

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 14, 2021
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-4](#)

OBJECTION TO CLAIM OF ASPEN PROPERTIES GROUP LLC, CLAIM NUMBER 1
12-1-2020 [[56](#)]

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

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

The court will overrule this objection without prejudice because the debtors have not stated any legal grounds supporting the relief sought.

LBR 9014-1(d)(3)(A) requires a motion "set forth the relief or order sought" and "state with particularity the factual and legal grounds therefor. Legal grounds for the relief means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." LBR 9014-1(d)(3)(A). After reviewing the papers, it appears some discrepancy between the debtors' confirmed plan, the notices of mortgage payment change, and the creditor's proof of claim may be at issue. However, it is the obligation of the moving party to cite to both facts and law in the motion to support the relief requested. Here, the debtors cite no rule, statute, case, or doctrine in the motion.

Accordingly, this motion is OVERRULED WITHOUT PREJUDICE.

2. [20-10509](#)-A-13 **IN RE: EDDIE CALDWELL**
[TCS-2](#)

CONTINUED MOTION TO MODIFY PLAN
10-22-2020 [[53](#)]

EDDIE CALDWELL/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor Eddie Lee Caldwell ("Debtor") filed and served this motion to confirm the second modified Chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and set the hearing for December 10, 2020. Doc. ##53-59. Both the Chapter 13 trustee ("Trustee") and Wheels Financial Group, LLC ("Creditor") filed oppositions to Debtor's motion. Doc. ##64, 66. The court continued this

matter to January 14, 2021 and ordered Debtor to file and serve a written response to Trustee's and Creditor's objections by December 24, 2020; or if Debtor elected to withdraw this plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by January 7, 2021. Order, Doc. #70.

Having reviewed the docket in this case, the court finds Debtor has not voluntarily converted this case to Chapter 7 or dismissed this case, and neither Trustee's nor Creditor's objections have been withdrawn. Further, Debtor has not filed and served any written response to Trustee's or Creditor's objections. Debtor has not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtor's motion to confirm the second modified Chapter 13 plan is DENIED on the grounds set forth in Trustee's and Creditor's oppositions.

3. [20-12810](#)-A-13 **IN RE: JOSE REYES**
[MHM-1](#)

MOTION TO DISMISS CASE
12-9-2020 [[34](#)]

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN 1/6/21

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on January 6, 2021. Doc. #40.

4. [15-14121](#)-A-13 **IN RE: JONATHAN MEEKER**
[MHM-5](#)

MOTION TO DISMISS CASE
12-10-2020 [[118](#)]

MICHAEL MEYER/MV
DAVID JENKINS/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 December 28, 2020. Doc. #122.

5. [20-13024](#)-A-13 **IN RE: DELRICH JONES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-29-2020 [\[25\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
\$77.00 INSTALLMENT FEE PAID

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

6. [20-13024](#)-A-13 **IN RE: DELRICH JONES**
[MAZ-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCIAL
11-27-2020 [\[17\]](#)

DELRICH JONES/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by 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.

Delrich Jones ("Debtor"), the debtor in this Chapter 13 case, moves the court for an order valuing the Debtor's vehicle, a 2008 GMC Yukon ("Vehicle"), which is the collateral of Capital One Auto Finance, a division of Capital One, N.A. ("Creditor"). Doc. #17.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the vehicle and the debt was not incurred within

the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts the Vehicle was purchased in January 2008, more than 910 days before the filing of this case. Doc. #19. Debtor further asserts a replacement value of the Vehicle of \$9,570.00 and asks the court for an order valuing the Vehicle at \$9,570.00. Doc. #19; Doc. #17. Debtor is competent to testify as to the value of the Vehicle. Additionally, Creditor filed a proof of claim in this case valuing the Vehicle at \$9,570.00. Claim 5.

The motion is GRANTED. Creditor's secured claim will be fixed at \$9,570.00. 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. [20-12732](#)-A-13 **IN RE: JOSE CUIRIZ**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
10-21-2020 [\[27\]](#)

MICHAEL MEYER/MV
CHINONYE UGORJI/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The Chapter 13 trustee's motion sought to dismiss the debtor's case for unreasonable delay pursuant to 11 U.S.C. § 1307(c)(1) stemming from the debtor's failure to file tax returns. At the hearing held December 10, 2020, the court continued the hearing on this matter to January 14, 2021 at 9:30 a.m. to provide the debtor an opportunity to file evidence showing that the relevant tax returns were filed. Civil Minutes, Doc. #46.

On January 6, 2021, the debtor filed a supplemental declaration and an exhibit showing that all but the debtor's 2016 tax returns have been processed by the IRS. Doc. ##49, 50. The debtor testifies that he filed all federal and state taxes, including those from 2016. Decl., Doc. #49.

