

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, June 18, 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. [19-10423](#)-B-12      **IN RE: KULWINDER SINGH AND BINDER KAUR**  
[ETL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION  
5-16-2019    [\[86\]](#)

VW CREDIT LEASING, LTD./MV  
DAVID JOHNSTON  
ERICA LOFTIS/ATTY. FOR MV.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

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

First, the notice 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 movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

Second, the motion did not comply with LBR 4001-1(b), which explains the additional procedures movants must make when filing motions for relief from stay in Chapter 12 cases.

2. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[FWP-1](#)

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

CERNER CORPORATION/MV  
RILEY WALTER  
JASON RIOS/ATTY. FOR MV.

NO RULING.

3. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A**  
**CALIFORNIA LOCAL HEALTH CARE DISTRICT**  
[WW-7](#)

MOTION TO BORROW AND/OR MOTION TO ISSUE SPECIAL REVENUE  
BONDS  
6-7-2019    [[247](#)]

COALINGA REGIONAL MEDICAL  
CENTER, A CALIFORNIA LOCAL  
RILEY WALTER  
OST 6/6/19

NO RULING.

1:30 PM

1. [19-10804](#)-B-13     **IN RE: DENISE COX**  
[TCS-1](#)

MOTION TO CONFIRM PLAN  
5-17-2019    [\[25\]](#)

DENISE COX/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Granted as set forth below.

ORDER:                        The minutes of the hearing will be the court's  
findings and conclusions. Order preparation  
will be determined at the hearing.

This motion was filed and served pursuant to Local Rule of Practice  
("LBR") 3015-1(d)(1) and will proceed as scheduled.

The chapter 13 trustee ("Trustee") timely objected to confirmation  
because Trustee could not determine whether debtor is paying all of  
her disposable income due to an incomplete Forms 122C-1 and 122C-2  
("Forms"). Doc. #35

Debtor responded, stating that the complete Forms have been filed  
and Trustee's objection should essentially be moot. Doc. #37.

The court takes judicial notice of the filed Forms. Doc. #31. This  
matter will be called for Trustee to verify the accuracy and  
completeness of the Forms. If Trustee no longer objects, then the  
motion may be granted.

2. [19-11414](#)-B-13     **IN RE: DAVID WRIGHT AND JENNIFER DOYLE**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-21-2019    [\[43\]](#)

MICHAEL MEYER/MV

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 (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all the required documentation. The debtors also failed, according to the Trustee, to file 521(a)(1)(B)(v) statement (11 U.S.C. § 521(i)(1)), tax returns for the years 2015, 2016, 2017 and 2018 (11 U.S.C. § 1307(e)). Debtors failed to set a plan for hearing and notice all creditors, failed to file complete Schedules A/B, Schedule H and Statement of Financial Affairs (11 U.S.C. § 521), and failed to provide Credit Counseling Certificates (11 U.S.C. § 109(h)).

The court agrees on all points except one. 11 U.S.C. § 521(a)(1)(B)(v) provides that unless otherwise ordered by the court, the debtor must file: "a statement of the amount of monthly net income, itemized to show how the amount is calculated. . ." The 2005-2007 Committee Note for Schedule I states, in part: "A new subtotal line for income from sources other than as an employee and a new 'average monthly income' line will enable this form to be used in conjunction with Schedule J to satisfy the requirements of §521(a)(1)(B)(v), which was added to the Code by BAPCPA." The "average monthly income" line does not appear on current forms 106I and 106J which were part of a form's modernization project. But the Committee Notes accompanying 2013, 2014 and 2015 forms changes do not alter the 2005-2007 Notes. Line 12 of Official Form 106I and Line 23c of Official Form 106J seem to provide the statement of monthly net income and other parts of the forms provide how it is calculated. The debtors provided that information.

The court is not persuaded in this case that any failure to file the information within 45 days of the petition date automatically results in dismissal. In the ninth circuit, the bankruptcy court has discretion to waive the § 521(a)(1) filing requirement even after the forty-five-day filing deadline set forth in § 521(a)(1) has passed. Wirum v. Warren (In re Warren), 568 F.3d 1113, 1117 (9th Cir. 2009). The court does not waive the requirement in this case, but dismissal of this case is not on the ground that it was "automatic."

Nevertheless, the case is dismissed on the other grounds.

3. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-29-2019    [\[116\]](#)

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                The minutes of the hearing will be the court's findings and conclusions.

