

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, August 16, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [11-14556](#)-B-12 IN RE: RICARDO/MARIA MALDONADO
[TOG-17](#)

MOTION FOR ENTRY OF DISCHARGE
7-9-2018 [[374](#)]

RICARDO MALDONADO/MV
THOMAS GILLIS

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount 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.

Pursuant to 11 U.S.C. § 1228(a), the court finds that the debtor has completed all payments under the plan and has paid all domestic support order obligations that have become due on or before the date of certification.

11 U.S.C. § 1228(f) states that the court "may not grant a discharge . . . unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that section 522(q)(1) may be applicable to the debtor, and there is pending any proceeding in which the debtor may be found guilty of a

felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

Based upon the debtor's declaration, and because there is no opposition, the court finds that there is no reasonable cause to believe that section 522(q)(1) may be applicable to the debtor, and there is no pending proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

Therefore, this motion is GRANTED.

1:30 PM

1. [18-11201](#)-B-13 **IN RE: DOUGLAS PARKS**
[FW-3](#)

MOTION TO CONFIRM PLAN
6-22-2018 [[61](#)]

DOUGLAS PARKS/MV
PETER FEAR
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. The chapter 13 trustee filed a detailed objection, particularly to the non-standard provision 7.04, which pertains to the non-dischargeability of attorney's fees. Doc. #77. Debtor filed a timely reply, stating that he had met with the chapter 13 trustee and both have agreed to some different proposed language, and although that language has not yet been completely finalized, the following is a draft of the proposed language:

7.01 The following section of the plan are modified and or expanded by the provisions set forth below: Administrative Expenses Section 3.05 & 3.06 and Distribution of Plan Payments Section 5.02:

(1) The amount stated in Section 3.06 of each monthly plan payment, shall be held by the Chapter 13 trustee for payment of Debtor Attorney Fees and Administrative Expenses described in sections 3.05

and 3.06, except when necessary to maintain as current the post-petition monthly payments to the holders of a Class 1 claim.

(2) Debtors counsel has elected in section 3.05 to be paid by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, therefore,

(a) Counsel shall file the 1st Application for Approval of Attorney Fees and Costs no later than the longer of 310 days after the order for relief or 180 days after plan confirmation.

(b) If debtors counsel fails to file the 1st fee application by the deadlines set forth above, the Chapter 13 trustee may release the funds held pursuant to paragraph 1 above to the creditors and in the order described in section 5.02 (c) of the plan.

(3) Pursuant to 11 U.S.C. Sec. 1322(a)(2), and In re Johnson, 344 B.R. 104 (BAP 9th Cir.2006), debtor and debtor's attorney agree that debtor's attorney fees and costs remaining unpaid upon completion of the case shall not be discharged and shall be paid directly by the debtor to counsel for the debtor before and/or after entry of the discharge, provided that all of the following conditions are satisfied: (1) debtor's attorney fees and costs are approved by the bankruptcy court pursuant to 11 U.S.C. Sec. 330, (2) based on the circumstances of the case, the court determines said fees and costs should be non-dischargeable, and (3) prior to submitting a fee application in which counsel is requesting that certain fees be non-dischargeable, counsel shall meet in person with the debtor to explain what fees are anticipated to be paid through the plan and what fees are anticipated to be paid following discharge. Doc. #81.

This matter will be called to hear from trustee regarding this language. If the trustee is agreeable to the debtor's proposed changes, then this motion will be GRANTED. If not, the matter may be continued for a short period of time.

Pursuant to § 1324(b), the court will set October 25, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

2. [18-12205](#)-B-13 **IN RE: DEQUAN/ALEXIS KELSEY**
[MHM-2](#)

MOTION TO DISMISS CASE
7-17-2018 [\[18\]](#)

MICHAEL MEYER/MV
JOEL WINTER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion 8/7/18. Doc. #28.

3. [18-12612](#)-B-13 **IN RE: GLORIA ALCALA**
[SL-1](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
7-3-2018 [[8](#)]

GLORIA ALCALA/MV
SCOTT LYONS

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

This motion was continued to allow debtor to re-file an amended notice of hearing with the language required in Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii) and for the court to consider further extension of the stay.

This motion is GRANTED.

The court notes than an amended notice of hearing with the correct LBR 9014-1(d)(3)(B)(iii) language was filed on July 20, 2018. Doc. #21. By prior order of the court, because no respondent made an appearance at the hearing on July 19, 2018, their defaults were entered. The court has not received any other opposition to this motion. Therefore, the automatic stay shall be extended for all purposes as to all parties who received notice subject to further court order.

4. [18-11825](#)-B-13 **IN RE: JESSICA RAMOS**
[PLC-1](#)

MOTION TO CONFIRM PLAN
6-29-2018 [[23](#)]

JESSICA RAMOS/MV
PETER CIANCHETTA
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 13, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on September 13, 2018 at 1:30 p.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and

serve a written response not later than August 30, 2018. 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. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 6, 2018. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

5. [18-12132](#)-B-13 **IN RE: ALICE BURTON**
[MHM-2](#)

MOTION TO DISMISS CASE
7-12-2018 [[31](#)]

MICHAEL MEYER/MV
DAVID JENKINS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on 8/7/18. Doc.
#41.

