

**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: FEBRUARY 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. [17-13401](#)-A-13 **IN RE: RICHARD/VERONICA ESPINOZA**
[TCS-2](#)

MOTION TO MODIFY PLAN
1-14-2019 [[36](#)]

RICHARD ESPINOZA/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Civil minute order

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 trustee opposes confirmation. The plan is not on the most current authorized form and it is missing page three. The plan is on the form revised 5/1/12. ECF No. 38. Accordingly, the motion will be denied.

2. [17-13002](#)-A-13 **IN RE: ZABRINA RENDON**
[TCS-1](#)

MOTION TO INCUR DEBT
1-25-2019 [[22](#)]

ZABRINA RENDON/MV
TIMOTHY SPRINGER

Final Ruling

Motion: Approve New Debt [Mortgage Loan to Finance Home Purchase]

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

Disposition: Granted

Order: Prepared by moving party

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

The debtor seeks to incur new debt to finance the purchase of a new home. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

3. [15-10004](#)-A-13 **IN RE: LARRY VALENCIA**
[TCS-10](#)

MOTION TO MODIFY PLAN
1-14-2019 [[158](#)]

LARRY VALENCIA/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING WITHDRAWN,

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.

4. [16-11906](#)-A-13 **IN RE: DANIEL/STACY BAGHDANOV**
[HDN-3](#)

MOTION TO INCUR DEBT
2-8-2019 [[61](#)]

DANIEL BAGHDANOV/MV
HENRY NUNEZ

Tentative Ruling

Motion: Approve New Debt [Mortgage Loan to Finance Home Purchase]

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

Disposition: Granted

Order: Prepared by moving party

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

The debtor seeks to incur new debt to finance the purchase of a new home. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

5. [18-14508](#)-A-13 **IN RE: PEDRO ESPINOZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-8-2019 [[28](#)]

THOMAS GILLIS

Tentative Ruling

The debtor was delinquent for the \$73 installment payment due February 4, 2019, and after payments of \$100, \$60, and \$50, there appears to be a current balance due of \$23. Should that amount not be paid by the time of the hearing, the case may be dismissed without further notice or hearing.

6. [18-15111](#)-A-13 **IN RE: HERNAN SERNAS**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MIDFIRST BANK
2-5-2019 [[16](#)]

MIDFIRST BANK/MV
THOMAS GILLIS
DARLENE VIGIL/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor Midfirst Bank'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

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Creditor Midfirst Bank objects to confirmation because the plan identifies Ameri Home Mortgage as the creditor on the first mortgage encumbering the debtor's residence. The plan provides for Ameri Home Mortgage in Paragraph 3.10 as the holder of a Class 4 claim.

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

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 Midfirst Bank'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,

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).

7. [18-14912](#)-A-13 **IN RE: SHERRY WINDORF**
[SFR-2](#)

MOTION TO CONFIRM PLAN
1-9-2019 [[22](#)]

SHERRY WINDORF/MV
SHARLENE ROBERTS-CAUDLE
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

This motion for plan confirmation will be denied without prejudice as the court has no evidence that it was noticed on anyone. While there is a proof of service for the original notice of hearing for the motion (ECF Nos. 23 & 25), there is no proof of service accompanying the motion for the amended notice of hearing (ECF No.

27). The amended notice of hearing corrects the time and place for the hearing on the motion.

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 debtor's motion to confirm chapter 13 plan is not accompanied by a proof of service for the amended notice of hearing for the motion.

IT IS ORDERED that the motion is denied without prejudice. 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).

8. [18-13713](#)-A-13 **IN RE: DEQUAN/ALEXIS KELSEY**
[MHM-4](#)

MOTION TO DISMISS CASE
1-23-2019 [\[48\]](#)

MICHAEL MEYER/MV
JOEL WINTER

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 debtors have failed to confirm a plan even though they filed one on the petition date, September 12, 2018, and the deadline for lodging an order confirming the plan passed on December 4, 2018. The deadline for filing confirmation objections was November 20. The trustee cannot submit an order confirming the plan because the debtors have not prosecuted motions to value two vehicles under the terms of their plan. Additionally, the debtors are delinquent under the plan, as of January 23, 2019, in the amount of \$1,050.60.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 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 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.

9. [18-12814](#)-A-13 **IN RE: JIMMY JAMES**
[NSV-3](#)

MOTION TO CONFIRM PLAN
1-2-2019 [[49](#)]

JIMMY JAMES/MV
LUKAS JACKSON

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.

