

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, February 14, 2019
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. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
[KDG-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN,
DENATALE, GOLDNER, COOPER, ROSENLIB & KIMBALL, LLP FOR
JACOB L. EATON, DEBTORS ATTORNEY(S)
1-17-2019 [\[74\]](#)

JACOB EATON

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's bankruptcy counsel, Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, requests fees of \$32,917.50 and costs of \$537.01 for a total of \$33,454.51 for services rendered from December 7, 2018 through January 10, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary

expenses." Movant's services included, without limitation: (1) Advising debtor about the administration of its chapter 11 case and its duties as debtor-in-possession, (2) Attending the meeting of creditors in Fresno, (3) Reviewing leases and contracts and advising on the assumption and rejection of such, (4) Counseling debtor on the use of cash collaterals, and (5) Beginning the work on a plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$32,917.50 in fees and \$537.01 in costs.

2. [18-14868](#)-B-11 **IN RE: 1 RED INVESTMENTS INC.**
[LKW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-30-2019 [\[60\]](#)

DAN COOK, INC./MV
PHILLIP GILLET
LEONARD WELSH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless the case is dismissed. If dismissed, the motion will be denied as moot.

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

This case was dismissed at a hearing before the court on February 7, 2019. If the order dismissing the case is entered, this motion will be denied as moot. If it is not entered by the date of this hearing, the court will take up the merits of the motion.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, Dan Cook, Inc. (dba Equity 1 Loans), seeks relief from the automatic stay under § 362(d)(1) and (d)(2) with respect to a piece of real property located at 2708 College Avenue in Bakersfield, CA.

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from stay if the debtor does not have equity in the property and the property is not necessary to an effective reorganization.

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor has failed to make the necessary payments to movant under the promissory note executed on March 17, 2016, and there is no equity in the property and no evidence exists that it is necessary to a reorganization. The movant has produced evidence that the property has a value of \$230,000.00 and movant is owed approximately \$252,682.23. Doc. #62.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be ordered waived due to the fact that the movant has not shown an exigency.

3. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[WW-4](#)

MOTION FOR ORDER FIXING BAR DATE FOR FILING PROOFS OF CLAIM
1-14-2019 [[100](#)]

COALINGA REGIONAL MEDICAL
CENTER, A CALIFORNIA LOCAL
RILEY WALTER

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

DISPOSITION: Granted.

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

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

Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The court sets April 12, 2019 as the bar date, which would be the last date by which any entity or person, other than a governmental entity, may file a timely proof of claim against the debtor. The bar date will be enforceable notwithstanding any otherwise applicable non-bankruptcy law that could govern the timing of the assertion of a claim against the debtor.

The other relief requested in the motion, which is too lengthy to reproduce here, is also granted.

4. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-16](#)

MOTION TO EXTEND TIME
1-30-2019 [\[265\]](#)

VERSA MARKETING, INC./MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

11 U.S.C. § 365(d)(4)(B)(i) allows the court to extend the period a debtor has to assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee. The debtor has either until (1) the date that is 120 days after the date the petition is filed, or (2) the date of the entry of an order confirming a plan. See 11 U.S.C. § 365(d)(4)(A).

This motion appears to be the same as a motion that was previously denied without prejudice for procedural reasons (WW-13, doc. #264). This motion does not seek relief from the previous order. There is no reason in the record on this motion why the court should revisit the previous order.

Since no plan has yet been confirmed in this case, the date that is 120 days after the date the petition is filed was January 5, 2019. The court can only extend that assumption-rejection period "prior to the expiration of the 120-day period." See 11 U.S.C. § 365(d) (4) (B) (i).

Because this motion was filed and served after the expiration date, the court is no longer able to grant the relief requested. Therefore, this motion is DENIED.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[FWP-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES
1-14-2019 [\[993\]](#)

CERNER CORPORATION/MV
RILEY WALTER
JASON RIOS/ATTY. FOR MV.
CONTINUED TO 3/6/19 BY ECF ORDER #1066

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

DISPOSITION: Continued to March 6, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #1066.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-41](#)

MOTION FOR APPROVAL OF MODIFICATION OF LIST OF ASSIGNED
CONTRACTS FOR REMOVAL FROM LIST
1-25-2019 [\[1043\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

NO RULING.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-41](#)

CONTINUED MOTION FOR AUTHORITY TO ENTER INTO TRANSACTION
INCLUDING BORROWING FUNDS, SALES OF PERSONAL PROPERTY AND
PROVIDING SECURITY, ASSUMPTION AND ASSIGNMENT OF CONTRACTS
AND LEASES AND FOR AUTHORITY TO LEASE REAL PROPERTY
7-20-2018 [[603](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-67](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
12-6-2018 [[932](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

NO RULING.

