

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** AUGUST 28, 2019  
**CALENDAR:** 3:00 P.M. CHAPTERS 13 AND 12 CASES

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.

1. [19-12500](#)-A-13     **IN RE: STEPHANI MASTERS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-22-2019    [\[20\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS  
RESPONSIVE PLEADING

#### **Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 34.

2. [19-10507](#)-A-13     **IN RE: TUCKER/JAMIE MAXFIELD**  
[MHM-4](#)

MOTION TO DISMISS CASE  
6-24-2019    [\[58\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

#### **Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 83.

3. [19-12218](#)-A-13     **IN RE: LUILLI MURGUIA AND MONICA CROUSILLAT**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-19-2019    [\[20\]](#)

MICHAEL MEYER/MV  
STEPHEN LABIAK  
RESPONSIVE PLEADING

#### **Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 27.

4. [19-12228](#)-A-13     **IN RE: NICHOLAS/LESLIE MARTINEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-19-2019    [\[17\]](#)

MICHAEL MEYER/MV  
DAVID JENKINS  
RESPONSIVE PLEADING

**No Ruling**

5. [19-12235](#)-A-13     **IN RE: LAUREN SO**  
[MHM-2](#)

AMENDED MOTION TO DISMISS CASE  
7-24-2019    [\[33\]](#)

MICHAEL MEYER/MV

**Final Ruling**

Hearing dropped at moot; case Dismissed on August 17, 2019.    Dckt. 39.

6. [19-12438](#)-A-13     **IN RE: MICHAEL/LUCIA LOPEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-26-2019    [\[21\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS

**Final Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Denied as moot

**Order:** Civil minute order

Unopposed motions are subject to the rules of default.    Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c).    Written opposition to this motion was required not less than 14 days before the hearing on this motion.    LBR 9014-1(f)(1)(B).    None has been filed.    The default of the responding party is entered.    The court considers the record, accepting well-pleaded facts as true.    *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**MOTION TO DISMISS**

The trustee seeks dismissal because:

- (1) The debtor has not provided the trustee with the:
  - (i) All 60-day pre-petition payment advices (or other evidence of such payments); specifically, the March 22, 2019 paystubs have not been produced.
- (2) The debtor has not filed tax returns for 2016 through 2018.

#### **AUTOMATIC CASE DISMISSAL**

11 U.S.C. § 521(a)(1)(B)(iv) requires that the debtor file "copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition."

Under 11 U.S.C. § 521(i)(1), "if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition."

LBR 1007-1(c)(1) amends section 521(a)(1)(B)(iv) to require, instead of filing of the payment advices, for the advices to be produced to the trustee.

Here, the debtor filed this case on June 8, 2019. The debtor had not produced the required payment advices or other evidence of payment as required by section 521(a)(1)(B)(iv), by the time this motion was filed on July 26, 2019 (48 days post-petition). Accordingly, this case was automatically dismissed on July 24, 2019, the 46<sup>th</sup> day post-petition. This makes the subject motion moot. It will be denied as moot.

Nevertheless, the court will confirm that the case was automatically dismissed on July 24, 2019, pursuant to section 521(i)(1).

Additionally, Section 1308 of the Bankruptcy Code provides: "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." 11 U.S.C. § 1308(a).

The debtor has failed to comply with this tax-filing requirement. The debtor failed to file the 2016 through 2018 state and federal tax returns. The court will dismiss this case pursuant to § 1307(e).

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion to dismiss is denied as moot.

IT IS FURTHER ORDERED that the court confirms that the case was dismissed automatically under 11 U.S.C. § 521(i)(1) on July 24, 2019 and pursuant to 11 U.S.C. §1308(a) for not complying with the tax filing requirement.

IT IS FURTHER ORDERED that the Clerk of the court shall note on the case docket the date of the automatic dismissal of the case.