10. [18-14917](#)-A-13 **IN RE: JONATHAN YU**
[MHM-1](#)

MOTION TO DISMISS CASE
1-30-2019 [[22](#)]

MICHAEL MEYER/MV
PETER BUNTING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [18-15118](#)-A-13 **IN RE: FANNY CERVANTEZ**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
1-30-2019 [[24](#)]

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
SCOTT LYONS
WENDY LOCKE/ATTY. FOR MV.

No Ruling

12. [18-15118](#)-A-13 **IN RE: FANNY CERVANTEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-1-2019 [[28](#)]

SCOTT LYONS

No Ruling

13. [19-10319](#)-A-13 **IN RE: ANDREW ARAGON**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-12-2019 [[13](#)]

ANDREW ARAGON/MV
TIMOTHY SPRINGER

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.

14. [19-10131](#)-A-13 **IN RE: JOSE NUNO**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF WEST AMERICA BANK
1-26-2019 [[15](#)]

JOSE NUNO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle (2016 Chevrolet Silverado)]

Notice: LBR 9014-1(f)(1); written opposition filed by secured creditor Westamerica Bank

Disposition: Denied without prejudice

Order: Civil minute order

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. The court does not have admissible evidence of value for the vehicle. The only evidence of value in the record is a statement from the debtor in his declaration, stating that his opinion of value for the vehicle is \$27,482. ECF No. 17.

However, the debtor is a lay person. The declaration does not qualify him as a retail merchant familiar with the requisite specialized knowledge pertaining to the price a retail merchant would charge for the vehicle. See ECF No. 17; see also Fed. R. Evid. 702 & 703. Nor does the debtor state anything about the condition of the vehicle, justifying any correction in the retail value of the vehicle. And, to the extent the debtor is repeating another person's opinion of value for the vehicle, the debtor's statement is inadmissible hearsay. See Fed. R. Evid. 801(c) and 802. Accordingly, the motion will be denied.

15. [18-13732](#)-A-12 **IN RE: CHARMAINE BRANNAN**
[AP-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM
CHAPTER 12 TO CHAPTER 7
1-22-2019 [\[40\]](#)

WILMINGTON SAVINGS FUND
SOCIETY, FSB/MV
TODD GARAN/ATTY. FOR MV.

No Ruling

16. [18-13732](#)-A-12 **IN RE: CHARMAINE BRANNAN**
[MHM-2](#)

MOTION TO DISMISS CASE
2-5-2019 [\[71\]](#)

MICHAEL MEYER/MV

No Ruling

17. [13-16633](#)-A-13 **IN RE: FERNANDO ARROYO AND ELIZABETH BROERS**
[MHM-5](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
1-29-2019 [\[98\]](#)

MICHAEL MEYER/MV
GARY HUSS

Final Ruling

Motion: Determination of Final Cure and Payment of Required
Postpetition Amounts under Rule 3002.1(h)

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

Disposition: Granted

Order: Prepared by moving party

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

Federal Rule of Bankruptcy Procedure 3002.1(h) provides that the debtor or trustee may file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts" due on a claim in a chapter 13 case that is "(1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan." Fed. R. Bankr. P. 3002.1.

Rule 3002.1(f) and (g) describe procedures that must be followed before the motion may be filed. These procedures begin with the trustee's filing and serving "a notice stating that the debtor has paid in full the amount required to cure any default on the claim" and "inform[ing] the holder of its obligation to file and serve a response." Fed. R. Bankr. P. 3002.1(f). This notice is called the Notice of Final Cure. The debtor may file this notice if the trustee does not do so. *Id.*

Next, the holder of the claim has a limited time to file a response to this notice. See Fed. R. Bankr. P. 3002.1(g) (the holder must serve and file its response statement within 21 days after service of the Notice of Final Cure). The response statement permits the holder of the claim to dispute (or agree) that the debtor has paid in full the amount required to cure the default on the claim or whether the debtor is otherwise current on all payments under § 1322(b)(5).

A motion for a determination of final cure and payment must be filed within 21 days after service of the claimholder's response statement under subdivision (g) of Rule 3002.1. Fed. R. Bankr. P. 3002.1(h).

If the movant complies with these procedures, then "the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts." *Id.*

If, however, the holder of the claim fails to provide a response statement under subdivision (g) of Rule 3002.1, then the court may both (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, or (2) award other appropriate relief. Fed. R. Bank. P. 3002.1(i).

