

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, April 21, 2021  
Place: Department B - Courtroom #13  
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, **and all parties will need to appear at the hearing unless otherwise ordered.** 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.**

9:30 AM

1. [20-11901](#)-B-13    **IN RE: PAUL/DARLENE HOLLAND**  
[MHM-1](#)

OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM  
NUMBER 8  
2-23-2021    [\[76\]](#)

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

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

DISPOSITION:        Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Proof of Claim No. 8 filed by Jefferson Capital Systems, LLC ("Creditor"), on June 15, 2020 in the sum of \$381.28 and seeks that it be disallowed in its entirety.

This objection will be SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Fed. R. Bankr. P. 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, Trustee has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See Cal. Code Civ. P. §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) upon objection. *In re GI Indust., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000). According to the claim, there has been no activity between Creditor and the debtors since November 15, 2006. See Claim #8-1, at 4. This is well past the four-year statute of limitations for a written contract.

Accordingly, Claim No. 8 filed by Jefferson Capital Systems, LLC, will be disallowed in its entirety.

2. [20-13217](#)-B-13     **IN RE: LARRY/DOLORES SYRA**  
[MAZ-4](#)

MOTION TO MODIFY PLAN  
3-12-2021    [76]

DOLORES SYRA/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to May 26, 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).

Larry N. Syra and Dolores G. Syra ("Debtors") seek to confirm their First Amended Chapter 13 Plan. Doc. #76.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects to Debtors' plan because it fails to provide for submission of all or such portion of future earnings or other income to the supervision and control of Trustee to execute the plan. Doc. #84. Trustee contends that the plan payment must increase to \$3,004.57 per month effective March 2021 to fund the plan.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtors shall file and serve a written response not later than May 12, 2021. The

response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by May 19, 2021.

If the Debtors elect 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 May 19, 2021. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

3. [18-10219](#)-B-13     **IN RE: EFREN/ANA ELENEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
3-22-2021    [[29](#)]

MICHAEL MEYER/MV  
THOMAS GILLIS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:       Dropped from calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this motion on April 19, 2021. Doc. #45. Accordingly, this matter will be dropped from calendar.

4. [21-10724](#)-B-13     **IN RE: JUAN SANTOYO AND JEANETTE NEVAREZ**  
[SL-1](#)

MOTION TO IMPOSE AUTOMATIC STAY  
4-1-2021    [[14](#)]

JEANETTE NEVAREZ/MV  
SCOTT LYONS/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 the order.

This motion was filed on at least 14 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Consequently, the creditors, chapter 13 trustee, U.S. Trustee, and any other parties in interest were not required to file written opposition to the motion. If any of these respondents appear

at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Juan Javier Santoyo and Jeanette Jessica Nevarez ("Debtors") seek an order imposing the automatic stay pursuant to 11 U.S.C. § 362(c)(4).

Under 11 U.S.C. § 362(c)(4)(A), if a debtor has two or more cases pending within the previous year that were dismissed, the automatic stay will not go into effect when the later case is filed. This case was filed on March 26, 2021. Doc. #1. Debtors had two cases that were pending but dismissed in the past year, case no. 20-10331 (filed on January 30, 2020 and dismissed on August 17, 2020) and case no. 20-13219 (filed on October 2, 2020 and dismissed on February 19, 2021).

11 U.S.C. § 362(c)(4)(B) allows the court to impose the stay to any or all creditors, subject to any limitations the court may impose, if within 30 days after the filing of the later case, a party in interest requests the court may order they stay to take effect after a notice and hearing only if the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(4)(D) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* 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 in the affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 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. In both prior cases filed within the 1-year period preceding this case, Debtors failed to perform the terms of a confirmed plan and failed to timely pay plan payments. 11 U.S.C. §§ 362(c)(4)(D)(i)(I), (II).

Joint debtor Jeanette Jessica Nevarez filed a declaration acknowledging that the two prior cases were dismissed for failure to make plan payments. Doc. #16. Ms. Nevarez states that Debtors were unable to pay plan payments because they were both diagnosed with COVID-19 in January 2021 and were quarantined for two weeks. *Id.*, 4. During this time, Debtors suffered a decrease in income and used their sick leave time. On January 28, 2021, Debtors' daughter had an emergency surgery and Ms. Nevarez was forced to miss work on January 28 and 29, 2021 to take care of her. Because she was out of sick time, Debtors suffered a further decrease in income for those days. *Ibid.*

Debtors declare that they will be able to make their plan payments this time because both Debtors are back to work full time and have both been vaccinated for COVID-19. *Id.*, 5. Ms. Nevarez states she will receive a 1% pay raise in August 2021. Moreover, Debtors have dropped a cell phone line and stopped paying for whole life insurance, which has lowered their expenses by \$376.00 per month. *Ibid.*

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted and the Debtors' petition was filed in good faith. Moreover, Debtors have reduced their expenses, have been vaccinated, and have returned to work full time, which represents a substantial change in Debtors' financial affairs since the previous dismissal.

