

**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**

**August 14, 2014**

**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. [14-10416](#)-A-13 FELIX/ISABEL ALVAREZ MOTION TO CONFIRM PLAN  
TOG-2 7-2-14 [[43](#)]  
FELIX ALVAREZ/MV  
THOMAS GILLIS/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.

2. [11-13617](#)-A-13 JUAN/AMPARO SAMANIEGO MOTION TO INCUR DEBT  
SL-3 7-28-14 [[61](#)]  
JUAN SAMANIEGO/MV  
SCOTT LYONS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Approve Debtor's Incurring New Debt [Vehicle Loan]

**Notice:** LBR 9014-1(f)(2); no 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). 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 vehicle. The total cash price shown on the contract attached as Exhibit B is \$23,388.27 plus license, registration and other fees of \$261.75. The down payment in cash is \$1000, plus a rebate of \$500 for a total down payment shown on the contract of \$1500.00.

The amount requested to be financed is \$22,150.02 at 6.99% interest. The proposed monthly loan payment is \$378.56 per month.

Amended Schedules I and J have been filed indicating that the debtor can afford the plan payment, which is \$1,617.00 per month, projected living expenses, and the proposed monthly loan payment would result from obtaining this financing.

The debtors need the new vehicle to replace a vehicle that was totaled in a car accident. The debtors are both currently working. Both debtors need a vehicle to get to their workplaces. Because both debtors need a vehicle for employment, the court finds that the new debt is a single loan reasonably necessary for the maintenance or support of the debtors and their dependents.

The court will grant the motion, and the trustee will approve the order as to form and content.

3. [13-18017](#)-A-13 TYNETTA SHABAZZ  
RJR-1  
TYNETTA SHABAZZ/MV  
RANDY RISNER/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
7-28-14 [[60](#)]

### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Granted in part, denied in part

**Order:** Prepared by moving party according 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).

The motion seeks approval of a loan modification agreement. A copy of the loan modification agreement accompanies the motion. See Fed. R. Bankr. 4001(c). The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. 11 U.S.C. § 364(d); Fed. R. Bankr. P. 4001(c). To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

By granting this motion, the court is not approving the terms of any loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the loan modification agreement or other declaratory relief. The order shall state only that the parties are authorized to enter into the loan modification agreement subject to the parties' right to reinstate the agreement if all conditions precedent are not satisfied. The order shall not recite the terms of the loan modification agreement or state that the court approves the terms of the agreement.

4. [11-17827](#)-A-13 MICHAEL/JEANNYE MORGAN MOTION TO MODIFY PLAN  
PBB-2 7-10-14 [[48](#)]  
MICHAEL MORGAN/MV  
PETER BUNTING/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.

5. [11-61728](#)-A-13 FRANK GARCIA MOTION FOR RELIEF FROM  
DJD-1 AUTOMATIC STAY  
SETERUS, INC./MV 7-30-14 [[96](#)]  
JAMES MILLER/Atty. for dbt.  
DARREN DEVLIN/Atty. for mv.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject:** 24819 Gardena Drive, Madera, CA

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 plan in this case was confirmed on September 6, 2012. The confirmed plan places the claim of the moving creditor in Class 2. The plan also does not revest property of the estate in the debtor upon confirmation.

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The deed of trust and all rights and

interest secured by it was assigned by Citimortgage, Inc. F/K/A Citicorp Mortgage, Inc. to Federal National Mortgage Association ("Fannie Mae"). The moving party is Seterus, Inc., an authorized servicer for Fannie Mae.

According to the motion, the debtor has defaulted on the loan with the moving party. Seventeen postpetition payments are now past due. Cause exists to grant relief under § 362(d)(1).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

6. [14-11332](#)-A-13 RONALD ESCOBAR  
MHM-3  
MICHAEL MEYER/MV  
JAMIE XIONG-VANG/Atty. for dbt.  
WITHDRAWN
- MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-31-14 [[51](#)]

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

7. [13-17533](#)-A-13 ALEX/PRISCILLA PANG  
JRL-1  
ALEX PANG/MV  
JERRY LOWE/Atty. for dbt.
- MOTION TO MODIFY PLAN  
7-11-14 [[45](#)]

**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.

8. [13-13646](#)-A-13 JANELLE JAMES  
PBB-3  
JANELLE JAMES/MV  
PETER BUNTING/Atty. for dbt.

