

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
510 19th Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY

**DATE:** FEBRUARY 6, 2019

**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. [17-13401](#)-A-13    **IN RE: RICHARD/VERONICA ESPINOZA**  
[TCS-3](#)

MOTION TO VACATE DISMISSAL OF CASE  
1-23-2019    [[47](#)]

RICHARD ESPINOZA/MV  
TIMOTHY SPRINGER  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

2. [18-14602](#)-A-13    **IN RE: SALVADOR/JULIE CEJA**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
1-11-2019    [[15](#)]

U.S. BANK NATIONAL  
ASSOCIATION/MV  
THOMAS GILLIS  
SEAN FERRY/ATTY. FOR MV.

#### **No Ruling**

3. [18-13809](#)-A-13    **IN RE: MARY GUTIERREZ**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
11-7-2018    [[17](#)]

MICHAEL MEYER/MV  
WILLIAM OLCOTT  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

4. [17-13317](#)-A-13     **IN RE: LORNA TREMBLE**  
[DMG-3](#)

OBJECTION TO CLAIM OF FORD MOTOR CREDIT COMPANY LLC, CLAIM  
NUMBER 1  
12-21-2018    [\[73\]](#)

LORNA TREMBLE/MV  
D. GARDNER

**Tentative Ruling**

**Objection:** Objection to Claim

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

**Proof of Claim:** #1-3, filed on June 27, 2018, in the amount of \$1,375.67, for deficiency on account of a claim secured by a vehicle which was surrendered by the debtor and then sold by the claimant Ford Motor Credit Company

**Disposition:** Overruled

**Order:** Civil minute order

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

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A claim must be disallowed if it is unenforceable under applicable nonbankruptcy law. See 11 U.S.C. § 502(b)(1); *accord Diamant v. Kasparian (In re S. Cal. Plastics, Inc.)*, 165 F.3d 1243, 1247 (9th Cir. 1999).

Federal Rule of Bankruptcy Procedure 3001(f) prescribes the evidentiary effect of "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.,* Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. See Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

The evidentiary presumption created by Rule 3001(f) "operates to shift the burden of going forward but not the burden of proof." See *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706 (B.A.P. 9th Cir. 2006) (citing *Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000); *Diamant*, 165 F.3d at 1248). But this evidentiary presumption is rebuttable. *Id.* at 706. "One rebuts evidence with counter-evidence." *Id.* at 707; *see also Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495,

504 (B.A.P. 1st Cir. 2009) ("[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it.").

The burden of proof, however, always remains on the party who carries the burden under applicable nonbankruptcy law. Because the burden of proof is "a substantive aspect of a claim," *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20-21 (2000) (internal quotation marks omitted), it is governed by nonbankruptcy law, usually state law, applicable to a claim, see *id.* ("[S]tate law governs the substance of claims [in bankruptcy]." (citing *Butner v. United States*, 440 U.S. 48, 57 (1979))); *Garvida*, 347 B.R. at 705. "That is, the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." *Raleigh*, 530 U.S. at 21.

Here, the objection complains that the deficiency claim is inconsistent with the claimant's assertion that its claim is fully secured, in connection with the debtor's 2017 motion to value the vehicle and strip down the claimant's secured claim.

The debtor is correct that the claimant made such an assertion in connection with her motion to value the vehicle and strip down the claimant's secured claim. See ECF Nos. 17 & 25 (reflecting that the claimant's \$6,618.18 claim was fully secured as the vehicle had a retail value of \$8,967).

However, the movant's disguised judicial estoppel argument is unsupported by the record. Judicial estoppel requires that:

(1) "a party's later position must be 'clearly inconsistent' with its earlier position;"

(2) "the party . . . succeeded in persuading [the] court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled;'" and

(3) "the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped."

New Hampshire v. Maine, 532 U.S. 742, 750-51 (2001).

The debtor has not overcome the presumptive validity of the proof of claim.

First, the debtor has not presented evidence that the claimant's positions are clearly inconsistent. On the contrary, a review of the valuation motion record shows that the claimant's positions appear to be consistent.

