

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: SEPTEMBER 1, 2020
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g. nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [20-22701](#)-A-13 **IN RE: EVAN PASTERNAK AND SONJA DURAN**
[CYB-3](#)

MOTION TO VALUE COLLATERAL OF COMMONWEALTH CENTRAL CREDIT
UNION
8-17-2020 [[42](#)]

CANDACE BROOKS/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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 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 2017 Jeep Renegade. The purchase money security interest encumbered the vehicle from December 7, 2017, which was 901 days pre-petition. The hanging paragraph of 11 U.S.C. § 1325(a) applies to this lien. The court will deny this motion to value collateral.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

2. [20-22701](#)-A-13 IN RE: EVAN PASTERNAK AND SONJA DURAN [DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-16-2020 [[30](#)]

CANDACE BROOKS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan is not feasible under § 1325(a)(6). The plan calls for \$2,000.00 monthly payments and placed creditor Commonwealth Central Credit Union's interest in Class 2(B), valuing its claim at the value of the collateral. Plan, ECF 2. The plan was premised on the Motion to Value Collateral. However, this creditor's lien having been incurred less than 910 days pre-petition, the court denied the debtor's motion to value the creditor's collateral. Since the motion was unsuccessful, under LBR 3015-1(i) and § 1325(a)(6) the court will deny confirmation of the plan.

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

3. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR LAKEVIEW
SERVICING, LLC
8-13-2020 [[27](#)]

PETER MACALUSO/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

SECTION § 1325(a)(5)(b)(ii) AND IMPROPER CLASSIFICATION OF SECURED CLAIM

Lakeview Servicing, LLC's objection to confirmation is made on grounds that the plan incorrectly classifies its secured claim. The court takes judicial notice of the debtor's chapter 13 plan and its contents, which appear on its docket. Fed. R. Evid. 201(b)(2). The plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage.

Given that this creditor has filed a proof of claim, Claim 10-1, its claim is deemed allowed until a party in interest objects. 11 U.S.C. § 502(a). As a result, the claim is delinquent based prepetition arrearage set forth on the filed proof of claim.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In

summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

By placing this secured claim in Class 4, the plan contravenes § 1325(a)(5). The allowed secured claim in this case includes the prepetition arrearage shown on the proof of claim, which amount was past due on the petition date. Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a)(5)(B)(ii), 1322(b)(5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term).

Because the plan fails to provide for cure of the prepetition arrearage, the plan does not provide payment distributions on account of this secured claim that are at least equal to the allowed amount of such claim. Further, the secured claim holder does not accept the plan, and Class 4 is not a mechanism for surrender.

In addition, this district's form chapter 13 plan provides that "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Form Chapter 13 Plan, EDC 3-080. Claims that are in default and mature after the completion of the plan's term are to be placed in Class 1. Therefore, placing the claim in Class 4 also contravenes the terms of this district's form plan. Class 4 of the plan indicates payment of only the ongoing post-petition mortgage installments on the Class 4 claim and not the pre-petition arrearage. Therefore, this claim must be placed in Class 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.

Lakeview Loan Servicing, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

4. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK
8-12-2020 [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The court cannot conclude the plan is feasible under § 1325(a)(6). Schedule I says income is \$7,000.00 (monthly business). However, the debtors' bank statements do not match information on the debtors' Schedule I. ECF 1. There is no attachment to Schedule I for business or rental property gross receipts and expenses.

Also, the plan relies on valuing collateral of Ally Financial and Safe Credit Union (Class 2B). While a motion to value was filed against Ally Financial, none was filed against Safe Credit. Additionally, the debt for Safe Credit Union may have to be reclassified in Class 2(A) because debt was incurred within 910 days pre-petition.

The debtors failed to accurately list two of the four bank accounts spoken of at the 341 meeting on Schedule B, and failed to list the accurate amounts on each account at the date of filing. Plan pays unsecured creditors 0%. The plan may not provide for general unsecured creditors to receive all projected disposable income under § 1325(b).

