

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

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

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY

**DATE:** NOVEMBER 1, 2018

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

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

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

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

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

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

1. [18-12601](#)-A-13     **IN RE: JOSE/ANGELICA AVILA**  
[TOG-1](#)

MOTION TO MODIFY PLAN  
9-19-2018    [[18](#)]

JOSE AVILA/MV  
THOMAS GILLIS

### **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.

2. [14-14703](#)-A-13     **IN RE: BEATRICE PENA**  
[TCS-4](#)

MOTION TO INCUR DEBT  
10-16-2018    [\[43\]](#)

BEATRICE PENA/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

**No Ruling**

3. [15-10004](#)-A-13     **IN RE: LARRY VALENCIA**  
[TCS-8](#)

MOTION TO MODIFY PLAN  
9-26-2018    [\[133\]](#)

LARRY VALENCIA/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Modify Confirmed Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**INSUFFICIENT SERVICE**

The court will deny the motion without prejudice on grounds of insufficient service. The trustee and all creditors must be provided with "21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification." Fed. R. Bankr. P. 3015(h); LBR 3015-1(d)(2). "A copy of the proposed modification, or a summary thereof, shall be included with the notice." Fed. R. Bankr. P. 3015(h); see also LBR 3015-1(d)(2). In this case, the proof of service does not reflect service of the modified plan. Certificate of service, filed October 11, 2018, ECF No. 141.

The court will deny the motion without prejudice.

**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 modify plan has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion to modify the plan is denied without prejudice.

4. [18-12708](#)-A-13      **IN RE: JAMES/CELENA WATSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-5-2018    [[37](#)]

DAVID JENKINS  
\$77.00 INSTALLMENT PAYMENT    ON 10/15/18

**Tentative Ruling**

The \$77.00 installment due October 1, 2018, has been paid. However, the next and final installment of \$77 will become due October 30, 2018, which is a date prior to the date of this hearing. As the Order to Show Cause also applies to a failure to make any subsequent installment payment which may have come due and remains unpaid at the time of the hearing, should the final installment payment of \$77 not be paid by the time of this hearing, the case may be dismissed without further notice or hearing.

5. [18-12708](#)-A-13      **IN RE: JAMES/CELENA WATSON**  
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
10-5-2018    [[38](#)]

DAVID JENKINS

**No Ruling**

6. [18-13213](#)-A-13     **IN RE: JAMES/CHERYL CARRINGTON**  
[NLL-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY  
10-3-2018    [[23](#)]

WELLS FARGO BANK, N.A./MV  
ROBERT WILLIAMS  
NANCY LEE/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Confirm Absence of Automatic Stay

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

**Disposition:** Granted in part; Denied as moot in part

**Order:** Civil minute order

### **CONFIRMATION OF THE STAY'S TERMINATION**

If a debtor who files a petition has had two prior bankruptcy cases pending within the preceding one-year period that were dismissed, then the automatic stay does not go into effect upon the filing of the later case. 11 U.S.C. § 362(c)(4)(A)(i). And a party in interest may request an order confirming that no stay is in effect. *Id.* § 362(c)(4)(A)(ii). In this case, the debtor has had 2 cases pending within the preceding 1-year period that were dismissed. The automatic stay never went into effect upon the filing of the current case.

### **VIOLATION OF LOCAL BANKRUPTCY RULE 9014-1(d)(1)**

The Local Bankruptcy Rules do not permit the joinder of requests for multiple forms of relief that are separate and distinct from each other and not complementary or alternative to each other. LBR 9014-1(d)(1) provides: "Except as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion." In this case the debtor has filed a motion to confirm absence of stay and for in rem relief from the automatic stay.

### **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**

As discussed above, there is no automatic stay in this case. Specifically, there is no stay with respect to the debtor nor the estate. *See Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (B.A.P. 9th Cir. 2011). In addition, no evidence has been filed supporting relief under § 362(d)(4). The court will deny the motion for in rem relief as moot.

#### **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.

Wells Fargo Bank, N.A.'s motion to confirm the termination of the stay and for in rem relief has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted in part. The court hereby confirms that the automatic stay is not in effect.

IT IS FURTHER ORDERED that the motion is denied as moot, as to the request for in rem relief.

