

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
510 19th Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** FEBRUARY 7, 2018  
**CALENDAR:** 9:00 A.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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**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. [18-10101](#)-A-13     **IN RE: JOSEPH/NANCY MOON**  
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
1-22-2018    [9](#)

JOSEPH MOON/MV  
ROBERT WILLIAMS

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**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).

### **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.*

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.

The present motion to extend the automatic stay has been presented to the court. 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.

2. [17-14503](#)-A-13     **IN RE: JOEY/AUDREA ESTRADA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-5-2018    [[32](#)]

MICHAEL MEYER/MV  
D. GARDNER  
RESPONSIVE PLEADING  
WITHDRAWN

### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

3. [18-10105](#)-A-13     **IN RE: SCOTT MARSH**  
[JRL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
1-19-2018    [[8](#)]

SCOTT MARSH/MV  
JERRY LOWE

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**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).

### **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.*

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.

The present motion to extend the automatic stay has been presented to the court. 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.

4. [12-19411](#)-A-13     **IN RE: RICHARD/MINDI FARRELL**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-11-2017    [[108](#)]

MICHAEL MEYER/MV  
LEONARD WELSH  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

5. [17-13211](#)-A-13     **IN RE: GORDIE GORDON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-26-2017    [[44](#)]

PHILLIP GILLET  
\$71.00 FINAL INSTALLMENT PAYMENT 12/26/17

#### **Final Ruling**

The fee paid in full, the order to show cause is discharged and the case shall remain pending.

6. [17-14111](#)-A-13     **IN RE: JOHN DAILO AND EVELYN SALAZAR-DAILO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-8-2018    [[26](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

7. [17-10812](#)-A-13     **IN RE: CARLOS HERNANDEZ**  
[ASW-2](#)

MOTION TO MODIFY PLAN  
1-9-2018    [[42](#)]

CARLOS HERNANDEZ/MV  
ALLAN WILLIAMS  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

8. [17-14512](#)-A-13     **IN RE: SALVADOR TEJEDA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-5-2018    [[19](#)]

MICHAEL MEYER/MV

**Final Ruling**

**Motion:** Dismiss Case

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

**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). 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).

#### **CASE DISMISSAL**

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

#### **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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

9. [17-13914](#)-A-13     **IN RE: MARVIN/SHELIA MARTIN**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-8-2018    [\[18\]](#)

MICHAEL MEYER/MV  
D. GARDNER  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

### **CASE DISMISSAL**

The trustee moves to dismiss for failure to provide tax returns (federal and state for 2016) and for failure to file complete and accurate schedules. The debtors oppose. They contend they have given the trustee their 2016 tax return. And they have amended Schedule A/B, Schedule J and the SOFA (these were the problematic schedules and statements).

The debtors have offered no evidence that their 2016 tax returns have been provided. The unsworn representation of counsel is insufficient.

The court will dismiss this case because the debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). And it will dismiss because the documents are tax returns required to be provided (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. §§ 521(e)(2)(A)-(B); 1307(c)(1).

### **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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

10. [17-14817](#)-A-13     **IN RE: LARRY/SILVIA HULSEY**  
[WDO-1](#)

MOTION TO VALUE COLLATERAL OF GM FINANCIAL  
1-9-2018    [\[19\]](#)

LARRY HULSEY/MV  
WILLIAM OLCOTT  
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.

11. [17-13418](#)-A-13     **IN RE: GENE/ADRIENNE SMITH**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-9-2018    [[48](#)]

MICHAEL MEYER/MV  
D. GARDNER  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

12. [17-13818](#)-A-13     **IN RE: ANTHONY FRACKOWIAK**  
[RSW-2](#)

MOTION TO CONFIRM PLAN  
12-19-2017    [[26](#)]

ANTHONY FRACKOWIAK/MV  
ROBERT WILLIAMS

**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 bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

13. [17-12120](#)-A-13     **IN RE: SHERRY SIMPSON**  
[RSW-4](#)

MOTION TO APPROVE LOAN MODIFICATION  
1-17-2018    [\[58\]](#)

SHERRY SIMPSON/MV  
ROBERT WILLIAMS

### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**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).

