

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, June 9, 2021  
Place: Department B – Courtroom #13  
Fresno, California

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

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

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, **and all parties will need to appear at the hearing unless otherwise ordered.** 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. [20-12104](#)-B-13     **IN RE: ROBERT WEAVER AND VURLA WITTMAN**  
[JM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-5-2021    [\[40\]](#)

ONEMAIN FINANCIAL GROUP,  
LLC/MV  
MICHAEL REID/ATTY. FOR DBT.  
JAMES MACLEOD/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:       Denied without prejudice.

ORDER:                The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the original (Doc. #41) and amended (Doc. #47) notices of hearing did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, which can be viewed by checking the court's pre-hearing dispositions at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing. The notice must also notify respondents that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Second, with all motions for relief from stay, LBR 4001-1(a)(3) requires the movant to file and serve as a separate document completed Form EDC 3-468, *Relief from Stay Summary Sheet*. Here, the movant did not file and serve a separate Form EDC 3-468, which can be located at [www.caeb.uscourts.gov/Forms/FormsAndPublications.aspx](http://www.caeb.uscourts.gov/Forms/FormsAndPublications.aspx).

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

2. [19-13111](#)-B-13     **IN RE: DALE/MICHELLE SEAMONS**  
[TCS-3](#)

MOTION TO MODIFY PLAN  
4-28-2021    [\[50\]](#)

MICHELLE SEAMONS/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Denied.

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

Dale Gorden Seamons and Michelle Ann Seamons ("Debtors") seek confirmation of their Second Modified Chapter 13 Plan. Doc. #50. Debtors wish to extend the duration of their plan from 60 months to 71 months under the COVID-19 Bankruptcy Relief Extension Act of 2021 and 11 U.S.C. § 1329(d).

This motion will be DENIED. 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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the COVID-19 pandemic. Section 1329(d) requires the plan to have been confirmed prior to enactment of the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, although the motion says that Debtors' income decreased due to COVID-19 causing them to fall behind on plan payments, Debtors have not presented any evidence that they are experiencing or have experienced a material financial hardship indirectly or directly caused by the COVID-19 pandemic. Doc. #50, ¶ 5.

Joint debtor Michelle Seamons declares that repairs for their leaking roof cost approximately \$2,700.00, which caused them to fall behind on plan payments. She also says that creditors filed claims for higher amounts than anticipated. Doc. #54, ¶¶ 6-7. These may be material financial hardships, but based on the evidence, they do not appear to have been caused by the COVID-19 pandemic, either directly or indirectly.

Ms. Seamons states that their income has not changed since filing, which is consistent with Debtors' original and amended Schedules I and J. *Id.*, ¶ 9; *cf.* Docs. #1; #45; #57. To extend their plan under

§ 1329(d), Debtors must present admissible evidence that their hardship was caused either directly or indirectly by the COVID-19 pandemic.

The court notes that Debtors previous plan was confirmed on May 11, 2020, which is before the Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #47.

For the above reasons, this motion will be DENIED.

3. [16-13515](#)-B-13     **IN RE: MARIA TOVAR**  
[PBB-2](#)

MOTION TO MODIFY PLAN  
5-4-2021    [\[48\]](#)

MARIA TOVAR/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Maria Luisa Tovar ("Debtor") seeks confirmation of her First Modified Chapter 13 Plan. Doc. #48. The plan will shorten the duration of the plan from 58 months to 55 months. Doc. #51. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, 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 amounts 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 will be 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. [21-11216](#)-B-13     **IN RE: JESSICA KALINA**  
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-14-2021    [\[8\]](#)

JESSICA KALINA/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted as to the parties listed below, only.

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

Jessica Renee Kalina ("Debtor") seeks an order extending the automatic stay pursuant to 11 U.S.C. § 362(c) (3). Doc. #8.

This matter was filed on 14 days' notice under Local Rule of Practice ("LBR") 9014-1(f) (2) and will proceed as scheduled. Written opposition was not required and may be presented at the hearing.

Under 11 U.S.C. § 362(c) (3) (A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay under subsection (a) of this section shall terminate with respect to the debtor on the 30th day after the filing of the latter case. Debtor had one case pending within the preceding one-year period that was dismissed, case no. 20-10431. That case was filed on February 5, 2020 and was dismissed on August 17, 2020 for failure to pay plan payments. This case was filed on May 12, 2021 and the automatic stay will expire on June 11, 2021. Doc. #1.

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 latter 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 offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (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).

Debtor declares that the previous case was dismissed for failure to timely pay plan payments. Doc. #10, ¶ 4. Debtor states that her father is an alcoholic with Alzheimer's-related dementia, and he used the money for plan payments to instead purchase alcohol. *Id.*, ¶ 5. Debtor's circumstances have changed because she has prevented her father from having access to household funds. *Id.* ¶ 6. Debtors' parents live with her and are willing to contribute their social security and pension income toward completion of this chapter 13 case. *Id.*, ¶ 9. Debtor fears that the bank may foreclose on her house if she does not receive the benefit of the automatic stay. This is Debtors third case in the past 8 years. Before her previous case was dismissed, she filed case no. 15-14860 on December 21, 2015, in which she made plan payments for four years before the case was dismissed. *Id.*, ¶ 11. Debtor has not received a discharge in the past eight years. *Id.*, ¶ 12.

