

**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: August 30, 2018

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. [18-12204](#)-A-13 **IN RE: THOMAS/RUSELL WHEELER**
[JDW-1](#)

MOTION TO CONFIRM PLAN
7-18-2018 [[27](#)]

THOMAS WHEELER/MV
JOEL WINTER

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.

2. [18-12423](#)-A-13 **IN RE: ANTHONY/MELISSA CLARKE**
[MHM-2](#)

MOTION TO DISMISS CASE
7-25-2018 [[18](#)]

MICHAEL MEYER/MV
PETER BUNTING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [17-12729](#)-A-13 **IN RE: VIRGINIA SOTO**
[JRL-3](#)

MOTION TO TERMINATE WAGE ORDER
8-15-2018 [[44](#)]

VIRGINIA SOTO/MV
JERRY LOWE

Final Ruling

The motion is not supported by a certificate of service, LBR 9014-1(e)(2), and, accordingly, will be denied without prejudice. A civil minute order will issue.

4. [18-12330](#)-A-13 **IN RE: RAYMOND BYUS AND ROSARIO GOMEZ**
MENCHACA
[MHM-2](#)

MOTION TO DISMISS CASE
7-25-2018 [[18](#)]

MICHAEL MEYER/MV
SCOTT LYONS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [18-11032](#)-A-13 **IN RE: RICARDO CORONA**
[TOG-2](#)

MOTION TO CONFIRM PLAN
7-25-2018 [[42](#)]

RICARDO CORONA/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

The debtor concedes confirmation cannot be confirmed and the motion is denied. A 75-day bar date to achieve confirmation is imposed. A civil minute order will issue.

6. [18-12433](#)-A-13 **IN RE: JOSEPHINE HANNON**
[MHM-2](#)

MOTION TO DISMISS CASE
7-25-2018 [[18](#)]

MICHAEL MEYER/MV
DAVID JENKINS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

7. [18-10339](#)-A-13 **IN RE: KENNETH BLOWERS AND KIMBERLY**
BOLTON-BLOWERS
[KMM-2](#)

MOTION TO CONFIRM PLAN
7-26-2018 [[68](#)]

KENNETH BLOWERS/MV
KARNEY MEKHITARIAN
RESPONSIVE PLEADING

No Ruling

8. [16-13343](#)-A-13 **IN RE: AIDE/JAMES BLANCO**
[PK-13](#)

MOTION TO SELL
8-16-2018 [[207](#)]

AIDE BLANCO/MV
PATRICK KAVANAGH
OST 8/16/18

Tentative Ruling

Motion: Sell Real Property [Short Sale]

Notice: LBR 9014-1(f)(3); 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: 7004 Mill Glen Forest Ct., Bakersfield, CA

Buyer: Gonzalez & Co, LLC

Sale Price: \$183,000

Sale Type: Private sale subject to overbid opportunity

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).

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 stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

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.

9. [18-11844](#)-A-13 **IN RE: NOEL MUNERLYN AND ROBYN
HASKINS-MUNERLYN
[MHM-3](#)**

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
8-10-2018 [[32](#)]

PETER BUNTING
RESPONSIVE PLEADING

No Ruling

10. [18-10147](#)-A-13 **IN RE: RENEE RILEY
[MHM-2](#)**

MOTION TO DISMISS CASE
8-2-2018 [[76](#)]

MICHAEL MEYER/MV
SHARLENE ROBERTS-CAUDLE
RESPONSIVE PLEADING

No Ruling

11. [18-10147](#)-A-13 **IN RE: RENEE RILEY**
[SFR-4](#)

MOTION TO CONFIRM PLAN
7-26-2018 [[71](#)]

RENEE RILEY/MV
SHARLENE ROBERTS-CAUDLE
RESPONSIVE PLEADING

No Ruling

12. [18-10147](#)-A-13 **IN RE: RENEE RILEY**
[SFR-5](#)

OBJECTION TO NOTICE OF PAYMENT CHANGE
8-9-2018 [[82](#)]

RENEE RILEY/MV
SHARLENE ROBERTS-CAUDLE

No Ruling

13. [18-11047](#)-A-13 **IN RE: LEOVIGILDO CHAVEZ AND GUDELIA**
HERNANDEZ
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-26-2018 [[57](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

An amended Schedule C filed after the trustee's Objection to Debtor's Claim of Exemptions, the objection is dropped as moot.

