

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 12, 2020
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. [19-15117](#)-B-13 **IN RE: RAYMOND CASUGA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-22-2020 [[14](#)]

DAVID JENKINS/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. Debtor withdrew the plan. Doc. #21.

2. [19-13422](#)-B-13 **IN RE: LINNEY WADE**
[MHM-2](#)

MOTION TO DISMISS CASE
1-6-2020 [[59](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #65.

3. [19-15122](#)-B-13 **IN RE: DAVID/ANTOINETTE MORALES**

OBJECTION TO CONFIRMATION OF PLAN BY FEDERAL NATIONAL MORTGAGE
ASSOCIATION
1-8-2020 [\[21\]](#)

FEDERAL NATIONAL MORTGAGE ASSOCIATION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the
order.

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are
the rules about Docket Control Numbers ("DCN"). These rules require
the DCN to be in the caption page on all documents filed in every
matter with the court and each new motion requires a new DCN.

This motion did not include a DCN and therefore does not comply with
the local rules.

4. [19-14425](#)-B-13 **IN RE: SILVIA JIMENEZ**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
12-16-2019 [\[14\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED. Pursuant to the court's prior order
(doc. #32), debtor was to either (1) file and serve a written
response to the chapter 13 trustee's opposition to this motion not
later than January 29, 2020, or (2) file, serve, and set for hearing
a motion to confirm a modified plan not later than February 5, 2020,
or the objection would be sustained on the grounds stated in the
opposition. Debtor did neither. Therefore the objection is
SUSTAINED.

5. [19-14526](#)-B-13 **IN RE: YESENIA BAROCIO**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
12-12-2019 [\[37\]](#)

PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #58.

6. [19-10227](#)-B-13 **IN RE: MA GUADALUPE SERRANO**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
11-8-2019 [\[89\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 is GRANTED. By prior order of the court (doc. #115), debtor was ordered to file, serve, and set for hearing a motion to confirm an amended plan prior to this hearing. As of February 8, 2020, an amended plan has not been filed. If debtor has not done so by the time this hearing is called, the motion will be granted.

7. [19-14427](#)-B-13 **IN RE: ISIDRO AREVALO AND CARMEN GUZMAN**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
12-16-2019 [\[17\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED. Pursuant to the court's prior order (doc. #25), debtor was to either (1) file and serve a written response to the chapter 13 trustee's opposition to this motion not later than January 29, 2020, or (2) file, serve, and set for hearing a motion to confirm a modified plan not later than February 5, 2020, or the objection would be sustained on the grounds stated in the opposition. Debtor did neither. Therefore the objection is SUSTAINED.

8. [19-13328](#)-B-13 **IN RE: LARRY/DOLORES SYRA**
[MAZ-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES
12-23-2019 [\[37\]](#)

LARRY SYRA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #46.

9. [19-13329](#)-B-13 **IN RE: SALLY REYES**
[TCS-2](#)

MOTION TO MODIFY PLAN
12-24-2019 [\[53\]](#)

SALLY REYES/MV
TIMOTHY SPRINGER/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 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 confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10. [19-14132](#)-B-13 **IN RE: CLAYTON/KIMBERLY WHITE**
[MHM-2](#)

MOTION TO DISMISS CASE
1-6-2020 [\[38\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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.

This motion is GRANTED. 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.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors because debtor is delinquent on plan payments in the amount of \$8,100.00. Doc. #38. Before this hearing, another payment in the amount of \$4,050.00 became due on January 25, 2020. Doc. #40. Debtor did not oppose.

For the above reasons, this motion is GRANTED.

11. [19-13835](#)-B-13 **IN RE: JOSE VITOLAS**
[MHM-3](#)

MOTION TO DISMISS CASE
1-13-2020 [\[46\]](#)

MICHAEL MEYER/MV
JAMES CANALEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 11, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

This motion is continued to March 11, 2020 at 9:30 a.m. to be heard in conjunction with the debtor's motion to confirm an amended plan, JBC-2.

12. [19-14738](#)-B-13 **IN RE: LAUREN SO**
[MHM-1](#)

MOTION TO DISMISS CASE
1-6-2020 [\[45\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 1/10/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #51.

