

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 6th Floor
Courtroom 34, Department A
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: AUGUST 27, 2019
CALENDAR: 11:00 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. [19-20200](#)-A-13 **IN RE: KIMAKO STRICKLAND**
[RDG-3](#)

MOTION TO DISMISS CASE
8-12-2019 [\[51\]](#)

NICHOLAS WAJDA

No Ruling

2. [19-23100](#)-A-13 **IN RE: REVOYDA STARLING**
[MJH-1](#)

MOTION TO CONFIRM PLAN
7-15-2019 [\[23\]](#)

MARK HANNON

No Ruling

3. [19-23100](#)-A-13 **IN RE: REVOYDA STARLING**
[RDG-2](#)

MOTION TO DISMISS CASE
8-12-2019 [\[32\]](#)

MARK HANNON

Final Ruling

This motion has been voluntarily dismissed by the movant. ECF No. 37.

4. [00-27002](#)-A-13 **IN RE: ROSE PALMER**
[SLP-1](#)

MOTION TO AVOID LIEN OF BUTTE COUNTY CREDIT BUREAU
7-17-2019 [\[34\]](#)

STACIE POWER

Final Ruling

The motion will be denied without prejudice because the proof of service for the motion and the proof of service for the amended notice of hearing are not executed under the penalty of perjury, as any declaration should be executed. Additionally, the proofs of service do not state to whom service was addressed and where service was made (*i.e.*, the address where the respondent was served). See ECF Nos. 36 & 41. As a result, the court cannot tell whether the motion documents were properly served, in compliance with Fed. R. Bankr. P. 7004(b)(3).

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.

Having considered the motion,

IT IS ORDERED that the motion is denied without prejudice.

5. [19-22502](#)-A-13 **IN RE: JEFFERY/JEANETTE GATLIN**
[RDG-2](#)

MOTION TO DISMISS CASE
8-12-2019 [\[55\]](#)

PETER MACALUSO

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

6. [19-21005](#)-A-13 **IN RE: ELINOR BANKS**
[RDG-3](#)

MOTION TO DISMISS CASE
8-13-2019 [\[65\]](#)

LEN REIDREYNOSO

No Ruling

7. [14-23906](#)-A-13 **IN RE: JOHN/CATHY RAY**
[PGM-4](#)

AMENDED NOTICE OF DEATH OF A DEBTOR AND MOTION TO WAIVE
SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
7-25-2019 [\[77\]](#)

PETER MACALUSO

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

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

WAIVER OF § 1328 CERTIFICATIONS

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

CONTINUED ADMINISTRATION OF THE CASE

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

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

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

SUBSTITUTION OF THE PROPER PARTY

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

WAIVER OF POST-PETITION EDUCATION REQUIREMENT

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

ORDER INSTRUCTIONS

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

8. [18-21606](#)-A-13 **IN RE: PHILLIP/KIMBERLY ORTIZ**
[JCK-2](#)

MOTION TO INCUR DEBT
8-9-2019 [\[46\]](#)

KATHLEEN CRIST

Tentative Ruling

Motion: Approve 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 debtors seek to incur new debt to finance the purchase of a vehicle. The new monthly debt will replace the existing, but greater, vehicle monthly lease payments for the same vehicle the debtors are purchasing. The lease of the vehicle is about to expire. The court will grant the motion, and the trustee will approve the order as to form and content.

9. [19-24610](#)-A-13 **IN RE: MONIQUE ZE**
[RDG-1](#)

MOTION TO DISMISS CASE
8-12-2019 [\[22\]](#)

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

10. [18-26115](#)-A-13 **IN RE: ANTHONY GOMEZ**
[GS-4](#)

MOTION TO CONFIRM PLAN
7-19-2019 [\[69\]](#)

GARY SAUNDERS
RESPONSIVE PLEADING

No Ruling

11. [18-26115](#)-A-13 **IN RE: ANTHONY GOMEZ**
[RDG-4](#)

