

**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: APRIL 25, 2019
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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

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

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

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

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

1. [19-10502](#)-A-13 **IN RE: ISAAC NIETO**
[AF-3](#)

MOTION TO VALUE COLLATERAL OF MICHAEL AND CARMENCITA LACKO
3-19-2019 [\[35\]](#)

ISAAC NIETO/MV
ARASTO FARSAD

Final Ruling

Motion: Value Collateral [Real Property; Not Principal Residence]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); *accord Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' *i.e.*, the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value real property collateral securing the respondent's claim. The real property is located at 4001 1/2 E. Belmont Avenue, Fresno, CA and is not the debtor's principal residence.

The court values the collateral at \$81,636. The responding creditor's claim is secured only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a).

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 real property collateral 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 real property collateral located at 4001 1/2 E. Belmont Avenue, Fresno, CA has a value of \$81,636. Senior liens on the collateral secure debt in the amount of \$7,000. The respondent has a secured claim in the amount of \$74,636, equal to the value of the collateral minus the senior liens. The respondent has a general unsecured claim for the balance of the claim.

2. [19-10702](#)-A-13 **IN RE: PATRICIA PIZANO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-8-2019 [\[17\]](#)

THOMAS GILLIS

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

The trustee objects to confirmation because the plan fails the hypothetical liquidation test.

The debtor has filed a non-opposition to the objection, stating that an amended plan will be filed, addressing the objection.

75-DAY ORDER

A chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 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 objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

3. [19-10404](#)-A-13 **IN RE: MARIA VASQUEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-19-2019 [\[17\]](#)

MICHAEL MEYER/MV
BENNY BARCO
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

4. [19-10306](#)-A-13 **IN RE: ISELA BAUTISTA**
[MHM-2](#)

MOTION TO DISMISS CASE
3-26-2019 [\[20\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

5. [19-10306](#)-A-13 **IN RE: ISELA BAUTISTA**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-8-2019 [\[26\]](#)

THOMAS GILLIS

No Ruling

6. [18-12908](#)-A-13 **IN RE: CODY/CELESTE BERG**
[WLG-2](#)

MOTION TO CONFIRM PLAN
3-15-2019 [\[71\]](#)

CODY BERG/MV
NICHOLAS WAJDA
RESPONSIVE PLEADING

No Ruling

7. [19-10409](#)-A-13 **IN RE: IRENE BARRAGAN**
[MHM-2](#)

MOTION TO DISMISS CASE
3-22-2019 [\[22\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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 debtor failed to appear at the meeting of creditors on March 12, 2019.

For the reasons stated in the motion, cause exists to dismiss the case. 11 U.S.C. § 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.

8. [19-10010](#)-A-13 **IN RE: JOYCE FITZPATRICK**
[CJO-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
3-19-2019 [\[30\]](#)

LAKEVIEW LOAN SERVICING,
LLC/MV
PETER BUNTING
CHRISTINA O/ATTY. FOR MV.

Final Ruling

The case dismissed, the matter is dropped as moot.

9. [19-10615](#)-A-13 **IN RE: SERGIO/JUANA RIOS**
[RAS - 1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC
3-26-2019 [\[14\]](#)

CARRINGTON MORTGAGE SERVICES,
LLC/MV
PETER BUNTING
SEAN FERRY/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Creditor Carrington Mortgage Services, LLC's Objection to Confirmation of Plan

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

Disposition: Conditionally overruled, with a 75-day order

Order: Civil minute order

Creditor Carrington Mortgage Services, LLC, which holds a claim for \$248,260 that is secured by a real property in Fresno, California, objects to confirmation because the plan does not cure the full amount of pre-petition arrears. The plan provides for pre-petition arrears of \$3,400, whereas Carrington claims the arrears are \$5,374.28.

The debtor has filed a response, stating that the arrears will be corrected in the order confirming the plan. Given this, the court will overrule the objection, provided the plan confirmation order corrects the arrears to Carrington.

75-DAY ORDER

A chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of

this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 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.

Creditor Carrington Mortgage Services, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the objection is overruled, provided the plan cures \$5,374.28 in pre-petition arrears to Carrington Mortgage Services, LLC.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

10. [14-10416](#)-A-13 **IN RE: FELIX/ISABEL ALVAREZ**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
2-8-2019 [\[66\]](#)

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 hearing on this motion was continued from March 22 in order for it to be heard in conjunction with the debtors' objection to the proof of claim of Maxim Commercial Capital, LLC.

