

**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: MARCH 28, 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. [18-14403](#)-A-13 **IN RE: RODOLFO TORRES AND MARIA DE CAZARES**
[TOG-2](#)

MOTION TO MODIFY PLAN
2-20-2019 [[42](#)]

RODOLFO TORRES/MV
THOMAS GILLIS
RESPONSIVE PLEADING

No Ruling

2. [18-14508](#)-A-13 **IN RE: PEDRO ESPINOZA**
[MHM-2](#)

MOTION TO DISMISS CASE
2-11-2019 [[30](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, citing the debtor's plan payment default of \$2,135 for January 2019. 11 U.S.C. § 1307(c)(1)&(4).

The debtor opposes dismissal, contending that he made the January 2019 payment on February 22.

However, the debtor has said nothing about the plan payments due in February 2019 and March 2019, which are both due prior to the hearing on this motion. See ECF No. 40. The motion asks for the court to account for those payments as well.

The court also notes that the debtor's evidence is unsupported by a declaration establishing the factual assertions in the motion. Attaching an exhibit to a motion does not make the exhibit admissible.

Given the debtor's failure to proffer evidence of making the February 2019 payment and March 2019 plan payment, each for the same amount of \$2,135, dismissal is appropriate. See 11 U.S.C. § 1307(c)(1)&(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 this chapter 13 case has been presented to the court. Having considered the well-pleaded facts of the motion and the pleadings proffered by the respondent debtor in response to the motion,

IT IS ORDERED that the motion is granted because of the debtor's failure to make plan payments. The court hereby dismisses this case.

3. [19-10409](#)-A-13 **IN RE: IRENE BARRAGAN**
[TGM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY STRUCTURED ASSET
SECURITIES CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2006-BC4
2-14-2019 [[10](#)]

STRUCTURED ASSET SECURITIES
CORPORATION MORTGAGE
TIMOTHY SPRINGER
TYNEIA MERRITT/ATTY. FOR MV.

No Ruling

4. [18-15118](#)-A-13 **IN RE: FANNY CERVANTEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
2-11-2019 [[31](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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 because of 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) and (c)(4) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1,650. And, additional two payments for February and March 2019, of \$1,650 each, will come due prior to the hearing on this motion.

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.

5. [18-14133](#)-A-13 **IN RE: CHARLES SMITH**
[MJA-1](#)

MOTION TO CONFIRM PLAN
1-29-2019 [[32](#)]

CHARLES SMITH/MV
MICHAEL ARNOLD
RESPONSIVE PLEADING

No Ruling

6. [18-14836](#)-A-13 **IN RE: FRANK/ANA YBARRA**
[MHM-3](#)

MOTION TO DISMISS CASE
2-11-2019 [[34](#)]

MICHAEL MEYER/MV
RANDALL WALTON
DISMISSED 2/20/19

Final Ruling

The case dismissed, the matter is dropped from calendar.

7. [18-14037](#)-A-13 **IN RE: DESIREE MARTINEZ**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL CREDIT UNION
3-6-2019 [[69](#)]

DESIREE MARTINEZ/MV
SCOTT LYONS

Final Ruling

Motion: Avoid Lien that Impairs Exemption
Disposition: Denied without prejudice
Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

8. [18-11439](#)-A-7 **IN RE: BRANDON/LESLIE SMART**
[MHM-4](#)

MOTION TO DISMISS CASE
2-11-2019 [[66](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
CONVERTED 3/6/19

Final Ruling

The case dismissed, the matter is dropped from calendar.

9. [18-14146](#)-A-13 **IN RE: JULIAN/GLORIA TORRES**
[NSV-1](#)

CONTINUED MOTION TO CONFIRM PLAN
1-30-2019 [[40](#)]

JULIAN TORRES/MV
NIMA VOKSHORI

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), (continued from 3/6/19)

Disposition: Continued

Order: Civil minute order

As the court continued the March 22, 2019 hearing on the trustee's motion to dismiss the case to April 11, 2019 at 9:00, due to the debtors' failure to address unfiled tax returns and claims by the IRS and the FTB, the court will continue the hearing on this motion to April 11, 2019 at 9:00 a.m. as well, for both motions to be heard at the same time.

CIVIL MINUTE ORDER

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

The debtors' motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition, and good cause appearing,

IT IS ORDERED that the hearing on this motion is continued to April 11, 2019 at 9:00 a.m.