13. [19-14738](#)-B-13 **IN RE: LAUREN SO**
[TCS-2](#)

CONTINUED MOTION TO CONFIRM PLAN
11-20-2019 [\[23\]](#)

LAUREN SO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 1/10/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #51.

14. [19-14747](#)-B-13 **IN RE: TERRANCE TAYLOR**
[ETW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RICHARD BARNES
1-21-2020 [\[31\]](#)

RICHARD BARNES/MV
EDWARD WEBER/ATTY. FOR MV.
DISMISSED 1/29/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #42.

15. [19-14747](#)-B-13 **IN RE: TERRANCE TAYLOR**
[ETW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-21-2020 [\[35\]](#)

RICHARD BARNES/MV
EDWARD WEBER/ATTY. FOR MV.
DISMISSED 1/29/20

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 case was dismissed on January 29,
2020. Doc. #42. Therefore the automatic stay is no longer in effect.

16. [20-10150](#)-B-13 **IN RE: PAOLA ZAVALA LOPEZ**
[BDB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
1-24-2020 [\[15\]](#)

PAOLA ZAVALA LOPEZ/MV
BENNY BARCO/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 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 that was dismissed, case no. 19-12345. That case was filed on May 31, 2019 and was dismissed on December 19, 2019 for failure to make plan payments. This case was filed on January 15, 2020 and the automatic stay will expire on February 16, 2020.

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) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

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 because 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. Debtor states that her previous counsel misinformed her as to the due date of the first plan payment, which she was not able to make. Doc. #17. Debtor also had unexpected, very expensive medical bills to pay for her mother's emergency operation. Id. Since the previous case was dismissed however, debtor's mother has fully recovered and debtor has received a 3.5% pay increase. Id.

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.

17. [18-13354](#)-B-13 **IN RE: DAHNE FRAKER**
[TCS-4](#)

MOTION TO INCUR DEBT
1-13-2020 [\[50\]](#)

DAHNE FRAKER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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)(2) and will proceed as scheduled.

Debtor asks the court for permission to borrow \$31,216.00 from NewRoadsAutoLoans at a rate of 16.00% to purchase a 2019 Honda Accord ("Vehicle"). The loan will be secured by the Vehicle. The monthly payment is estimated to be not more than \$672.00 per month. Doc. #53.

Debtor states that she needs to purchase a new vehicle because the current vehicle has almost 200,000 miles on it, has required numerous repairs, "and is no longer worth fixing." Doc. #52. Debtor works full time at Burlington Coat Factory, but also works part time with Amazon Flex, which can require debtor to drive "approximately 200 miles per 3 hour shift" and the current vehicle is "not reliable and [debtor] fear[s] [they] will be stranded." Id. Debtor states that they have been "averaging around \$1,000.00 per month working for Amazon Flex." Id.

There is no other evidence of debtor's Amazon Flex income, only debtor's declaration and the amended Schedule I. The Debtor's intentions as to the current vehicle is not explained. Will it be sold? If so, what will be done with the proceeds? The plan states that the creditor secured by debtor's current vehicle is paid \$186.17 per month. \$312.00 of the \$340.00 monthly plan payment is to that secured creditor and the attorney, with the remainder being paid to unsecured creditors - a 3% dividend. Doc. #8. Debtor's amended schedules I and J show an ability to pay for the new vehicle, leaving \$341.00 per month to make the plan payment. Doc. #49.

Under LBR 3015-1 the court must approve new vehicle loans. It is not clear the extent of the court's authority under § 364 in Chapter 13 cases. See, Fed. R. Bankr. P. 4001(c). The court notes the loan amount far exceeds what can be approved on an ex parte basis. The court also notes the debtor is evidently current on plan obligations. The "new" Schedules I and J the debtor filed do show the debtor can afford the payments under the proposed new loan.

But the court is not convinced the proposed interest rate is reasonable or appropriate in these circumstances. There is no evidence of the debtor's attempts to obtain other financing on more favorable terms. The court approves the loan but will not approve the interest rate term if it exceeds 10% per annum.

Debtor is authorized, but not required, to incur further debt in order to purchase the Vehicle (or other Vehicle) for \$31,216.00 at a rate of 10.00% interest or less for a period of 72 months. Should the debtor's budget prevent maintenance of the current plan payment, debtor shall continue making plan payments until the plan is modified.

