

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto  
Hearing Date: Friday, May 20, 2016  
Place: Department B – Courtroom #13  
Fresno, California

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

**THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

**9:30 A.M.**

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| 1. <a href="#">16-10505</a> -B-13    ROCIO STINER<br>TOG-1<br>ROCIO STINER/MV<br>THOMAS GILLIS/Atty. for dbt.<br>RESPONSIVE PLEADING | MOTION TO CONFIRM PLAN<br>3-29-16 [ <a href="#">23</a> ] |
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**The motion to confirm a chapter 13 plan will be denied without prejudice. No appearance is necessary.**

**The debtor has presented no evidence that the issue with the IRS related to the question of whether or not the debtor filed tax returns for 2012 and 2015 has been resolved. The court will enter a civil minute order.**

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| 2. <a href="#">16-10309</a> -B-13    MILO/LEANN HODGES<br>KLF-1<br>GREENWICH CAPITAL FINANCIAL<br>PRODUCTS, INC./MV<br><br>SCOTT LYONS/Atty. for dbt.<br>MICHAEL KOGAN/Atty. for mv. | CONTINUED OBJECTION TO<br>CONFIRMATION OF PLAN BY<br>GREENWICH CAPITAL FINANCIAL<br>PRODUCTS, INC.<br>2-29-16 [ <a href="#">14</a> ] |
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**This matter will be continued to June 23, 2016, at 1:30 p.m. No appearance is necessary.**

**The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. The court will prepare and enter a civil minute order.**

3. [16-10409](#)-B-13 ROBERTO LUNA  
MHM-1

MOTION TO DISMISS CASE  
4-22-16 [[30](#)]

MICHAEL MEYER/MV  
SHARRON WILLIAMS GELOBTER/Atty. for dbt.

**The motion will be granted. No appearance is necessary.**

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor has failed to appear at the scheduled 341 Meeting of Creditors, has failed to provide the Trustee with 2015 State and Federal Tax Returns, and has failed to file and provide trustee with a Spousal Waiver. The debtor's plan and schedules are incomplete and the debtor has failed to demonstrate that debtor has regular monthly income. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order.

4. [16-11009](#)-B-13 JAVIER GARCIA

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-2-16 [[22](#)]

ROBERT CERVANTES/Atty. for dbt.

**The OSC will be vacated. No appearance is necessary.**

The record shows that the debtor is now current on the installment payment schedule. If the debtor fails to make one or more of the remaining installment payments when they come due then this case may be dismissed without further notice. The court will enter a civil minute order.

5. [11-15712](#)-B-13 RONALD KEELING AND ANGELA  
SL-1 LAVERNE KEELING  
RONALD KEELING/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
NATIONSTAR MORTGAGE LLC  
5-5-16 [[41](#)]

**This motion will be continued to June 23, 2016, at 1:30 p.m. No appearance is necessary. The court will enter a civil minute order.**

The debtors shall file and serve evidence to show that the respondent will not be prejudiced by the granting of the motion. This bankruptcy case was filed on May 18, 2011, five years ago. This creditor filed a secured claim based on the junior deed of trust that is the subject of this motion. The chapter 13 plan, confirmed on July 13, 2011, provided for a distribution to general unsecured creditors of 32%.

6. [16-10312](#)-B-13 JACKIE/MARIA WEECE  
AP-1  
WELLS FARGO BANK, N.A./MV  
  
SCOTT LYONS/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY WELLS  
FARGO BANK, N.A.  
3-29-16 [[29](#)]

**The objection will be overruled without prejudice. No appearance is necessary.**

**This objection was continued for reasons set forth in the court's civil minute order entered April 14, 2016, including the movant's failure to file an amended proof of service that complies with the Local Rules. No conforming proof of service has been filed.**

7. [16-10312](#)-B-13 JACKIE/MARIA WEECE  
MHM-1  
  
SCOTT LYONS/Atty. for dbt.