### **LOAN MODIFICATION**

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1).

### **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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

14. [17-13026](#)-A-7     **IN RE: LUIS TADEO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-14-2017    [[33](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
CONVERTED; RESPONSIVE PLEADING

**Final Ruling**

The case converted, the matter is denied as moot.

15. [13-15832](#)-A-13     **IN RE: MICHAEL/KATHRYN COLLIE**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-19-2017    [[51](#)]

MICHAEL MEYER/MV  
SUSAN SALEHI  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [13-14438](#)-A-13     **IN RE: STEPHANIE LANCASTER**  
[PWG-2](#)

MOTION FOR COMPENSATION FOR PHILLIP W. GILLET JR., DEBTORS  
ATTORNEY(S)  
12-27-2017    [[39](#)]

PHILLIP GILLET

### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**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 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 13 case, Phillip W. Gillet, Jr. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3,633.75 and reimbursement of expenses in the amount of \$55.02. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). 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. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim 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.

Phillip W. Gillet, Jr.'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 final compensation in the amount of \$3,633.75 and reimbursement of expenses in the amount of \$55.02. The aggregate allowed amount equals \$3,688.77. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$3,688.77 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

17. [17-14341](#)-A-13     **IN RE: MICHAEL/JESSICA OWEN**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-5-2018    [[14](#)]

MICHAEL MEYER/MV  
NEIL SCHWARTZ  
RESPONSIVE PLEADING  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

18. [16-13343](#)-A-13     **IN RE: AIDE/JAMES BLANCO**  
[PK-7](#)

MOTION TO SELL  
1-10-2018    [[130](#)]

AIDE BLANCO/MV  
PATRICK KAVANAGH  
RESPONSIVE PLEADING

#### **No Ruling**

19. [17-13543](#)-A-13     **IN RE: ELOY RODRIGUEZ AND ANGELA**  
VASS-RODRIGUEZ  
[PK-2](#)

MOTION TO VALUE COLLATERAL OF ALTA ONE FEDERAL CREDIT UNION  
1-3-2018    [\[52\]](#)

ELOY RODRIGUEZ/MV  
PATRICK KAVANAGH

## **Final Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

## **COMPLIANCE WITH RULE 9013**

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request. Under this rule, a motion lacking proper grounds for relief (or lacking a statement of the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

This motion requests an order valuing collateral that is the debtors' residence located at 649 Maria Court, Ridgecrest, CA. The motion cites *In re Lam*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

Pursuant to a motion to value collateral, chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. See 11 U.S.C. § 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002).

In this case, the motion contains no facts from which the court can conclude that the respondent's lien is (1) junior, and (2) wholly unsecured. The only fact offered in evidence to assist in determining whether the respondent's lien is wholly unsecured is the value of the real property, which is \$300,000, but even this information is not provided in the motion.

The motion also requests that the respondent's claim be treated as a "wholly unsecured *in rem*" claim. The term "unsecured *in rem*" is a phrase that appears internally contradictory. The court interprets this to mean that the respondent's claim is non-recourse, and that the debtors' personal liability on it has been discharged.

The motion identifies another case filed by the debtors in 2013, Case No. 13-15845-B-7, a chapter 7 case, in which the debtors received a discharge. But the motion does not state facts from which the court could independently conclude that this claim was discharged in the prior case. And the motion fails to make clear how the discharge of the debtors' personal liability on the respondent's claim affects the outcome of this valuation motion.

## CIVIL MINUTE ORDER

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

The debtors' motion to value collateral 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.