7. [19-12744](#)-A-13     **IN RE: EDGAR BAUTISTA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-7-2019     [\[23\]](#)

PETER BUNTING  
PARTIAL PAYMENT OF \$70 PAID 8/6/19

**Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

8. [19-11449](#)-A-13     **IN RE: DAVID DELAO**  
      [MHM-3](#)

MOTION TO DISMISS CASE  
6-24-2019     [\[50\]](#)

MICHAEL MEYER/MV  
VARDUHI PETROSYAN  
RESPONSIVE PLEADING

**No Ruling**

9. [19-11256](#)-A-13     **IN RE: DAVID/BILLIE KELLEY**  
      [MHM-2](#)

MOTION TO DISMISS CASE  
7-31-2019     [\[43\]](#)

MICHAEL MEYER/MV  
MARK ZIMMERMAN  
RESPONSIVE PLEADING

**No Ruling**

10. [19-12461](#)-A-13     **IN RE: GREGORY NELSON**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-23-2019    [[19](#)]

MICHAEL MEYER/MV  
DAVID JENKINS  
RESPONSIVE PLEADING

**No Ruling**

11. [19-12462](#)-A-13     **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-19-2019    [[21](#)]

MICHAEL MEYER/MV  
PETER BUNTING  
RESPONSIVE PLEADING

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 28.

12. [19-12364](#)-A-13     **IN RE: FRANK RECCHIO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-22-2019    [[26](#)]

MICHAEL MEYER/MV  
ERIC ESCAMILLA  
RESPONSIVE PLEADING

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 34.

13. [19-12372](#)-A-13     **IN RE: THIESEN HERNANDEZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-19-2019    [\[26\]](#)

MICHAEL MEYER/MV  
RICHARD STURDEVANT  
RESPONSIVE PLEADING

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 32.

14. [19-12282](#)-A-13     **IN RE: VICTOR FIGUEROA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-22-2019    [\[14\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 21.

15. [19-12384](#)-A-13     **IN RE: ANTHONY D'ANGEL**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-29-2019    [\[15\]](#)

MICHAEL MEYER/MV  
STEVEN ALPERT  
RESPONSIVE PLEADING

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 24.

16. [19-12386](#)-A-13     **IN RE: CRISPIN RODRIGUEZ**  
[MHM-3](#)

MOTION TO DISMISS CASE  
7-24-2019    [[22](#)]

MICHAEL MEYER/MV  
SCOTT LYONS

**No Ruling**

17. [19-12390](#)-A-13     **IN RE: MARK/TERRI ROBARDS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-29-2019    [[17](#)]

MICHAEL MEYER/MV  
JEFFREY MEISNER

**No Ruling**

18. [19-12391](#)-A-13     **IN RE: KATHRYN MCCOON**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-22-2019    [[22](#)]

MICHAEL MEYER/MV

**No Ruling**

19. [19-12903](#)-A-13     **IN RE: ROBERT/DARLENE AGUINAGA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
8-8-2019    [[30](#)]

MARK ZIMMERMAN

**No Ruling**



20. [19-12903](#)-A-13     **IN RE: ROBERT/DARLENE AGUINAGA**  
[STH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
7-26-2019    [\[17\]](#)

THE BANK OF NEW YORK MELLON/MV  
MARK ZIMMERMAN  
STEPHEN HICKLIN/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

21. [19-11009](#)-A-13     **IN RE: KEVIN/TAMEKA BLUEBAUGH**  
[DMG-2](#)

MOTION TO CONFIRM PLAN  
7-23-2019    [\[55\]](#)

KEVIN BLUEBAUGH/MV  
D. GARDNER  
RESPONSIVE PLEADING

**No Ruling**

22. [19-11009](#)-A-13     **IN RE: KEVIN/TAMEKA BLUEBAUGH**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-25-2019    [\[51\]](#)

MICHAEL MEYER/MV  
D. GARDNER  
RESPONSIVE PLEADING

**No Ruling**

23. [19-12011](#)-A-13     **IN RE: JENNIE CABAN**  
[PBB-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
7-25-2019    [\[30\]](#)

JENNIE CABAN/MV  
PETER BUNTING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien:** \$ 2,824.74

**All Other Liens:** \$ 122,170.96

**Exemption:** \$ 175,000.00

**Value of Property:** \$ 227,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

24. [19-12011](#)-A-13     **IN RE: JENNIE CABAN**  
[PBB-3](#)

