZ/MV 7-5-13 [[25](#)]  
SCOTT LYONS/Atty. for dbt.

**Tentative Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Collateral Value:** \$154,500.00

**Senior Liens:** \$184,315.02

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

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

9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the responding party's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25.

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

30. [12-16773](#)-A-13 KATHRYN STONECIPHER MOTION TO MODIFY PLAN  
PLF-2 6-12-13 [[63](#)]  
KATHRYN STONECIPHER/MV  
PETER FEAR/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.

31. [10-15076](#)-A-13 KIMBERLY BIRD  
MHM-1  
MICHAEL MEYER/MV  
M. ENMARK/Atty. for dbt.

COUNTER MOTION TO DISMISS  
CASE/PROCEEDING  
7-16-13 [[79](#)]

*[This matter will be called subsequent to the debtor's Motion to Confirm Second Modified Plan, MNE-4, Item No. 32.]*

#### **Tentative Ruling**

**Motion:** Dismiss Chapter 13 Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

Chapter 13 trustee Michael H. Meyer moves to dismiss for default in plan payments. 11 U.S.C. § 1307(c)(1),(4),(6). The debtor is delinquent \$7,710.00 (6 months) under the plan confirmed July 8, 2010. Unless the debtor is able to confirm the Second Modified Chapter 13 Plan, filed May 30, 2013, ECF No. 69, the court will dismiss the case.

32. [10-15076](#)-A-13 KIMBERLY BIRD  
MNE-4  
KIMBERLY BIRD/MV  
M. ENMARK/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
5-30-13 [[67](#)]

#### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required  
Plan: Second Modified Chapter 13 Plan, filed May 30, 2013, ECF No. 69

**Disposition:** Denied unless the plan payment is increased to \$914 per month starting April 2013, and the debtor is current (\$3,656.00 due) by the hearing

**Order:** Civil minute order

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

The debtor moves to confirm the Second Modified Chapter 13 Plan, filed May 30, 2013, ECF No. 69. Chapter 13 trustee Michael H. Meyer opposes confirmation, as authorized by 11 U.S.C. § 1302(b)(2)(B),(C), arguing that the plan, as proposed, does not satisfy the requirements for

confirmation. The Chapter 13 trustee has the better side of the argument and confirmation is denied.

**SECTION 1325(a)(6): NOT FEASIBLE**

Title 11 of U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and otherwise comply with the plan. The proposed plan provides for payments of \$881.00 starting April 2013. The debtors are delinquent for April, May and June 2013.

**SECTION 1322(d): THE PLAN EXCEEDS 60 MONTHS**

A Chapter 13 plan may not exceed 60 months. 11 U.S.C. § 1322(d). The plan will take in excess of 60 months to fund.

33. [13-11576](#)-A-13 BENITO/MARTHA GALARZA MOTION FOR RELIEF FROM  
JCW-1 AUTOMATIC STAY  
M&T BANK/MV 6-25-13 [[64](#)]  
THOMAS GILLIS/Atty. for dbt.  
BRIELYN ATWATER/Atty. for mv.  
NON-OPPOSITION

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2425 West Swift Avenue, Fresno, California

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. Moreover, the debtors have never confirmed a Chapter 13 plan but have signaled their non-opposition to the motion. Notice of Non-Opposition, July 16, 2013, ECF NO. 81. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

34. [10-64677](#)-A-13 MARCUS CESENA  
SL-3  
MARCUS CESENA/MV  
STEPHEN LABIAK/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
6-6-13 [[71](#)]

**Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(2); no written opposition required  
Plan: Second Modified Chapter 13 Plan, filed June 6, 2013, ECF No. 73

**Disposition:** Denied

**Order:** Civil minute order

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

This court has already granted Wells Fargo Auto Finance stay relief as to the 2006 Toyota Prius. Order Regarding Motion for Relief from Stay, July 17, 2013, ECF No. 80. The debtor's attempt to place the vehicle in Class 2 of the modified plan is inconsistent with the court's previous ruling. The motion will be denied.

35. [13-13879](#)-A-13 RICHARD MARQUEZ  
JRL-1  
RICHARD MARQUEZ/MV  
JERRY LOWE/Atty. for dbt.  
CASE DISMISSED

MOTION TO VALUE COLLATERAL OF  
JPMORGAN CHASE BANK, N.A.  
6-28-13 [[14](#)]

**Final Ruling**

The case dismissed, the matter is dropped as moot.

