

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

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

PRE-HEARING DISPOSITIONS

DAY: THURSDAY

DATE: MAY 23, 2019

CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-10900](#)-A-13 **IN RE: FILIMON RAMIREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
4-25-2019 [\[22\]](#)

MICHAEL MEYER/MV
ERIC ESCAMILLA

No Ruling

2. [19-10900](#)-A-13 **IN RE: FILIMON RAMIREZ**
[TGM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A.
5-1-2019 [\[28\]](#)

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A./MV
ERIC ESCAMILLA
TYNEIA MERRITT/ATTY. FOR MV.

No Ruling

3. [19-10507](#)-A-13 **IN RE: TUCKER/JAMIE MAXFIELD**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-26-2019 [\[29\]](#)

TIMOTHY SPRINGER

No Ruling

4. [18-15111](#)-A-13 **IN RE: HERNAN SERNAS**
[TOG-1](#)

MOTION TO CONFIRM PLAN
4-4-2019 [\[25\]](#)

HERNAN SERNAS/MV
THOMAS GILLIS

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

5. [14-12223](#)-A-13 **IN RE: ANDRES ALVAREZ AND ELVIRA DE CAMPOS**
[LKW-12](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
4-24-2019 [\[226\]](#)

LEONARD WELSH

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(2); no 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). 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, Law Offices of Leonard Welsh has applied for an allowance of a first interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,240 and reimbursement of expenses in the amount of \$63.30. The applicant also asks that the court allow on a final basis all prior applications for fees and costs 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.

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.

Law Offices of Leonard Welsh'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 \$3,240 and reimbursement of expenses in the amount of \$63.30. The aggregate allowed amount equals \$3,303.30. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3,303.30 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 directly by the debtor after completion of the plan's term. 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.

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.

6. [19-10524](#)-A-13 **IN RE: DEBBIE GOMES**
[MHM-3](#)

MOTION TO DISMISS CASE
4-9-2019 [\[24\]](#)

MICHAEL MEYER/MV
DAVID JOHNSTON

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied as moot

Order: Civil minute order

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

MOTION TO DISMISS

The chapter 13 trustee moves to dismiss this case, contending that the debtor has not provided the trustee with or filed:

- (1) the Class 1 checklist with the most recent mortgage statement;
- (2) the Authorization to Release Information form;
- (3) all pages of the most recent federal tax return;
- (4) all payment advices (or other evidence of payment) for the 60 days pre-petition;
- (5) a statement of the amount of monthly net income (521(a)(1)(B)(v) statement); and
- (6) 2018 tax returns (not filed).

The debtor responds that she is not opposed to dismissal.

AUTOMATIC CASE DISMISSAL

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

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

dismissed effective on the 46th day after the date of the filing of the petition."

Here, the debtor filed this case on February 15, 2019. The debtor had not filed the required payment advices or other evidence of payment as required by section 521(a)(1)(B)(iv), by the time this motion was filed on April 9, 2019 (53 days post-petition). Accordingly, this case was automatically dismissed on April 1, 2019, the 46th day post-petition. This makes the subject motion moot. It will be denied as moot.

Nevertheless, the court will confirm that the case was automatically dismissed on April 1, 2019, pursuant to section 521(i)(1).

CIVIL MINUTE ORDER

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

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

IT IS FURTHER ORDERED that the court confirms that the case was dismissed automatically under 11 U.S.C. § 521(i)(1) on April 1, 2019.

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

7. [18-12827](#)-A-13 **IN RE: JOSE GALLEGOS**
[TOG-3](#)

MOTION TO CONFIRM PLAN
4-17-2019 [\[97\]](#)

JOSE GALLEGOS/MV
THOMAS GILLIS

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

8. [19-10131](#)-A-7 **IN RE: JOSE NUNO**
[TOG-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF WEST AMERICA BANK
1-26-2019 [\[15\]](#)

JOSE NUNO/MV
THOMAS GILLIS
CONVERTED 3/12/19

Final Ruling

This motion to value will be denied as moot because the debtor converted the case to chapter 7 on March 12, 2019. ECF No. 33.

9. [14-13032](#)-A-13 **IN RE: RHONDA STAPLETON**
[DRJ-3](#)

MOTION TO BORROW
5-8-2019 [\[38\]](#)

RHONDA STAPLETON/MV
DAVID JENKINS

Tentative Ruling

Motion: Approve New Debt [Mortgage Loan to Finance Home Purchase]

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

Disposition: Denied

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). 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 seeks to incur new debt to finance the purchase of a home. The debtor has just completed all payments on her 60-month plan.

