

**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: MARCH 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. [17-14401](#)-A-7 **IN RE: KIMBERLY YONEMITSU-TODD**
[MHM-2](#)

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

MICHAEL MEYER/MV
ROBERT WILLIAMS
CONVERTED 2/8/18

Final Ruling

The case converted, the motion is denied as moot.

2. [17-14401](#)-A-7 **IN RE: KIMBERLY YONEMITSU-TODD**
[MHM-3](#)

MOTION TO DISMISS CASE
1-12-2018 [[37](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
CONVERTED 2/8/18

Final Ruling

The case converted, the motion is denied as moot.

3. [17-14503](#)-A-13 **IN RE: JOEY/AUDREA ESTRADA**
[DMG-3](#)

MOTION TO CONFIRM PLAN
1-22-2018 [[44](#)]

JOEY ESTRADA/MV
D. GARDNER
RESPONSIVE PLEADING

No Ruling

4. [17-14503](#)-A-13 **IN RE: JOEY/AUDREA ESTRADA**
[DMG-4](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
2-2-2018 [\[54\]](#)

JOEY ESTRADA/MV
D. GARDNER

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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.

5. [13-10404](#)-A-13 **IN RE: ROBERT CASTANEDA**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-31-2018 [\[74\]](#)

PATRICK KAVANAGH
RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Conditionally approved

Order: Civil minute order

FACTUAL BACKGROUND

In this Chapter 13 case, Patrick Kavanagh has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1500 and reimbursement of expenses in the amount of \$0.

Section 2.06 of the plan provides that the applicant was paid \$0.00 prior to the filing of the case, and it also provides that, subject to prior court approval, the applicant will be paid \$0.00 in additional fees through the plan. The order confirming the plan states that the attorney's fees for the debtor's attorney in the full amount of \$0.00 are approved. Order Confirming 3rd Modified Plan, ECF No. 58.

The chapter 13 trustee has filed comments in response to the application. The trustee contends that the debtor has completed his plan and that the case is in process of closing. All funds derived from all plan payments have been transmitted by the trustee. Further, the debtor has filed his § 1328 certificates, and absent an objection, the debtor should receive a discharge as early as April 2018.

Additionally, the chapter 13 trustee indicates that the debtor did not sign the consent portion of the fee application. The applicant provided a copy of debtor's consent and approval of the fees requested.

Lastly, the applicant has filed a reply to the trustee's comments. The applicant agrees that he must be paid prior to discharge or his fees will be discharged.

COMPENSATION IN CHAPTER 13

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 approves the fees as reasonable and necessary under § 330(a)(1) and (4) on a final basis. But approval of the fees does not resolve the issue of payment or discharge of the fees.

DISCHARGE OF APPLICANT'S ADMINISTRATIVE CLAIM FOR FEES

The parties do not dispute that the applicant's fees will be discharged unless paid before the entry of discharge in this case. This is consistent with § 1328(a) and case law.

Section 1328(a) governs the discharge in the ordinary chapter 13 case. This statute provides for a "discharge of all debts provided for by the [chapter 13] plan or disallowed under section 502 of this title, except any debt [listed in the exceptions to discharge in § 1328(a)(1)-(4)]." 11 U.S.C. § 1328(a).

An administrative claim for attorney's fees under § 330(a)(4) and § 503(b)(2) must be provided for in the plan by payment in full unless the holder of the claim agrees to a different treatment. *Id.* § 1322(a)(2). Furthermore, "an administrative claim 'provided for' in a chapter 13 plan is discharged upon entry of discharge." *In re Rios*, No. EC-05-1285-MOPAB, 2006 WL 6811006, at *4 (B.A.P. 9th Cir. May 1, 2006) (holding that an attorney's administrative claim was "provided for" under the confirmed plan and the debtors' personal liability for that claim was discharged under § 1328(a)).

In this case, the confirmed plan and the order confirming the plan do not contain a *Johnson* provision authorizing payment of additional fees outside the plan by the debtor directly. See *In re Johnson*, 344 B.R. 104, 107-08 (B.A.P. 9th Cir. 2006). Such a provision would preserve the administrative claim for fees and expenses from discharge. See *id.*

Because the applicant's fees and costs were provided for in the plan in the amount of \$0.00, it is a debt provided for by the plan, and all debts provided for by the plan, including applicant's claim for additional attorney's fees, are subject to discharge.

The court will allow the fees requested as reasonable and necessary, but the fees will be discharged unless paid directly by the debtor before the entry of discharge in this case. And the entry of discharge in this case shall not be delayed to accommodate payment of the applicant's fees and expenses.

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.

Patrick Kavanagh's application for allowance of final compensation and reimbursement of expenses has been presented to the court.

Having considered the application, and any oppositions, responses or replies,

IT IS ORDERED that the application is conditionally approved on a final basis. The court allows final compensation in the amount of \$1500 and reimbursement of expenses in the amount of \$0 subject to the following condition: the allowed amounts may be paid only before the discharge is entered from either (1) any retainer held by the applicant or (2) directly by the debtor.

6. [15-14704](#)-A-13 **IN RE: CARLIE MEDINA**
[RSW-3](#)

MOTION TO MODIFY PLAN
1-17-2018 [[44](#)]

CARLIE MEDINA/MV
ROBERT WILLIAMS
DISMISSED

Final Ruling

The case dismissed, the motion is dropped as moot.

7. [17-12105](#)-A-13 **IN RE: ALEXANDER JOHNSON**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
2-13-2018 [[60](#)]

PATRICK KAVANAGH

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(2); no 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). 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, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4980 and reimbursement of expenses in the amount of \$0.