The motion is GRANTED IN PART.

18. [19-14154](#)-B-13 **IN RE: SHANNON/TY WILLIAMS**
[MHM-3](#)

MOTION TO DISMISS CASE
1-13-2020 [\[31\]](#)

MICHAEL MEYER/MV
RICHARD STURDEVANT/ATTY. FOR DBT.
DISMISSED 1/16/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #40.

19. [19-14955](#)-B-13 **IN RE: ALBERTO/NORA URZUA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-7-2020 [\[37\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Granted unless withdrawn prior to the hearing.

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 matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents'

defaults 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 chapter 13 trustee ("Trustee") moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1), 521(a)(3), and Federal Rules of Bankruptcy Procedure 1007(b)(6). Doc. #37. Trustee contends that debtors have failed to accurately complete Official Form 122C-1, Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and failed to complete Official Form 122C-2, Chapter 13 Calculation of Your Disposable Income. Id. Debtors have not responded.

11 U.S.C. § 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See In re Robertson, 2010 WL 5462500 (Bankr. D.S.C. Dec. 29 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. Aug. 5, 2009).

11 U.S.C. § 521 states that debtors must ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3). As one commentator noted, "'Cooperate' is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that debtors are entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Federal Rule of Bankruptcy Procedure 1007(b)(6) requires debtors to file a statement of current monthly income using the appropriate Official Form, 122C-1. Fed. R. Bankr. P. 1007(b)(6). If the current monthly income exceeds the median family income for a family in California of the same household size, a calculation of disposable income using the appropriate Official Form, 122C-2, must also be filed. Id.

Debtors did file Official Form 122C-1, which lists their current average monthly income as \$7,511.00, with an annual income of \$90,132.00. Doc. #23. The stated annual income is below the median annual income of \$96,813.00 for a family of 4 in California, which does not require Official Form 122C-2. Id.

However, Trustee has submitted evidence showing that debtors' average monthly income was \$11,091.12 for the six months preceding the date of filing their chapter 7 petition. Doc. #35. While debtors' income may fluctuate, the court finds that the income

listed on Official Form 122C-1 is inaccurate. Doc. #23. Debtors should have amended Official Form 122C-1 and submitted Official Form 122C-2.

Nearly a month has passed since Trustee requested accurate documents and debtors have not filed any additional documents or responses. Trustee is entitled to receive an accurate statement of current monthly income and a calculation of disposable income, which are necessary for the performance of his duties. The court finds that debtors have had a reasonable time to cooperate and have not done so.

For those reasons, unless Trustee withdraws, the motion is GRANTED and the case is dismissed.

20. [19-14556](#)-B-13 **IN RE: NICOLAS/MARTHA NUNEZ**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
12-16-2019 [\[20\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED. Pursuant to the court's prior order (doc. #28), debtors were to either (1) file and serve a written response to the chapter 13 trustee's opposition to this motion not later than January 29, 2020, or (2) file, serve, and set for hearing a motion to confirm a modified plan not later than February 5, 2020, or the objection would be sustained on the grounds stated in the opposition. Debtors did neither. Therefore the objection is SUSTAINED.

21. [20-10263](#)-B-13 **IN RE: MANUELA MATA**
[BDB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
1-28-2020 [\[10\]](#)

MANUELA MATA/MV
BENNY BARCO/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 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 that was dismissed, case no. 19-14761. That case was filed on November 14, 2019 and was dismissed on December 5, 2019 for failure to timely file documents. This case was filed on January 27, 2020 and the automatic stay will expire on February 26, 2020.

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) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

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 because debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa).

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 filed chapter 7 pro se. Debtor states that they "did not understand what [they] were doing and was trying to save [their] house from foreclosure." Doc. #12. Debtor has now hired counsel. The court notes that the schedules and a chapter 13 plan were filed February 6, 2020.

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.