6. [18-12246](#)-B-13 **IN RE: CHARLES/MICHAELA GIBBS**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H.
MEYER
7-17-2018 [[15](#)]

MICHAEL MEYER/MV
PHILLIP GILLET

NO RULING.

7. [18-12246](#)-B-13 **IN RE: CHARLES/MICHAELA GIBBS**
[MHM-2](#)

MOTION TO DISMISS CASE
7-17-2018 [[20](#)]

MICHAEL MEYER/MV
PHILLIP GILLET
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on 8/7/18. Doc.
#36.

8. [18-12050](#)-B-13 **IN RE: GENEVIEVE SANTOS**
[ALG-1](#)

MOTION TO VALUE COLLATERAL OF QUANTUM3 GROUP
6-26-2018 [[22](#)]

GENEVIEVE SANTOS/MV
JANINE ESQUIVEL

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount 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 debtor is competent to testify as to the value of the 2012 Toyota Camry. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The

respondent's secured claim will be fixed at \$9,010.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

9. [18-12050](#)-B-13 **IN RE: GENEVIEVE SANTOS**
[MHM-1](#)

MOTION TO DISMISS CASE
7-9-2018 [[27](#)]

MICHAEL MEYER/MV
JANINE ESQUIVEL

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on 8/7/18. Doc.
#44.

10. [11-61153](#)-B-13 **IN RE: VIRGINIA FRANKLIN**
[TCS-2](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
7-25-2018 [[49](#)]

VIRGINIA FRANKLIN/MV
TIMOTHY SPRINGER

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

On motions filed on less than 28 days' notice, but at least 14 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion, the notice, declaration, and exhibits were filed and served on July 25, 2018. Doc. ##49-52. The proof of service was filed on July 27, 2018. Doc. #57. The motion was set for hearing on August 16, 2018. Doc. #50. August 16, 2018 is 23 days after July 25, 2018, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding

the date of the hearing. *Id.* That is incorrect. Because the hearing was set on less than 28 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

11. [11-61153](#)-B-13 **IN RE: VIRGINIA FRANKLIN**
[TCS-3](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
7-25-2018 [\[53\]](#)

VIRGINIA FRANKLIN/MV
TIMOTHY SPRINGER

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

On motions filed on less than 28 days' notice, but at least 14 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion, the notice, declaration, and exhibits were filed and served on July 25, 2018. Doc. ##53-56. The proof of service was filed on July 27, 2018. Doc. #58. The motion was set for hearing on August 16, 2018. Doc. #54. August 16, 2018 is 23 days after July 25, 2018, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. *Id.* That is incorrect. Because the hearing was set on less than 28 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

12. [18-12256](#)-B-13 **IN RE: PATRICIA GUERRERO**
[MHM-2](#)

MOTION TO DISMISS CASE
7-12-2018 [[16](#)]

MICHAEL MEYER/MV
PETER BUNTING

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 matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to appear at the scheduled 341 meeting of creditors. Accordingly, the case will be dismissed.

13. [18-11357](#)-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
[JAM-3](#)

CONTINUED OBJECTION TO CLAIM OF STATE OF CALIFORNIA
FRANCHISE TAX BOARD, CLAIM NUMBER 2
6-4-2018 [[38](#)]

ENRIQUE REYES/MV
JAMES MICHEL
RESPONSIVE PLEADING

NO RULING.

14. [18-12366](#)-B-13 **IN RE: LAURENCE/TUESDAY SHANNON**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC
7-24-2018 [\[27\]](#)

CARRINGTON MORTGAGE SERVICES,
LLC/MV
TIMOTHY SPRINGER
LEE RAPHAEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The court received written opposition from debtor on August 2, 2018. Debtor stated that they "are filing a new modified plan that takes care of the Creditor's objection." Doc. #34. As of August 14, 2018, no new plan has been filed with the court.

This objection is SUSTAINED.

11 U.S.C. § 1325(a)(5)(B)(iii)(I) requires that "if property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts." Here, debtor's plan proposes to pay Movant nothing for nine months. This is in violation of the bankruptcy code and therefore the objection must be sustained. The plan is also in violation of § 1322(b)(5) which states that the plan must "provide for the curing of any default within a reasonable time...." The court finds that nine months is not a reasonable time to go in a chapter 13 plan without being paid.

Because the plan is not in compliance with the Bankruptcy Code, this objection is SUSTAINED.

15. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
6-27-2018 [\[22\]](#)

MICHAEL MEYER/MV
GABRIEL WADDELL

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #54.