MOTION TO AVOID LIEN OF LAS FLORES APARTMENTS  
7-25-2019    [\[35\]](#)

JENNIE CABAN/MV  
PETER BUNTING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien:** \$ 5,364.00

**All Other Liens:** \$ 116,806.96

**Exemption:** \$ 175,000.00

**Value of Property:** \$ 227,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

25. [19-12626](#)-A-13     **IN RE: FILIMON RAMIREZ**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
8-8-2019    [\[18\]](#)

ERIC ESCAMILLA

#### **FINAL RULING**

Hearing moot, Debtor filed Notice of Withdrawal of Plan on August 22, 2019. Dckt. 21.

26. [19-13326](#)-A-13     **IN RE: RICARDO/JESSICA MONTANO**  
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
8-13-2019    [\[10\]](#)

RICARDO MONTANO/MV  
PETER BUNTING

#### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Denied

**Order:** Civil minute order

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial

change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

The debtors, Ricardo Montano and Jessica Marie Montano's, prior case, No. 17-13868, was dismissed May 24, 2019, after the debtors defaulted in plan payments. 17-13868, ECF No. 67.

In the Declaration Jessica Marie Montano, the Jessica provides testimony that the debtor's 2016 Chevrolet Camaro began having mechanical problems in February 2019, and the debtor's had to pay for repairs. ECF No. 12. Jessica testifies further that Ricardo Montano became a co-signor on a loan for debtors' son's 2004 Toyota Celica during the prior case, and that Ricardo now makes those payments and uses that vehicle. *Id.*

The Notice of Default and Motion To Dismiss filed by the Chapter 13 Trustee in the prior case indicated a default of at least \$9,211.38 before the case was dismissed. 17-13868, ECF No. 63. The Confirmed Plan in the prior case provided for monthly payments of \$4,600.00. 17-13868, ECF No. 5.

The debtors have not provided a credible explanation for the delinquency in plan payments in the prior case. The repairs to debtors' vehicle were unlikely to amount to \$9,211.38.

Furthermore, there has been no explanation of changed circumstances or why the debtors would be able to make payments in this case has been provided.

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The supporting declaration does not point to any substantial change in the personal and financial affairs of the debtors since the dismissal of their previous case. The motion will be denied.

27. [19-11628](#)-A-12      **IN RE: MIKAL JONES**  
[FW-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL  
7-3-2019    [\[39\]](#)

MIKAL JONES/MV  
PETER FEAR  
RESPONSIVE PLEADING

**No Ruling**

28. [19-11628](#)-A-12     **IN RE: MIKAL JONES**  
[FW-3](#)

MOTION TO CONFIRM CHAPTER 12 PLAN  
7-19-2019    [\[53\]](#)

MIKAL JONES/MV  
PETER FEAR  
RESPONSIVE PLEADING

**Final Ruling**

The motion will be continued to September 17, 2019 at 9:00 a.m.

29. [19-11628](#)-A-12     **IN RE: MIKAL JONES**  
[WW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-19-2019    [\[25\]](#)

RUSSELL DILDAY/MV  
PETER FEAR  
RILEY WALTER/ATTY. FOR MV.  
RESPONSIVE PLEADING

**Final Ruling**

The motion will be continued to September 17, 2019 at 9:00 a.m.

30. [19-10434](#)-A-13     **IN RE: MARIA QUIROZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-23-2019    [\[60\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 92.

31. [19-10434](#)-A-13     **IN RE: MARIA QUIROZ**  
[TOG-3](#)

MOTION TO CONFIRM PLAN  
7-24-2019    [\[64\]](#)

MARIA QUIROZ/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

**Motion was Amended See Item 32.**

32. [19-10434](#)-A-13     **IN RE: MARIA QUIROZ**  
[TOG-3](#)

MOTION TO CONFIRM PLAN  
7-25-2019    [\[70\]](#)

MARIA QUIROZ/MV  
THOMAS GILLIS

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

33. [19-11654](#)-A-13     **IN RE: LINNEY WADE**  
[MAZ-1](#)

MOTION TO CONFIRM PLAN  
7-17-2019    [[53](#)]

LINNEY WADE/MV  
MARK ZIMMERMAN  
DISMISSED 7/24/19

**Final Ruling**

This hearing is moot, the case was dismissed on July 24, 2019. Dckt. 73.