22. [19-11265](#)-B-13 **IN RE: MARTIN/SUSANA SANCHEZ**
[GRB-1](#)

MOTION TO ALLOW LATE FILED CLAIM
1-3-2020 [\[59\]](#)

CROSSROADS EQUIPMENT LEASE & FINANCE, LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
GLENN BRONSON/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

23. [19-14173](#)-B-13 **IN RE: GONZALO ADAME AND MARTHA RAMIREZ DE ADAME**
[EPE-1](#)

MOTION TO CONFIRM PLAN
12-30-2019 [\[44\]](#)

GONZALO ADAME/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion to Extend Deadline to File Schedules was previously filed on October 15, 2019. Doc. #11. The DCN for that motion was EPE-1. This motion also has a DCN of EPE-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

24. [19-14574](#)-B-13 **IN RE: JOSE MORALES**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
12-16-2019 [\[23\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED. Pursuant to the court's prior order (doc. #31), debtors were to either (1) file and serve a written response to the chapter 13 trustee's opposition to this motion not later than January 29, 2020, or (2) file, serve, and set for hearing a motion to confirm a modified plan not later than February 5, 2020, or the objection would be sustained on the grounds stated in the

opposition. Debtors did neither. Therefore the objection is SUSTAINED.

25. [19-14176](#)-B-13 **IN RE: STEVEN WILSON**
[EPE-2](#)

MOTION TO CONFIRM PLAN
12-23-2019 [\[33\]](#)

STEVEN WILSON/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant filed an amended plan. Doc. #71.

26. [19-14577](#)-B-13 **IN RE: CONNIE YRIGOLLEN**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-7-2020 [\[24\]](#)

MICHAEL MEYER/MV
BENNY BARCO/ATTY. FOR DBT.
DISMISSED 1/8/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #33.

27. [19-14577](#)-B-13 **IN RE: CONNIE YRIGOLLEN**
[MHM-2](#)

MOTION TO DISMISS CASE
1-7-2020 [\[27\]](#)

MICHAEL MEYER/MV
BENNY BARCO/ATTY. FOR DBT.
DISMISSED 1/8/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #33.

28. [19-14592](#)-B-13 **IN RE: ARTURO LEON AND ANA MARTINEZ**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
12-16-2019 [\[18\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED. Pursuant to the court's prior order (doc. #26), debtors were to either (1) file and serve a written response to the chapter 13 trustee's opposition to this motion not later than January 29, 2020, or (2) file, serve, and set for hearing a motion to confirm a modified plan not later than February 5, 2020, or the objection would be sustained on the grounds stated in the opposition. Debtors did neither. Therefore the objection is SUSTAINED.

29. [19-13793](#)-B-13 **IN RE: JOSE/ROSA ESPINO**
[MHM-1](#)

MOTION TO DISMISS CASE
1-13-2020 [\[43\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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.

This motion is GRANTED. 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.

The chapter 13 trustee ("Trustee") has requested dismissal pursuant to 11 U.S.C. § 1307(c) for unreasonable delay by the debtor that is prejudicial to creditors for failing to set a plan for a confirmation hearing and noticing creditors. Doc. #43.

11 U.S.C. § 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See In re Robertson, 2010 WL 5462500 (Bankr. D.S.C. Dec. 29 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. Aug. 5, 2009).

The court finds that dismissal would be in the best interest of the creditors and the estate. Trustee objected to the plan and the plan was later denied. Doc. #39. Debtors have not filed or set an amended plan for a confirmation hearing subsequent to the denial of their first motion to confirm. Five months have elapsed since the date of the petition and debtors have failed to confirm a chapter 13 plan.

For the above reasons, this motion is GRANTED.

11:00 AM

1. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[19-1046](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-23-2019 [[19](#)]

SALVEN V. THE UNITED STATES OF AMERICA DEPARTMENT OF THE TRE
PETER FEAR/ATTY. FOR PL.
CLOSED 12/2/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The case closed on December 2, 2019.

2. [19-13048](#)-B-7 **IN RE: CRAIG BREWER**
[19-1103](#)

STATUS CONFERENCE RE: COMPLAINT
10-2-2019 [[1](#)]

MACLOVIO V. BREWER
DENIS DELJA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 1, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Defendant's status report states that the state court trial is set for January 21, 2020. Doc. #17. No initial disclosures have been exchanged in the case and settlement negotiation attempts have not been productive. Id. Therefore the status conference is continued to April 1, 2020 at 11:00 a.m. to allow the state court action to conclude.

3. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1007](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-7-2019 [[1](#)]

SUGARMAN V. BOARDMAN TREE FARM, LLC ET AL
JOHN MACCONAGHY/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 22, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report submitted by the chapter 11 trustee and the status of case no. 19-1033, this status conference is continued to July 22, 2020 at 11:00 a.m. Status reports due not later than July 15, 2020.

4. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#)

CONTINUED STATUS CONFERENCE COMPLAINT
3-8-2019 [[1](#)]

SUGARMAN V. IRZ CONSULTING, LLC
JOHN MACCONAGHY/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 22, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report submitted by the chapter 11 trustee, this status conference is continued to July 22, 2020 at 11:00 a.m. Status reports due not later than July 15, 2020.

5. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1037](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
7-23-2018 [[1](#)]

IRZ CONSULTING LLC V. TEVELDE ET AL
SANFORD LANDRESS/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 22, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report submitted by the chapter 11 trustee and the status of case no. 19-1033, this status conference is continued to July 22, 2020 at 11:00 a.m. Status reports due not later than July 15, 2020.

6. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1091](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-28-2019 [[1](#)]

SUGARMAN V. MARTIN LEASING RESOURCE, LLC ET AL
JOHN MACCONAGHY/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

7. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**
[19-1116](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-24-2019 [[1](#)]

MARTINES ET AL V. VIVINT SOLAR
NANCY KLEPAC/ATTY. FOR PL.

NO RULING.

8. [18-13678](#)-B-7 **IN RE: VERSA MARKETING, INC.**
[19-1032](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING
FOR FAILURE TO PROSECUTE
1-7-2020 [\[52\]](#)

VERSA MARKETING, INC. V. WEST
LIBERTY FOODS, LLC
RESPONSIVE PLEADING

NO RULING.

9. [19-11293](#)-B-7 **IN RE: JEFFREY/JAIME HULL**
[19-1094](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
11-5-2019 [\[13\]](#)

HULL V. U.S. DEPARTMENT OF EDUCATION ET AL
NANCY KLEPAC/ATTY. FOR PL.
DISMISSED 1/23/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #26.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1105](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
10-4-2019 [\[7\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. PEREZ
MICHAEL WILHELM/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1108](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-7-2019 [1](#)

TULARE LOCAL HEALTHCARE DISTRICT V. MARTINEZ, MD
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION: Continued to March 11, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' status report (doc. #22), the status
conference will be continued to March 11, 2020 at 11:00 a.m.

12. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1108](#) [WJH-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
1-3-2020 [15](#)

TULARE LOCAL HEALTHCARE DISTRICT V. MARTINEZ, MD
MICHAEL WILHELM/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue the order.

Pursuant to the parties' status report (doc. #22), the motion for
entry of default judgment is dropped from calendar.

13. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1109](#)

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
10-7-2019 [1](#)

TULARE LOCAL HEALTHCARE DISTRICT V. TELNET-RX, INC.
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION: Continued to March 11, 2020 at 11:00 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #18.

14. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1111](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-14-2019 [\[1\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. AYA HEALTHCARE,
MICHAEL WILHELM/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The parties have dismissed the case. Doc. #24.

15. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1113](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-14-2019 [\[1\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. KOLLEN, MD
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION: Continued to March 11, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' status report (doc. #29), the status conference will be continued to March 11, 2020 at 11:00 a.m.

16. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1113](#) [WJH-1](#)

RESCHEDULED HEARING RE: MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-17-2019 [\[16\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. KOLLEN, MD
MICHAEL WILHELM/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue the order.

Pursuant to the parties' status report (doc. #29), the motion for entry of default judgment is dropped from calendar at the request of the parties.

17. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1114](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-14-2019 [\[1\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. OSTROM, DO
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION: Continued to March 11, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' status report (doc. #23), the status
conference will be continued to March 11, 2020 at 11:00 a.m.

18. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1114](#) [WJH-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
1-3-2020 [\[16\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. OSTROM, DO
MICHAEL WILHELM/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue the order.

Pursuant to the parties' status report (doc. #23), the motion for
entry of default judgment is dropped from calendar at the request of
the parties.

19. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1119](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-24-2019 [\[1\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. CUMMINS INC.
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #22.