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE MICHAEL H.  
MEYER  
4-19-16 [[38](#)]

**This matter will be called as scheduled. If no one appears at the hearing in opposition then the court intends to sustain the objection.**

**In addition, the court will order that the debtors must confirm a chapter 13 plan by August 11, 2016, or the case will be dismissed on the trustee's declaration without further notice.**

8. [15-11813](#)-B-13 ALBERT/LUCIA SOLIS  
GMA-1  
ALBERT SOLIS/MV  
GEOFFREY ADALIAN/Atty. for dbt.

MOTION TO MODIFY PLAN  
4-7-16 [[31](#)]

**The motion will be granted. No appearance is necessary.**

**The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The debtors shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. The court will enter a civil minute order.**

9. [14-14016](#)-B-13 ISMAEL GONZALEZ  
PPR-1  
BANK OF AMERICA, N.A./MV

VINCENT GORSKI/Atty. for dbt.  
HALIE LEONARD/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
4-18-16 [[67](#)]

**The motion will be granted. No appearance is necessary.**

**This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered and the motion will be granted without oral argument for cause shown. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.**

**The movant shall submit a proposed order that specifically describes the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted. Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.**

10. [10-63819](#)-B-13 YONG PARK AND HYANG YOON  
MHM-3  
MICHAEL MEYER/MV

PHILLIP GILLET/Atty. for dbt.

OBJECTION TO CLAIM OF JPMORGAN  
CHASE BANK, N.A., CLAIM NUMBER  
4  
3-31-16 [[106](#)]

**The objection will be sustained without oral argument. No appearance is necessary.**

**The record reflects that the objection is unopposed. The claim will be disallowed in part on the grounds stated in the objection. Claim number 4 will be allowed in the amount of \$14,525.58 at 5% per annum per the plan (\$14,525.58 principal and \$1,692.42 interest). Any and all other amounts will be disallowed. The trustee shall submit a proposed order.**

11. [15-13519](#)-B-13 SERGIO PEREZ  
MHM-2  
MICHAEL MEYER/MV  
DAVID JENKINS/Atty. for dbt.

MOTION TO DISMISS CASE  
4-7-16 [[37](#)]

**The trustee's motion has been withdrawn. No appearance is necessary.**

12. [16-10619](#)-B-13 JOSE CERVANTES-ESQUIVEL  
MHM-1 AND SARA CERVANTES  
MICHAEL MEYER/MV  
DAVID JENKINS/Atty. for dbt.

MOTION TO DISMISS CASE  
4-22-16 [[16](#)]

**The motion will be granted. No appearance is necessary.**

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows there has been unreasonable delay by the debtors that is prejudicial to creditors, including the debtors' failure to appear at the scheduled 341 Meeting of Creditors, failure to provide the Trustee with 2015 State and Federal Tax Return, and failure to file tax returns for the year 2015. In addition, the debtors have failed to commence making plan payments. Accordingly, the respondents' default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order.

13. [14-14028](#)-B-13 GEORGETTE AVEDIKIAN  
DRJ-7  
GEORGETTE AVEDIKIAN/MV  
DAVID JENKINS/Atty. for dbt.

MOTION TO MODIFY PLAN  
4-7-16 [[113](#)]

**The motion will be granted. No appearance is necessary.**

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The debtor shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. [15-14228](#)-B-13 OSCAR GUTIERREZ  
GEG-1  
OSCAR GUTIERREZ/MV  
GLEN GATES/Atty. for dbt.

MOTION TO CONFIRM PLAN  
3-31-16 [[85](#)]

**The motion will be granted. No appearance is necessary.**

**This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The debtor shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.**

15. [16-10030](#)-B-13 KEITH/TAWNEY HIGGINS  
MHM-1  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE  
3-31-16 [[17](#)]

**The motion will be granted. No appearance is necessary.**

**The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondents' default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.**

16. [16-10832](#)-B-13 ISRAEL AYON RODRIGUEZ  
  
SCOTT LYONS/Atty. for dbt.  
PAID \$160 ON 4/25/16

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-21-16 [[20](#)]

**The OSC will be vacated. No appearance is necessary.**

**The record shows that the debtor is now current on the installment payment schedule. If the debtor fails to make one or more of the remaining installment payments when they come due then this case may be dismissed without further notice. The court will enter a civil minute order.**

17. [15-14733](#)-B-13 JAVIER VELIZ  
PBB-4  
JAVIER VELIZ/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
FRESNO D.C.S.S.  
4-19-16 [[49](#)]

The motion will be granted. No appearance is necessary. The movant shall submit a proposed order consistent with the court's ruling.