Additionally, Debtor included updated Schedules I and J, which reflect disposable income of \$3,090.00 - enough to make the proposed plan payment of \$2,354.00. Doc. #1, Schedule J; *cf.* Doc. #3.

However, according to the certificate of service, chapter 13 trustee Michael H. Meyer ("Trustee"), the United States Trustee ("UST"), Debtor, and only one creditor, Directv, LLC by American InfoSource as agent, were served the motion, notice, and declaration. Doc. #11. Debtor appears to have other creditors in the schedules that were not served. Doc. #1, Schedules D, E/F. Notably, secured creditor Select Portfolio Servicing, Inc., and unsecured creditor Grant Mercantile Agency were not served. Select Portfolio Servicing filed a request for special notice on the same day as this motion and has a security interest in Debtor's residence. See Doc. #12; Claim #3.

Although, in the absence of opposition, Debtor appears to have rebutted the presumption of bad faith, not all creditors were served this motion. So, the motion will be granted only as to those parties served: Trustee, UST, and Directv, LLC by American InfoSource as agent.

5. [21-11223](#)-B-13     **IN RE: CHRISTOPHER/TRACEY PRESS**  
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-26-2021    [\[12\]](#)

TRACEY PRESS/MV  
TIMOTHY SPRINGER/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.

Christopher David Press and Tracey Lee Press ("Debtors") seek an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3). Doc. #12.

In the absence of opposition, this motion will be GRANTED.

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 set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay under subsection (a) of this section shall terminate with respect to the debtor on the 30th day after the filing of the latter case. Debtors had one case pending within the preceding one-year period that was dismissed, case no. 20-10858. That case was filed on March 5, 2020 and was dismissed on March 17, 2021 for failure to pay plan payments. This case was filed on May 13, 2021 and the automatic stay will expire on June 12, 2021. Doc. #1.

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 latter 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 offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (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 Debtors failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

Joint debtor Tracey Lee Press declares that the previous case was dismissed for failure to timely make plan payments, but Debtors incorrectly believed they were current. Doc. #14, ¶ 3. Debtors' mortgage company purportedly created an escrow account after filing their last bankruptcy, which increased their mortgage payment to include taxes and insurance. *Id.*, ¶¶ 4-6. Debtors were unaware of the increased payment amount and continued to pay their taxes and insurance outside of the mortgage payment, unaware that the plan payment had increased. *Id.*, ¶ 7. Ms. Press states that all of their payments were on time, but in lower amounts than required, which caused the case to be dismissed. *Id.*, ¶ 8. Ms. Press claims Debtors' situation has changed because they no longer owe arrearages and one of their vehicles was repossessed. *Id.*, ¶¶ 9-10. Debtors plan to pay off their vehicle and make plan payments. *Id.*, ¶¶ 11-12. Ms. Press fears that they may lose their car if they do not obtain the benefit of the automatic stay and states that she has not received a discharge in the last eight years. *Id.*, ¶¶ 13, 15.

Additionally, Debtors included updated Schedules I and J, which reflect disposable income of \$600.00 - enough to make the proposed plan payment of \$600.00. Doc. #16, Schedule J; *cf.* Doc. #17.

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.

In the absence of opposition, this motion will be GRANTED. The automatic stay will be 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).



6. [20-13638](#)-B-13     **IN RE: MIGUEL RODRIGUEZ-CISNEROS AND MARIA CEJA**  
[AMS-2](#)

MOTION TO CONFIRM PLAN  
4-15-2021    [\[79\]](#)

MARIA CEJA/MV  
ADELE SCHNEIDEREIT/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.

Miguel Rodriguez-Cisneros and Maria De Jesus Ceja ("Debtors") seek confirmation of their Second Amended Chapter 13 Plan. Doc. #79. No party in interest timely filed written opposition.

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 chapter 13 trustee, 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 amounts 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 will be 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.

7. [21-10443](#)-B-13     **IN RE: JORGE LOPEZ**  
[DJ-3](#)

MOTION TO CONFIRM PLAN  
4-26-2021    [\[57\]](#)

JORGE LOPEZ/MV  
DUSHAWN JOHNSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Denied as moot.

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

Jorge L. Lopez ("Debtor") seeks confirmation of his First Amended Chapter 13 Plan. Doc. #57. The court notes that Debtor filed a Second Amended Plan on May 17, 2021 but has not filed a corresponding motion to confirm. See Doc. #73.

Chapter 13 trustee Michael H. Meyer timely opposed. Doc. #69.

This motion was filed on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The defaults of all non-responding parties in interest except the chapter 13 trustee will be entered.