Satisfied with the debtor's evidence, the court finds no cause for dismissal. Accordingly, the Chapter 13 trustee's motion to dismiss is DENIED.

8. [18-15035](#)-A-13 **IN RE: HENRY LOYA HERNANDEZ AND ALICE HERNANDEZ**
[SL-2](#)

MOTION TO MODIFY PLAN
12-3-2020 [[65](#)]

HENRY LOYA HERNANDEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 25, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #72. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than January 28, 2021. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by February 4, 2021.

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 February 4, 2021. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

9. [19-13841](#)-A-13 **IN RE: LOTTIE STEWART**
[JDR-3](#)

MOTION TO MODIFY PLAN
12-3-2020 [[57](#)]

LOTTIE STEWART/MV
JEFFREY ROWE/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)(2). 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.

10. [20-13342](#)-A-13 **IN RE: GINGER MULLINS**
[MHM-1](#)

MOTION TO DISMISS CASE
12-9-2020 [[15](#)]

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on December 15, 2020. Doc. #24. 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). Therefore, the defaults of the non-responding parties in interest are entered.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in the bankruptcy case of Ginger Lynette Mullins ("Debtor"), moves the court to dismiss this case for failure to confirm a Chapter 13 plan pursuant to 11 U.S.C. § 1307(c). Doc. #15. At the time of filing this motion, Debtor had not moved to value collateral of a Class 2 secured creditor, and so Trustee was unable to submit an Order Confirming Plan as required by LBR 3015-1(e). Decl., Doc. #17.

While no written opposition has been filed to Trustee's motion, Debtor did file a motion to value collateral on December 9, 2020 (Doc. #19) and set a hearing on that motion for January 14, 2021 (Doc. #20). As set forth in matter number 11 below, the court will grant Debtor's motion to value collateral by final ruling.

Because Debtor has taken the action needed for Trustee to submit an Order Confirming Plan as set forth Trustee's motion to dismiss, the court is inclined to deny Trustee's motion.

11. [20-13342](#)-A-13 **IN RE: GINGER MULLINS**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
12-9-2020 [\[19\]](#)

GINGER MULLINS/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 28 days' notice as required by 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.

Ginger Lynette Mullins ("Debtor"), the debtor in this Chapter 13 case, moves the court for an order valuing the Debtor's Tempur-pedic mattress ("Property"), which is the collateral of Wells Fargo Bank, N.A. ("Creditor"). Doc. #19.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a personal property acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts the Property was purchased more than 910 days before the filing of this case. Doc. #21. Debtor asserts a replacement value of the Property of \$1,000.00 and asks the court for an order valuing the Property at \$1,000.00. Doc. #19; Doc. #21. Debtor is competent to testify as to the value of the

Property. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$1,000.00. 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.

12. [19-13874](#)-A-13 **IN RE: DORA HAYWOOD**
[PLG-1](#)

MOTION TO MODIFY PLAN
12-2-2020 [\[24\]](#)

DORA HAYWOOD/MV
STEVEN ALPERT/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)(2). 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.

13. [20-10180](#)-A-13 **IN RE: DANIELLE BAILEY**
[SL-2](#)

MOTION TO MODIFY PLAN
12-2-2020 [[34](#)]

DANIELLE BAILEY/MV
SCOTT LYONS/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)(2). 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.

14. [20-13687](#)-A-13 **IN RE: ALMA INZUNZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-28-2020 [[21](#)]

NO RULING.

MOTION TO EXTEND AUTOMATIC STAY
12-28-2020 [\[9\]](#)

SALVADOR ALEJO/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Stay extended until continued hearing.

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

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 continue the hearing on this motion to permit the debtors to file supplemental pleadings in support of their motion. If opposition is presented at the hearing, the court will consider the opposition in light of the proposed continuance.

Salvador John Alejo (individually, "Alejo") and Diane A. Rocha (individually, "Rocha") (together, "Debtors") move the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #9.

Debtors are a married couple and filed their joint Chapter 13 case on December 22, 2020. Doc. #1. Prior to their marriage, Alejo and Rocha each had an individual Chapter 13 case pending within the preceding one-year period that was dismissed. Alejo's prior Chapter 13, Case No. 20-11240 (Bankr. E.D. Cal.), was dismissed on November 24, 2020 at the request of Alejo pursuant to 11 U.S.C. § 1307(b). No. 20-11240 Doc. #29. Rocha's prior Chapter 13, Case No. 20-11241 (Bankr. E.D. Cal.), was dismissed on October 16, 2020 for failure to make plan payments. No. 20-11241 Doc. ##21, 23.

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. Debtors filed this case on December 22, 2020. Petition, Doc. #1. The automatic stay will terminate in Debtors' present case on January 21, 2021.