However, the Amended Schedules I and J that have been filed in connection with this motion, indicate that the debtor will be unable

to make the approximately \$2,091 monthly mortgage payment on the home she wants to purchase. ECF No. 43. Schedule J indicates a monthly net income of \$659.59.

When one takes into account the \$1,000 current rental expense, the \$699 in chapter 13 plan payments (just ended), and monthly net income of \$659.59, with \$392.98 of increase in otherwise monthly expenses (ECF No. 43 at 5) (net **\$1,965.61**), the debtor cannot afford the approximately **\$2,091** monthly mortgage payment. ECF No. 43.

$(\$1,000 + \$699 + \$659.59 - \$392.98 = \$1,965.61)$

The debtor is short \$125.39 ($\$2,091 - \$1,965.61 = \125.39). As such, the court will not allow the debtor to borrow. The motion will be denied.

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 borrow has been presented to the court. Having considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied. No relief will be awarded.

10. [19-11032](#)-A-13 **IN RE: MARTIN VERA AND LETICIA DE MORENO**
[MHM-2](#)

MOTION TO DISMISS CASE
4-24-2019 [[17](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

No Ruling

11. [19-11037](#)-A-13 **IN RE: MICHAEL/SALENA NOWAK**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MUFG UNION BANK, N.A.
4-12-2019 [\[16\]](#)

MUFG UNION BANK N.A./MV
PETER BUNTING
WENDY LOCKE/ATTY. FOR MV.
DISMISSED 5/10/19

Final Ruling

The case dismissed, the matter is dropped as moot.

12. [19-11037](#)-A-13 **IN RE: MICHAEL/SALENA NOWAK**
[MHM-2](#)

MOTION TO DISMISS CASE
4-24-2019 [\[22\]](#)

MICHAEL MEYER/MV
PETER BUNTING
DISMISSED 5/10/19

Final Ruling

The case dismissed, the matter is dropped as moot.

13. [18-10339](#)-A-13 **IN RE: KENNETH BLOWERS AND KIMBERLY**
BOLTON-BLOWERS
[MHM-6](#)

OBJECTION TO CLAIM OF CAVALRY INVESTMENTS LLC, CLAIM NUMBER
12
3-27-2019 [\[118\]](#)

MICHAEL MEYER/MV
KARNEY MEKHITARIAN

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).

The trustee objects to the allowance of general unsecured Proof of Claim No. 12-1 in the amount of \$668.53 filed by the claimant Cavalry Investments, LLC. The court will sustain the objection for the reasons discussed in this ruling.

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

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

The evidentiary presumption created by Rule 3001(f) "operates to shift the burden of going forward but not the burden of proof." See *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706 (B.A.P. 9th Cir. 2006) (citing *Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000); *Diamant*, 165 F.3d at 1248). But this evidentiary presumption is rebuttable. *Id.* at 706. "One rebuts evidence with counter-evidence." *Id.* at 707; see also *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009) ("[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it.").

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

The trustee objects to the claim, contending that the underlying debt is unenforceable against the debtors because the statute of limitations for recovering the debt underlying the claim has expired. The basis for the claim is credit card debt.

Enforceability of the claim is governed by California law, where the debtors reside.

The statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an instrument in writing after four years. See Cal. Civ. Proc. Code §§ 312, 337(1). Cal. Civ. Proc. Code § 339 also bars an action on an oral contract after two years.

Here, according to the proof of claim, the last transaction on the account was in March 1999, over 20 years ago, meaning that collection on the account is over four old. The debtors filed this case on January 31, 2018. Accordingly, the debt owed on the subject account is no longer enforceable. The statute of limitations on recovery of the debt has passed.

Given the foregoing, the trustee has not only rebutted the presumptive validity of the claim. He has also established that the claim is unenforceable under applicable nonbankruptcy law. See 11 U.S.C. § 502(b)(1); accord *Diamant v. Kasparian (In re S. Cal. Plastics, Inc.)*, 165 F.3d 1243, 1247 (9th Cir. 1999). Accordingly, the objection will be sustained. The claim will be disallowed in its entirety.

