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

ANIBAL MESALA SILVA,

Appellant,

vs.

PATRICK C. HARGADON; GERALD  
DAVIS; and FEDERAL APPELLEES,

Appellees.

CASE NO. 08cv784-WQH-RBB

ORDER

HAYES, Judge:

The matter before the Court is the motion to stay proceedings pursuant to the Servicemembers Civil Relief Act (Doc. 28) filed by Appellant Anibal Mesala Silva.

On April 29, 2008, Appellant Anibal Mesala Silva, acting pro se, filed an appeal from an order of the United States Bankruptcy Court for the Southern District of California pursuant to Federal Rule of Bankruptcy Procedure 8001 and 28 U.S.C. § 158. (Doc. 1.)

On June 17, 2008, Appellant filed a motion to stay these proceedings until September 30, 2008 pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App. § 522. (Doc. 5.)

On August 6, 2008, the Court denied without prejudice the motion to stay the proceedings due to Appellant's failure to submit a letter of communication from his commanding officer as required by § 522(b)(2)(B). (Doc. 9.) In the same order, the Court set a briefing schedule pursuant to Bankruptcy Rule 8009 ordering Appellant to file his opening brief by September 30, 2008 and Appellees to file their responsive briefs by October 31, 2008.

1 On September 30, 2008, Appellant filed an ex parte motion requesting the Court to  
2 extend the time to file his opening brief to October 6, 2008. (Doc. 10.) The Court granted the  
3 ex parte motion and ordered Appellant to file his opening brief by October 6, 2008. (Doc. 11.)

4 On October 31, 2008, the Federal Appellees and Appellee Davis filed their briefs, in  
5 which they requested dismissal of this appeal for failure to file an opening brief in accordance  
6 with the schedule set by this Court and the applicable law governing bankruptcy appellate  
7 procedure. (Docs. 12, 13, 14.)

8 On November 13, 2008, Appellant filed an ex parte motion requesting the Court to  
9 extend the time to file a response in opposition to the motions to dismiss to December 5, 2009.  
10 (Doc. 16.) The Court granted the ex parte motion and ordered Appellant to file a response in  
11 opposition to the motions to dismiss on or before December 5, 2008. (Doc. 17.) No response  
12 was filed by Appellant.

13 On February 4, 2009, the Court ordered Appellee to serve and file an opening brief and  
14 any response to the motion to dismiss no later than Monday, February 23, 2009. (Doc. 18.)  
15 Appellant was warned that failure to comply with the Court's order may result in dismissal of  
16 his bankruptcy appeal. Appellant did not file an opening brief or a response to the motion to  
17 dismiss.

18 On February 26, 2009, the Court granted Appellees' motions to dismiss, concluding that  
19 Appellant's failure to file an opening brief despite being given several opportunities to do so  
20 warranted dismissal pursuant to Bankruptcy Rule 8001. (Doc. 19.) The Clerk of the Court  
21 entered judgment accordingly. (Doc. 20.)

22 On March 5, 2009, Appellant filed a second motion to stay the proceedings pursuant  
23 to the Servicemembers Civil Relief Act, 50 U.S.C. App. § 522. (Doc. 22.)

24 On March 10, 2009, the Federal Appellees filed a response in opposition to Appellant's  
25 second motion to stay the proceedings. (Doc. 23.) Appellee Davis filed a notice of joinder to  
26 the Federal Appellees' opposition to the motion to stay. (Doc. 24.)

27 On April 10, 2009, the Court denied the second motion to stay the proceedings due to  
28 Appellant's failure to submit a letter of communication from his commanding officer as

1 required by § 522(b)(2)(B). (Doc. 26.)

2 On April 15, 2009, Appellant filed a third motion to stay the proceedings pursuant to  
3 the Servicemembers Civil Relief Act, 50 U.S.C. App. § 522. (Doc. 28.)


4 On May 5, 2009, Appellee Davis filed a response in opposition to Appellant's third  
5 motion to stay the proceedings. (Doc. 29.)

6 **RULING OF THE COURT**

7 Appellant moves the Court to stay these proceedings pursuant to the Servicemembers  
8 Civil Relief Act, 50 U.S.C. App. § 522. Appellant explains that he was ordered to attend the  
9 Special Forces Assessment and Selection training from April 13, 2009 until May 2, 2009.  
10 However, this appeal was dismissed on February 26, 2009.

11 IT IS HEREBY ORDERED that the motion to stay the proceedings pursuant to the  
12 Servicemembers Civil Relief Act (Doc. 28) filed by Appellant is DENIED.

13 DATED: June 4, 2009

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15 **WILLIAM Q. HAYES**  
16 United States District Judge  
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