

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

2500 Tulare Street, Fifth Floor  
Department A, Courtroom 11  
Fresno, California

**THURSDAY**

**MAY 21, 2015**

**PRE-HEARING DISPOSITIONS**

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

**ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [15-10902](#)-A-13 DESIREE HALMES MOTION TO DISMISS CASE  
MHM-1 5-1-15 [[31](#)]  
MICHAEL MEYER/MV  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

2. [15-10902](#)-A-13 DESIREE HALMES MOTION TO DISMISS CASE  
MHM-2 5-6-15 [[42](#)]  
MICHAEL MEYER/MV

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

3. [10-17305](#)-A-13 GLEN/MARY CHANDLER MOTION FOR COMPENSATION  
PLF-4 4-6-15 [[105](#)]  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

**Tentative Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

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

## **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Fear Law Group, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,884.00 and reimbursement of expenses in the amount of \$330.20. The applicant also asks that the court allow on a final basis all prior applications for fees and costs, including the "no look" fee described in LBR 2016-1(c)(1), that the court has previously allowed on an interim basis.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

## **DISCHARGE OF UNPAID ATTORNEYS FEES**

Chapter 13 trustee Michael Meyer comments that the plan does not have sufficient funds remaining over its life to pay the fees and costs, except for \$356.00.

The Chapter 13 plan provides that all attorney fees and costs must be paid in full through the plan. Chapter 13 Plan § 3.07, filed July 26, 2011, ECF # 78. The plan contains no "Johnson provision," *In re Johnson*, 344 B.R. 104 (2006). As a result, unpaid attorney fees and costs will be forgiven upon discharge. 11 U.S.C. § 1328(a).

## **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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2,884.00 and reimbursement of expenses in the amount of \$330.02. The aggregate allowed amount equals \$3,214.20.20. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3,214.20 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held. The court also approves on a final basis all prior applications for interim fees and

costs, including the no look fee described in LBR 2016-1(c)(1) that the court has allowed under § 331 on an interim basis.

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

IT IS FURTHER ORDERED that fees and costs unpaid will be discharged.

4. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON MOTION TO MODIFY PLAN AND/OR  
MNE-6 MOTION TO ALLOW PURCHASE OF  
LARRY ANDERSON/MV VEHICLE  
4-9-15 [[116](#)]  
M. ENMARK/Atty. for dbt.  
RESPONSIVE PLEADING

### **Final Ruling**

**Matter:** Motion to Confirm Third Modified Chapter 13 Plan and Motion to Allow Purchase of Vehicle

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **PROCEDURE**

Effective May 1, 2015, the Local Bankruptcy Rules do not permit the joinder of requests for multiple forms of relief that are separate and distinct from each other and not complementary or alternative to each other. LBR 9014-1(d)(1) provides: "Except as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion."

The debtors have requested an order confirming a third modified chapter 13 plan and an order authorizing the purchase of a vehicle. This matter does not comply with LBR 9014-1(d)(1) in that it joins multiple forms of relief that are separate and distinct from each other rather than complementary or alternative to each other.

### **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 debtors' motion has been presented to the court. Having considered the motion, and having found that the motion does not comply with LBR 9014-1(d)(1) as it improperly joins multiple forms of relief,

IT IS ORDERED that the motion is denied without prejudice.

5. [11-17816](#)-A-13 MARLOWE FOSSEN  
MHM-4  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
4-8-15 [[98](#)]

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

6. [15-10017](#)-A-13 JAMES CULVER  
DRJ-2  
JAMES CULVER/MV  
DAVID JENKINS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
3-25-15 [[49](#)]

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Pending

**Order:** Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). The Chapter 13 trustee opposes the motion, objecting to confirmation. But the moving party has not filed a reply to the opposition.

