

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 12, 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. [20-13904](#)-B-13 **IN RE: LINDA TODD**
[MHM-2](#)

MOTION TO DISMISS CASE
4-8-2021 [\[33\]](#)

MICHAEL MEYER/MV

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Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.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

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors. Doc #33. Debtor did not oppose.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to set a Ch. 13 Plan for hearing and notice creditors. Accordingly, the motion will be GRANTED, and the case dismissed.

2. [19-13822](#)-B-13 **IN RE: SALVADOR PULIDO**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-28-2021 [[60](#)]

EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The movant, Educational Employees Credit Union, withdrew this motion on May 10, 2021. Doc. #68. Accordingly, this matter will be dropped from calendar.

3. [19-14232](#)-B-13 **IN RE: ISIDRO GARCIA AND BRENDA HERNANDEZ**
[TCS-2](#)

MOTION TO MODIFY PLAN
4-1-2021 [[50](#)]

BRENDA HERNANDEZ/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)(2). 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.

The court notes that the Notice of Hearing (Doc. #51) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent proceedings. Future violations of the local rules may result in the motion being denied without prejudice.

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.

4. [19-14040](#)-B-13 **IN RE: EARL/JOSIE BOYD**
[FW-6](#)

MOTION TO INCUR DEBT
4-27-2021 [\[55\]](#)

JOSIE BOYD/MV
GABRIEL WADDELL/ATTY. FOR DBT.
OST 4/27/21

NO RULING.

This motion was filed with an order shortening time and on at least 14 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(2) and (3). Consequently, chapter 13 trustee Michael H. Meyer ("Trustee"), the U.S. Trustee, and any other party in interest were not required to file a written response or opposition to this motion. If opposition is presented at the hearing, the court will consider whether further briefing is necessary and issue an order if necessary.

Earl Lee Boyd, III, and Josie Autencio Boyd ("Debtors") seek authorization for Debtors to incur debt to purchase a vehicle. Doc. #56.

This matter will be called as scheduled. The court is inclined to DENY the motion.

LBR 3015-1(h)(A) allows the debtor, with court approval, to finance the purchase of a motor vehicle if written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is a certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the new debt; (iv) the new debt is a single loan incurred to purchase a vehicle that is reasonably necessary for the maintenance or support of the debtor, or necessary for the continuation, preservation, and operation of the debtor's business; (v) the only security for the new debt will be the vehicle purchased by debtor; and (vi) the new debt does not exceed \$20,000.00.

If the trustee will not give consent, the debtors may still seek court approval under LBR 3015-1(h) (E) by filing and serving a motion on the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

Since the loan offer is only valid through May 15, 2021, Debtors filed a motion for an order shortening time to file this motion to incur debt on less than the 21 days' notice required by Fed. R. Bankr. P. 2002. Doc. #54. The court granted Debtors' request for an order shortening time. Doc. #62. The order stated that notice shall be adequate if mailed to all parties in interest by first-class mail on or before April 27, 2021. *Id.* Debtors served all parties in interest notice of the hearing by first-class mail on April 27, 2021. Docs. ##61-62.

Debtors ask the court for permission to borrow \$20,000.00 from NewRoadsAutoLoans ("Creditor") at an interest rate of 17.70% to purchase a vehicle. Doc. #55. The loan will be secured by the vehicle and include the following terms:

Total Amount Financed:	\$20,000 or less
Interest Rate:	17.70%
Maximum Monthly Payment:	\$445.00
Maximum Loan Period:	72 months

Doc. #57, ¶ 9. Debtors will make a down payment of approximately \$3,000.00, all of which is derived from stimulus amounts received and saved during the last year. *Id.*, ¶ 11. Debtors anticipate purchasing a less expensive vehicle so that the loan will be significantly under the \$20,000.00 cap. *Id.*, ¶ 12. Debtors intend to pay the loan off in three years, rather than the six-year proposed maximum loan period. *Ibid.*

