

**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: WEDNESDAY
DATE: MARCH 18, 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. [20-10100](#)-A-12 **IN RE: TRANQUILITY PISTACHIO, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION

1-13-2020 [[1](#)]

NOEL KNIGHT/ATTY. FOR DBT.

No Ruling

2. [20-10100](#)-A-12 **IN RE: TRANQUILITY PISTACHIO, LLC**
[MB-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-10-2020 [[24](#)]

SUSAN KILSDONK/MV
NOEL KNIGHT/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

3. [19-11701](#)-A-13 **IN RE: RAMON DIAZ**
[MHM-3](#)

MOTION TO DISMISS CASE
3-4-2020 [[59](#)]

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

No Ruling

4. [19-13001](#)-A-13 **IN RE: JULIO GRANADOS**
[MHM-2](#)

MOTION TO DISMISS CASE
3-4-2020 [[26](#)]

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

No Ruling

5. [19-13002](#)-A-13 **IN RE: ARNOLDO CASTRO**
[MHM-2](#)

MOTION TO DISMISS CASE
3-4-2020 [[52](#)]

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

No Ruling

6. [19-15207](#)-A-13 **IN RE: SUKETU VAIDYA**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-13-2020 [[29](#)]

MICHAEL MEYER/MV
JAMES MILLER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

7. [20-10608](#)-A-13 **IN RE: TRISHALL WASHINGTON**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-4-2020 [[9](#)]

TRISHALL WASHINGTON/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

Final Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied without prejudice

Order: Civil minute order

The Motion to Extend the Automatic Stay was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 28 days' notice is required. 14 days' notice was provided. The court shall therefore deny this motion without prejudice.

8. [19-15109](#)-A-13 **IN RE: HENRY/REBECCA COVARRUBIAS**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-18-2020 [\[14\]](#)

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

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this 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).

SECTION 522(B)(3)

11 U.S.C. § 522(b)(3) provides that a debtor may exempt "any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place...."

Debtors resided in Texas from August 1, 2017 through February 1, 2018. ECF 1. Debtor's exemption schedule utilizes C.C.P. § 703.140(b) exemptions. *Id.* However, Debtors have not resided in a single state during the 730 days (December 7, 2017 to December 7, 2019) to filing. Therefore, 11 U.S.C. § 522(b)(3) requires that the court look to Debtors' place of domicile during the 180 days preceding December 7, 2017 (730 days before filing) to determine the exemptions available to Debtors. 180 days prior to December 7, 2017 is June 10, 2017. Debtors resided in California from June 10, 2017 to August 1, 2017 (52 days). Debtors then moved to Texas and lived in Texas 128 days in the 180-day period. Debtors resided in Texas for a longer portion of the 180-day period. Therefore, Debtors must take the exemptions as provided under Texas law. The court sustains Trustee's objection to debtor's claim of exemptions.

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 objection to the debtor's claim of exemptions 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 debtor's exemption claimed under Cal. Civ. Proc. Code § 703.140(b) will be disallowed.

9. [20-10109](#)-A-13 **IN RE: MICHAEL PENA**
[MHM-2](#)

MOTION TO DISMISS CASE
2-19-2020 [[19](#)]

MICHAEL MEYER/MV
JERRY LOWE/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 not filed copies of all payment advices or other evidence of payment received within 60 days before filing of the petition. The last day was February 27, 2020.

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.

10. [19-12536](#)-A-13 **IN RE: RAYMOND JONES AND KAREN YOCKEY-JONES**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-2020 [\[59\]](#)

SANTANDER CONSUMER USA INC./MV
JERRY LOWE/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Fiat 500E

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

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

At issue is a leased vehicle. Schedule G. The confirmed plan binds. 11 U.S.C. § 1327(a). Leases assumed by the debtor should be listed in the plan; unlisted leases are rejected. ECF 32, Plan, Section 4.01-4.02. Here, the debtor has not assumed the lease at confirmation. The lease is deemed rejected under 11 U.S.C. § 365(d)(2). This constitutes cause for stay relief under 362(d)(1).

The court does not address grounds for relief under § 362(d)(2) as relief is warranted 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.

Santander Consumer USA Inc.'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 2017 Fiat 500E, 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.

11. [19-13841](#)-A-13 **IN RE: LOTTIE STEWART**
[JDR-1](#)

CONTINUED OBJECTION TO CLAIM OF PINNACLE SERVICE SOLUTIONS
LLC, CLAIM NUMBER 2
12-6-2019 [\[19\]](#)

LOTTIE STEWART/MV
JEFFREY ROWE/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 debtor stated the debt is over 10 years old. ECF 21, paragraph 8.

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.