Trustee objects for five reasons:

1.     The plan fails to provide for submission of all or such portion of future earnings or income to the supervision and control of Trustee to execute the plan under 11 U.S.C. § 1322(a).
2.     The plan fails to provide for full payment of all claims entitled to priority under § 507, as required by § 1322(a).
3.     The plan fails to provide for the value, as of the effective date of the plan, of property to be distributed on account of each allowed unsecured claim in at least the amount that would be paid if this were a chapter 7 case. This liquidation analysis is required by § 1325(a)(4).
4.     Debtor will not be able to make plan payments and comply with the plan, as required by § 1325(a)(6).
5.     The plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors as required by § 1325(b).

Doc. #69. First, Trustee notes that the plan payment is insufficient to pay month 1 monthly dividends. The plan payment is \$465.00 for month 1, and Trustee is required to pay Class 1 creditors \$656.52 and Class 1 arrears of \$396.06, so the month 1 plan payment is insufficient to fund the plan.

Trustee notes that section 3.05 provides for attorney fees of \$3,000.00, but the plan fails to list a monthly dividend. Thus, the plan fails to provide for full payment of all claims entitled to priority.

Trustee argues that the plan fails to satisfy the liquidation analysis. The plan provides for a 0% dividend to unsecured creditors. But since this case was filed February 22, 2021, Trustee needs to review Debtor's 2020 tax returns. Trustee says that the tax returns show Debtor received a federal refund of \$5,921.00 and state refund of \$893.00, but the refunds are not disclosed on amended Schedule A/B. *Id.*; cf. Doc. #48, Schedule A/B, ¶ 28 (Tax refunds owed to Debtor: "No"). Thus, the schedules do not disclose unexempt assets that could be available to allowed unsecured claims if this case were filed under chapter 7.

Additionally, Debtor owns real property in Firebaugh, California, which is exempted under C.C.P. § 704.730 in the amount of \$82,850.44. Doc. #48, Schedule C. The property is owned by Debtor and his separated spouse, Veronica Lopez. The automatic stay was modified so that the Fresno County Superior Court could resolve their dissolution action, including any marital property division issues. Doc. #72. Any sale of the marital property must be brought before this court as required by the order modifying stay.

Trustee urges that the order confirming plan provide that if the real property is sold, the proceeds are subject to the reinvestment condition of C.C.P. § 704.720(b) so that the sale proceeds lose exempt status once the reinvestment period expires. Doc. #69. This would provide additional funds that could have been distributed to allowed unsecured claims in a chapter 7 liquidation.

Further, plan payments are currently delinquent \$709.00 through April 2021, so Trustee argues that Debtor will not be able to make all payments under the plan and comply with the plan.

Lastly, Debtor includes \$500.00 per month for post-petition legal fees for his ongoing divorce. Doc. #55, Schedule J, ¶ 21. Trustee believes that Debtor agrees to increase the plan payment by \$500 beginning month 13, which will be enough to pay 100% of allowed unsecured claims.

The court is inclined to DENY this motion as moot because Debtor filed a Second Amended Plan. Doc. #73. Debtor must promptly file a separate notice and motion to confirm the Second Amended Plan in conformance with LBR 3015-1(d)(1).

8. [21-11254](#)-B-13     **IN RE: JENNIE CABAN**  
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-26-2021     [\[14\]](#)

JENNIE CABAN/MV  
PETER BUNTING/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.

Jennie Caban ("Debtor") seeks an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3). Doc. #14.

In the absence of opposition, this motion will be GRANTED.

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 set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period but was dismissed, then the automatic stay under subsection (a) of this section shall terminate with respect to the debtor on the 30th day after the filing of the latter case. Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-12011. That case was filed on May 10, 2019 and was dismissed on April 14, 2021 for failure to pay plan payments. This case was filed on May 17, 2021 and the automatic stay will expire on June 16, 2021. Doc. #1.

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 latter 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 offered in

opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith since 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).

Debtor declares that the previous case was dismissed for failure to make plan payments after 22 months of bankruptcy. Doc. #16, ¶ 4. Her previous case required plan payments of \$1,200.00 per month for 60 months and a 0% dividend to unsecured creditors. *Ibid.* Debtor, her mother, and her sister, Michelle Ramos, tested positive for COVID-19 on March 11, 2021. *Id.*, ¶ 5. Although Debtor's sole source of income is social security, her sister is employed and contributes to household expenses. Since the entire household had COVID-19, Ms. Ramos was unable to work and contribute to household expenses, causing Debtor to fall behind on plan payments. *Ibid.* Debtor filed bankruptcy to stop a foreclosure sale and declares that the petition and plan were filed in good faith. *Id.*, ¶¶ 6, 11.

Ms. Ramos also submitted a declaration wherein she states she is employed part-time by El Pollo Loco and In Home Supportive Services. Doc. #17, ¶ 2. Ms. Ramos resides with Debtor and their mother and contributes to living expenses. *Id.*, ¶ 3. Ms. Ramos was diagnosed with COVID-19 on March 11, 2021 and was delayed in receiving pay for her time off. *Id.*, ¶ 4. Ms. Ramos has resumed paying household expenses and intends to continue doing so for the duration of this case. *Id.*, ¶ 5.