The plan does not fund in 60 months, but instead in 119 months because a monthly dividend of \$310.00 to creditor Safe Credit Union is scheduled at \$29,417.11. The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

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 chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

5. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[MBW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR SAFE CREDIT
UNION
7-29-2020 [[19](#)]

PETER MACALUSO/ATTY. FOR DBT.
DANIEL BURBOTT/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION AND BY MISCLASSIFYING

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan classifies the creditor's claim in Class 2(B) and proposes to reduce the creditor's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not filed a motion to determine the value of such collateral. Also, the creditor's claim was misclassified and should have been in Class 2(A). The creditor's claim fulfills the requirements of the hanging paragraph in § 1325(a). The claim of \$29,417.11 is a purchase money security interest incurred within 910 days pre-petition on a vehicle, which was purchased for the debtor's personal use. The creditor's claim cannot be crammed down and must be paid in full for the plan to be confirmed. The plan's treatment of the claim constitutes failure to provide for the creditor's secure claim. Accordingly, the court must deny confirmation of the plan.

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.

Safe Credit Union's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

6. [19-27010](#)-A-13 **IN RE: MARY CARTER**
[CAR-2](#)

MOTION TO CONFIRM PLAN
7-27-2020 [[46](#)]

YASHA RAHIMZADEH/ATTY. FOR DBT.
NON-OPPOSITION

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 movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, January 1, 2020

DEFAULT OF RESPONDENT

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).

CHAPTER 13 PLAN CONFIRMATION

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.

7. [19-26311](#)-A-13 **IN RE: NOEMY RIVAS**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
7-21-2020 [[60](#)]

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

8. [19-26311](#)-A-13 **IN RE: NOEMY RIVAS**
[WW-3](#)

MOTION TO CONFIRM PLAN
7-21-2020 [[64](#)]

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

9. [20-23811](#)-A-13 **IN RE: DENISE BATTS**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-17-2020 [[11](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

10. [20-20814](#)-A-13 **IN RE: PATRICK EASTER AND TINA**
GUEVARA-EASTER
[GC-2](#)

MOTION TO CONFIRM PLAN
7-28-2020 [[59](#)]

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

11. [19-23016](#)-A-13 **IN RE: DENISE EDWARDS**
[DPC-2](#)

MOTION TO DISMISS CASE
7-30-2020 [[107](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

12. [20-21720](#)-A-13 **IN RE: EARL MILLER**
[TJW-4](#)

MOTION TO VALUE COLLATERAL OF OAKLAND MUNICIPAL CREDIT UNION
7-30-2020 [[51](#)]

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

Property: 452 Lancing Circle, Benicia, CA

First Deed of Trust: \$1,022,462.00

Second Deed of Trust: \$74,421.62

Value: \$857,797.00.

VALUATION OF COLLATERAL

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

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 452 Lancing Circle, Benicia, CA.

The court values the collateral at \$857,797.00. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

NONCOMPLIANCE WITH LOCAL RULES

An "application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." L.B.R. 9014-1(d)(3)(A).

The motion does not comply with L.B.R. 9014-1(d)(3)(A). The motion and declaration state the proposed value of the real estate and the circumstances giving rise to the debtor's claim that Oakland Municipal Credit Union's claim is unsecured. Neither the motion nor the declaration states the legal grounds for the relief sought. The court demands compliance with the Local Rules for all future matters.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 452 Lancing Circle, Benicia, CA has a value of \$857,797.00. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

13. [20-23127](#)-A-13 **IN RE: KEVIN GRIMES AND MICHAEL RULLI**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-13-2020 [[13](#)]

LUCAS GARCIA/ATTY. FOR DBT.

No Ruling

14. [20-22331](#)-A-13 **IN RE: BRANDON/JOVINA LIMOSNERO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-4-2020 [[33](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
8/5/20 INSTALLMENT PAID \$77

Final Ruling

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

15. [20-21832](#)-A-13 **IN RE: JUAN RODRIGUEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
7-22-2020 [[46](#)]

JEFFREY MEISNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

16. [20-23132](#)-A-13 **IN RE: JEFFREY COATES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-12-2020 [[20](#)]

GARY FRALEY/ATTY. FOR DBT.