10. [18-15052](#)-A-13 **IN RE: DARREN/MEGAN MORRISON**
[PBB-1](#)

MOTION TO CONFIRM PLAN
2-20-2019 [[26](#)]

DARREN MORRISON/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.

11. [18-10754](#)-A-13 **IN RE: EUSTORGIO REYES**
[ALG-2](#)

MOTION TO APPROVE LOAN MODIFICATION
2-21-2019 [[46](#)]

EUSTORGIO REYES/MV
JANINE ESQUIVEL

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

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).

LOAN MODIFICATION

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

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

The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 362(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1).

By granting this motion, the court is not approving the terms or conditions of the loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the terms and conditions of the loan modification agreement or other declaratory relief.

CIVIL MINUTE ORDER

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

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

The court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied in part. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right

to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court denies the motion to the extent it requests approval of the terms and conditions of the loan modification or any other declaratory relief. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

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

12. [18-12661](#)-A-13 **IN RE: GEORGE WRIGHT**
[ALG-2](#)

MOTION TO MODIFY PLAN
2-12-2019 [[69](#)]

GEORGE WRIGHT/MV
JANINE ESQUIVEL

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 cannot conclude that the debtor has sustained that burden, as there are no current Schedules I and J reflecting that the debtor is able to make the proposed \$274 plan payment. The debtor last filed Schedules I and J on August 27, 2018, reflecting only \$126.39 in monthly net income. ECF No. 36. The court cannot approve confirmation of the plan.

CIVIL MINUTE ORDER

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

The debtor's motion to modify a chapter 13 plan 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 denied without prejudice, given the absence of evidence that the debtor can make the payments under the proposed modified plan.

13. [15-14163](#)-A-13 **IN RE: DANNY/BEVERLY ALLEN**
[RSW-1](#)

MOTION FOR SUBSTITUTION FOR DECEASED DEBTOR, MOTION TO WAIVE FILING REQUIREMENT OF 1328 CERTIFICATE AS TO DEBTOR ONLY, MOTION FOR AUTHORIZATION TO TRANSFER PROPERTY
3-7-2019 [37]

BEVERLY ALLEN/MV
ROBERT WILLIAMS

Tentative Ruling

Motion: Substitution of Representative, Continued Administration, Waiver of Certifications, Transfer of Property

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

Disposition: Granted in part and denied in part without prejudice

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).

The joint debtor Beverly Allen asks that she is substituted as successor in interest to the debtor Danny Allen, as Danny Allen passed away on January 15, 2019, prior to the full administration of this chapter 13 bankruptcy estate.

DISCUSSION

Suggestion of Death

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

Notice of Death. In a bankruptcy case which has not been closed, a **Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025]** shall be filed within

sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. **A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.**

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

Here, a notice of death was filed on March 7, 2019, doubling as this motion.

Substitution of Representative

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

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

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

Where the debtor dies during the administration of a chapter 13 case, dismissal of the case is not required. "[I]f further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by Fed. R. Bankr. P. 7025, 9014(c)* and LBR 1016-1(a).

Debtor Danny Allen passed away on January 15, 2019, prior to the full administration of this chapter 13 bankruptcy estate.

Continued Administration

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

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.**

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

The court cannot permit the continued administration of the estate because there is nothing in the motion indicating that the estate can continue to be administered in the absence of Danny Allen.

Wavier of Post-Petition Education Requirement

In most cases, individual chapter 13 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless
. . . after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability,** or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4). However, Danny Allen does not need to be exempt from the requirement for a

post-petition personal financial management course, as he completed such requirement prior to his passing.

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

TRANSFER OF PROPERTY

The court will deny the motion's request for authorization of "the transfer of any property through probate," only to the joint debtor Beverly Allen. ECF No. 37 at 2. The court does not understand the request. It does not understand why Beverly Allen needs this court's permission - as opposed to permission from the probate court - for transfers within a probate proceeding. The motion also gives no information about any probate proceeding and its role in this bankruptcy case. Particular transfers and property have not been described either. Nor is there any legal basis in the motion for such broad relief.

The motion will be granted in part and denied in part as provided in this ruling.

CIVIL MINUTE ORDER

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

Beverly Allen's motion has been presented to the court. Having entered the default of the respondents and having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted in part and denied in part. Beverly Allen is appointed as successor in interest to Danny Allen in this bankruptcy case, given his passing. 11 U.S.C. § 1328 certifications are waived for Danny Allen.