For the reasons stated in the motion and supporting papers, the court will grant the relief sought by the motion. It will also award the "other appropriate relief" described in Rule 3002.1(i)(2) by determining that the debtor has cured the default and paid all postpetition amounts due on the secured claim described in the motion as of the date indicated in the motion.

18. [18-14335](#)-A-13 **IN RE: JENNIFER PINTO**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-1-2019 [[27](#)]

STEPHEN LABIAK

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

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:

IT IS ORDERED that the objection to confirmation is overruled as moot.

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).

19. [18-14037](#)-A-13 **IN RE: DESIREE MARTINEZ**
[MHM-4](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER
7
1-14-2019 [[41](#)]

SCOTT LYONS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

20. [16-12740](#)-A-13 **IN RE: BRUCE/DANIELLE CAMPBELL**
[JDR-6](#)

MOTION TO INCUR DEBT
1-28-2019 [[69](#)]

BRUCE CAMPBELL/MV
JEFFREY ROWE

Final Ruling

Motion: Approve New Debt [Mortgage Loan to Finance Home Purchase]

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

Disposition: Granted

Order: Prepared by moving party

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

The debtor seeks to incur new debt to finance the purchase of a new home. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

21. [18-14443](#)-A-13 **IN RE: JOSE MERAS**
[PBB-2](#)

MOTION TO CONFIRM PLAN
1-18-2019 [[44](#)]

JOSE MERAS/MV
PETER BUNTING
RESPONSIVE PLEADING

No Ruling

22. [18-15149](#)-A-13 **IN RE: MIGUEL FERNANDEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
1-31-2019 [[20](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

23. [18-10750](#)-A-13 **IN RE: BIENVENIDO/TERESITA LADERAS**
[MHM-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
1-8-2019 [[44](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

Final Ruling

The case dismissed, the matter is dropped as moot.

24. [18-13252](#)-A-13 **IN RE: JENNIFER SILVA**
[MRG-1](#)

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

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

No Ruling

25. [18-13252](#)-A-13 **IN RE: JENNIFER SILVA**
[SL-2](#)

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

JENNIFER SILVA/MV
SCOTT LYONS

No Ruling

26. [18-15052](#)-A-13 **IN RE: DARREN/MEGAN MORRISON**
[VC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-2019 [[14](#)]

ALLIANT CREDIT UNION/MV
PETER BUNTING
MICHAEL VANLOCHEM/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Keystone Sprinter vehicle

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as one postpetition payment is past due. The total postpetition delinquency is approximately \$495.06.

Alternatively, because the plan, which has not been confirmed yet, provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. ECF No. 28 at 4. And the moving party has shown that there is no equity in the property. ECF No. 16. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2017 Keystone Sprinter vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

27. [18-12661](#)-A-13 **IN RE: GEORGE WRIGHT**
[ALG-2](#)

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

GEORGE WRIGHT/MV
JANINE ESQUIVEL

Final Ruling

The matter was noticed for a hearing on March 28, 2019, at 9:00 a.m. and was added to this calendar in error. Therefore, the matter is dropped from this calendar.

28. [18-14461](#)-A-13 **IN RE: MARIA RODRIGUEZ**
[MJA-2](#)

MOTION TO CONFIRM PLAN
12-27-2018 [\[27\]](#)

MARIA RODRIGUEZ/MV
MICHAEL ARNOLD

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.

29. [18-14569](#)-A-13 **IN RE: JESUS/FATIMA AYALA**
[TCS-2](#)

MOTION TO CONFIRM PLAN
1-24-2019 [\[39\]](#)

JESUS AYALA/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 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). While the trustee filed an opposition, it was dismissed. No other opposition 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 concludes that the plan does not satisfy 11 U.S.C. § 1322(b)(5), which permits for the cure of a default on "on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due."

The plan says, "[d]ebtors' ongoing mortgage to start being paid in Month 2 and caught up by an additional payment when the funds are available." ECF No. 41 at 7.

While section 1322(b)(5) permits the cure, the provision also requires that the default is cured "within a reasonable time." The plan does not do this. It is a plan to have a plan. What if funds never become available for the debtor to cure the default. Or, the funds become available only at the end of the plan term. The plan does not satisfy the "reasonable time" requirement. Confirmation will be denied without prejudice.

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 debtor's 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 to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. 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).