No Ruling

17. [17-22634](#)-A-13 **IN RE: RANDY RICHARDSON AND JACQUELYN
RAMIREZ-RICHARDSON**
[WSS-10](#)

MOTION TO MODIFY PLAN
7-22-2020 [[172](#)]

W. SHUMWAY/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address. AT&T Corp, Premier Bankcard, LLC, and Springleaf Financial haven't been served.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

COURT PREFERS USE OF THE CLERK'S MATRIX

There are reasons that the court prefers the use of the court's matrix as the standard list of creditors and parties in interest to whom a Rule 2002(a) notice is transmitted. Creditors and parties in interest, other than the debtor, are added to this matrix if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice under § 342(e) or Fed. R. Bankr. P. 2002(g), (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) (assuming that they are originally identified as a creditor in the Master Address List by the debtor), or (vii) file a designation under Rule 5003(e). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request under § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2).

It would be cumbersome and impracticable for an attorney to ensure proper notice is given by monitoring each filing of a proof of claim, request for special notice, designation pursuant to Rule 5003(e), and global request made potentially with a different

bankruptcy court. Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.

18. [20-23839](#)-A-13 **IN RE: NICOLE PRESTON**
[MWB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-6-2020 [[8](#)]

MARK BRIDEN/ATTY. FOR DBT.

No Ruling

19. [20-21946](#)-A-13 **IN RE: SUE PIERCE**

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER
5
7-13-2020 [[67](#)]

ARETE KOSTOPOULOS/ATTY. FOR DBT.

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).

STANDARDS

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it

is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Litton Loan Servicing*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

But "a creditor's lack of adequate response to a debtor's formal or informal inquiries 'in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within [§] 502(b)'s grounds to disallow the claim.'" *Id.* at 436 (quoting *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005)).

Here the debtor objects to the IRS's Claim 5-1 amount. The IRS's proof of claim states that \$29,825.91 is owed as an unsecured priority claim, from the tax years 2018-2019. The IRS has not shown proof of accuracy of such amount with any supporting attachment to the claim beyond a Form 410.

The debtors state that the unsecured priority portion of the IRS's claim should be \$26,510.10. The debtor has attached in their exhibits to their objection copies of their 2018-2019 tax returns and have shown how the debtor's amount is calculated. The IRS has not responded to the debtor's objection. The court finds the debtor rebutted the presumption of the claim validity and will sustain the objection.

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 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.

20. [20-21946](#)-A-13 **IN RE: SUE PIERCE**
[KLG-3](#)

MOTION TO CONFIRM PLAN
7-9-2020 [[52](#)]

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirmation of a Chapter 13 Plan
Disposition: Denied without prejudice
Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service states that creditors have been served on "Attached Service List," but no such list has been attached.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

21. [20-22849](#)-A-13 **IN RE: GLORIA SULLIVAN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-22-2020 [[21](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

22. [20-22849](#)-A-13 **IN RE: GLORIA SULLIVAN**
[PSB-1](#)

MOTION TO VALUE COLLATERAL OF MILESTONE JEWELERS
7-29-2020 [\[25\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of personal property described as Jewelry described in the motion. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$1,000.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a Jewelry described in the motion has a value of \$1,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1,000.00 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.

23. [20-20251](#)-A-13 **IN RE: MATTHEW/ROSE MARGOLIS**
[CYB-1](#)

MOTION TO MODIFY PLAN
7-14-2020 [\[32\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
NON-OPPOSITION

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 movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, July 21, 2020

DEFAULT OF RESPONDENT

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).

CHAPTER 13 PLAN MODIFICATION

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.

COURT PREFERS USE OF THE CLERK'S MATRIX

There are reasons that the court prefers the use of the court's matrix as the standard list of creditors and parties in interest to whom a Rule 2002(a) notice is transmitted. Creditors and parties in interest, other than the debtor, are added to this matrix if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice under § 342(e) or Fed. R. Bankr. P. 2002(g), (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) (assuming that they are originally identified as a creditor in the Master Address List by the debtor), or (vii) file a designation under Rule 5003(e). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request under § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2).