CONTINUED MOTION TO DISMISS CASE
7-9-2019 [[65](#)]

GARY SAUNDERS

No Ruling

12. [15-26516](#)-A-13 **IN RE: DONALD/SANDRA BOSSE**
[JCK-2](#)

MOTION TO MODIFY PLAN
7-11-2019 [[43](#)]

KATHLEEN CRIST
RESPONSIVE PLEADING

No Ruling

13. [19-23718](#)-A-13 **IN RE: JAMES SHROPSHIRE**
[JHW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE, LLC
7-8-2019 [[16](#)]

KATHLEEN CRIST
JENNIFER WANG/ATTY. FOR MV.

No Ruling

14. [18-24819](#)-A-13 **IN RE: JAVIER CONTRERAS**
[RDG-1](#)

MOTION TO DISMISS CASE
8-12-2019 [[21](#)]

JOSEPH ANGELO

No Ruling

15. [18-26123](#)-A-13 **IN RE: TIMOTHY GARRY**
[SMJ-5](#)

MOTION TO CONFIRM PLAN
7-22-2019 [\[71\]](#)

SCOTT JOHNSON
RESPONSIVE PLEADING

No Ruling

16. [18-27726](#)-A-13 **IN RE: EDWARD COLOMA AND KATHERINE SANCHEZ**
[RDG-2](#)

MOTION TO DISMISS CASE
8-13-2019 [\[96\]](#)

JENNIFER REICHHOFF

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

17. [19-23730](#)-A-13 **IN RE: TERRY/MICHELLE DINTELMAN**
[RDG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
7-29-2019 [\[23\]](#)

GRACE JOHNSON

No Ruling

18. [19-23730](#)-A-13 **IN RE: TERRY/MICHELLE DINTELMAN**
[RDG-3](#)

MOTION TO DISMISS CASE
8-12-2019 [\[29\]](#)

GRACE JOHNSON
WITHDRAWN BY M.P.

Final Ruling

This motion has been voluntarily dismissed by the moving party. ECF
No. 33.

19. [19-23232](#)-A-13 **IN RE: DAVID VEDDER**
[RDG-1](#)

MOTION TO DISMISS CASE
8-12-2019 [\[29\]](#)

JENNIFER LEE

No Ruling

20. [19-23232](#)-A-13 **IN RE: DAVID VEDDER**
[RDG-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-12-2019 [\[25\]](#)

JENNIFER LEE

Final Ruling

Objection: Objection to Claim of Exemptions for Failure to File
Spousal Waiver

Notice: LBR 9014-1(f)(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 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 but has not filed a joint petition with debtor's spouse. The debtor may not claim exemptions under section 703.140(b) because both spouses have not filed the required spousal waiver described in section 703.140(a)(2).

21. [19-22134](#)-A-13 **IN RE: MAGDALENA ALVARADO**
[RDG-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D.
GREER
5-24-2019 [\[29\]](#)

PETER MACALUSO
RESPONSIVE PLEADING

No Ruling

22. [17-23238](#)-A-13 **IN RE: LAURIE CROSBY-WILSON**
[JCK-9](#)

MOTION TO MODIFY PLAN
7-15-2019 [\[101\]](#)

KATHLEEN CRIST
RESPONSIVE PLEADING

No Ruling

23. [19-23639](#)-A-13 **IN RE: OLIVO/NATIVIDAD CIENFUEGOS**
[RDG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
7-29-2019 [\[31\]](#)

T. O'TOOLE
DEBTORS DISMISSED: 8/2/19

Final Ruling

This objection will be overruled as moot because the case was dismissed on August 2, 2019.

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 plan confirmation objection has been presented to the court. Having considered the objection,

IT IS ORDERED that the objection is overruled as moot.

24. [19-20441](#)-A-13 **IN RE: CAROLYN VALDEZ**
[MKM-5](#)

MOTION TO CONFIRM PLAN
7-16-2019 [\[51\]](#)

MICHAEL MOORE

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.

