

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: DECEMBER 2, 2015
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-13607](#)-A-13 BEATRICE NARVAEZ
BF-5
BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/Atty. for dbt.
BRANDYE FOREMAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
11-11-15 [[28](#)]

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled as moot

Order: Civil minute order

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

Section 2.04 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section.

Bank of America, N.A., as a servicer, is a secured party whose claim has been placed in Class 1. Although it has not yet filed a proof of claim, the filing of such claim will resolve any alleged understatement of the arrearage in the plan's Class 1, given the language of section 2.04 of the plan. The court will resolve factual disputes about the amount of the arrearage, if any arise, upon a properly filed objection to Bank of America's proof of claim. Therefore, the objection will be overruled because any understatement of the amount of the creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights at this time, given the plan's incorporation of the creditor's proof of claim into the plan and given the creditor's ability to file a proof of claim that resolves the issue.

2. [15-13607](#)-A-13 BEATRICE NARVAEZ
PPR-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
ROBERT WILLIAMS/Atty. for dbt.
HALIE LEONARD/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
10-8-15 [[9](#)]

No tentative ruling.

3. [15-13607](#)-A-13 BEATRICE NARVAEZ
RSW-1
BEATRICE NARVAEZ/MV

MOTION TO VALUE COLLATERAL OF
WESTLAKE FINANCIAL SERVICES,
INC.
11-10-15 [[20](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the 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 2008 Volkswagen Jetta. 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 \$2490.

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 2008 Volkswagen Jetta has a value of \$2490. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2490 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.

4. [15-13607](#)-A-13 BEATRICE NARVAEZ
RSW-2
BEATRICE NARVAEZ/MV

MOTION TO VALUE COLLATERAL OF
DEUTSCHE BANK NATIONAL TRUST
COMPANY
11-10-15 [[24](#)]

ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the 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 strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 2409 Berkshire Rd., Bakersfield, CA.

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).

The debtor seeks to incur new debt for purposes of payment in full of the secured debt that debtor owes to creditor Muhamet Cifligu. Cifligu holds a deed of trust on debtor's real property located at 1501 California Avenue, Bakersfield, CA. (Cifligu also has a pending motion for stay relief that is also set for hearing on this December 2, 2015 calendar.) The amount outstanding appears to be approximately \$235,327.96 as of September 23, 2015.

The debtor operates his business at the 1501 California Avenue location. If Cifligu forecloses the deed of trust on this property, then debtor will be unable to complete his plan or otherwise pay creditors.

No collateral will be given to secure the loans. The creditors are listed on page 3 of the motion and include mostly relatives and friends and a business. The business will loan approximately \$140,000 and the relatives and friends will make up the difference between \$140,000 and \$235,327.96. The business will be paid at 10% interest and payments will be amortized over 5 years. The other loans will not bear interest, require no payments for 5 years, and will be due on demand after 5 years.

The court will authorize the debtor to incur the new debt requested. The debtor's Schedule J, filed November 5, 2015, shows net income of \$3950 per month. But Schedule J (and Schedule I) does not appear to show the amount of Cifligu's business loan that will be eliminated through the refinance.

However, the motion states that a new plan will be filed. So long as amended Schedules I and J are filed in support of the new plan, which reflect any changes in the debtor's debt structure after the refinance, the court will be able to evaluate the plan's feasibility at the confirmation hearing.

The court will authorize the new unsecured financing pursuant to §§ 364(b) and 1304(b) of the Bankruptcy Code, allowable as an administrative expense under § 503(b) and entitled to treatment and priority under § 1322(a)(2) unless the new lenders agree to different treatment.

7. [15-13716](#)-A-13 RIGOBERTO GONZALEZ
PP-1
MUHAMET CIFLIGU/MV
PATRICK KAVANAGH/Atty. for dbt.
MARGARET GARMS/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
10-7-15 [[27](#)]

No tentative ruling.

8. [12-19417](#)-A-13 PEDRO DURAN AND YOLANDA MOTION TO DISMISS CASE
MHM-2 LOPEZ 10-8-15 [[55](#)]
MICHAEL MEYER/MV
JANINE ESQUIVEL/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [15-13719](#)-A-13 BUFORD LAND MOTION TO DISMISS CASE
MHM-1 11-9-15 [[18](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 debtor has failed to appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

10. [14-12326](#)-A-13 GARY WRIGHT AND KIM MOTION TO MODIFY PLAN
RSW-3 GRIFFIN-WRIGHT 10-21-15 [[80](#)]
GARY WRIGHT/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

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).

