

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, November 4, 2020  
Place: Department A - Courtroom #11  
Fresno, California

**ALL APPEARANCES MUST BE TELEPHONIC**  
**(Please see the court's website for instructions.)**

*Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. 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.**

1. [20-11908](#)-A-13     **IN RE: BRIAN/STEPHANIE RICH**  
[PBB-3](#)

MOTION TO CONFIRM PLAN  
9-21-2020    [[42](#)]

BRIAN RICH/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

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.

2. [17-11123](#)-A-13     **IN RE: EDUARDO LUPIAN**  
[PLG-2](#)

OBJECTION TO CLAIM OF US DEPARTMENT OF VETERAN AFFAIRS,  
CLAIM NUMBER 6  
10-5-2020    [[75](#)]

EDUARDO LUPIAN/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.

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 Moving Party will submit a proposed order after the hearing.

This motion was filed and served with at least 30 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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 further hearing is necessary.

Eduardo Quiroz Lupian ("Debtor"), the Chapter 13 debtor in this bankruptcy case, objects to claim no. 6 (the "Claim") filed by the United States Department of Veterans Affairs ("Claimant") on the grounds that the Claim was untimely filed under Bankr. R. Civ. P. 3002(c)(1) and is unenforceable. Debtor's Obj., Doc. #75.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

The Claim asserts an unsecured claim of \$9,358.78 and was filed on November 13, 2019. Claim 6. The Debtor filed a Chapter 7 case on March 28, 2017, and the case was converted to Chapter 13 on July 7, 2017. Am. Notice of Conversion, Doc. #43. The deadline to file proofs of claim in the Chapter 13 case was November 6, 2017, which is more than 180 days after the voluntary petition was filed. Id.

"The commencement of a voluntary case under a chapter of [the Bankruptcy Code] constitutes an order for relief under such chapter." 11 U.S.C. § 301(b). 11 U.S.C. § 502(b)(9) provides that the time for a governmental unit to file its proof of claim shall be either within 180 days after the order for relief "or such later time as the Federal Rules of Bankruptcy Procedure may provide." Gardenhire v. IRS (In re Gardenhire), 209 F.3d 1145, 1147 (B.A.P. 9th Cir. 2000). Section 502(b)(9) is reinforced by Bankruptcy Rule 3002(c)(1): "[a] proof of claim filed by a governmental unit . . . is timely filed if it is filed not later than 180 days after the date of the order for relief." The bankruptcy court may extend the time for filing a proof of claim if, *inter alia*, the government moves for an extension. Gardenhire, 209 F.3d at 1147.

The court finds that the period established by § 502(b)(9) and Rule 3002(c)(1) expired before the filing of the Claim, and Claimant has not moved for an extension. Having reviewed the Claim and Debtor's objection, the court finds that the Claim is untimely and will be disallowed.

Accordingly, the court is inclined to SUSTAIN Debtor's objection to Claim 6. Debtor agrees, and the order shall include, that (1) any unpaid balance of Claimant's Claim will not be discharged by Debtor's Chapter 13 bankruptcy and

(2) Debtor does not object to any prior disbursements made by the Chapter 13 trustee to Claimant.

3. [19-15339](#)-A-13      **IN RE: PHILIP IRWIN**  
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 13  
9-18-2020    [[42](#)]

MICHAEL MEYER/MV  
NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION:      Sustained.

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

This objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of 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 3007-1(b)(1)(A) may be deemed a waiver of any opposition to the sustaining of the objection. 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in this bankruptcy case, objects to claim no. 13 (the "Claim") filed by Cavalry SPV I, LLC ("Claimant") on the grounds that the Claim is unenforceable under California state law and should be entirely disallowed pursuant to 11 U.S.C. § 502(b)(1). Tr.'s Obj., Doc. #42.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

The Claim asserts an unsecured claim of \$3,315.60 stemming from a credit account originally owned by Citibank, N.A. Claim 13. The Claim lists the last transaction date on the account as May 12, 2006, the last payment date on the account as May 12, 2006, and the account charge off date as October 17, 2006. Claim 13. The only additional information provided with the Claim is a Bill of Sale, Assignment, and Assumption Agreement signed by Citibank (South Dakota), N.A. and Cavalry SPV I, LLC. Claim 13.