16. [15-14576](#)-B-13 **IN RE: JOSHUA/IRENE COSTNER**
[MAZ-3](#)

MOTION TO INCUR DEBT
8-2-2018 [\[43\]](#)

JOSHUA COSTNER/MV
MARK ZIMMERMAN
OST 8/3/18

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time (doc. #48) 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 consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. After review of the attached evidence, the court finds that debtors are able to make the monthly payment for the new property in Visalia, CA. Debtors are authorized but not required to incur further debt in order to purchase real property located at 3230 N. Jacob Court in Visalia, CA for \$251,526.00 with an estimated monthly payment of \$1,857.00. Should the debtors' budget prevent maintenance of current plan payment, debtors shall continue making plan payments until the plan is modified.

17. [18-11583](#)-B-13 **IN RE: TODD FISHER AND LEZA COOPER**
[SL-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES
7-12-2018 [\[45\]](#)

TODD FISHER/MV
STEPHEN LABIAK

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount 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 debtor is competent to testify as to the value of the 2011 Kia Soul. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$4,675.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

18. [18-12186](#)-B-13 **IN RE: GAVINO/OLGA CANO**
[MHM-2](#)

MOTION TO DISMISS CASE
7-12-2018 [[26](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN
CASE DISMISSED 8/3/18

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on August 3, 2018. Doc. #42.

19. [18-10696](#)-B-13 **IN RE: DAVID/JENNIFER CASTRO**
[NEA-2](#)

MOTION TO CONFIRM PLAN
7-2-2018 [[48](#)]

DAVID CASTRO/MV
NICHOLAS ANIOTZBEHERE
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires 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 trustee's objection (doc. #53) and debtor's reply (doc. #56). Debtor consented to trustee's recommendation in order for the plan to be confirmed. Doc. #56.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. The following language shall also be added to the confirmation order: "Attorney consents to being paid in the final month of the plan."

20. [18-12879](#)-B-13 **IN RE: GERALD STULLER AND BARBARA WILKINSON-STULLER**

[KWS-3](#)

MOTION TO EXTEND AUTOMATIC STAY
8-9-2018 [[41](#)]

GERALD STULLER/MV
SCOTT SAGARIA
OST 8/10/18

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as to all creditors except Wells Fargo N.A. The conditions to the extensions as to Wells Fargo are described below.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(3) and an order shortening time (doc. #49). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

This is the second motion to extend the automatic stay filed in this case. The first (KWS-1) was denied for procedural reasons.

Under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease

shall terminate with respect to the debtor on the 30th day after the filing of the later case.

This case was filed on July 17, 2018 and the automatic stay will expire on August 16, 2018. 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 later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* This evidence standard has been defined, in Singh v. Holder, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." In re Castaneda, 342 B.R. 90 (Bankr. S.D. Cal. 2006), *citations omitted*.

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

However, 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 except Wells Fargo, N.A.

Debtor's previous bankruptcy case was dismissed because the debtors failed to cure a large arrearage that had accrued during the bankruptcy. Mr. Stuller suffered a medical hardship due to issues caused by his prosthetic leg. Doc. #43. Due to the unexpected cost of repairing the leg, debtors were unable to cure the default.

However, the repairs have been completed and debtor will be additionally receiving social security income in the amount of \$1,299.00 every month beginning June 2018. *Id.* The plan payment is less than debtors' current monthly income. Doc. #1, 4.

Wells Fargo N.A. opposed the first motion to extend (KWS-1) (doc. #27). This motion is virtually identical. Wells Fargo has a substantial pre-petition arrearage. The debtors claim their immediately previous case (they have filed three in a little over two years) was filed to pay the arrears, and restructure tax obligations and an obligation secured by a car. They propose to do the same in the Plan filed in this case. The Plan confirmation hearing is set for September 27, 2018 and the meeting of creditors is set for September 4, 2018.

The debtors' financial situation is unchanged or has worsened since the immediate last case, Wells Fargo argues, because the debtors' expenses are now higher and any increase in income anticipated will be eliminated by the increase in expenses. Counsel for the debtors has amended the income and expense schedules I and J in the previous case. The schedules in this case suggest the debtors can make the proposed Plan payment. But, the debtors' situation has not manifestly changed since the last case but there is evidence of slight improvement. They now receive Social Security payments which was not the case when the previous case was filed. The debtors state they are establishing a payment protocol with the TFS service. The court is persuaded that the debtors deserve this chance but not without conditions relating to the extension of the stay as to Wells Fargo.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice except Wells Fargo N.A., unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order.

As to Wells Fargo only:

- Unless otherwise ordered, the automatic stay will expire October 5, 2018.
- If a chapter 13 plan is confirmed before October 5, 2018 the terms of the Plan will control Wells Fargo's rights.
- Ongoing mortgage payments shall be paid promptly pursuant to the controlling contracts for all months after the petition was filed through October 5, 2018.
- Both debtors shall appear and be examined at the meeting of creditors on September 4, 2018 and provide all documents requested by the Chapter 13 trustee.
- The debtors may file a motion requesting the court extend the deadlines but the motion must be served on counsel for Wells Fargo and must be heard no later than September 27, 2018. The debtors may request an order shortening time if necessary consistent with the Local Rules of Court.
- The extension is without prejudice to Wells Fargo filing a motion for stay relief for cause.