

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY

DATE: SEPTEMBER 26, 2019

CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-12710](#)-A-13 **IN RE: EDITH FIGUEROA**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-29-2019 [\[15\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Overruled as moot
Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor has claimed exemptions under section 704.070 of the California Code of Civil Procedure. The trustee objects to the debtor's following claims of exemptions:

Description	Value	Exemption Amount
Union Bank Checking	\$404.00	\$404.00
Union Bank Savings	\$935.00	\$935.00
Pacific Service Credit Union	\$85.00	\$85.00
Pacific Service Credit Union Savings	\$5.00	\$5.00
Amazon Stock	\$200.00	\$200.00
2018 Tax Return	\$1206.00	\$1206.00

The debtor filed a response on September 19, 2019 stating that Debtor agrees with the trustee's Objection. Debtor will amend the claimed exemption. The Amended Schedule C was filed on September 19, 2019. Dckt. 24. The Objection will be overruled as moot.

2. [19-13121](#)-A-13 **IN RE: MILCA BARRERA-NUNEZ**
[PBB-1](#)

MOTION TO CONFIRM PLAN
8-16-2019 [\[17\]](#)

MILCA BARRERA-NUNEZ/MV
PETER BUNTING

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. [17-10828](#)-A-13 **IN RE: ALYSIA FLORES-FRANCO**
[PBB-1](#)

CONTINUED OBJECTION TO CLAIM OF DEPARTMENT OF
TREASURY-INTERNAL REVENUE SERVICE, CLAIM NUMBER 1
5-15-2019 [\[21\]](#)

ALYSIA FLORES-FRANCO/MV
PETER BUNTING

No Ruling

4. [16-12630](#)-A-13 **IN RE: ROGELIO/BETTY TRUJILLO**
[JRL-5](#)

MOTION TO REFINANCE AND/OR MOTION TO INCUR DEBT
8-21-2019 [\[64\]](#)

ROGELIO TRUJILLO/MV
JERRY LOWE
CONDITIONAL NON-OPPOSITION

Tentative Ruling

Motion: Approve New Debt [Refinance Existing Home Loan]
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

The debtors seek to incur new debt to refinance an existing home loan with Wells Fargo Bank. Amended Schedules I and J have been filed indicating that the debtors can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing.

The court cannot grant the motion though because the debtors' calculations do not add up. They want to incur a new loan of \$156,400.00 and use \$9,483.93 to cover the closing costs of the loan, \$25,100.92 to make needed repairs of the home and use \$7,634.04 to catch up on plan payments. This leaves \$114,181.11 to pay off the sole existing mortgage against the property, alleged by the debtors to be in the amount of \$114,175.69.

However, the mortgagee on the existing mortgage has filed a responsive pleading indicating that the total payoff is not \$114,175.69. It is \$132,554.00. The proposed new debt then is not sufficient to cover the home repairs, plan payment arrears, and the existing mortgage. As such, the motion will be denied.

The court note that debtors filed a nearly identical motion to incur debt where the mortgagee raised the same issue. Dckts. 54, Motion, 60, Non-Opposition. The court similarly denied the Motion without prejudice because the request did not mathematically compute. Dckt. 63, Order.

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 debtors' motion to refinance has been presented to the court. Having considered the motion and any papers filed in support of and response to the motion,

IT IS ORDERED that the motion is denied without prejudice.

5. [19-12243](#)-A-13 **IN RE: VALERIE JACQUES**
[JDR-1](#)

MOTION TO CONFIRM PLAN
8-12-2019 [\[35\]](#)

VALERIE JACQUES/MV
JEFFREY ROWE

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.

6. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[LNH-3](#)

MOTION TO SELL
8-28-2019 [\[58\]](#)

PETER FEAR/MV
SCOTT LYONS
LISA HOLDER/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 24816 Avenue 334, Lemon Cove, California

Buyer: Lane Arnold Anderson and Diann E. Anderson

Sale Price: \$455,095.00

receiving \$9,500.00 in cash and crediting the buyer:

- (1) \$309,189.00 for the secured deed of trust;
- (2) \$100,000.00 for the homestead exemption; and
- (3) \$ 36,410.00 the cost of sale

Sale Type: Private sale subject to overbid opportunity

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

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

7. [19-10251](#)-A-13 **IN RE: RAFAEL VALDOVINOS AND BERTA DE AGUILAR**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-21-2019 [\[66\]](#)

TD AUTO FINANCE LLC/MV
THOMAS GILLIS
JENNIFER WANG/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not

modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

8. [19-11256](#)-A-13 **IN RE: DAVID/BILLIE KELLEY**
[MAZ-2](#)

AMENDED MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL
GROUP INC.
8-29-2019 [\[54\]](#)

DAVID KELLEY/MV
MARK ZIMMERMAN

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. Specifically, the court flags for debtor's counsel that the registered agent as shown on the California Secretary of State website was not properly served at the address reflected in the most current 1505 Certificate.