In the debtor's motion to value, the claimant asserted having a fully secured claim based on the vehicle's retail value. The deficiency claim here, on the other hand, could not have been based

on the claimant selling the vehicle as a retail merchant. The claimant is not a retail merchant of vehicles. The claimant only provides loans to finance vehicle purchases. The deficiency claim here is based on the claimant selling the vehicle as a repossessed vehicle, in the condition that the vehicle was repossessed. Repossessed vehicles sold in such a way do not fetch retail value prices. Retail value prices can be expected only when a retail merchant corrects condition deficiencies that may make the vehicle unmarketable to the general public.

The objection does not address this point. See ECF No. 73.

Additionally, the attachments to the subject proof of claim indicate that the claim increased, beyond what the debtor owed at the time the valuation motion was filed, because the claimant incurred additional expenses for having to repossess the vehicle.

The objection does not address this point. See ECF No. 73. The claimant's positions are far from clearly inconsistent.

Second, the court did not grant the debtor's valuation motion, meaning that the court did not rely on the claimant's earlier position. The debtor voluntarily dismissed her valuation motion. See ECF No. 41. The claimant had no need to persuade the court about anything in the valuation motion.

The objection does not address this point either. See ECF No. 73.

Third, the objection is unsupported by any declaration or any other form of admissible evidence. The exhibits to the objection are not authenticated by a declaration. See ECF No. 75.

The debtor then has not satisfied her burden of going forward to refute the presumptive validity of the claim. Therefore, the objection will be overruled.

5. [18-14223](#)-A-13     **IN RE: KRISTIN COLLINS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-26-2018    [\[25\]](#)

MICHAEL MEYER/MV  
PATRICK KAVANAGH  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [18-14223](#)-A-13     **IN RE: KRISTIN COLLINS**  
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
1-22-2019    [[31](#)]

PATRICK KAVANAGH  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

7. [18-14326](#)-A-13     **IN RE: RICHARD NELSON**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-27-2018    [[37](#)]

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 chapter 13 trustee moves to dismiss this chapter 13 case due to the debtor's failure to produce his 2017 tax returns, a Class 1 Checklist with the most recent mortgage statement, an Authorization to Release Information form, and six months of pay stubs. The debtor has also not filed her chapter 13 plan on the correct form and has not filed a section "521(a)(1)(B)(v) statement." ECF No. 37.

**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 because of the debtor's failure to produce his 2017 tax returns, a Class 1 Checklist with the most recent mortgage statement, an Authorization to Release Information form and six months of pay stubs, and his failure to file his chapter 13 plan on the correct form. The court hereby dismisses this case.

8. [16-12428](#)-A-13      **IN RE: SONIA GONZALEZ**  
[RSW-5](#)

MOTION TO MODIFY PLAN  
12-10-2018    [\[63\]](#)

SONIA GONZALEZ/MV  
ROBERT WILLIAMS

#### **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.

9. [18-13343](#)-A-13     **IN RE: EUGENE/ANDREA WILLIAMS**  
[LKW-3](#)

MOTION TO CONFIRM PLAN  
12-28-2018    [\[45\]](#)

EUGENE WILLIAMS/MV  
LEONARD WELSH

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor 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.



10. [18-14254](#)-A-13     **IN RE: JOSEPH CLEVINGER**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-21-2018    [[18](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

11. [18-10656](#)-A-13     **IN RE: ERIN FAIRBANK**  
[WDO-3](#)

MOTION TO MODIFY PLAN  
12-3-2018    [[34](#)]

ERIN FAIRBANK/MV  
WILLIAM OLCOTT  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Modify Confirmed Chapter 13 Plan

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**THE MODIFIED PLAN HAS BEEN SUPERSEDED**

Chapter 13 debtors may modify a confirmed plan before completion of payments under the plan. 11 U.S.C. § 1329(a). This motion requests approval of a modified plan under § 1329(a). But the requested modified plan has been superseded by another modified plan. Because another modified plan has superseded the modified plan to be confirmed by this motion, the court will deny the motion as moot.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion to modify the plan is denied as moot.