In the absence of opposition, this motion will be GRANTED. The automatic stay will be imposed effective upon entry of the order as to all parties who received notice, unless terminated by further order of this court. 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.

5. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**  
[MHM-6](#)

CONTINUED MOTION TO DISMISS CASE  
2-10-2021 [[120](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion was previously continued so that it could be heard in connection with the debtors' motion to confirm plan in matter #6 below. See TCS-3.

The court intends to grant the motion to confirm plan in matter #6 below. Accordingly, the trustee's motion to dismiss for material default under the plan will be DENIED AS MOOT because the debtors have confirmed a modified plan.

6. [19-12058](#)-B-13     **IN RE: RICHARD/DAWN MARTINES**  
[TCS-3](#)

MOTION TO MODIFY PLAN  
3-4-2021    [\[124\]](#)

DAWN MARTINES/MV  
TIMOTHY SPRINGER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Richard John Martines and Dawn Marie Martines ("Debtors") seek confirmation of their Third Modified Chapter 13 Plan. Doc. #124. Debtors wish to extend the duration of their plan from 60 months to 64 months under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act and 11 U.S.C. § 1329(d).

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021). Here, Debtors state that they are unable to keep up with a higher plan payment with the ongoing pandemic. Doc. #127, ¶ 7. Debtors previous plan was confirmed on February 12, 2020. Doc. #107. Accordingly, Debtors satisfy the requirements to extend their plan beyond 60 months under the CARES Act and § 1329(d).

This motion will be 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.

7. [20-13965](#)-B-13     **IN RE: STEPHANIE FOREMAN**  
[DMG-1](#)

MOTION TO CONFIRM PLAN  
3-9-2021    [\[19\]](#)

STEPHANIE FOREMAN/MV  
D. GARDNER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Stephanie Foreman ("Debtor") seeks confirmation of her first modified chapter 13 plan. Doc. #19.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed confirmation because (1) the plan fails to provide for the value of property to be distributed under the plan on account of each allowed unsecured in at least the amount that would be paid under chapter 7; and (2) the plan does not provide for all of Debtor's disposable income to be applied to unsecured creditors under the plan. Doc. #25.

Debtor timely responded by declaration and amended Schedule A/B, Form 122C-1, and Form 122C-2. Docs. ##29-32.

On April 19, 2021, Trustee withdrew his opposition. Doc. #33.

This motion will be 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.

8. [20-12288](#)-B-13     **IN RE: FRANCISCO/MELISSA RAMIREZ**  
[SAH-7](#)

MOTION TO MODIFY PLAN  
3-4-2021    [\[85\]](#)

MELISSA RAMIREZ/MV  
SUSAN HEMB/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

This motion was filed on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled. The defaults of all non-responding parties except the chapter 13 trustee are entered.

Francisco R. Ramirez and Melissa Diane Ramirez ("Debtors") seek confirmation of their modified chapter 13 plan. Doc. #85. Debtors wish to extend the duration of their plan from 60 months to 77 months under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act and 11 U.S.C. § 1329(d).

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed confirmation because (1) the plan fails to provide for submission of all or such portion of Debtors' future earnings or other income to the supervision and control of Trustee to execute the plan; (2) Debtors will not be able to make all payments under the plan and comply with the plan; and (3) the plan has not been proposed in good faith. Doc. #95.

Debtors timely replied. Doc. #97. But the reply did not include a declaration. Rather only argument and an exhibit for which no foundational evidence was offered.