IT IS FURTHER ORDERED that continued administration of the bankruptcy estate is denied without prejudice, given the absence of evidence that administration is possible in the absence of Danny Allen.

IT IS FURTHER ORDERED that authority from this court for transfers of property within a probate proceeding is denied without prejudice.

14. [15-14163](#)-A-13 **IN RE: DANNY/BEVERLY ALLEN**
[RSW-2](#)

MOTION TO SELL
3-7-2019 [[40](#)]

BEVERLY ALLEN/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

15. [19-10169](#)-A-13 **IN RE: DAMON/REGINA GUNDERMAN**
[DRJ-3](#)

MOTION TO CONFIRM PLAN
2-7-2019 [[14](#)]

DAMON GUNDERMAN/MV
DAVID JENKINS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued

Order: Civil minute order

This motion will be denied without prejudice because the hearing on the motion is premature, in violation of 11 U.S.C. § 1324(b), as it is heard earlier than 20 days after the March 12, 2019 meeting of creditors (only 16 days after the meeting).

More, the Notice of Chapter 13 Bankruptcy Case gives notice that the hearing on plan confirmation will be held on April 11, 2019 at 9:00 a.m., with parties in interest to file objections to confirmation no later than March 19, 2019. ECF No. 21 at 2.

The debtors suggest that the court continue the hearing on this motion to April 11, 2019 at 9:00 a.m.

The court is inclined to continue the hearing on this motion to April 11, 2019 at 9:00 a.m. and order the debtors to provide no later than March 29 notice of the continued hearing date, along with notice that oppositions may be made orally at the April 11 hearing.

CIVIL MINUTE ORDER

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

The debtors' motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers

filed in support and opposition, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the hearing on this motion is continued to April 11, 2019 at 9:00 a.m.

IT IS FURTHER ORDERED that the debtors shall give notice to all interested parties of the continued hearing date, apprising such parties also that any opposition to the motion may be made at the April 11 hearing. Such notice shall be served and filed with the court no later than March 29, 2019.

16. [19-10169](#)-A-13 **IN RE: DAMON/REGINA GUNDERMAN**
[DRJ-4](#)

MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES,
INC.
2-28-2019 [[27](#)]

DAMON GUNDERMAN/MV
DAVID JENKINS

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle (2014 Nissan Altima)]
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

VALUATION OF COLLATERAL

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

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

vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2014 Nissan Altima. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition.

However, the court does not have probative or admissible evidence of value for the vehicle. The only evidence of value in the record is a statement from the debtors in their joint declaration, stating that the vehicle "had a fair market value of \$9,100.00." ECF No. 29.

However, the standard is not "fair market value." It is replacement value, defined as "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." 11 U.S.C. § 506(a)(2).

In short, the court cannot tell whether the debtors used the correct legal standard for proffering a value for the vehicle. Accordingly, the motion will be denied.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied without prejudice.

17. [19-10169](#)-A-13 **IN RE: DAMON/REGINA GUNDERMAN**
[DRJ-5](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL
SERVICES, INC.
2-28-2019 [[31](#)]

DAMON GUNDERMAN/MV
DAVID JENKINS

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle (2007 Chevrolet Silverado)]

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

Disposition: Denied without prejudice

Order: Civil minute order

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 2007 Chevrolet Silverado. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition.

However, the court does not have probative or admissible evidence of value for the vehicle. The only evidence of value in the record is a statement from the debtors in their joint declaration, stating that the vehicle "had a fair market value of \$10,240.00." ECF No. 33.

However, the standard is not "fair market value." It is replacement value, defined as "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." 11 U.S.C. § 506(a)(2).

In short, the court cannot tell whether the debtors used the correct legal standard for proffering a value for the vehicle. Accordingly, the motion will be denied.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied without prejudice.

18. [18-12678](#)-A-13 **IN RE: MICHAEL PFEIFFER**
[DMG-2](#)

OBJECTION TO CLAIM OF DEBRA MCGUIRE, CLAIM NUMBER 16
2-12-2019 [[56](#)]

MICHAEL PFEIFFER/MV
D. GARDNER

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained in part

Order: Prepared by objecting party

The debtor objects to the allowance of priority Proof of Claim No. 16-2 in the amount of **\$40,570.36** filed by the claimant Debra McGuire. The claimant opposes the sustaining of the objection. The court will sustain the objection for the reasons discussed in this ruling.

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)).

