

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re ) Case No. 15-26710-E-13  
ROBERTO LARA RAMIREZ, ) Ex Parte Motion: No Hearing  
Debtor. )  
\_\_\_\_\_ )

MEMORANDUM OPINION AND DECISION  
DENYING MOTION TO EXTEND AUTOMATIC STAY  
11 U.S.C. § 362(c)(3)(B).

Roberto Lara Ramirez, the Debtor, commenced this bankruptcy case on August 25, 2015. Debtor has filed this case in *propria persona*. This is not Debtor's first recent bankruptcy case. The court summarizes these cases below:

Chapter 13 Case 14-31766 Attorney: <i>In Pro Se</i>	Filed: December 2, 2014 Dismissed: June 29, 2015	
	Dismissal: The court dismissed the case due to (1) Debtor being in default in plan payment and (2) Debtor failing to file an amended plan and motion to confirm after denial of confirmation of the prior proposed plan. 14-31766; Civil Minutes, Dckt. 42.  Denial of Confirmation: The court denied confirmation of the prior proposed plan for grounds including: (1) Debtor's failure to attend First Meeting of Creditors, (2) failure to complete the basic Chapter 13 documents, (3) the prior proposed Chapter 13 Plan not being completed, (4) failure to disclose the multiple prior bankruptcy cases filed by Debtor, and (5) failure to provide dividend for general unsecured claims which met the Chapter 7 liquidation requirement. <i>Id.</i> ; Civil Minutes, Dckt. 32.	

Chapter 7 Case 14-25966 Attorney: <i>In Pro Se</i>	Filed: June 4, 2014  Discharge: October 24, 2014  Case Closed: October 31, 2014	
	Order Granting Relief From Stay: Nationstar Mortgage, LLC granted relief from automatic stay to exercise rights to foreclose on real property commonly known as 2440 Beaufort Drive, Fairfield, California. 14-25966; Order, Dckt. 29.	
Chapter 7 Case 14-23403 Attorney: <i>In Pro Se</i>	Filed: April 2, 2014  Dismissed: May 1, 2014	
	Dismissal: The bankruptcy case was dismissed due to Debtor's failure to file the basic Chapter 7 documents necessary to prosecute the case. 14-23403; Order, Dckt. 27.  Denial of Motion to Vacate Dismissal: The court denied a request to vacate the dismissal. <i>Id.</i> ; Order, Dckt. 31.	
Chapter 13 Case 11-48165 Attorney: Peter G. Macaluso	Filed: December 2, 2011  Dismissed: July 9, 2013	
	Dismissal: The bankruptcy case was dismissed after eighteen months due to Debtor's failure to cure defaults in the plan payments or file a modified plan and motion to confirm to address the defaults. 11-48165; Order, Dckt. 41. The Notice stated the default to be \$4,440.00, with the monthly plan payments being \$1,480.00. <i>Id.</i> ; Notice, Dckt. 38.	

## REVIEW OF MOTION TO EXTEND AUTOMATIC STAY

On August 26, 2015, Debtor filed an ex parte Motion to Extend the Automatic Stay. Dckt.

9. The grounds stated in the Motion are:

- A. "In order to stop the foreclosure of our real property, I filed the current case."
- B. "I am working with creditor to file a feasible Chapter 13 plan."
- C. "In order to successfully re-organize, I request that the stay be extended, with respect to creditors, Nationstar Mortgage and their representatives for the duration of the case."

*Id.* No declaration or other evidence in support of the Motion have been filed. The court construes

1 the grounds stated in the Motion as facts to which Debtor would testify to under penalty of perjury  
2 in this case.

3 Congress has provided in 11 U.S.C. § 362(c)(3)(A) that the automatic stay in the current case  
4 within thirty-days of filing, unless extended by the court, because this case was filed within thirty-  
5 days of a prior bankruptcy case which was pending and dismissed within the prior year. To obtain  
6 an extension of the stay, Debtor must rebut the presumption that the current case has been filed in  
7 bad faith. 11 U.S.C. § 362(c)(3)(B). The presumption must be rebutted by “clear and convincing  
8 evidence,” as compared to the usual preponderance of the evidence standard in civil cases. 11  
9 U.S.C. § 362(c)(3)(C).