This motion was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown.

The collateral for respondent's lien will be valued at zero subject to the completion of a chapter 13 plan. If the case is dismissed or converted then this ruling shall have no effect. *In re Concannon*, 338 B.R. 90, 95 (B.A.P. 9th Cir. 2006).

18. [16-10639](#)-B-13 HAROLD THORNTON  
MHM-1  
MICHAEL MEYER/MV  
HENRY NUNEZ/Atty. for dbt.

MOTION TO DISMISS CASE  
4-22-16 [[49](#)]

The motion will be granted. No appearance is necessary.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows there has been unreasonable delay by the debtor that is prejudicial to creditors, including, failure to provide the Trustee with the following required documentation, including but not limited to: Class 1 Mortgage Checklist with payment coupon or last statement; 2015 State and Federal Tax Return; proof of all income, i.e., pay advices; profit and loss statements; rental income; unemployment compensation; social security income; disability; and retirement for the six months prior to filing. In addition, it appears that the debtor has failed to file tax returns for the years 2012-2015. Finally, the debtor has failed to set a plan for hearing with notice to creditors. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order.



19. [13-12642](#)-B-13 MARIA VELARDE-GARCIA MOTION TO MODIFY PLAN  
PBB-1 4-12-16 [[34](#)]  
MARIA VELARDE-GARCIA/MV  
PETER BUNTING/Atty. for dbt.

**The motion will be granted. No appearance is necessary.**

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered. The debtor shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

20. [12-17145](#)-B-13 DAVID/LISA PINA CONTINUED MOTION TO DISMISS  
MHM-2 CASE  
MICHAEL MEYER/MV 3-3-16 [[68](#)]  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

**The trustee's motion has been withdrawn. No appearance is necessary.**

21. [12-17145](#)-B-13 DAVID/LISA PINA MOTION TO MODIFY PLAN  
TCS-5 4-13-16 [[74](#)]  
DAVID PINA/MV  
TIMOTHY SPRINGER/Atty. for dbt.

**The motion will be denied without prejudice. No appearance is necessary.**

This case was filed August 19, 2012. The debtors have proposed and confirmed four prior chapter 13 plans. The first plan proposed to pay a 100% dividend on general unsecured claims in the approximate amount of \$30,000. The subsequent confirmed chapter 13 plan proposed to pay 60% on approximately \$22,000 in unsecured claims. The third plan proposed to pay 10% to the same amount of unsecured claims, and the fourth also proposed to pay a 10% dividend.

This motion to modify a confirmed plan, the debtors' fifth plan, contains inconsistent and misleading information about a material element of the plan, the distribution to general unsecured creditors. While the motion and declaration state that the distribution to these creditors will be reduced from 10% to 1%, the plan provides for 10% distribution. The court will enter a civil minute order.

22. [16-10645](#)-B-13 SERENA HERNANDEZ  
BRT-1  
BANK OF AMERICA, N.A./MV  
JERRY LOWE/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
3-22-16 [[15](#)]

**This matter will be called as scheduled. If no one appears at the hearing in opposition then the court intends to sustain the objection on the grounds stated in the moving papers and to enter a civil minute order.**

23. [16-10645](#)-B-13 SERENA HERNANDEZ  
JRL-1  
SERENA HERNANDEZ/MV  
  
JERRY LOWE/Atty. for dbt.