The subject proof of claim is based on a marital dissolution judgment entered against the debtor in favor of the claimant. The proof of claim includes three components from the judgment: (i) a \$25,000 equalization payment for a community credit card debt, to be made by the debtor to the claimant; (ii) a \$4,000 payment to be made by the debtor to the claimant on account of medical bills incurred by the claimant; and (iii) \$2,300 in attorney's fees incurred by the claimant, to be paid by the debtor to the claimant. In total, these amounts add up to **\$31,300**.

The debtor does not challenge the priority classification of the proof of claim, as according to him the confirmed plan provides 100% dividend to unsecured creditors. The debtor objects however to the amount of the claim, contending that the correct amount of the claim should be **\$27,346.69**. Specifically, the objection challenges:

(1) the addition of \$4,585 in attorney's fees for the claimant's enforcement of the claim, including attorney's fees in this and a prior dismissed chapter 13 case of the debtor;

(2) the addition of \$5,292.32 in post-judgment interest on the marital dissolution judgment; and

(3) the lack of credit in the proof of claim for \$3,953.31 the debtor paid to the claimant on account of the claim in his prior chapter 13 case.

Preliminarily, the debtor has overcome the presumptive validity of the proof of claim. The debtor has produced sufficient evidence to satisfy the burden of going forward on the objection. ECF Nos. 58 & 59. On the other hand, the claimant, in opposing the objection, has produced no evidence whatsoever to support her factual assertions in the opposition. See ECF No. 65.

Turning to the merits, the objection will be sustained in part.

First, according to the opposition and proof of claim, the claimant contends that she is entitled to attorney's fees in the amount of \$4,585 under Cal. Fam. Code § 3557(a)(2), beyond what the claimant was awarded by the state court in the marital dissolution judgment. The court rejects this argument because the trigger for attorney's fees under Cal. Fam. Code § 3557(a)(2) is an award of such fees by a court. Cal. Fam. Code § 3557(a) provides that:

(a) Notwithstanding any other provision of law, absent good cause to the contrary, **the court**, in order to ensure that each party has access to legal representation to preserve each party's rights, upon determining (1) an award of attorney's fees and cost under this section is appropriate, (2) there is a disparity in access to funds to retain counsel, and (3) one party is able to pay for legal representation for both parties, **shall award** reasonable attorney's fees to any of the following persons:

(1) A custodial parent or other person to whom payments should be made in any action to enforce any of the following:

(A) An existing order for child support.

(B) A penalty incurred pursuant to Chapter 5 (commencing with Section 4720) of Part 5 of Division 9.

(2) A supported spouse in an action to enforce an existing order for spousal support.

The attorney's fees in the proof of claim, beyond the marital dissolution judgment, are not based on an award by a court. They were not awarded by the state court, this court, or any other court. Nor is there another statute allowing the attorney's fees. The opposition simply glosses over the lack of an award of the fees.

As such, the \$4,585 in attorney's fees will be disallowed from the proof of claim.

Second, the general rule is that claims do not incur interest post-petition. "Generally, the Code does not provide for pendency interest to creditors, because the filing of the petition usually stops interest from accruing." *Wells Fargo Bank, N.A. v. Beltway*

One Dev. Grp., LLC (In re Beltway One Dev. Grp., LLC), 547 B.R. 819, 826 (B.A.P. 9th Cir. 2016).

However, bankruptcy law governs the issue [of whether interest accrues post-petition]. See *Bursch v. Beardsley & Piper*, 971 F.2d 108, 114 (8th Cir.1992) (federal law determines creditor's rights after filing of bankruptcy petition). Bankruptcy law generally does not provide for collection of interest accruing after the filing of a bankruptcy petition. See 11 U.S.C. § 502(b)(2) (court may not allow claim for unmatured interest); see, e.g., *In re Hanna*, 872 F.2d 829, 831 (8th Cir.1989) (post petition interest is disallowed against estate under section 502). The Bankruptcy Code does allow collection of interest or its functional equivalent under certain circumstances, see, e.g., 11 U.S.C. §§ 506(b), 1325 (2000); *In re Milham*, 141 F.3d 420, 423-24 (2d Cir.1998), but we cannot determine from the record before us whether these provisions were applied by the bankruptcy court or the district court.

Brooks v. Am. Gen. Fin., Inc. (In re Brooks), 323 F.3d 675, 678 (8th Cir. 2003).

The exceptions to this rule are over-secured claims and nondischargeable claims.