7. [18-13019](#)-A-13     **IN RE: RENEE BURTON**  
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
9-27-2018    [[31](#)]

MICHAEL MEYER/MV  
SCOTT LYONS

### **Final Ruling**

**Objection:** Objection to Claim of Exemptions  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Sustained  
**Order:** Civil minute order

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).

### **PAID-EARNINGS EXEMPTION**

The trustee objects to the debtors' claim of exemptions. The trustee objects to the debtors' claim of exemption in a checking account. The total funds in this account equal approximately \$1,800.00 as indicated on Schedule B. See Fed. R. Evid. 201. The exemption claimed is pursuant to C.C.P. § 704.070, the "paid earnings" exemption.

A debtor may claim an exemption in paid earnings under California Code of Civil Procedure section 704.070. Cal. Civ. Proc. Code § 704.070(a)(2), (b). The term "paid earnings" means "earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy." *Id.* § 704.070(a)(2). The term "earnings" means "compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." *Id.* § 706.011(b) (emphasis added).

The exemption for earnings is limited to all or a percentage of earnings paid to an employee within the 30-day period prior to the date of levy, which translates in the bankruptcy context to the 30-day period preceding the date of the petition. See Cal. Civ. Proc. Code § 704.070(a)(2); *In re Moffat*, 119 B.R. 201, 204 n.3 (B.A.P. 9th Cir. 1990) ("The debtor's exemption rights under state law are determined as of the date of the petition.").

The debtors have not opposed the relief sought. Accordingly, the court finds that the objection to the claim of exemption in the funds in the checking account should be sustained.

## **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 the debtors' claim of exemptions 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.

8. [18-13122](#)-A-13     **IN RE: ANNA OLIVAREZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
9-20-2018    [[21](#)]

MICHAEL MEYER/MV  
SCOTT LYONS  
DISMISSED 9/28/18

### **Final Ruling**

The case dismissed, the matter is denied as moot.

9. [18-13223](#)-A-13     **IN RE: ISMAEL/RITA HERRERA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
9-20-2018    [[21](#)]

MICHAEL MEYER/MV  
JERRY LOWE  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped from calendar.



10. [18-13226](#)-A-13     **IN RE: CHARLES/SHUANTA BROWN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
9-20-2018    [[16](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar.

11. [17-14529](#)-A-13     **IN RE: BRIAN FOLLAND**  
[DRJ-5](#)

MOTION TO CONFIRM PLAN  
9-25-2018    [[102](#)]

BRIAN FOLLAND/MV  
DAVID JENKINS  
RESPONSIVE PLEADING

**No Ruling**

12. [17-14529](#)-A-13     **IN RE: BRIAN FOLLAND**  
[MHM-4](#)

CONTINUED MOTION TO DISMISS CASE  
8-27-2018    [[82](#)]

MICHAEL MEYER/MV  
DAVID JENKINS  
RESPONSIVE PLEADING

**No Ruling**

13. [17-14334](#)-A-13     **IN RE: BRANDY BUMP**  
[JRL-6](#)

CONTINUED OBJECTION TO CLAIM OF NELNET, CLAIM NUMBER 1  
8-14-2018    [\[36\]](#)

BRANDY BUMP/MV  
JERRY LOWE  
WITHDRAWN

#### **Final Ruling**

The objection withdrawn, the matter is dropped from calendar.

14. [18-12436](#)-A-13     **IN RE: PAULA TORREZ**  
[SL-1](#)

MOTION TO MODIFY PLAN  
9-24-2018    [\[18\]](#)

PAULA TORREZ/MV  
STEPHEN LABIAK

#### **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.

15. [18-10339](#)-A-13     **IN RE: KENNETH BLOWERS AND KIMBERLY**  
BOLTON-BLOWERS  
[KMM-3](#)

MOTION TO CONFIRM PLAN  
9-27-2018    [\[91\]](#)

KENNETH BLOWERS/MV  
KARNEY MEKHITARIAN

### **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.

16. [18-10339](#)-A-13     **IN RE: KENNETH BLOWERS AND KIMBERLY**  
BOLTON-BLOWERS  
[MHM-5](#)

CONTINUED MOTION TO DISMISS CASE  
9-11-2018    [\[87\]](#)

MICHAEL MEYER/MV  
KARNEY MEKHITARIAN

### **No Ruling**

17. [18-12249](#)-A-13     **IN RE: TRISHALL WASHINGTON**  
[TCS-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF AMERICREDIT  
FINANCIAL SERVICES, INC.  
8-22-2018    [[20](#)]

TRISHALL WASHINGTON/MV  
TIMOTHY SPRINGER

**Final Ruling**

The matter resolved by stipulation and order, the hearing is dropped  
from calendar.

