

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: AUGUST 14, 2019
CALENDAR: 3:00 P.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-11806](#)-A-13 **IN RE: ANNIE PUMPHREY**
[MHM-1](#)

MOTION TO DISMISS CASE
7-9-2019 [[17](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

2. [19-12606](#)-A-13 **IN RE: JUAN/MARIA QUEVEDO**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF NOBLE CREDIT UNION
7-8-2019 [[14](#)]

JUAN QUEVEDO/MV
PETER BUNTING

Final Ruling

This motion has been voluntarily dismissed by the movant. ECF No. 27.

3. [19-10507](#)-A-13 **IN RE: TUCKER/JAMIE MAXFIELD**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2019 [[62](#)]

FREEDOM MORTGAGE
CORPORATION/MV
TIMOTHY SPRINGER
DANE EXNOWSKI/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2600 12th Avenue Kingsburg, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been

filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as four postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2600 12th Avenue Kingsburg, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

4. [19-10507](#)-A-13 **IN RE: TUCKER/JAMIE MAXFIELD**
[TCS-2](#)

MOTION TO CONFIRM PLAN
7-8-2019 [\[73\]](#)
TUCKER MAXFIELD/MV
TIMOTHY SPRINGER

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2600 12th Avenue Kingsburg, CA

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

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as four postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2600 12th Avenue Kingsburg, CA, as to all parties

in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

5. [16-12713](#)-A-13 **IN RE: JASON ATHERTON AND GENZZIA**
DOVIGI-ATHERTON
[TCS-6](#)

MOTION TO MODIFY PLAN
6-25-2019 [87]
JASON ATHERTON/MV
TIMOTHY SPRINGER

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. *See* 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); *see also In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); *see also In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

6. [19-11913](#)-A-13 **IN RE: JOSE VITOLAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-17-2019 [[52](#)]

JAMES CANALEZ
DISMISSED 7/24/19

Final Ruling

The case having been dismissed, the matter is dropped as moot.

7. [19-11913](#)-A-13 **IN RE: JOSE VITOLAS**
[JBC-1](#)

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. AND/OR
MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
7-10-2019 [[40](#)]

JOSE VITOLAS/MV
JAMES CANALEZ
DISMISSED 7/24/19

Final Ruling

The case having been dismissed, the matter is dropped as moot.

8. [19-11913](#)-A-13 **IN RE: JOSE VITOLAS**
[JBC-2](#)

MOTION TO CONFIRM PLAN
7-10-2019 [[44](#)]

JOSE VITOLAS/MV
JAMES CANALEZ
DISMISSED 7/24/19

Final Ruling

The case having been dismissed, the matter is dropped as moot.

9. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[TCS-12](#)

CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE
DISCHARGE INJUNCTION
6-19-2019 [\[159\]](#)

DIMAS COELHO/MV
NANCY KLEPAC
ORDER, ECF NO. 164

Final Ruling

Motion: Sanctions Due to Violation of Discharge Injunction

Notice: LBR 9014-1(f)(1); continued from July 19, 2019 by stipulation of the parties; no written opposition filed

Disposition: Continued

Order: Civil minute order

The debtors are seeking sanctions for an alleged violation of the discharge injunction by Federal National Mortgage Association, Seterus, Inc., and someone named "Mr. Cooper."

However, none of the evidence proffered with the motion is admissible. The motion is unsupported by a declaration or affidavit establishing the factual assertions in the motion. The exhibits are not authenticated with a declaration or affidavit either. See LBR 9014-1(d)(3)(D).

Accordingly, the court will continue the hearing on this motion to September 17, 2019 at 9:00 a.m., in order for the movant to address the issues identified by the court above. A supplemental pleading in support of the motion, with admissible evidence, shall be filed and served no later than September 3, 2019. As no responses have been filed to the motion, the record is otherwise closed.

CIVIL MINUTE ORDER

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

The debtor's motion for imposition of the automatic stay has been presented to the court. Having considered the motion,

IT IS ORDERED that the hearing on the motion is continued to September 17, 2019 at 9:00 a.m., in order for the movant to supplement the record as prescribed by the court's August 14 hearing minutes. A supplemental pleading in support of the motion, with admissible evidence, shall be filed and served on all parties in interest no later than September 3, 2019.

IT IS FURTHER ORDERED that the record on the motion is closed.

