

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, July 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. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[DJP-1](#)

CONTINUED MOTION FOR APPOINTMENT OF OFFICIAL COMMITTEE OF
UNSECURED CREDITORS
5-16-2019 [\[207\]](#)

BECKMAN COULTER, INC./MV
RILEY WALTER
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 26, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court will be signing an order submitted
by the parties.

2. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[FRB-1](#)

CONTINUED MOTION TO EMPLOY MICHAEL J. GOMEZ AS SPECIAL COUNSEL
3-25-2019 [\[127\]](#)

ELITECARE MEDICAL STAFFING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 26, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court will be signing an order submitted
by the parties.

3. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[SWE-1](#)

CONTINUED MOTION TO EMPLOY ROBERT S. MARTICELLO AS ATTORNEY(S)
3-22-2019 [\[122\]](#)

ELITECARE MEDICAL STAFFING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 26, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court will be signing an order submitted
by the parties.

4. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[WW-14](#)

MOTION TO VACATE
5-24-2019 [\[221\]](#)

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL
RILEY WALTER

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

DISPOSITION: Continued to September 26, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court will be signing an order submitted
by the parties.

1:30 PM

1. [19-11801](#)-B-13 **IN RE: SHEREE ENGBRECHT**
[MHM-2](#)

MOTION TO DISMISS CASE
6-10-2019 [\[20\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

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.

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; failed to make all payments due under the plan (debtor is delinquent in the amount of \$1,102.50 as of June 10, 2019); failed to provide the trustee with (1) Authorization to Release Information (LBR 3015-1(b)(6)), (2) the 521(a)(1)(B)(iv) statement (11 U.S.C. § 521(i)(1)), (3) all pages of the most recent federal tax return (11 U.S.C. §§ 521(e)(2)(A)(B), 1307(e)).

Debtor timely responded, without evidence that debtor provided the Trustee's office with "copies of missing documents, paystub April 26, 2019, the Authorization to Release Information" and did not provide the tax returns because they have not yet been finished. Doc. #28.

The court agrees with the trustee 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. 11 U.S.C. § 1308(a) states

Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

The court takes judicial notice of the fact that in 2019, federal taxes were due not later than April 15, 2019. Debtor has not stated that debtor's tax returns were due at a different time. Debtor's opposition makes obvious that debtor was required to file a tax return, and has not done so "not later than the day before the date on which" the § 341 meeting of creditors took place. 11 U.S.C. § 1307(e) requires the court to dismiss the case if a debtor fails to file a tax return under § 1308. The record does not reflect the trustee left the creditors meeting "open." 11 U.S.C. § 1308(b). But the docket reflects the creditors meeting was continued to July 16, 2019.

The court finds that debtor was required to file a tax return under § 1308. The court also finds that debtor failed to file the tax return, and therefore the case is dismissed under § 1307(e).

2. [19-10704](#)-B-13 **IN RE: VIRGINIA RAMIREZ**
[TOG-3](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
6-13-2019 [\[36\]](#)

VIRGINIA RAMIREZ/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 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 debtor is competent to testify as to the value of the 2016 GMC Terrain. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$15,641.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

3. [19-11707](#)-B-13 **IN RE: SALVADOR TEJEDA**
[MHM-2](#)

MOTION TO DISMISS CASE
6-17-2019 [\[21\]](#)

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 default 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 make all payments due under the plan (11 U.S.C. § 1307(c)(1) and (c)(4)) and failed appear at the scheduled 341 meeting of creditors. The debtor failed to provide required documentation to the trustee and failed to file a feasible plan. Accordingly, the case will be dismissed.

4. [19-11509](#)-B-13 **IN RE: JOHN/MARY WINN**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF SOCIAL SECURTY FEDERAL CREDIT UNION
6-19-2019 [\[24\]](#)

JOHN WINN/MV
PETER BUNTING

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 debtor is competent to testify as to the value of the 2008 Nissan Titan XE. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$10,902.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

5. [19-11809](#)-B-13 **IN RE: CHRISTINE WOOD**
[MHM-1](#)

MOTION TO DISMISS CASE
6-17-2019 [\[13\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH
WITHDRAWN

<u>FINAL RULING:</u>	There will be no hearing on this matter.
DISPOSITION:	Dropped from calendar.
NO ORDER REQUIRED:	Movant withdrew the motion on June 28, 2019, Doc. #25.