### **CONFIRMATION**

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

### **75 DAY ORDER**

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

7. [11-10219](#)-A-13 ELEAZAR/ANITA GONZALEZ MOTION TO DISMISS CASE  
MHM-1 4-8-15 [[29](#)]  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

8. [15-10433](#)-A-13 STEPHEN/MARTHA EVANS MOTION TO VALUE COLLATERAL OF  
PBB-3 SPRINGLEAF FINANCIAL SERVICES,  
STEPHEN EVANS/MV INC.  
4-15-15 [[38](#)]  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]

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

**Disposition:** Granted

**Order:** Civil minute order

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

**VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of

personal property described as Apple desktop computer and computer equipment. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the aggregate collateral at \$500.00.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value non-vehicular, personal property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as an Apple desktop and computer equipment has an aggregate value of \$500. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$500 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

9. [15-10633](#)-A-13 MARICELA NEIBLAS  
SAS-1  
FINANCE AND THRIFT COMPANY/MV

OBJECTION TO CONFIRMATION OF  
PLAN BY FINANCE AND THRIFT  
COMPANY  
4-14-15 [[23](#)]

FRANCISCO ALDANA/Atty. for dbt.  
STEVEN SILVER/Atty. for mv.  
DISMISSED

#### **Final Ruling**

The case dismissed, the objection is denied as moot.

10. [15-10135](#)-A-13 SERGIO/IRMA PIZARRO  
TCS-1  
SERGIO PIZARRO/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
4-4-15 [[23](#)]

### **Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 1947 W. Princeton Ave., Fresno, CA.

The court values the collateral at \$138,000. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value real property collateral 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 real property collateral located at 1947 W. Princeton Ave., Fresno, CA, has a value of \$138,000. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

11. [15-10935](#)-A-13 JOSEPH DIAZ  
JRT-1  
WDTD, LLC/MV  
MATIN RAJABOV/Atty. for dbt.  
JENNIFER TULLIUS/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-22-15 [[43](#)]

### **Tentative Ruling**

**Motion:** Relief from Stay

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

**Disposition:** Continued to June 18, 2015, at 9:00 a.m.; notice of continued hearing under LBR 9014-1(f)(2) shall be filed along with a supplemental declaration no later than June 4, 2015

**Order:** Civil minute order

### **INSURANCE**

The motion at paragraph 6 suggests that in May 2014, the debtor failed to maintain insurance on the property. But the motion does not state whether this insurance default has continued to the present. Paragraph 14 of the declaration filed at docket no. 47 explains that the debtor "is also in default" as the debtor "has failed to maintain insurance on the Property." These statements are not sufficiently clear to indicate that the debtor *presently* is not maintaining insurance on the Property. If the debtor is not maintaining insurance on the property, the court would likely find that omission to constitute cause for relief from the automatic stay.

### **CONTINUED FOR FINAL HEARING**

The motion otherwise does not satisfy the standards for stay relief in chapter 13. Because the court finds a reasonable likelihood that the debtor would prevail on the motion in the absence of a supplemental declaration addressing the court's concerns, the court will continue the hearing for 28 days for a final hearing on the motion. See § 362(e).

The stay shall remain in effect pending the conclusion of the final hearing. The court will continue the motion to June 28, 2015, at 9:00 a.m. to allow the movant to file a supplemental declaration addressing the questions raised by the court.

## OTHER ISSUES

### Foreclosure Sale Postpetition

Lastly, the court notes that movant has stated it conducted a foreclosure sale on March 12, 2015. The petition date was March 11, 2015. The court does not decide whether this foreclosure sale violated the automatic stay in this proceeding, but a foreclosure sale postpetition is considered a violation of the automatic stay that is void. See *In re Mitchell*, 279 B.R. 839, 844 (B.A.P. 9th Cir. 2002) ("The bankruptcy court correctly held that § 549(c) does not except a post-petition foreclosure sale to a BFP from the automatic stay, and that the foreclosure sale to Value T was void."). The court will not grant retroactive relief from stay in this matter.

### Late-Filed Opposition

The debtor filed a late opposition. It was filed May 19, 2015. The deadline for a motion noticed under LBR 9014-1(f)(1) is 14 days before the hearing date. Here, the deadline was May 7, 2015. The court may in its discretion consider the late filed opposition before the continued hearing date.

If debtor wishes to file further supplemental opposition, the debtor may do so before the continued hearing or raise such opposition at the continued hearing.

## 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.

IT IS ORDERED that the hearing on movant WDTD, LLC's motion is continued to June 28, 2015, at 9:00 a.m. Movant shall file a notice of continued hearing according to LBR 9014-1(f)(2), along with a supplemental declaration addressing the dates during which debtor has failed to maintain insurance, no later than June 4, 2015.