ORDER:                        The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

The debtor filed amended Summary of Schedules/Assets and Liabilities; Schedule A/B; Schedule D; Schedule E/F; Schedule G; Schedule I; and Schedule J without the required amendment fee of \$31.00. The court issued a Notice of Payment Due which was served on the debtor on May 22, 2019. The court later issued this Order to Show Cause and set the matter for hearing. To date, the debtor has not paid the fee.

4. [19-10227](#)-B-13     **IN RE: MA GUADALUPE SERRANO**  
[TOG-1](#)

FURTHER STATUS CONFERENCE RE: MOTION TO VALUE COLLATERAL OF  
FRANKLIN CREDIT MANAGEMENT CORPORATION  
3-16-2019    [\[25\]](#)

MA GUADALUPE SERRANO/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

NO RULING.

5. [19-11428](#)-B-13     **IN RE: HOMER/MARIA MORA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-20-2019    [\[17\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #27.

6. [19-12128](#)-B-13     **IN RE: JULIAN/GLORIA TORRES**  
[NSV-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-24-2019    [\[10\]](#)

JULIAN TORRES/MV  
NIMA VOKSHORI

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.

Debtors had one case pending within the preceding one-year period that was dismissed, case no. 18-14146. That case was filed on October 12, 2018 and was dismissed on April 15, 2019 for failure to file tax returns. This case was filed on May 20, 2019 and the automatic stay will expire on June 19, 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) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because the debtors failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

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

Debtors' previous case was dismissed for failure to file the previous four years of tax returns with the appropriate tax authorities. Debtors now state that "all of our tax returns that have come due during the prior four (4) years have been prepared and filed well before the 341a meeting of creditors." Doc. #12. Debtors have filed bankruptcy to save their home and cure the arrearages owed on their home loan. Id. Debtors' home is still in foreclosure. Id. The meeting of creditors is scheduled for June 25, 2019 and the debtors have filed a plan.

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.

7. [19-11429](#)-B-13     **IN RE: RHONDA RAMIREZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-21-2019    [\[26\]](#)

MICHAEL MEYER/MV  
ERIC ESCAMILLA

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 respondent's 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 (11 U.S.C. § 1307(c)(1)). The debtor failed to set a plan for hearing and notice all creditors. Accordingly, the case will be dismissed. The court notes debtor's non-opposition. Doc. #33.

8. [13-11337](#)-B-13     **IN RE: GREGORY/KARAN CARVER**  
[TCS-3](#)

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR  
VIOLATION OF THE DISCHARGE INJUNCTION  
3-18-2019    [\[84\]](#)

GREGORY CARVER/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

NO RULING.

9. [14-14343](#)-B-13     **IN RE: RICHARD KELLEY**  
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL P.C.  
DEBTORS ATTORNEY(S)  
4-12-2019    [\[80\]](#)

PETER FEAR

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 is GRANTED. Movant is awarded \$2,609.00 in fees and \$102.74 in costs.

10. [19-10752](#)-B-13     **IN RE: STEVEN CHAVEZ**  
[SFR-2](#)

MOTION TO CONFIRM PLAN  
4-10-2019    [\[41\]](#)

STEVEN CHAVEZ/MV  
SHARLENE ROBERTS-CAUDLE  
PLAN WITHDRAWN

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED:    Movant withdrew the motion. Doc. #47.

11. [19-11354](#)-B-13     **IN RE: JENNIFER DAVIS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-17-2019    [\[23\]](#)

MICHAEL MEYER/MV

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 respondent's 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 (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the required documentation. Accordingly, the case will be dismissed.

12. [19-11357](#)-B-13     **IN RE: ROBERTO/VERONICA AYALA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-20-2019    [\[33\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED:    Movant withdrew the motion. Doc. #48.

13. [19-11362](#)-B-13     **IN RE: HEATHER DARPLI**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-17-2019    [\[22\]](#)

MICHAEL MEYER/MV

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 respondent's 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 (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the required documentation. Debtor also failed to file complete and accurate Schedule A/B (11 U.S.C. § 521) and failed to file correct form for Chapter 13 Plan. Accordingly, the case will be dismissed.

14. [19-11463](#)-B-13     **IN RE: CHATBANT SROW**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-20-2019    [\[17\]](#)

MICHAEL MEYER/MV  
JERRY LOWE

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED:    Movant withdrew the motion. Doc. #24.

15. [19-11265](#)-B-13     **IN RE: MARTIN/SUSANA SANCHEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-21-2019    [\[24\]](#)

MICHAEL MEYER/MV  
MARK ZIMMERMAN  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #39.

16. [19-11188](#)-B-13     **IN RE: ESTEBAN ARIAS AND SOFIA HERNANDEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-20-2019    [\[25\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #40.