Additionally, Debtor included updated Schedules I and J, which reflect disposable income of \$1,070.46 - enough to make the proposed plan payment of \$1,070.00. Doc. #18, Ex. A; *cf.* Ex. B.

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

In the absence of opposition, this motion will be GRANTED. The automatic stay will be 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).

9. [20-12861](#)-B-13     **IN RE: TODD/TINA ROTH**  
[DMG-1](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS  
ATTORNEY(S)  
5-14-2021    [\[42\]](#)

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed on May 14, 2021 and set for hearing on June 9, 2021. Doc. #42. May 14, 2021 is 26 days before June 9, 2021. This motion was therefore filed on less than 28 days' notice under LBR 9014-1(f)(2). The notice incorrectly states that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #43. Because the hearing was set on 14 days' notice, the notice should have stated that no written opposition was required and included the language of LBR 9014-1(f)(2)(C).

The court notes that the notice of hearing also does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. The local rules can be found at [www.caeb.uscourts.gov/LocalRules.aspx](http://www.caeb.uscourts.gov/LocalRules.aspx).

10. [17-11570](#)-B-13     **IN RE: GREGGORY KIRKPATRICK**  
[MHG-11](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
2-15-2021    [[273](#)]

GREGGORY KIRKPATRICK/MV  
MARTIN GAMULIN/ATTY. FOR DBT.

NO RULING.

11. [17-11570](#)-B-13     **IN RE: GREGGORY KIRKPATRICK**  
[MHG-12](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
2-15-2021    [[278](#)]

GREGGORY KIRKPATRICK/MV  
MARTIN GAMULIN/ATTY. FOR DBT.

NO RULING.

12. [17-11570](#)-B-13     **IN RE: GREGGORY KIRKPATRICK**  
[MHG-8](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
12-4-2020    [[244](#)]

GREGGORY KIRKPATRICK/MV  
MARTIN GAMULIN/ATTY. FOR DBT.

NO RULING.

13. [17-11570](#)-B-13     **IN RE: GREGGORY KIRKPATRICK**  
[MHG-9](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
12-14-2020    [[250](#)]

GREGGORY KIRKPATRICK/MV  
MARTIN GAMULIN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

14. [21-10678](#)-B-13     **IN RE: RICARDO/DIANA CASTANEDA**  
[PBB-1](#)

MOTION TO CONFIRM PLAN  
4-22-2021    [\[22\]](#)

DIANA CASTANEDA/MV  
PETER BUNTING/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 Moving Party shall submit a proposed order in conformance with the ruling below. Trustee to approve the order confirming plan.

Ricardo Castaneda and Diana Castaneda ("Debtors") seek confirmation of their Chapter 13 Plan. Doc. #22.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely filed written opposition. Doc. #33.

Debtors replied. Doc. #35.

In the absence of further objection by Trustee, the court is inclined to OVERRULE Trustee's objection and GRANT the motion.

This matter was filed and served on 35 days' notice as required by LBR 3015-1(c)(3) and (d)(1) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest, except Trustee, 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 amounts 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.

Trustee objects for two reasons:

1. Debtors will not be able to make all plan payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6)
2. The plan provides for payments to creditors for a period longer than 5 years in violation of § 1322(d).

Doc. #33. Trustee contends that the priority (\$42,062.71) and unsecured claims (\$65,388.93) filed by creditors exceed those provided for in the plan (\$8,780.00, \$29,283.97, respectively). To



fund these additional amounts over 60 months, the plan payment would need to increase to \$5,827.79 per month effective month 1. The plan as proposed would take more than five years to complete while maintaining a 100% distribution to allowed unsecured claims.

In reply, Debtors propose increasing the plan payment from \$4,720.00 to \$6,200.00 beginning in month 3 (June 2021). Doc. #35. Schedules I and J show disposable income of \$6,206.88, so Debtors will be able to afford the proposed plan payment. See Doc. #16, Schedule J, ¶ 23c. On this basis, Debtors ask for Trustee's opposition to be overruled, and the plan confirmed with the increased payment.

This matter will be called as scheduled to inquire whether Trustee approves of the proposed increase in plan payment beginning month 3. The court is inclined to OVERRULE Trustee's objection and GRANT this motion. The confirmation order shall be approved by Trustee, include the docket control number of the motion, and shall reference the plan by the date it was filed.

15. [21-10678](#)-B-13     **IN RE: RICARDO/DIANA CASTANEDA**  
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF SNAP-ON CREDIT LLC  
4-22-2021    [\[28\]](#)

DIANA CASTANEDA/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Ricardo Castaneda and Diana Castaneda ("Debtors") ask the court for an order valuing mechanic's tools ("Property") at \$1,000.00. Doc. #28. Property is encumbered by a purchase-money security interest in favor of Snap-On Credit, LLC ("Creditor"). The court notes that Creditor's agent for service of process was properly served in accordance with Cal. Civ. Proc. Code § 416.40. Doc. #32. No party in interest timely filed written opposition.