36. [13-13083](#)-A-13 TIMOTHY/JAMIE STEELE MOTION TO VALUE COLLATERAL OF  
PLG-3 WELLS FARGO FINANCIAL  
TIMOTHY STEELE/MV CALIFORNIA, INC (2ND DEED OF  
TRUST) AND/OR MOTION TO VALUE  
COLLATERAL OF WELLS FARGO  
FINANCIAL CALIFORNIA, INC (3RD  
DEED OF TRUST)  
7-2-13 [[39](#)]

D. HARELIK/Atty. for dbt.

**Final Ruling**

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

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

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

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

37. [10-18297](#)-A-13 KEITH/PAMELA VAN PAUL MOTION TO INCUR DEBT  
ASW-4 7-16-13 [[67](#)]  
KEITH VAN PAUL/MV  
ADRIAN WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Incur Debt for Vehicle Purchase

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

**Disposition:** Continued to August 16, 2013, at 9:00 a.m.

**Order:** Prepared by moving party

**Proposed New Debt:** \$15,000.00 or less

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

The motion seeks court approval of the debtors' incurring new debt to purchase a vehicle. No proof of service accompanies the motion showing that the proper parties have received service of the motion and notice of the hearing. See Fed. R. Bankr. P. 4001(c), 9013-9014; LBR 9014-1(d)(4). The debtor may file a proof of service on or before August 7, 2013.

Local Bankruptcy Rule 3015-1(i) allows the court to approve debtors' vehicle loans not greater than \$15,000.00 on an ex parte motion provided the trustee has consented in writing to the new debt and the other requirements of the local rule are met. LBR 3015-1(i). Absent opposition at the continued date of the hearing by the trustee or any other interested party, and assuming a proper proof of service is filed before August 7, 2013, then the court is inclined to grant the motion.

38. [12-60298](#)-A-13 HERBERT/DENISE DORIA  
MHM-1  
MICHAEL MEYER/MV  
CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
4-18-13 [[66](#)]  
MARK ZIMMERMAN/Atty. for dbt.  
MOTION WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

39. [09-62448](#)-A-13 CATHIE LANCASTER  
ASW-3  
CATHIE LANCASTER/MV  
MOTION FOR CONSENT TO ENTER  
INTO LOAN MODIFICATION  
AGREEMENT  
7-23-13 [[78](#)]  
ADRIAN WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Loan Modification Approval

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion and authorize the debtor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

9:15 a.m.

1. [13-10803](#)-A-13 CARLOS JACOBO  
MHM-2  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-17-13 [[30](#)]

TIMOTHY SPRINGER/Atty. for dbt.

**No tentative ruling.**

2. [13-11562](#)-A-13 EDWARD/LYDIA SWILLEY  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-13-13 [[29](#)]

THOMAS ARMSTRONG/Atty. for dbt.  
MOTION WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [13-11486](#)-A-13 MANUEL/MARIA DIAS  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
6-13-13 [[21](#)]

TIMOTHY SPRINGER/Atty. for dbt.

### **Final Ruling**

The matter is continued to September 5, 2013, at 9:15 a.m. to allow the debtors to prosecute the Motion to Value against The Bank of New York. Motion to Value, June 13, 2013, ECF No. 26.

**9:30 a.m.**

1. [13-10971](#)-A-13 JEREMY WINANS  
[13-1054](#)  
DAVIS V. WINANS  
5-14-13 [[1](#)]  
THOMAS ARMSTRONG/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT

**No tentative ruling.**

2. [13-10971](#)-A-13 JEREMY WINANS  
[13-1054](#) HDN-1  
DAVIS V. WINANS  
6-19-13 [[7](#)]  
HENRY NUNEZ/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS ADVERSARY  
PROCEEDING/NOTICE OF REMOVAL

### **Tentative Ruling**

**Motion:** Motion to Dismiss under Rule 12(b)(6)

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

**Disposition:** Granted in part; denied in part

**Order:** Civil minute order

The debtor/defendant Jeremy David Winans (the "Debtor") has filed a motion to dismiss the complaint by the creditor/plaintiff Portia Davis ("Davis") under Rule 12(b)(6), seeking to dismiss both claims for relief asserted in the complaint. Davis has filed an opposition to the motion.

For the reasons set forth below, the court will grant in part and deny in part the Debtor's motion. The claim under § 523(a)(6) will be dismissed. The claim under § 1328(a)(4) will remain.

## **RULE 12(b)(6)**

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555). In addition to looking at the facts alleged in the complaint, the court may also consider a limited set of documents without converting the motion to dismiss into a motion for summary judgment; these include (1) documents attached as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters which the court may take judicial notice. *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003).

