

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY

DATE: JUNE 13, 2019

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.

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. [19-10507](#)-A-13 **IN RE: TUCKER/JAMIE MAXFIELD**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
4-26-2019 [\[29\]](#)

TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

2. [19-10409](#)-A-13 **IN RE: IRENE BARRAGAN**
[JM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LENDMARK FINANCIAL
SERVICES, LLC
5-29-2019 [\[48\]](#)

LENDMARK FINANCIAL SERVICES,
LLC/MV
TIMOTHY SPRINGER
JAMES MACLEOD/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

3. [19-10409](#)-A-13 **IN RE: IRENE BARRAGAN**
[TCS-1](#)

MOTION TO CONFIRM PLAN
5-7-2019 [\[37\]](#)

IRENE BARRAGAN/MV
TIMOTHY SPRINGER

Tentative 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 has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

4. [18-14912](#)-A-13 **IN RE: SHERRY WINDORF**
[MHM-1](#)

MOTION TO DISMISS CASE
5-13-2019 [\[35\]](#)

MICHAEL MEYER/MV
SHARLENE ROBERTS-CAUDLE

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, arguing unreasonable delay by the debtor that is prejudicial to creditors, due to failure to timely confirm a plan. This case was filed on December 10, 2018. The court denied confirmation of the debtor's only plan filed in this case, on March 4, 2019. ECF No. 32. Since then, the debtor has not filed another plan.

The court also notes that its March 4 order denying plan confirmation included a 75-day plan confirmation provision. ECF No. 32. The 75-day time period for plan confirmation expired on May 14. The latest hearing date by which the debtor could have obtained plan confirmation would have been May 23.

The above is cause for dismissal. 11 U.S.C. § 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 this chapter 13 case has been presented to the court. Having considered the well-pleaded facts of the motion and the pleadings proffered by the respondent debtor in response to the motion, if any,

IT IS ORDERED that the motion is granted because of unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

5. [15-14222](#)-A-13 **IN RE: BRIAN BROWN**
[MAZ-1](#)

MOTION TO MODIFY PLAN
4-12-2019 [[29](#)]

BRIAN BROWN/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

No Ruling

6. [15-14222](#)-A-13 **IN RE: BRIAN BROWN**
[MHM-1](#)

MOTION TO DISMISS CASE
5-13-2019 [[35](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN

Final Ruling

The motion was withdrawn, the matter is dropped as moot.

7. [19-10524](#)-A-13 **IN RE: DEBBIE GOMES**
[MHM-4](#)

MOTION TO DISMISS CASE
4-17-2019 [[29](#)]

MICHAEL MEYER/MV
DAVID JOHNSTON
DISMISSED

Final Ruling

The case was dismissed, the matter is dropped as moot.

8. [14-13032](#)-A-13 **IN RE: RHONDA STAPLETON**
[DRJ-3](#)

CONTINUED MOTION TO BORROW
5-8-2019 [[38](#)]

RHONDA STAPLETON/MV
DAVID JENKINS

No Ruling

9. [19-10434](#)-A-13 **IN RE: MARIA QUIROZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-28-2019 [[46](#)]

THOMAS GILLIS
\$252.00 INSTALLMENT PAYMENT 5/29/19

Final Ruling

The installment having been paid, the order to show cause is discharged. The case will remain pending.

10. [19-10038](#)-A-13 **IN RE: ANTONIO CASTANEDA**
[MHM-2](#)

MOTION TO DISMISS CASE
5-2-2019 [[25](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

No Ruling

11. [19-11439](#)-A-13 **IN RE: JOHN HERNANDEZ**
[EGS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GUILD MORTGAGE COMPANY
5-22-2019 [\[27\]](#)

GUILD MORTGAGE COMPANY/MV
NIMA VOKSHORI
EDWARD SCHLOSS/ATTY. FOR MV.

No Ruling

12. [19-11439](#)-A-13 **IN RE: JOHN HERNANDEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
5-16-2019 [\[23\]](#)

MICHAEL MEYER/MV
NIMA VOKSHORI
RESPONSIVE PLEADING

No Ruling

13. [19-10640](#)-A-13 **IN RE: GARY/ROSE BRADY**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-13-2019 [\[36\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
SUSAN HEMB
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This motion has been withdrawn by the movant. ECF No. 53. The court deems it to have been voluntarily dismissed.

14. [19-11448](#)-A-13 **IN RE: DONNIE EASON**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
5-21-2019 [\[16\]](#)

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
DAVID JENKINS
WENDY LOCKE/ATTY. FOR MV.

No Ruling

15. [19-11449](#)-A-13 **IN RE: DAVID DELAO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
5-17-2019 [\[16\]](#)

VARDUHI PETROSYAN

No Ruling

16. [19-11255](#)-A-13 **IN RE: MOISES/JACQUELINE ARCE**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
5-17-2019 [\[22\]](#)

MARK ZIMMERMAN

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

17. [19-11256](#)-A-13 **IN RE: DAVID/BILLIE KELLEY**
[MHM-1](#)

MOTION TO DISMISS CASE
5-16-2019 [\[21\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

Final Ruling

This motion has been withdrawn by the movant. ECF No. 34. The court deems it to have been voluntarily dismissed.

18. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-9-2019 [\[30\]](#)

MICHAEL MEYER/MV
DAVID JENKINS

Tentative Ruling

This objection will be overruled as moot because the court already adjudicated a prior objection to the same exemption claims referenced in this objection, on May 23, 2019. See ECF Nos. 41 & 43. And, there have been no amendments to Schedule C since the adjudication of the prior objection.