10. [17-11817](#)-A-13 **IN RE: KEVIN ROBERTS**
[SAH-3](#)

MOTION TO MODIFY PLAN
6-26-2019 [\[48\]](#)

KEVIN ROBERTS/MV
SUSAN HEMB

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d) (2), 9014-1(f) (1); written opposition required

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d) (2), 9014-1(f) (1) (B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a) (5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b) (1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b) (1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

11. [18-15119](#)-A-13 **IN RE: MARIA ECHEVERRIA**
[SL-2](#)

MOTION TO MODIFY PLAN
7-9-2019 [\[30\]](#)

MARIA ECHEVERRIA/MV
STEPHEN LABIAK

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

12. [19-12235](#)-A-13 **IN RE: LAUREN SO**
[MHM-1](#)

MOTION TO DISMISS CASE
7-10-2019 [[24](#)]

MICHAEL MEYER/MV

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, contending that the debtor is delinquent under the terms of his still unconfirmed plan. The debtor is delinquent in the amount of \$379. The debtor has also not responded to this motion. This is cause for dismissal. 11 U.S.C. §§ 1307(c)(1), (c)(4).

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having considered the well-pleaded facts of the motion and the pleadings proffered by the respondent debtor in response to the motion, if any,

IT IS ORDERED that the motion is granted because of unreasonable delay by the debtor that is prejudicial to creditors and for failure to make plan payments. The court hereby dismisses this case.

13. [19-12536](#)-A-13 **IN RE: RAYMOND JONES AND KAREN YOCKEY-JONES**
[NFS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN SERVICES,
LLC
7-23-2019 [[14](#)]

PENNYMAC LOAN SERVICES, LLC/MV
JERRY LOWE
NATHAN SMITH/ATTY. FOR MV.

No Ruling

14. [18-14443](#)-A-13 **IN RE: JOSE MERAS**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
4-16-2019 [[79](#)]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

No Ruling

15. [18-14443](#)-A-13 **IN RE: JOSE MERAS**
[PBB-4](#)

MOTION TO CONFIRM PLAN
7-3-2019 [[99](#)]

JOSE MERAS/MV
PETER BUNTING
RESPONSIVE PLEADING

No Ruling

16. [19-12243](#)-A-13 **IN RE: VALERIE JACQUES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
7-18-2019 [[20](#)]

JEFFREY ROWE
RESPONSIVE PLEADING

No Ruling

17. [19-12243](#)-A-13 **IN RE: VALERIE JACQUES**
[NLG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY QUICKEN LOANS INC.
6-24-2019 [[15](#)]

QUICKEN LOANS INC./MV
JEFFREY ROWE
NICHOLE GLOWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

18. [19-11449](#)-A-13 **IN RE: DAVID DELAO**
[VRP-1](#)

MOTION TO CONFIRM PLAN
6-21-2019 [[34](#)]

DAVID DELAO/MV
VARDUHI PETROSYAN
RESPONSIVE PLEADING

No Ruling

19. [19-13051](#)-A-13 **IN RE: ERICKA MORAN**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-30-2019 [[8](#)]

ERICKA MORAN/MV
TIMOTHY SPRINGER

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

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

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

CIVIL MINUTE ORDER

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

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

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

20. [19-13151](#)-A-13 **IN RE: KRISTIN VOOLSTRA**
[TCS-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
7-30-2019 [8]

KRISTIN VOOLSTRA/MV
TIMOTHY SPRINGER

Tentative Ruling

Motion: Impose the Automatic Stay

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

Disposition: Continued to September 4, 2019 at 9:00 a.m.

Order: Civil minute order

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to

the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "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." *Id.* (emphases added).

The motion indicates that at least 2 or more cases were pending in the 1-year period preceding the current petition but were dismissed. A presumption that this case has not been filed in good faith arises under subsection (c)(4)(C) of section 362. See *id.* § 362(c)(4)(D)(i). Clear and convincing evidence is required to rebut the presumption. *Id.* Supporting declarations should proffer evidence that rebuts this presumption. The motion does not sufficiently rebut this presumption, demonstrating that the moving party is entitled to the relief requested. LBR 9014-1(d)(3)(D).

Specifically, the motion does not address why the debtor filed the most recent prior case in pro per when she had already been represented by an attorney in the earlier of her prior cases - namely, the same attorney who filed this motion on her behalf. The motion does not address the role of the debtor's current attorney in the earlier of the prior cases either. While the motion says that she filed that earlier case in pro per, the Law Offices of Timothy Springer were substituted into the case as her counsel of record approximately two months post-petition. The motion also fails to address the other deficiencies in the debtor's most recent prior case, including, without limitation, her failure to file bankruptcy schedules and statements.