MOTION TO AVOID LIEN OF STATE  
OF CALIFORNIA EMPLOYMENT  
DEVELOPMENT DEPARTMENT  
3-28-16 [[21](#)]

**This motion will be denied without prejudice to the amendment of debtor's claim of exemptions. No appearance is necessary. The court will enter a civil minute order.**

**The motion was not served on the respondent, State of California Employment Development Department, at the address specified in the Roster of Government Agencies, which is available on the court's website.**

**In addition, the pleadings do not contain evidence of the property's value as required to determine whether there is value in excess of the exemption claimed.**

**Finally, the record shows that the debtor is not entitled to claim this real property as her homestead under Cal. Code of Civ. P. §704.730 pursuant to §704.710(c), and no evidence has been presented to the contrary.**

24. [16-10645](#)-B-13 SERENA HERNANDEZ  
JRL-2  
SERENA HERNANDEZ/MV  
JERRY LOWE/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO AVOID LIEN OF  
TUCOEMAS FEDERAL CREDIT UNION  
3-28-16 [[25](#)]

**The motion to avoid the lien has been withdrawn. No appearance is necessary.**

25. [16-10653](#)-B-13 GEORGE/LYDIA MATHIS  
MHM-1  
MICHAEL MEYER/MV  
HENRY NUNEZ/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
4-22-16 [[22](#)]

**The trustee's motion to dismiss will be continued to June 16, 2016, at 1:30 p.m., to be heard with the debtors' motion to confirm a chapter 13 plan. No appearance is necessary. The court will enter a civil minute order.**

26. [15-10257](#)-B-13 JUAN CALVILLO  
MAZ-2  
JUAN CALVILLO/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO SELL  
4-20-16 [[75](#)]

**This matter will be called as scheduled. If no one appears at the hearing in opposition then the court intends to grant the motion subject to the trustee's approval of the escrow closing statement and order prepared and submitted by the movant.**

27. [16-10957](#)-B-13 BRIDGET MEZA  
  
BRIAN HADDIX/Atty. for dbt.  
PAID \$79.00 ON 5/2/16

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-28-16 [[15](#)]

**This matter will be called as scheduled. If no one appears at the hearing to take a different position, then the court intends to vacate the OSC and enter a civil minute order.**

**The record shows that the April payment has been made. The failure to make each installment payment, due on May 23, June 22, and July 22, as required by the installment agreement, may result in dismissal of the case without further notice. The court will enter a civil minute order.**

28. [16-10358](#)-B-13 ADAM/CHRISTINA RAMIREZ  
  
PAID \$200.00 ON 4/14/16

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-14-16 [[36](#)]

**This matter will be called as scheduled. If no one appears in opposition, and the required fee in the amount of \$110 is not paid by June 8, 2016, the case will be dismissed without further notice and the court will enter a civil minute order.**

29. [16-10361](#)-B-13 LODGERIO/ANTONIA JORGE  
BRT-1  
STEARNS LENDING, LLC/MV  
  
STEVEN ALPERT/Atty. for dbt.  
BRIAN TRAN/Atty. for mv.

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY STEARNS  
LENDING, LLC  
3-3-16 [[14](#)]

**The objection will be sustained. No appearance is necessary.**

**This objection was fully noticed and there is no opposition. The respondents' default will be entered. The address listed in the debtors' chapter 13 plan in class 4 is inconsistent with the amended petition and Schedules A, C, and D, filed April 4, 2016. Based on the objection, it appears that Stearns Lending, LLC's collateral is misidentified in the plan. The court will enter a civil minute order.**

30. [15-14662](#)-B-13 JUAN ALVARADO AND DORIS MOTION TO CONFIRM PLAN  
TCS-1 CARRILLO-CENTENO 4-5-16 [[35](#)]  
JUAN ALVARADO/MV  
TIMOTHY SPRINGER/Atty. for dbt.

The motion will be granted. No appearance is necessary.

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The debtors shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. The court will enter a civil minute order.

31. [15-14662](#)-B-13 JUAN ALVARADO AND DORIS MOTION TO VALUE COLLATERAL OF  
TCS-2 CARRILLO-CENTENO THE BANK OF NEW YORK MELLON,  
JUAN ALVARADO/MV ET. AL.  
4-11-16 [[45](#)]  
TIMOTHY SPRINGER/Atty. for dbt.

The motion will be granted. Movant shall submit a proposed order consistent with this ruling. No appearance is necessary.

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted for cause shown without oral argument. Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtors may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

Page 2, paragraph 8, lines 13 and 14, of the declaration are ordered stricken as inadmissible hearsay.