6. [19-11113](#)-B-13 **IN RE: FRANCISCO ESPINO AND MARIA DIAZ**
[VC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-11-2019 [\[22\]](#)

REGIONAL ACCEPTANCE CORPORATION/MV
THOMAS GILLIS
MICHAEL VANLOCHEM/ATTY. FOR MV.

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

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 for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 4001-1(b) is the rule regarding additional procedures for motions for relief from the automatic stay in chapter 12 and 13 cases. That rule was not complied with in this motion. Therefore, the motion is DENIED WITHOUT PREJUDICE.

Second, LBR 9004-2(d)(2) requires an exhibit index to be filed with the exhibits. There was no exhibit index included.

7. [16-13723](#)-B-13 **IN RE: JACKY/LASHAWN BLUE**
[NES-4](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
6-19-2019 [\[54\]](#)

NEIL SCHWARTZ

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.

First the court must note movants failure to comply with LBR 9004-2(c)(1). LBR 9004-2(c)(1) requires that motions, exhibits, *inter alia*, to be filed as separate documents. Here, the motion and exhibits were combined into one document and not filed separately. Failure to comply with this rule in the future will result in the motion being denied without prejudice.

The motion is GRANTED. Movant is awarded \$6,757.50 in fees and \$413.00 in costs.

8. [19-10227](#)-B-13 IN RE: MA GUADALUPE SERRANO
TOG-1

CONTINUED STATUS CONFERENCE RE: MOTION TO VALUE COLLATERAL OF
FRANKLIN CREDIT MANAGEMENT CORPORATION
3-16-2019 [25]

MA GUADALUPE SERRANO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties.
Doc. #73.

9. 19-11536-B-13 **IN RE: RAJESH/SHAILEZA ARORA**
MMH-2

MOTION TO DISMISS CASE
6-11-2019 [17]

MICHAEL MEYER/MV
JOEL WINTER

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 debtors failed to appear at the scheduled 341 meeting of creditors and failed to provide required documentation to the trustee. Accordingly, the case will be dismissed.

10. [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.

11. [19-12446](#)-B-13 **IN RE: CARLOS/BRANDI MOLINA**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
6-18-2019 [[19](#)]

CARLOS MOLINA/MV
PETER BUNTING

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 debtor is competent to testify as to the value of the 2013 Hyundai Sonata GLS. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$6,626.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

12. [19-10752](#)-B-13 **IN RE: STEVEN CHAVEZ**
[PPR-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MORGAN STANLEY
PRIVATE BANK, NATIONAL ASSOCIATION
5-28-2019 [\[81\]](#)

MORGAN STANLEY PRIVATE BANK, NATIONAL ASSOCIATION/MV
SHARLENE ROBERTS-CAUDLE
DIANA TORRES-BRITO/ATTY. FOR MV.
RESPONSIVE PLEADING

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 objection is OVERRULED WITHOUT PREJUDICE. Creditor Morgan Stanley Private Bank, National Association ("Creditor") objects to confirmation on the grounds that the plan does not comply with 11 U.S.C. § 1325(a)(5)(B)(iii)(I) because Creditor is not due to receive any payment on their claim until month 15. Doc. #81.

Debtor timely responded, stating that they are "willing to amend the plan in the Order Confirming to reduce the amount for attorneys fees and to begin payments on arrears to both holders of the first and junior deeds of trust in Month 10." Doc. #102. Debtor believes that this change would be acceptable to Creditor.

This matter will be called to confirm Creditor's acceptance or rejection of the proposed change. If Creditor accepts, the objection

will be overruled without prejudice. If Creditor rejects, the objection may be further continued and the matter set for a scheduling conference.