NOTICE CONTENT

The content of the notice of hearing does not comply with LBR 3015-1(d)(2)'s procedure for confirmation of modified plans. The notice must contain content that informs respondents that opposition must be filed fourteen (14) days prior to the hearing. LBR 3015-1(d)(2). In this case, the notice fails to require written opposition that is due 14 days before the hearing. In the future, the court may impose a sanction for this type of noncompliance.

MODIFICATION

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

11. [11-61227](#)-A-13 GUILLERMO/ELVA RUBIO MOTION TO MODIFY PLAN
LKW-8 10-28-15 [[154](#)]
GUILLERMO RUBIO/MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

12. [11-61227](#)-A-13 GUILLERMO/ELVA RUBIO MOTION TO DISMISS CASE
MHM-2 10-8-15 [[146](#)]
MICHAEL MEYER/MV
LEONARD WELSH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

13. [15-11527](#)-A-13 WALKER/ALECIA MURRELL CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 9-4-15 [[25](#)]
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

14. [15-11527](#)-A-13 WALKER/ALECIA MURRELL MOTION TO CONFIRM PLAN
RSW-2 9-28-15 [[29](#)]
WALKER MURRELL/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

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).

NOTICE CONTENT

The content of the notice of hearing does not comply with LBR 3015-1(d)(1)'s procedure for plan confirmation. LBR 3015-1(d)(1) requires that Notice of the motion comply with LBR 9014-1(f)(1) as well as Fed. R. Bankr. P. 2002(b). Here, the notice did not comply with LBR 9014-1(f)(1) because it did not require notice that opposition must be filed 14 days prior to the hearing. Instead, the notice, and the amended notice, permit opposition to be presented at the hearing on the motion. In the future, the court may impose a sanction for this type of noncompliance.

CONFIRMATION

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

15. [11-16328](#)-A-13 CHARLES THOMEY AND MOTION TO DISMISS CASE
MHM-3 TIFFANY RILEY-THOMEY 10-6-15 [[95](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

No tentative ruling.

16. [14-12932](#)-A-13 ALICIA MARTINEZ MOTION TO DISMISS CASE
MHM-2 10-8-15 [[54](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [15-12638](#)-A-13 RICKY/TAMERA RICE CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 8-11-15 [[31](#)]
PHILLIP GILLET/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [15-12638](#)-A-13 RICKY/TAMERA RICE MOTION TO CONFIRM PLAN
PWG-3 10-1-15 [[44](#)]
RICKY RICE/MV
PHILLIP GILLET/Atty. for dbt.

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 debtor's counsel using Form EDC 3-081 and signed by the trustee

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 bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

19. [15-12639](#)-A-13 DAVID/MONICA GARZA CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 8-11-15 [[32](#)]
PHILLIP GILLET/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [15-12639](#)-A-13 DAVID/MONICA GARZA MOTION TO DISMISS CASE
MHM-2 10-27-15 [[49](#)]
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [15-12639](#)-A-13 DAVID/MONICA GARZA
PWG-2
DAVID GARZA/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING
OPPOSITION WITHDRAWN

MOTION TO CONFIRM PLAN
10-22-15 [[43](#)]

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

FACIALLY INVALID PROOF OF SERVICE FOR NOTICE PURPOSES

The proof of service is facially invalid for several reasons. First, the date shown on the list of creditors (page 2 of the proof at docket no. 46) is July 16, 2015. This date shown for what appears to be a computer-generated list of creditors and parties in interest is not a date near in time to the date the proof of service was executed.

Second, the "service list" is not specifically incorporated by reference on page 1 of the proof of service. Such a service list should be incorporated by reference specifically by the document title in the same what that a usual affidavit or declaration incorporates by reference an exhibit.

ALL CREDITORS NOT LISTED ON THE PROOF

Even if the court were to find that the proof of service was not deficient, the court would deny the motion because all creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that at least one creditor or party in interest has not received notice or has not received notice at the correct address.