14. [18-11047](#)-A-13 **IN RE: LEOVIGILDO CHAVEZ AND GUDELIA**
HERNANDEZ
[TOG-3](#)

MOTION TO CONFIRM PLAN
7-26-2018 [\[52\]](#)

LEOVIGILDO CHAVEZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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.

15. [18-12350](#)-A-13 **IN RE: JUAN REYES**
[MHM-1](#)

MOTION TO DISMISS CASE
7-30-2018 [\[32\]](#)

MICHAEL MEYER/MV
YELENA GUREVICH
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [18-13252](#)-A-13 **IN RE: JENNIFER SILVA**
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-15-2018 [[8](#)]

JENNIFER SILVA/MV
SCOTT LYONS

No Ruling

17. [18-10054](#)-A-13 **IN RE: TRACEY PRITCHETT**
[TCS-2](#)

MOTION TO MODIFY PLAN
7-17-2018 [[48](#)]

TRACEY PRITCHETT/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

18. [18-10754](#)-A-13 **IN RE: EUSTORGIO REYES**
[ALG-1](#)

MOTION TO MODIFY PLAN
7-9-2018 [[33](#)]

EUSTORGIO REYES/MV
JANINE ESQUIVEL

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

VIOLATION OF LOCAL BANKRUPTCY RULES

Movant has violated LBR 9014-1(c)(3) by re-using docket control number "ALG-1." Future violations may result in denial of the motion without hearing.

DISCUSSION

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.

19. [15-13058](#)-A-13 **IN RE: JUAN/VERONICA LOPEZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-1-2018 [\[64\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
THOMAS GILLIS
JAMIE HANAWALT/ATTY. FOR MV.

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Civil minute order

Subject: 5629 Native Sunflower Street, North Las Vegas, NV

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third-party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion in part and deny the motion in part.

SECTION 362(d)(4) RELIEF

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) a transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A, of which the court takes judicial notice. Fed. R. Evid. 201. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

SECTION 362(d)(1) RELIEF

Given that some uncertainty exists about whether the stay applies, the court will grant stay relief. The court grants stay relief for cause under § 362(d)(1) because the property is not estate property and because the property's transfer was unauthorized. Moreover, according to the Relief from Stay Summary Sheet, the borrower is 36 monthly payments delinquent.

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.

U.S. Bank National Association's motion for relief from the automatic stay 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 in part as to relief under 11 U.S.C. § 362(d)(1). The automatic stay is vacated for cause under § 362(d)(1) with respect to the property described in the motion, commonly known as 5629 Native Sunflower Street, North Las Vegas, NV, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that the motion is denied in part as to relief under 11 U.S.C. § 362(d)(4). No other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs against the debtor for bringing this motion, the request is denied.

20. [16-13265](#)-A-13 IN RE: MICHELLE KEVORKIAN
[MHM-1](#)

MOTION TO DISMISS CASE
7-31-2018 [\[95\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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, asserting that cause exists under § 1307(c)(1) as the debtor has failed to provide amended Schedules I and J. The debtor has not opposed the motion.

The code requires the debtor to cooperate with the chapter 13 trustee:

(f) **At the request of** the court, the United States trustee, or **any party in interest** in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court . . . (4) in a case under chapter 13--(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and (B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan; **a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.**

11 U.S.C. § 521(f)(4). Here, the chapter 13 trustee made a demand for amended Schedules I and J on June 21, 2018. Despite the passage of more than 60 days the debtor has not done so. The motion will be granted.

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 has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to provided amended Schedules I and J, as required by 11 U.S.C. § 521(f)(4) and this constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

21. [18-11473](#)-A-13 **IN RE: SUKHPAL SINGH AND RANI CHAUHAN**
[MHM-3](#)

MOTION TO DISMISS CASE
7-30-2018 [[38](#)]

MICHAEL MEYER/MV
DAVID JENKINS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

22. [18-11979](#)-A-13 **IN RE: LAURA MILLER**
[SL-2](#)

MOTION TO CONFIRM PLAN
7-12-2018 [[38](#)]

LAURA MILLER/MV
STEPHEN LABIAK
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [18-11979](#)-A-13 **IN RE: LAURA MILLER**
[SL-3](#)

MOTION TO CONFIRM PLAN
7-23-2018 [\[48\]](#)

LAURA MILLER/MV
STEPHEN LABIAK

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.