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

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SRP 2014-15  
LLC  
9-12-2018    [[22](#)]

SRP 2014-15 LLC/MV  
SCOTT LYONS  
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

**No Ruling**

19. [18-13252](#)-A-13     **IN RE: JENNIFER SILVA**  
[SL-2](#)

MOTION TO VALUE COLLATERAL OF SN SERVICING CORPORATION  
10-3-2018    [[25](#)]

JENNIFER SILVA/MV  
SCOTT LYONS  
RESPONSIVE PLEADING

**No Ruling**

20. [16-11061](#)-A-13     **IN RE: JOSHUA/JULIE WEEDMAN**  
[MAZ-1](#)

OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM  
NUMBER 20  
9-25-2018    [\[32\]](#)

JOSHUA WEEDMAN/MV  
MARK ZIMMERMAN  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar.

21. [16-11061](#)-A-13     **IN RE: JOSHUA/JULIE WEEDMAN**  
[MAZ-2](#)

OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM  
NUMBER 20  
9-26-2018    [\[38\]](#)

JOSHUA WEEDMAN/MV  
MARK ZIMMERMAN

**Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

Joshua and Julie Weedman, the debtors, object to the allowance of Claim No. 20 filed by Navy Federal Credit Union. The court will overrule the objection for the reasons discussed.

**NOTICE INSUFFICIENT**

Local Bankruptcy Rule 3007-1(b) provides that an objecting party may provide forty-four days' notice or thirty days' notice with respect to an objection to proof of claim. If an objecting party provides forty-four days' notice, opposition must be filed "by the responding party at least fourteen (14) days preceding the date or continued date of the hearing." LBR 3007-1(b)(1)(A). However, if an objecting party gives "fewer than forty-four (44) days' notice ... no party in interest shall be required to file written opposition ..." Instead, opposition may be presented at the hearing. LBR 3007-1(b)(2).

The debtor attempted to give the notice described in LBR 3007-1(b)(1). The notice of hearing provides that opposition "must be filed with the court ... no later than fourteen (14) days prior to the hearing." Notice of Hearing, ECF No. 39. However, the objecting party provided only 36 days' notice, and thus provided the notice described in LBR 3007-1(b)(2). Consequently, the notice of

hearing is incorrect because written opposition was not due 14 days prior to the hearing.

The court will overrule the objection without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtors' claim objection has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

22. [16-11061](#)-A-13      **IN RE: JOSHUA/JULIE WEEDMAN**  
[MAZ-3](#)

OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM  
NUMBER 21  
9-26-2018    [\[42\]](#)

JOSHUA WEEDMAN/MV  
MARK ZIMMERMAN

#### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

Joshua and Julie Weedman, the debtors, object to the allowance of Claim No. 21 filed by Navy Federal Credit Union. The court will overrule the objection for the reasons discussed.

#### **NOTICE INSUFFICIENT**

Local Bankruptcy Rule 3007-1(b) provides that an objecting party may provide forty-four days' notice or thirty days' notice with respect to an objection to proof of claim. If an objecting party provides forty-four days' notice, opposition must be filed "by the responding party at least fourteen (14) days preceding the date or continued date of the hearing." LBR 3007-1(b)(1)(A). However, if an objecting party gives "fewer than forty-four (44) days' notice ... no party in interest shall be required to file written opposition ..." Instead, opposition may be presented at the hearing. LBR 3007-1(b)(2).

The debtor attempted to give the notice described in LBR 3007-1(b)(1). The notice of hearing provides that opposition "must be filed with the court ... no later than fourteen (14) days prior to the hearing." Notice of Hearing, ECF No. 43. However, the objecting party provided only 36 days' notice, and thus provided the notice described in LBR 3007-1(b)(2). Consequently, the notice of

hearing is incorrect because written opposition was not due 14 days prior to the hearing.