13. [19-10752](#)-B-13 **IN RE: STEVEN CHAVEZ**
[RPZ-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CENLAR FEDERAL
SAVINGS BANK
5-30-2019 [\[85\]](#)

CENLAR FEDERAL SAVINGS BANK/MV
SHARLENE ROBERTS-CAUDLE
ROBERT ZAHRADKA/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #106.

14. [19-10752](#)-B-13 **IN RE: STEVEN CHAVEZ**
[SFR-4](#)

CONTINUED MOTION TO CONFIRM PLAN
5-8-2019 [\[67\]](#)

STEVEN CHAVEZ/MV
SHARLENE ROBERTS-CAUDLE

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. Of the two objections to confirmation (matter numbers 13 and 14 above, PPR-1 and RPZ-1), one was withdrawn and the other is tentatively overruled without prejudice. If at the hearings the tentative ruling becomes the final ruling, then this motion will be GRANTED. If the tentative ruling does not become the final ruling, this motion may be continued, denied without prejudice, or set for a further scheduling conference.

15. [19-11853](#)-B-13 **IN RE: KENNETH HUDSON**
[MHM-1](#)

MOTION TO DISMISS CASE
6-18-2019 [\[29\]](#)

MICHAEL MEYER/MV

TENTATIVE RULING: This matter will proceed as scheduled.

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.

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 chapter 13 trustee ("Trustee") states that Debtor failed to provide certain necessary and required information to Trustee's office. Doc. #29. Among those items is the 521(a)(1)(B)(v) statement (11 U.S.C. § 521(i)(1)).

Debtor timely opposed, stating that all of the requested documents listed in the motion have been provided. Doc. #37.

The court agrees with the trustee 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."

The court takes notice of its docket, and notes that as of May 22, 2019, several of the documents were filed with the court but many of

the grounds for dismissal have still not been complied with, or the court simply has no evidence that they have been. Debtor still has not set a plan for hearing with notice to creditors.

This matter will be called to inquire as to the status of requested information.

16. [19-11354](#)-B-13 **IN RE: JENNIFER DAVIS**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
5-17-2019 [\[20\]](#)

DISMISSED 6/18/19

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. #31.

17. [19-11857](#)-B-13 **IN RE: THERESE DOZIER**
[MHM-2](#)

MOTION TO DISMISS CASE
6-14-2019 [\[25\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before or at 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.

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 the
§ 521(a)(1)(B)(v) statement (11 U.S.C. § 521(i)(1)).

Debtor timely responded, stating that they amended Schedule I to
include the attachment and "although the attachment was not filed,
the proof of income was submitted to the trustee's office" and
Debtor did not appear at the § 341 meeting because she did not

receive notice of the hearing, apparently due to an error on the part of the United States' Postal Service. Doc. #37.

On the petition, the debtor listed her address as "4916 Pelican Hill Drive, Bakersfield, CA 93312." Doc. #1. That address appears on the certificate of service for the mailing of the creditors meeting notice. Doc. #12. The debtor claims she never received the notice and complained to the United States Postal Service. She has not filed a change of address. Service on the debtor at her listed address is sufficient. See Federal Rule of Bankruptcy Procedure 7004(b)(9). The court does not find service of the notice inadequate. Inexplicable, debtor's counsel did not appear at the creditors meeting despite accurate service of the notice. Denial of receipt of properly addressed notice does not rebut the presumption it was delivered. In re Bucknam, 105 B.R. 25 (9th Cir. BAP 14989) (aff'd, In re Bucknam, 951 F.2d 204 (9th Cir. 1991)).

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, if granted, is not on the ground that it was "automatic."

The court takes judicial notice of the amended schedule I. Doc. #34. Unless this matter is withdrawn prior to or at the hearing, the court will continue this matter to August 1, 2019 at 1:30 p.m. to give debtor an opportunity to attend the continued § 341 meeting scheduled for July 23, 2019 at 11:00 a.m. in Bakersfield, CA. The trustee continued the meeting to that date.