There are reasons that the court prefers the use of the court's matrix as the list of creditors and parties in interest to whom a Rule 2002(a) notice should be transmitted. Creditors and other parties, other than the debtor, are added to the Matrix only if they (i) are included in the Master Address List at the outset of the case by the debtor, (ii) are added to an Amended Matrix filed with the court, (iii) file a proof of claim in the case, (iv) file a request for special notice or a notice of appearance containing a request for special notice, (v) file a request with the Clerk's office to be added to the mailing list, (vi) file a global request under Rule 2002(g)(4) and 11 U.S.C. § 342(f) or a designation under Rule 5003(e) (granted that they are originally included as a creditor in the Master Address List by the debtor). The court's matrix thus updates whenever a creditor or party in interest files a proof of claim, requests special notice, or files a global notice request § 342(f), the court's mailing matrix (or Master Mailing List) is updated. See 11 U.S.C. § 342(e), (f)(1)-(2); see also Fed. R. Bankr. P. 2002(g)(1), (2). It would be cumbersome and even impracticable for an attorney to keep track of each filing of a proof of claim, every request for special notice, and every global request made potentially with a different bankruptcy court, § 342(f). Therefore, the court prefers its mailing matrix for notice purposes because parties relying on their own self-constructed

list for notice tend to miss at least one or more creditors or often transmit notice to an incorrect address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the motion being noticed. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

22. [15-12640](#)-A-13 JASON/MICHELLE WILLIAMS MOTION TO DISMISS CASE
MHM-1 10-8-15 [[18](#)]
MICHAEL MEYER/MV
SUSAN SALEHI/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$3723.10.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$3723.10. This delinquency constitutes cause to dismiss this case. 11 U.S.C.

§ 1307(c)(1), (6). The court hereby dismisses this case.

23. [15-10043](#)-A-13 JON/KATHLEEN QUIJADA CONTINUED MOTION FOR
NES-4 COMPENSATION FOR NEIL E.
SCHWARTZ, DEBTORS ATTORNEY(S)
9-25-15 [[76](#)]

NEIL SCHWARTZ/Atty. for dbt.

Tentative Ruling

Application: Compensation and Expenses
Notice: Continued hearing date
Disposition: Disapproved without prejudice
Order: Civil minute order

The debtors, the US Trustee, and the chapter 13 trustee, appear to have received notice of the original application. But all creditors and parties in interest have not received sufficient notice of the original application (or the continued notice of hearing as noted below). The hearing on an application for approval of compensation or reimbursement of expenses, when the application requests approval of an amount exceeding \$1000, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3).

Additionally, the court's civil minutes indicate that oral opposition was to be allowed at the continued hearing, but the notice of continued hearing relies on LBR 9014-1(f)(1), which does not permit oral opposition.

Lastly, the notice of continued hearing was also required to be served on all creditors, the debtors, and the chapter 13 trustee, and the US Trustee. This instruction has not been followed.

24. [15-12046](#)-A-13 JEFFREY/ANGELINA MOTION TO MODIFY PLAN
RSW-1 JORGENSEN 10-22-15 [[37](#)]
JEFFREY JORGENSEN/MV
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Modify Chapter 13 Plan
Notice: LBR 3015-1(d)(2), 9014-1(f)(2); written opposition required
Disposition: Granted
Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

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).

NOTICE CONTENT

The content of the notice of hearing does not comply with LBR 3015-1(d)(2)'s procedure for confirmation of modified plans. The notice must contain content that informs respondents that opposition must be filed fourteen (14) days prior to the hearing. LBR 3015-1(d)(2). In this case, the notice fails to require written opposition that is due 14 days before the hearing. In the future, the court may impose a sanction for this type of noncompliance.

MODIFICATION

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

25. [14-10149](#)-A-13 JOHN/WANDA GRIFFIN MOTION TO DISMISS CASE
MHM-1 10-6-15 [[34](#)]
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [14-12360](#)-A-13 SERGIO BUENO MOTION TO COMPEL ABANDONMENT
PK-2 11-11-15 [[107](#)]
WILLIAM ESCOTO/MV
ROBERT WILLIAMS/Atty. for dbt.
PATRICK KAVANAGH/Atty. for mv.
DISMISSED

Final Ruling

The case dismissed, the motion is denied as moot.

27. [14-11761](#)-A-13 FRANCISCO/DIANE LOPEZ MOTION TO MODIFY PLAN
RSW-2 10-19-15 [[37](#)]
FRANCISCO LOPEZ/MV
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

28. [11-17264](#)-A-13 MICHAEL/CHERYL PAULEY MOTION TO DISMISS CASE
MHM-1 10-6-15 [[44](#)]
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.

Final Ruling

The motion withdrawn, the matter is dropped as moot.