Debtors currently own three older vehicles, but one of those, a Nissan Xterra, is now inoperable and the cost of repairs exceeds the value of the vehicle. *Id.*, ¶ 2. The second vehicle, a Honda CR-V, is unreliable and needs significant service. *Ibid.*

Joint Debtor Earl Lee Boyd, III, declares that he commutes three hours roundtrip to his place of employment and works at least three days per week on location. *Id.*, ¶ 3. While on location, Mr. Boyd states that he has to drive to three different work sites as part of his job. *Ibid.* Further, Mr. Boyd anticipates being required to be at the office five days per week in the near future and states that he needs reliable transportation or else he will lose his employment. *Ibid.*

Debtors also have children who attend school and Joint Debtor Josie Autencio Boyd needs a vehicle to take care of family errands. *Id.*, ¶ 4. Since Mr. Boyd has a significant commute time, he contends that it is not feasible for the Debtors to share one vehicle. *Ibid.*

Debtors did not include Trustee's written consent with this motion. As result, Debtors declare that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) Debtors filed amended Schedules I and J to show an ability to make plan payments, living expenses, and payments on the new vehicle loan

(Doc. #59). *Id.*, ¶¶ 15-17. Additionally, (iv) the new debt is a single loan to purchase a vehicle, which Debtors declare is necessary for support and maintenance; (v) the only security for the new debt will be the vehicle purchased with the loan proceeds; and (vi) the new debt will not exceed \$20,000.00.

The main concern with this proposed vehicle loan is the unreasonably high interest rate of 17.70%. Though the court does not know for certain, the interest rate may be the reason that Trustee did not provide written consent.

Mr. Boyd's declaration vaguely states he made "significant effort" to obtain a loan and he has determined that better terms are unavailable because of his bankruptcy. The record is insufficient to support both assertions.

This matter will be called as scheduled to inquire about the positions of Trustee and any other parties in interest. The court is inclined to DENY the motion because the 17.70% interest rate is unreasonable based on this record. Also, the Trustee has not provided consent or recommendation that the loan should be approved.

5. [21-10443](#)-B-13 **IN RE: JORGE LOPEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-14-2021 [\[50\]](#)

DUSHAWN JOHNSON/ATTY. FOR DBT.
MOTION FEE \$188.00 PAID ON 4/19/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the required fee of \$188.00 for a Motion for Relief from Automatic Stay was paid on April 19, 2021. Therefore, the Order to Show Cause will be vacated.

6. [20-13846](#)-B-13 **IN RE: RACHEL ROBERTS**
[MHM-3](#)

MOTION TO DISMISS CASE
4-2-2021 [[37](#)]

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.
CASE DISMISSED 4/30/21

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 April 30, 2021. Doc. #42. Therefore, this motion will be DENIED AS MOOT.

7. [18-12050](#)-B-13 **IN RE: GENEVIEVE SANTOS**
[ALG-5](#)

MOTION TO MODIFY PLAN
3-29-2021 [[105](#)]

GENEVIEVE SANTOS/MV
JANINE ESQUIVEL OJI/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 16, 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) (2).

Genevieve Ann Santos ("Debtor") seeks confirmation of her Second Modified Chapter 13 Plan. Doc. #105.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed because the plan fails to provide for submission of all or such portion of Debtor's future earnings to the Trustee to execute the plan as required by 11 U.S.C. § 1322(a). Doc. #120. Trustee states that Debtor is delinquent for two ongoing Class 1 mortgage payments in the amount \$1,681.18 through March 2021. The plan does not address post-petition mortgage delinquency and all funds on hand will be held to pay the mortgage until it is current, which will result in no payment to the Class 1 pre-petition arrears claim, Class 2 claim, or attorney fees, until at least June 2021 if Debtor timely pays the plan payments. *Id.*

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall

file and serve a written response not later than June 2, 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 Debtor's position. Trustee shall file and serve a reply, if any, by June 9, 2021.

If 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 June 9, 2021. If Debtor does 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.

8. [20-13358](#)-B-13 **IN RE: JENNIFER WELLS**
[MAZ-2](#)

MOTION TO CONFIRM PLAN
3-22-2021 [\[59\]](#)

JENNIFER WELLS/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 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.