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| 12. | <a href="#">14-15736</a> -A-13 OMAR MARTINEZ AND JUDIT<br>GEG-2 LOPEZ<br>OMAR MARTINEZ/MV<br>GLEN GATES/Atty. for dbt. | MOTION TO VALUE COLLATERAL OF<br>CARMAX AUTO FINANCE<br>4-20-15 [ <a href="#">39</a> ] |
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## Final Ruling

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been

filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2006 Ford Freestyle Wagon. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$5000.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2006 Ford Freestyle Wagon has a value of \$5000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$5000 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

13. [13-17637](#)-A-13 BENJAMIN/SONIA VELO MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
SANTANDER CONSUMER USA INC./MV 4-10-15 [[58](#)]  
ANDREW MOHER/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 2008 Volkswagen New Beetle

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." The total loss of a vehicle that is collateral constitutes cause for relief from stay. 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.

14. [15-10243](#)-A-13 JERRY/SARA GARCIA MOTION TO CONFIRM PLAN  
MAZ-3 3-30-15 [[45](#)]  
JERRY GARCIA/MV  
MARK ZIMMERMAN/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 Chapter 13 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 bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

15. [14-15245](#)-A-13 MICHAEL CASE  
MHM-1  
MICHAEL MEYER/MV  
HENRY NUNEZ/Atty. for dbt.
- OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
4-9-15 [[52](#)]

**Final Ruling**

**Objection:** Objection to Debtor's Claim of Exemptions

**Notice:** LBR 9014-1(f)(1) / 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).

Section 703.140(b)(6) is intended to exempt tools and implements, or professional books, used in a debtor's trade or business, or the trade of a dependent of the debtor. The term *implements* should be construed, moreover, to be consistent with the other words in the phrase, which have to do with books or tools used in a trade or business. The 2007 Honda CRF 450 is a dirt bike that Debtor uses for recreational purposes only. For the reasons stated in the objection, the court will sustain the objection.

16. [15-10847](#)-A-13 RONALD/DOLORES SANDERS  
BF-5  
CALIBER HOME LOANS, INC./MV
- OBJECTION TO CONFIRMATION OF  
PLAN BY CALIBER HOME LOANS,  
INC.  
4-21-15 [[27](#)]
- SCOTT LYONS/Atty. for dbt.  
BRANDYE FOREMAN/Atty. for mv.

**No tentative ruling.**

17. [15-10847](#)-A-13 RONALD/DOLORES SANDERS  
MDE-1  
HARLEY-DAVIDSON CREDIT  
CORP./MV
- OBJECTION TO CONFIRMATION OF  
PLAN BY HARLEY-DAVIDSON CREDIT  
CORP.  
3-24-15 [[14](#)]
- SCOTT LYONS/Atty. for dbt.  
MARK ESTLE/Atty. for mv.

**No tentative ruling.**

18. [14-13752](#)-A-13 ROBERT/LESLIE DARNER  
PBB-2  
ROBERT DARNER/MV  
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 1  
4-1-15 [[37](#)]

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

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

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

A statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1). Another statute of limitations in California bars an action on an oral contract after two years. Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the debtor has not made any payments or charges on the loan held by the responding party in the four years prior to filing the petition in this case. The last payment or transaction made with the original loan holder was on January 27, 2009, which is more than 4 years before the petition date. The objection will be sustained.

19. [14-13752](#)-A-13 ROBERT/LESLIE DARNER  
PBB-3  
ROBERT DARNER/MV  
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 2  
4-1-15 [[42](#)]

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

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

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

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

A statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1). Another statute of limitations in California bars an action on an oral contract after two years. Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the debtors have made no charges or payments on the loan held by the responding party in the four years prior to filing the petition in this case. The last payment or transaction with the original loan holder was on December 23, 2008, which is more than 4 years before the petition in this case. The objection will be sustained.

20. [13-13655](#)-A-13 FROYLAN/MARGARET GARCIA MOTION TO DISMISS CASE  
MHM-2 4-6-15 [[57](#)]  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

21. [13-13655](#)-A-13 FROYLAN/MARGARET GARCIA MOTION TO MODIFY PLAN  
TOG-2 4-2-15 [[51](#)]  
FROYLAN GARCIA/MV  
THOMAS GILLIS/Atty. for dbt.