25. [18-26043](#)-A-13 **IN RE: ROBERT EVANS**
[RDG-3](#)

MOTION TO DISMISS CASE
8-12-2019 [\[71\]](#)

BRIAN HADDIX

No Ruling

26. [19-24643](#)-A-13 **IN RE: STACY HALLINAN**
[RDG-1](#)

MOTION TO DISMISS CASE
8-12-2019 [\[13\]](#)

KATHLEEN CRIST

No Ruling

27. [11-25250](#)-A-13 **IN RE: CELESTE/JAMES BURNS**
[CLH-4](#)

MOTION TO AVOID LIEN OF HSBC BANK NEVADA, N.A.
8-8-2019 [\[95\]](#)

CHARLES HASTINGS
DEBTORS DISCHARGED: 12/2/16

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$3,181.96

All Other Liens (Non-Avoidable): \$393,825

Exemption: \$1.00

Value of Property: \$150,000 (debtors owned 50% interest)

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).

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 respondent'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 judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

28. [19-22750](#)-A-13 **IN RE: DEBRA ROY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-5-2019 [\[52\]](#)

MICHAEL MOORE
8/5/19 INSTALLMENT FEE PAID \$80

Final Ruling

The installment having been paid, the order to show cause is discharged. The case will remain pending.

29. [19-22750](#)-A-13 **IN RE: DEBRA ROY**
[RDG-4](#)

MOTION TO DISMISS CASE
8-12-2019 [\[54\]](#)

MICHAEL MOORE

No Ruling

30. [19-24650](#)-A-13 **IN RE: SHANE DOSIO**
[RDG-1](#)

MOTION TO DISMISS CASE
8-12-2019 [\[26\]](#)

PETER MACALUSO

No Ruling

31. [19-22551](#)-A-13 **IN RE: RICARDO QUESADA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-29-2019 [\[51\]](#)

FRED IHEJIRIKA
8/7/19 FINAL INSTALLMENT PAID \$150

Final Ruling

The installment having been paid, the order to show cause is discharged. The case will remain pending.

32. [19-22551](#)-A-13 **IN RE: RICARDO QUESADA**
[RDG-4](#)

CONTINUED MOTION TO DISMISS CASE
7-16-2019 [\[36\]](#)

FRED IHEJIRIKA

No Ruling

33. [19-22551](#)-A-13 **IN RE: RICARDO QUESADA**
[RDG-5](#)

MOTION TO DISMISS CASE
8-12-2019 [\[57\]](#)

FRED IHEJIRIKA

No Ruling

34. [16-21452](#)-A-13 **IN RE: MARIO ORTIZ**
[NFG-3](#)

CONTINUED MOTION TO ENFORCE TERMS OF CONFIRMED AMENDED PLAN
5-20-2019 [\[117\]](#)

NELSON GOMEZ
STIPULATION AND ORDER

Final Ruling

The hearing on this motion has been continued to September 17, 2019
at 11:00 a.m. ECF No. 129.

35. [18-21253](#)-A-13 **IN RE: INGRID CONTRERAS**
[MSN-2](#)

MOTION TO MODIFY PLAN
7-11-2019 [\[72\]](#)

MARK NELSON
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 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)(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 modification 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. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

36. [19-20155](#)-A-13 **IN RE: GERALDINE OSEI**
[KRW-2](#)

MOTION TO CONFIRM PLAN
7-12-2019 [\[51\]](#)

KEITH WOOD

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.