10 In determining whether the presumption of bad faith has been rebutted courts consider the  
11 totality of the circumstances and specifically focus on the following two areas of inquiry: (i) why  
12 the previous plan failed and (ii) circumstances that have changed such that the proposed plan is  
13 likely to succeed. 3 Collier on Bankruptcy ¶ 362.06 (Alan N. Resnick & Henry J. Sommer eds. 16th  
14 ed.). Courts consider the following nonexhaustive list of factors when determining good faith under  
15 § 362(c)(3), § 362(c)(4), and § 1325(c)(3):

- 16 1. Timing of the petition;
- 17 2. Whether the debtor truly intends to effectuate a financial rehabilitation;
- 18 3. Whether the debtor made "eve of bankruptcy" purchases;
- 19 4. The accuracy of the information provided by the debtor;
- 20 5. Types of debts sought to be discharged and the circumstances in which they arose;
- 21 6. Whether the plan is preferential as to certain creditors;
- 22 7. Debtor's treatment of creditors both before and after the petition was filed;
- 23 8. Whether debtor seeks to unfairly manipulate provisions of the Code;
- 24 9. Debtor's conduct in the prior cases;
- 25 10. Frequency with which debtor has sought bankruptcy relief;
- 26 11. Reasons for the dismissal of the debtor's prior cases;
- 27 12. Debtor's earning capacity and likelihood that the debtor will have a steady income  
28 throughout the case;

1           13.     Likelihood that the debtor will be able to properly fund a plan; and

2           14.     Whether the Trustee or creditors object to the debtor's motion.

3     *In re Ferguson*, 376 B.R. 109, 123 (Bankr. E.D. Pa. 2007).

4           In the current case, while the Debtor has filed a bankruptcy petition, he has not filed  
5 Schedules or the other basic documents necessary to prosecute a Chapter 13 case. This has  
6 precluded the court from considering whether the Debtor's finances provide grounds for the court  
7 to conclude that clear and convincing evidence exists to rebut the presumption of bad faith. In the  
8 preceding case, 14-31766, Debtor filed Schedules I and J under penalty of perjury on December 16,  
9 2014. On that Schedule I Debtors stated that he had gross income of \$3,056.00 a month, with no  
10 taxes withheld. 14-31766; Dckt. 11 at 14. Though stating he was married, Debtor lists the spouse's  
11 income as "N/A," not disclosing an actual amount, even if it was \$0.00. On Schedule J Debtor lists  
12 having monthly expenses of (\$2,905.00), leaving only \$151.00 on Monthly Net Income. *Id.* at 15.  
13 The expenses do not include any for income or self-employment taxes.

14           The Chapter 13 Plan filed in the prior case states that the pre-petition arrearage on the  
15 Nationstar Mortgage secured claim was \$31,565. *Id.*; Plan Class 1 Claim, Dckt. 13. The court also  
16 notes that in case 14-31766 Debtor did not file any responsive pleadings to those filed by the Trustee  
17 or any affirmative pleadings beyond the Schedules, Statement of Financial Affairs, and the Chapter  
18 13 Plan which was denied confirmation. The same is true in Chapter 7 case 14-25966.

19           In reviewing the 2011 Chapter 13 case which was filed and prosecuted with assistance of  
20 counsel, these bankruptcy filings have been driven by Debtor's desire to address what is identified  
21 as the then existing, and then post-petition defaults on the Nationstar Mortgage secured claim.  
22 Debtor has attempted, and has not been able, to address the growing arrearage (the motion to modify  
23 the plan and declaration therein discuss the pre-petition and then post-petition defaults in case 11-  
24 48165).

25           Debtor has not rebutted the presumption of bad faith arising under 11 U.S.C. § 362(c)(3)(A),  
26 (C). Debtor's only statement is that he seeks to obtain the automatic stay to stop the foreclosure to  
27 try and negotiate a Chapter 13 Plan with Nationstar Mortgage. From the Motion, the files in this  
28 case, and the multiple prior bankruptcy cases, the court concludes that Debtor is not seeking to

1 prosecute a Chapter 13 Plan, but to seek a loan modification.

2       Therefore, the Motion is denied.