

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** JANUARY 8, 2020  
**CALENDAR:** 3:00 P.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. [19-13501](#)-A-13     **IN RE: JOSE SANCHEZ**  
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-6-2019    [[30](#)]

NATIONSTAR MORTGAGE LLC/MV  
SCOTT LYONS/ATTY. FOR DBT.  
CASSANDRA RICHEY/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2306 East Victor Avenue, Visalia, CA 93292

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).

### **STAY RELIEF**

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as 3 postpetition payments aggregating \$5,441.37 are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

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.

Nationstar Mortgage LLC'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 2306 East Victor Avenue, Visalia, CA 93292, 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. [15-13603](#)-A-13     **IN RE: JUAN A. LOPEZ**  
[PBB-3](#)

MOTION TO MODIFY PLAN  
11-22-2019    [\[35\]](#)

JUAN A. LOPEZ/MV  
PETER BUNTING/ATTY. FOR DBT.

### **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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof.  
The court will grant the motion and approve the modification.

3. [19-14104](#)-A-13     **IN RE: JOSE CEDANO**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
11-1-2019    [[20](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.  
WITHDRAWN

**Final Ruling**

The objection having been withdrawn, the matter is dropped as moot.

4. [13-14205](#)-A-13     **IN RE: EDDIE NOLEN**  
[HDN-5](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.  
11-27-2019    [[104](#)]

EDDIE NOLEN/MV  
HENRY NUNEZ/ATTY. FOR DBT.  
DISCHARGED 5/28/19

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent of FIA Card Services authorized to accept service.

Also, the motion does appear to have been served on the attorney whose name appears on the abstract of judgment attached to the

motion. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case. The court will deny this motion without prejudice.

5. [18-14905](#)-A-13     **IN RE: TRACEY PRITCHETT**  
[TCS-4](#)

MOTION TO INCUR DEBT  
11-27-2019    [[64](#)]

TRACEY PRITCHETT/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

**No Ruling**

6. [19-14008](#)-A-13     **IN RE: MARY ROMERO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-4-2019    [[19](#)]

MICHAEL MEYER/MV  
PHILLIP GILLET/ATTY. FOR DBT.

**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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). Debtor has failed to provide requested evidence of payment to Class 1 Claims.

Debtor also failed to provide at the 341 meeting the requested amended Schedule J to demonstrate feasibility and to correct household size.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

#### **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 has been presented to the court. Having entered the default of the 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

7. [16-13322](#)-A-13     **IN RE: RICHARD GARCIA AND BEATRIZ  
CORTEZ-GARCIA**  
[EGS-1](#)

MOTION TO APPROVE LOAN MODIFICATION  
12-11-2019    [[37](#)]

BAYVIEW LOAN SERVICING, LLC/MV  
JAMES MILLER/ATTY. FOR DBT.  
EDWARD SCHLOSS/ATTY. FOR MV.

**No Ruling**

8. [19-10223](#)-A-13     **IN RE: RAFAEL SANCHEZ AND CANDELARIA RAMOS**  
[MHM-4](#)

OBJECTION TO CLAIM OF CAVALRY SPV I LLC, CLAIM NUMBER 1  
11-8-2019    [\[65\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmaturing." 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)).

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in bankruptcy. "The word 'enforceable' does not appear in the Code's definition of 'claim.'" *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy does not violate the FDCPA). "[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a 'claim.'" The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense." *Id.* (citations omitted).

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.

9. [16-11025](#)-A-13      **IN RE: TIM/CHERIE WILKINS**  
[FW-6](#)

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE  
11-25-2019    [[244](#)]

TIM WILKINS/MV  
PETER FEAR/ATTY. FOR DBT.

**No Ruling**

10. [16-11025](#)-A-13      **IN RE: TIM/CHERIE WILKINS**  
[FW-7](#)

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE  
12-11-2019    [[251](#)]

TIM WILKINS/MV  
PETER FEAR/ATTY. FOR DBT.