This motion was continued to accommodate discussions between the
debtor and Med One.

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-73](#)

CONTINUED MOTION FOR ORDER AUTHORIZING REJECTION OF MASTER
AGREEMENT
1-14-2019 [[1007](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

NO RULING.

This motion deals with Roche Diagnostics who is also involved in
other administrative motions involving this debtor.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-60](#)

CONTINUED MOTION TO BORROW
1-25-2019 [[1035](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

NO RULING.

1:30 PM

1. [18-14902](#)-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
1-14-2019 [\[36\]](#)

MICHAEL MEYER/MV
SUSAN HEMB
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

2. [19-10002](#)-B-13 **IN RE: CARLOS LEAL**
[JCW-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
1-16-2019 [\[14\]](#)

WELLS FARGO BANK, N.A./MV
TIMOTHY SPRINGER
JENNIFER WONG/ATTY. FOR MV.
DISMISSED 1/22/19

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. #18.

3. [18-13803](#)-B-13 **IN RE: DAIZY RINCON**
[NRA-3](#)

MOTION TO CONFIRM PLAN
12-31-2018 [\[52\]](#)

DAIZY RINCON/MV
NELLIE AGUILAR

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.

4. [18-12004](#)-B-13 **IN RE: HERBERT KELLEY**
[SJS-4](#)

CONTINUED MOTION TO CONFIRM PLAN
12-13-2018 [\[70\]](#)

HERBERT KELLEY/MV
SUSAN SALEHI
RESPONSIVE PLEADING 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 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. The trustee withdrew their opposition on February 1, 2019. Doc. #83.

5. [19-10004](#)-B-13 **IN RE: GEORGE BAKER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-29-2019 [\[24\]](#)

JOEL WINTER
FILING FEE PAID 2/1/19

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 amendment fee now due was paid on February 1, 2019. The OSC will be vacated.

6. [19-10004](#)-B-13 **IN RE: GEORGE BAKER**
[DVM-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR
MOTION FOR RELIEF FROM AUTOMATIC STAY
1-31-2019 [\[25\]](#)

U.S. BANK N.A./MV
JOEL WINTER
DIANE WEIFENBACH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

First, the court notes movant's procedural deficiency. LBR 9004-2(c)(1) requires that exhibits, declarations, *inter alia*, to be filed as separate documents. Here, the declaration of James Stefani and numerous exhibits were combined into one document and not filed separately.

This motion is GRANTED.

11 U.S.C. § 362(j) states “[o]n request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.”

11 U.S.C. § 362(c)(4)(A)(i) provides, *inter alia*, that if the debtor had “2 or more single . . . cases . . . pending within the previous year but were dismissed, the stay” will not go into effect upon the filing of the later case unless a party in interest files a motion to impose the stay within 30 days of the filing of the later case.

This is debtor’s third case in the space of one year. Debtor first filed bankruptcy on May 4, 2018 (case no. 18-11826), and that case was dismissed on June 30, 2018. Debtor then filed bankruptcy again on September 24, 2018 (case no. 18-13858), and that case was dismissed on December 20, 2018.

This third case was filed on January 2, 2019. The 30-day time period by which a motion to impose the stay under § 362(c)(4) lapsed on February 1, 2019. Therefore, the automatic stay never arose in this case.

The movant, U.S. Bank, N.A., seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) with respect to a piece of real property located at 1783 Norwhich Avenue in Clovis, CA 93611.