14. [19-10640](#)-A-13 **IN RE: GARY/ROSE BRADY**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-19-2019 [\[19\]](#)

MICHAEL MEYER/MV
SUSAN HEMB

Final Ruling

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

MOOTNESS OF OBJECTION TO EXEMPTIONS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The debtors exempted four bank accounts under C.C.P. § 703.140(b)(10)(A). The statute however allows exemptions only of "[a] social security benefit, unemployment compensation, or a local

public assistance benefit." As the debtors testified that they receive social security benefits in only one of their bank accounts, the trustee's position is that only one account is entitled to an exemption under § 703.140(b)(10)(A).

However, since this objection was filed, the debtors filed an Amended Schedule C (ECF No. 23), removing the § 703.140(b)(10)(A) exemptions from three of the bank accounts. Accordingly, this objection is moot.

CIVIL MINUTE ORDER

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

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

The trustee's objection to exemptions has been presented to the court. Having considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the objection is overruled as moot. No relief will be awarded.

15. [18-14443](#)-A-13 **IN RE: JOSE MERAS**
[MHM-3](#)

MOTION TO DISMISS CASE
4-16-2019 [[79](#)]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

No Ruling

16. [18-14443](#)-A-13 **IN RE: JOSE MERAS**
[PBB-3](#)

MOTION TO CONFIRM PLAN
4-11-2019 [[71](#)]

JOSE MERAS/MV
PETER BUNTING
RESPONSIVE PLEADING

No Ruling

17. [18-15048](#)-A-13 **IN RE: ALDO ESCRIBENS AND ANA CASTILLO**
[MHM-2](#)

MOTION TO DISMISS CASE
4-24-2019 [\[52\]](#)

MICHAEL MEYER/MV
STEPHEN LABIAK
DISMISSED 5/6/19

Final Ruling

The case dismissed, the matter is dropped as moot.

18. [16-12852](#)-A-13 **IN RE: ELEANOR AIKINS**
[JDR-3](#)

MOTION TO MODIFY PLAN
4-1-2019 [\[87\]](#)

ELEANOR AIKINS/MV
JEFFREY ROWE
RESPONSIVE PLEADING

No Ruling

19. [18-14254](#)-A-13 **IN RE: JOSEPH CLEVINGER**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
3-8-2019 [\[38\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

20. [19-11255](#)-A-13 **IN RE: MOISES/JACQUELINE ARCE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-3-2019 [\[18\]](#)

MARK ZIMMERMAN

Final Ruling

The fee paid, the order to show cause is discharged.

21. [19-11256](#)-A-13 **IN RE: DAVID/BILLIE KELLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-3-2019 [\[17\]](#)

MARK ZIMMERMAN

Final Ruling

The fee paid, the order to show cause is discharged.

22. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
4-5-2019 [\[14\]](#)

DAVID JENKINS
RESPONSIVE PLEADING

No Ruling

23. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-18-2019 [\[21\]](#)

MICHAEL MEYER/MV
DAVID JENKINS

Final Ruling

Objection: Objection to Claim of Exemptions for Failure to File Spousal Waiver and for Exceeding Statutory Limit of C.C.C.P § 703.140(b) (8)

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

Disposition: Sustained in part and overruled in part as moot

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 motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objects to the debtor's claim of exemptions because the debtor has not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b). The debtor is married and she may not claim exemptions under section 703.140(b) unless both spouses file the required spousal waiver described in section 703.140(a)(2).

The court notes however that the debtor filed the requisite spousal waiver approximately the same time this objection was filed. ECF No. 20. This part of the objection then will be overruled as moot.

The trustee also objects to the debtor's exemptions under C.C.C.P § 703.140(b)(8) of:

(1) 100% of the fair market value, up to any applicable statutory limit under § 703.140(b)(8), of Nationwide Universal Life, with a value of "unknown;"

(2) Security National Life in the amount of \$1,600; and

(3) Security National Life in the amount \$1,800.

The trustee contends that the debtor cannot exhaust the exemption limit of \$14,325 under C.C.C.P § 703.140(b)(8) by claiming an exemption up to the applicable statutory limit of § 703.140(b)(8) (Nationwide Universal Life) and then claim two more exemptions under the same statute (Security National Life and Security National Life).