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by Chapter 13 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 confirmation 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. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

22. [15-10966](#)-A-13 RODNEY HARON MOTION TO DISMISS CASE  
MHM-1 4-23-15 [[22](#)]  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss or Convert Case

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

**Disposition:** Continued to June 18, 2015 at 9:00 a.m.

**Order:** Civil minute order



## CAUSE

For the reasons stated in the motion and supplemental brief, cause exists under § 1307(c) to dismiss or convert this case. The debtor's Schedule E shows unsecured priority claims totaling \$5,000,000. This claim is based on a legal separation agreement. The claim is not listed as being contingent, unliquidated, or disputed. So the court finds that the claim is noncontingent and liquidated. The debtor is not eligible for chapter 13, and this constitutes cause for conversion or dismissal.

## CONVERSION

The court at this time will not consider whether conversion or dismissal is in the best interests of the creditors in this case. The court instead will continue the hearing on this matter to coincide with the hearing on the debtor's motion to convert the case to chapter 11 at docket no. 35.

23. [15-10967](#)-A-13 NIGEL MARIN

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-24-15 [[36](#)]

### Tentative Ruling

If the amendment fee of \$30 has not been paid by the time of the hearing, the case will be dismissed without further notice or hearing.

24. [15-10473](#)-A-13 ELOISA PEREZ  
BRL-1  
LEO KESSELMAN/MV

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY LEO  
KESSELMAN  
4-6-15 [[46](#)]

GEORGE LOGAN/Atty. for dbt.  
BENJAMIN LEVINSON/Atty. for mv.

### Tentative Ruling

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

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

The court has issued a tentative ruling to dismiss this case. The court will overrule the objection as moot.

25. [15-10473](#)-A-13 ELOISA PEREZ  
GGL-1  
ELOISA PEREZ/MV

CONTINUED MOTION TO VALUE  
COLLATERAL OF LEO KESSELMAN/PLM  
AND/OR MOTION TO CRAMDOWN THE  
VALUE OF THE SENIOR LIEN ,  
MOTION TO USE CASH COLLATERAL  
3-3-15 [[17](#)]

GEORGE LOGAN/Atty. for dbt.  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

26. [15-10473](#)-A-13 ELOISA PEREZ  
MHM-1  
MICHAEL MEYER/MV  
GEORGE LOGAN/Atty. for dbt.  
MICHAEL MEYER/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
3-12-15 [[32](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Prepared by moving party

### **TRUSTEE'S MOTION**

The chapter 13 trustee moves to dismiss this case on grounds that the debtor's amount of unsecured debt exceeds the eligibility limit for a case under chapter 13. The eligibility limit for an individual debtor is "noncontingent, liquidated, unsecured debts of less than \$383,175." 11 U.S.C. § 109(e).

The trustee has performed calculations showing the total unsecured debt of debtor as \$710,718, which far exceeds the applicable debt limit.

### **DEBTOR'S OPPOSITION**

The debtor opposes but does not dispute any material fact asserted in the motion. The debtor simply states that the motion is premature because it depends on the outcome of the debtor's motion to value collateral.

### **WHETHER MOTION'S REQUEST FOR DISMISSAL IS PREMATURE**

The debtor is incorrect. Importantly, even if the valuation motion can be used (rather than the Schedules) to determine eligibility, Kesselman does not dispute the value of the Winton Property for purposes of the valuation motion. Thus, the outcome of the valuation motion will not change the result here, which relies on the same value as the undisputed value used in the debtor's valuation motion. Thus, the motion to dismiss is not premature regardless of which values and debt amounts are used to determine eligibility.

## UNSECURED DEBT EXCEEDS § 109(e) LIMIT

### Chapter 13 Eligibility Standards

"We now simply and explicitly state the rule for determining Chapter 13 eligibility under § 109(e) to be that eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001).

