

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, October 17, 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. [15-14705](#)-B-13 IN RE: MARIA DE LA MORA  
[TCS-2](#)

MOTION TO VACATE DISMISSAL OF CASE  
9-26-2018 [[53](#)]

MARIA DE LA MORA/MV  
TIMOTHY SPRINGER  
DEBTOR DISMISSED: 09/14/2018

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)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will 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. Federal Rule of Civil Procedure 60(b) (made applicable by Federal Rule of Bankruptcy Procedure 9024) states that, "on motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceedings for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . any other reason that justifies relief."

The debtor's case was dismissed for failure to make plan payments. Debtor received a "Notice of Intent to Dismiss" ("Notice") on August 3, 2018, stating that her case would be dismissed if payments were not made by September 13, 2018. Debtor made a payment that was processed on August 13, 2018. Debtor then made a second payment, purportedly becoming current on the payments, on September 7, 2018, but was not credited to the Trustee's system until September 14, 2018. The trustee sent its declarations regarding dismissal on September 13, 2018. The debtor's case was then dismissed on September 14, 2018.

Debtor has only 16 months remaining in the plan, and as of the date of the motion, she was current on her plan payments. Debtor believed that making the payment on September 7, 2018 would result in her plan being current.

The court is persuaded that these facts qualify sufficiently as "mistake" or "excusable neglect," or "any other reason that justifies relief." Debtor attempted to cure her arrearage and despite making the second payment six days before the deadline given in the Notice, her case was dismissed one day prior to the that payment being credited. Therefore, this motion is GRANTED.

2. [16-12421](#)-B-13     **IN RE: INEZ SEARS**  
[TCS-4](#)

CONTINUED MOTION TO MODIFY PLAN  
8-6-2018    [[69](#)]

INEZ SEARS/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

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

DISPOSITION:        Denied.

ORDER:                The court will issue an order.

This motion is DENIED.

By prior order of the court, the debtor was required to either serve and file a written response to the trustee's objection not later than October 3, 2018, or serve and file a confirmable modified plan by October 10, 2018. Doc. #80.

As of October 11, 2018, no written objection or modified plan was served and filed. Because the debtor did not comply with the court's order, this motion is DENIED.

The court notes the amended Schedules I and J filed on October 11, 2018. Doc. #83.

3. [18-12132](#)-B-13     **IN RE: ALICE BURTON**  
[MHM-3](#)

MOTION TO DISMISS CASE  
9-12-2018    [[47](#)]

MICHAEL MEYER/MV  
DAVID JENKINS

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Conditionally denied without prejudice. This matter is continued to December 5, 2018 at 1:30 p.m. A chapter 13 plan must be served, filed, and set for hearing before that date, or the court may grant this motion.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The court notes and has considered the late filed opposition by the debtor (doc. #51) and the "Request for Consideration of Late Filed Opposition" (doc. #52).

This motion is **CONDITIONALLY DENIED WITHOUT PREJUDICE**. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Here, the trustee has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to notice, serve, and set for hearing a motion to confirm a chapter 13 plan. Doc. #47.

Debtor opposed, stating that the only creditor to be paid under the plan is the holder of the first mortgage ("Bayview") encumbering Debtor's residence. Debtor contends that Bayview has only been prejudiced because the Trustee has not yet paid anything towards Bayview's pre-petition arrearage, but the Trustee has made the four regular monthly post-petition mortgage payments that have come due since the case was commenced. Doc. #51.

Debtor then goes on to state the reasons a plan has not yet been confirmed: A skeletal petition was filed to first stop a foreclosure; Bayview's claim evidenced a significantly higher arrearage than what was previously believed; Debtor's counsel could not show feasibility to confirm a chapter 13 plan that complied with the Bankruptcy Code; and it was not until counsel spoke to debtor's relatives that feasibility has potentially been shown. Doc. #53. Debtor has also been ill and was at the time of filing hospitalized. *Id.*

The court finds that dismissal would not be in the best interests of creditors and the estate at this time. Due to the health of the

debtor and the significantly higher-than-believed arrearage, the court finds cause to continue this motion to allow debtor to propose a confirmable plan. Debtor's schedules show no unsecured debt, and just one secured creditor, Bayview. Doc. #1. The entire purpose of filing chapter 13 is to save Debtor's residence. The court also finds that debtor's counsel has not acted in bad faith but has acted diligently to adequately represent his client and has worked towards confirming a plan. The court thus finds good cause to grant debtor's request.

For the above reasons, this motion is **CONDITIONALLY DENIED WITHOUT PREJUDICE**. This matter is continued to December 5, 2018 at 1:30 p.m. A chapter 13 plan must be served, filed, and set for hearing before that date, or the court may grant this motion.