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.

9. [20-13358](#)-B-13 **IN RE: JENNIFER WELLS**
[MAZ-3](#)

OBJECTION TO CLAIM OF PENNYMAC LOAN SERVICES, LLC, CLAIM
NUMBER 6
3-23-2021 [\[54\]](#)

JENNIFER WELLS/MV
MARK ZIMMERMAN/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 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.

Jennifer L. Wells ("Debtor") objects to Proof of Claim No. 6-1 filed by PennyMac Loan Services, LLC ("Creditor"), on December 7, 2020 in the sum of \$230,298.37. Doc. #54. The claim states an arrearage of \$6,644.69 for the months of July through October 2020. Claim #6, at 4. Debtor objects to the arrearage because she received a deferral agreement from Creditor on November 17, 2020 suspending payments for the months of July through October 2020, pre-petition, and November 2020, post-petition. See Doc. #57, Ex. A.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely responded to comment that Debtor appears to be current on the mortgage through April 2021. Doc. #66.

This objection will be SUSTAINED.

First, the court notes that the Notice of Hearing (Doc. #55) filed in connection with this motion does appear to comply with LBR 3015-1(d)(3)(B)(iii) by notifying respondents that they can view the pre-hearing dispositions at the court's website, www.caeb.uscourts.gov. However, the URL for the court website is nearly illegible. Counsel is advised to maintain adequate toner or printer ink levels to

ensure all documents filed with the court are legible. Illegible documents may result in the motion being denied without prejudice.

Second, 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, Debtor has established that she received a deferral on her mortgage payments for the months of July through November 2020. Docs. ##56-57. Moreover, Trustee states that Debtor is current on payments to Creditor through April 2021. Doc. #66.

Therefore, this objection will be SUSTAINED. Claim #6-1 filed by PennyMac Loan Services, LLC, will be disallowed insofar as it purports an arrearage of \$6,644.69 because Debtor is current on mortgage payments through April 2021. Creditor's remaining secured claim will be allowed.

10. [18-11964](#)-B-13 **IN RE: PAUL/MICHELLE ESPARZA**
[MHM-4](#)

STATUS CONFERENCE RE: CHAPTER 13 TRUSTEE'S NOTICE OF
FORBEARANCE
4-29-2021 [\[83\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

The parties shall be prepared to discuss Wells Fargo Home Mortgage's ("Wells Fargo") Notice of Loan Forbearance supplemental letter purportedly suspending payments for fifteen months, through July 1, 2021.

Chapter 13 trustee Michael H. Meyer ("Trustee") set this forbearance status conference for hearing pursuant to General Order 20-03. Doc. #84. A previous forbearance conference occurred on March 31, 2021 after Wells Fargo filed a similar forbearance notice. See MHM-3. Because Trustee had already made six ongoing mortgage payments between August 2020 and February 2021, Trustee requested that the forbearance be effective: May 2020 - July 2020; December 2020; and March 2021 - April 2021. Doc. #77. Trustee subsequently withdrew that forbearance status conference on April 20, 2021 and set this status conference on April 29, 2021.

Trustee states that the debtors filed another letter from Wells Fargo extending the mortgage payment suspension through July 1, 2021, for a total of fifteen months. Doc. #83. Although Wells Fargo

has not filed a Notice of Forbearance or supplemental claim suspending payments due from May 1, 2021 through July 1, 2021, Trustee requests to extend the forbearance for an additional three months (May 2021 - July 2021). *Id.*

11. [19-11780](#)-B-13 **IN RE: JESSE/KATHLEEN CANTU**
[JAD-2](#)

MOTION TO MODIFY PLAN
3-15-2021 [\[44\]](#)

KATHLEEN CANTU/MV
JESSICA DORN/ATTY. FOR DBT.
VARDUHI PETROSYAN/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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.

The court notes that the Notice of Hearing (Doc. #45) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent proceedings. Future violations of the local rules may result in the motion being denied without prejudice.