This motion will be GRANTED.

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 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 amounts 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.

11 U.S.C. § 1325(a)(\*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) that collateral is personal property other than a motor vehicle acquired for the personal use of the debtor, and (3) the debt was incurred within one year preceding the filing of the petition.

Debtors purchased Property on May 20, 2019, which is more than one year preceding the petition date. The elements of § 1325(a)(\*) are not met and § 506 is applicable.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Joint debtor Ricardo Castaneda's declaration states that the replacement value of the Property on the petition date was \$1,000.00. Doc. #30. Creditor's claim states that the amount owed is \$2,271.39. Claim #2.

Mr. Castaneda is competent to testify as to the value of the Property. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

This motion will be GRANTED. Creditor's secured claim will be fixed at \$1,000.00. The proposed order shall specifically identify the collateral, and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

16. [21-10895](#)-B-13     **IN RE: JASON/ASHLEY WILLIAMS**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MID AMERICA MORTGAGE,  
INC.

5-26-2021    [\[23\]](#)

MID AMERICA MORTGAGE, INC./MV  
PETER BUNTING/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Overruled.

ORDER:             The court will issue an order.

Mid America Mortgage, Inc. ("Creditor"), objects to confirmation of Jason Russell Williams and Ashley Jane Williams' ("Debtors") Chapter 13 Plan. Doc. #23.

Debtors timely opposed. Docs. #30; #32.

Creditor's objection will be OVERRULED because the deadline to file objections to plan confirmation under Local Rule of Practice ("LBR") 3015-1(c)(4) has expired.

Debtors filed bankruptcy on April 12, 2021. Doc. #1. The first meeting of creditors was scheduled for May 11, 2021. Doc. #10. Accordingly, the deadline to file objections under LBR 3015-1(c)(4) was May 18, 2021, which is reflected in the *Notice of Chapter 13 Bankruptcy Case*, Form EDC 309I. *Id.*, ¶ 9. General Order 20-02 is inapplicable here because the meeting of creditors was not continued. See Am. Gen. Order 20-02, at 4, ¶ 5 (Am. Apr. 16, 2020).

The meeting of creditors was held on May 11, 2021 and concluded as to the Debtors. See docket generally. The deadline for filing LBR 3005-1(c)(4) objections was May 18, 2021. Creditor filed this objection on May 26, 2021, which is eight days after the deadline. This objection is therefore untimely.

Further, Creditor argues that the plan does not account for the entire amount of the pre-petition arrearages that Debtors owe to creditor and that the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). Doc. #23.

The plan states arrears of \$18,250.00, and the claim states arrears of \$21,379.38. Doc. #4. Debtor contends that the proof of claim supersedes the amount listed in the plan. Doc. #32. Since the plan provides for a monthly dividend of \$650.00 per month and Creditor's arrearage will be paid within 33 months of the 60-month plan. Debtors also offer to increase the plan payment if needed but ask that it be done after the deadline to file claims has passed.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determined the amount that will be repaid under the plan. Doc. #4. Section 3.07(b)(2) requires that the payment be adjusted for a class 1 claim, but only if a class 1 creditor files a proof of claim or a notice of payment change under Fed. R. Bankr. P. ("Rule") 3002.1(b) demanding a higher or lower post-petition monthly payment.

As of June 7, 2021, Creditor has neither filed a proof of claim, nor a notice of post-petition monthly mortgage payment change under Rule 3002.1(b). The proof of claim deadline is June 21, 2021 for non-governmental units. Doc. #10.

Creditor's objection will be OVERRULED because it was filed after the deadline to object to plan confirmation. Creditor is free to file a proof of claim or Rule 3002.1(b) notice as needed.

17. [17-11570](#)-B-13      **IN RE: GREGGORY KIRKPATRICK**  
[MHG-14](#)

MOTION TO DISMISS CASE  
5-31-2021    [\[322\]](#)

GREGGORY KIRKPATRICK/MV  
MARTIN GAMULIN/ATTY. FOR DBT.  
OST 6/1/21

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

Greggory Ryan Kirkpatrick ("Debtor") moves for an order dismissing this case under 11 U.S.C. § 1307(b). Written opposition was not required and may be presented at the hearing.

In the absence of opposition, this motion will be GRANTED.

This motion was set for hearing on less than 14 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time. Doc. #326. Consequently, the creditors, chapter 13 trustee, 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 those potential respondents appear at the hearing and offer opposition, 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, the court will take up the merits of the motion.

11 U.S.C. § 1307(b) provides:

On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

Debtor filed this bankruptcy case on April 24, 2017. Doc. #1. The case has not been converted under §§ 706, 1112, or 1208. Debtor is eligible to voluntarily dismiss this case under § 1307(b).