Under § 362(d)(4), if the court finds that the debtor’s filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

After review of the included evidence, the court finds that the debtor’s filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

On or about May 19, 2006, George O. Baker (“Baker”) (who is not the debtor here) entered into a loan transaction for \$248,000.00. Doc. #27. The promissory note and deed of trust securing the note were later assigned to movant. *Id.* Baker defaulted, and a notice of sale was recorded on April 5, 2018, with a sale date of May 7, 2018. *Id.* Currently, a sale date is set for February 19, 2019. Movant believes that debtor is a successor in interest to the estate of Baker. *Id.* The court finds that this bankruptcy case is part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the property. This is debtor’s third bankruptcy filing in the space of 1 year. The first two cases were dismissed very early on; the first was dismissed for failure to file necessary documents, and the second was dismissed for failure to make plan payments.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to the real property located at 1783 Norwhich Avenue in Clovis, CA 93611.; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because a sale date is scheduled in the next 14 days.

7. [18-14605](#)-B-13 **IN RE: GUADALUPE SANCHEZ**
[TOG-2](#)

MOTION TO CONFIRM PLAN
12-28-2018 [\[23\]](#)

GUADALUPE SANCHEZ/MV
THOMAS GILLIS

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

8. [18-14906](#)-B-13 **IN RE: STEVEN/MATISHA NORENBURG**
[MHM-2](#)

MOTION TO DISMISS CASE
1-14-2019 [\[16\]](#)

MICHAEL MEYER/MV
MARTHA PASSALAUQUA

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the 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 record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors. The debtors failed to provide the trustee with copies of all payment advices and other evidence of payment received within 60 days before the filing of the petition. (11 U.S.C. § 521(a)(1)(B)(iv)). The debtors failed to file a complete and accurate Schedule H. (11 U.S.C. § 521). Accordingly, the case will be dismissed.

9. [16-12421](#)-B-13 **IN RE: INEZ SEARS**
[TCS-6](#)

CONTINUED MOTION TO MODIFY PLAN
12-4-2018 [\[97\]](#)

INEZ SEARS/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

There being no timely filed modified Plan or opposition filed conforming to the court's order dated January 18, 2019 (doc. #110) the motion is DENIED.

10. [18-11825](#)-B-13 **IN RE: JESSICA RAMOS**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
11-1-2018 [\[66\]](#)

MICHAEL MEYER/MV
PETER CIANCHETTA
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 grounds of the motion are that debtor failed to confirm a plan. Debtor's continued motion to confirm plan (PLC-3, matter #11 below) is granted, and therefore the grounds of this motion are moot.

11. [18-11825](#)-B-13 **IN RE: JESSICA RAMOS**
[PLC-3](#)

CONTINUED MOTION TO CONFIRM PLAN
11-15-2018 [\[72\]](#)

JESSICA RAMOS/MV
PETER CIANCHETTA
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

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

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.

12. [18-13527](#)-B-13 **IN RE: GREG/SHERRY KELLY**
[PK-2](#)

CONTINUED MOTION TO CONFIRM PLAN
9-28-2018 [\[22\]](#)

GREG KELLY/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #122.

13. [18-13832](#)-B-13 **IN RE: ANDREA SOUSA**
[MHM-2](#)

MOTION TO DISMISS CASE
1-3-2019 [\[57\]](#)

MICHAEL MEYER/MV
JERRY LOWE
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on February 7,
2019. Doc. #67.

14. [18-14735](#)-B-13 **IN RE: KARL KENNEL**
[MHM-1](#)

MOTION TO DISMISS CASE
1-15-2019 [\[24\]](#)

MICHAEL MEYER/MV
SCOTT LYONS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless conditions are met as set forth
below.

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).

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss
this case under 11 U.S.C. §§ 1307(c)(1) and 521(a)(3), (4). Trustee
contends that he has not received all of the documents to which he
is entitled and which are necessary for performance of his duties.
Debtor, opposes the motion, contending that the necessary and
requested documents have been supplied. Doc. ##24, 26.

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.
S.C. 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the
trustee is long. At a minimum it includes (1) pay advices for the 60
days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Federal
Rule of Bankruptcy Procedure 1007(b)(1)(E); (2) a copy of the
debtor's most recent federal income tax return (or a transcript
thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3);

(3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under 11 U.S.C. §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . 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). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Trustee has requested the following additional documentation from the debtor: copies of all payment advices or other evidence of payment received within 60 days before the date of filing of the petition, and a statement of the amount of monthly net income, itemized to show how the amount is calculated. Doc. #24.

Debtor timely responded, stating that debtor provided copies of his income of the six months prior to filing on December 20, 2018, and debtor filed and served the Schedule I on January 24, 2019. Doc. #32.