4. [18-12437](#)-B-13     **IN RE: ANDREA AFFRONTI**  
[MAZ-1](#)

MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORP.  
9-17-2018    [[22](#)]

ANDREA AFFRONTI/MV  
MARK ZIMMERMAN

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 2015 Nissan Rogue Sport. 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 \$15,545.00. 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.

5. [18-12057](#)-B-13     **IN RE: ALEXANDRO/LUCY HOLLIE**  
[SL-1](#)

MOTION TO MODIFY PLAN  
9-7-2018    [[15](#)]

ALEXANDRO HOLLIE/MV  
SCOTT LYONS  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to November 15, 2018 at 9:30 a.m.

ORDER:                The court will issue an order.

This motion will be set for a continued hearing on November 15, 2018 at 9:30 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtors' 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 debtors shall file and serve a written response not later than November 1, 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 debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 8, 2018. If the debtors do 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.

6. [18-12980](#)-B-13    **IN RE: FRANCISCO/MICHELLE GUIZAR**  
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF VALLEY FIRST CREDIT UNION  
9-13-2018    [[29](#)]

FRANCISCO GUIZAR/MV  
TIMOTHY SPRINGER

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 Mercedes-Benz C300. 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 \$8,150.00. 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.

7. [18-13895](#)-B-13    **IN RE: CAROL SHIELDS**  
[DRJ-2](#)

MOTION TO EXTEND AUTOMATIC STAY  
9-28-2018    [8]

CAROL SHIELDS/MV  
DAVID JENKINS

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). 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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period, case no. 17-13047. That case was filed on August 7, 2017 and was dismissed on August 15, 2018 for failure to make plan payments. This case was filed on September 26, 2018 and the automatic stay will expire on October 26, 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.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable.



Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (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.

Debtor's previous case was dismissed for failure to make plan payments. The debtor fell behind in her plan payments by attempting to make partial plan payments every two weeks, matching with her pay schedule. Over time, she became delinquent and was unable to become current.

Debtor's previous plan proposed to pay a 0% dividend to unsecured creditors. However, debtor's current plan proposes to pay a 35% dividend to unsecured creditors. The probability of success in this case is higher because her income and living arrangements are more stable. Debtor stated in her declaration that she moved twice during the last case, which was costly. Doc. #10.

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

8. [18-13832](#)-B-13    **IN RE: ANDREA SOUSA**  
[JRL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
10-2-2018    [[10](#)]

ANDREA SOUSA/MV  
JERRY LOWE

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted. Stay is extended as stated in this ruling until November 15, 2018 when it will expire subject to further extension as set forth below. This hearing will be continued to November 15, 2018 at 1:30 p.m.

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 Local Rule of Practice ("LBR") 9014-1(f)(2). 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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period, case no. 17-13649. That case was filed on September 22, 2017 and was dismissed on July 18, 2018 for failure to make plan payments. This case was filed on September 21, 2018 and the automatic stay will expire on October 21, 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.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (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.

Debtor previously, and currently, filed bankruptcy to save his home from foreclosure proceedings. Doc. #12. The previous case was dismissed for failure to make plan payments. Debtor owns a sheep dairy, and part of the reason debtor was unable to make plan payments is because of his clients failed to pay him for sheep milk debtor provided to him. *Id.* Since then however, debtor has picked up a new client which will compensate for the loss of that client's business. The current plan is a 100% plan, and prior to falling behind on the plan payments in the previous case, debtor made payments to the trustee totaling \$14,148.00. *Id.*

The automatic stay shall be extended for all purposes as to all parties who received notice, unless terminated by further order of this court until November 15, 2018 when it will expire subject to further extension as set forth below. 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 notes that the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

Debtor shall re-file and serve the notice of hearing to all creditors with the added LBR 9014-1(d)(3)(B)(iii) language, notifying the creditors of a continued hearing on this motion on November 15, 2018 at 1:30 p.m. The court will consider further extension of the stay at that hearing.

9. [18-13105](#)-B-13    **IN RE: MATTHEW ESCALANTE**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
9-5-2018    [[27](#)]

MICHAEL MEYER/MV  
D. GARDNER

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion.

10. [18-13076](#)-B-13    **IN RE: JASON/IRENE FORBIS**  
[TCS-2](#)

MOTION TO VACATE DISMISSAL OF CASE  
10-11-2018    [[36](#)]

JASON FORBIS/MV  
TIMOTHY SPRINGER  
DISMISSED 10/09/2018, OST 10/12/18

NO RULING.