29. [13-15569](#)-A-13 JOANNIE RIOS MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
NISSAN MOTOR ACCEPTANCE 10-27-15 [[37](#)]
CORPORATION/MV
ROBERT WILLIAMS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2010 Chevrolet 3500 Van

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).

STAY RELIEF

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).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest

against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . .) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

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

Two species of cause exist here. First, the debtor has missed three post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief. Second, collateral is not listed on the debtor's Schedule B and is not provided for by the chapter 13 plan. Plan, August 18, 2013, ECF #5. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Nissan Motor Acceptance Corporation's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2010 Chevrolet 3500 Van, VIN # 1GB6G3BG8A1108898, as to all parties in interest. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law. The stay in Rule 4001(a)(3) is waived.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

30. [14-11379](#)-A-13 ROBERTA CUMBERLAND
PK-5
ROBERTA CUMBERLAND/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
9-23-15 [[97](#)]

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 debtor's counsel using Form EDC 3-081 and signed by the trustee

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

31. [14-11379](#)-A-13 ROBERTA CUMBERLAND
PK-6
ROBERTA CUMBERLAND/MV
PATRICK KAVANAGH/Atty. for dbt.

OBJECTION TO CLAIM OF QUANTUM3
GROUP LLC, CLAIM NUMBER 7
10-13-15 [[116](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(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 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).

OBJECTION TO Claim No. 7

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

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

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

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

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

Here, the claim is asserted by Quantum3 Group, LLC, who contends that it is the secondary or tertiary assignee of Smilecare (the original creditor). California law is clear: the burden of proving assignment falls on the party asserting the assignment. *Cockerell v. Title Ins. and Trust Co. (In re Cockerell)*, 42 Cal.2d 284 (1954). A similar analysis is applied by the Bankruptcy Court. *In re Melillo*, 392 B.R. 1 (1st Cir. BAP 2008). Here, the claim fails to connect the dots in the alleged chain of assignment. The debtor and the claimant agree that the debtor owed a debt to Smilecare. The debtor denies owing the claimant. And the only proof of assignment is the "Bankruptcy Rule 3001(c)(3)(A) Statement of Account Information," which refers to "Genesis Bankcard Services, Inc.," "assignor" and "Galaxy International Purchasing, LLC," "assignee." The claim purports to act as "agent" for "Galaxy International Purchasing, LLC." While this may adequately document the assignment from Genesis to Galaxy, no effort

is made to document Galaxy's rights and the debtor denies owing any debt to Galaxy. Declaration of Cumberland ¶ 3, filed October 13, 2015, ECF # 119. As a result, the objection is 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.

Debtor Roberta Cumberland's objection to claim no. 7 (Quantum3 Group, LLC, as agent for Galaxy Internal Purchasing, LLC) 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 (1) the objection as to Claim No. 7 is sustained; and (2) Quantum3 Group, LLC, as agent for Galaxy Internal Purchasing, LLC shall take nothing by way of its claim.

32. [15-13580](#)-A-13 ROBYN HILL AVERY
MHM-1
MICHAEL MEYER/MV
NIMA VOKSHORI/Atty. for dbt.

MOTION TO DISMISS CASE
11-9-15 [[27](#)]

Tentative 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to provide the Chapter 13 trustee with her paystub for March 2015, and her 2014 state tax returns. 11 U.S.C. § 521(a)(3), (4).

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to

appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to provide the Chapter 13 trustee with all of the documents required by 11 U.S.C. § 521(a)(3), (4). The court hereby dismisses this case.

33. [11-63487](#)-A-13 KENNETH/BARBARA HARRIS MOTION TO DISMISS CASE
MHM-2 10-6-15 [[108](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

34. [12-13093](#)-A-13 LONNIE/BROOK HAYES MOTION TO DISMISS CASE
MHM-3 10-8-15 [[70](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$9,572.00.

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$9,572.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

35. [15-14296](#)-A-13 LAO CHA
DRJ-2
LAO CHA/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
11-5-15 [[9](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

36. [15-14411](#)-A-13 NICK/CHRISTINA NGIRAILILD MOTION TO CONTINUE THE
PK-2 AUTOMATIC STAY AS TO FINANCE
NICK NGIRAILILD/MV AND THRIFT
11-18-15 [[10](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted as to Finance and Thrift only

Order: Prepared by moving party pursuant to the instructions below

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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

37. [15-14303](#)-A-13 LORI SILVA MOTION TO EXTEND AUTOMATIC STAY
RSW-1 11-20-15 [[14](#)]
LORI SILVA/MV
ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.