CASE DISMISSAL

The trustee seeks dismissal because the case is beyond the 60th month and the debtors are short \$27,539.26 under their confirmed existing plan. The 60th month was January 2019.

The debtors respond that their objection to the late-filed proof of claim of Maxim Commercial Capital, LLC should take care of the short-fall under the plan.

However, while the court is sustaining the objection to Maxim's claim, this accounts for only \$24,148.58 under the plan (Maxim's claim amount of \$57,148.58 - what the debtors actually paid on account of the claim under the plan, \$33,000).

The shortfall under the plan is \$27,539.26 (what is required to be paid based on administrative expenses and claims of \$89,464.26 - what was actually paid by the debtors under the plan, \$61,925). This still leaves a shortfall of \$3,390.68 under the plan. The debtors say nothing about this. Given this shortfall and the fact that the case is beyond the 60th month, dismissal is appropriate.

For the reasons stated in the motion, cause exists to dismiss the case. 11 U.S.C. § 1307(c)(6).

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 considered the well-pleaded facts of the motion and responses to the motion, if any,

IT IS ORDERED that the motion is granted for material default by the debtors with respect to a term of a confirmed plan. The court hereby dismisses this case.

11. [14-10416](#)-A-13 **IN RE: FELIX/ISABEL ALVAREZ**
[TOG-3](#)

OBJECTION TO CLAIM OF MAXIM COMMERCIAL CAPITAL, LLC, CLAIM
NUMBER 12
3-8-2019 [\[74\]](#)

FELIX ALVAREZ/MV
THOMAS GILLIS

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR

9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. See *id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. See *id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. See *id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. See *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

LBR 3007-1(d)(4) is not applicable here because the debtors are not seeking a refund of payments on account of the claim.

The court makes no determination about the claimant's rights with respect to its collateral outside of bankruptcy.

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

IT IS ORDERED that the objection is sustained. Claim no. 12 is hereby disallowed.

12. [18-14719](#)-A-13 **IN RE: ROSALINDA GAYTAN**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-14-2019 [\[44\]](#)

MICHAEL MEYER/MV
MICHAEL AVANESIAN
NON-OPPOSITION

Final Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Civil minute order

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

FACTS

The debtor has claimed a \$75,000 exemption in a real property on W. Ceres Avenue in Visalia, California under California Code of Civil Procedure § 704.730 and has claimed a \$6,170 exemption in a Citi Bank savings account with a balance of \$6,170 under California Code of Civil Procedure § 704.070.

The trustee has objected to the real property exemption because the debtor did not live on the property as of the petition and has

objected to the bank account exemption because the account is not paid earnings, as prescribed by § 704.070.

EXEMPTION LAW

Article 4 of Part 2, Title 9, Division 2, Chapter 4 of California Code of Civil Procedure provides for an exemption known as the "automatic" homestead exemption. See Cal. Civ. Proc. Code §§ 704.710-704.850; *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 17-20 (B.A.P. 9th Cir. 2003). This exemption is conceptually distinct from the declared homestead exemption provided in Article 5 of Part 2, Title 9, Division 2, Chapter 4 of the California Code of Civil Procedure. See §§ 704.910-704.995; *Kelley*, 300 B.R. at 18-19.

The automatic homestead exemption under Article 4 is limited to the "principal dwelling" of the debtor or the debtor's spouse. Cal. Civ. Proc. Code § 704.710(c). A "dwelling" is defined by statute to include any place a person "resides." *Id.* § 704.710(a), (c). Section 704.710 further defines the homestead as "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." *Id.* § 704.710(c). Additionally, "the factors a court should consider in determining residence for homestead purposes are [(i)] physical occupancy of the property and [(ii)] the intention with which the property is occupied." *Kelley*, 300 B.R. at 21 (citing *Ellsworth v. Marshall*, 16 Cal. Rptr. 588, 589 (Cal. Ct. App. 1961)); accord *In re Pham*, 177 B.R. 914, 918 (Bankr. C.D. Cal. 1994).

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

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

ANALYSIS

The debtor's non-opposition does not oppose the real property exemption objection, apparently agreeing with the trustee that she did not reside at the W. Ceres Avenue property on the petition date. ECF No. 50. The court also notes that, according to the bankruptcy petition, the debtor did not reside as of the petition date at the

W. Ceres Avenue property. She resided at a real property on S. Arkle Court in Visalia, California. ECF No. 1 at 2.

The debtor's non-opposition does not oppose the bank account exemption objection, apparently agreeing with the trustee that the Citi Bank account is not paid earnings and section 704.070 is inapplicable. ECF No. 50. In addition, the court does not see how the balance in the bank account is "paid earnings" within the meaning of section 704.070. Accordingly, the exemption objections will be sustained.