**No Ruling**

11. [19-12626](#)-A-13      **IN RE: FILIMON RAMIREZ**  
[EPE-2](#)

MOTION TO CONFIRM PLAN  
11-21-2019    [[39](#)]

FILIMON RAMIREZ/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

**No Ruling**



12. [19-12626](#)-A-13     **IN RE: FILIMON RAMIREZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-3-2019    [[48](#)]

MICHAEL MEYER/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

**No Ruling**

13. [19-11628](#)-A-12     **IN RE: MIKAL JONES**  
[FW-6](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
12-10-2019    [[141](#)]

MIKAL JONES/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

14. [19-13238](#)-A-13     **IN RE: HENRY/KRISTI GARCIA**  
[LBJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST  
NATIONAL ASSOCIATION  
10-7-2019    [[34](#)]

U.S. BANK TRUST NATIONAL  
ASSOCIATION/MV  
JULIE MORADI-LOPES/ATTY. FOR DBT.  
L. JAQUEZ/ATTY. FOR MV.

**Final Ruling**

This case having been dismissed, the court will drop this objection from the calendar as moot.

15. [19-14638](#)-A-13     **IN RE: ARTHUR/RACHEL QUINTANA**  
[BDB-2](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.  
12-4-2019    [\[30\]](#)

ARTHUR QUINTANA/MV  
BENNY BARCO/ATTY. FOR DBT.

### **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 2015 Chevrolet Traverse. 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 \$22,400.00.

## **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 2015 Chevrolet Traverse has a value of \$22,400.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$22,400.00 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.

16. [19-14541](#)-A-13     **IN RE: MOSES/SONIA MALDONADO**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER  
12-12-2019    [\[16\]](#)

JEFFREY MEISNER/ATTY. FOR DBT.

### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 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 plan does not comply with 11 U.S.C. §1322(a). The plan proposes a \$1,400.00 monthly payment for 60 months, but the Trustee will need monthly payments of \$1,466.78 in order to pay all claims as stated in the plan. The plan thereby fails to provide all earnings to the Trustee as necessary to execute the plan.

The plan is unfeasible under 11 U.S.C. § 1325(a)(6). Debtors indicated at the 341 meeting that their income has changed, and they would not be able to pay an increased plan payment of \$1,466.78.

The plan does not comply with 11 U.S.C. § 1325(a)(1). The Trustee has not yet concluded the meeting of Creditors so that the debtors may file amended documents reflecting the changed situation. The continued meeting will be on January 28, 2020 at 10:00 a.m. The case is thus not ready to be confirmed in accordance with § 1325(a)(1).

#### **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 confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

17. [19-14543](#)-A-13     **IN RE: EDGAR BAUTISTA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-5-2019    [[18](#)]

\$80.00 INSTALLMENT PAID 12/10/19

#### **Final Ruling**

The installment having been paid, the order to show cause is discharged. The case will remain pending.

18. [19-14543](#)-A-13     **IN RE: EDGAR BAUTISTA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER  
12-12-2019    [[20](#)]

#### **No Ruling**

19. [19-13553](#)-A-13     **IN RE: ZATHHEBA/BRITTANY LEBO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-3-2019    [\[19\]](#)

MICHAEL MEYER/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.

### **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 confirm a plan within a reasonable time. The case has been pending for approximately 4.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

Also, Section 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See *In re Robertson*, 2010 WL 5462500 (Bankr. S.C. 2010); *In re Nichols*, 2009 WL 2406172 (Bankr. E.D. N.C. 2009). Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). Here, Debtor has failed to file a complete and accurate Schedule A/B. This constitutes cause to 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. The court hereby dismisses this case.

20. [19-14958](#)-A-13     **IN RE: MARIO OJEDA**  
[GB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-6-2019    [\[13\]](#)

U.S. BANK TRUST NATIONAL  
ASSOCIATION/MV  
L. JAQUEZ/ATTY. FOR MV.  
DISMISSED 12/16/19

### **Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

### **MOOTNESS STANDARDS**

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

### **RELIEF UNDER SECTION 362(d)(1) AND (2)**

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief.

### **RELIEF UNDER SECTION 362(d)(4)**

The movant requests relief from the automatic stay under § 362(d)(4). Section 362(d)(4) authorizes binding, in rem relief from stay with to respect real property "if the court finds that the

filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4). An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." *Id.*

However, similar to paragraphs (1)-(3) of § 362(d), paragraph (4) provides a basis for relief from the automatic stay. Subsection (d)(4) begins with following language: "On request of a party in interest . . . , the court shall grant relief *from the stay provided under subsection (a)* of this section, such as by terminating, annulling, modifying, or conditioning such stay-(4) with respect to a *stay of an act* against real property *under subsection (a)* . . . , if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors . . . ." *Id.* § 362(d)(4) (emphases added).