Trustee contends that the relevant statute of limitations in California (Cal. Civ. Proc. Code § 337) bars Claimant's action to recover on a contract, obligation, or liability founded on an instrument in writing after four years. Tr.'s Mot., Doc. #42. Trustee also notes that an action based on an oral contract is barred after two years under Cal. Civ. Proc. Code § 339. Doc. #42. Therefore, Trustee argues, the Claim must be disallowed entirely under § 502(b)(1).

A claim cannot be allowed under § 502(b)(1) if it is unenforceable under nonbankruptcy law. Durkin v. Benedor Corp. (In re G.I. Indus.), 204 F.3d 1276, 1281 (9th Cir. 2000). Having reviewed the Claim and Trustee's objection, the court finds that Trustee rebutted the prima facie showing made by the Claim. Claimant has not responded.

Accordingly, Trustee's objection is SUSTAINED.

4. [19-13341](#)-A-13      **IN RE: GARY/JENNIFER FOX**  
[FW-3](#)

MOTION TO AVOID LIEN OF ATLANTIC CASUALTY INSURANCE COMPANY  
10-1-2020    [\[44\]](#)

GARY FOX/MV  
GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Gary Allen Fox and Jennifer Anne Fox (collectively, "Debtors"), the debtors in this Chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Atlantic Casualty Insurance Company ("Creditor") on their residential real property commonly referred to as 5774 N. Orchard Street, Fresno, CA 93710 (the "Property"). Doc. #44; Am. Schedule C, Doc. #42.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under section 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

A judgment was entered against Jennifer Fox in the amount of \$37,197.07 in favor of Creditor on April 12, 2019. Ex. A, Doc. #48. The abstract of judgment was recorded in Fresno County on May 20, 2019. Ex. A, Doc. #48. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #44. The Property also is encumbered by a lien in favor of JPMorgan Chase Bank, N.A. in the amount \$168,707.17. Claim 2-1; Decl. of Gary Allen Fox, Doc. #46. Debtors claimed an exemption of \$11,292.83 in the Property under California Code of Civil Procedure § 703.140(b)(1). Am. Schedule C, Doc. #42. Debtors assert a market value for the Property as of the petition date at \$180,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Atlantic Casualty Insurance Co.'s judicial lien		\$37,197.07
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$168,707.17
Amount of Debtors' claim of exemption in the Property	+	\$11,292.83
	sum	\$217,197.07
Value of Debtors' interest in the Property absent liens	-	\$180,000.00
Extent of impairment of Debtors' exemption	=	\$37,197.07

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

5. [19-14743](#)-A-13     **IN RE: DORCAS O'BRIEN**  
[PBB-2](#)

MOTION TO MODIFY PLAN  
9-24-2020    [[35](#)]

DORCAS O'BRIEN/MV  
PETER BUNTING/ATTY. FOR DBT.  
OPPOSITION WITHDRAWN

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 at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee timely opposed this motion, but withdrew his opposition on October 15, 2020. Doc. #46. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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.

6. [20-11243](#)-A-13     **IN RE: ARTHUR/SONIA PINA**  
[MHM-3](#)

ORDER TO SHOW CAUSE  
10-1-2020    [[45](#)]

THOMAS MOORE/ATTY. FOR DBT.  
DISMISSED 06/15/2020

NO RULING.

7. [19-13645](#)-A-13     **IN RE: GUSTAVO/BEATRIZ ROCHA**  
[SLL-3](#)

MOTION TO MODIFY PLAN  
9-24-2020    [[51](#)]

GUSTAVO ROCHA/MV  
STEPHEN LABIAK/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion on October 19, 2020. Doc. #67.