12. [19-13841](#)-A-13 **IN RE: LOTTIE STEWART**
[JDR-2](#)

CONTINUED OBJECTION TO CLAIM OF SFM-6, LLC, CLAIM NUMBER 10
12-17-2019 [[25](#)]

LOTTIE STEWART/MV
JEFFREY ROWE/ATTY. FOR DBT.

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Overruled

Order: Civil minute order

Debtor objects to the allowance of Claim No. 10 filed by the claimant. The court will overrule the objection for the reasons discussed.

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 promissory note attached to the proof of claim is sufficient to establish a prima facie presumption of validity of the proof of claim. The debtor has not filed any evidence to overcome the presumption of validity. As a result, the presumption of validity requires that the objection be overruled.

13. [19-14442](#)-A-13 **IN RE: ANTONIO CASTANEDA**
[MHM-5](#)

MOTION TO DISMISS CASE
2-5-2020 [[46](#)]

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

Final Ruling

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

14. [19-14442](#)-A-13 **IN RE: ANTONIO CASTANEDA**
[MHM-7](#)

MOTION TO DISMISS CASE
3-3-2020 [[63](#)]

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

No Ruling

15. [19-15146](#)-A-13 **IN RE: ROSE RUBINO**
[MHM-2](#)

MOTION TO DISMISS CASE
2-5-2020 [[16](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

No Ruling

16. [19-13352](#)-A-13 **IN RE: MARY ISLAS**
[TAM-2](#)

MOTION TO CONFIRM PLAN
2-11-2020 [[52](#)]

MARY ISLAS/MV
THOMAS MOORE/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.

17. [20-10654](#)-A-13 **IN RE: PETE AVILA AND PRISCILLA VELOZ**
[WW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-4-2020 [\[15\]](#)

PRIMELENDING/MV
JOEL WINTER/ATTY. FOR DBT.
JONATHAN CAHILL/ATTY. FOR MV.

Tentative 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)).

PRISCILLA VELOZ

Relief under Section 362(d)(1) and (2)

"If a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case." 11 U.S.C. § 362(c)(4).

"If, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed." 11 U.S.C. § 362(c)(4)(B).

Here, the debtor has had three prior bankruptcy cases - two of which were filed and dismissed within the last year. See Exhibits. Debtor also has not filed a motion to impose stay under 362(c)(4)(B).

Therefore, stay has never taken effect in this case. The court is unable to grant the movant effective relief under 362(d)(1) and (d)(2).

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).

As mentioned above, the stay never took effect in this case. The court therefore cannot provide movant relief under 362(d)(4). The motion will be denied as moot under 362(d)(4).

Also, a bankruptcy court abuses its discretion if it makes factual findings that are illogical, implausible, or not supported by the record. *Javier Jiminez v. ARCPE 1, LLP*, 2020 WL 1042503 (B.A.P. 9th Cir. Mar. 3, 2020).

Movant has only filed exhibits that specify debtor's past bankruptcy filings. Movant has not offered evidence from which the court could conclude the petition was part of a scheme to delay, hinder, or defraud creditors. Movant also did not file any declarations in support of the motion, in violation of LBR 9014-1(d)(3)(D). The court does not find factual findings that are supported by the record. The motion will be denied.

PETE RICO AVILA

Relief under Section 362(d)(1) and (d)(2)

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

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). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

Debtor has filed a chapter 13 plan awaiting confirmation, providing for the movant's claim in Class 1. The debtor further admitted arrears owed to creditor of \$25,000.00. Plan S. 3.07 (ECF 2). A confirmed chapter 13 plan in this case would provide for the cure of the delinquency and bind the movant with respect to its claim. The stay is operative for the movant. Creditor has not submitted admissible evidence of debtor's delinquency. Creditor also has not shown that debtor has no equity in the property. The court will therefore deny motion for stay relief under 362(d)(1) and (d)(2).

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 respect to 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.*

A bankruptcy court abuses its discretion if it makes factual findings that are illogical, implausible, or not supported by the record. *Javier Jiminez v. ARCPE 1, LLP*, 2020 WL 1042503 (B.A.P. 9th Cir. Mar. 3, 2020).

The debtor has not filed bankruptcies in the past year. Movant has not admitted evidence that the debtor previously filed bankruptcies. Movant also did not file any declarations in support of the motion, in violation of LBR 9014-1(d)(3)(D). The court does not find factual findings that are supported by the record. The motion will be denied.

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 as to debtor Priscilla Veloz is denied as moot under 362(d)(1) and (d)(2).

IT IS FURTHER ORDERED that the motion as to debtor Priscilla Veloz is denied as moot under 362(d)(4).

IT IS FURTHER ORDERED that the motion as to debtor Pete Avila is denied under 362(d)(1) and (d)(2).