However, despite the fact that a claim based on a judgment lien might not have been scheduled as unsecured on Schedule F, the Ninth Circuit in *Scovis* applied a § 506(a) analysis to determine whether the judgment lien debt was secured or unsecured and to ensure that form was not elevated over substance in determining whether a claim was secured or unsecured. The court in *Scovis* stated: "To determine the status of [a judgment lien creditor's] \$132,026.91 non-priority claim, we must look to 11 U.S.C. § 506(a). Through the inclusion of a § 506(a) analysis to define "secured" and "unsecured" in the § 109(e) context, a vast majority of courts, and all circuit courts that have considered the issue, have held that the unsecured portion of undersecured debt is counted as unsecured for § 109(e) eligibility purposes." *In re Scovis*, 249 F.3d 975, 983 (9th Cir. 2001) (citing cases).

The court further reasoned: "It is true that although § 506(a) speaks in terms of an "allowed claim," applying § 506(a) to § 109(e) is necessary to prevent "raising form over substance and manipulation of the debt limits" to achieve Chapter 13 eligibility. By merely looking at the value of Debtors' residence, the first deed trust, and the judgment lien, it is clear that [a] judgment lien is undersecured to a significant extent. The listed value of Debtors' residence is \$325,000. After considering the \$249,026.91 first deed trust, only \$75,973.09 remains as possible equity to which liens could attach. Since [the] judgment lien is for \$208,000, at least \$132,026.91 of the judgment lien is undersecured. There is no question that this undersecured debt is to be counted as unsecured for eligibility purposes." *In re Scovis*, 249 F.3d 975, 983 (9th Cir. 2001) (citation omitted).

Although it is unclear to what extent a bankruptcy court may look beyond the schedules, *Scovis* permits a bankruptcy court to apply a § 506(a) analysis to ensure form is not elevated over substance as to undersecured claims, despite the lack of scheduling of the unsecured portion of an undersecured debt on Schedule F. In addition, the Ninth Circuit bankruptcy appellate panel has affirmed, in the face of a good faith eligibility objection, a bankruptcy court's decision to look past the debtor's schedules, which showed apparent eligibility on their face, to consider additional evidence showing that the value of certain collateral was insufficient to provide any security for a second lien. *In re Lantzy*, No. BAP.CC-10-1057-KILPA, 2010 WL 6259984, at \*3, \*7 (B.A.P. 9th Cir. Dec. 7, 2010) (unpublished decision).

### Analysis

The debtor has filed a motion to value the real property collateral of Leo Kesselman, which consists of the debtor's restaurant, Tequila Café and the debtor's multi-unit apartment complex in Winton, California ("Winton Property"). The motion to value collateral on its face along with debtor's Schedules, of which the court takes judicial notice as

to its contents and accepts as the authentic representations of the debtor in the absence of an authenticity objection, show that the debtor's unsecured debt exceeds the eligibility limits of § 109(e).

Schedule D shows that the secured claim of Leo Kesselman is not indicated as being contingent, unliquidated, or disputed. Thus, the \$745,000 claim of Kesselman secured by the Winton Property is noncontingent, liquidated, and undisputed by the debtor's admission. In addition, the value of the collateral shown on Schedule D is \$250,000. On Schedule F, the debtor has scheduled another unsecured claim owed to Leo Kesselman based on a "Former 2nd mortgage" on the Winton Property in the amount of \$123,366. This claim is not identified as being contingent, unliquidated, or disputed. Thus, this claim is noncontingent, liquidated, and undisputed. Even without considering the valuation motion, and based on Schedule D and F alone, the debtor's unsecured, noncontingent, liquidated debt with respect to Kesselman's claims only is \$618,366, which exceeds the debt limit.

Even looking at other evidence of value to determine eligibility, as suggested by the debtor's opposition, the debtor is ineligible. The motion to value collateral identifies the collateral as the Winton Property. It admits that the value is \$250,000 for the Winton Property. It identifies both a first and second deed of trust held by Kesselman securing balances of \$745,000 and \$123,366 respectively. These numbers are consistent with the debtor's schedules and ineligibility under § 109(e). Kesselman's opposition concedes the value of the Winton Property is \$250,000. But the opposition states, however, that the loan balances at the time of the petition for the first and second deeds of trust were \$540,747.93 and \$124,053.77 respectively. Even using this somewhat lower figure for the total loan balances secured by the Winton Property, the total unsecured balance of such loans is \$414,801.70.