37. [18-26758](#)-A-13 **IN RE: TERRY/JACQUELINE THOMAS**
[JAD-4](#)

MOTION TO CONFIRM PLAN
7-3-2019 [\[70\]](#)

JESSICA DORN

No Ruling

38. [16-21360](#)-A-13 **IN RE: PARAM SAINI AND SATNAM KAUR**
[CLH-4](#)

MOTION TO AVOID LIEN OF PAULINE H. MCDONALD
7-17-2019 [\[60\]](#)

CHARLES HASTINGS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$65,525

All Other Liens (Non-Avoidable): \$251,697

Exemption: \$1.00

Value of Property: \$200,000

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 judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

39. [19-21461](#)-A-13 **IN RE: OLIVIA MERCADO**
[RDG-2](#)

MOTION TO DISMISS CASE
8-12-2019 [[41](#)]

ROBERT FONG

No Ruling

40. [19-21561](#)-A-13 **IN RE: BEVERLY LUCIO**
[RDG-4](#)

MOTION TO DISMISS CASE
8-12-2019 [[39](#)]

KEITH WOOD

No Ruling

41. [19-22062](#)-A-13 **IN RE: CLINTON WILLIAMS**
[JLL-1](#)

MOTION TO CONFIRM PLAN
7-2-2019 [[29](#)]

JENNIFER LEE
RESPONSIVE PLEADING

No Ruling

42. [19-22062](#)-A-13 **IN RE: CLINTON WILLIAMS**
[RDG-1](#)

CONTINUED MOTION TO DISMISS CASE
6-4-2019 [[23](#)]

JENNIFER LEE

No Ruling

43. [17-23068](#)-A-13 **IN RE: SILVIA QUIROGA**
[RJ-2](#)

MOTION TO MODIFY PLAN
7-22-2019 [[44](#)]

RICHARD JARE
RESPONSIVE PLEADING

No Ruling

44. [14-26570](#)-A-13 **IN RE: CATHERINE GRIFFIN**
[RDG-6](#)

MOTION TO DISMISS CASE
8-12-2019 [[82](#)]

HANK WALTH

Final Ruling

The motion is continued to September 10, 2019 at 11:00 a.m.

45. [17-21375](#)-A-13 **IN RE: DAVID/KATHRYN SCROGGINS**
[BSH-1](#)

MOTION TO MODIFY PLAN
7-16-2019 [[37](#)]

BRIAN HADDIX
RESPONSIVE PLEADING

No Ruling

46. [19-21675](#)-A-13 **IN RE: ARNOLD ANDRADE**
[DCP-1](#)

MOTION TO CONFIRM PLAN
7-12-2019 [[31](#)]

ERIC GRAVEL
RESPONSIVE PLEADING

No Ruling

47. [19-21675](#)-A-13 **IN RE: ARNOLD ANDRADE**
[RDG-1](#)

CONTINUED MOTION TO DISMISS CASE
7-9-2019 [\[26\]](#)

ERIC GRAVEL
RESPONSIVE PLEADING

No Ruling

48. [19-23379](#)-A-13 **IN RE: RAMON/NANCY CASTILLO**
[JCK-1](#)

MOTION TO CONFIRM PLAN
7-15-2019 [\[22\]](#)

KATHLEEN CRIST
RESPONSIVE PLEADING

No Ruling

49. [16-26384](#)-A-13 **IN RE: RAUL BOTELLO**
[JCK-6](#)

MOTION TO SELL
8-1-2019 [\[75\]](#)

KATHLEEN CRIST
RESPONSIVE PLEADING

Tentative Ruling

Motion: Sell Property [Real Property]

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below
and approved as to form and content by the Chapter 13 trustee

Property: 2076 Licstal Court, Manteca, California

Buyer: Valentin Velez and Daisy Moreno-Velez

Sale Price: \$480,000

Sale Type: Private sale subject to overbid opportunity

The debtor seeks authority to sell his residence.

Wells Fargo Bank, the sole mortgagee and claimant on the property,
owed approximately \$246,678, responds that the order approving the
sale should include the following provisions:

1. Creditor's Claim shall be paid off in full before
satisfying any other lien on the Property.

2. Creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that Creditor's Claim is paid in full at the time the sale of the property is finalized.

3. In the event that the sale of the Property does not take place, Creditor shall retain its Lien for the full amount due under the Subject Loan.