These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. Unless the motion is withdrawn prior to the hearing, this matter will be called to confirm whether the trustee has received those documents. If the trustee has, the motion will be denied. If the trustee has not, the motion will be granted.

15. [18-13941](#)-B-13 **IN RE: JUAN MENDOZA**
[TOG-2](#)

MOTION TO CONFIRM PLAN
12-28-2018 [\[25\]](#)

JUAN MENDOZA/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice unless the trustee withdraws opposition at the hearing. The court sets April 25, 2019 as a bar date by which a plan must be confirmed, or the case will be dismissed.

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

This motion is DENIED WITHOUT PREJUDICE.

The trustee's opposition stated that debtor is delinquent in plan payments. Doc. #34.

If debtor is current on plan payments at the hearing, then this motion shall be granted. If the debtor is not current on plan payments, then this motion shall be denied without prejudice.

Pursuant to § 1324(b), the court will set April 25, 2019 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

16. [18-12542](#)-B-13 **IN RE: ISABEL SANCHEZ**
[TCS-1](#)

CONTINUED MOTION TO CONFIRM PLAN
11-20-2018 [\[59\]](#)

ISABEL SANCHEZ/MV
TIMOTHY SPRINGER
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. Debtor filed an amended chapter 13 plan. Doc. #82.

17. [18-14845](#)-B-13 **IN RE: MARIANO SANCHEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
1-15-2019 [\[19\]](#)

MICHAEL MEYER/MV
CHRISTOPHER FISHER
RESPONSIVE PLEADING

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.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1) and 521(a)(3), (4). Trustee contends that he has not received all of the documents to which he is entitled and which are necessary for performance of his duties. Debtor, opposes the motion, contending that the necessary and requested documents have been supplied. Doc. ##19, 21.

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. S.C. 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Federal Rule of Bankruptcy Procedure 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under 11 U.S.C. §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . 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). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Trustee has requested the following additional documentation from the debtor: a statement of the amount of monthly net income itemized to show how the amount is calculated under 11 U.S.C. § 521(a)(1)(B)(v), a properly completed Official Form 122C-1, and an Official Form 122C-2.

Debtor timely responded, without evidence, stating that debtor filed "amended Schedule I" and Official Forms 122C-1 and 2. Doc. #25.

Without any evidence, the court is unable to evaluate the accuracy of debtor's claims. These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. The court finds that the debtor has had a reasonable time to cooperate and has not done so.

For each of these reasons, unless Trustee withdraws the motion, the case is dismissed.

18. [18-14550](#)-B-13 **IN RE: JOSE VARGAS PACHECO**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-8-2019 [\[26\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
DISMISSED 1/30/19

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. [18-14550](#)-B-13 **IN RE: JOSE VARGAS PACHECO**
[MHM-3](#)

MOTION TO DISMISS CASE
1-17-2019 [\[33\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
DISMISSED 1/30/19

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.

20. [18-13654](#)-B-13 **IN RE: STEPHANIE WITHROW**
[MHM-1](#)

MOTION TO DISMISS CASE
12-26-2018 [\[27\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the 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 record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to make all payments due under the plan. (11 U.S.C. § 1307(c)(1) and/or (c)(4)). Accordingly, the case will be dismissed.

21. [17-10655](#)-B-13 **IN RE: ROSA QUINONEZ**
[TOG-1](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
1-17-2019 [\[28\]](#)

ROSA QUINONEZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on the condition that the debtor
 accepts the court's modifications based on the
 response of the chapter 13 trustee and the
 Chapter 13 Trustee approves the order as to
 form and content.

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

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). Therefore, the defaults of the above-mentioned parties in interest, except for the chapter 13 trustee and creditor Nationstar Mortgage LLC, are entered. 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. § 363(f), the debtor-in-possession ("Debtor") may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(f) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore the debtor has the authority to sell estate property free and clear of liens under § 363(f).

The Debtor wishes to sell real property located at 1333 Bennett Avenue in Dos Palos, CA 93722 for \$240,000.00 to Francisco Juarez

("Buyer"). Doc. #28. Buyer has paid a \$2,300.00 deposit. The Debtor has produced evidence that Nationstar Mortgage, LLC. has the only secured interest in the property and is owed \$80,070.77. Claim #5, doc. #1.