The trustee's motion to dismiss contends that Schedule F shows total nonpriority, unsecured debt of \$50,751, and that Schedule E shows priority unsecured debt of \$41,601. But these figures increase the total unsecured debt to \$507,153.70 even using Kesseleman's lower loan balances. This amount exceeds the \$383,175 limit in § 109(e).

## **CONCLUSION**

For the reasons discussed, the debtor is ineligible to be a debtor under chapter 13 of Title 11. The court will dismiss the case.

27. [15-10573](#)-A-13 SUSAN LEIBOWITZ  
SL-2  
SUSAN LEIBOWITZ/MV  
STEPHEN LABIAK/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA  
4-7-15 [[31](#)]

## **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

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

#### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2010 Chevy Impala. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$8862.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2010 Chevy Impala has a value of \$8862. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$8862 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

28. [13-15375](#)-A-13 ROSEMARY GARCIA  
MHM-2  
MICHAEL MEYER/MV  
FRANK RUGGIER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
4-7-15 [[40](#)]

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to June 25, 2015, at 9:00 a.m.

**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).

The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1552. A modified plan has been filed and noticed for a hearing on June 25, 2015. The debtor has filed a motion to confirm this plan. The court will continue the hearing on this motion to dismiss to June 25, 2015. If the modified plan is not confirmed on June 25, 2015, the court may grant this motion.

29. [10-15076](#)-A-13 KIMBERLY BIRD  
MNE-7  
KIMBERLY BIRD/MV  
M. ENMARK/Atty. for dbt.

MOTION TO MODIFY PLAN  
4-9-15 [[141](#)]

### **Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by Chapter 13 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 confirmation 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. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

30. [11-11178](#)-A-13 ISRAEL/NENITA GADDI MOTION TO DISMISS CASE  
MHM-2 4-8-15 [[39](#)]  
MICHAEL MEYER/MV  
F. GIST/Atty. for dbt.  
CONTINUED TO 6/18/15, ORDER  
ECF NO. 46

**Final Ruling**

The matter is continued to June 18, 2015, at 9:00 a.m., ECF #46.

31. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED STATUS CONFERENCE RE:  
[13-1124](#) COMPLAINT  
STORMS ET AL V. LEMONS 11-12-13 [[1](#)]  
GLEN GATES/Atty. for pl.  
RESPONSIVE PLEADING

**Final Ruling**

At the joint suggestion of the parties, the status conference is continued to July 23, 2015, at 9:00 a.m. In the event that the adversary proceeding has not been resolved, not later than July 8, 2015, the parties shall file a joint status report.

32. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED MOTION TO COMPROMISE  
[13-1124](#) GEG-2 CONTROVERSY/APPROVE SETTLEMENT  
STORMS ET AL V. LEMONS AGREEMENT WITH LINDSAY LEMONS  
12-16-14 [[46](#)]  
GLEN GATES/Atty. for mv.

**Final Ruling**

At the joint suggestion of the parties, the status conference is continued to July 23, 2015, at 9:00 a.m. In the event that the adversary proceeding has not been resolved, not later than July 8, 2015, the parties shall file a joint status report.

33. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED MOTION TO CONFIRM  
SL-2 PLAN  
LINDSAY LEMONS/MV 11-26-13 [[79](#)]  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

At the joint suggestion of the parties, the status conference is continued to July 23, 2015, at 9:00 a.m. In the event that the matter has not been resolved, not later than July 8, 2015, the parties shall file a joint status report.

34. [13-15181](#)-A-13 LINDSAY LEMONS  
SL-3  
LINDSAY LEMONS/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF  
WES STORMS, CLAIM NUMBER 2  
11-7-13 [[49](#)]

**Final Ruling**

At the joint suggestion of the parties, the status conference is continued to July 23, 2015, at 9:00 a.m. In the event that the matter has not been resolved, not later than July 8, 2015, the parties shall file a joint status report.

35. [13-15181](#)-A-13 LINDSAY LEMONS  
SL-4  
LINDSAY LEMONS/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF  
WAYLENCO, CLAIM NUMBER 3  
11-7-13 [[54](#)]

**Final Ruling**

At the joint suggestion of the parties, the status conference is continued to July 23, 2015, at 9:00 a.m. In the event that the matter has not been resolved, not later than July 8, 2015, the parties shall file a joint status report.