The court will continue the hearing on this motion to September 4, 2019 at 9:00 a.m., in order for the movant to address the issues identified by the court above. A supplemental pleading in support of the motion, with admissible evidence, shall be filed and served no later than August 21, 2019. Parties in interest may file responses to the supplement to the motion 7 days prior to the September 4 hearing. Replies to oppositions, if any, may be raised orally at the September 4 hearing.

CIVIL MINUTE ORDER

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

The debtor's motion for imposition of the automatic stay has been presented to the court. Having considered the motion,

IT IS ORDERED that the hearing on the motion is continued to September 4, 2019 at 9:00 a.m. in order for the movant to supplement the record as prescribed by the court's August 14 hearing minutes. A supplemental pleading in support of the motion, with admissible evidence, shall be filed with the court and served on all parties in interest no later than August 21, 2019. Parties in interest may file responses to the supplement to the motion 7 days prior to the September 4 hearing. Replies to oppositions, if any, may be raised orally at the September 4 hearing.

21. [19-12455](#)-A-13 **IN RE: ANTONIO FRANCO AND SYLVIA VALENCIA**
[PBB-1](#)

MOTION TO CONFIRM PLAN
7-5-2019 [[34](#)]

ANTONIO FRANCO/MV
PETER BUNTING
PLAN WITHDRAWN

Final Ruling

This motion has been dismissed voluntarily by the movant. ECF No. 52.

22. [19-12455](#)-A-13 **IN RE: ANTONIO FRANCO AND SYLVIA VALENCIA**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF TD RETAIL CARD SERVICES
7-5-2019 [[22](#)]

ANTONIO FRANCO/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular (furniture)]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the

property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as a dining room set and a living room set. The debt secured by such property was not incurred within the one-year period preceding the date of the petition. The court values the collateral at \$600.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value non-vehicular, personal property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a dining room set and a living room set has a value of \$600. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$600, equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

23. [17-14459](#)-A-13 **IN RE: VANESSA IBANEZ**
[PBB-2](#)

MOTION TO MODIFY PLAN
7-2-2019 [[31](#)]

VANESSA IBANEZ/MV
PETER BUNTING
PLAN WITHDRAWN,

Final Ruling

This motion has been dismissed voluntarily by the movant. ECF No. 42.

24. [19-10564](#)-A-13 **IN RE: VICTOR ALVAREZ**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
6-24-2019 [[33](#)]

MICHAEL MEYER/MV
THOMAS MOORE
RESPONSIVE PLEADING

No Ruling

25. [19-10564](#)-A-13 **IN RE: VICTOR ALVAREZ**
[TAM-1](#)

AMENDED MOTION TO CONFIRM PLAN
7-1-2019 [[43](#)]

VICTOR ALVAREZ/MV
THOMAS MOORE

No Ruling

26. [18-11467](#)-A-13 **IN RE: FRANKLIN BAER**
[KSB-5](#)

MOTION TO MODIFY PLAN
6-26-2019 [[77](#)]

FRANKLIN BAER/MV
KELLY BRESSO
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

27. [19-11767](#)-A-13 **IN RE: ARACELI MORA**
[HDN-1](#)

MOTION TO CONFIRM PLAN
6-14-2019 [[31](#)]

ARACELI MORA/MV
HENRY NUNEZ

No Ruling

28. [19-11868](#)-A-13 **IN RE: KEVIN RIPPEON**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
7-18-2019 [[29](#)]

SUSAN HEMB

Final Ruling

The objection was withdrawn, the matter is dropped as moot.

29. [19-10975](#)-A-13 **IN RE: EDUARDO FRANCO**
[TOG-3](#)

MOTION TO CONFIRM PLAN
6-21-2019 [[37](#)]

EDUARDO FRANCO/MV
THOMAS GILLIS

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

30. [14-12777](#)-A-13 **IN RE: RAY/SANDY TOLLISON**
[MHM-3](#)

MOTION TO DISMISS CASE
7-10-2019 [\[85\]](#)

MICHAEL MEYER/MV
URSULA BARRIOS
WITHDRAWN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

31. [19-12277](#)-A-13 **IN RE: FABIOLA DE GUEL**
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC
7-18-2019 [\[14\]](#)

NATIONSTAR MORTGAGE LLC/MV
THOMAS GILLIS
DANE EXNOWSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

32. [15-14779](#)-A-13 **IN RE: VINCENT/NIOMI LAZALDE**
[MJA-1](#)

MOTION TO MODIFY PLAN
6-24-2019 [\[32\]](#)