CIVIL MINUTE ORDER

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

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

The chapter 7 trustee's objection to the debtor's claim of exemptions in a real property on W. Ceres Avenue and a Citi Bank account has been presented to the court. Having considered the well-pleaded facts of the objection and the non-opposition of the debtor,

IT IS ORDERED that the objection is sustained.

13. [19-10319](#)-A-13 **IN RE: ANDREW ARAGON**
[MHM-2](#)

MOTION TO DISMISS CASE
3-20-2019 [\[35\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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 debtor failed to appear at the meeting of creditors on March 12, 2019. In addition, the debtor has not filed his 2018 federal tax return. Consequently, such return was not provided to the trustee either.

For the reasons stated in the motion, cause exists to dismiss the case. 11 U.S.C. §§ 1307(c)(1), 1308(e), 521(e)(2)(A)(i).

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 and for failure to file a tax return. The court hereby dismisses this case.

14. [19-10319](#)-A-13 **IN RE: ANDREW ARAGON**
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL
SERVICES, INC.
3-11-2019 [\[26\]](#)

ANDREW ARAGON/MV
TIMOTHY SPRINGER

Final Ruling

As the court is dismissing this bankruptcy case on account of the trustee's motion to dismiss (DCN MHM-2), this matter will be denied as moot.

15. [19-11419](#)-A-13 **IN RE: MARIANO SANCHEZ**
[CGF-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-12-2019 [\[12\]](#)

MARIANO SANCHEZ/MV
CHRISTOPHER FISHER

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.

16. [18-12827](#)-A-13 **IN RE: JOSE GALLEGOS**
[MHM-3](#)

MOTION TO DISMISS CASE
3-20-2019 [\[77\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [19-10136](#)-A-13 **IN RE: RODNEY/MONICA HESS**
[MHM-2](#)

MOTION TO DISMISS CASE
3-15-2019 [\[22\]](#)

MICHAEL MEYER/MV
JERRY LOWE

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [18-14037](#)-A-13 **IN RE: DESIREE MARTINEZ**
[SL-2](#)

MOTION TO VALUE COLLATERAL OF TUCOEMAS FEDERAL CREDIT UNION
4-4-2019 [\[77\]](#)

DESIREE MARTINEZ/MV
SCOTT LYONS

Final Ruling

Motion: Value Collateral (vehicle)
Disposition: Denied without prejudice
Order: Civil minute order

The court will deny the motion without prejudice on the 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 addressed *solely* to an officer of the responding party. It was addressed to "Officer or Agent Authorized to receive Service of Process." ECF No. 81. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service *solely* to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. *Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

No showing has been made that the exceptions in Rule 7004(h) are applicable either. See Fed. R. Bankr. P. 7004(h)(1)-(3).

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 a vehicle, described as a 2015 Chevrolet Impala, has been presented to the court in this case. Having considered the motion papers,

IT IS ORDERED that the motion is denied without prejudice, given the service deficiency identified in the ruling on the motion.

19. [19-10640](#)-A-13 **IN RE: GARY/ROSE BRADY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-8-2019 [[16](#)]

SUSAN HEMB

No Ruling

20. [15-11245](#)-A-13 **IN RE: WILLIAM O'BRIEN AND JILL**
ALVARADO-O'BRIEN
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
10-31-2018 [\[72\]](#)

MICHAEL MEYER/MV
MARK SIEGEL
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

21. [18-13845](#)-A-13 **IN RE: CURTIS ROSS**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
1-29-2019 [\[42\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

22. [16-12253](#)-A-13 **IN RE: MARLENE LOPEZ**
[PBB-3](#)

MOTION TO MODIFY PLAN
3-19-2019 [\[45\]](#)

MARLENE LOPEZ/MV
PETER BUNTING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

23. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-5-2019 [\[14\]](#)

DAVID JENKINS

No Ruling

24. [18-14559](#)-A-7 **IN RE: CAROL DAVIS-MADISON**
[BDB-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF AMERICREDIT
FINANCIAL SERVICES, INC.
2-4-2019 [\[29\]](#)

CAROL DAVIS-MADISON/MV
BENNY BARCO
WITHDRAWN; CONVERTED 3/29/19

Final Ruling

The motion withdrawn, the matter is dropped as moot.