20. [17-13543](#)-A-13     **IN RE: ELOY RODRIGUEZ AND ANGELA**  
VASS-RODRIGUEZ  
[PK-3](#)

MOTION TO VALUE COLLATERAL OF ALTAONE FEDERAL CREDIT UNION  
1-16-2018    [\[59\]](#)

ELOY RODRIGUEZ/MV  
PATRICK KAVANAGH

### Tentative Ruling

**Motion:** Value Collateral [Real Property; Not Principal Residence]

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

**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 respondent 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).

### VALUATION OF COLLATERAL

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); *accord Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value real property collateral securing the respondent's claim. There are two parcels of real property securing the respondent's claim.

#### 404 West Upjohn Ave

The first parcel of real property collateral is located at 404 West Upjohn Avenue, Ridgecrest, CA. This is not the debtors' principal residence.

The court values the collateral at \$125,000. The senior lien is \$145,772.21. The responding creditor's claim is secured as to this parcel only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a). No portion of the value of the collateral secures the respondent's claim.

#### 1157 North Thorn Street

The second parcel of real property collateral is located at 1157 North Thorn Street, Ridgecrest, CA. This is not the debtors' principal residence.

The court values the collateral at \$15,000. The senior tax lien against this parcel totals \$11,393.10. The responding creditor's claim is secured as to this parcel only to the extent of the collateral's value unencumbered by any senior liens. See 11 U.S.C. § 506(a). The responding creditor's claim is secured in the amount of \$3,606.90 (the motion's calculation is slightly incorrect at the amount of \$3,616.90).

#### **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 value real property collateral 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 first parcel of real property collateral is located at 404 West Upjohn Avenue, Ridgecrest, CA, and has a value of \$125,000. Senior liens on the West Upjohn parcel exceed its value. The second parcel of real property collateral is located at 1157 North Thorn Street, Ridgecrest, CA, and has a value of \$15,000. Senior liens on the North Thorn Street parcel secure debt in the amount of \$11,393.10. The respondent has a secured claim in the amount of \$3,606.90 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

21. [12-60545](#)-A-13     **IN RE: JOSE RAMOS**  
[PWG-2](#)

MOTION FOR COMPENSATION FOR PHILLIP W. GILLET, DEBTORS  
ATTORNEY(S)  
12-29-2017    [[50](#)]

PHILLIP GILLET  
RESPONSIVE PLEADING

**No Ruling**

22. [17-14163](#)-A-13     **IN RE: JOHN/RITA CORSON**  
[MHM-1](#)

MOTION TO DISMISS CASE  
1-9-2018    [[23](#)]

MICHAEL MEYER/MV  
PATRICK KAVANAGH  
RESPONSIVE PLEADING

**No Ruling**

23. [16-14465](#)-A-13     **IN RE: MATTHEW ESCALANTE**  
[MHM-3](#)

MOTION TO DISMISS CASE  
12-14-2017    [\[88\]](#)

MICHAEL MEYER/MV  
D. GARDNER  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**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). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B).

The debtor has filed a non-opposition to the motion. 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2,662.

### **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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

24. [12-19978](#)-A-13     **IN RE: LINDA MCCULLAR**  
[MHM-1](#)

MOTION TO DISMISS CASE  
12-29-2017    [[78](#)]

MICHAEL MEYER/MV  
VINCENT GORSKI  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

25. [12-19978](#)-A-13     **IN RE: LINDA MCCULLAR**  
[VAG-4](#)

CONTINUED MOTION FOR COMPENSATION FOR VINCENT A. GORSKI,  
DEBTORS ATTORNEY(S)  
12-4-2017    [[74](#)]

VINCENT GORSKI

#### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**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 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 13 case, Vincent A. Gorski has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$7200 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). 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.

