

**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: SEPTEMBER 27, 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.

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. [18-12908](#)-A-13 **IN RE: CODY/CELESTE BERG**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2018 [[18](#)]

BANK OF THE WEST/MV
NICHOLAS WAJDA
MARY TANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2005 Pace Arrow 36B Motorhome

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as two postpetition payments are past due. The total postpetition delinquency is approximately \$1,280.10.

Alternatively, because the plan which has not been confirmed provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Bank of the West's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as a 2005 Pace Arrow 36B Motorhome, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

2. [18-11812](#)-A-13 **IN RE: HEATHER SILVEIRA**
[SL-1](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS
ATTORNEY(S)
8-23-2018 [[39](#)]

STEPHEN LABIAK

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Stephen Labiak has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,000.00 and reimbursement of expenses in the amount of \$0.00.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$4,000.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$4,000.00. As of the date of the application, the applicant held a retainer in the amount of \$85.00QZ. The amount of \$3,915.00 shall be allowed as an administrative expense to be paid through the plan.

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

3. [18-13019](#)-A-13 **IN RE: RENEE BURTON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-6-2018 [[23](#)]

SCOTT LYONS

No Ruling

4. [18-13122](#)-A-13 **IN RE: ANNA OLIVAREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-4-2018 [[16](#)]

SCOTT LYONS

Tentative Ruling

If the \$79 installment due August 30, 2018, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

5. [17-14529](#)-A-13 **IN RE: BRIAN FOLLAND**
[MHM-4](#)

MOTION TO DISMISS CASE
8-27-2018 [[82](#)]

MICHAEL MEYER/MV
DAVID JENKINS

No Ruling

6. [18-12330](#)-A-13 **IN RE: RAYMOND BYUS AND ROSARIO GOMEZ**
MENCHACA

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-11-2018 [[28](#)]

SCOTT LYONS
\$74.00 INSTALLMENT PAYMENT ON 9/12/18

Final Ruling

The installment payment of \$74 due September 12, 2018, having been paid, the order to show cause is discharged.

7. [18-10543](#)-A-13 **IN RE: CHARLES MASSEY**
[MHM-5](#)

CONTINUED MOTION TO DISMISS CASE
7-6-2018 [[52](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling

8. [18-10543](#)-A-13 **IN RE: CHARLES MASSEY**
[PK-2](#)

MOTION TO CONFIRM PLAN
8-21-2018 [[75](#)]

CHARLES MASSEY/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

No Ruling

9. [18-12949](#)-A-13 **IN RE: MANUEL/CAROLE CAMILO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-6-2018 [[21](#)]

TIMOTHY SPRINGER

No Ruling

10. [18-12956](#)-A-13 **IN RE: SHANNON HULING**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SYSTEMS AND SERVICES
TECHNOLOGIES, INC.
9-11-2018 [[25](#)]

SYSTEMS AND SERVICES
TECHNOLOGIES, INC./MV
JERRY LOWE
AUSTIN NAGEL/ATTY. FOR MV.

No Ruling

11. [17-14163](#)-A-13 **IN RE: JOHN/RITA CORSON**
[MHM-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 3
8-10-2018 [[47](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

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

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

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

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

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

12. [18-12766](#)-A-13 **IN RE: ROSA DORSHIMER**
[MHM-2](#)

MOTION TO DISMISS CASE
8-22-2018 [[26](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

No Ruling

13. [18-12767](#)-A-13 **IN RE: CARLOS LEAL**
[MHM-2](#)

MOTION TO DISMISS CASE
8-22-2018 [[24](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

No Ruling

14. [18-12769](#)-A-13 **IN RE: ARTHUR/SYLVIA RAMIREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-22-2018 [[17](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

15. [18-12170](#)-A-7 **IN RE: JOSUE SOLIS**
[MHM-2](#)

MOTION TO DISMISS CASE
8-24-2018 [[26](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
CONVERTED 9/13/18,

Final Ruling

The case having been converted to Chapter 7, the motion is denied as moot.

16. [18-13075](#)-A-13 **IN RE: CYNTHIA BAUDER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-4-2018 [[14](#)]

PHILLIP GILLET
\$79.00 INSTALLMENT PAYMENT ON 9/6/18

Final Ruling

The installment payment of \$79 due September 6, 2018, having been paid, the order to show cause is discharged.

17. [17-14892](#)-A-13 **IN RE: SALVADOR GARCIA**
[MHM-4](#)

MOTION TO DISMISS CASE
8-30-2018 [[65](#)]

MICHAEL MEYER/MV
PETER BUNTING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to comply with the 120-day order the court imposed for achieving confirmation of a chapter 13 plan in this case. The court issued a 120-day order requiring that a plan be confirmed no later than the first hearing date available 120 days after the prior confirmation hearing date. The debtor has missed this deadline. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted given the debtor's failure to confirm a chapter 13 plan no later than the 120-day deadline established by the court. The court hereby dismisses this case.

18. [18-12797](#)-A-13 **IN RE: ANTONIO LOZANO DE ANDA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-22-2018 [[21](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT

No Ruling