The court agrees. The debtor exhausted the limit on the \$14,325 limit of § 703.140(b)(8) by claiming the exemption in the Nationwide Universal Life policy. From the debtor claiming an exemption in the Nationwide Universal Life policy up to the statutory limit, the court infers that the value of the Nationwide policy exceeds the statutory limit of § 703.140(b)(8). In any event, the value of the Nationwide policy should not be setting the limit of exemptions under § 703.140(b)(8) and creditors should not have to speculate about the value of the Nationwide policy to determine if the exemptions are within the statutory limit.

This Nationwide policy exemption leaves nothing available for additional exemptions under the statute, unless the debtor specifies a dollar figure for the Nationwide policy that is less than the statutory limit.

The court will disallow the exemptions of the Security National Life and Security National Life policies, without prejudice to the debtor amending her exemption scheme to avoid violation of the \$14,325 statutory limit of § 703.140(b)(8). This part of the objection will be sustained.

24. [19-10564](#)-A-13 **IN RE: VICTOR ALVAREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
4-10-2019 [\[19\]](#)

MICHAEL MEYER/MV
THOMAS MOORE

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [15-11373](#)-A-13 **IN RE: FREDRICK HALL**
[PK-3](#)

MOTION TO INCUR DEBT
4-25-2019 [\[56\]](#)

FREDRICK HALL/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approve New Debt [Vehicle Loan]

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

Disposition: Denied

Order: Civil minute order

The debtor seeks to incur new debt to finance the purchase of a vehicle. The debtor claims that he is current on plan payments and that he can afford the proposed financing. He proposes to borrow no more than \$18,000, with a monthly payment of no more than \$400. His current vehicle has over 300,000 miles and it needs serious repairs. The debtor has 14 more plan payments to make before completing his plan.

However, the trustee opposes the motion, contending that the debtor is delinquent under the existing confirmed plan. The trustee also points out that the debtor's most recent Schedules I and J, filed on April 15, 2019, indicate that the debtor's monthly net income is only \$651.69, whereas his monthly plan payments are \$906. ECF No. 54.

This means that the debtor does not have sufficient monthly net income to make plan payments, let alone to make additional \$400 in car payments.

Based on the foregoing, the court does not see how the debtor can incur the proposed new debt. The motion will be denied.

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 borrow has been presented to the court. Having considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied. No relief will be awarded.

26. [19-10575](#)-A-13 **IN RE: ENRIQUE NAVARRO VICTORIA**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-17-2019 [\[14\]](#)

MICHAEL MEYER/MV
SCOTT LYONS

Final Ruling

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

MOOTNESS OF OBJECTION TO EXEMPTIONS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

Bankruptcy debtors have two choices of exemption schemes in California, the so known regular exemptions (Cal. Civ. Proc. Code § 704.010 through 704.995 (excluding Cal. Civ. Proc. Code § 703.140)) or the special exemptions of Cal. Civ. Proc. Code § 703.140, which mirror the federal bankruptcy exemption scheme. See, e.g., In re Geisenheimer, 530 B.R. 747, 749-50 (Bankr. E.D. Cal. 2015).

The trustee complains that the debtor exempts assets in Schedule C under both of California's section 704 and 703 exemption schemes.

However, since this objection was filed, the debtor filed an Amended Schedule C (ECF No. 17), limiting his exemptions to the section 704 exemption scheme. Accordingly, this objection is moot.

CIVIL MINUTE ORDER

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

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

The trustee's objection to exemptions has been presented to the court. Having considered the motion, any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the objection is overruled as moot. No relief will be awarded.

27. [18-14077](#)-A-13 **IN RE: BENITO/ANNA ALVAREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
4-16-2019 [\[42\]](#)

MICHAEL MEYER/MV
JAMES MILLER
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [19-11083](#)-A-13 **IN RE: JOE/LILLIANA ALVES**
[JHK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES-BENZ FINANCIAL
SERVICES USA LLC
4-30-2019 [\[22\]](#)

MERCEDES-BENZ FINANCIAL
SERVICES USA LLC/MV
SCOTT JOHNSON
JOHN KIM/ATTY. FOR MV.

Final Ruling

This objection will be overruled as moot because the case is being dismissed pursuant to the trustee's motion to dismiss (DCN MHM-2), also set on this May 23 calendar.