Because "the price at which such property is to be sold is greater than the aggregate value of all liens on such property," the Debtors may sell the property located at 1333 Bennett Avenue in Dos Palos, CA 93722 for \$240,000.00 to Francisco Juarez and free and clear of the Nationstar Mortgage, LLC lien. The liens are transferred to the proceeds.

The court notes the non-opposition filed by Nationstar Mortgage, LLC (doc. #33) and the chapter 13 trustee's statement (doc. #35). An independent basis to approve the sale is that the lender consents to the sale free and clear of the lien subject to full payment of the claim from the sale proceeds.

Debtor expects the sale to net them approximately \$145,000.00. Doc. #28. If Debtor wants to complete the plan early, Debtor shall turn over \$13,642.18 to the chapter 13 trustee to pay the allowed unsecured creditors 100%. See doc. #31. Debtor must also reinvest the \$75,000.00 homestead exemption within six months of the sale. Id. If debtor fails to do so, the trustee "will be required to file a hostile plan modification on behalf of unsecured creditors in order to capture those proceeds that belong to unsecured creditors." Id.

If Debtor wants to complete the plan in 36 months, she may keep her funds and continue to apply them toward her plan payments for the remaining months and reinvest the exempt \$75,000.00 within six months.

The Chapter 13 Trustee must approve the order as to form and content and sign the final seller's closing statement. The order approving this shall include all conditions specified in this ruling.

22. [19-10258](#)-B-13 **IN RE: NELDA MCNEALY**
[WLG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
1-31-2019 [\[8\]](#)

NELDA MCNEALY/MV
NICHOLAS WAJDA

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, case no. 17-14680. That case was filed on December 8, 2017 and was dismissed on January 14, 2019 for failure to make plan payments. This case was filed on January 27, 2019 and the automatic stay will expire on February 26, 2018.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under

the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted).

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

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor's previous case was dismissed for failure to make plan payments. She fell behind "due to serious health issues [she] experienced between November 2018 and January 2019," including two hospitalizations and four emergency room visits. Doc. #10.

Debtor now is back in good health and is going to receive assistance from her nephew, who will also be making financial contributions so the debtor can complete the plan successfully. Doc. #10, 11.

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.

23. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[JFL-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DITECH
FINANCIAL LLC
6-14-2018 [\[8\]](#)

DITECH FINANCIAL LLC/MV
RABIN POURNAZARIAN
JAMES LEWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

24. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[PLG-1](#)

CONTINUED OBJECTION TO CLAIM OF DITECH FINANCIAL LLC, CLAIM
NUMBER 1
9-11-2018 [\[38\]](#)

ALVINA FISCHER/MV
RABIN POURNAZARIAN
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 21, 2019 at 1:30 p.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #91.

25. [16-11470](#)-B-13 **IN RE: JOSHUA/BRANDY BARKLEY**
[TCS-3](#)

MOTION TO MODIFY PLAN
12-13-2018 [\[68\]](#)

JOSHUA BARKLEY/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

26. [18-11375](#)-B-13 **IN RE: ERIC RUBIO**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-8-2019 [\[67\]](#)

SYSTEMS & SERVICES
TECHNOLOGIES, INC./MV
TIMOTHY SPRINGER
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

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

The movant, Systems & Services Technologies, Inc., seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2003 Glastron 24 Boat and a 2016 Venture trailer ("Property").

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor has failed to make the required post-petition payments. The movant has produced evidence that the Property has a value of \$23,430.00 and debtor owes \$16,601.00. Claim 2, Doc. #69.

The court also notes that the debtor filed non-opposition to the granting of this motion. Doc. #73.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Property is depreciating in value.

27. [18-13681](#)-B-13 **IN RE: ARTURO/ELIZABETH ESPINOSA**
[RJS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
1-8-2019 [\[54\]](#)

CYNTHIA LIEDSTRAND/MV
THOMAS GILLIS
RALPH SWANSON/ATTY. FOR MV.

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

DISPOSITION: Granted unless the debtors' plan is confirmed
 (matter #28 below, TOG-2). If so, this motion is
 denied as moot as the plan will control.