36. [13-15181](#)-A-13 LINDSAY LEMONS  
SL-5  
LINDSAY LEMONS/MV  
SCOTT LYONS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF  
WAYNE STORMS, CLAIM NUMBER 1  
10-24-13 [[134](#)]

**Final Ruling**

At the joint suggestion of the parties, the status conference is continued to July 23, 2015, at 9:00 a.m. In the event that the matter has not been resolved, not later than July 8, 2015, the parties shall file a joint status report.



37. [15-11284](#)-A-13 ORA HOWARD  
ALG-1  
ORA HOWARD/MV  
JANINE ESQUIVEL/Atty. for dbt.  
RENOTICED FOR 6/9/15, ECF 31

MOTION TO CONFIRM PLAN  
4-1-15 [[8](#)]

### **Final Ruling**

The matter renoticed for June 9, 2015, at 9:00 a.m., the matter is dropped as moot.

38. [15-11284](#)-A-13 ORA HOWARD  
ALG-2  
ORA HOWARD/MV  
  
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
WINDSOR NORTH OWNERS  
ASSOCIATION  
4-2-15 [[17](#)]

### **Tentative Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002). Because a motion to value collateral substantially alters creditors' property rights, it thereby implicates heightened due process requirements. *In re Millspaugh*, 302 B.R. 90, 99 (Bankr. D. Idaho 2003). Given the impact on property interests of the creditor affected, the motion is treated as a contested matter. *Id.* at 101-02 & n.23.

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). "Thus, to meet the requirements of the Rules and comply with considerations of due process, a Rule 3012 motion (either with or without a plan) must be served on the affected creditors in accord with Rule 7004." *Millspaugh*, 302 B.R. at 102 (emphasis added); see also *In re Pereira*, 394 B.R. 501, 506-07 (Bankr. S.D. Cal. 2008) (Chapter 13 plan containing lien stripping proposal must be served on the affected creditor pursuant to Rule 7004). Rule 3012 notice alone will not suffice for the motion. See *Pereira*, 394 B.R. at 506.

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

Service on the attorney Steven Hrdlicka, Esq., is also insufficient. "An implied agency to receive service is not established by representing a client in an earlier action." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

39. [11-16885](#)-A-13 DAVID/DELIA HAYES MOTION TO DISMISS CASE  
MHM-4 4-7-15 [[66](#)]  
MICHAEL MEYER/MV  
BENJAMIN SHEIN/Atty. for dbt.  
RESPONSIVE PLEADING

**No tentative ruling.**

40. [10-18186](#)-A-13 IRMA LOPEZ MOTION TO DISMISS CASE  
MHM-3 4-8-15 [[81](#)]  
MICHAEL MEYER/MV  
GEOFFREY ADALIAN/Atty. for dbt.  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

41. [13-14786](#)-A-13 SILVESTRE/KARLA OCHOA MOTION TO DISMISS CASE  
MHM-3 4-6-15 [[39](#)]  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2500.

42. [14-13287](#)-A-13 BLAS AVILA  
GH-2  
BLAS AVILA/MV  
GARY HUSS/Atty. for dbt.  
RESPONSIVE PLEADING

OBJECTION TO THE NOTICE OF PLAN  
DELINQUENCY  
4-13-15 [[34](#)]

**No tentative ruling.**

43. [10-64592](#)-A-13 RICARDO/MARTHA ZAMORA  
MHM-2  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
4-8-15 [[40](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

44. [11-17092](#)-A-13 KACY JOHNSON  
MHM-4  
MICHAEL MEYER/MV  
JOSEPH BOYD/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
4-8-15 [[111](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

45. [13-14594](#)-A-13 JUANITA MARTINEZ  
JDW-1  
JUANITA MARTINEZ/MV  
JOEL WINTER/Atty. for dbt.

MOTION TO MODIFY PLAN  
4-15-15 [[32](#)]

**Final Ruling**

**Motion:** Confirm Modified Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by Chapter 13 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 confirmation 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. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

46. [15-11814](#)-A-13 DONALD OBRIEN  
TCS-1  
DONALD OBRIEN/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
5-13-15 [[9](#)]

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor without proper notice of this motion

**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). 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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

47. [15-11802](#)-A-13 PATRICIA DANIELS  
DRJ-2  
PATRICIA DANIELS/MV  
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
5-14-15 [[8](#)]

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted except as to any creditor without proper notice of this motion

**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). 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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

10:00 a.m.