29. [19-11083](#)-A-13 **IN RE: JOE/LILLIANA ALVES**
[MHM-2](#)

MOTION TO DISMISS CASE
4-24-2019 [\[17\]](#)

MICHAEL MEYER/MV
SCOTT JOHNSON

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

The chapter 13 trustee moves to dismiss this case, arguing unreasonable delay by the debtor that is prejudicial to creditors and contending that:

- 1) Schedule H has not been completed by the co-debtor; it was completed only by the debtor;
- 2) Question 27 of the Statement of Financial Affairs does not reflect the debtors' business J&L Alves Trucking;
- 3) the debtors improperly filled out Form 122C-1, as they cannot deduct business expenses from current monthly income;
- 4) they failed to file Form 122C-2; if they had correctly filled out Form 122C-1, they would be above median.

The court also notes that the debtors have not responded to this motion.

The foregoing is cause for dismissal. 11 U.S.C. §§ 1307(c)(1), 521; Fed. R. Bankr. P. 1007(b)(6).

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having considered the well-pleaded facts of the motion and the pleadings proffered by the respondent debtor in response to the motion, if any,

IT IS ORDERED that the motion is granted because of unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

30. [19-10388](#)-A-13 **IN RE: LOUIE/CYNTHIA CUELLAR**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF CVI LOAN TRUST, I
4-5-2019 [\[17\]](#)

LOUIE CUELLAR/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle (2001 Chevrolet Silverado Crew Cab Pickup Truck)]

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 2001 Chevrolet Silverado Crew Cab Pickup Truck. 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 \$4,174.

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 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 2001 Chevrolet Silverado Crew Cab Pickup Truck has a value of \$4,174. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4,174 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.

31. [19-10388](#)-A-13 **IN RE: LOUIE/CYNTHIA CUELLAR**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF NAVY FEDERAL CREDIT UNION
4-5-2019 [\[22\]](#)

LOUIE CUELLAR/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle (2012 Audi A5)]

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 2012 Audi A5. 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 \$11,183.

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 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 2012 Audi A5 has a value of \$11,183. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$11,183 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.

32. [19-11189](#)-A-13 **IN RE: ARMANDO GONZALES AND CLAUDIA BATZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-1-2019 [\[21\]](#)

THOMAS GILLIS
\$80.00 PAID 5/6/19

Final Ruling

The fee paid, the order to show cause is discharged.

33. [18-12494](#)-A-13 **IN RE: LAURA AUSTIN**
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV II LLC, CLAIM NUMBER 1
3-29-2019 [\[21\]](#)

MICHAEL MEYER/MV
JEFFREY ROWE

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).

The trustee objects to the allowance of general unsecured Proof of Claim No. 1-1 in the amount of \$2,079.89 filed by the claimant Cavalry Spv II, LLC. The court will sustain the objection for the reasons discussed in this ruling.

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A claim must be disallowed if it is unenforceable under applicable nonbankruptcy law. See 11 U.S.C. § 502(b)(1); *accord Diamant v.*

Kasparian (In re S. Cal. Plastics, Inc.), 165 F.3d 1243, 1247 (9th Cir. 1999).

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

The evidentiary presumption created by Rule 3001(f) "operates to shift the burden of going forward but not the burden of proof." See *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706 (B.A.P. 9th Cir. 2006) (citing *Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000); *Diamant*, 165 F.3d at 1248). But this evidentiary presumption is rebuttable. *Id.* at 706. "One rebuts evidence with counter-evidence." *Id.* at 707; see also *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009) ("[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it.").

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

The trustee objects to the claim, contending that the underlying debt is unenforceable against the debtor because the statute of limitations for recovering the debt underlying the claim has expired. The basis for the claim is credit card debt. Enforceability of the claim is governed by California law, where the debtors reside.

The statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an instrument in writing after four years. See Cal. Civ. Proc. Code §§ 312, 337(1). Cal. Civ. Proc. Code § 339 also bars an action on an oral contract after two years.

Here, according to the proof of claim, the last transaction on the account was in February 2009, over 10 years ago, meaning that collection on the account is over four years old. The debtor filed this case on June 21, 2018. Accordingly, the debt owed on the subject account is no longer enforceable. The statute of limitations on recovery of the debt has passed.

Given the foregoing, the trustee has not only rebutted the presumptive validity of the claim. He has also established that the claim is unenforceable under applicable nonbankruptcy law. See 11 U.S.C. § 502(b)(1); accord *Diamant v. Kasparian (In re S. Cal. Plastics, Inc.)*, 165 F.3d 1243, 1247 (9th Cir. 1999). Accordingly, the objection will be sustained. The claim will be disallowed in its entirety.