

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

Honorable Fredrick E. Clement
Modesto Federal Courthouse
1200 I Street, Suite 4
Modesto, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: SEPTEMBER 10, 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. [18-90003](#)-A-13 **IN RE: MATTHEW/MELISSA DICKENS**
[MSN-3](#)

MOTION TO APPROVE LOAN MODIFICATION
8-20-2019 [\[36\]](#)

MARK NELSON

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

Notice: LBR 9014-1(f)(2); no 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). 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).

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

2. [18-90908](#)-A-13 **IN RE: HIRAM KEMP**
[DCJ-5](#)

MOTION TO CONFIRM PLAN
7-22-2019 [\[67\]](#)

DAVID JOHNSTON

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.

3. [17-90013](#)-A-13 **IN RE: EDWARD/LINDA GABRIEL**
[JAD-3](#)

MOTION TO MODIFY PLAN
7-26-2019 [[74](#)]

JESSICA DORN
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

The Chapter 13 Trustee argues the plan is not feasible because the plan payment would need to be \$3,141.00 to pay all the claims provided for in the plan. The Chapter 13 Trustee also opposes the Motion because the debtors projected a \$658.31 decrease in income monthly, but have not provided documentation supporting the alleged decrease.

Based on the aforementioned reasons, the proposed modified plan is not feasible.

4. [19-90421](#)-A-13 **IN RE: NARCISSA THOMAS**
[GLF-4](#)

MOTION TO CONFIRM PLAN
8-6-2019 [[74](#)]

JESSICA GALLETTA
WITHDRAWN BY M.P.

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

5. [14-91623](#)-A-13 **IN RE: MARIO BENAVIDEZ**
[HWW-1](#)

MOTION TO MODIFY PLAN
7-31-2019 [\[32\]](#)

HANK WALTH

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.

6. [19-90424](#)-A-13 **IN RE: SUSAN DUENKE**
[DCJ-2](#)

MOTION TO CONFIRM PLAN
7-22-2019 [[29](#)]

DAVID JOHNSTON
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d) (1), 9014-1(f) (1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d) (1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation on numerous grounds.

Trustee argues the plan is not feasible because (1) the debtor has not provided a copy of her 2018 tax returns; (2) the proposed plan relies on valuing the IRS' secured claim, but no motion to value the claim has been filed; (3) the average monthly dividend proposed to pay the claim of the FTB would take 66 months; (4) the plan payment would be required to be increased to \$2,707.00 to be feasible; (5) the attorney fee compensation method was not specified in Section 3.05 of the plan; (6) and the proposed plan does not provide for all priority claims, totaling \$23,538.53.

Trustee also argues he cannot determine whether the plan complies with 11 U.S.C. § 1325(a) (4) until he receives information demonstrating her ownership interest in 41 undeveloped acres of real estate.

Additionally, the Chapter 13 trustee argues the debtor's income is \$8,567.75 monthly, and not \$5,682.00, and that debtor therefore fails the disposable income test of 11 U.S.C. § 1325(b).

Based on the foregoing, the Motion is denied.

CIVIL MINUTE ORDER

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

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

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

7. [19-90335](#)-A-13 **IN RE: JOBERT/CARLEY VERCELES**
[JLL-1](#)

MOTION TO CONFIRM PLAN
7-19-2019 [38]

JENNIFER LEE

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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

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

8. [18-90144](#)-A-13 **IN RE: ART/TERESA SISNEROZ**
[RDG-2](#)

OBJECTION TO CLAIM OF TITLEMAX OF CALIFORNIA, INC., CLAIM
NUMBER 7
7-29-2019 [\[42\]](#)

JESSICA DORN

Tentative 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 Chapter 13 Trustee, Russell Greer'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. 7 will be disallowed.

9. [19-90554](#)-A-13 **IN RE: FILIMON/BLANCHE TAMRZ**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [\[20\]](#)

THOMAS GILLIS
WITHDRAWN BY M.P.

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed. The court drops the matter from calendar.

10. [16-90362](#)-A-13 **IN RE: KRISTOPHER/JULIE NABORS**
[RDG-4](#)

OBJECTION TO CLAIM OF DEPARTMENT OF THE TREASURY-INTERNAL
REVENUE SERVICE, CLAIM NUMBER 18
7-29-2019 [\[160\]](#)

MARK NELSON

Tentative 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 Chapter 13 Trustee, Russell Greer'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. 18 will be disallowed.

11. [16-90362](#)-A-13 **IN RE: KRISTOPHER/JULIE NABORS**
[RDG-5](#)

OBJECTION TO CLAIM OF ED RIDENOUR, CLAIM NUMBER 17
7-29-2019 [\[157\]](#)

MARK NELSON

Tentative 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 Chapter 13 Trustee, Russell Greer'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 nos. 17-1 and 17-2 will be disallowed.

