

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

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: JANUARY 18, 2022
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("880," not "808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-24210](#)-A-7 **IN RE: PARIS/DONTE FLORES**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-30-2021 [\[15\]](#)

VINCENT FROUNJIAN/ATTY. FOR MV.
STATEWIDE AUTO SALES VS.

Final Ruling

This case was dismissed on January 10, 2022, ECF No. 21. As the case was dismissed; this matter will be denied as moot.

2. [21-23912](#)-A-7 **IN RE: ROBERT/JENNIFER FINE**
[DBL-2](#)

MOTION TO COMPEL ABANDONMENT
1-3-2022 [\[26\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); non opposition filed by chapter 7 trustee

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: Fine Detailing

Equipment: 2002 Ford F-350 Pick Up; Air Compressor; 7 Buffers; Carpet Extractor; 2 Shop Vacs; 3 Pressure Washers; Steam Cleaner; Cleaning Supplies and Waxes

Value: \$9,758.00

Amount Claimed Exempt: \$9,326.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

The debtor requests an order compelling the chapter 7 trustee's abandonment of the estate's interest in the debtor's business "Fine Detailing"; a vehicle; and equipment/ supplies used in the operation of the business. On January 10, 2022, the chapter 7 trustee Nikki Farris filed a non-opposition to this motion.

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and

benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.

3. [20-25322](#)-A-7 **IN RE: JOGINDER SINGH**
[KJH-2](#)

MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY,
ACCOUNTANT(S)
12-21-2021 [\[73\]](#)

DAVID ARIETTA/ATTY. FOR DBT.
DEBTORS DISCHARGED: 09/07/2021

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$1,741.50

Expenses: \$64.85

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Gabrielson & Company, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1,741.50 and reimbursement of expenses in the amount of \$64.85.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

Gabrielson & Company's application for allowance of final compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows first and final compensation in the amount of \$1,741.50 and reimbursement of expenses in the amount of \$64.85.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

4. [21-23051](#)-A-7 **IN RE: NICHOLAS/JENNIFER WILLIAMS**
[DEF-3](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO ABANDON
10-20-2021 [\[48\]](#)

DAVID FOYIL/ATTY. FOR DBT.

No Ruling

5. [20-24259](#)-A-7 **IN RE: NESTOR/MARIA QUILATES**
[BLF-3](#)

CONTINUED MOTION TO SELL
11-15-2021 [\[130\]](#)

ARASTO FARSAD/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: Equity in: Real Property located at 2681 Cinnabar Hills Ct., Brentwood, California; 2005 Toyota Sienna; 2006 Dodge Gran Caravan; 2007 Audi A3; 2007 Kia Rio; Non-exempt funds in checking account \$352; Rental Security Deposit \$2,000

Buyer: Nestor Quilates and Maria Quilates

Sale Price: \$42,608.61

Sale Type: Private sale subject to overbid opportunity

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).

BACKGROUND

The chapter 7 trustee seeks an order approving the sale of estate assets to the debtors. The hearing on this motion was continued from December 6, 2021, to allow the trustee to report the status of claims filed in this case after the passing of the claims bar date. The claims bar date has passed and the trustee reports that additional unsecured claims have been filed in the amount of \$12,608.61.

The sale agreement between the parties provided that in the event additional claims were filed that the amount due from the debtors under the agreement would increase.

The trustee has filed a Status Report, ECF No. 152. The trustee has detailed the following modification to the agreement: the debtors will make additional monthly payments to pay the amount of \$12,608.61 which represents the total amount of additional claims filed.

The adoption of these additional monthly payments is supported by the following: Declaration of Maria Quilates, ECF NO. 157; Declaration of Nestor Quilates, ECF No. 158; Declaration of Kimberly Husted, ECF No. 153; Declaration of Arasto Farsad, debtors' counsel, ECF No. 154 and the Status Report and Exhibits in support of the motion, ECF Nos. 152 and 155.

The modified payment schedule is as follows: 1) deposit of \$3,000.00 upon signing of agreement; 2) 12 monthly payments of \$3,000.00 received by the close of business on the first day of each month beginning January 1, 2022; final payment of \$3,608.61 due before close of business on February 1, 2023, ECF No. 152, 3:22-26, 4:1-2.

The trustee reports that the debtors have paid the initial \$3,000.00 deposit and the first monthly payment due under the agreement, *id.*, 3:13-14.

AUTHORITY

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

6. [21-20864](#)-A-7 **IN RE: HEATH/CHRISTIAN FULKERSON**
[GMR-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND/OR
MOTION FOR TURNOVER OF PROPERTY
6-22-2021 [\[80\]](#)

Final Ruling

Motion: Objection to Debtor's Claim of Exemptions and/or Motion for Turnover of Property

Notice: Continued from December 17, 2021

Disposition: Continued to March 14, 2022, at 9:00 a.m.