34. [19-11654](#)-A-13     **IN RE: LINNEY WADE**  
[MAZ-2](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE  
7-18-2019    [[60](#)]

LINNEY WADE/MV  
MARK ZIMMERMAN  
DISMISSED 7/24/19

**Final Ruling**

This hearing is moot, the case was dismissed on July 24, 2019. Dckt. 73.

35. [19-11654](#)-A-13     **IN RE: LINNEY WADE**  
[MAZ-3](#)

MOTION TO VALUE COLLATERAL OF HARLEY DAVIDSON CREDIT CORP.  
7-18-2019    [[65](#)]

LINNEY WADE/MV  
MARK ZIMMERMAN  
DISMISSED 7/24/19

**Final Ruling**

This hearing is moot, the case was dismissed on July 24, 2019. Dckt. 73.



36. [19-12455](#)-A-13     **IN RE: ANTONIO FRANCO AND SYLVIA VALENCIA**  
[PBB-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
7-5-2019    [\[27\]](#)

ANTONIO FRANCO/MV  
PETER BUNTING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien:** \$ 7,121.82

**All Other Liens:** \$ 192,057.00

**Exemption:** \$ 100,000.00

**Value of Property:** \$ 270,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

37. [19-12455](#)-A-13     **IN RE: ANTONIO FRANCO AND SYLVIA VALENCIA**  
[PBB-4](#)

MOTION TO CONFIRM PLAN  
7-23-2019    [\[43\]](#)

ANTONIO FRANCO/MV  
PETER BUNTING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

38. [19-12168](#)-A-13     **IN RE: SANDRA BOMBITA**  
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
8-9-2019    [\[50\]](#)

TIMOTHY SPRINGER

### **No Ruling**

39. [19-12668](#)-A-13     **IN RE: MARCO CISNEROS AND VERONICA ESTRADA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
8-12-2019    [\[28\]](#)

THOMAS GILLIS

**Final Ruling**

Trustee Michael H. Meyer's Objection to Confirmation of Plan Sustained, and the proposed Chapter 13 Plan is not confirmed. Debtors filed a Non-Opposition on August 21, 2019, indicating Debtors intention to file an Amended Plan. Dckt. 42.

40. [19-12668](#)-A-13     **IN RE: MARCO CISNEROS AND VERONICA ESTRADA**  
[RPZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
7-30-2019    [\[23\]](#)

U.S. BANK NATIONAL  
ASSOCIATION/MV  
THOMAS GILLIS  
ROBERT ZAHRADKA/ATTY. FOR MV.

**Final Ruling**

U.S. Bank National Association's Objection to Confirmation of Plan Overruled, the Trustee's Objection to Confirmation of the proposed Chapter 13 Plan was Sustained based on Non-Opposition of the Debtor. Accordingly, the Creditor's Objection is moot because the Plan was not confirmed.

41. [19-12668](#)-A-13     **IN RE: MARCO CISNEROS AND VERONICA ESTRADA**  
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF US BANK  
7-24-2019    [\[18\]](#)

MARCO CISNEROS/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Notice:** Written opposition filed by responding party

**Disposition:** Continued for evidentiary hearing

**Order:** Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

42. [15-11870](#)-A-13     **IN RE: GLENDA LANDIN**  
[SL-1](#)

MOTION TO INCUR DEBT  
8-13-2019    [\[57\]](#)

GLENDA LANDIN/MV  
SCOTT LYONS

**Tentative Ruling**

**Motion:** Approve New Debt [Vehicle Loan]  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Denied without prejudice  
**Order:** Prepared by moving party

The debtor seeks to incur new debt to finance the purchase of a vehicle. However, no certificate or proof of service was filed with the Motion to show that the Motion was served properly. Therefore, the Motion is denied without prejudice.