9. [19-11256](#)-A-13 **IN RE: DAVID/BILLIE KELLEY**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
7-31-2019 [\[43\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

No Ruling

10. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-7](#)

MOTION FOR COMPENSATION FOR RILEY C. WALTER, DEBTORS
ATTORNEY(S)
8-30-2019 [\[60\]](#)

RILEY WALTER

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Wanger Jones Helsley PC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$19,935.00 and reimbursement of expenses in the amount of \$891.08.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a

final application for compensation and expenses, which shall be filed prior to case closure.

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.

Wanger Jones Helsley PC's application for allowance of interim compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$19,935.00 and reimbursement of expenses in the amount of \$891.08. The aggregate allowed amount equals \$20,826.08. As of the date of the application, the applicant held a retainer in the amount of \$4,980.71. The amount of \$15,845.37 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

11. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-8](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
8-30-2019 [\[56\]](#)

FRANK FAGUNDES/MV
RILEY WALTER

Tentative Ruling

Motion: Assume an Unexpired Lease

Disposition: Granted

Order: Civil minute order

The debtors in possession have moved to assume an unexpired lease of non-residential real property. The motion was set for hearing on the notice required by LBR 9014-1(f)(1). In the absence of opposition by the responding party, the rules of default apply. Fed. R. Bankr. P. 9014(c); Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055. Upon default, a motion's well-pleaded facts are taken as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Additionally, failure to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); see *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The default of the responding party is entered, and the matter is resolved without oral argument.

LEGAL STANDARDS

Section 365 of Title 11 gives the debtor in possession (DIP) limited options for its unexpired leases and executory contracts. 11 U.S.C. § 365(a), (f). The DIP has the option to assume, to assume and assign, or to reject. *Id.*; *In re Standor Jewelers West, Inc.*, 129 B.R. 200, 201 (B.A.P. 9th Cir. 1991). "By assumption, the trustee or DIP elects to be bound by the terms of the agreement so that the other party must continue to perform thereunder. The contract or lease remains in force" Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *Cal. Practice Guide: Bankruptcy* ¶ 16:2 (rev. 2011). Statutory conditions precedent must be satisfied before a court may approve an assumption of an unexpired lease. See 11 U.S.C. § 365(b). These conditions include curing defaults, compensating the lessor for actual pecuniary losses, or providing adequate assurance of that these conditions will be met. *Id.* § 365(b)(1), (2). The DIP must also provide adequate assurance of future performance under the lease. *Id.* § 365(b)(3).

In evaluating motions to assume or reject, the court applies the business judgment rule. See *In re Pomona Valley Med. Group*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000); March, Ahart & Shapiro, *supra*, ¶¶ 16:1535-1536, 16:515 (rev. 2011). In applying the business judgment rule, the bankruptcy court gives the decision to assume or reject only a cursory review under the presumption that "the [DIP] acted prudently, on an informed basis, in good faith, and

in the honest belief that the action taken was in the best interests of the bankruptcy estate.” In re Pomona Valley, 476 F.3d at 670.

ANALYSIS

Here, the DIP seeks to assume a lease of non-residential real property. The DIP did not provide a copy of the leases. The DIP provided a Declaration that assets that the lease relates to real property used to operate a small farming operation. The subject lease provides for an annual payment of \$750.00 to the son, or \$62.50 per month, of the DIP for the right to use five acres to grow crops. Dckt. 58, Declaration. The DIP states that the lease payments are current, the lease is an oral agreement between the DIP and landlord (the DIP’s son), the payments are market price, and that assumption is in the best interest of the creditors of the estate. *Id.*

The motion states that § 365(b) is satisfied because there are no defaults under either lease to be assumed, and the lessor has not suffered any pecuniary loss resulting from default under either lease to be assumed.