ORDER: The Moving Party shall submit a proposed order in
 conformance with the ruling below if the motion is
 granted. The court will issue the order if the plan
 is confirmed and this motion is denied.

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.

First, the court notes movant's procedural error. LBR 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the declaration of Carrie S. Arata and exhibits were combined into one document and not filed separately. Doc. #56.

The movants, Cynthia A. Liedstrand and Carrie S. Arata ("Movants"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) in order to send written notice under California Civil Code § 2966 to the debtors regarding the commencement of collection under a promissory note.

Movants are the successor trustees of the Ann F. Schreiber and Grant F. Schreiber 2012 Living Trust dated April 18, 2012 ("Trust"). The Trust is the current lender and holder of a Promissory Note secured by a Deed of Trust under a loan made to debtors in the original principal amount of \$85,000.00. The real property encumbered by the deed of trust is not believed to be debtors' residence, because the addresses of the two properties are different.

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtors are delinquent in their obligation to Movants. The Movants have produced evidence that debtors ceased making payments in August 2016. Doc. #56.

Accordingly, the motion will be conditionally granted pursuant to 11 U.S.C. § 362(d)(1). If granted, the stay shall be terminated as it applies only to Movants' enforcement of their right to send written notice to the debtors that the full amount to be paid under the Note is due after the expiration of 90 days following service of the notice. Movants may also seek further relief from the court after the 90 day period expires.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived since the relief only extends to sending the requisite notice.

28. [18-13681](#)-B-13 **IN RE: ARTURO/ELIZABETH ESPINOSA**
[TOG-2](#)

MOTION TO CONFIRM PLAN
12-28-2018 [\[46\]](#)

ARTURO ESPINOSA/MV
THOMAS GILLIS

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. 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). Therefore, the defaults of the above-mentioned parties in interest, with the exception of creditors Cynthia Liedstrand and Carrie Arata, and the chapter 13 trustee, 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.

First, the court notes objectors Cynthia Liedstrand and Carrie Arata's ("Creditors") procedural error. LBR 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the objection, declaration, and exhibits were combined into one document and not filed separately. Doc. #62.

Both Creditors and the chapter 13 trustee ("Trustee") have objected to plan confirmation.

Creditors' objection is on the grounds that the plan does not comply with 11 U.S.C. § 1325(a)(5) because the plan does not currently provide adequate protection to Creditors' rights as secured creditors. Doc. #62.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #49. Creditor's proof of claim, filed November 6, 2018 is in class 4 - paid directly by debtors. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Plan section 3.11. The debtors may need to modify the plan. If they do not and the plan is confirmed, Creditor will have stay relief. If the plan is modified, then Creditors' objection may be moot.

Trustee's objection is on the grounds that the plan does not provide for all of debtors' projected disposable income to be applied to unsecured creditors under the plan. Doc. #59. Trustee states that the plan can be confirmed with the following changes in the order confirming plan: "All plan payments for months 1-3 shall total \$7,755.00. Commencing in Month 4, January 2019, the plan payments shall be \$2,871.27." Id. Debtors responded, agreeing to in the increase and Trustee's recommendation. Doc. #66.

Therefore, 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.

29. [18-14785](#)-B-13 **IN RE: LINNEY WADE**
[BW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY USAA FEDERAL SAVINGS
BANK
1-15-2019 [\[27\]](#)

USAA FEDERAL SAVINGS BANK/MV
MARK ZIMMERMAN
BETHANY WOJTANOWICZ/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

This motion is OVERRULED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

First, the court notes objector's procedural error. Local Rule of Practice ("LBR") 9004-2(c)(1) requires that oppositions, exhibits, *inter alia*, be filed as separate documents. Here, the opposition and exhibits were combined into one document and not filed separately. Doc. #27. Nor did the exhibits comply with LBR 9004-2(d).

Creditor USAA Federal Savings Bank's ("Creditor") objection is on the grounds that the plan does not provide for any treatment of Creditor's claim. Doc. #27, claim #11.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #3. Creditor's proof of claim, filed January 31, 2019, states a claim amount of \$8,171.22, all of which is

secured. The debtor may need to modify the plan to account for the claim. If they do not and debtor does not provide adequate protection payments to objector, Creditor may obtain stay relief. If the plan is modified, then this objection may be moot.

Therefore, this objection is OVERRULED.