Additionally, the plan provides for payments of \$6,528.00 per month beginning month 24. Doc. #46. Jesse Mario Cantu and Kathleen Louise Cantu ("Debtors") declare that they receive monthly income of \$12,275.31 and have monthly expenses of \$5,746.46, which leaves them with \$6,528.85 in disposable income. Doc. #47, ¶ 11. Schedule J filed on April 30, 2019, however, indicates that Debtors have

disposable income of \$5,528.85. Doc. #1, Schedule J, ¶ 23c. No amended Schedule J has been filed.

Upon request by the chapter 13 trustee, Debtors shall amend Schedule I and J to reflect their updated income and expenses. If Debtors are otherwise unable to make the plan payments, they shall file, serve, and set for hearing a motion to modify the plan.

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.

12. [19-12284](#)-B-13 **IN RE: MATTHEW GONZALEZ ALVARADO AND NEREYDA ALVARADO**

MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
4-6-2021 [[58](#)]

SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on April 30, 2021. Doc. #65. Accordingly, this matter will be dropped from calendar.

13. [21-10895](#)-B-13 **IN RE: JASON/ASHLEY WILLIAMS**

MOTION TO EXTEND AUTOMATIC STAY
4-19-2021 [[13](#)]

ASHLEY WILLIAMS/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 the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and

final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Jason Russel Williams and Ashley Jane Williams ("Debtors") seek an order extending the automatic stay pursuant to 11 U.S.C. § 362(c) (3). Doc. #13.

Under 11 U.S.C. § 362(c) (3) (A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay under subsection (a) of this section shall terminate with respect to the debtor on the 30th day after the filing of the latter case. Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-13377. That case was filed on August 6, 2019 and was dismissed on February 18, 2021 for failure to pay plan payments. This case was filed on April 12, 2021 and the automatic stay will expire on May 12, 2021, the date of this hearing. Doc. #1.

11 U.S.C. § 362(c) (3) (B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the latter 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) (3) (C) 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 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. 1785 (2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith since the prior case was dismissed because Debtors failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c) (3) (C) (i) (II) (cc).

Joint Debtor Jason Russell Williams declares that the previous case was dismissed for failure to timely pay plan payments. Doc. #16, ¶ 4. Mr. Williams states that he changed employment in September 2020, which interrupted Debtors' monthly cash flow. *Id.*, ¶ 5. After he began receiving wages from his new employer, Debtors needed to catch up on plan payments while still maintaining regular living expenses, which caused them to fall behind on plan payments. Meanwhile, Joint Debtor Ashley Jane Williams changed employers around the same time, but the new position caused a decrease in Debtors' earnings that hindered their ability to make plan payments further. *Ibid.* Debtors filed bankruptcy to prevent foreclosure of their house and repossession of their vehicles. *Id.*, ¶ 6.

Additionally, Debtors included updated Schedules I and J, which reflect disposable income of \$5,634.30 - enough to make the proposed plan payment of \$4,350.00. Doc. #15, Ex. A; *cf.* Ex. B.

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the Debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

In the absence of opposition, this motion will be GRANTED. The automatic stay will be extended for all purposes 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).

14. [18-11141](#)-B-13 **IN RE: ELENA HARPER**
[MHM-3](#)

STATUS CONFERENCE RE: CHAPTER 13 TRUSTEE'S FORBEARANCE
4-30-2021 [\[80\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.

NO RULING.

The parties shall be prepared to discuss treatment of Freedom Mortgage Corporation's ("Freedom Mortgage") Notice of Forbearance Due to the COVID-19 Pandemic filed on April 27, 2021. The notice provides for a six-month forbearance starting March 1, 2021 through August 31, 2021.

Chapter 13 trustee Michael H. Meyer ("Trustee") set this forbearance status conference for hearing pursuant to General Order 20-03. Doc. #81. Trustee states that he has already paid the March 2021 mortgage payment. Doc. #80. Trustee requests that Freedom Mortgage's forbearance be effective for the months of April 2021 through August 2021 only.

