

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, February 11, 2021
Place: Department A - Courtroom #11
Fresno, California

**ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)**

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [20-13101](#)-A-13 **IN RE: SARAH LEE**
[JM-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
1-12-2021 [[21](#)]

ONEMAIN FINANCIAL GROUP, LLC/MV
PETER BUNTING/ATTY. FOR DBT.
JAMES MACLEOD/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance
with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, OneMain Financial Group, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2016 Kia Sportage (the "Vehicle"). Doc. #21.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Movant seeks relief from the stay for the sole purpose of allowing Movant to perfect its interest in the Vehicle. Doc. #21. The debtor has agreed to relief from stay, and the relief is requested only because a delay in transferring security title in the Vehicle prevented Movant from perfecting its lien within California's thirty-day statutory period. Ex. A, Doc. #23.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant and its successor and assigns, if any, to perfect its lien in the Vehicle. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to permit Movant to perfecting its lien.

2. [19-14729](#)-A-13 **IN RE: JASON/JODI ANDERSON**
[FW-2](#)

MOTION TO MODIFY PLAN
12-23-2020 [[41](#)]

JASON ANDERSON/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee timely opposed this motion, but withdrew his opposition in consideration of terms agreeable to the debtors and put forth in a stipulation and proposed order filed February 5, 2021. Doc. ##52, 53. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burke (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall be consistent with the proposed order marked Exhibit A, Doc. #53.

3. [16-13036](#)-A-13 **IN RE: JOSE/KATRINA INZUNZA**
[PBB-6](#)

MOTION TO MODIFY PLAN
12-29-2020 [[80](#)]

JOSE INZUNZA/MV
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the

U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. [16-10445](#)-A-13 **IN RE: DONALD/NANCY NEWSOME**
[WDC-4](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT,
CONTINUE CASE ADMINISTRATION, AS TO DEBTOR
1-13-2021 [55]

DONALD NEWSOME/MV
VARDUHI PETROSYAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Nancy Louise Newsome ("Debtor"), the surviving co-debtor in this Chapter 13 case, requests the court name Debtor as the successor to the deceased co-debtor, waive the § 1328 certification requirements as to the deceased co-debtor, and for the continued administration of the case under chapter 13. Doc. #56. The evidence submitted with the motion is in sufficient for this court to grant the various requests for relief. Doc. ##55, 56.

Local Rule of Practice ("LBR") 9014-1(d)(3)(A) provides, in part, that the "application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefore." LBR 9014-1(d)(3)(D) provides that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4)." The only evidence provided for the relief requested in the motion is the Certificate of Death of Donald Gene Newsome, the deceased co-debtor ("Decedent"). Doc. #58.

Upon the death of a debtor in Chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred *upon a showing that further administration is possible and in the best interest of the parties.* (Emphasis added). Debtor has made no such showing.

The motion fails to provide any evidence or legal analysis explaining how or why further administration of this Chapter 13 case is possible and is in the best interests of the parties should the court name Debtor as the successor to Decedent. Decedent's death certificate, on its own, is insufficient to establish the showing required under Federal Rule of Bankruptcy Procedure 1016.

With respect to a waiver of the certification requirements for entry of discharge under 11 U.S.C. § 1328, Debtor has not "demonstrate[d] an inability to provide such certifications." LBR 9016-1(b)(4).

Further, it appears that Debtor also may be requesting the court to grant a discharge as to both Debtor and Decedent. Federal Rule of Bankruptcy Procedure 1016 and LBR 9016-1 apply to a pending bankruptcy case of a deceased debtor, but do not provide a means to waive any discharge requirements for a surviving co-debtor.

Accordingly, this motion is DENIED WITHOUT PREJUDICE. To the extent that Debtor is seeking a hardship discharge, that request for relief must be made by a separate motion.

5. [20-13164](#)-A-13 **IN RE: BETSSY MANDUJANO**
[HDN-3](#)

MOTION TO CONFIRM PLAN
12-31-2020 [58]

BETSSY MANDUJANO/MV
HENRY NUNEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to March 18, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #67. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than February 25, 2021. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by March 4, 2021.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 4, 2021. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

6. [20-13164](#)-A-13 **IN RE: BETSSY MANDUJANO**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
12-11-2020 [[43](#)]

MICHAEL MEYER/MV
HENRY NUNEZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to March 18, 2021 at 9:30 a.m.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The court will issue an order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The chapter 13 trustee asks the court to dismiss this case for unreasonable delay that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and for failure of the debtor to make all payments due under the plan (11 U.S.C. § 13074(c)(4)).

At the hearing held on February 11, 2021, the hearing on this matter was continued to be heard in conjunction with the motion to confirm the debtor's second amended plan. Civil Minutes, Doc. #70. Because the hearing on the motion to confirm the debtor's second amended plan (matter no. 5, above) is being continued to March 18 at 9:30 a.m., the court is inclined to continue the hearing on this motion to track with the debtor's motion to confirm the second amended plan.