However, 11 U.S.C. § 109(g)(2) prevents an individual from being a debtor under this title if they have been a debtor in a case pending in the preceding 180 days if the debtor requested and obtained a voluntary dismissal of the case following the filing of a request for relief from the automatic stay under § 362.

Christopher Scott Callison ("Creditor") filed his first motion for relief from the automatic stay on September 27, 2017. See RCA-1. This motion was denied without prejudice on October 26, 2017. Doc. #110. Creditor's second motion for relief from the automatic stay was filed on December 8, 2017. MC-1. This motion was denied as moot on June 14, 2018. Doc. #183. Both stay relief motions were denied, but the language of § 109(g)(2) seems to indicate that the 180-day bar will apply to voluntarily dismissals *following* the filing of a motion for stay relief, regardless of whether the stay relief is granted.

Some courts have held that § 109(g)(2) does not apply if the debtor successfully defended against or resolved the motion for relief from stay. See *In re Hutchins*, 303 B.R. 503 (Bankr. N.D. Ala. 2003) (reasoning that strict application of § 109(g)(2) would lead to an absurd result); *In re Luna*, 122 B.R. 575 (B.A.P. 9th Cir. 1991) (adopting discretionary application of § 109(g)(2)).

This matter will be called as scheduled. The court is inclined to GRANT the motion and dismiss this case without prejudice.

11:00 AM

1. [20-10024](#)-B-7     **IN RE: SUKHJINDER SINGH**  
[20-1036](#)     [RWR-2](#)

MOTION FOR SANCTIONS  
5-19-2021     [\[44\]](#)

SALVEN V. SINGH ET AL  
RUSSELL REYNOLDS/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 shall submit a proposed order after hearing.

Chapter 7 trustee James E. Salven ("Plaintiff") moves for sanctions under Federal Rule of Civil Procedure 37 (applicable to adversary proceedings under Federal Rule of Bankruptcy Procedure 7037) against debtor Sukhjinder Singh ("Debtor"), non-debtor Manjinder Singh, and non-debtor Lakhvir Singh (collectively "Defendants") for their failure to cooperate in discovery.<sup>1</sup> Doc. #44. Plaintiff requests that the answers of all three Defendants be stricken and default judgments entered against them. Alternatively, Plaintiff asks that Defendants be ordered to pay Plaintiff's cancellation expenses and attorney fees, and that this action be stayed until those sums are paid.

Written opposition was not required and may be presented at the hearing.

In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to 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.

LBR 9014-1(f)(2) typically does not apply for adversary proceedings. LBR 9014-1(f)(2)(A). However, the Scheduling Order allows for motions for discovery disputes to be set not less than seven calendar days from the date of service of the notice and supporting papers. Doc. #35, at 3.

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<sup>1</sup> Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; "Civil Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

## FACTS

Plaintiff is the trustee of Debtor's bankruptcy case and filed this action to recover real property that he alleges was fraudulently transferred. Debtor acquired a home located at 14225 Spyglass Circle, Chowchilla, CA ("Property") in October 2014. On March 1, 2018, Property was transferred to Debtor and Manjinder Singh (Debtor's cousin) as a gift. On July 18, 2018, Property was transferred to Lakhvir Singh and Balwinder Kaur, Debtor's parents, also by gift. Plaintiff alleges that Defendants failed to appear for their agreed upon and properly noticed depositions and have made no effort to reschedule. Baldwinder Kaur is not included in this motion for sanctions because she became ill, so it was agreed that her deposition would be rescheduled.

Plaintiff contends that the dates and times of all depositions were agreed upon and then noticed. Doc. #46. Lakhvir Singh's deposition was scheduled for April 28, 2021, Debtor's deposition was scheduled for April 29, 2021, and Manjinder Singh's deposition was scheduled for April 30, 2021. Doc. #47, ¶ 8. All depositions were to be conducted using the "Zoom" teleconferencing application.

Lakhvir Singh did not appear at the April 28, 2021 deposition. *Id.*, ¶ 9. Plaintiff was informed that he had traveled to New York. Plaintiff was informed by Defendants' counsel that Debtor and Manjinder Singh would also not appear for their depositions over the following two days. Plaintiff states that it was necessary to have interpreters for the first two depositions. Since it is difficult to locate fully certified Punjabi interpreters, Plaintiff says there is a 72-hour limit on cancellations, resulting in cancellation fees for the missed deposition and late cancellations.

Plaintiff certifies that he conferred with Jerry Lowe, counsel for Defendants and Kaur, to resolve this motion without court action. Doc. #47. Plaintiff was informed by Mr. Lowe on May 7, 2021 that he had been unsuccessful in communicating with his clients.

## DISCUSSION

Civil Rule 30(d)(2) allows the court to impose an appropriate sanction—including reasonable expenses and attorney fees—on a person who impedes, delays, or frustrates the fair examination of the deponent.

Civil Rule 30(g) provides for recovery of reasonable expenses, including attorney fees, to a party who expects a deposition to be taken and either attends in person or by an attorney if the noticing party failed to attend and proceed with the deposition.