12. [18-13657](#)-A-13     **IN RE: MARTINA DUL**  
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
11-20-2018    [[27](#)]

MARTINA DUL/MV  
ROBERT WILLIAMS  
OBJECTION WITHDRAWN

### **Tentative Ruling**

The hearing on this motion was continued from January 9. The continuance appears to have been because the trustee had not concluded the meeting of creditors. While the trustee concluded the meeting of creditors as to the debtor on January 15, the trustee has filed a motion to dismiss the case, set for a hearing on March 6, 2019 at 9:00 a.m. As the dismissal motion is based on the debtor's failure to provide identification documents to the trustee, the court is inclined to continue the hearing of this motion once again, to the March 6 at 9:00 a.m. calendar, in order for this motion to be resolved in conjunction with the dismissal motion.

13. [17-11264](#)-A-13     **IN RE: JUSTIN/KATHARINE FARMER**  
[PK-2](#)

MOTION TO MODIFY PLAN  
1-4-2019    [[37](#)]

JUSTIN FARMER/MV  
PATRICK KAVANAGH  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan  
**Notice:** LBR 3015-1(d)(2); 9014-1(f)(1)  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

The motion requests modification of a confirmed chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2).

### **NON-COMPLIANCE WITH LOCAL RULES**

The court will deny the motion without prejudice on grounds of insufficient notice. Notice of a motion to modify a plan shall comply with Local Bankruptcy Rule 3015-1(d)(2), which requires at least 35 days' notice prior to the hearing. In this case, 33 days' notice was provided. Certificate of service, filed January 4, 2019, ECF No. 45.

## **CIVIL MINUTE ORDER**

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

The debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

14. [18-14765](#)-A-13      **IN RE: EDWARD GUTIERREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-3-2019    [[22](#)]

### **Tentative Ruling**

If the installments of \$79 due January 2, 2019, and \$77 due January 28, 2019, have not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

15. [18-14765](#)-A-13      **IN RE: EDWARD GUTIERREZ**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
1-17-2019    [[25](#)]

### **No Ruling**

16. [18-14166](#)-A-13      **IN RE: DOUGLAS NEWHOUSE**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-26-2018    [[38](#)]

MICHAEL MEYER/MV  
D. GARDNER  
RESPONSIVE PLEADING

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

17. [18-14166](#)-A-13     **IN RE: DOUGLAS NEWHOUSE**  
[MHM-3](#)

MOTION TO DISMISS CASE  
1-8-2019    [[47](#)]

MICHAEL MEYER/MV  
D. GARDNER  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [18-14668](#)-A-13     **IN RE: JOE CORREA**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.  
1-3-2019    [[13](#)]

WELLS FARGO BANK, N.A./MV  
ROBERT WILLIAMS  
WENDY LOCKE/ATTY. FOR MV.

**No Ruling**

19. [18-14768](#)-A-13     **IN RE: KIMBERLY KING- RICHARDSON**  
[JHW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDIT ACCEPTANCE  
CORPORATION  
1-16-2019    [[16](#)]

CREDIT ACCEPTANCE  
CORPORATION/MV  
NEIL SCHWARTZ  
JENNIFER WANG/ATTY. FOR MV.

**No Ruling**

20. [18-14768](#)-A-13     **IN RE: KIMBERLY KING- RICHARDSON**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
1-17-2019    [[21](#)]

NEIL SCHWARTZ

**No Ruling**

21. [18-14477](#)-A-13     **IN RE: LISA BOUDREAULT**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-2-2019    [[28](#)]

MICHAEL MEYER/MV  
PHILLIP GILLET

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied as moot

**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).

### **MOTION TO DISMISS**

The debtor has failed to file the correct form for the chapter 13 plan. The debtor has also failed to set her plan for hearing with notice to creditors.

Finally, the debtor has not filed all payment advices covering the 60-day period pre-petition, rendering this case automatically dismissed on the 46<sup>th</sup> day post-petition.