7. [19-12168](#)-A-13 **IN RE: SANDRA BOMBITA**
[TCS-4](#)

MOTION TO SELL
1-21-2021 [[103](#)]

SANDRA BOMBITA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The Moving Party shall submit a proposed
order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. LoanCare LLC, as servicer for Lakeview Loan Servicing, LLC, filed a written non-opposition. Doc. #108. Unless opposition is presented at the hearing, the court intends to enter the non-responding parties' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to

LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Sandra Jeanette Bombita ("Debtor"), the Chapter 13 debtor in this case, petitions the court for an order authorizing Debtor to sell real property located at 1343 N. Wilson Ave, Fresno, CA 93728 ("Property) for \$255,000.00 to Madeline Zeicher ("Buyer"). Doc. #103; Decl. of Sandra Bombita, Doc. #105. Debtor's Chapter 13 plan was confirmed on October 5, 2019 (the "Plan"). Doc. #71. Section 6 of Debtor's Plan revested property of the estate in Debtor upon confirmation of the Plan, but requires Debtor to obtain court authorization prior to transferring property. Plan, Doc. #10.

Debtor had a previous motion to sell granted, but that sale never closed. Decl., Doc. #105. Debtor has had difficulty securing employment and seeks to sell the Property and apply the sale proceeds to debts secured by the Property. Debtor states that "[a]ll creditors with liens and security interests encumbering the subject property will be paid in full before, or simultaneously with the transfer of title." Decl., Doc. #105. Debtor asserts the offer is fair and reasonable and will enable Debtor's reorganization efforts. Decl., Doc. #83. LoanCare LLC, as servicer for Lakeview Loan Servicing, LLC, holder of a first priority deed of trust on the Property and the sole Class 1 secured creditor, consents to the sale of the Property as described by Debtor. Non-Opp'n, Doc. #108.

Accordingly, the court is inclined to grant Debtor's motion. Debtor shall file a confirmable modified plan pursuant to 11 U.S.C. § 1329(a).

8. [20-13473](#)-A-13 **IN RE: JOSE MERAS**
[MHM-1](#)

MOTION TO DISMISS CASE
1-14-2021 [[14](#)]

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987).

Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Doc. #14. Debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011).

Accordingly, this motion will be GRANTED. The case will be dismissed.

9. [19-14977](#)-A-13 **IN RE: JOSE/MARIA CHAVARRIA**
[MAZ-3](#)

MOTION TO MODIFY PLAN
12-31-2020 [[68](#)]

JOSE CHAVARRIA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

MOTION TO DISMISS CASE
1-13-2021 [[34](#)]

MICHAEL MEYER/MV
LEROY AUSTIN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtors failed to appear at the scheduled 341 meeting of creditors. Doc. #34. The debtors did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011).

Accordingly, this motion will be GRANTED. The case will be dismissed.

11. [17-14887](#)-A-13 **IN RE: VALENTIN CHOCOTECO**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY , MOTION FOR RELIEF
FROM CO-DEBTOR STAY
1-7-2021 [[87](#)]

NATIONSTAR MORTGAGE LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

12. [19-14187](#)-A-13 **IN RE: KELLY BURNS AND MARIA SANTORA-BURNS**
[TCS-3](#)

CONTINUED MOTION TO MODIFY PLAN
11-25-2020 [[48](#)]

KELLY BURNS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance
with the ruling below.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee timely opposed this motion, and the hearing on this matter was continued to February 11, 2021 at 9:30 a.m. to permit the debtors to respond to the trustee's opposition. Order, Doc. #58. On February 9, 2021, the trustee withdrew his opposition in consideration of terms agreeable to the debtors and set forth in a stipulation and proposed order filed February 9, 2021. Doc. ## 60, 61. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burke (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall be consistent with the proposed order marked Exhibit A, Doc. #61.

13. [20-13687](#)-A-13 **IN RE: ALMA INZUNZA**
[MHM-2](#)

MOTION TO DISMISS CASE
1-13-2021 [[23](#)]

MICHAEL MEYER/MV

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on January 29, 2021.
Doc. #36. The motion will be DENIED AS MOOT.

14. [16-14288](#)-A-13 **IN RE: RYAN/NIKOLE EKIZIAN**
[FW-3](#)

MOTION TO MODIFY PLAN
12-21-2020 [[57](#)]

RYAN EKIZIAN/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtors filed a second modified plan on February 5, 2021 (FW-4, Doc. ##68-76), with a motion to confirm the modified plan set for hearing on April 1, 2021 at 9:30 a.m.

15. [20-13890](#)-A-13 **IN RE: SALVADOR ALEJO AND DIANE ROCHA**
[PBB-1](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
12-28-2020 [[9](#)]

SALVADOR ALEJO/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The court will issue an order.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and set for hearing on January 14, 2021. At the January 14 hearing, the court continued the hearing on this matter to February 11, 2021 to permit the debtors to file supplemental pleadings in support of their motion. Order, Doc. #22. The debtors filed the supplemental declaration and exhibits on January 26, 2021. Doc. #24.