Civil Rule 37(a)(1) and (3) allow a party to move for an order compelling discovery. Civil Rule 37(a)(5) mandates that the court, after giving an opportunity to be heard, require a party or deponent whose conduct necessitated the motion to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. Civil Rule 37(a)(5)(i)-(iii) provides three scenarios where the court must not order this payment:

- (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
- (iii) other circumstances make an award of expenses unjust.

Civil Rule 37(a) (5) (A) (i)-(iii). Meanwhile, Civil Rule 37(d) applies to scenarios where a party fails to attend its own deposition, and provides:

(1) In General.

(A) Motion; Grounds for Sanctions. The court where the action is pending may, on motion, order sanctions if:

- (i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b) (6) or 31(a) (4)—fails, after being served with proper notice, to appear for that person's deposition; or
- (ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

. . .

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b) (2) (A) (i)-(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

Civil Rule 37(d) (1)-(3). Civil Rule 37(b) (2) (A) includes a list of sanctions for failure to obey a discovery order:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Civil Rule 37(b) (2) (A) (i)-(vi).



Plaintiff requests the court to order Defendants' answer to be stricken and a default judgment entered against them under Civil Rule 37(b)(2)(A)(iii) and (vi). Doc. #46. Plaintiff contends that this remedy is appropriate because Defendants agreed to the time, place, and manner of their depositions and then told their counsel they would not be appearing after it became too late to cancel. Plaintiff argues that Lakhvir Singh was in New York on the day of his deposition, and it must have taken several days to get there and back, so there was no excuse for not disclosing his unavailability sooner. Plaintiff contends that Defendants' failure to communicate when their depositions could go forward demonstrates their intent not to cooperate in the discovery process, and therefore "failure to appear" warrants striking their answers and entering default judgment.

Plaintiff lists other issues with discovery. There have already been two extension of fact discovery so far, the first because Defendants had difficulty acquiring documents, and then some of those documents were not signed and delivered with "verifications to follow" notation.

The second extension was because there was not enough time to complete all depositions. Names and addresses (no phone numbers) of persons who had knowledge of certain facts were provided by Defendants.<sup>2</sup> Depositions were set between May 26, 2021 and June 1, 2021 for the three persons with knowledge. Process servers were sent to the addresses given to serve the deposition subpoenas, but one of them was out of state and two of them did not live at the addresses given.

Plaintiff claims to have been operating on the good faith assumption that all written discovery is final and sworn as being true and correct, but Defendants are not providing signatures verifying documents on the date they are delivered, so Plaintiff is unable to rely on the documents provided. Plaintiff also alleges that the three people with knowledge did not appear anywhere else in Defendants' discovery responses.

The court is sympathetic to Plaintiff's difficulties in conducting depositions. However, this is Defendants' first sanctionable offense. Striking Defendants' answer and entering default judgment against them is not yet warranted at this time.

If the court does not strike Defendants' answers with entry of default, Trustee requests:

- (1) Lakhvir Singh be ordered to pay Plaintiff's expenses in the amount of \$3,455.00;
- (2) Debtor Sukhjinder Singh be ordered to pay Plaintiff's expenses in the amount of \$3,175.00;
- (3) All three Defendants jointly and severally be ordered to pay Plaintiff's attorney fees of \$1,225.00; and

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<sup>2</sup> The three people with knowledge were identified as Gananpreet Mangat, Yadwinder Singh, and Kirandeep Kaur.

- (4) This action to be stayed until the fees and expenses are paid and all depositions are completed.

Since this is Defendants' first sanctionable offense, the court is inclined to GRANT IN PART Plaintiff's request for monetary sanctions. Lakhvir Singh will be ordered to pay expenses of \$3,455.00; Debtor will be ordered to pay expenses of \$3,175.00; and all three Defendants will be jointly and severally ordered to pay attorney fees of \$1,225.00.

The proceeding will not be stayed, however. Defendants will be ordered to pay the monetary sanctions and reschedule their depositions within 30 days of the order on this motion. The depositions do not need to be completed within 30 days, so long as they have been scheduled to occur within a reasonable time.

#### CONCLUSION

This matter will be called as scheduled to inquire whether Defendants oppose the sanctions sought by Plaintiff. The court is inclined to GRANT monetary sanctions for expenses and attorney fees as prayed. The court will order the costs and expenses awarded be paid to the Trustee and that the party depositions shall be scheduled (but not necessarily completed) within 30 days of the date of entry of the order on this motion. If Defendants do not pay the monetary sanctions within 30 days, or do not appear at the rescheduled depositions, Trustee may seek further relief.

2. [20-10465](#)-B-7 **IN RE: JASPREET DHILLON**  
[20-1065](#) [WLA-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
5-10-2021 [\[29\]](#)

ATCHLEY ET AL V. DHILLON  
WILLIAM ALEXANDER/ATTY. FOR MV.

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.