30. [16-13876](#)-A-13 **IN RE: KATHERINE RAINEY**
[TCS-1](#)

MOTION TO EMPLOY MEGHAN MCCORMIC AS SPECIAL COUNSEL
2-4-2019 [\[39\]](#)

KATHERINE RAINEY/MV
TIMOTHY SPRINGER

Final Ruling

This motion for employment of special counsel retroactively will be denied without prejudice as the court has no evidence that it was noticed on anyone, including the U.S. Trustee. See Fed. R. Bankr. P. 2014(a) (requiring service of employment applications on the U.S. Trustee). There is no proof of service accompanying the motion.

31. [18-14477](#)-A-13 **IN RE: LISA BOUDREAULT**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-28-2019 [[37](#)]

MICHAEL MEYER/MV
PHILLIP GILLET
DISMISSED 12/16/18

Final Ruling

The case dismissed, the matter is dropped as moot.

32. [18-15180](#)-A-13 **IN RE: MARC TYLER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-6-2019 [[15](#)]

MARK ZIMMERMAN

Final Ruling

The fee paid, the order to show cause is discharged.

33. [18-15181](#)-A-13 **IN RE: CAROLE PUCCINO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-6-2019 [[18](#)]

MARK ZIMMERMAN

Tentative Ruling

If the installment payment of \$79 due February 1, 2019, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

34. [18-14682](#)-A-13 **IN RE: LUIS AVALOS**
[TOG-1](#)

MOTION TO CONFIRM PLAN
1-17-2019 [\[20\]](#)

LUIS AVALOS/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1); 9014-1(f)(1)
Disposition: Denied
Order: Civil minute order

The motion requests confirmation of the chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1).

The court will deny the motion because the debtor agrees with the trustee's opposition to confirmation. See ECF Nos. 35 and 42.

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:

The debtor's motion to confirm 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.

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).

35. [18-14682](#)-A-13 **IN RE: LUIS AVALOS**
[TOG-1](#)

MOTION TO CONFIRM PLAN
1-17-2019 [[27](#)]

LUIS AVALOS/MV
THOMAS GILLIS

Final Ruling

This motion to confirm chapter 13 plan will be denied as duplicative of the prior motion on this calendar (ECF No. 20), which is being denied. While this motion concerns a plan filed as ECF No. 29 and the prior motion concerns a plan filed as ECF No. 23, both plans were filed on the same date, January 17, 2019, and are identical.

36. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[NEA-1](#)

MOTION TO CONFIRM PLAN
1-9-2019 [[31](#)]

JAMES JORGENSEN/MV
NICHOLAS ANIOTZBEHERE
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

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).

Creditors Donald and Karen Aluisi object to confirmation, contending bad faith on the part of the debtors due to their failure to list in Question 18 of the Statement of Financial Affairs the transfers of property associated with two refinances of their residence within 12 months prior to the filing of this chapter 13 bankruptcy case on November 13, 2018.

Bad faith is determined by examining the totality of the circumstances. *In re Rolland*, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004). The misrepresentation of facts, the unfair manipulation

of the Bankruptcy Code, the history of filings and dismissals, and the presence of egregious behavior are all factors to be considered in determining whether bad faith exists." *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. *Leavitt* at 1224-25 (quoting *In re Powers*, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also *Cabral v. Shabman (In re Cabral)*, 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

The court is not convinced that failure to disclose two refinance transactions of a residential real property in Question 18 of the Statement of Financial Affairs amounts to bad faith, warranting denial of plan confirmation. By itself, the failure to disclose the refinances - which are more subtle transfers of property than are sales or purchases, for example - is not enough to indicate an intent by the debtors to misrepresent facts or unfairly manipulate the Bankruptcy Code.

Nevertheless, the court does not view real property refinances as transfers in the ordinary course of business or financial affairs. The court does not have evidence from the debtors that they have been doing refinances on a regular basis, in the ordinary course of their financial affairs.

The court has evidence of only two refinances completed by the debtors within 12 months prior to filing this case. This does not make refinances, in the case of the subject debtors, per se in the ordinary course of their financial affairs. The court has no other evidence or information to consider, relevant to a determination of whether refinances are in the ordinary course of the debtors' financial affairs.

Further, refinances are substantial transactions, with high cost to individuals. Refinances of residential properties can cost as much as \$10,000 per refinance, depending on the terms of the refinance. Refinances also take a substantial period of time, anywhere from 30 to 60 days, depending on the conditions and terms of the refinance. Given their cost and substantial time of completion, there is nothing ordinary about refinances, from a financial perspective.

The frequency at which someone completes refinances is unhelpful either. Refinances are not in the ordinary course of a debtor's financial affairs any more than are bankruptcy filings. While the debtors here completed two refinances within a 12-month span, some debtors prosecute two or more bankruptcy petitions in a given year. Many of the debtors on the subject calendar have been in at least

two bankruptcy cases within the last one year. This does not make bankruptcy filings - anymore than it would make refinances - in the ordinary course of their financial affairs.