Here, in addition to the facts alleged in the complaint, the court will consider the state court's Statement of Decision, which has been referenced throughout the complaint and of which the court can take judicial notice.

### Section 523(a)(6)

The court first considers whether dismissal is proper for Davis's first claim for relief under § 523(a)(6).

The time for filing a nondischargeability complaint under § 523(c) (i.e., debts under § 523(a)(2), (a)(4), and (a)(6)) is established in Rule 4007. The rule provides that a complaint to determine the dischargeability of a debt under § 523(c) must be filed no later than 60 days after the first date set for the § 341(a) meeting of creditors "[e]xcept as otherwise provided in subdivision (d)." Fed. R. Bankr. P. 4007(c) (emphasis added). The exception applies only to a § 523(a)(6) claim brought against a chapter 13 debtor. Specifically, subdivision (d) states, "On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(a)(6)." Fed. R. Bankr. P. 4007(d). This separate filing deadline makes sense because a debt under § 523(a)(6) only becomes

nondischargeable in a chapter 13 case when the debtor has been granted a hardship discharge under § 1328(b). Compare § 1328(c)(2) (hardship discharge), with § 1328(a)(2) (standard discharge). If the debtor obtains a standard discharge under § 1328(a), a debt that is only somewhat similar to that under § 523(a)(6) is excepted from the discharge. See § 1328(a)(4).

Since Davis's first claim for relief asserts a § 523(a)(6) claim against a chapter 13 debtor, Rule 4007(d) is applicable, and Davis has prematurely brought this claim. Davis's § 523(a)(6) claim "is not ripe for decision because 'resolution of the issue has no meaningful effect until and unless the debtor moves for hardship discharge, a contingency that occurs only in a small percentage of Chapter 13 cases.'" *Auto. Fin. Corp. v. Smith (In re Smith)*, 2009 WL 4800159, at \*2 (Bankr. E.D.N.C. Dec. 8, 2009) (quoting *Ambassadors Travel Servs., Inc. v. Liescheidt (In re Liescheidt)*, 404 B.R. 499, 505 (Bankr. C.D. Ill. 2009)). Since the Debtor has not moved for a hardship discharge yet, it is inappropriate for the court to adjudicate Davis's first claim for relief at this time.

Therefore, the claim under § 523(a)(6) must be dismissed at this time, without prejudice.

#### Section 1328(a)(4)

The court now turns to the second claim for relief under § 1328(a)(4).

Section 1328(a)(4) excepts from a standard chapter 13 discharge any debt "for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual." The B.A.P. has noted that a debt under § 1328(a)(4) is different from a debt for a willful and malicious injury under § 523(a)(6) in three ways: "(1) [§ 1328(a)(4)] applies to 'willful or malicious' injuries instead of to 'willful and malicious' injuries; (2) it applies to personal injuries or death and not to injuries to property; and (3) it applies to restitution and damages 'awarded in a civil action against the debtor' as a result of such injuries." *Waag v. Permann (In re Waag)*, 418 B.R. 373, 377 (B.A.P. 9th Cir. 2009).

Here, the Debtor contends that Davis has failed to state a claim under § 1328(a)(4), but the court is unclear about what the Debtor is attempting to argue in his motion.

In the state court action, the state court entered judgment in favor of Davis on the following causes of action: (1) sexual discrimination, (2) sexual harassment, (3) failure to prevent harassment, (4) retaliation, (5) sexual battery, (6) intentional infliction of emotional distress, and (7) wrongful termination. The state court then awarded Davis the following remedies: (1) economic damages in the amount of \$42,640, (2) emotional distress damages in the amount of \$50,000, and (3) punitive damages in an unknown amount (to be soon determined by the state court now that relief from the automatic stay has been granted). The economic damages appear to flow from (at least) the court's judgment on the cause of action of wrongful termination. The emotional distress damages appear to flow from (at least) the court's judgment on the cause of action of intentional infliction of emotional distress. The punitive damages appear to flow from the sexual discrimination and sexual harassment causes of action.