First, Trustee states that the ongoing Class 1 mortgage payment to Wells Fargo Bank NA is delinquent \$4,673.51 through March 2021. Doc. #95, ¶ 1. Since the plan fails to address the post-petition delinquency, all funds on hand will be held until the mortgage is current causing Class 1 prepetition arrears, attorney's fees, and Class 2 creditors to not be paid until the mortgage is current. Trustee further contends that the plan payment is insufficient to pay monthly dividends and is short \$286.88 per month commencing month 26. *Ibid.*

Next, Trustee offers that Debtors will not be able to make all payments under and comply with the plan. *Id.*, ¶ 2. Section 7 of the plan provides for additional provisions wherein Debtors admit that they are delinquent in the amount of \$12,356.82 for months 1-7. Since the plan does not bring the payments current as of the date of confirmation, Trustee contends that the plan is not feasible. Additionally, Trustee states that Debtors only paid \$3,000.00 of the \$4,310.35 March 2021 plan payment. As proposed, it would take 90.85 months to fund the plan. Debtors must pay \$308,028.55 to fund the plan, but the total proposed payments only total \$273,776.12. *Ibid.*

Lastly, Trustee questions whether the Debtors proposed the plan in good faith and met their burden of satisfying each and every element of § 1325(a). *Id.*, ¶ 3. Trustee notes that the plan reduces the plan payment to \$3,448.26 effective month 26 but Amended Schedules I and J state that Debtors have monthly net income of \$4,311.36. This results in Debtors keeping over \$860.00 in income for personal use.

Debtors' response states that they further reviewed the amount necessary to fund the plan and concluded that \$4,310.35 for 72 additional months will fund the plan, including the arrears. The plan will still be completed within the total allowed 84 months under § 1329.

Further, Debtors state that they paid an additional \$1,670.00 to Trustee on March 30, 2021, which brings the total amount paid in March to \$4,670.00. Debtors ask that the court enter an order approving the plan with payments of \$4,310.35 monthly beginning April 2021 and continuing for 71 additional months.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021). Here, Debtors were diagnosed with COVID-19 in December 2020 resulting in a loss of income in December 2020 and January 2021. Doc. #87, ¶ 3. Debtors previous plan was confirmed on December 17, 2020, which is before the Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #78. Accordingly, Debtors satisfy the requirements to extend their plan beyond 60 months under the CARES Act and § 1329(d).

This matter will be called as scheduled to inquire whether Trustee is amenable to the proposed plan changes in Debtors' reply. If there is further objection from Trustee, this matter may be continued. In addition, the Debtors have not directly discussed the delinquency to Wells Fargo, the current plan delinquency of over \$12,000, or the debtors' good faith. Presumably, the Debtors contend that confirming the modified plan with continued payments of \$4310.00 per month satisfies the objection. But the court must also review other aspects of the Debtor's financial condition. The existing delinquencies and post-objection "modifications of the modifications" is troubling, here. The lack of reply evidence does not satisfy the Debtor's burden of proof.

The court may deny confirmation at the hearing.

9. [19-10641](#)-B-13    **IN RE: MARTIN FLORES**  
[MHM-2](#)

CHAPTER 13 TRUSTEE'S FORBEARANCE STATUS CONFERENCE  
4-14-2021    [\[55\]](#)

PETER BUNTING/ATTY. FOR DBT.

NO RULING.

The parties shall be prepared to discuss PennyMac Loan Services, LLC's ("PennyMac") Notice of Loan Forbearance filed March 31, 2021. See docket generally.

Chapter 13 trustee Michael H. Meyer ("Trustee") set this forbearance status conference for hearing pursuant to General Order 20-03. Doc. #55. A previous forbearance status conference occurred on February 10, 2021 after PennyMac filed a similar notice suspending payments from December 2020 through February 2021. MHM-1. Since Trustee had already made the December 2020 mortgage payment, the court ordered suspension of January and February 2021 payments in accordance with PennyMac's forbearance. Doc. #53.

PennyMac's March 31, 2021 notice suspends mortgage payments for six (6) months beginning December 1, 2020 through May 1, 2021. Since Trustee has already paid the December 2020 payment, Trustee requests that the forbearance be effective for the months of January 2021 through May 2021. Doc. #55.

11:00 AM

1. [17-14112](#)-B-13    **IN RE: ARMANDO NATERA**  
[TAT-2](#)

FURTHER SCHEDULING CONFERENCE RE: MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-12-2020    [[76](#)]

SANDRA WARD/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
THOMAS TRAPANI/ATTY. FOR MV.  
DISMISSED 01/03/2018, RESPONSIVE PLEADING

NO RULING.

2. [21-10124](#)-B-13    **IN RE: KIRK/JAYCEE KILLIAN**  
[21-1005](#)

STATUS CONFERENCE RE: COMPLAINT  
2-9-2021    [[1](#)]

U.S. TRUSTEE V. KILLIAN ET AL  
JUSTIN VALENCIA/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.