11:00 AM

1. [20-12036](#)-B-7 **IN RE: SANDRA SANCHEZ**
[21-1016](#)

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-13-2021 [9]

SALVEN V. SANCHEZ ET AL
FILING FEE \$350.00 PAID ON 4/28/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee on the complaint of \$350.00 was paid on April 28, 2021. Therefore, the Order to Show Cause will be vacated.

2. [20-12037](#)-B-7 **IN RE: GURDIAL SINGH**
[21-1017](#)

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-13-2021 [9]

SALVEN V. SINGH
FILING FEE \$350.00 PAID ON 4/28/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee on the complaint of \$350.00 was paid on April 28, 2021. Therefore, the Order to Show Cause will be vacated.

3. [20-12037](#)-B-7 **IN RE: GURDIAL SINGH**
[21-1018](#)

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-13-2021 [9]

SALVEN V. HANNON ET AL
FILING FEE \$350.00 PAID ON 4/28/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee on the complaint of \$350.00 was paid on April 28, 2021. Therefore, the Order to Show Cause will be vacated.

4. [19-15246](#)-B-7 **IN RE: ANDREA CASTILLO**
[20-1016](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-12-2020 [1]

SEMPER V. CASTILLO
BRIAN WHELAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

Mark Semper ("Plaintiff") filed this adversary proceeding on March 12, 2020 seeking to determine that his claim against Debtor Andrea Castillo ("Defendant") be deemed non-dischargeable under 11 U.S.C. §§ 523(a)(2), (4), and (6). Plaintiff's claim arises under state law and is based on allegations of defamatory statements made by Defendant with malice and intent to injure Plaintiff ("Defamation Claims"). Plaintiff filed a State Court Action for the Defamation Claims in Fresno County Superior Court on May 21, 2019 entitled *Mark Semper v. Andrea Castillo, et al.*, case no. 19CECG01772 ("State Court Action").

The court previously granted Plaintiff's motion for relief from the automatic stay to proceed with the State Court Action on March 23, 2020. See *In re Andrea Castillo*, case no. 19-15246-BK-7, Doc. #48.

In accordance with this court's previous order, Plaintiff filed a status conference statement on March 5, 2021. Doc. #44. Plaintiff reports that the parties appeared at a hearing in the State Court Action on November 19, 2020 and all parties consented to a continuance due to additional required discovery and delays caused by COVID-19. *Id.* The trial was continued to March 7, 2022 and Plaintiff requests this court continue the status conference to a later date and time following the trial on March 7, 2022. *Id.*

But first, the court notes that the adversary proceeding cover sheet (Doc. #2) filed in this case indicates that the lead cause of action is both objection/revocation to/of discharge under § 727 and a dischargeability action under § 523. As result, the § 727 flag was triggered preventing a discharge in Defendant's related chapter 7 bankruptcy case. In reviewing the complaint, objection to or revocation of discharge under § 727 is not alleged and the complaint focuses primarily on dischargeability of certain debts under § 523. Doc. #1.

This status conference will be called to confirm that Plaintiff is not alleging objection to or revocation of Defendant's discharge under § 727. If Plaintiff is not alleging objection to or revocation of discharge under § 727, then this court will order that the adversary proceeding shall proceed under § 523 only.

The court is inclined to stay and administratively close this adversary proceeding pending final adjudication of the Defamation Claims in favor of Plaintiff. If proceedings are then necessary to determine the dischargeability of any judgment entered on account of the Defamation Claims, or if any other relief is required in this adversary proceeding before the Defamation Claims are finally adjudicated, then this adversary proceeding may be reopened, without a fee, and reset for a further status conference by either party on 21 days' notice to the opposing party.

5. [20-12969](#)-B-7 **IN RE: CARLOS CORTES AND BERTHA SPINDOLA**
[21-1012](#)

STATUS CONFERENCE RE: COMPLAINT
3-15-2021 [[1](#)]

EDMONDS V. CORTES ET AL
ANTHONY JOHNSTON/ATTY. FOR PL.

NO RULING.