Section 506(b), however, provides an exception for oversecured creditors:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

§ 506(b). Thus, an oversecured creditor can recover pendency interest as part of its allowed claim, at least to the extent it is oversecured. *Rake v. Wade*, 508 U.S. 464, 471, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993), superseded on other grounds by §§ 1123(d) and 1322(e); *Ron Pair Enters., Inc.*, 489 U.S. at 241, 109 S.Ct. 1026; *In re Hoopai*, 581 F.3d at 1099-1101 (pendency period includes from the petition date to the date of plan confirmation as opposed to the "effective date," unless the plan specifically provides an effective date).

Beltway One Dev. Grp., LLC at 826.

Nondischargeable debt has also been held to incur interest post-petition.

Our opinion in *Pardee* [*Great Lakes Higher Education Corp. v. Pardee (In re Pardee)*, 218 B.R. 916, 919 (9th Cir. BAP 1998), aff'd, 193 F.3d 1083 (9th Cir.1999)] **concluded that *Bruning*** [*Bruning v. United States*, 376 U.S. 358, 84 S.Ct. 906, 11

L.Ed.2d 772 (1964)] **retained continuing vitality**, noting that five circuit courts had held that it **remained good law under the Bankruptcy Code**. *Pardee*, 218 B.R. at 921. We found no reason to limit *Bruning* to nondischargeable tax debts, and thus concluded that post-petition interest on a nondischargeable student loan debt is nondischargeable under the Code. *Id.*

. . .

Pardee's reasoning has been extended to nondischargeable support obligations. See *Jacobson v. Jacobson (In re Jacobson)*, 231 B.R. 763 (Bankr.D.Ariz.1999). See also *In re Slater*, 188 B.R. 852, 856 (Bankr.E.D.Wash.1995) and *In re Crable*, 174 B.R. 62, 63-64 (Bankr.W.D.Ky.1994) (post-petition interest on nondischargeable child support arrearages continues to accrue during the pendency of chapter 13 proceeding and survives discharge).

We see no reason to treat post-petition interest on support obligations differently from interest on nondischargeable taxes or student loans. See *Pardee*, 218 B.R. at 929 (Klein, J., concurring) (noting in dicta that post-petition interest on alimony and support debts is nondischargeable). The principles articulated in *Bruning* are as valid for support debt as for any other nondischargeable debt. Regardless of the nature of the underlying obligation, interest represents the cost of the debtor's use of the amounts owed to a creditor and should thus be treated as "an integral part of a continuing debt." *Bruning*, 376 U.S. at 360, 84 S.Ct. 906.

County of Sacramento v. Foross (In re Foross), 242 B.R. 692, 693-94 (B.A.P. 9th Cir. 1999); see also *In re Pitt*, 240 B.R. 908, 911 (Bankr. N.D. Cal. 1999); *Strauss v. Student Loan Office -Mercer-University (In re Strauss)*, 216 B.R. 638, 640 n.3 (Bankr. N.D. Cal. 1998)(recognizing that post-petition interest on nondischargeable claims continues to accrue); *Roa-Moreno v. U.S. Dep't of Health and Human Servs. (In re Roa-Moreno)*, 208 B.R. 488, 492 (Bankr. C.D. Cal. 1997).

Here, however, the claim at issue is neither over-secured, nor nondischargeable. The general exception to discharge section of title 11 addresses two types of debts incurred in connection with a marital dissolution. They are found in sections 523(a)(5) and (a)(15). Section 1328(a)(2) excepts only 523(a)(5) debts from discharge. Section 523(a)(15) debts are dischargeable in a chapter 13 proceeding.

Section 523(a)(5) excepts from discharge any debt for a "domestic support obligation."

Section 101(14A) defines:

The term "domestic support obligation" [as] a debt that accrues before, on, or after the date of the order for relief

in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--

(A) owed to or recoverable by--

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) **in the nature of alimony, maintenance, or support** (including assistance provided by a governmental unit) **of such spouse, former spouse, or child of the debtor or such child's parent**, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; **and**

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

11 U.S.C.A. § 101 (emphasis added).

The subject claim is dischargeable. The debts encompassed by the claim include a \$25,000 equalization payment for a community credit card debt, a \$4,000 payment on account of medical bills incurred by the claimant, and \$2,300 in attorney's fees incurred by the claimant. None of these debts are in the nature of alimony, maintenance, or support. They are not designed to support the claimant, but to equalize debts she is either undertaking or has already incurred. None of the debts are listed under the Spousal Support section of the judgment. See POC 16-2 at 7-8. Nor has the claimant advanced another reason for why the debts in the claim are nondischargeable under section 523(a)(5) or otherwise.