The court will overrule the objection without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtors' claim objection has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

23. [16-11061](#)-A-13      **IN RE: JOSHUA/JULIE WEEDMAN**  
[MAZ-4](#)

OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM  
NUMBER 22  
9-26-2018    [\[46\]](#)

JOSHUA WEEDMAN/MV  
MARK ZIMMERMAN

#### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

Joshua and Julie Weedman, the debtors, object to the allowance of Claim No. 22 filed by Navy Federal Credit Union. The court will overrule the objection for the reasons discussed.

#### **NOTICE INSUFFICIENT**

Local Bankruptcy Rule 3007-1(b) provides that an objecting party may provide forty-four days' notice or thirty days' notice with respect to an objection to proof of claim. If an objecting party provides forty-four days' notice, opposition must be filed "by the responding party at least fourteen (14) days preceding the date or continued date of the hearing." LBR 3007-1(b)(1)(A). However, if an objecting party gives "fewer than forty-four (44) days' notice ... no party in interest shall be required to file written opposition ..." Instead, opposition may be presented at the hearing. LBR 3007-1(b)(2).

The debtor attempted to give the notice described in LBR 3007-1(b)(1). The notice of hearing provides that opposition "must be filed with the court ... no later than fourteen (14) days prior to the hearing." Notice of Hearing, ECF No. 47. However, the objecting party provided only 36 days' notice, and thus provided the notice described in LBR 3007-1(b)(2). Consequently, the notice of

hearing is incorrect because written opposition was not due 14 days prior to the hearing.

The court will overrule the objection without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtors' claim objection has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

24. [18-12363](#)-A-13     **IN RE: MANUEL/JINA VILLALOVOS**  
[SL-2](#)

MOTION TO CONFIRM PLAN  
9-26-2018    [\[34\]](#)

MANUEL VILLALOVOS/MV  
SCOTT LYONS

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

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



25. [18-12767](#)-A-13     **IN RE: CARLOS LEAL**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
8-22-2018    [[24](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

**Final Ruling**

The case dismissed, the matter is dropped from calendar.

26. [18-12769](#)-A-13     **IN RE: ARTHUR/SYLVIA RAMIREZ**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
8-22-2018    [[17](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar.

27. [15-11870](#)-A-13     **IN RE: GLENDA LANDIN**  
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-2-2018    [[36](#)]

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION/MV  
SCOTT LYONS  
NICHOLE GLOWIN/ATTY. FOR MV.  
RESPONSIVE PLEADING

**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 2.11 of the plan provides: "Upon confirmation of the plan, all bankruptcy stays 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.

#### **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.

Federal National Mortgage Association's motion for relief from stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied as moot.

28. [18-13071](#)-A-13     **IN RE: TEMPLE GINTHER**  
[SAH-1](#)

MOTION TO CONFIRM PLAN  
10-1-2018    [\[24\]](#)

TEMPLE GINTHER/MV  
SUSAN HEMB  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion requests confirmation 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 confirmation.

### **NON-COMPLIANCE WITH LOCAL RULES**

The court will deny the motion without prejudice on grounds of insufficient notice. Notice of a motion to confirm a plan shall comply with Local Bankruptcy Rule 3015-1(d)(1), which requires at least 35 days' notice prior to the hearing. In this case, 31 days' notice was provided. Certificate of service, filed October 1, 2018, ECF No. 27.

The court will deny the motion without prejudice.

### **CIVIL MINUTE ORDER**

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

The debtor's motion to confirm the proposed chapter 13 plan in this case has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

29. [18-13072](#)-A-13     **IN RE: CHARLES BLANKENSHIP**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
9-6-2018    [[32](#)]

MICHAEL MEYER/MV  
SHARLENE ROBERTS-CAUDLE  
DISMISSED 10/20/2018

**Final Ruling**

The case dismissed, the matter is dropped from calendar.

30. [18-13072](#)-A-13     **IN RE: CHARLES BLANKENSHIP**  
[MHM-2](#)

MOTION TO DISMISS CASE  
10-2-2018    [[40](#)]

MICHAEL MEYER/MV  
SHARLENE ROBERTS-CAUDLE  
DISMISSED 10/20/2018

**Final Ruling**

The case dismissed, the matter is dropped from calendar.