Salvador John Alejo (individually, "Alejo") and Diane A. Rocha (individually, "Rocha") (together, "Debtors") move the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #9.

Debtors are a married couple and filed their joint Chapter 13 case on December 22, 2020. Doc. #1. Prior to their marriage, Alejo and Rocha each had an individual Chapter 13 case pending within the preceding one-year period that was dismissed. Alejo's prior Chapter 13, Case No. 20-11240 (Bankr. E.D. Cal.), was dismissed on November 24, 2020 at the request of Alejo pursuant to 11 U.S.C. § 1307(b). No. 20-11240 Doc. #29. Rocha's prior Chapter 13, Case No. 20-11241 (Bankr. E.D. Cal.), was dismissed on October 16, 2020 for failure to make plan payments. No. 20-11241 Doc. ##21, 23.

Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtors filed this case on December 22, 2020. Petition, Doc. #1. On January 15, 2021, the court ordered the automatic stay extended until further order of the court. Doc. #22.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B). In a joint bankruptcy case, the application of § 362(c)(3) to each debtor must be analyzed separately. In re Parker, 336 B.R. 678, 681 (Bankr. S.D.N.Y. 2006).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if: (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 584 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019)).

In this case, the presumption of bad faith arises as to both Alejo and Rocha.

Diane Rocha

The presumption of bad faith arises as to Rocha because Rocha failed to perform the terms of a confirmed plan in her prior Chapter 13 case. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). A review of the court's docket in Rocha's prior case shows a Chapter 13 plan was confirmed on July 10, 2020, the Chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on September 3, 2020, and the court dismissed Rocha's prior case upon Trustee's declaration that Rocha failed to address the Notice in the time and manner prescribed by LBR 3015-1(g). See Case No. 20-11241, Doc. ##19, 21, 23.

The presumption that Debtors' bankruptcy case is filed in bad faith that arises as to Rocha may be rebutted by clear and convincing evidence to the contrary. 11 U.S.C. § 362(c)(3)(C). In support of this motion to extend the automatic stay, Debtors state that the individual payments on Debtors' separate plans strained their finances causing Rocha and Alejo to fall behind on their respective plan payments. Decl. of Alejo, Doc. #11. Debtors state that their income, assets, and expenses were commingled during each of their individual Chapter 13 cases. Decl., Doc. #11. However, despite the Debtors commingling income, assets, and expenses, Rocha and Alejo were both responsible for their individual plan payments. The budgets filed with Debtors' individual cases were unrealistically tight and Debtors could not make their individual plan payments. Supp. Decl., Doc. #24. Debtors' current case has a more realistic budget that will permit Debtors to make their proposed plan payment. Supp. Decl., Doc. #24. The court finds that the presumption of bad faith has been rebutted as to Rocha.

Salvador Alejo

Although Alejo voluntarily dismissed his prior Chapter 13 case, the presumption of bad faith arises as to Alejo because there has not been a substantial change in the financial or personal affairs of Alejo since the dismissal of his prior Chapter 13 case. 11 U.S.C. § 362(c)(3)(C)(i)(III). A review of the court's docket in Alejo's prior case shows a Chapter 13 plan was confirmed on June 12, 2020, the Chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on November 5, 2020, but the court dismissed Alejo's case upon Alejo's request pursuant to 11 U.S.C. § 1307(b) and without reference to Trustee's Notice. See Case No. 20-11240, Doc. ##26, 28, 29.

The presumption that Debtors' bankruptcy case is filed in bad faith that arises as to Alejo may be rebutted by clear and convincing evidence to the contrary. 11 U.S.C. § 362(c)(3)(C). A comparison of Debtors' schedules filed in this case with Alejo's schedules filed in his prior Chapter 13 shows no substantial change in his financial affairs. Additionally, Alejo testifies that Debtors commingled assets, income, and expenses during Alejo's prior Chapter 13 case. The budgets filed with Debtors' individual cases were unrealistically tight and Debtors could not make their individual plan payments. Supp. Decl., Doc. #24. Debtors' current case has a more realistic budget that will permit Debtors to make their proposed plan payment. Supp. Decl., Doc. #24. The court finds that the presumption of bad faith has been rebutted as to Alejo.

Conclusion

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay to any and all creditors pursuant to 11 U.S.C. § 362(c)(3)(B), unless terminated by further order of the court.

11:00 AM

1. [19-15321](#)-A-7 **IN RE: MARIA RAMIREZ**
[20-1037](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-9-2020 [[1](#)]

FEAR V. RAMIREZ ET AL
KELSEY SEIB/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to April 1, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement filed January 19, 2021, the status conference will be continued to April 1, 2021, at 11:00 a.m. Doc. #36.

2. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#)

CONTINUED STATUS CONFERENCE RE: SECOND AMENDED COMPLAINT
1-31-2018 [[151](#)]

SALVEN V. NIJJAR ET AL
PETER SAUER/ATTY. FOR PL.
JOINT STIPULATION OF DISMISSAL, DOC #457

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on January 11, 2021. Doc. #457.