*This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.*

32. [15-14864](#)-B-13 LINDA SEE  
MHM-1  
MICHAEL MEYER/MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
4-7-16 [[16](#)]

**The trustee's motion has been withdrawn. No appearance is necessary.**

33. [16-10866](#)-B-13 MICHELLE YORK  
MRG-1  
STONEGATE MORTGAGE  
CORPORATION/MV  
DAVID JENKINS/Atty. for dbt.  
MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY STONEGATE MORTGAGE  
CORPORATION  
5-3-16 [[29](#)]

**This matter will be continued to June 23, 2016, at 1:30 p.m. No appearance is necessary.**

**The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. The court will prepare and enter a civil minute order.**

34. [16-10866](#)-B-13 MICHELLE YORK  
PJL-1  
PEOPLEAS HOLDINGS, INC./MV  
  
DAVID JENKINS/Atty. for dbt.  
PAUL LAURIN/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY PEOPLEAS LLC, PLC  
SERVICES LLC, AND PEOPLEAS  
HOLDINGS, INC.  
5-3-16 [[32](#)]

**This matter will be continued to June 23, 2016, at 1:30 p.m. No appearance is necessary.**

**The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. The court will prepare and enter a civil minute order.**

35. [16-10468](#)-B-13 FRED/ANNA VALDEZ  
MHM-1  
MICHAEL MEYER/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE  
4-19-16 [[29](#)]

**The trustee's motion has been withdrawn. No appearance is necessary.**

36. [15-12279](#)-B-13 MICHAEL MARMOLEJO  
PBB-3  
MICHAEL MARMOLEJO/MV  
PETER BUNTING/Atty. for dbt.  
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF FRESNO  
D.C.S.S., CLAIM NUMBER 11  
4-6-16 [[54](#)]

The objection will be sustained. The priority unsecured claim will be allowed in the sum of \$35,300.87 only. The balance will be disallowed. No appearance is necessary. The court will issue a civil minute order.

Although, pursuant to FRBP 3001(f), a properly executed proof of claim is *prima facie* evidence of the validity and amount of the proof of claim, the ultimate burden of proof is upon the claimant. *In re: Garvida*, 347 BR 697, 705, 707 (9th Cir. B.A.P., 2006). The claimant, County of Fresno (the "County"), on behalf of debtor's ex-spouse, Ms. Wagner, filed a timely proof of a priority unsecured claim and attached both the state court judgment establishing that claim for the domestic support obligation and a purported accounting. Based on the County's opposition to the debtor's objection, it appears that the accounting was prepared based entirely upon hearsay statements of Ms. Wagner. These "statements" appear here without any evidentiary foundation and therefore lack any evidentiary value.

The presumption of *prima facie* validity is rebuttable upon presentation of sufficient affirmative evidence. *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15, 22 fn. 2 (2000); *Lundell v. Anchor Const. Specialists, Inc*, 223 F. 3d 1035, 1039 (9th Cir., 2000). In his objection the debtor presented evidence of payment authenticated by both check stubs and statements from the debtor's Credit Union showing payments made directly to Ms. Wagner on the dates in question. This evidence overcomes the presumption of validity to the extent of the payments proven to be made by the debtor and the corresponding interest which may have been charged by the County.

Once the debtor presented the evidence the burden of proof shifted to the County to establish the claim by a preponderance of the evidence. *Lundell* 223 F.3d at 1039. The County, however, merely presented unverified allegations of the process that occurred in state court. There is no competent evidence to rebut the evidence presented by the debtor on the payment issue, thus the preponderance of the evidence favors the debtor in the absence of competent conflicting evidence.

The County relies upon the state court determination of arrears-a determination that appears to have been made in violation of the automatic stay of 11 U.S.C. §362(b)(2)(B). The bankruptcy case was filed June 5, 2015; the hearing in the state court was on April 18, 2016; none of the exceptions listed in §362(b)(2) apply to that proceeding. It was not an action for the establishment or modification of an order for a domestic support obligation, the proof of claim shows that such order had already been made. It was not with respect to the withholding of income that is property of the estate or debtor for such an obligation, and it was not for the collection of a domestic support obligation from property that is not

property of the estate. Pursuant to §1306, the debtor's wages are property of the estate and the chapter 13 plan payments will be made from those wages. Accordingly, the determination of the arrearage made by the state court is void and of no effect. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir.1992); *In re Gruntz*, 202 F.3d 1074, 1081-82 (9th Cir.2000).