18. [19-11362](#)-B-13 **IN RE: HEATHER DARPLI**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
5-17-2019 [\[19\]](#)

DISMISSED 6/18/19

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. #30.

19. [19-11463](#)-B-13 **IN RE: CHATBANT SROW**
[MHM-3](#)

MOTION TO DISMISS CASE
6-18-2019 [\[27\]](#)

MICHAEL MEYER/MV
JERRY LOWE

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
default 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 file complete and accurate Schedule I.
Accordingly, the case will be dismissed.

20. [19-10965](#)-B-13 **IN RE: GUADALUPE RAMIREZ**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
4-26-2019 [[19](#)]

SCOTT LYONS

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED. By prior order of the court (doc. #26),
debtor had until either July 4, 2019 to file a written response to
the objection, or in lieu of a written response, until July 11, 2019
to file a confirmable amended plan. Debtor did neither. Because
debtor failed to comply with the court's previous order, the
objection is SUSTAINED.

21. [19-11265](#)-B-13 **IN RE: MARTIN/SUSANA SANCHEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
6-12-2019 [[41](#)]

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. Doc. #52.

22. [19-11768](#)-B-13 **IN RE: LISA THAI**
[MHM-1](#)

MOTION TO DISMISS CASE
6-12-2019 [\[16\]](#)

MICHAEL MEYER/MV
LAUREN RODE

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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. Doc. #16. Debtor timely opposed, stating that they will be providing the necessary documents. Doc. #20.

Unless the chapter 13 trustee withdraws the motion, the court finds that dismissal would be in the best interests of creditors and the estate. As of July 15, 2019, the court still has no evidence that the class 1 checklist has been provided. The court notes that a motion to confirm plan was set for hearing on August 29, 2019. Doc. #23.

For the above reasons, this motion is GRANTED.

23. [19-10873](#)-B-13 **IN RE: IVAN/RODELIA VILLA**
[PBB-1](#)

MOTION TO CONFIRM PLAN
6-12-2019 [\[40\]](#)

IVAN VILLA/MV
PETER BUNTING

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.

24. [19-11475](#)-B-13 **IN RE: HEZEKIAH SHERWOOD**
[MHM-2](#)

MOTION TO DISMISS CASE
6-17-2019 [\[22\]](#)

MICHAEL MEYER/MV
JEFFREY MEISNER

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 default 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 provide required documentation to the trustee. The debtor failed to file tax returns for the years 2017 and 2018 (11 U.S.C. § 1307(e)) and failed to file a complete and accurate Schedule H and Statement of Financial Affairs. Accordingly, the case will be dismissed.

25. [19-11780](#)-B-13 **IN RE: JESSE/KATHLEEN CANTU**
[MHM-1](#)

MOTION TO DISMISS CASE
6-12-2019 [\[18\]](#)

MICHAEL MEYER/MV
VARDUHI PETROSYAN

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)(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. Doc. #18. Specifically, schedules A/B and H. Id. Elizabeth Roberts' declaration states more specifically that Schedule H is wrong and that the value of the time share on Schedule A/B is \$0.00. Doc. #20.

Debtor timely opposed, with evidence, stating that they have filed the schedules. Doc. #24. The court takes judicial notice of amended Schedules A/B and H. Doc. #22. The court notes that the value of the timeshare has increased to \$10,000.00, but on Schedule H, debtors states in section 2 that they lived in a community property state within the last 8 years, but wrote "NONE" on the line asking in which state did you live. The court finds that information conflicting and confusing.

On July 17, 2019, debtors filed another amended Schedule H. This Schedule H appears to have corrected the problem outlined by the court above.

Unless the motion is withdrawn, the court finds that dismissal would be in the best interests of creditors and the estate.

For the above reasons, this motion is GRANTED.

26. [19-10181](#)-B-13 **IN RE: ARNULFO/LETICIA OLGUIN**
[PBB-3](#)

MOTION TO CONFIRM PLAN
6-12-2019 [\[66\]](#)

ARNULFO OLGUIN/MV
PETER BUNTING

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.