25. [19-10559](#)-A-13 **IN RE: LINDA FORD**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-8-2019 [[31](#)]

PETER BUNTING

No Ruling

26. [19-10564](#)-A-13 **IN RE: VICTOR ALVAREZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-8-2019 [[16](#)]

THOMAS MOORE

Final Ruling

This motion will be denied as moot because the debtor filed another plan on April 11, after this motion was filed. See ECF No. 24.

27. [18-14768](#)-A-13 **IN RE: KIMBERLY KING- RICHARDSON**
[MHM-2](#)

MOTION TO DISMISS CASE
3-28-2019 [[42](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, citing unreasonable delay by the debtor in confirming a plan that is prejudicial to creditors. The court entered a 75-day order on February 8, with the 75-day period starting on February 6. The end of that period is on April 22. The debtor cannot obtain plan confirmation by April 22. The debtor also has not responded to this motion. This is cause for dismissal. 11 U.S.C. § 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 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, if any,

IT IS ORDERED that the motion is granted because of unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

28. [18-14768](#)-A-13 **IN RE: KIMBERLY KING- RICHARDSON**
[NES-1](#)

MOTION TO CONFIRM PLAN
3-1-2019 [[29](#)]

KIMBERLY KING- RICHARDSON/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

No Ruling

29. [19-10169](#)-A-13 **IN RE: DAMON/REGINA GUNDERMAN**
[DRJ-3](#)

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

DAMON GUNDERMAN/MV
DAVID JENKINS
RESPONSIVE PLEADING

No Ruling

30. [19-10169](#)-A-13 **IN RE: DAMON/REGINA GUNDERMAN**
[DRJ-6](#)

MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES,
INC.
3-28-2019 [\[53\]](#)

DAMON GUNDERMAN/MV
DAVID JENKINS

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle; 2014 Nissan Altima]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2014 Nissan Altima. The debt secured

by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$9,100.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2014 Nissan Altima has a value of \$9,100. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,100 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.

31. [19-10169](#)-A-13 **IN RE: DAMON/REGINA GUNDERMAN**
[DRJ-7](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL
SERVICES, INC.
3-28-2019 [\[57\]](#)

DAMON GUNDERMAN/MV
DAVID JENKINS

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2007 Chevrolet Silverado. 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 \$10,240.

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 2007 Chevrolet Silverado has a value of \$10,240. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,240 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.

32. [19-10169](#)-A-13 **IN RE: DAMON/REGINA GUNDERMAN**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
3-19-2019 [\[44\]](#)

DAVID JENKINS

No Ruling

33. [18-14077](#)-A-13 **IN RE: BENITO/ANNA ALVAREZ**
[JDM-2](#)

MOTION TO CONFIRM PLAN
3-17-2019 [\[36\]](#)

BENITO ALVAREZ/MV
JAMES MILLER
RESPONSIVE PLEADING

No Ruling

34. [18-12678](#)-A-13 **IN RE: MICHAEL PFEIFFER**
[DMG-2](#)

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

MICHAEL PFEIFFER/MV
D. GARDNER
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained in part

Order: Prepared by objecting party

The hearing on this objection was continued from March 28, in order for the debtor to have the opportunity to supplement the record. The debtor however has chosen not to supplement the record. ECF No. 71. Accordingly, the ruling the court posted for the March 28 hearing will be the final disposition of the objection. The ruling follows below.

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.

35. [18-11387](#)-A-13 **IN RE: DEVON BALDWIN**
[ALG-1](#)

MOTION TO MODIFY PLAN
2-27-2019 [\[20\]](#)

DEVON BALDWIN/MV
JANINE ESQUIVEL OJI
JANINE ESQUIVEL/ATTY. FOR MV.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof.
The court will grant the motion and approve the modification.

36. [19-10293](#)-A-13 **IN RE: JONATHON PHILLIPS AND VALERIE**
RENOBATO-PHILLIPS
[MHM-1](#)

MOTION TO DISMISS CASE
3-15-2019 [[14](#)]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

37. [19-10293](#)-A-13 **IN RE: JONATHON PHILLIPS AND VALERIE**
RENOBATO-PHILLIPS
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER, USA, INC.
3-19-2019 [[21](#)]

JONATHON PHILLIPS/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle; 2013 Mitsubishi Outlander]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2013 Mitsubishi Outlander. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$9,350.

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 2013 Mitsubishi Outlander has a value of \$9,350. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,350 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.