IT IS FURTHER ORDERED that the motion as to debtor Pete Avila is denied under 362(d)(4).

18. [20-10555](#)-A-13 **IN RE: NANCY JERKOVICH**
[PLG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-4-2020 [[9](#)]

NANCY JERKOVICH/MV
STEVEN ALPERT/ATTY. FOR DBT.

No Ruling

19. [19-14956](#)-A-13 **IN RE: ISAURO CAMPOS**
[MHM-1](#)

MOTION TO DISMISS CASE
3-3-2020 [[63](#)]

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

No Ruling

20. [20-10056](#)-A-13 **IN RE: MARK CASTRO**
[MHM-2](#)

MOTION TO DISMISS CASE
2-19-2020 [\[16\]](#)

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). Debtor has not provided the Class 1 Checklist with most recent mortgage statement, evidence of payment to Class 1 Claims, Domestic Support Obligation Checklist, Authorization to Release Information, and copies of all payment advices or other evidence of payment received within 60 days before date of filing the petition. The last day for submitting evidence of payment was February 22, 2020.'

The debtor has not filed accurate or complete schedules, statements, and plan. 11 U.S.C. § 521.

The debtor has failed to provide the trustee with a required tax returns for 2016, 2017 and 2019 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.

21. [17-10573](#)-A-13 **IN RE: JOEL/BETTY HILL**
[TCS-1](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, SUBSTITUTE PARTY, AS TO JOINT DEBTOR
2-19-2020 [\[62\]](#)

JOEL HILL/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

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).

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CONTINUED ADMINISTRATION OF THE CASE

Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under

chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will authorize further administration of this case.

SUBSTITUTION OF THE PROPER PARTY

Furthermore, the court will order substitution of the proper party. Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bankr. P. 7025; LBR 1016-1(b)(1). The court will substitute the surviving joint debtor in the stead of the deceased debtor. The court will authorize the surviving joint debtor's service as the deceased debtor's representative.

WAIVER OF POST-PETITION EDUCATION REQUIREMENT

The motion also requests a waiver of the requirement to complete, after the petition date, the personal financial management course described in § 111. See 11 U.S.C. § 1328(g)(1). But this post-petition requirement does not apply when the debtor is a person described in § 109(h)(4). *Id.* § 1328(g)(2). The court finds that the joint-debtor's death constitutes incapacity under § 109(h)(4) and will grant a waiver of the § 1328(g)(1) requirement.

ORDER INSTRUCTIONS

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. The court also waives the requirement that the debtor complete an instructional course concerning personal financial management as required by § 1328(g). It is further ordered that the court finds that continued administration of the estate is possible and in the best interests of the parties. The court substitutes [surviving debtor's name] in the stead of the deceased debtor, and authorizes the surviving joint debtor's service as the deceased debtor's representative."

22. [17-14873](#)-A-13 **IN RE: KATHERINE MUNSEY**
[MHM-2](#)

CONTINUED MOTION TO RECONVERT CASE FROM CHAPTER 13 TO
CHAPTER 7
1-16-2020 [[85](#)]

PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

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

23. [20-10575](#)-A-13 **IN RE: JUDY BURDEN**
[BDB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-3-2020 [[16](#)]

JUDY BURDEN/MV
BENNY BARCO/ATTY. FOR DBT.

No Ruling

24. [19-12678](#)-A-13 **IN RE: ANTONIO HERNANDEZ SILVA**
[JDR-2](#)

MOTION TO MODIFY PLAN
1-30-2020 [[57](#)]

ANTONIO HERNANDEZ SILVA/MV
JEFFREY ROWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

25. [19-12679](#)-A-13 **IN RE: NAEEM/SAIMA QARNI**
[NEA-4](#)

CONTINUED MOTION TO CONFIRM PLAN
12-18-2019 [[194](#)]
NAEEM QARNI/MV
NICHOLAS ANIOTZBEHERE/ATTY. FOR DBT.

Final Ruling

Per the parties request in the Joint Status Report filed March 11, 2020, ECF #229, this Motion is continued to April 2, 2020 at 2:00 p.m.

26. [11-19090](#)-A-13 **IN RE: JASON/ROBIN MYERS**
[JDW-7](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
2-6-2020 [[85](#)]

JASON MYERS/MV
JOEL WINTER/ATTY. FOR DBT.

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 FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. *See* Fed. R. Bankr. P. 7004(h)(1)-(3).

27. [20-10739-A-13](#) **IN RE: DONNA REYNA**
[JBC-2](#)

HEARING RE: MOTION TO EXTEND AUTOMATIC STAY
3-11-2020 [[15](#)]

DONNA REYNA/MV
JAMES CANALEZ/ATTY. FOR DBT.
OST 3/12/20

No Ruling