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 an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Patrick Kavanagh's application for allowance of interim 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 an interim basis. The court allows interim compensation in the amount of \$4980 and reimbursement of expenses in the amount of \$0. The aggregate allowed amount equals \$4980. As of the date of the application, the applicant held a retainer in the amount of \$1000. The amount of \$3980 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

8. [17-13211](#)-A-13 **IN RE: GORDIE GORDON**
[PWG-1](#)

PRETRIAL CONFERENCE RE: MOTION TO VALUE COLLATERAL OF CREDIT
ACCEPTANCE CORPORATION
11-10-2017 [[22](#)]

GORDIE GORDON/MV
PHILLIP GILLET
ORDER, ECF NO. 60

Final Ruling

The motion granted by order, ECF #60, the matter is dropped as moot.

9. [17-14512](#)-A-13 **IN RE: SALVADOR TEJEDA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-31-2018 [[25](#)]

DISMISSED

Final Ruling

The case dismissed, the matter is dropped as moot.

10. [17-13914](#)-A-13 **IN RE: MARVIN/SHELIA MARTIN**
[DMG-1](#)

MOTION TO CONFIRM PLAN
1-16-2018 [[24](#)]

MARVIN MARTIN/MV
D. GARDNER
RESPONSIVE PLEADING

No Ruling

11. [17-14817](#)-A-13 **IN RE: LARRY/SILVIA HULSEY**
[MHM-2](#)

MOTION TO DISMISS CASE
2-2-2018 [[33](#)]

MICHAEL MEYER/MV
WILLIAM OLCOTT

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 appear at a § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343. 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.

12. [17-14629](#)-A-13 **IN RE: MATTHEW/JEANNA HILL**
[MHM-2](#)

MOTION TO DISMISS CASE
2-5-2018 [[22](#)]

MICHAEL MEYER/MV
D. GARDNER
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the motion is dropped as moot.

13. [17-14746](#)-A-13 **IN RE: DAVID/DENISE EARL**
[MHM-1](#)

MOTION TO DISMISS CASE
2-5-2018 [[16](#)]

MICHAEL MEYER/MV
SUSAN SALEHI
RESPONSIVE PLEADING

No Ruling

14. [14-10149](#)-A-13 **IN RE: JOHN/WANDA GRIFFIN**
[RSW-5](#)

MOTION FOR SUBSTITUTION AS THE SUCCESSOR FOR DECEASED DEBTOR
1-29-2018 [[48](#)]

JOHN GRIFFIN/MV
ROBERT WILLIAMS

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

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).

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CONTINUED ADMINISTRATION OF THE CASE

Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will authorize further administration of this case.

SUBSTITUTION OF THE PROPER PARTY

Furthermore, the court will order substitution of the proper party. Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bankr. P. 7025; LBR 1016-1(b)(1). The court will substitute the surviving joint debtor in the stead of the deceased debtor. The court will authorize the surviving joint debtor's service as the deceased debtor's representative.

ORDER INSTRUCTIONS

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. The court also waives the requirement that the debtor complete an instructional course concerning personal financial management as required by § 1328(g). It is further ordered that the court finds that continued administration of the estate is possible and in the best interests of the parties. The court substitutes [surviving debtor's name] in the stead of the deceased debtor, and authorizes the surviving joint debtor's service as the deceased debtor's representative."

15. [17-11454](#)-A-13 **IN RE: CHERYL JUAREZ**
[PK-1](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-31-2018 [\[22\]](#)

PATRICK KAVANAGH

Final Ruling

Application: Allowance of Interim 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, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4260 and reimbursement of expenses in the amount of \$0.

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 an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Patrick Kavanagh's application for allowance of interim 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 an interim basis. The court allows interim compensation in the amount of \$4260 and reimbursement of expenses in the amount of \$0. The aggregate allowed amount equals \$4260. As of the date of the application, the applicant held a retainer in the amount of \$1000. The amount of \$3260 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

16. [17-14665](#)-A-13 **IN RE: VICKI/ANGELA VALENTYN**
[MHM-2](#)

MOTION TO DISMISS CASE
2-2-2018 [[17](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the motion is dropped as moot.

17. [17-14675](#)-A-13 **IN RE: LUIS/ROSALINDA MARTINEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
2-2-2018 [[20](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

18. [17-14682](#)-A-13 **IN RE: SCOTT DOYLE**
[MHM-2](#)

MOTION TO DISMISS CASE
2-5-2018 [[17](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the motion is dropped as moot.

19. [17-14784](#)-A-13 **IN RE: RICHARD/GINA ESPITIA**
[MHM-2](#)

MOTION TO DISMISS CASE
2-5-2018 [[22](#)]

MICHAEL MEYER/MV
LEONARD WELSH
RESPONSIVE PLEADING

No Ruling

20. [17-14887](#)-A-13 **IN RE: VALENTIN CHOCOTECO**
[MHM-1](#)

MOTION TO DISMISS CASE
2-5-2018 [[24](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the motion is dropped as moot.

21. [17-14696](#)-A-13 **IN RE: OLUSEGUN LERAMO**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
1-11-2018 [\[22\]](#)

WELLS FARGO BANK, N.A./MV
FRANCISCO ALDANA
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

The case dismissed, the matter is denied as moot.

22. [17-14696](#)-A-13 **IN RE: OLUSEGUN LERAMO**
[MHM-2](#)

MOTION TO DISMISS CASE
2-2-2018 [\[32\]](#)

MICHAEL MEYER/MV
FRANCISCO ALDANA

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.

23. [17-12799](#)-A-13 **IN RE: ANGELA ADAMS**
[RSW-2](#)

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA, EMPLOYMENT
DEVELOPMENT DEPARTMENT
2-6-2018 [[22](#)]

ANGELA ADAMS/MV
ROBERT WILLIAMS

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

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.