8. [20-11646](#)-A-13     **IN RE: LEAH KLASCIUS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
10-2-2020    [[67](#)]

MICHAEL MEYER/MV  
NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

ORDER:                            The court will issue the order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Debtor is delinquent in the amount of \$7,969.00. Doc. #69. Before this hearing, another payment in the amount of \$4,076.00 also will come due. Id. Debtor did not oppose the chapter 13 trustee's motion.

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. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

Accordingly, this motion will be GRANTED. The case will be dismissed.

9. [17-13747](#)-A-13     **IN RE: PATRICIA MALDONADO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
10-2-2020    [[52](#)]

MICHAEL MEYER/MV  
MARK HANNON/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion on November 2, 2020. Doc. #59.

10. [20-13164](#)-A-13     **IN RE: BETSSY MANDUJANO**  
[HDN-1](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY  
10-8-2020    [[11](#)]

BETSSY MANDUJANO/MV  
HENRY NUNEZ/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

On October 22, 2020, the court issued an order continuing the hearing on the motion to extend the automatic stay to November 4, 2020 at 9:30 a.m. because counsel for the moving party did not appear at the October 22 hearing on this motion. Order, Doc. #24. The court expects counsel for the moving party to appear at the continued hearing on November 4, 2020.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Debtor Betssy Mandujano ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtor had a Chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 19-15234 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on December 17, 2019 and dismissed on January 6, 2020. Decl. of Betssy Mandujano, Doc. #13. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay 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 current case. Debtor filed this case on September 29, 2020. Petition, Doc. #1. As a result of the court's order continuing the hearing, the automatic stay will terminate in the present case on November 4, 2020.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30- day period 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[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 584 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019)).

In this case, the presumption of bad faith arises. Debtor failed to timely file documents in the Prior Case. A review of the court's docket in the Prior Case disclosed a Chapter 13 plan was never confirmed. The Chapter 13 trustee ("Trustee") filed a Notice of Incomplete Filing and Intent to Dismiss Case (the "Notice") on December 17, 2019, and the case was dismissed by an Order Dismissing Case for Failure to Timely File Documents after Debtor failed to respond to Trustee's Notice. See Case No. 19-15234, Doc. ##1, 9, 18. Debtor states that she allowed the Prior Case to be dismissed because a foreclosure sale, which prompted the filing of the Prior Case, had been cancelled by the mortgage creditor. Decl. of Betssy Mandujano, Doc. #13.

In support of this motion to extend the automatic stay, Debtor declares that the instant case was filed to prevent a foreclosure sale on the same property by a private party creditor that was scheduled for September 30, 2020. Decl.,

Doc. #13. Debtor disputes the debt and corresponding deed of trust that gives rise to that foreclosure sale. Decl., Doc. #13. Debtor further states that she has the income ability to maintain plan payments and is confident that a Chapter 13 plan will be confirmed. Decl., Doc. #13. Debtor filed a proposed plan on October 12, 2020. Doc. #18. Debtor's Schedules I and J filed in this case list monthly income of \$2,585.00 and expenses of \$2,362.00, resulting in monthly net income of \$223.00 of which Debtor proposes to apply \$200.00 to plan payments in this case. Schedules I and J, Doc. #17; Chapter 13 plan, Doc. #18.

The court is inclined to find that Debtor's reasoning for allowing the Prior Case to be dismissed, along with Debtor's filing of the necessary papers in this case, rebut the presumption of bad faith that arose from the failure to timely file documents in the Prior Case and that Debtor's petition commencing this case was filed in good faith. Further, there is reason to conclude that this case will result in a confirmed plan that will be fully performed.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties named in Debtor's motion (Doc. #11), unless terminated by further order of the court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is necessary.

11. [19-14377](#)-A-13     **IN RE: ERIC/MARIE MENDEZ**  
[UST-3](#)

CONTINUED MOTION TO COMPEL  
9-2-2020    [[107](#)]

TRACY DAVIS/MV  
MARK HANNON/ATTY. FOR DBT.  
JASON SHORTER/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:        Dropped from calendar.