Order: Civil minute order

BACKGROUND

The debtors filed this bankruptcy proceeding under chapter 7 on March 11, 2021. On June 22, 2021, the chapter 7 trustee, Geoffrey Richards filed this Objection to Claim of Exemption in Income Tax Proceeds and Motion to Compel Turnover of Income Tax Proceeds, ECF No. 80.

The debtors converted their case to chapter 13 on August 6, 2021, ECF No. 131. On October 20, 2021, the chapter 13 trustee filed a motion to reconvert the case to chapter 7, ECF No. 158. The motion to reconvert was granted on December 17, 2021, ECF No. 183.

During the pendency of the case the chapter 7 trustee's objection to the debtors' claim of exemptions and motion to turnover property was continued, eventually to January 18, 2022, at 9:00 a.m.

Upon reconversion to chapter 7 Kimberly Husted was appointed as the chapter 7 trustee in this matter, ECF No. 193. As Ms. Husted was not the chapter 7 trustee originally appointed in this case the court will continue the hearing on this objection to exemptions and motion for turnover to allow Ms. Husted time to review the objection and examine the debtors at the 341 meeting currently scheduled on February 18, 2022, at 9:00 a.m.

The hearing on this motion will be continued to March 14, 2022, at 9:00 a.m.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the objection to claim of exemptions and motion for turnover is continued to March 14, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing, the chapter 7 trustee shall file and serve pleadings which either: (1) ratify the objection to exemption and

motion for turnover; or (2) withdraw the objection and motion for turnover.

7. [21-23172](#)-A-7 **IN RE: ELENA NUNES**
[BLF-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ELENA MARIA NUNES
12-9-2021 [\[21\]](#)

MICHAEL MOORE/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

Final Ruling

Motion: Approve Settlement Agreement
Disposition: Denied without prejudice
Order: Civil minute order

The movant did not provide sufficient and/or proper notice of the hearing on the approval of the compromise or settlement agreement. See Fed. R Bankr. P. 2002, LBR 9014-1(d)(3)(B).

The hearing date is indicated in the caption of the notice of hearing as January 18, 2022, ECF No. 22. However, the hearing date indicated in the body of the notice is January 4, 2022, *id.*, 1:24-26. This inconsistency negatively impacts the ability of any party to determine: 1) the proper date and time of the hearing; and 2) whether a written opposition is due and the date such opposition must be filed and served.

Given the inconsistencies in the notice the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The chapter 7 trustee's motion to approve settlement has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

8. [21-23172](#)-A-7 **IN RE: ELENA NUNES**
[BLF-4](#)

MOTION FOR COMPENSATION FOR LORIS L BAKKEN, TRUSTEE'S
ATTORNEY
12-9-2021 [\[26\]](#)

MICHAEL MOORE/ATTY. FOR DBT.

Final Ruling

Motion: Motion to Approve Compensation

Disposition: Denied without prejudice

Order: Civil minute order

The movant did not provide sufficient and/or proper notice of the hearing on the motion for approval of compensation. See Fed. R Bankr. P. 2002, LBR 9014-1(d) (3) (B).

The hearing date is indicated in the caption of the notice of hearing as January 18, 2022, ECF No. 27. However, the hearing date indicated in the body of the notice is January 4, 2022, *id.*, 1:22-23. This inconsistency negatively impacts the ability of any party to determine: 1) the proper date and time of the hearing; and more importantly 2) whether a written opposition is due and the date such opposition must be filed and served.

Given the inconsistencies in the notice the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The chapter 7 trustee's motion to approve compensation has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

9. [20-24691](#)-A-7 **IN RE: FREEDOM 123 LLC**
[GRF-3](#)

MOTION FOR COMPENSATION FOR GARY FARRAR, CHAPTER 7 TRUSTEE
12-20-2021 [\[331\]](#)

HOWARD NEVINS/ATTY. FOR MV.

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

First and Final Compensation: \$22,500.00

Expenses: \$957.53

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 application was required not less than 14 days before the hearing on the application. 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).

The chapter 7 trustee, Gary Farrar, requests the court approve this first and final motion for compensation.

The motion seeks approval of compensation for professional services rendered by the trustee from March 5, 2021, through the conclusion of this case in the aggregate sum of \$23,457.53, representing the voluntarily reduced amount of \$22,500.00 for trustee services, and \$957.53 for associated costs. See ECF No. 333.

COMPENSATION AND EXPENSES

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

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.

The chapter 7 trustee's application for allowance of compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$22,500.00 and reimbursement of expenses in the amount of \$957.53.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

10. [21-23497](#)-A-7 **IN RE: JEAN DELA CRUZ**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
WITHOUT ENTRY OF DISCHARGE AND/OR MOTION TO EXTEND TIME TO
FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)
12-28-2021 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Chapter 7 Case

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

Disposition: Granted

Order: Prepared by the movant

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).