Vincent A. Gorski'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 final compensation in the amount of \$7200 and reimbursement of expenses in the amount of \$0. The aggregate allowed amount equals \$7200. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$7200 shall be allowed as an administrative expense to be paid through the plan.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

26. [17-11884](#)-A-13     **IN RE: MONTE LAMONT**  
[RSW-1](#)

MOTION TO MODIFY PLAN  
12-14-2017    [[48](#)]

MONTE LAMONT/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

**No Ruling**

27. [17-12885](#)-A-13     **IN RE: RANDY LENOIR**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
11-28-2017    [[32](#)]

MICHAEL MEYER/MV  
STEVEN ALPERT  
RESPONSIVE PLEADING

**No Ruling**

28. [17-12885](#)-A-13     **IN RE: RANDY LENOIR**  
[PLG-1](#)

MOTION TO CONFIRM PLAN  
12-20-2017    [[40](#)]

RANDY LENOIR/MV  
STEVEN ALPERT  
RESPONSIVE PLEADING

**No Ruling**

29. [17-14292](#)-A-13     **IN RE: JUAN MEDINA- HERRERA AND STEFANIEROSE**  
MEDINA  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-5-2018    [[18](#)]

MICHAEL MEYER/MV  
NEIL SCHWARTZ  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

30. [17-14596](#)-A-13     **IN RE: ARDIS BROOKS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-5-2018    [[21](#)]

MICHAEL MEYER/MV  
KENUMI MAATAFALE  
RESPONSIVE PLEADING  
WITHDRAWN

**Final Ruling**

The motion withdrawn, the matter is dropped as moot.

31. [17-14696](#)-A-13     **IN RE: OLUSEGUN LERAMO**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-4-2018    [[11](#)]

U.S. BANK NATIONAL  
ASSOCIATION/MV  
FRANCISCO ALDANA  
JENNIFER WONG/ATTY. FOR MV.

**Final Ruling**

**Motion:** Stay Relief under § 362(d)(4)

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

**Disposition:** Granted

**Order:** Prepared by the movant

**Subject:** 8805 O'Meara Court, Bakersfield, CA 93311

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

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d)(4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the

property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." § 362(d)(4).

The debtor has filed 3 prior bankruptcy cases that were each dismissed. Case No. 17-11124 was filed March 29, 2017, and dismissed on November 1, 2017. This case was dismissed for failure to file amended Schedules I and J as ordered by the court.

Case No. 16-14260 was filed November 28, 2016, and was dismissed February 13, 2017. This case was dismissed for the debtor's failure to appear at the scheduled § 341 meeting of creditors and for failure to provide documents to the trustee.

Case No. 15-12789 was filed July 16, 2016 and dismissed on November 9, 2015. This case was dismissed for failure to appear at a scheduled § 341 meeting of creditors and for failure to provide documents to the trustee.

Case No. 12-40315 was filed November 11, 2012, and this case was not dismissed and resulted in a chapter 7 discharge of debtor.

The court finds that this current bankruptcy case, in light of the debtor's 3 prior cases that were filed and dismissed, was filed as part of a scheme to hinder or delay the movant creditor. And this scheme involved the filing of multiple bankruptcy cases, without any intention to prosecute them properly for the purpose of reorganizing.

#### **SECTION 362(c)(4)**

The automatic stay did not come into effect in this case because two of the debtor's prior cases were pending in the year prior to the filing of this case but were dismissed. § 362(c)(4). However, under § 362(c)(4)(A)(ii), the court may, on request of a party in interest, enter an order confirming that no stay is in effect.

The court hereby grants the motion for an order confirming the stay is not in effect in this case. Furthermore, the court will issue such order (confirming the stay has no effect) as binding relief under § 362(d)(4).

## CO-DEBTOR STAY

The court also grants relief from the co-debtor stay. No opposition has been filed to this relief sought. And the court finds that continuation of the co-debtor stay would irreparably harm the movant creditor's interest. § 1301(c)(3).

32. [16-12498](#)-A-13     **IN RE: PAMELA SUNIGA**  
[RSW-3](#)

MOTION TO MODIFY PLAN  
12-14-2017    [[49](#)]

PAMELA SUNIGA/MV  
ROBERT WILLIAMS

### Final Ruling

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 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)(2), 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, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.