ORDER:                The court will issue an order.

At the request of the movant, the motion to compel is dropped from calendar.  
Doc #134.

12. [11-19090](#)-A-13     **IN RE: JASON/ROBIN MYERS**  
[JDW-9](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.  
10-14-2020    [[116](#)]

JASON MYERS/MV  
JOEL WINTER/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Jason Myers and Robin Myers (collectively, "Debtors"), the debtors in this Chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of FIA Card Services, N.A. ("Creditor") on residential real property located at 5416 E. Dakota, Fresno, CA 93727 (the "Property"). Mot., Doc. #116; Am. Schedule C. Doc. #113.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must either be a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

A judgment was entered against Robin Myers in the amount of \$37,232.51 in favor of Creditor on May 6, 2010. Ex. 1, Doc. #123. The abstract of judgment was issued in Fresno County on June 3, 2010. Ex. 1, Doc. #123. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #116. According to Debtors' schedules, the Property also is encumbered by two security interests. Select Portfolio Servicing, the first mortgage holder, is listed as holding a claim for \$235,000.00. Schedule D, Doc. #1. Wells Fargo Home Equity is listed as holding a claim for \$48,390.00. Schedule D, Doc. #1. The value of the Property as of the petition date was listed at \$200,000. Schedule A, Doc. #1. Debtors claim an exemption of \$1.00 under Cal. Civ. Proc. Code § 703.140(b)(1). Am. Schedule C, Doc. #113.

Amount of FIA Card Services, N.A.'s judicial lien		\$37,232.51
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$283,390.00
Amount of Debtors' claim of exemption in the Property	+	\$1.00
	sum	\$320,623.51
Value of Debtors' interest in the Property absent liens	-	\$200,000.00
Extent of impairment of Debtors' exemption	=	\$120,623.51

"Notwithstanding the absence of any 'equity' in the property, the debtor can avoid the judicial lien under [§ 522(f)(2)'s] definition of impairment." 4 COLLIER ON BANKRUPTCY ¶ 522.11[3] (Richard Levin & Henry J. Sommer eds., 16th ed. 2020); see Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592 (B.A.P. 9th Cir. 1997). After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion will be GRANTED.

1. [18-14920](#)-A-7     **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA  
GENERAL PARTNERSHIP  
[20-1034](#)**

STATUS CONFERENCE RE: AMENDED COMPLAINT  
10-20-2020    [[46](#)]

SOUSA V. FRED AND AUDREY  
SCHAKEL AS TRUSTEES OF THE  
RONALD CLIFFORD/ATTY. FOR PL.

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

DISPOSITION:        Continued to January 14, 2021 at 11:00 a.m.

ORDER:                The court will issue an order.

Pursuant to the status conference statement filed October 27, 2020, Doc. #48,  
the status conference will be continued to January 14, 2021 at 11:00 a.m.

2. [19-11430](#)-A-7     **IN RE: VINCENT/CAROL HERNANDEZ  
[20-1055](#)**

STATUS CONFERENCE RE: COMPLAINT  
8-27-2020    [[1](#)]

SALVEN V. HERNANDEZ ET AL  
RUSSELL REYNOLDS/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

3. [20-10568](#)-A-7     **IN RE: BHUPINDER SIHOTA  
[20-1045](#)**

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
8-30-2020    [[12](#)]

SIHOTA ET AL V. SIHOTA  
PETER SAUER/ATTY. FOR PL.

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

DISPOSITION:        Continued to January 28, 2021, at 11:00 a.m.

NO ORDER REQUIRED.

The court has already issued an order continuing the status conference,  
Doc. #33.

4. [20-12577](#)-A-11     **IN RE: MARIA LUNA MANZO**  
[20-1056](#)

STATUS CONFERENCE RE: COMPLAINT  
9-1-2020    [[1](#)]

AHMED V. LUNA MANZO ET AL  
DAVID GILMORE/ATTY. FOR PL.

NO RULING.