24. [18-12180](#)-A-13 **IN RE: CHRISTINE MOURETT**
[SL-1](#)

MOTION TO CONFIRM PLAN
7-16-2018 [\[15\]](#)

CHRISTINE MOURETT/MV
STEPHEN LABIAK

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. [18-12283](#)-A-13 **IN RE: LEAH GARCIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-9-2018 [[30](#)]

Tentative Ruling

If the installment payment of \$77 due August 6, 2018, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

26. [18-12283](#)-A-13 **IN RE: LEAH GARCIA**
[MHM-2](#)

MOTION TO DISMISS CASE
7-25-2018 [[24](#)]

MICHAEL MEYER/MV

No Ruling

27. [13-12089](#)-A-13 **IN RE: ROBERT BIGELOW**
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
7-27-2018 [[94](#)]

MICHAEL MEYER/MV
CHRISTOPHER BLAXLAND

Final Ruling

Motion: Determination of Final Cure and Payment of Required
Postpetition Amounts under Rule 3002.1(h)

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).

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not do so. *Id.*

Next, the holder of the claim has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to dispute (or agree) that the debtor has paid in full the amount required to cure the default on the claim or whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h).

If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

28. [18-11292](#)-A-13 **IN RE: ANGEL PEREZ**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
7-3-2018 [[16](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

29. [17-14095](#)-A-13 **IN RE: KEITH HORTON AND JENNIFER ROGERS**
[GEG-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 3-1
AND/OR MOTION FOR REQUEST OF ATTORNEY FEES AS PREVAILING
PARTY
7-11-2018 [[43](#)]

KEITH HORTON/MV
GLEN GATES

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained in part, denied in part

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).

STATUTE OF LIMITATIONS DEFENSE

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)).

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in bankruptcy. "The word 'enforceable' does not appear in the Code's definition of 'claim.'" *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy does not violate the FDCPA). "[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a 'claim.'" The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense." *Id.* (citations omitted).

The applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The claimant has filed a proof of claim based on a credit account that is stale. The objection's well-pleaded facts show that the debtor has made no payments or other transactions on this credit account within the four years prior to the petition date. Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant's claim based on this loan account is time barred and unenforceable under

state law. The objection will be sustained. The claim will be disallowed.

ATTORNEYS FEES

The instances in which a party may recover attorney's fees is well settled:

In most instances, a prevailing litigant may not recover attorney's fees from the other party. *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983); *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 448 (2007) (applying the rule in bankruptcy). **Three exceptions to the rule exist, allowing the prevailing party to recover attorney's fees: (1) when an enforceable contract provides for the recovery of attorney's fees, *Travelers*, 549 U.S. at 448; *Penrod v. AmeriCredit Fin. Servs., Inc. (In re Penrod)*, 2015 WL 5730425 (9th Cir. Oct. 1, 2015); (2) when the court exercises its equitable powers to award fees when a party has willfully disobeyed a court order, acted in bad faith or vexatiously, or has conferred a substantial and direct benefit on a class of individuals by that party's litigation efforts, see *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45 (1991); or (3) where a statute shifts fees to the losing party, *United States v. Standard Oil Co. of Cal.*, 603 F.2d 100, 103 (1979).**

Jones v. Hurtado (In re Hurtado), No. 09-16160-A-13, 2015 WL 6941127, at *3 (Bankr. E.D. Cal. Nov. 6, 2015) (emphasis added).

Here, the movant points to no legally cognizable exception to the rule. As Federal Rule of Bankruptcy Procedure 9013 states, "A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. **The motion shall state with particularity the grounds therefor**, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d)." Fed. R. Bankr. P. 9013 (emphasis added). Having pointed to no basis for finding an exception to the rule, the request for fees will be denied without prejudice.

30. [16-10697](#)-A-13 **IN RE: DARCY NUNES**
[TCS-5](#)

MOTION TO MODIFY PLAN
7-19-2018 [[85](#)]

DARCY NUNES/MV
TIMOTHY SPRINGER

Final Ruling

A Fifth Modified Plan having been filed on August 2, 2018, this motion is denied as moot.