The United States trustee seeks dismissal of this chapter 7 case pursuant to the terms of a stipulation with the debtor. The U.S. Trustee is prepared to file a motion to dismiss this case for abuse pursuant to 11 U.S.C. §§ 707(b)(1), 707(b)(2) (i.e., presumed abuse) and/or 707(b)(3) (i.e., bad faith and/or totality of the circumstances abuse). The debtor indicated that she does not wish to defend the U.S. Trustee's allegations and has stipulated to dismissal of this chapter 7 bankruptcy case without discharge, ECF No. 20. The parties are not aware of any prepetition/pre-dismissal bad faith conduct and/or non 11 U.S.C. § 707(b) abuse of the bankruptcy process that would limit the debtor's right to dismiss the case.

CASE DISMISSAL

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal" 11 U.S.C. § 305(a)(1); *see, e.g., In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. *See* 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

The court finds that cause exists to dismiss the case and that the dismissal poses no prejudice to creditors. The court grants the motion to dismiss.

11. [21-23998](#)-A-7 **IN RE: VERONICA NARANJO**
[JCK-1](#)

MOTION TO DISMISS DUPLICATE CASE
12-2-2021 [\[8\]](#)

KATHLEEN CRIST/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Chapter 7 Case

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

Disposition: Granted

Order: Prepared by the movant

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).

The debtor seeks dismissal of the instant chapter 7 case because this case was an accidental, duplicative filing of the debtor's previous chapter 7 case number 21-21125, filed March 20, 2021, and discharged July 28, 2021. The filing of the instant case was an error.

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal" 11 U.S.C. § 305(a)(1); *see, e.g., In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. *See* 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

The court will grant the motion

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.

The debtor's motion to dismiss chapter 7 case 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, and the case is dismissed.

12. [21-23346](#)-A-7 **IN RE: RAYMOND/ESTRELLA RADO**
[UST-2](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE
A MOTION TO DISMISS CASE UNDER SEC. 707(B) , MOTION TO
CONVERT CASE
1-4-2022 [[16](#)]

STEPHAN BROWN/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

Tentative Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to
Object to Discharge or File a Motion to Dismiss

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

Disposition: Granted

Order: Prepared by moving party

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The United States Trustee requests an order extending the time for filing a complaint objecting to the debtor's discharge under 11 U.S.C. § 727 and for filing a motion to dismiss or convert pursuant to 11 U.S.C. § 707(b) to April 4, 2022.

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through April 4, 2022.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e) (1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e) (1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through April 4, 2022.

13. [21-24175](#)-A-13 **IN RE: PETE GARCIA**
[PGM-1](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
12-21-2021 [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: Continued from January 5, 2022

Disposition: Granted

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). 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).

The debtor requests an order extending the automatic stay under 11 U.S.C. § 362(c) (3). The hearing on this motion was continued from January 5, 2022, to allow the debtor to augment the record.

This is the fourth chapter 13 case filed by the debtor since 2018. None of the plans have been completed in the three prior chapter 13 cases. The last case 20-21974 was dismissed on October 20, 2021, for plan delinquency. The Civil Minutes from the hearing on the prior motion to dismiss show that the debtor intended to sell real property to cure the plan delinquency, 20-21974, ECF No. 91. The plan payments in the prior case were \$5,511.35 per month.

The debtor has filed the following additional evidence in support of his motion: Declaration of Pedro Garcia, Sr., ECF No. 29; Supplemental Exhibits C and D, ECF No. 28; Supplemental Declaration of Pete Garcia, ECF No. 27.

The chapter 13 trustee had previously expressed concern about the feasibility of the proposed plan as the debtor's budget included income from contributions in the amount of \$400.00 from the debtor's father. The debtor's father, Pedro Garcia, Sr. has filed a Declaration, ECF No. 29, stating his willingness and averring his ability to contribute this sum of money to the debtor each month.

The previous plan failed because the debtor was unable to market and sell his real property as called for in the plan. The debtor's Supplemental Declaration, ECF No. 27, has been filed wherein the debtor states that he has achieved his prior spouse's cooperation in listing and selling the real property.

In support of this statement the debtor has also filed Supplemental Exhibits C and D, ECF No. 28. Exhibit C is a listing agreement for the sale of 6573 Park Riviera Way, Sacramento, California. The agreement is signed by the listing agent, Sandra Daniels of First Authority Realty/eXpRealty. The agreement is also signed by the debtor and his prior spouse, Natalie Garcia. The property is listed at \$630,000.00 and the agreement continues from January 11, 2022, through December 31, 2022.

Exhibit D is a listing agreement for the sale of 2870 26th Street, Sacramento, California. The property is listed with the same agent and broker and signed by the debtor and Natalie Garcia. The property is listed at \$420,000.00 and the agreement continues from January 11, 2022, through December 31, 2022.

EXTENSION OF THE STAY

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). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

The signed listing agreements represent a change from the debtor's prior circumstances which prohibited the sale of the properties in the prior case.

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.