It would be cumbersome and impracticable for an attorney to ensure proper notice is given by monitoring each filing of a proof of claim, request for special notice, designation pursuant to Rule 5003(e), and global request made potentially with a different bankruptcy court. Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.

24. [17-26052](#)-A-13 **IN RE: TANISHA MAVY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-14-2020 [[197](#)]

Final Ruling

The filing fee having been paid in full, the order to show cause is discharged. The case will remain pending.

25. [19-27653](#)-A-13 **IN RE: JUAN ZARAGOZA AND MARIA GARCIA**
[DPC-3](#)

MOTION TO DISMISS CASE
7-21-2020 [[57](#)]

HARRY ROTH/ATTY. FOR DBT.

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).

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 8.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

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 entered the default of respondent debtor 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 court hereby dismisses this case.

26. [18-27055](#)-A-13 **IN RE: JEFFREY/LISA PURCELL**
[MRL-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH REX GREILICH; TERESA GREILICH; VILLEGAS 2001
FAMILY TRUST, ET AL.
8-7-2020 [[28](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

27. [20-20756](#)-A-13 **IN RE: TIMOTHY BROWN**
[DPC-2](#)

MOTION TO DISMISS CASE
7-22-2020 [[66](#)]

CHINONYE UGORJI/ATTY. FOR DBT.

No Ruling

28. [20-22460](#)-A-13 **IN RE: ENER/MARIA ELENA GUECO**
[JTN-2](#)

MOTION TO CONFIRM PLAN
7-6-2020 [[45](#)]

JASMIN NGUYEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). No certificate of service has been filed.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

29. [20-22076](#)-A-13 **IN RE: PAMELA PORTER**
[TJW-1](#)

MOTION TO CONFIRM PLAN
7-16-2020 [\[22\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
NON-OPPOSITION

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 movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, July 14, 2020

DEFAULT OF RESPONDENT

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).

CHAPTER 13 PLAN CONFIRMATION

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.

30. [19-27080](#)-A-13 **IN RE: DYLAN HAZELTINE**
[CJK-1](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
7-30-2020 [[23](#)]

LUCAS GARCIA/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

For each of the reasons set forth in the trustee's Response, August 18, 2020, ECF # 27, the motion is denied. The court will issue a civil minute order.

31. [20-21783](#)-A-13 **IN RE: TEMA ROBINSON**
[DPC-2](#)

MOTION TO DISMISS CASE
7-22-2020 [[53](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

32. [19-23995](#)-A-13 **IN RE: MANUEL/ALMA PEREZ**
[WW-2](#)

MOTION TO SELL
8-11-2020 [[45](#)]

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

33. [20-22495](#)-A-13 **IN RE: CHRISTOPHER RICHARDSON**
[MWB-1](#)

MOTION TO CONFIRM PLAN
7-16-2020 [\[19\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address. Synchrony Bank c/o PRA Receivables Management, LLC, JPMorgan Chase Bank, N.A., LVNV Funding, LLC, Prosper Marketplace Inc. c/o Weinstein & Riley, P.S., SunTrust Bank, and U.S. Bank N.A have not been served.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

COURT PREFERS USE OF THE CLERK'S MATRIX

There are reasons that the court prefers the use of the court's matrix as the standard list of creditors and parties in interest to whom a Rule 2002(a) notice is transmitted. Creditors and parties in interest, other than the debtor, are added to this matrix if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an amended Master Address List filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice under § 342(e) or Fed. R. Bankr. P. 2002(g), (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) (assuming that they are originally identified as a creditor in the Master Address List by the debtor), or (vii) file a designation under Rule 5003(e). The court's matrix thus updates virtually automatically whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request under § 342(f). See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2).

It would be cumbersome and impracticable for an attorney to ensure proper notice is given by monitoring each filing of a proof of claim, request for special notice, designation pursuant to Rule 5003(e), and global request made potentially with a different

bankruptcy court. Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed list for notice tend to miss at least one or more creditors or transmit notice to incorrect addresses for creditors and parties in interest.