To the extent that the Debtor is arguing that the term "personal injury" in § 1328(a)(4) contemplates only personal bodily injury and that Davis did not necessarily suffer a personal bodily injury, that argument must be rejected. This court agrees with the bankruptcy court's decision in *Adams v. Adams (In re Adams)*, 478 B.R. 476 (Bankr. N.D. Ga. 2012). In that case, the court reasoned that the term "personal injury" in § 1328(a)(4) included both physical and nonphysical injuries and was intended to only exclude injuries to property. See *id.* at 487-88 (concluding that claims for defamation and intentional infliction of emotional distress were "personal injuries" under § 1328(a)(4)). This was based on Congress's intention to distinguish between injuries to property and injuries to a person by omitting § 523(a)(6)'s language of "to the property of another entity" from § 1328(a)(4) and on Congress's use of the more-specific term "personal bodily injury" in § 522(d)(11), which shows that "personal injury" must be a broader term. See *id.* at 486. Thus, the term "'personal injury' in § 1328(a)(4) should be defined in contradistinction to injury to property; the emphasis in § 1328(a)(4) is on injury to an individual." *Id.*

Here, even though Davis may not have suffered physical injuries as a result of the Debtor's conduct, the causes of action in the state court clearly show that they nevertheless involved tortious conduct that led to injuries to an individual, albeit nonphysical injuries.

Therefore, the court finds that Davis has sufficiently pleaded a claim under § 1328(a)(4).

#### **CONCLUSION**

For the reasons set forth above, the court will grant in part and deny in part the Debtor's motion. The claim under § 523(a)(6) will be dismissed. The claim under § 1328(a)(4) will remain.

3. [12-17896](#)-A-13 BRIAN/LINDA RIDDLE  
[13-1062](#)  
RIDDLE ET AL V. ROBINSON ET AL  
PETER BUNTING/Atty. for pl.  
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT  
6-4-13 [[1](#)]

**No tentative ruling.**

10:00 a.m.

1. [13-10132](#)-A-12 ANTONIO CABRAL - BARRED - CONTINUED MOTION TO CONFIRM  
TOG-4 6/4/13. AND MARIA CABRAL CHAPTER 12 PLAN  
ANTONIO CABRAL - BARRED - 2-10-13 [[30](#)]  
6/4/13./MV  
THOMAS GILLIS/Atty. for dbt.  
CASE DISMISSED

**Final Ruling**

The case dismissed, the matter is dropped as moot.

2. [12-12164](#)-A-12 NATHAN SPARKMAN OBJECTION TO CLAIM OF FRANCHISE  
PLF-6 TAX BOARD, CLAIM NUMBER 8  
NATHAN SPARKMAN/MV 7-2-13 [[70](#)]  
PETER FEAR/Atty. for dbt.

**Tentative Ruling**

**Motion:** Objection to Proof of Claim No. 8

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

**Disposition:** Sustained

**Order:** Prepared by moving party

No responding party is required to file written opposition to the sustaining of the objection; opposition may be presented at the hearing. If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The Debtor has filed an objection to a proof of claim filed by the Franchise Tax Board (the "FTB"). The FTB filed two claims on July 10, 2012: Proof of Claim No. 7 and Proof of Claim No. 8. The two Proofs of Claim appear to be duplicates, showing the same claim amount and attaching the same supporting documentation.

Therefore, the court will sustain the Debtor's objection to Proof of Claim No. 8. Proof of Claim No. 8 will be disallowed entirely (while Proof of Claim No. 7 remains allowed).

3. [10-63277](#)-A-12 DELVIN/DEBORAH GEORGESON MOTION TO DISMISS CASE FOR  
MNE-2 FAILURE TO MAKE PLAN PAYMENTS  
M. ENMARK/MV 6-20-13 [[50](#)]  
HILTON RYDER/Atty. for dbt.  
MOTION WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [12-19290](#)-A-12 DIMAS/ROSA COELHO  
TOG-7  
DIMAS COELHO/MV  
JOSEPHINE SANTOS  
5-16-13 [[83](#)]  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO VALUE  
COLLATERAL OF HAMILTON AND

**No tentative ruling.**

5. [12-19291](#)-A-12 JOAO/LUZIA VAZ  
TOG-7  
JOAO VAZ/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO VALUE  
COLLATERAL OF HAMILTON AND  
JOSEPHINE SANTOS  
5-16-13 [[101](#)]

**No tentative ruling.**

**11:00 a.m.**

1. [08-16873](#)-A-7 SONIA GUILFOYLE  
[11-1230](#)  
GUILFOYLE V. SALLIE MAE ET AL

CONTINUED TRIAL RE: COMPLAINT  
FOR DISCHARGEABILITY, 11 U.S.C.  
523(A)(8) (FOR FINDINGS AND  
FACT AND CONCLUSIONS OF LAW)  
9-6-11 [[1](#)]