VINCENT LAZALDE/MV
MICHAEL ARNOLD
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. “[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge’s discretion and good judgment in reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 (“[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan.”); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

33. [19-12679](#)-A-13 **IN RE: NAEEM/SAIMA QARNI**
[PRG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-31-2019 [\[18\]](#)

GULAMNABI VAHORA/MV
NICHOLAS ANIOTZBEHERE
SHANE SMITH/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief to Complete Non-Bankruptcy Federal District Court Litigation

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

Disposition: Granted in part and denied in part

Order: Civil minute order

Subject: Two pending federal district court non-bankruptcy cases

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

FACTS

In a 2016 federal district court action (“2016 Action”), following a jury trial, the movant Gulamnabi Vahora obtained on May 21, 2019 a

pre-petition judgment against the debtor Naeem Qarni and a nondebtor entity Valley Diagnostic Laboratory, Inc. ("VDL"), a California corporation. The judgment awarded \$240,232 in the movant's favor against the debtor and awarded \$158,175 in the movant's favor against VDL. On June 4, 2019, the debtor and VDL filed two post-trial motions, a motion for new trial and a motion to amend the judgment. The movant filed oppositions to each of these motions.

On July 2, the movant initiated a separate receivership action against VDL ("Receivership Action"), seeking: the appointment of a receiver, accounting of books and records, and breach of fiduciary and partnership duty remedies.

On June 21, the debtor, along with his spouse, filed the instant chapter 13 bankruptcy case, scheduling the movant's judgment against the debtor as disputed and unliquidated. ECF No. 1, Schedule D.

The debtor filed a notice of bankruptcy filing with the district court in the 2016 Action on June 21. The district court then ordered the parties to brief the automatic stay question and its effect on the action. Both sets of parties briefed the issue before the district court.

On July 26, the debtors filed an adversary proceeding in this bankruptcy case against the movant and his attorneys, alleging automatic stay violations by the movant's prosecution of the July 2 Receivership Action against VDL.

By this motion, the movant seeks both prospective and retroactive relief from stay, as of June 21 (the petition date), for the 2016 Action against the debtor and VDL to be completed and for finality to attach to the judgment already entered, including resolution of the post-trial motions and resolution of a potential appeal from the judgment.

The movant also seeks permission to continue the prosecution of the separate Receivership Action against VDL, contending that the automatic stay does not protect VDL.

LAW

PROSPECTIVE RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include:

- (1) whether relief would result in a partial or complete resolution of the issues;
- (2) lack of any connection with or interference with the bankruptcy case;
- (3) whether the other proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- (5) whether the debtor's insurer has assumed full responsibility for defending it;
- (6) whether the action primarily involves third parties;
- (7) whether litigation in another forum would prejudice the interests of other creditors;
- (8) whether the judgment claim arising from the other action is subject to equitable subordination;
- (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
- (10) the interests of judicial economy and the expeditious and economical resolution of litigation;
- (11) whether the parties are ready for trial in the other proceeding; and
- (12) impact of the stay on the parties and the balance of harms.

Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)); see also *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

RETROACTIVE RELIEF FROM STAY

"[S]ection 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, "[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay" *Id.* at 573.

"In deciding whether 'cause' exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties' respective positions. Under this approach, the bankruptcy court considers (1) whether the creditor was aware of the bankruptcy petition and automatic stay and (2) whether the debtor engaged in unreasonable or inequitable conduct." *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

In deciding whether to annul the stay retroactively, the court should consider the following factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003) (citation omitted). These factors should not be construed as a "scorecard" for arithmetic reasoning. *Id.* The court is aware that "[t]hese factors merely present a framework for analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive." *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

DISCUSSION

Non-Bankruptcy Litigation Involving the Debtor and VDL (2016 Action)

The 2016 Action against the debtor was initiated in 2016, several years prior to the filing of this bankruptcy case. The district court conducted a trial and entered a judgment against the debtor before this case was filed. Permitting completion of the action with respect to the debtor, including resolution of the post-trial motions the debtor brought and any appeals from the judgment, will

bring the judgment to finality, without interference with this bankruptcy case.

Relief from stay for completion of the 2016 Action as to the debtor will resolve all issues in that action and bring the pre-petition judgment to finality.

Further, the judgment entered against the debtor has been liquidated. "[C]apability of ready computation" is the standard for determining if a debt has been liquidated. "[W]hether a debt is liquidated does not depend on whether it is disputed . . . [t]hus[] a disputed debt which is capable of ready determination is liquidated." *Loya v. Rapp (In re Loya)*, 123 B.R. 338, 340-41 (B.A.P. 9th Cir. 1991).