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); see also *In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation. Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

Provisions (1) and (3), as proffered by Wells Fargo, shall not be included in the order. The court is not approving a free and clear sale, meaning that Wells Fargo's claim will be paid in full from escrow. Also, the court will not determine the validity, priority, or extent of Wells Fargo's interest in the property, in the event the sale falls through. This is not properly before the court as the sale is going forward. The court will not provide an advisory opinion about Wells Fargo's interest in the property if the sale is not consummated. And, such relief cannot be awarded on a motion. It requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2).

The court will allow provision (2), as proffered by Wells Fargo, to be included in the order. There shall be no doubt that Wells Fargo may update its claim amount with the escrow company as of the sale closing date.

50. [18-27084](#)-A-13 **IN RE: MELISSA BICE**
[JCK-2](#)

OBJECTION TO CLAIM OF U.S. BANK TRUST, N.A. / CALIBER HOME
LOANS, INC., CLAIM NUMBER 2
7-11-2019 [\[27\]](#)

KATHLEEN CRIST
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Overruled as moot

Order: Civil minute order

The debtor objects to the allowance of secured Proof of Claim No. 2-1 in the amount of \$339,284.82 filed by the claimant U.S. Bank.

The court will overrule the objection as moot because, since the filing of the objection, U.S. Bank filed an amended proof of claim, POC 2-2. This objection was filed on July 11. U.S. Bank filed POC 2-2 on August 1.

CIVIL MINUTE ORDER

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

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

The debtor's objection to proof of claim 2-1 has been presented to the court. Having considered the objection, 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.

51. [19-23886](#)-A-13 **IN RE: SEAN/NATALIE HAMILTON**
[MC-1](#)

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
8-8-2019 [\[15\]](#)
MUOI CHEA

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

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

The same rule applies to credit unions, like the respondent. Pursuant to 11 U.S.C. § 101(35)(B), the term "insured depository institution" includes an insured credit union. Thus, Fed. R. Bankr. P. 7004(h) required service to be made upon the respondent by certified mail addressed to an officer of the credit union.

Service of the motion was insufficient. Service of the motion was not made by certified mail and was not addressed solely to an officer of the responding party. ECF No. 19.

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. *Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

No showing has been made that the exceptions of Rule 7004(h) are applicable either. See Fed. R. Bankr. P. 7004(h)(1)-(3).

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.

Having considered the motion,

IT IS ORDERED that the motion is denied without prejudice.

52. [19-22987](#)-A-13 **IN RE: MARVIN BODINE**
[RDG-3](#)

MOTION TO DISMISS CASE
8-13-2019 [\[33\]](#)

PATRICK EDABURN

No Ruling

53. [19-23389](#)-A-13 **IN RE: CHRISTINA MORONES**
[RDG-2](#)

CONTINUED MOTION TO DISMISS CASE
7-11-2019 [\[14\]](#)

No Ruling

54. [19-23390](#)-A-13 **IN RE: KAREEM SYKES**
[RDG-1](#)

CONTINUED MOTION TO DISMISS CASE
7-16-2019 [\[18\]](#)

No Ruling

55. [19-23294](#)-A-13 **IN RE: WILLIAM GRASSO AND LAUREN CANEPA**
[RDG-3](#)

MOTION TO DISMISS CASE
8-13-2019 [\[25\]](#)

KATHLEEN CRIST

No Ruling

56. [19-23994](#)-A-13 **IN RE: FLORENTINO GUERZO**
[RDG-4](#)

MOTION TO DISMISS CASE
8-13-2019 [\[27\]](#)

MARK WOLFF

No Ruling

57. [19-21096](#)-A-13 **IN RE: JOHN ASAIVAO**
[RDG-1](#)

OBJECTION TO CLAIM OF SKS AUTO GROUP, CLAIM NUMBER 5
7-19-2019 [\[29\]](#)

MUOI CHEA

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no 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). 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

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. *See id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. *See id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. *See id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that “[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules.” Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor’s assets, even if the debt was listed in the debtor’s bankruptcy schedules. *See In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor’s proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

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 claim 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 objection,

IT IS ORDERED that the objection is sustained. Claim no. 5-1 will be disallowed.