### **AUTOMATIC CASE DISMISSAL**

11 U.S.C. § 521(a)(1)(B)(iv) requires that the debtor file "copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition."

Under 11 U.S.C. § 521(i)(1), "if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition."

Here, the debtor filed this case on October 31, 2018. The debtor had not filed the required payment advices or other evidence of payment as required by section 521(a)(1)(B)(iv), by the time this motion was filed on January 2, 2019 (63 days post-petition). Accordingly, this case was automatically dismissed on December 16, 2018, the 46<sup>th</sup> day post-petition. This makes the subject motion moot. It will be denied as moot.

Nevertheless, the court will confirm that the case was automatically dismissed on December 16, 2018, pursuant to section 521(i)(1).

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion to dismiss is denied as moot.

IT IS FURTHER ORDERED that the court confirms that the case was dismissed automatically under 11 U.S.C. § 521(i)(1) on December 16, 2018.

IT IS FURTHER ORDERED that the Clerk of the court shall note on the case docket the date of the automatic dismissal of the case.

22. [18-12678](#)-A-13     **IN RE: MICHAEL PFEIFFER**  
[DMG-1](#)

OBJECTION TO CLAIM OF DEBRA MCGUIRE, CLAIM NUMBER 16  
12-19-2018    [[37](#)]

MICHAEL PFEIFFER/MV  
D. GARDNER  
RESPONSIVE PLEADING

#### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

The debtor objects to the allowance of Claim No. 16-1 filed by the claimant, the debtor's former spouse Debra McGuire.

The court will overrule the objection for it is moot as the proof of claim has been amended. Filing of an amended proof of claim renders the original proof of claim moot. The claimant filed an amended proof of claim, 16-2, after the objection was filed. Accordingly, the objection will be overruled as moot.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to proof of claim 16-1 is overruled as moot.

23. [18-14383](#)-A-13     **IN RE: LAWRENCE HORTON**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-27-2018    [[15](#)]

MICHAEL MEYER/MV  
RABIN POURNAZARIAN  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

24. [18-14884](#)-A-13     **IN RE: PEDRO DUARTE**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
1-18-2019    [[19](#)]

GARY SAUNDERS

**No Ruling**

25. [18-14493](#)-A-13     **IN RE: ALICIA GOMEZ**  
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
1-18-2019    [[20](#)]

ROBERT WILLIAMS

**No Ruling**

26. [16-10697](#)-A-13     **IN RE: DARCY NUNES**  
[TCS-9](#)

MOTION TO VACATE DISMISSAL OF CASE  
1-23-2019    [[129](#)]

DARCY NUNES/MV  
TIMOTHY SPRINGER  
DISMISSED

### **Tentative Ruling**

**Motion:** Vacate Dismissal

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

**Disposition:** Granted

**Order:** Prepared by the debtor, approved by the trustee subject to him certifying that the debtor is current on all payments under the proposed modified plan (ECF No. 119)

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).

### **SETTING ASIDE ORDERS OR JUDGMENTS UNDER FED. R. CIV. P. 60(b)**

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider a judgment, order, or proceeding for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

The motion asks for the court to vacate the January 14 dismissal of the case under Rule 60(b)(1) or (6), as the debtor's counsel delayed in preparing and filing the pleadings to avert dismissal of the case, including a modified plan, motion to confirm modified plan, and declaration in support of the motion.

This motion has been filed timely. It was filed on January 23, 9 days after the court entered the order dismissing the case. ECF Nos. Dockets 126 & 129.



The court finds the existence of mistake, inadvertence, surprise, or excusable neglect, and it will grant the motion to vacate the dismissal.

#### **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 vacate the January 14, 2019 dismissal of the case has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court vacates the January 14, 2019 dismissal of the case.

IT IS FURTHER ORDERED that prior to the lodging of the order with the court, the Chapter 13 trustee shall approve the order subject to confirming that the debtor is current on all plan payments under the proposed modified plan filed on January 14, 2019.