The amount owed by the debtor to the movant in the 2016 Action is expressly stated in the judgment. While the judgment may be still disputed, as it is not yet final, it has been liquidated.

Thus, there is no need for the debtor to file a motion to estimate the claim for plan confirmation purposes. The debtor may proceed with plan confirmation without any delays from the continuance of the 2016 Action.

Continuing the 2016 Action in district court will not prejudice the interests of other creditors either, given the liquidation of the movant's claim against the debtor.

The movant has also stated his intent to prosecute a non-dischargeability action against the debtor in this case, meaning that his claim against the debtor may survive a bankruptcy discharge in this case.

The court also notes that the debtor has not the lifting of the stay as to the 2016 Action. See ECF No. 28. After all, it was the debtor who filed the post-trial motions after entry of the 2016 Action judgment. As the debtor says that he disputes the judgment entered against him, the parties should have the opportunity to litigate the 2016 Action through final judgment.

Accordingly, cause for prospective relief from stay exists, for the movant to complete the litigation of the 2016 Action through final judgment, including litigation of the post-trial motions and any appeal of the judgment that may follow.

On the other hand, the court will deny retroactive relief from stay as to the debtor. There is nothing in the motion indicating that the movant did anything post-petition in the 2016 Action, with respect to the debtor, that was proscribed by section 362(a).

Moreover, the movant and the district court knew of the bankruptcy filing immediately. It was four days post-petition, on June 25, that the district court raised the issue with the parties about the automatic stay. Thus, even if the movant took action against the debtor post-petition, violating the stay, this court would not annul the stay retroactively to ratify the action, given that the movant

knew of the bankruptcy case on the day it was filed. Retroactive relief from stay is generally reserved for parties who did not know of the violation when they acted against the debtor.

Non-Bankruptcy Litigation Involving VDL (Receivership Action)

It is a well-established legal principle that the automatic stay does not protect separate and distinct nondebtor persons. See, e.g., *Park West Real Estate Corp. v. Calvert (In re Calvert)*, 135 B.R. 398, 400-01 (Bankr. S.D. Cal. 1991) (denying automatic stay protections for separate and distinct fictitious nondebtor entities); *Pereira v. Dieffenbacher (In re Dieffenbacher)*, 556 B.R. 79, 85 (Bankr. E.D.N.Y. 2016).

The automatic stay in this case protects only the debtor. It does not protect VDL, a nondebtor entity, which is not even qualified for chapter 13 relief (as it is not an individual), much less protected by the automatic stay in this case. VDL is a corporation, acting through its board of directors and officers. This court has been given no reason to disregard the separate and distinct corporate form of VDL. VDL is not an alter ego of the debtor, nor is it a sham entity. In the 2016 Action, the district court certainly treated VDL as a separate and distinct person from the debtor, in addressing the movant's and the debtor's ownership interests in VDL.

Nevertheless, the court disagrees that the Receivership Action does not implicate the debtor and property of the estate.

The debtor's connection to VDL is an equity ownership interest (i.e., a shareholder). The debtor is also VDL's president. ECF No. 1 Schedule I. The co-debtor here is also a supervisor with VDL. *Id.*

As a California corporation, VDL is subject to California business law. Generally, "the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board" of directors of the corporation. Cal. Corp. Code § 300(a). It is the shareholders of the corporation who elect its directors, however. See Cal. Corp. Code §§ 708, 708.5.

Under 11 U.S.C. § 541(a), "[t]he commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: (1) Except as provided in subsections (b) and (c)(2) of this section, *all legal or equitable interests of the debtor in property as of the commencement of the case.*"

As such, when a shareholder files for bankruptcy, the shareholder's interest in the corporation, including the shareholder's voting rights, become property of the bankruptcy estate. It is not uncommon for bankruptcy trustees to vote a debtor's shares to obtain control of a corporation.

In the Receivership Action, the movant is seeking:

(1) appointment of a receiver *to oversee the operations* of VDL (a separate, non-bankrupt, judgment debtor); (2) for an order requiring an accounting of VDL's books and records; (3) judgment against VDL for breach of fiduciary duty; and (4) judgment against VDL for breach of partnership duties.

ECF No. 22 at 10 (as numbered) (emphasis added).

(a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) Where a corporation has been dissolved, as provided in Section 565.

(6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(7) In an action of unlawful detainer.

(8) At the request of the Public Utilities Commission pursuant to Section 855 or 5259.5 of the Public Utilities Code.

(9) In all other cases where necessary to preserve the property or rights of any party.