Even if the state court proceeding was not undertaken in violation of the automatic stay, in determining the preclusive effect of a state court judgment, 28 U.S.C. § 1738 requires federal courts, as a matter of full faith and credit, to apply that state's collateral estoppel principles. *In re Nourbaksh*, 67 F. 3d 798, 800 (9th Cir., 1995). Under California law, the party asserting claim preclusion, here the County, bears the burden of proof. *Lucido v. Superior Court*, 51 Cal. 3d 335, 341; 272 Cal. Rptr. 767 cert. den. 500 U.S. 920 (1991). That burden means the production of a record sufficient to reveal the controlling facts and pinpointing the exact issues litigated in the prior action. *In re Plyam*, 530 B.R. 456, 462 (9th Cir., B.A.P., 2015); quoting *Kelly v. Okoye (In re: Kelly)*, 182 B.R. 255, 258 (9th Cir., B.A.P., 1995) *aff'd* 100 F. 3d 110 (9th Cir., 1996). "Ultimately, any reasonable doubt as to what was decided by a prior judgment should be resolved against the [issue preclusive] effect." *Id.* The County has presented no admissible proof that the debtor had a "full and fair opportunity to litigate." *In re Cantrell*, 269 B.R. 413, 418-420 (9th Cir. BAP, 2001); *Valley View Health Care, Inc. v. Chapman*, 992 F.Supp.2d 1016, 1047 (E.D. Cal., 2014). There is no evidence that the state court had the opportunity to review the debtor's copies of cancelled checks and his bank statements that he has presented to the County to support his contention of the amounts paid directly to Ms. Wagner.

The County's request for abstention should have been made by counter motion. Nevertheless, since it appears that the state court proceedings were stayed, there is nothing for the court to abstain from. The County would need an order for relief from the automatic stay which has not been requested.

37. [14-15385](#)-B-13 CHRISTINA BAIRD  
PBB-3  
CHRISTINA BAIRD/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN  
3-28-16 [[41](#)]

**The motion will be granted. No appearance is necessary.**

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The debtor shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. The court will enter a civil minute order.

38. [12-13786](#)-B-13 MARIO PANTOJA  
TOG-5  
MARIO PANTOJA/MV  
THOMAS GILLIS/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
5-6-16 [[52](#)]

This motion will be called as scheduled. If no one appears in opposition, the court intends to enter the defaults and grant the motion. It appears from the record that this property is in class 4 of a confirmed plan and the approval of the proposed modification will not negatively affect the creditors. The movant shall submit a proposed order that has been approved by the chapter 13 trustee.

39. [16-10294](#)-B-13 LINA CONTRERAS  
AP-1  
WELLS FARGO BANK, NA/MV  
  
WILLIAM ROMAINE/Atty. for dbt.  
JONATHAN CAHILL/Atty. for mv.

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY WELLS  
FARGO BANK, NA  
3-29-16 [[33](#)]

**This matter will be continued to June 1, 2016, at 1:30 p.m. No appearance is necessary.**

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. The court will prepare and enter a civil minute order.



11:00 A.M.

1. [16-10521](#)-B-7 ALAN ENGLE  
FW-1

ORDER TO SHOW CAUSE WHY THE  
COURT SHOULD NOT ISSUE A  
TURNOVER ORDER AS TO PROPERTY  
OF THE ESTATE  
5-11-16 [[29](#)]

PETER BUNTING/Atty. for dbt.

**This matter will be called as scheduled. Based on the debtor's notice of non-opposition, and the trustee's status report, the court intends to issue an order for turnover of the debtor's undisclosed and non-exempt assets. The trustee will submit a proposed order for turnover that has been approved by debtor's counsel.**