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). In a joint bankruptcy case, the application of § 362(c)(3) to each debtor must be analyzed separately. In re Parker, 336 B.R. 678, 681 (Bankr. S.D.N.Y. 2006).

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 as to both Alejo and Rocha.

Diane Rocha

The presumption of bad faith arises as to Rocha because Rocha failed to perform the terms of a confirmed plan in her prior Chapter 13 case. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). A review of the court's docket in Rocha's prior case shows a Chapter 13 plan was confirmed on July 10, 2020, the Chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on September 3, 2020, and the court dismissed Rocha's prior case upon Trustee's declaration that Rocha failed to address the Notice in the time and manner prescribed by LBR 3015-1(g). See Case No. 20-11241, Doc. ##19, 21, 23.

The presumption that Debtors' bankruptcy case is filed in bad faith that arises as to Rocha may be rebutted by clear and convincing evidence to the contrary. 11 U.S.C. § 362(c)(3)(C). In support of this motion to extend the automatic stay, Debtors state that the individual payments on Debtors' separate plans strained their finances causing Rocha and Alejo to fall behind on their respective plan payments. Decl. of Alejo, Doc. #11. Debtors state that their income, assets, and expenses were commingled during each of their individual Chapter 13 cases. Decl., Doc. #11. The court finds that Debtors have not met their burden of rebutting the presumption of bad faith arising from Rocha's prior Chapter 13 case based on the pleadings filed with the motion. Rocha's sole argument to rebut the presumption of bad faith is that Debtors are now married, but that argument, by itself, does not rebut the presumption.

Salvador Alejo

Although Alejo voluntarily dismissed his prior Chapter 13 case, the presumption of bad faith arises as to Alejo because there has not been a substantial change in the financial or personal affairs of Alejo since the dismissal of his prior Chapter 13 case. 11 U.S.C. § 362(c)(3)(C)(i)(III). A review of the court's docket in Alejo's prior case shows a Chapter 13 plan was confirmed on June 12, 2020, the Chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on November 5, 2020, but the court dismissed Alejo's case upon Alejo's request pursuant to 11 U.S.C. § 1307(b) and without reference to Trustee's Notice. See Case No. 20-11240, Doc. ##26, 28, 29.

The presumption that Debtors' bankruptcy case is filed in bad faith that arises as to Alejo may be rebutted by clear and convincing evidence to the contrary. 11 U.S.C. § 362(c)(3)(C). A comparison of Debtors' schedules filed in this case with Alejo's schedules filed in his prior Chapter 13 shows no substantial change in his financial affairs. Additionally, Alejo testifies that Debtors commingled assets, income, and expenses during Alejo's prior Chapter 13 case.

Under these circumstances, the court finds that Debtors' marriage is not a substantial change in Alejo's personal or financial affairs.

Conclusion

For the reasons discussed above, Debtors' case "is presumptively filed not in good faith." 11 U.S.C. § 362(c)(3)(C). In the pleadings filed with the motion, Debtors have not rebutted this presumption by clear and convincing evidence.

Rather than allow the stay under § 362(a) to terminate pursuant to 11 U.S.C. § 362(c)(3)(C), the court is inclined to extend the automatic stay for a limited time to permit Debtors to supplement their motion and rebut the presumption by clear and convincing evidence that this Chapter 13 case is not filed in good faith.

16. [18-11292](#)-A-13 **IN RE: ANGEL PEREZ**
[TCS-8](#)

CONTINUED MOTION TO MODIFY PLAN
10-30-2020 [[143](#)]

ANGEL PEREZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a seventh modified plan on December 10, 2020 (TCS-9, Doc. ##159-165), with a motion to confirm the modified plan set for hearing on January 14, 2021 at 9:30 a.m., matter number 17 below.

17. [18-11292](#)-A-13 **IN RE: ANGEL PEREZ**
[TCS-9](#)

MOTION TO MODIFY PLAN
12-10-2020 [[159](#)]

ANGEL PEREZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE
ADMINISTRATION, AS TO DEBTOR
12-15-2020 [\[51\]](#)

DONALD NEWSOME/MV
VARDUHI PETROSYAN/ATTY. FOR DBT.

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. The motion and related pleadings as filed do not comply with Local Rules of Practice ("LBR") 9004-2(b)(6) and 9014-1(c). The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

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

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

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

NO RULING.

2. [20-11321](#)-A-7 **IN RE: SENaida GONZALES**
[20-1043](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
7-2-2020 [[1](#)]

JOHN C. HART, CONSERVATOR OF THE ESTATE OF JAMES G V.
RYAN SULLIVAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [19-11430](#)-A-7 **IN RE: VINCENT/CAROL HERNANDEZ**
[20-1055](#)

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

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

NO RULING.

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

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

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

NO RULING.