43. [19-12679](#)-A-13     **IN RE: NAEEM/SAIMA QARNI**  
[PRG-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY GULAMNABI VAHORA, M.D.,  
PH.D.  
8-13-2019    [\[35\]](#)

GULAMNABI VAHORA/MV  
NICHOLAS ANIOTZBEHERE  
SHANE SMITH/ATTY. FOR MV.

**FINAL RULING**

Objection is Sustained because Debtor filed an Amended Plan on August 19, 2019 (Dckt. 52), a de facto withdrawal of the pending plan.

44. [18-13981](#)-A-13     **IN RE: JENNIFER JENKINS**  
[MHM-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1  
7-1-2019    [\[27\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS

**Final Ruling**

**Objection:** Objection to Claim  
**Notice:** LBR 3007-1(b)(1); written opposition required  
**Disposition:** Sustained  
**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in bankruptcy. "The word 'enforceable' does not appear in the Code's definition of 'claim.'" *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy does not violate the FDCPA). "[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a 'claim.'" The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense." *Id.* (citations omitted).

The applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The claimant has filed a proof of claim based on a credit account that is stale. The objection's well-pleaded facts show that the debtor has made no payments or other transactions on this credit account within the four years prior to the petition date. Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant's claim based on this loan account is time barred and unenforceable under state law. The objection will be sustained. The claim will be disallowed.

45. [19-12788](#)-A-13     **IN RE: JOHNNY/MARY MORALES**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
8-13-2019    [[31](#)]

U.S. BANK NATIONAL  
ASSOCIATION/MV  
MARK ZIMMERMAN  
KATIE PARKER/ATTY. FOR MV.

**No Ruling**

46. [14-15493](#)-A-13     **IN RE: DANIEL/LYDIA WILLIAMS**  
[FW-6](#)

MOTION TO MODIFY PLAN  
7-9-2019    [[118](#)]

DANIEL WILLIAMS/MV  
PETER FEAR  
RESPONSIVE PLEADING

**No Ruling**

47. [19-12993](#)-A-13     **IN RE: WILLIAM COOK**

NOTICE OF INCOMPLETE FILING AND INTENT TO DISMISS CASE  
7-15-2019    [[3](#)]

**No Ruling**

48. [19-12993](#)-A-13     **IN RE: WILLIAM COOK**  
[GK-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-6-2019    [\[36\]](#)

38SDJV HOLDINGS, LLC/MV  
MILES GRANT/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Relief from Stay

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted in part, denied in part

**Order:** Civil minute order

**Subject:** 4237 E. Clinton Ave., Fresno, California

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third-party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion in part and deny the motion in part.

**SECTION 362(d)(4) RELIEF**

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors . . . ." See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (i) a transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A, of which the court takes judicial notice. Fed. R. Evid. 201. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.



## **SECTION 362(d) (1) RELIEF**

Given that some uncertainty exists about whether the stay applies, the court will grant stay relief. The court grants stay relief for cause under § 362(d) (1) because the property is not estate property and because the property's transfer was unauthorized.

## **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

38SDJV Holdings, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part as to relief under 11 U.S.C. § 362(d) (1). The automatic stay is vacated for cause under § 362(d) (1) with respect to the property described in the motion, commonly known as 4237 E. Clinton Ave., Fresno, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a) (3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that the motion is denied in part as to relief under 11 U.S.C. § 362(d) (4). No other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs against the debtor for bringing this motion, the request is denied.

49. [18-14394](#)-A-13     **IN RE: DEREK WHITFIELD**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-29-2019    [\[29\]](#)

WELLS FARGO BANK, N.A./MV  
SCOTT LYONS  
AUSTIN NAGEL/ATTY. FOR MV.

### **Final Ruling**

**Motion: Stay Relief**

**Notice: LBR 9014-1(f)(1); written opposition required**

**Disposition: Granted**

**Order: Civil minute order**

**Subject: 2016 Chrysler 300, VIN ending in 6541**

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, California Practice Guide: Bankruptcy ¶ 8:1065.1 (rev. 2012) (citing United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and 1 postpetition payment is past due in the amount of \$2,659.40.