31. [18-12173](#)-A-13     **IN RE: VICENTE ALCALA AND JOSEFINA HERNANDEZ**  
[TOG-1](#)

MOTION TO CONFIRM PLAN  
9-26-2018    [[34](#)]

VICENTE ALCALA/MV  
THOMAS GILLIS  
RESPONSIVE PLEADINGS

**No Ruling**

32. [18-12375](#)-A-13     **IN RE: GREG/RANDA HALL**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
9-11-2018    [[25](#)]

MICHAEL MEYER/MV  
MARK ZIMMERMAN  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped from calendar.

33. [18-13075](#)-A-13     **IN RE: CYNTHIA BAUDER**  
[MHM-2](#)

MOTION TO DISMISS CASE  
9-5-2018    [[18](#)]

MICHAEL MEYER/MV  
PHILLIP GILLET

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

#### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307 because the debtor failed to attend a scheduled § 341 meeting of creditors. Because the debtor failed to attend the required § 341 creditors' meeting and did not file written opposition, the court will grant this motion.

#### **CIVIL MINUTE ORDER**

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

The trustee's motion to dismiss 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,  
and good cause appearing,

IT IS ORDERED that the motion is granted, and the case is dismissed.

34. [13-17076](#)-A-13     **IN RE: RAQUEL ARROYO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
9-6-2018    [[92](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped from calendar.

35. [17-12676](#)-A-13     **IN RE: VALER OCHOA**  
[SL-2](#)

MOTION TO SELL  
9-27-2018    [[31](#)]

VALER OCHOA/MV  
STEPHEN LABIAK  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Sell Property [Real Property]

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

**Disposition:** Granted

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

**Property:** 2212 S. Conyer Court, Visalia, California

**Buyer:** Nicholas Alexander Pion and Raechel Alicia Cano

**Sale Price:** 371,000

**Sale Type:** Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation. Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

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

36. [18-13380](#)-A-13     **IN RE: BETTY OCHOA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
10-2-2018    [\[20\]](#)

MICHAEL MEYER/MV  
GLEN GATES

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1,325.00.

## **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 trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

37. [18-13182](#)-A-13     **IN RE: WANDA CLEMMONS**  
[BH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JOHN E. GRINDSTAFF, JR.  
AND SHARON K. GRINDSTAFF  
10-9-2018    [[32](#)]

JOHN GRINDSTAFF/MV  
ROBERT WILLIAMS  
ROBERT BRUMFIELD/ATTY. FOR MV.

### **No Ruling**

38. [18-11388](#)-A-13     **IN RE: RAYMOND AVILES**  
[JDR-2](#)

MOTION TO CONFIRM PLAN  
9-13-2018    [[49](#)]

RAYMOND AVILES/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.

39. [18-13289](#)-A-13     **IN RE: JULIO CARBALLO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
9-27-2018    [[29](#)]

MICHAEL MEYER/MV  
DAVID JENKINS

#### **Final Ruling**

The case dismissed, the matter is dropped from calendar.

40. [18-12790](#)-A-13     **IN RE: ROBINSON/MARIA POLANCO**  
[RS-1](#)

MOTION TO CONFIRM PLAN  
9-19-2018    [[29](#)]

ROBINSON POLANCO/MV  
RICHARD STURDEVANT

#### **Final Ruling**

Pursuant to Order, ECF #48, this motion has been denied as moot.

41. [17-14095](#)-A-13     **IN RE: KEITH HORTON AND JENNIFER ROGERS**  
[GEG-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GATES LAW GROUP  
FOR GLEN E. GATES, DEBTORS ATTORNEY(S)  
9-27-2018    [[63](#)]

GLEN GATES

#### **No Ruling**

42. [18-12797](#)-A-13     **IN RE: ANTONIO LOZANO DE ANDA**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
8-22-2018    [[21](#)]

MICHAEL MEYER/MV  
RICHARD STURDEVANT  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar.

43. [18-12104](#)-A-13     **IN RE: DIANNA CONDELL**  
[MHM-3](#)

RESCHEDULED HEARING RE: MOTION TO DISMISS CASE  
9-12-2018    [[46](#)]

MICHAEL MEYER/MV  
MARK ZIMMERMAN  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped from calendar.