Based on the facts asserted in the motion regarding the statutory conditions precedent under § 365(b), and under the rules of default applicable in the absence of opposition, the court approves the assumption. The DIP’s decision to assume is based on sound business judgment and has been made in good faith.

CONCLUSION

Accordingly, the motion is granted. The moving party will prepare and lodge an order consistent with this ruling.

12. [19-12059](#)-A-13 **IN RE: JOHNNIE LOWERY AND HAZEL TURNER**
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF TOYOTA MOTOR CREDIT
CORPORATION
8-19-2019 [\[23\]](#)

JOHNNIE LOWERY/MV
TIMOTHY SPRINGER

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 2015 Toyota Camry LE with 71,000 miles. 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 \$12,375.00.

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.

13. [19-12160](#)-A-13 **IN RE: LISA STANDLEE**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-29-2019 [\[29\]](#)

MICHAEL MEYER/MV
SCOTT LYONS

Final Ruling

This objection has been voluntarily withdrawn by the movant. ECF No. 35.

14. [19-12462](#)-A-13 **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**
[PBB-1](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC
8-26-2019 [\[30\]](#)

ROBERT HAMPTON/MV
PETER BUNTING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an

exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) State of California, EDD Abstract recorded July 20, 2012, (ii) Sunlan-020105, LLC, (iii) State of California, EDD Abstracts recorded October 20, 2009; July 2, 2010; and November 10, 2010. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens, to the extent they are not statutory liens, against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$100,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the non-avoidable consensual liens plus the exemption amount equals approximately \$370,944.07. The value of the property is \$370,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

15. [19-12462](#)-A-13 **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**
[PBB-2](#)

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA, EMPLOYMENT
DEVELOPMENT DEPARTMENT
8-26-2019 [\[35\]](#)

ROBERT HAMPTON/MV
PETER BUNTING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LIEN-AVOIDANCE STANDARDS

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

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Cavalry SPV I, LLC, (ii) State of California, EDD Abstract recorded July 20, 2012, (iii) Sunlan-020105, LLC, (iv) State of California, EDD Abstracts recorded October 20, 2009; July 2, 2010; and November 10, 2010. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens, to the extent they are not statutory liens, against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$100,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the non-avoidable consensual liens plus the exemption amount equals approximately \$370,944.07. The value of the property is \$370,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

16. [19-12462](#)-A-13 **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**
[PBB-3](#)

MOTION TO AVOID LIEN OF SUNLAN-020105, LLC
8-26-2019 [\[40\]](#)

ROBERT HAMPTON/MV
PETER BUNTING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

LIEN-AVOIDANCE STANDARDS

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

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Cavalry SPV I, LLC, (ii) State of California, EDD Abstract recorded July 20, 2012, (iii) Sunlan-

020105, LLC, (iv) State of California, EDD Abstracts recorded October 20, 2009; July 2, 2010; and November 10, 2010 . The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens, to the extent they are not statutory liens, against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$100,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the non-avoidable consensual liens plus the exemption amount equals approximately \$370,944.07. The value of the property is \$370,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

17. [19-12462](#)-A-13 **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**
[PBB-4](#)

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA, EMPLOYMENT
DEVELOPMENT DEPARTMENT
8-26-2019 [\[45\]](#)

ROBERT HAMPTON/MV
PETER BUNTING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be

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

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Cavalry SPV I, LLC, (ii) State of California, EDD Abstract recorded July 20, 2012, (iii) Sunlan-020105, LLC, (iv) State of California, EDD Abstracts recorded October 20, 2009; July 2, 2010; and November 10, 2010. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens, to the extent they are not statutory liens, against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$100,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the non-avoidable consensual liens plus the exemption amount equals approximately \$370,944.07. The value of the property is \$370,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

18. [19-11864](#)-A-13 **IN RE: KIMBERLY CHANEY**
[MHM-2](#)

MOTION TO DISMISS CASE
8-2-2019 [\[32\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS

Final Ruling

This motion has been voluntarily withdrawn by the movant. ECF No. 44.

19. [19-12872](#)-A-13 **IN RE: ANTHONY RAMIREZ**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-28-2019 [\[21\]](#)

MICHAEL MEYER/MV
NICHOLAS WAJDA

Final Ruling

This objection has been voluntarily withdrawn by the movant. ECF
No. 31.