30. [18-14785](#)-B-13 **IN RE: LINNEY WADE**
[MHM-2](#)

MOTION TO DISMISS CASE
1-15-2019 [\[23\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless withdrawn prior to the hearing.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

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.

Here, the trustee has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to provide necessary and requested documents to the trustee's office, including all pages of the debtors' most recent federal tax return; copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition; failure to file complete and accurate statement of financial affairs; failure to file a 521(a)(1)(B)(v) statement; and failure to properly fill out Official Form 122C-1 and 122C-2.. Doc. #23. Debtor filed a very late response, without authorization of the court, and without evidence. Doc. #44.

The court finds that dismissal would be in the best interests of creditors and the estate. The debtor provided no evidence in support of their opposition that they in fact complied with the trustee's document request.

For the above reasons, unless this motion is withdrawn prior to the hearing, this motion is GRANTED.

31. [18-14786](#)-B-13 **IN RE: JACQUELINE COLE**
[MHM-1](#)

MOTION TO DISMISS CASE
1-15-2019 [\[15\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on February 7,
2019. Doc. #21.

32. [18-13887](#)-B-13 **IN RE: GREG/MARY JENNINGS**
[SAH-2](#)

MOTION TO CONFIRM PLAN
1-8-2019 [\[40\]](#)

GREG JENNINGS/MV
SUSAN HEMB
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #50.

33. [18-14589](#)-B-13 **IN RE: TIMOTHY/VICKIE WEATHERLY**
[SL-3](#)

MOTION TO CONFIRM PLAN
1-10-2019 [\[43\]](#)

TIMOTHY WEATHERLY/MV
SCOTT LYONS
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by
Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the
creditors, the debtor, the U.S. Trustee, or any other party in
interest to file written opposition at least 14 days prior to the

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

This motion is GRANTED. The trustee withdrew their opposition on February 12, 2019. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

34. [15-12993](#)-B-13 **IN RE: ROBERT/KARLA RODRIGUEZ**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
12-19-2018 [\[132\]](#)

MICHAEL MEYER/MV
GLEN GATES
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on February 7, 2019. Doc. #146.

35. [17-14594](#)-B-13 **IN RE: ISIDRO/ANGELA TORRES**
[TOG-1](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
1-17-2019 [\[40\]](#)

ISIDRO TORRES/MV
THOMAS GILLIS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. The trustee is to sign the order approving the sale as to form and content.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing. Order is to be include conditions stated in this ruling.

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). Therefore, the defaults of the above-mentioned parties in interest are entered. 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. § 363(f), the debtors-in-possession ("Debtors") may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(f) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore the debtor has the authority to sell estate property free and clear of liens under § 363(f).

The Debtors wish to sell real property located at 2284 W Kanai Avenue in Porterville, CA 93257 for \$190,000.00 to Alfredo Tapia and Jessica Garcia-Tapia ("Buyer"). Doc. #40. Buyer has paid a \$1,000.00 deposit. The Debtors have produced evidence that Union Bank, N.A. has the only secured interest in the property, and are owed \$73,318.05. Claim #3, doc. #42.

Because "the price at which such property is to be sold is greater than the aggregate value of all liens on such property," the Debtors may sell the property located at 2284 W Kanai Avenue in Porterville, CA 93257 to Buyer for \$190,000.00 and free and clear of the Union Bank, N.A. lien. The liens are transferred to the proceeds.

Debtors expect the sale to net them approximately \$95,000.00. Doc. #42. Debtors shall turn over \$35,359.58 to the chapter 13 trustee in order to pay the approved unsecured creditors. See doc. #43. The 5% real estate commission shall be split 50/50 between the selling and listing agents listed in the motion. The chapter 13 trustee shall sign the order approving the sale as to form and content and approve the seller's final closing statement.

36. [18-10696](#)-B-13 **IN RE: DAVID/JENNIFER CASTRO**
[MHM-3](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
12-28-2018 [\[62\]](#)

MICHAEL MEYER/MV
NICHOLAS ANIOTZBEHERE
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #67.

37. [18-14098](#)-B-13 **IN RE: RUSSELL FANN AND CHRISTIE GAITAN-FANN**
[MHM-2](#)

MOTION TO DISMISS CASE
12-26-2018 [\[57\]](#)

MICHAEL MEYER/MV
STEPHEN LABIAK

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the 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 record shows that the debtors have failed to make all payments due under the plan. (11 U.S.C. § 1307(c)(1) and/or (c)(4)). Accordingly, the case will be dismissed.