Virginia Lee Atchley, Successor Trustee of the Atchley Living Trust dated December 4, 1995 ("Plaintiff"), requests an order dismissing this adversary complaint for revocation of Jaspreet Dhillon's ("Defendant") discharge pursuant to Federal Rule of Civil Procedure 41 (as incorporated by Federal Rule of Bankruptcy Procedure 7041).<sup>3</sup> No party in interest timely filed written opposition.

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<sup>3</sup> Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure;

This motion will be GRANTED.

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 chapter 7 trustee, 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 amounts 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.

Plaintiff sold Defendant commercial property and agreed to carry a note of \$168,000.00 secured by a deed of trust. Doc. #31. Defendant allegedly stopped paying on the note after a fire occurred causing damage to the property. Defendant allegedly received insurance payouts totaling approximately \$485,000.00, of which \$450,000.00 was purportedly transferred to his ex-wife, Harjeet K. Randhawa ("Randhawa").

Defendant's discharge was entered in October 2020. In December 2020, Plaintiff filed this adversary proceeding to revoke Defendant's discharge on the ground of fraud.

Plaintiff has since entered into a settlement agreement with Randhawa. The settlement agreement requires Randhawa to pay Plaintiff an amount in exchange for release of all claims against Randhawa. Meanwhile, chapter 7 trustee Jeffrey M. Vetter ("Trustee") entered into a separate settlement agreement with Randhawa wherein Randhawa will pay \$105,000.00, which will be used to pay all allowed unsecured claims in full and administration costs. Trustee moved to approve the settlement agreement in Defendant's underlying chapter 7 bankruptcy case. *See In re Jaspreet Dhillon*, case no. 20-10465, DMG-2. The court approved the settlement agreement on May 11, 2021. *Id.*, Doc. #52. Under the terms of the agreement, (1) Plaintiff will withdraw her proof of claim; (2) Randhawa will pay \$105,000 to the estate, which is sufficient to pay all allowed unsecured claims and projected administrative expenses; (3) per the separate settlement between Randhawa and Plaintiff, Plaintiff will cause this adversary proceeding to be dismissed. *Id.*, Doc. #51. The court concluded that the compromise between Randhawa and the estate was in the best interests of creditors and the estate.

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"Civil Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

Rule 7041 provides that Civil Rule 41 applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, U.S. Trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions deemed proper. The Advisory Committee on Rules - 1983 explain that dismissal of a complaint objecting to discharge raises special concerns because the plaintiff may have been induced to dismiss the adversary proceeding in exchange for an advantage given or promised by the debtor.

The majority approach to settlement of claims under § 727, which has been used in other Ninth Circuit bankruptcy courts, is limited to circumstances where the terms of the settlement are fair and equitable and in the best interests of the estate. *Bankr. Receivables Mgmt. v. De Armond (In re De Armond)*, 240 B.R. 51, 56 (Bankr. C.D. Cal. 1999) citing *In re Bates*, 211 B.R. 338, 347 (Bankr. D. Minn. 1997) ("[D]ismissal of a § 727 complaint in return for the provision of a private benefit to the plaintiff would violate the plaintiff's fiduciary duty to the bankruptcy estate.")

Here, Plaintiff became a fiduciary to other creditors when the § 727 complaint was filed and cannot dismiss the complaint if the settlement benefits only Plaintiff. *De Armond*, 240 B.R. at 58. Plaintiff reached this settlement agreement with Randhawa as part of a global settlement involving Trustee. The two settlements taken together will resolve Plaintiff's claim against Debtor and the claims of other creditors against the estate. Doc. #32. Since all creditors will be paid 100% of their claims, they will not be harmed by dismissal of this § 727 proceeding. Additionally, this motion was noticed to all creditors and served to Trustee, the U.S. Trustee, and all requests for special notice. Doc. #33. All parties in interest received notice of this motion. Doc. #34. No party in interest filed opposition.

Accordingly, this motion to dismiss will be GRANTED, and the adversary proceeding will be dismissed.

3. [17-11570](#)-B-13     **IN RE: GREGGORY KIRKPATRICK**  
[19-1100](#)

CONTINUED FURTHER SCHEDULING CONFERENCE RE: COMPLAINT  
9-24-2019    [\[1\]](#)

KIRKPATRICK V. CALLISON ET AL  
MARTIN GAMULIN/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

4. [20-10465](#)-B-7     **IN RE: JASPREET DHILLON**  
[20-1065](#)

CONTINUED SCHEDULING CONFERENCE RE: COMPLAINT, AND/OR JURY  
DEMAND  
12-9-2020    [[1](#)]

ATCHLEY ET AL V. DHILLON  
WILLIAM ALEXANDER/ATTY. FOR PL.

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

DISPOSITION:     Dropped from calendar.

ORDER:             The court will issue an order.

This adversary proceeding will be dismissed (WLA-2) in matter #2  
above. The status conference will be dropped from calendar as moot  
and the clerk of the court will close the adversary proceeding.