Based on its plain language, paragraph (4) of § 362(d) is one of several disjunctive grounds for relief *from the automatic stay* under § 362(a). It cannot be the basis for relief in a vacuum when no stay exists. Although relief under § 362(d)(4) may be binding in a subsequent bankruptcy case, a prerequisite to such relief is an extant automatic stay under § 362(a).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because this case has been dismissed, the automatic stay no longer exists. The court cannot grant relief from a non-existent stay under § 362(d)(4). The motion will be denied as moot.

#### **CIVIL MINUTE ORDER**

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

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

21. [19-12462](#)-A-13     **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**  
[PBB-7](#)

MOTION TO CONFIRM PLAN  
11-26-2019    [\[82\]](#)

ROBERT HAMPTON/MV  
PETER BUNTING/ATTY. FOR DBT.

**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 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 has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

22. [19-14171](#)-A-13     **IN RE: KAREN/MARIA RUTAN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-26-2019    [\[28\]](#)

MICHAEL MEYER/MV  
THOMAS HOGAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

This motion having been withdrawn (ECF 47), the court will drop this matter from the calendar as moot.



23. [19-13473](#)-A-13     **IN RE: CHRISTOPHER LOCASCIO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-3-2019    [[22](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

**No Ruling**

24. [19-14473](#)-A-13     **IN RE: AMANDA KONG**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER  
12-12-2019    [[30](#)]

**Final Ruling.**

This case having been dismissed, this matter will be dropped from the calendar as moot.

25. [19-13376](#)-A-13     **IN RE: OPAL RIDER**  
[SLL-1](#)

CONTINUED AMENDED OBJECTION TO CLAIM OF WRCOG ENERGY  
EFFICIENCY AND WATER CONSERVATION PROGRAM FOR WESTERN  
RIVERSIDE COUNTY, CLAIM NUMBER 3-1  
11-4-2019    [[36](#)]

OPAL RIDER/MV  
STEPHEN LABIAK/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

26. [19-13376](#)-A-13     **IN RE: OPAL RIDER**  
[SLL-2](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS  
ATTORNEY(S)  
12-5-2019    [\[49\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

[This ruling is "tentative," rather than "final" because the court cannot make the fees requested \$7,005.22, Application § 1(b), and costs prayed \$50.22, *Id.* at § 1(c), total the aggregate requested amount \$6,955, *Id.* at § 1(d). The court is whether this was a purposeful reduction by debtor's counsel, a computational error or something else. The applicant is requested to address the issue at the hearing and confirm that the aggregate fees and costs approved are accurate.]

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 interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$7,005.22 and reimbursement of expenses in the amount of \$50.22.

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

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

## CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$7,005.22 and reimbursement of expenses in the amount of \$50.22. The aggregate allowed amount equals \$7,055.44. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$7,055.44 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

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

27. [19-14376](#)-A-13     **IN RE: TERIKA HENDRIX**  
[MHM-1](#)

MOTION TO DISMISS CASE  
11-21-2019    [[24](#)]

MICHAEL MEYER/MV

### 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 debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with a required tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

The debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

#### **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 has been presented to the court. Having entered the default of the 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

28. [19-12679](#)-A-13     **IN RE: NAEEM/SAIMA QARNI**  
[NEA-2](#)

MOTION TO CONFIRM PLAN  
11-26-2019    [[145](#)]

NAEEM QARNI/MV  
NICHOLAS ANIOTZBEHERE/ATTY. FOR DBT.

#### **Final Ruling**

The motion withdrawn the matter is dropped as moot.

29. [19-14682](#)-A-13     **IN RE: MARIO PENA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-12-2019    [\[18\]](#)

BENNY BARCO/ATTY. FOR DBT.