This leaves section 523(a)(15) to define the debts in the claim. It addresses debt:

to a spouse, former spouse, or child of the debtor and **not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or**

other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit.

11 U.S.C.A. § 523(a)(15).

As the debts in the claim are not of the kind described in section 523(a)(5), but they were incurred in the course of the debtor's divorce from the claimant, the claim is in the category of the debt described by section 523(a)(15). And given that section 523(a)(15) debt is dischargeable in chapter 13 proceedings, the instant claim is dischargeable. See 11 U.S.C. § 1328(a)(2).

As it is dischargeable and not secured, the claim is not entitled to post-petition interest in the debtor's instant chapter 13 bankruptcy case.

As the prior bankruptcy case ended with dismissal, however, there is nothing that prohibits the claimant from recovering post-judgment interest on the claim for the pendency of the prior bankruptcy case. The claim did not become subject to a discharge in the prior chapter 13 case because that case was dismissed and the plan never completed.

The judgment underlying the claim was entered on November 3, 2015. The debtor filed the prior chapter 13 case on February 2, 2016 and the case was pending until March 30, 2018. The debtor filed the instant chapter 13 case on June 29, 2018.

This means that through November 3, 2016 the judgment accrued interest in the amount of \$3,130 (10% of **\$31,300 judgment**). On **November 3, 2016**, the judgment was in the amount of **\$34,430**.

Through November 3, 2017, the judgment accrued interest in the amount of \$3,443 (10% of \$34,430 judgment as of November 3, 2016). On **November 3, 2017**, the judgment was in the amount of **\$37,873**.

Through March 30, 2018, when the debtor's prior case was dismissed, the judgment accrued interest in the amount of \$1,525.29 (\$3,787.30 (10% of \$37,873 judgment as of November 3, 2017) x (147 days (from November 3, 2017 through March 30, 2018) / 365 days (non-leap year))). By the end of the prior chapter 13 case, the debtor had also paid \$3,953.31 on account of the claim. On **March 30, 2018**, then, when the prior case was dismissed, the judgment was in the amount of **\$35,444.98** (\$37,873 + \$1,525.29 - \$3,953.31).

Through June 29, 2018, when the instant bankruptcy case was filed, the judgment accrued interest in the amount of \$883.69 (\$3,544.49 (10% of \$35,444.98 judgment as of March 30, 2018) x (91 days (from March 30, 2018 through June 29, 2018) / 365 days (non-leap year))).

Therefore, on **June 29, 2018**, when the instant case was filed, the judgment was in the amount of **\$36,328.67** (\$35,444.98 + \$883.69).

The claim amount then should be **\$36,328.67**. Accordingly, the objection will be sustained in part.

19. [14-15384](#)-A-13 **IN RE: DAVID/CHRISTINE RUBALCABA**
[MHM-1](#)

MOTION TO DISMISS CASE
2-11-2019 [[40](#)]

MICHAEL MEYER/MV
JERRY LOWE

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).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because of a delinquency in payments under the debtor's confirmed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (c)(6) to dismiss the case. The last payment of \$770.63 under the confirmed plan is delinquent.

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 confirmed chapter 13 plan in this case. The court hereby dismisses this case.

20. [18-12797](#)-A-13 **IN RE: ANTONIO LOZANO DE ANDA**
[MHM-6](#)

MOTION TO DISMISS CASE
2-11-2019 [[83](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT

Final Ruling

Given the dismissal of this case on account of the trustee's dismissal motion heard on March 22, 2019, this motion will be denied as moot.

21. [19-10797](#)-A-13 **IN RE: ARTHUR/LEANN LOPEZ**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-13-2019 [[10](#)]

ARTHUR LOPEZ/MV
PETER BUNTING

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

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

EXTENSION OF THE STAY

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.

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.

A motion to extend the automatic stay has been presented to the court in this case. 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, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

22. [15-14163](#)-A-13 **IN RE: DANNY/BEVERLY ALLEN**
[RSW-3](#)

MOTION FOR AUTHORIZATION OF EARLY PAYOFF OF CHAPTER 13
BANKRUPTCY
3-7-2019 [[44](#)]

BEVERLY ALLEN/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped from calendar.