1. [14-16040](#)-A-13 PRISCILLA ANGEL STATUS CONFERENCE RE: COMPLAINT  
[15-1026](#) 3-6-15 [[1](#)]  
ANGEL V. GORE ET AL  
PETER BUNTING/Atty. for pl.

**No tentative ruling.**

2. [14-15245](#)-A-13 MICHAEL CASE CONTINUED STATUS CONFERENCE RE:  
[15-1018](#) COMPLAINT  
BLACK V. CASE 2-17-15 [[1](#)]  
RICHARD HARRIS/Atty. for pl.

**No tentative ruling.**

3. [14-15245](#)-A-13 MICHAEL CASE MOTION TO DISMISS ADVERSARY  
[15-1018](#) HDN-1 PROCEEDING/NOTICE OF REMOVAL  
BLACK V. CASE 4-2-15 [[7](#)]  
HENRY NUNEZ/Atty. for mv.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Rule 12(b)(6) Motion to Dismiss

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

**Disposition:** Granted with leave to amend

**Order:** Civil minute order

Defendant Michael B. Case ("Defendant") has filed a Rule 12(b)(6) motion to dismiss the complaint filed by Plaintiff Laurie Black. The complaint pleads a single count of fraud, 11 U.S.C. § 523(a)(2)(A). Plaintiff opposes the motion. For the reasons discussed, the court will grant the motion with leave to amend.

### **LEGAL STANDARDS**

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when

the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

## DISCUSSION

### *Nondischargeability Claim under § 523(a)(2)(A)*

To succeed on a nondischargeability claim under § 523(a)(2)(A), a creditor must establish five elements: "(1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct." *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000). "The purposes of [§ 523(a)(2)(A)] are to prevent a debtor from retaining the benefits of property obtained by fraudulent means and to ensure that the relief intended for honest debtors does not go to dishonest debtors." *Id.*

The court agrees that the pleading is less than entirely specific. But the court finds that it satisfies the minimal requirements of pleading under Federal Rule of Civil Procedure 8. See Complaint ¶¶ 22-27.

Since this is a claim alleging fraud, Rule 9(b) applies. See, e.g., *Chase Bank, U.S.A., N.A. v. Vanarthos (In re Vanarthos)*, 445 B.R. 257, 264 (Bankr. S.D.N.Y. 2011). This rule's heightened pleading standard requires a plaintiff to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b), incorporated by Fed. R. Bankr. P. 7009. This standard means that "the complaint must set forth what is false or misleading about a statement, and why it is false." *Rubke v. Capitol Bancorp Ltd.*, 551 F.3d 1156, (9th Cir. 2009) (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 993 (9th Cir. 1999)) (internal quotation marks omitted). The facts constituting fraud must be pleaded specifically enough to give a defendant sufficient "notice of the particular misconduct" so that defendant may defend against the charge. *Vess v. Ciba-Geigy Corp. U.S.A.*, 317 F.3d 1097, 1106 (9th Cir. 2003). A plaintiff must include the "who, what, when, where, and how" of the fraud. *Id.*

But the complaint fails the specificity requirement of Federal Rule of Civil Procedure 9. The complaint lacks specificity as to the specifics of the misrepresentation. Complaint ¶¶ 9, 22, filed February 17, 2015, ECF #1. The complaint states only that "It was the understanding between Debtor and Plaintiff that the Funds obtained from the refinance were to be used to pay community debts." It also states, "The debtor stated that the Funds from the refinance would be

used to pay community debts..." This is insufficient. The number of statements, dates made and where they were made has not been plead.

#### **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.

Defendant Michael B. Case's motion to dismiss 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 with 21 days from service of the civil minute order to file an amended complaint.

4. [13-10971](#)-A-13 JEREMY WINANS  
[13-1054](#)  
DAVIS V. WINANS  
THOMAS ARMSTRONG/Atty. for pl.

CONTINUED PRE-TRIAL CONFERENCE  
RE: AMENDED COMPLAINT  
11-21-14 [[95](#)]

#### **Final Ruling**

This matter is continued to July 22, 2015, at 10:00 a.m.