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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANIBAL MESALA SILVA,

vs.
HAROLD S. MARENUS and BARRY K.
LANDER,

Respondents.

CASE NO. 07cv1856 BTM (AJB)

**ORDER DENYING APPLICATION
TO PAY FILING FEES THROUGH
DEBTOR'S CHAPTER 13 CASE**

On September 21, 2007, Petitioner filed a petition for a writ of mandamus to compel the clerk of the Bankruptcy Appellate Panel, Harold S. Marenus, and the clerk of the Bankruptcy Court, Barry K. Lander, to refer Petitioner's bankruptcy appeal case to this District Court, as he elected at the time of filing his appeal. Petitioner did not pay the filing fee but, instead, included within the petition an application to pay the filing fees through his Chapter 13 bankruptcy case. In particular, he requests that this Court enter "an order approving payment of the filing fees through [his] Chapter 13 Plan, case #07-03740, and to send the bill to the Trustee, David L. Skelton." [Petition at 7; Doc. #1.]

A review of the Bankruptcy Court docket reveals that Petitioner's amended Chapter 13 plan, which was filed on September 21, 2007, does include a provision for the payment of court filing fees in connection with this petition. [Bankr. S.D. Cal., #07-03740-JM13; Doc. #48.] However, the plan has not yet been approved and objections to the plan are scheduled for hearing on October 24, 2007. It is not the province of this Court to direct that payments

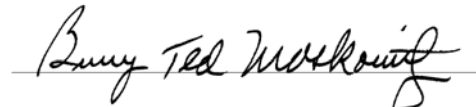
1 be made with respect to a Chapter 13 plan, and Petitioner's application is properly directed
2 to the Bankruptcy Court. Petitioner's application is therefore **DENIED** without prejudice.

3 The Court cannot proceed with Petitioner's action without his payment of the requisite
4 filing fee, as specified in 28 U.S.C. § 1914, or approval of his proceeding *in forma pauperis*
5 pursuant to 28 U.S.C. § 1915. The Clerk is directed to include a copy of the form application
6 to proceed *in forma pauperis* when serving this order upon Petitioner.

7 In order to proceed with this action, Petitioner must either: (1) pay the full \$350 filing
8 fee; (2) file a motion to proceed *in forma pauperis*; or (3) if Petitioner's Chapter 13 plan is
9 approved, file a notice informing the Court that payment of the filing fee will be made directly
10 by the Trustee in accordance with the plan. **Petitioner must proceed with one of these**
11 **options on or before October 26, 2007.** Failure to do so will result in the dismissal of this
12 action.

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14 **IT IS SO ORDERED.**

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16 DATED: September 28, 2007

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18 Honorable Barry Ted Moskowitz
19 United States District Judge
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