38. [18-14098](#)-B-13 **IN RE: RUSSELL FANN AND CHRISTIE GAITAN-FANN**
[MHM-3](#)

MOTION TO DISMISS CASE
1-14-2019 [\[67\]](#)

MICHAEL MEYER/MV
STEPHEN LABIAK

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case will be dismissed on the Ch. 13 Trustee's Motion to Dismiss [MHM-2] above.

39. [18-14098](#)-B-13 **IN RE: RUSSELL FANN AND CHRISTIE GAITAN-FANN**
[MHM-4](#)

MOTION TO DISMISS CASE
1-17-2019 [\[71\]](#)

MICHAEL MEYER/MV
STEPHEN LABIAK

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case will be dismissed on the Ch. 13 Trustee's Motion to Dismiss (MHM-2) above.

40. [16-14099](#)-B-13 **IN RE: KATHERINE LIMATA**
[TCS-1](#)

MOTION TO MODIFY PLAN
12-26-2018 [\[19\]](#)

KATHERINE LIMATA/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 28, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

This motion is continued to February 28, 2019 at 1:30 p.m. The chapter 13 trustee's sole objection is that the debtor used the incorrect form plan. Doc. #31. Because the trustee did not object to the substance of the plan, the plan can be confirmed when the plan is re-served and filed on the correct form.

Before or at the continued hearing, if the correct form has been used and the plan was filed and served, then the trustee shall withdraw their objection.

41. [19-10387](#)-B-13 **IN RE: OMAR MARTINEZ**
[DMG-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
2-4-2019 [\[9\]](#)

OMAR MARTINEZ/MV
D. GARDNER
OST 2/4/19

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted. The automatic stay shall be extended through February 28, 2019. Debtor must re-serve the motion and accompanying paperwork on all creditors. At the continued hearing, if debtor has complied with the court's order and there is no opposition, the court shall extend the automatic stay indefinitely as to all creditors.

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)(3) and an order shortening time. Doc. #13. 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.

Debtor styles this motion as a "Motion to Impose the Automatic Stay" pursuant to 11 U.S.C. § 362(c)(4)(a)(i), however it should be a motion to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3). § 362(c)(4)(A)(i) is used, *inter alia*, when there have been two or more cases of the debtor which were pending within the previous year *but were dismissed*. In this case, although there were two cases pending, only one was dismissed. The chapter 7 case, which was closed on April 6, 2018, was not dismissed. The chapter 13 case however, was dismissed.

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 two cases pending within the preceding one-year period, but only one was dismissed (the other was a chapter 7 in which debtor received a discharge). Case no. 18-14070. That case was filed on October 5, 2018 and was dismissed on January 11, 2019 for failure to make plan payments. This case was filed on February 4, 2019 and the automatic stay will expire on March 6, 2019.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted).

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

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor fell behind in plan payments in the previous chapter 13 case because they needed to pay for the funeral expenses of a family member, debtor's wife had to quit her job to care for one of their children that has poor health. Doc. #10. Debtor's neighborhood was regularly experiencing mail thefts during the months of October, November, and December, and debtor never received certain documents from the trustee, likely due to theft. Id.

However, debtor's plan is a 100% plan. Debtor is making adjustments to his withholding in order to balance take-home pay without having on-going tax liability. Debtor has a large family, and with the adoption of four of them finalizing this month, debtor's tax burden will likely decrease. Id. Debtors have also eliminated home school expenses, are receiving a large tax refund that will be allocated towards plan payments, and one of their children is joining the military after high school graduation, further reducing necessary household expenses. Id.

The motion will be CONDITIONALLY GRANTED and the automatic stay shall be extended for all purposes as to all parties who received notice through February 28, 2019. The court notes that debtor's proof of service does not show that the motion and accompanying papers were served on the United States Trustee, nor many of the creditors listed in the master address list. Debtor must re-serve the motion and accompanying paperwork on all creditors. At the continued hearing, if debtor has complied with the court's order and there is no opposition, the court shall extend the automatic stay indefinitely as to all creditors, 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.