Question 18 is express in requiring grants of security interest and mortgages on property to be disclosed in the Statement of Financial Affairs. The debtors should have disclosed them. The court will provide them with seven days from the February 28 hearing on this motion to file an amended Statement of Financial Affairs to correct the lack of disclosure.

Finally, this motion will be granted. 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.

37. [18-14988](#)-A-13 **IN RE: NICK/JENNIFER DUNN**
[MHM-1](#)

MOTION TO DISMISS CASE
1-30-2019 [[16](#)]

MICHAEL MEYER/MV
STEVEN ALPERT
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

38. [18-11292](#)-A-13 **IN RE: ANGEL PEREZ**
[TCS-3](#)

CONTINUED OBJECTION TO CLAIM OF FRESNO COUNTY TAX COLLECTOR,
CLAIM NUMBER 14
11-28-2018 [[60](#)]

ANGEL PEREZ/MV
TIMOTHY SPRINGER

Tentative Ruling

Objection: Objection to Claim

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

Proof of Claim: #14 in the amount of \$3,970.65, for property taxes,
secured by the debtor's real property in Fresno, California

Disposition: Sustained

Order: Prepared by objecting party

The hearing on this objection was continued from January 24, 2019 in order for the objecting party, the debtor, to supplement the record. The debtor filed supplemental papers in support of the objection on February 6, 2019. ECF Nos. 78 and 79. The court's amended ruling on the objection follows.

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

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A claim must be disallowed if it is unenforceable under applicable nonbankruptcy law. See 11 U.S.C. § 502(b)(1); *accord Diamant v. Kasparian (In re S. Cal. Plastics, Inc.)*, 165 F.3d 1243, 1247 (9th Cir. 1999).

Federal Rule of Bankruptcy Procedure 3001(f) prescribes the evidentiary effect of "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f). If properly executed and filed under the rules along with all supporting documentation that may be required, *see, e.g.,* Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. See Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

The evidentiary presumption created by Rule 3001(f) "operates to shift the burden of going forward but not the burden of proof." See *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706 (B.A.P. 9th Cir. 2006) (citing *Garner v. Shier (In re Garner)*,

246 B.R. 617, 622 (B.A.P. 9th Cir. 2000); *Diamant*, 165 F.3d at 1248). But this evidentiary presumption is rebuttable. *Id.* at 706. "One rebuts evidence with counter-evidence." *Id.* at 707; see also *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009) ("[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it.").

The burden of proof, however, always remains on the party who carries the burden under applicable nonbankruptcy law. Because the burden of proof is "a substantive aspect of a claim," *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20-21 (2000) (internal quotation marks omitted), it is governed by nonbankruptcy law, usually state law, applicable to a claim, see *id.* ("[S]tate law governs the substance of claims [in bankruptcy]." (citing *Butner v. United States*, 440 U.S. 48, 57 (1979))); *Garvida*, 347 B.R. at 705. "That is, the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." *Raleigh*, 530 U.S. at 21.

Here, the debtor's objection complains that the claim amount is for future property taxes that are being paid through the debtor's escrow account with his mortgagee, AmeriHome Mortgage, which is paid as a class 1 creditor in the plan.

The debtor is correct that the proof of claim attaches only an estimate for \$3,571.04 of the total claim amount. This amount in the proof of claim is prospective and it is only an estimate.

Yet, the debtor's taxes are being paid through an escrow account with the mortgagee. Fresno County Tax Collector has been receiving payment on account of the property taxes from AmeriHome Mortgage, the debtor's mortgagee. See ECF No. 79.

The remainder \$399.61 of the claim amount is for delinquent taxes, which are already scheduled to be paid as a class 2 claim through the plan. ECF No. 41. Therefore, the objection will be sustained.

39. [19-10296](#)-A-13 **IN RE: SANDRA BARBOZA**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-12-2019 [\[15\]](#)

SANDRA BARBOZA/MV
TIMOTHY SPRINGER

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.

40. [16-10697](#)-A-13 **IN RE: DARCY NUNES**
[TCS-8](#)

MOTION TO MODIFY PLAN
1-14-2019 [[117](#)]

DARCY NUNES/MV
TIMOTHY SPRINGER
DISMISSED 1/14/19

Final Ruling

The case dismissed and the motion to vacate dismissal denied, the matter is dropped as moot.