20. [19-10975](#)-A-13 **IN RE: EDUARDO FRANCO**
[TOG-3](#)

MOTION TO VALUE COLLATERAL OF WESTERRA CREDIT UNION
8-26-2019 [\[48\]](#)

EDUARDO FRANCO/MV
THOMAS GILLIS

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 2015 Toyota Corolla. 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 \$9,564.00.

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 2015 Toyota Corolla has a value of \$9,564.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,564.00 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.

21. [19-13077](#)-A-13 **IN RE: ANDREA SOUSA**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-26-2019 [\[31\]](#)

WILMINGTON TRUST, NATIONAL
ASSOCIATION/MV
JERRY LOWE
DARLENE VIGIL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief under § 362(d)(4)

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

Disposition: Granted

Order: Civil minute order

Subject: 1690 S. Anderson Road, Exeter, California

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

SECTION 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).

The debtor has missed 31 pre-petition payments, aggregating \$43,762.48 and 1 post-petition payments due on the debt secured by the moving party's lien. Moreover, the debtor's most recently filed plan classes this claim in Class 4. Chapter 13 Plan § 3.10, August 19, 2019, EC # 29. And once confirmed, the stay will lift as to this property anyway. This constitutes cause for stay relief. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

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).

APPLICATION

This is Debtor's sixth Chapter 13 bankruptcy proceeding involving the subject property since April of 2012. Case Nos. 12-14003; 14-11461; 15-14711; 17-13649; 18-13823; and 19-13077). Debtor did not receive a discharge in any of the Chapter 13 cases which were all dismissed due to failure to may required plan payments.

CIVIL MINUTE ORDER

Wilmington Trust, National Association, not as in its individual capacity, but solely as Trustee for MFRA Trust 2016-1'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 automatic stay of 11 U.S.C. § 362(a) is vacated with respect to real property commonly known as 1690 S. Anderson Road, Exeter, California.

IT IS FURTHER ORDERED, under 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filing affecting such real property.

22. [19-12679](#)-A-13 **IN RE: NAEEM/SAIMA QARNI**
[NEA-1](#)

MOTION TO CONFIRM PLAN
8-19-2019 [\[48\]](#)

NAEEM QARNI/MV
NICHOLAS ANIOTZBEHERE
RESPONSIVE PLEADING

Final Ruling

The motion to confirm is continued to December 18, 2019, at 3:00 p.m. Civil Minutes, September 17, 2019, ECF # 93.

23. [19-13283](#)-A-13 **IN RE: ANA MARIA CAMACHO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-5-2019 [\[17\]](#)

MARK ZIMMERMAN

No Ruling

24. [19-13086](#)-A-13 **IN RE: GARY/JANET BOTHUN**
[MHM-2](#)

MOTION TO DISMISS CASE
8-29-2019 [\[24\]](#)

MICHAEL MEYER/MV
DAVID JENKINS

Final Ruling

This motion has been voluntarily withdrawn by the movant. ECF No. 36.

25. [19-13087](#)-A-13 **IN RE: DAVID/NANCY CASTRO**
[PBB-3](#)

MOTION TO CONFIRM PLAN
8-13-2019 [\[26\]](#)

DAVID CASTRO/MV
PETER BUNTING

Final Ruling

This motion is moot as Debtors have voluntarily requested to dismiss the case. Dckt. 37.

26. [19-12788](#)-A-13 **IN RE: JOHNNY/MARY MORALES**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK
NATIONAL ASSOCIATION
8-13-2019 [\[31\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
MARK ZIMMERMAN
KATIE PARKER/ATTY. FOR MV.

No Ruling

27. [18-14190](#)-A-13 **IN RE: ADRIANE ASHFORD**
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
8-2-2019 [\[37\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

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).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

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

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

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

28. [19-12993](#)-A-13 **IN RE: WILLIAM COOK**

CONTINUED NOTICE OF INCOMPLETE FILING AND INTENT TO DISMISS
CASE
7-15-2019 [[3](#)]

No Ruling

29. [19-12993](#)-A-13 **IN RE: WILLIAM COOK**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-27-2019 [[50](#)]

THE BANK OF NEW YORK MELLON/MV
WENDY LOCKE/ATTY. FOR MV.

No Ruling

30. [19-12697](#)-A-13 **IN RE: CHRISTOPHER/HEATHER KENT**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-29-2019 [[16](#)]

MICHAEL MEYER/MV
DAVID JENKINS

Final Ruling

This objection has been voluntarily withdrawn by the movant. ECF
No. 23.