#### **Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

30. [14-14785](#)-A-13     **IN RE: REY/JULITA SAMONTE**  
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
11-21-2019    [\[65\]](#)

MICHAEL MEYER/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Determination of Final Cure and Payment of Required Postpetition Amounts under Rule 3002.1(h)

**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).

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response." Fed. R. Bankr. P. 3002.1(f). This notice is called the

Notice of Final Cure. The debtor may file this notice if the trustee does not do so. *Id.*

Next, the holder of the claim has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to dispute (or agree) that the debtor has paid in full the amount required to cure the default on the claim or whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h). If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

31. [19-12788](#)-A-13     **IN RE: JOHNNY/MARY MORALES**  
[MHM-3](#)

MOTION TO DISMISS CASE  
11-20-2019    [[91](#)]

MICHAEL MEYER/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

32. [18-13192](#)-A-13     **IN RE: CARLOS/SAMANTHA QUEVEDO**  
[SL-1](#)

MOTION TO INCUR DEBT  
12-13-2019    [[24](#)]

CARLOS QUEVEDO/MV  
SCOTT LYONS/ATTY. FOR DBT.

**No Ruling**

33. [19-14394](#)-A-13     **IN RE: ROBERT/MARIA PFEIFLE**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-2-2019    [[14](#)]

MICHAEL MEYER/MV  
D. GARDNER/ATTY. FOR DBT.

**No Ruling**

34. [15-14198](#)-A-13     **IN RE: RAMIRO/ELIDIA FUENTES**  
[TOG-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.  
12-14-2019    [[23](#)]

RAMIRO FUENTES/MV  
THOMAS GILLIS/ATTY. FOR DBT.

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$15,106.17

**All Other Liens:** \$197,532.00

**Exemption:** \$100,000.00

**Value of Property:** \$223,229.00

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

Section 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 respondent'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 judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

35. [19-14698](#)-A-13     **IN RE: DUSTIN MAJCHEN AND CLAUDIA VELIT DE MAJCHEN**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
12-17-2019    [[20](#)]

PETER BUNTING/ATTY. FOR DBT.

**No Ruling**

36. [19-15123](#)-A-13     **IN RE: THIESEN HERNANDEZ**  
[SL-1](#)

MOTION TO IMPOSE AUTOMATIC STAY  
12-18-2019    [[10](#)]

THIESEN HERNANDEZ/MV  
SCOTT LYONS/ATTY. FOR DBT.

**No Ruling**



37. [19-15123](#)-A-13     **IN RE: THIESEN HERNANDEZ**  
[SL-1](#)

MOTION TO IMPOSE AUTOMATIC STAY  
12-18-2019    [[14](#)]

THIESEN HERNANDEZ/MV  
SCOTT LYONS/ATTY. FOR DBT.

### **Final Ruling**

This matter being a duplicate of Item 36 Motion to Impose Automatic Stay, the court will drop this matter from the calendar as a duplicate.

38. [19-14442](#)-A-13     **IN RE: ANTONIO CASTANEDA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER  
12-17-2019    [[17](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS/ATTY. FOR DBT.

### **No Ruling**

39. [19-14446](#)-A-13     **IN RE: MOISES/JACQUELINE ARCE**  
[NLL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION  
12-17-2019    [[19](#)]

JPMORGAN CHASE BANK, N.A./MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
NANCY LEE/ATTY. FOR MV.

### **No Ruling**

40. [19-14473](#)-A-13     **IN RE: AMANDA KONG**  
[RDW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SELF-HELP FEDERAL  
CREDIT UNION  
12-17-2019    [[38](#)]

SELF-HELP FEDERAL CREDIT  
UNION/MV  
REILLY WILKINSON/ATTY. FOR MV

#### **Final Ruling**

This case having been dismissed, this matter will be dropped from  
the calendar as moot.

41. [19-14376-A-13](#)     **IN RE: TERIKA HENDRIX**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-20-2019    [[29](#)]

#### **Tentative Ruling**

If the filing fee has not been paid in full by the time of the  
hearing, the case may be dismissed without further notice or  
hearing.

42. [19-15309-A-13](#)     **IN RE: RICHARD CERVANTES**  
[BDB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
12-24-2019    [[9](#)]

RICHARD CERVANTES/MV  
BENNY BARCO/ATTY. FOR DBT.

#### **No Ruling**