OBJECTION TO CLAIM OF BANK OF  
AMERICA, N.A., CLAIM NUMBER 4  
6-27-14 [[44](#)]

### **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).

### **LEGAL STANDARDS**

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)).

### **ANALYSIS**

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 claimant's proof of claim has an attachment that provides supporting information for a "revolving consumer credit agreement." These are ordinarily in writing, but the claim does not state whether the contract is supported by a writing. But whether in writing or oral, an action to enforce it is barred under both the 2-year and 4-year statutes of limitations in California. The petition date for this case is May 23, 2013. The last payment on the account according to the claimant's own admission was March 30, 2009, more than 4 years before the petition date.

The objection's well-pleaded facts show that the debtor has not made any payments on the loan held by the responding party since March 30, 2009. Thus, no payment has been made for over 4 years before the

filing of the petition on May 23, 2013.

9. [14-10946](#)-A-13 MATTHEW/JULIA ARMAS  
MHM-1  
MICHAEL MEYER/MV  
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-31-14 [[36](#)]

**No tentative ruling.**

10. [14-12649](#)-A-13 DANIEL/MOLLY LAVILLA  
MHM-1  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSE FILED

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-31-14 [[23](#)]

**No tentative ruling.**

11. [14-10855](#)-A-13 ELISEO OROZCO  
JDR-1  
ELISEO OROZCO/MV  
JEFFREY ROWE/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
6-27-14 [[37](#)]

**No tentative ruling.**

12. [14-10855](#)-A-13 ELISEO OROZCO  
MHM-1  
MICHAEL MEYER/MV

CONTINUED MOTION TO DISMISS  
CASE FOR UNREASONABLE DELAY  
THAT IS PREJUDICIAL TO  
CREDITORS AND/OR MOTION TO  
DISMISS CASE  
6-5-14 [[26](#)]

JEFFREY ROWE/Atty. for dbt.

**No tentative ruling.**

13. [14-10855](#)-A-13 ELISEO OROZCO  
MHM-2  
MICHAEL MEYER/MV  
JEFFREY ROWE/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-31-14 [[46](#)]

**No tentative ruling.**

14. [14-11857](#)-A-13 HAN/IN KIM  
HJA-4  
HAN KIM/MV  
H. AHN/Atty. for dbt.

MOTION TO AVOID LIEN OF BH  
FINANCIAL SERVICES, LLC  
6-18-14 [[63](#)]

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

15. [14-11857](#)-A-13 HAN/IN KIM  
HJA-5  
HAN KIM/MV  
H. AHN/Atty. for dbt.

MOTION TO AVOID LIEN OF TARGET  
NATIONAL BANK  
6-18-14 [[69](#)]

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**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).

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The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

16. [14-11857](#)-A-13 HAN/IN KIM  
HJA-6  
HAN KIM/MV  
H. AHN/Atty. for dbt.

MOTION TO AVOID LIEN OF  
AMERICAN EXPRESS BANK, FSB  
6-18-14 [[75](#)]

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**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).

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property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

17. [14-11461](#)-A-13 ANDREA SOUSA  
MHM-2  
MICHAEL MEYER/MV  
RICHARD BAMBL/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-31-14 [[53](#)]

**No tentative ruling.**

18. [14-12362](#)-A-13 BENITO/MARTHA GALARZA  
  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
  
THOMAS GILLIS/Atty. for dbt.  
MELISSA VERMILLION/Atty. for mv.

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY  
6-6-14 [[16](#)]

**No tentative ruling.**

19. [14-12362](#)-A-13 BENITO/MARTHA GALARZA  
TOG-3  
BENITO GALARZA/MV  
  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO VALUE  
COLLATERAL OF DEUTSCH BANK,  
N.A. NATIONAL TRUST COMPANY  
6-13-14 [[30](#)]

**No tentative ruling.**

20. [14-12772](#)-A-13 CORINA BARRON  
MHM-1  
MICHAEL MEYER/MV  
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
7-31-14 [[52](#)]

**No tentative ruling.**

21. [13-14086](#)-A-13 IDA JONES  
SAH-14  
IDA JONES/MV  
SUSAN HEMB/Atty. for dbt.  
NON-OPPOSITION

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-27-14 [[134](#)]

**No tentative ruling.**