(10) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 129173 of the Health and Safety Code.

(11) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. The appointment may be continued after entry of a judgment for specific performance if appropriate to protect, operate, or maintain real property encumbered by a deed of trust or mortgage or to collect rents therefrom while a pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage is being completed.

(12) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

Cal. Civ. Proc. Code § 564 (emphasis added).

The movant appears to be pursuing the Receivership Action to enforce its money judgment against VDL and to preserve property of VDL for enforcement of the judgment, pending finality of the 2016 Action judgment.

Although the movant contends that he was declared part owner of VDL, there is no declaratory relief to such effect in the 2016 Action judgment. The judgment awards only monetary relief to the movant.

In any event, the movant is seeking the receiver to displace VDL's board of directors and officers and manage VDL's operations.

In other words, the movant is seeking to exercise control over the debtor's rights to vote in a board of directors with their shares.

This violates the stay - specifically section 362(a)(3), which prohibits "any act to obtain possession of property of the estate or of property from the estate or to *exercise control over property of the estate.*" Having a receiver appointed abridges the debtor's voting rights as a shareholder of VDL to elect directors to manage VDL's operations.

The Receivership Action then is not as innocent as it is portrayed by the subject motion.

The court is unwilling to grant retroactive or prospective relief from stay for the prosecution of that action.

The debtor's shares in VDL and their value to the bankruptcy estate are essential for the administration of the estate. For instance, the hypothetical liquidation test by which the floor for dividends to general unsecured creditors is calculated will depend heavily on the value of the debtor's VDL shares. The appointment of a receiver in a parallel non-bankruptcy litigation will significantly impact the value of the debtor's VDL shares and will impact the estate's ability to realize any such value, by depriving it from control over who will manage VDL. See *NRM Operating Co. v. McConkey (In re Edisto Resources Corp.)*, 158 B.R. 954, 956-57 (Bankr. D. Del. 1993) (holding that automatic stay was violated by minority shareholders' state court action requesting appointment of receiver for corporation in which chapter 11 debtors were majority shareholders; appointment of receiver would control the debtors' joint interest in management of corporation); see also *Shin v. Altman (In re Altman)*, Case No. CC-17-1277-KuLS, 2018 WL 3133164, at 4-6 (B.A.P. 9th Cir., June 26, 2018) (arriving to the same conclusion with respect to a debtor who was a managing member of a limited liability company).

Moreover, when the movant filed the Receivership Action, he knew of this bankruptcy case. The Receivership Action was filed on July 2, 2019, while the movant found out about the bankruptcy case on June 21, the day it was filed.

The debtor did not engage in unreasonable or inequitable conduct with respect to the Receivership Action either. The movant filed that action on his own, post-petition.

The court is unwilling to grant retroactive relief from stay when the movant admittedly knew of the bankruptcy case when it filed the Receivership Action. ECF No. 22 at 6 n.5 (as numbered). For the same reasons, prospective relief from stay will be denied as well.

CONCLUSION

The movant shall have prospective relief from stay to complete the 2016 Action against the debtor, bringing the pre-petition judgment to finality. The movant may file, defend, and litigate any post-judgment motions or appeals.

No action shall be taken to collect or enforce the judgment against the debtor, except by filing a proof of claim or amending an existing proof of claim in this court.

Prospective relief as to VDL and retroactive relief as to the debtor and VDL will be denied.

To the extent the motion is granted, the stay of the order provided by Fed. R. Bankr. P. 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Gulamnabi Vahora's motion for relief from the automatic stay has been presented to the court. Having considered the well-pleaded facts of the motion and any responses and replies pertaining to the motion,

IT IS ORDERED that the motion is granted in part, hereby lifting the automatic stay prospectively with respect to the debtor Naeem Qarni, to allow completion through final judgment of the pending federal district court action against the debtor Naeem Qarni and Valley Diagnostics Laboratory, Inc., Case No. 1:16-cv-01624-SKO. The movant may file, defend, and litigate any post-judgment motions or appeals in the action, Case No. 1:16-cv-01624-SKO.

IT IS FURTHER ORDERED that the movant shall not take any action to collect or enforce the judgment entered against the debtor, or collect or enforce any costs or attorney's fees awarded or to be awarded against the debtor, except by filing a proof of claim or amending an existing proof of claim in this case.

IT IS FURTHER ORDERED that, to the extent the motion is granted, the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

IT IS FURTHER ORDERED that retroactive relief from stay as to the pending district court action against the debtor Naeem Qarni and Valley Diagnostics Laboratory, Inc., Case No. 1:16-cv-01624-SKO, is denied.