12. [19-90467](#)-A-13 **IN RE: ERIC/MARGIE DANA**
[SLH-2](#)

MOTION TO VALUE COLLATERAL OF CENTRAL STATE CREDIT UNION
7-23-2019 [\[29\]](#)

SETH HANSON

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An

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

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2014 Mercedes-Benz C250. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$13,200.00.

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2014 Mercedes-Benz C250 has a value of \$13,200.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$13,200.00 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.

13. [17-90869](#)-A-13 **IN RE: KAY PARKER**
[WW-4](#)

CONTINUED MOTION TO MODIFY PLAN
6-3-2019 [\[146\]](#)

MARK WOLFF
RESPONSIVE PLEADING

Tentative 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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994).

The Chapter 13 trustee filed an opposition on June 28, 2019. ECF No. 160. In four of the trustee's grounds for opposition, the trustee acknowledged those grounds could be addressed in the language of the order confirming the modified plan. The remaining grounds for opposition addressed the feasibility of the modified plan given its reliance on funds from the sale of property, and an ambiguity implying there may be potential funds from a foreclosure on debtor's property where those funds had already been received.

The debtor filed a Reply to the trustee's Opposition on July 3, 2019. ECF No. 164. The debtor proposes address the majority of trustee's grounds for opposition in the language of the order confirming plan, and notes the debtor's Motion To Sell property is set for hearing the same day as this Motion.

On July 9, 2019, Harminder Deol filed an Objection To Confirmation on the grounds that the modified plan does not provide for Deol's alleged administrative claim totaling \$41,800.00 as of July 20, 2019. ECF No. 165. Deol had previously filed a request for payment of administrative expense on August 27, 2018, but never set noticed hearing on that request. ECF NO. 119.

After the July 23, 2019, hearing on this Motion, the court issued an Order continuing the hearing, and requiring Deol file and set for hearing a motion for allowance of his purported administrative claim. ECF No. 179. Deol has not filed anything since that hearing.

The debtor filed a Status Statement on August 8, 2019, providing an overview of the case status, noting Deol's failure to file a motion, and requesting themotion be granted.

Despite the trustee's opposition, the trustee contends that the proposed modification can be approved with changes to the plan made in the order confirming. The debtor has agreed to such changes.

The court will approve the modification of the plan with the changes that the trustee proposed.

14. [19-90569](#)-A-13 **IN RE: BIMLESH SINGH**
[JKR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-13-2019 [\[37\]](#)

JESSICA DORN
JOHN ROUNDS/ATTY. FOR MV.
HOMEOWNERS FIRST, LLC VS.

Tentative Ruling

Motion: Stay Relief under § 362(d)(1) and (d)(4)
Notice: LBR 9014-1(f)(2); written opposition filed
Disposition: The hearing on the Motion is continued to October 22, 2019 at 1:00 p.m.
Order: Civil minute order

Subject: 1833 Darby Lane, Ceres, California

Applicable Law

SECTION 362(d)(1)

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

SECTION 362(d)(4)

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d)(4), the court

must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." § 362(d)(4).

DISCUSSION

Movant argues relief from stay should be granted pursuant to Section 362(d)(4) of the Bankruptcy Code because the above described property has been transferred without permission, and was involved in multiple bankruptcy filings. Movant also argues cause for relief exists based on Section 362(d)(1) because debtor in not making post-petition payments, the present case was filed in bad faith, and because judicial economy supports allowing state court litigation regarding the property to proceed.

Movant asserts that the Note was executed by Sati Singh aka Sati Sen in 2006. Exhibit 1, ECF No. 40. The Note and respective Deed of Trust were assigned to Movant on August 18, 2010. Exhibit 3, ECF NO. 40.

Because Sati Singh had defaulted on the loan, a loan modification was executed in April 2011 decreasing the principle owed to \$21,600.00. Declaration, ECF No. 39. Sati Singh made some payments thereafter, but stopped making payments on August 5, 2013. *Id.*

On September 25, 2019, Sati Singh recorded a Grant Deed transferring the property to the debtor. Exhibit 7, ECF No. 40. On August 31, 2016, a Grant Deed was recorded conveying the property from debtor to Bikrant Singh. Exhibit 8, ECF No. 40. Then, on June 11, 2019, a Grant Deed was recorded conveying the property back from Bikrant Singh to the debtor. Exhibit 13, ECF No. 40.

The property has been listed both in this bankruptcy case, and in Case No. 19-90572 filed by Sati Sen (aka Sati Singh, the borrower on the Note).

On August 28, 2019, the debtor filed a Response to the Motion. ECF No. 44. The debtor's Response contests the validity of the Movant's claim, arguing that past mortgage statements show the debtor was

current in payments up to 2013; that debtor received documents in 2014 stating Movant's claim was paid in full; and that debtor will be filing an objection to Movant's Proof of Claim, No. 4.

An Objection To Claim regarding Movant's claim was filed by the debtor on September 4, 2019, and set for hearing October 22, 2019. ECF No. 51.