27. [18-10283](#)-B-13 **IN RE: FRANK/ROSALINDA BRUM**
[PBB-1](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE
CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
6-11-2019 [\[32\]](#)

FRANK BRUM/MV
PETER BUNTING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9004-2(c)(1) requires that motions, notices, *inter alia*, to be
filed as separate documents. Here, the "Notice of Death and Omnibus
Motion" were combined into one document and not filed separately.

28. [19-11188](#)-B-13 **IN RE: ESTEBAN ARIAS AND SOFIA HERNANDEZ**
[KEH-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY BALBOA THRIFT & LOAN
6-14-2019 [\[44\]](#)

BALBOA THRIFT & LOAN/MV
THOMAS GILLIS
KEITH HERRON/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties.
Doc. #49.

29. [19-10794](#)-B-13 **IN RE: REBECCA GUERRA**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF NOBLE CREDIT UNION
6-25-2019 [\[36\]](#)

REBECCA GUERRA/MV
SCOTT LYONS

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.

The motion is GRANTED. 11 U.S.C. § 1325(a)(*) (the hanging paragraph) gives a debtor the ability to value a motor vehicle acquired for the personal use of the debtor at its current amount, as opposed to the amount due on the loan, when the loan is secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of the filing.

Debtor asks the court for an order valuing a 2013 Chevrolet Suburban SL at \$17,199.00. Doc. #36. Creditor Noble Credit Union's ("Creditor") claim states the amount owed to be \$22,097.00. Claim #2. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$17,199.00. Doc. #39. Debtor incurred the debt on August 18, 2016. Id. That date is more than 910 days before debtor filed this case.

The debtor is competent to testify as to the value of the 2013 Chevrolet Suburban SL. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at \$17,199.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

30. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-26-2019 [\[15\]](#)

TIMOTHY SPRINGER

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

DISPOSITION: Continued to August 15, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than August 1, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. The trustee shall file and serve a reply, if any, by August 8, 2019.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 8, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

31. [19-11463](#)-B-13 **IN RE: CHATBANT SROW**
[MHM-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-27-2019 [\[33\]](#)

JERRY LOWE

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

DISPOSITION: If not dismissed pursuant to matter #19 above because the chapter 13 trustee withdrew his motion, the objection shall be continued to August 15, 2019 at 1:30 p.m. If the case is dismissed, then the objection is overruled as moot.

ORDER: The court will issue an order.

Unless the chapter 13 trustee's motion to dismiss (matter #19, MHM-3 above) is withdrawn prior to the hearing, then this objection will be overruled as moot. If the motion to dismiss is withdrawn prior to the hearing, then the matter will be continued. The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted

to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than August 1, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by August 8, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 8, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

32. [19-12190](#)-B-13 **IN RE: CHRISTOPHER/ROBYN NELSON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHEAL H. MEYER
6-26-2019 [\[18\]](#)

DAVID JENKINS

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

DISPOSITION: Continued to August 15, 2019 at 1:30 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than August 1, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. The trustee shall file and serve a reply, if any, by August 8, 2019.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 8, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

33. [19-12843](#)-B-13 **IN RE: DONNIE EASON**
[DRJ-2](#)

MOTION TO EXTEND AUTOMATIC STAY
7-3-2019 [\[9\]](#)

DONNIE EASON/MV
DAVID JENKINS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-11448. That case was filed on April 11, 2019 and was dismissed on July 3, 2019 for failure to file necessary documents. This case was filed on July 1, 2019 and the automatic stay will expire on July 31, 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 debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa).

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

Debtor's previous case was dismissed for failure to file tax documents with the chapter 13 trustee's office. Doc. #11. Due to debtor's health and other family and personal matters during the beginning of the previous bankruptcy case, debtor's son was in control of debtor's finances, which resulted in the mortgage not being paid and tax returns not being filed. Id. Debtor has not filed the tax returns. Id.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f) (2). The court will issue an order.