IT IS FURTHER ORDERED that retroactive and prospective relief from stay as to the pending district court receivership action against Valley Diagnostics Laboratory, Inc., Case No. 1:19-cv-00912-DAD-SKO, is denied.

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

34. [19-13280](#)-A-13 **IN RE: JOE/LILLIANA ALVES**
[JBA-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-31-2019 [9]
JOE ALVES/MV
JOSEPH ANGELO

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

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

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

CIVIL MINUTE ORDER

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

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

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

35. [19-12081](#)-A-13 **IN RE: DONNIE/SHUA XIONG**
[MHM-2](#)

MOTION TO DISMISS CASE
7-2-2019 [[24](#)]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

No Ruling

36. [19-12081](#)-A-13 **IN RE: DONNIE/SHUA XIONG**
[MHM-3](#)

MOTION TO DISGORGE FEES
7-2-2019 [[28](#)]

MICHAEL MEYER/MV
PETER BUNTING

No Ruling

37. [19-12081](#)-A-13 **IN RE: DONNIE/SHUA XIONG**
[PBB-2](#)

MOTION TO CONFIRM PLAN
7-9-2019 [[42](#)]
DONNIE XIONG/MV
PETER BUNTING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

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

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

38. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[NEA-1](#)

RESCHEDULED HEARING RE: MOTION TO CONFIRM PLAN
1-9-2019 [[31](#)]

JAMES JORGENSEN/MV
NICHOLAS ANIOTZBEHERE

No Ruling

39. [19-12386](#)-A-13 **IN RE: CRISPIN RODRIGUEZ**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
7-18-2019 [[12](#)]

SCOTT LYONS

No Ruling

40. [19-12386](#)-A-13 **IN RE: CRISPIN RODRIGUEZ**
[MWP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RICHARD NIEMI AND
KATHLEEN NIEMI
7-18-2019 [[17](#)]

RICHARD NIEMI/MV
SCOTT LYONS
MARTIN PHILLIPS/ATTY. FOR MV.

No Ruling

41. [19-13086](#)-A-13 **IN RE: GARY/JANET BOTHUN**
[DRJ-2](#)

MOTION TO EXTEND AUTOMATIC STAY
7-31-2019 [8]
GARY BOTHUN/MV
DAVID JENKINS

Tentative Ruling

Motion: Extend the Automatic Stay
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Civil minute order

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

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only “after notice and a hearing *completed* before the expiration of the 30-day period” after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

CIVIL MINUTE ORDER

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

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

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

42. [19-11189](#)-A-13 **IN RE: ARMANDO GONZALES AND CLAUDIA BATZ**
[MHM-3](#)

MOTION TO DISGORGE FEES
7-2-2019 [[48](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

No Ruling

43. [19-10296](#)-A-13 **IN RE: SANDRA BARBOZA**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
6-20-2019 [[28](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

No Ruling

44. [19-10296](#)-A-13 **IN RE: SANDRA BARBOZA**
[TCS-2](#)

MOTION TO CONFIRM PLAN
7-1-2019 [[40](#)]

SANDRA BARBOZA/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

45. [19-13163](#)-A-13 **IN RE: GENE FEUERSINGER AND DENISE CAMPOS**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-6-2019 [\[16\]](#)

GENE FEUERSINGER/MV
PETER BUNTING
OST 8/6/19

Tentative Ruling

Motion: Extend the Automatic Stay
Notice: LBR 9014-1(f)(3); no written opposition required
Disposition: Denied
Order: Civil minute order

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

The dichotomy of bad faith and good faith is determined by examining the totality of the circumstances. *In re Castaneda*, 342 B.R. 90, 96 (Bankr. S.D. Cal. 2006) (applying the "totality of circumstances" test to a section 362(c)(3)(B) good faith assessment); see also *Eisen v. Curry (In re Eisen)*, 14 F.3d 469, 470 (9th Cir. 1994); *Ellsworth v. Lifescape Medical Assocs. (In re Ellsworth)*, 455 B.R. 904, 917 (B.A.P. 9th Cir. 2011); *Morimoto v. United States of America (In re Morimoto)*, 171 B.R. 85, 86 (B.A.P. 9th Cir. 1994); *In re Rolland*, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004).

The bankruptcy court should consider the following factors:
(1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present.

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

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

The prior case filed by the debtor was dismissed due to the debtors' inability to make plan payments. Thus, the presumption against good faith in the filing of this case is triggered. 11 U.S.C. § 362(c) (3) (C) (i) (II) (cc).