Disposition

The debtor alleges Movant's claim has been paid in full, and has filed an Objection To Claim. The court cannot determine if there is cause for relief here until the extent and validity of Movant's claim is determined. Therefore, the court shall continue the hearing on the Motion to October 22, 2019 at 1:00 p.m. to be heard alongside the debtor's Objection.

CIVIL MINUTE ORDER

Homeowner's First, LLC's motion for relief from the automatic stay under § 362(d)(4) has been presented to the court. Having rendered findings of fact and conclusions of law orally on the record pursuant to Fed. R. Civ. P. 52, as incorporated by Fed. R. Bankr. P. 7052:

IT IS ORDERED that the hearing on the Motion is continued to October 22, 2019 at 1:00 p.m.

IT IS FURTHER ORDERED that the automatic stay shall remain in effect until resolution of the debtor's Objection To Claim, ECF No. 51.

15. [19-90571](#)-A-13 **IN RE: LATONA BOWERS**
[RDG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [[28](#)]

LAUREN FRANZELLA

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 Chapter 13 trustee filed this Objection on the grounds that the proposed dividend to the Class 2 claim of Allied Trustee Services would result in an 84 month plan given the greater than anticipated arrearages. The Chapter 13 trustee also objects on the basis that \$583.22 is proposed to pay a lease installment which lease was rejected by operation of law, and on the basis that debtor has not provided a copy of an insurance liability rider.

The debtor filed a Reply on September 2, 2019, stating an amended plan would be filed. ECF No. 31.

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.

16. [19-90578](#)-A-13 **IN RE: THOMAS/CECILIA MCCAULEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-21-2019 [\[45\]](#)

BRIAN HADDIX
8/26/19 AMENDMENT FEE PAID \$31

Final Ruling

Matter: Order to Show Cause re Failure To Pay Filing Fees

An Order To Show Cause was issued on August 21, 2019, based on the debtor, Consuelo C. Flores's, failure to pay an amended schedule filing fee of \$31.00.

A review of the docket shows on August 26, 2019, the fee was paid.

Therefore, the Order To Show Cause is discharged.

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 Order to Show Cause has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

17. [19-90578](#)-A-13 **IN RE: THOMAS/CECILIA MCCAULEY**
[RDG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [[31](#)]

BRIAN HADDIX

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

18. [19-90581](#)-A-13 **IN RE: GARY/MICHELLE POGUE**
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
8-12-2019 [[20](#)]

MARY ANDERSON

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 Chapter 13 trustee filed this Objection on the grounds that (1) the debtor did not appear at the Meeting of Creditors on August 7, 2019, and (2) debtor has obtained new employment without filing amended schedules.

The debtor did not file a response or opposition to the Objection.

Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(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 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.

19. [14-91187](#)-A-13 **IN RE: KENNETH/MAUREEN YAJKO**
[JCK-2](#)

NOTICE OF DEATH OF A DEBTOR, MOTION TO WAIVE SECTION 1328
CERTIFICATE REQUIREMENT, SUBSTITUTE PARTY, AS TO DEBTOR
8-5-2019 [[59](#)]

KATHLEEN CRIST
RESPONSIVE PLEADING

Final Ruling

Motion: Substitution of Representative, Continued Administration, Waiver of Personal Financial Management and Waiver of Certifications
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 debtor Maureen Yajko requests through her Motion that the court appoint her as the sole representative for her dece

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a **Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor.** The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. **A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, a copy of the Certificate of Death for Kenneth Michael Yajko was filed as Exhibit A, and served on all parties in interest. ECF Nos. 61, 62.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by Fed. R. Bankr. P. 7017, 9014(c)* (emphasis added).

Here, the Motion To Substitute has been brought by the debtors' attorney on their behalf.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If 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.**

Fed. R. Bankr. P. 1016 (emphasis added).

The Motion does not address whether dismissal or continued administration or dismissal is in the best interest of the parties.

This case was filed on August 25, 2014. ECF No. 1. A plan was confirmed on March 24, 2015. ECF Nos. 47, 48. The Confirmed Plan provides for a 60 month plan term, and a combination of monthly payments and a lump sum payment related to the liquidation of certain assets. ECF No. 40.

The Chapter 13 trustee filed an Opposition to the Motion on August 19, 2019. ECF No. 66. The trustee's sole basis for opposing this Motion is the surviving debtor's failure to provide information regarding potential life insurance proceeds. *Id.*

The debtor filed a Supplemental Filing on September 3, 2019, stating that \$100,000.00 in insurance proceeds were received, which proceeds have been claimed fully exempt. ECF NO. 70.

While not addressed by any party to this Matter, the case being very near completion, continued administration is in the best interest of the parties.

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

CIVIL MINUTE ORDER

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

The Notice of Death and Motion To Substitute has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted, and Maureen Heather Yajko is substituted as the successor-in-interest to Kenneth Michael Yajko and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the requirement of 11 U.S.C. § 1328 Certification is waived for the deceased Debtor Kenneth Michael Yajko.