The Confirmed Chapter 13 Plan provides for monthly payments on Movant's claim in the amount of \$424.69. ECF No. 9. On August 2, 2019, a Notice of Default and Motion To Dismiss was filed by the Chapter 13 Trustee due to a delinquency in Plan payments.

Wells Fargo Bank, N.A., contends that the value of the vehicle is depreciating and continues to depreciate. Thus, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(C) (requiring adequate protection payments to commence not later than 30 days after the petition as to any creditor secured by personal property).

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wells Fargo Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2016 Chrysler 300, VIN ending in 6541, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

50. [19-12395](#)-A-13     **IN RE: TAMMIE SPARKS**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-29-2019    [\[15\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS

#### **Final Ruling**

This motion has been voluntarily dismissed by the movant. ECF No. 22.

51. [18-14796](#)-A-13     **IN RE: TIMOTHY GENTRY**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-24-2019    [\[19\]](#)

SANTANDER CONSUMER USA INC./MV  
MARK ZIMMERMAN  
JENNIFER WANG/ATTY. FOR MV.  
NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2016 Dodge Challenger, VIN ending in 5568

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and 7 postpetition payments are past due.

Santander Consumer USA, Inc., contends that the value of the vehicle is depreciating and continues to depreciate. Thus, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(C) (requiring adequate protection payments to commence

not later than 30 days after the petition as to any creditor secured by personal property).

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Santander Consumer USA, Inc.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2016 Dodge Challenger, VIN ending in 5568, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

52. [19-10296](#)-A-13     **IN RE: SANDRA BARBOZA**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
6-20-2019    [\[28\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

#### **Final Ruling**

This motion has been voluntarily dismissed by the movant. ECF No. 61.

53. [19-10296](#)-A-13     **IN RE: SANDRA BARBOZA**  
[TCS-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
7-1-2019    [\[40\]](#)

SANDRA BARBOZA/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

**No Ruling**

54. [19-13308](#)-A-13     **IN RE: MICHAEL/CECELIA BLANCO**  
[PWG-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
8-19-2019    [\[17\]](#)

MICHAEL BLANCO/MV  
PHILLIP GILLET  
**OST** 8/20/19

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Denied

**Order:** Civil minute order

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to

the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

The prior case, No. 19-11295, was dismissed on July 3, 2019, on several grounds. ECF Nos. 44, 46. Those grounds included failure to provide various 11 U.S.C. 521 documents, file a feasible plan, file a complete and accurate Schedule h and Statement of Financial Affairs, and failure to file an "Authorization to Release Information" form. *Id.*

In the Declaration of Christina Guerrero filed in support of the Motion, Guerrero testifies that she has "uploaded the trustee's packet in the ftp site." Declaration, ECF No. 19.

No personal knowledge testimony is offered by the debtors Michael Blanco and Cecelia Ann Blanco. No explanation is provided regarding the feasibility of the proposed Chapter 13 Plan, or the completeness and accuracy of debtors' schedules. No changes in circumstances which might make this case successful are asserted.

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The supporting declaration does not point to any substantial change in the personal and financial affairs of the debtors since the dismissal of their previous case. The motion will be denied.

55. [19-13309](#)-A-13     **IN RE: ROGELIO/MYRA RIOS**  
[PWG-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
8-20-2019    [\[17\]](#)

ROGELIO RIOS/MV  
PHILLIP GILLET  
**OST** 8/20/19

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Denied

**Order:** Civil minute order

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the

current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

The prior case, No. 19-11294, was dismissed on July 3, 2019, after Debtor failed to make plan payments. ECF Nos. 24, 55, 56.

In the Declaration of Christina Guerrero filed in support of the Motion, Guerrero testifies that she has "uploaded the trustee's packet in the ftp site." Declaration, ECF No. 19.

No explanation, and no testimony, is offered by the debtors Rogelio Frausto Rios and Myra Rios showing why the prior case was dismissed for failure to make payments, what circumstances have changed, and why the present case will be successful.

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The supporting declaration does not point to any substantial change in the personal and financial affairs of the debtors since the dismissal of their previous case. The motion will be denied.