The debtors have not overcome the presumption. They state only that the plan payment in the prior case was based on business earnings the debtors "believed [they] would be able to make." ECF No. 19 at 2. "The increase never happened" though. *Id.* As a result, they "were left unable to make [their] plan payment nor living expenses." *Id.* The debtors say that they filed this case to keep their vehicles and protect against levies on their bank accounts.

However, the debtors say nothing about changed financial circumstances. If they were unable - and they were admittedly unable - to make their plan payments and pay living expenses during the pendency of the prior case, why should the court conclude anything different in this case. There is no mention in the motion of changed circumstances that would allow the debtors to make their plan payments and pay living expenses in this case. Outside of what the debtors have stated on their Schedules I and J in this case, this motion indicates to the court that, as in their prior case, the debtors are unable to make plan payments and pay their living expenses.

As such, the court is not convinced that this case was filed in good faith. The debtors have not overcome the presumption against good faith in the filing of this case. The motion will be denied.

CIVIL MINUTE ORDER

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

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

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

46. [19-13077](#)-A-13 **IN RE: ANDREA SOUSA**
[JRL-3](#)

MOTION TO IMPOSE AUTOMATIC STAY
8-6-2019 [[20](#)]

ANDREA SOUSA/MV
JERRY LOWE
OST 8/7/19

Tentative Ruling

Motion: Impose the Automatic Stay (Deemed Motion to Extend Stay)

Notice: LBR 9014-1(f)(3); no written opposition required

Disposition: Denied

Order: Civil minute order

The debtor brings this motion to impose the automatic under 11 U.S.C. § 362(c)(4)(B).

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "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." *Id.* (emphases added).

However, from the debtor's two most recent prior bankruptcy cases, only one was pending within the one-year period prior to the filing of this case on **July 20, 2019**. The most recent prior case was filed on September 21, 2018 and was dismissed on April 26, 2019. See Case No. 18-13832. The second most recent prior case was filed on September 22, 2017 and was dismissed on **July 18, 2018**, just two days outside the one-year period prior to the filing of this case. See Case No. 17-13649.

As such, the court will deem this to be a motion for extension of the automatic stay under 362(c)(3)(B).

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

The dichotomy of bad faith and good faith is determined by examining the totality of the circumstances. *In re Castaneda*, 342 B.R. 90, 96 (Bankr. S.D. Cal. 2006) (applying the "totality of circumstances" test to a section 362(c)(3)(B) good faith assessment); see also *Eisen v. Curry (In re Eisen)*, 14 F.3d 469, 470 (9th Cir. 1994); *Ellsworth v. Lifescape Medical Assocs. (In re Ellsworth)*, 455 B.R. 904, 917 (B.A.P. 9th Cir. 2011); *Morimoto v. United States of America (In re Morimoto)*, 171 B.R. 85, 86 (B.A.P. 9th Cir. 1994); *In re Rolland*, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004).

The bankruptcy court should consider the following factors: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present.

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

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

The motion does not establish that the filing of this, later case is in good faith as to the debtor's creditors.

This is the debtor's sixth chapter 13 case since April 30, 2012. See Case Nos. 18-13832, 17-13649, 15-14711, 14-11461, 12-14003. The debtor has been in one or another bankruptcy case every year, starting 2012. The prior five cases have been all unsuccessful, even though the debtor was represented by counsel in all prior cases. The motion does not address the debtor's five failed prior chapter 13 bankruptcy cases.

Further, as part of its good faith assessment, the court is unconvinced that the debtor is able to propose and fund a confirmable plan in this case. By her own admission, the debtor has borrowed funds to catch up on her mortgage payments and fund a plan in this case to pay off her creditors. ECF No. 22 ¶8. In other words, the debtor will be funding a chapter 13 bankruptcy plan by further borrowing. She herself does not have the funds to pay creditors.

Nor does the motion give details about the loan the debtor is taking, *i.e.*, who is providing the loan, what is the relationship of the debtor to that person, what are the terms of the loan, how the debtor plans to pay off the loan, how will the plan treat the loan, etc. As such, there is substantial reason to conclude that the subject case - like the prior five cases - will not be completed by the debtor.

Finally, the debtor has not filed her bankruptcy schedules, statements, and plan in this case. Although the court granted an extension of the time for filing these documents, the court cannot assess the debtor's good faith in filing this case, without examining these documents.

Taken together, the totality of circumstances compel a conclusion against good faith in the filing of this case. Accordingly, the motion will be denied.

CIVIL MINUTE ORDER

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

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

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.