19. [18-14559](#)-A-7 **IN RE: CAROL DAVIS-MADISON**
[MHM-1](#)

MOTION TO DISMISS CASE
4-8-2019 [\[57\]](#)

MICHAEL MEYER/MV
BENNY BARCO
WITHDRAWN, CONVERTED

Final Ruling

The case was converted to Chapter 7, the matter is dropped as moot.

20. [19-11359](#)-A-13 **IN RE: JUAN/MARIA VELAZQUEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
5-16-2019 [\[21\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

No Ruling

21. [19-12160](#)-A-13 **IN RE: LISA STANDLEE**
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-29-2019 [\[8\]](#)

LISA STANDLEE/MV
SCOTT LYONS

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.

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.

22. [18-14166](#)-A-13 **IN RE: DOUGLAS NEWHOUSE**
[DMG-5](#)

MOTION TO CONFIRM PLAN
4-30-2019 [\[129\]](#)

DOUGLAS NEWHOUSE/MV
D. GARDNER

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 has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

23. [18-14166](#)-A-13 **IN RE: DOUGLAS NEWHOUSE**
[MHM-5](#)

MOTION TO DISMISS CASE
5-13-2019 [\[139\]](#)

MICHAEL MEYER/MV
D. GARDNER
RESPONSIVE PLEADING

No Ruling

24. [18-14768](#)-A-13 **IN RE: KIMBERLY KING- RICHARDSON**
[NES-2](#)

MOTION TO CONFIRM PLAN
4-30-2019 [\[52\]](#)

KIMBERLY KING- RICHARDSON/MV
NEIL SCHWARTZ
DISMISSED

Final Ruling

The case was dismissed, the matter is dropped as moot.

25. [19-12168](#)-A-13 **IN RE: SANDRA BOMBITA**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
6-4-2019 [\[17\]](#)

SANDRA BOMBITA/MV
TIMOTHY SPRINGER
OST PENDING

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(3); 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.

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.

26. [18-14569](#)-A-13 **IN RE: JESUS/FATIMA AYALA**
[TCS-4](#)

MOTION TO CONFIRM PLAN
4-26-2019 [[79](#)]

JESUS AYALA/MV
TIMOTHY SPRINGER
DISMISSED

Final Ruling

The case was dismissed, the matter is dropped as moot.

27. [19-11171](#)-A-13 **IN RE: JOSE GARCIA**
[MHM-2](#)

MOTION TO DISMISS CASE
5-15-2019 [\[17\]](#)

MICHAEL MEYER/MV
THOMAS MOORE

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied as moot

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).

MOTION TO DISMISS

The trustee seeks dismissal because:

- (1) The debtor did not appear at the 341 meeting on May 14, 2019;
- (2) The debtor has also failed to provide the trustee with the:

(i) Class 1 checklist;
(ii) Correct and accurate Domestic Support Obligation Checklist; and

(iii) All 60-day pre-petition payment advices (or other evidence of such payments); specifically, the March 22, 2019 paystubs have not been produced.

AUTOMATIC CASE DISMISSAL

11 U.S.C. § 521(a)(1)(B)(iv) requires that the debtor file "copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition."

Under 11 U.S.C. § 521(i)(1), "if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition."

LBR 1007-1(c)(1) amends section 521(a)(1)(B)(iv) to require, instead of filing of the payment advices, for the advices to be produced to the trustee.

Here, the debtor filed this case on March 26, 2019. The debtor had not produced the required payment advices or other evidence of payment as required by section 521(a)(1)(B)(iv), by the time this motion was filed on May 15, 2019 (50 days post-petition). Accordingly, this case was automatically dismissed on May 11, 2019, the 46th day post-petition. This makes the subject motion moot. It will be denied as moot.

Nevertheless, the court will confirm that the case was automatically dismissed on May 11, 2019, pursuant to section 521(i)(1).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to dismiss is denied as moot.

IT IS FURTHER ORDERED that the court confirms that the case was dismissed automatically under 11 U.S.C. § 521(i)(1) on May 11, 2019.

IT IS FURTHER ORDERED that the Clerk of the court shall note on the case docket the date of the automatic dismissal of the case.

28. [19-10273](#)-A-13 **IN RE: ANTONIO HERNANDEZ SILVA**
[MHM-2](#)

MOTION TO DISMISS CASE
4-8-2019 [\[24\]](#)

MICHAEL MEYER/MV
JEFFREY ROWE

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, contending that the debtor is delinquent under the terms of his still unconfirmed plan. The debtor is delinquent in the amount of \$5,682.08. The debtor has also not responded to this motion. This is cause for dismissal. 11 U.S.C. §§ 1307(c)(1), (c)(4).

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 this chapter 13 case has been presented to the court. Having considered the well-pleaded facts of the motion and the pleadings proffered by the respondent debtor in response to the motion, if any,

IT IS ORDERED that the motion is granted because of unreasonable delay by the debtor that is prejudicial to creditors and for failure to make plan payments. The court hereby dismisses this case.

29. [19-10875](#)-A-13 **IN RE: MARTHA JACKSON**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-10-2019 [\[22\]](#)

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim of Exemptions for Exceeding Amount Permitted Under Cal. Civ. Proc. Code § 703.140(b)(1) and (5)

Disposition: Overruled as moot

Order: Civil minute order

The trustee complains that the debtor has claimed exemptions under section 703.140(b)(1) and (5) in excess of the \$28,225 cap for both exemptions under (b)(1) and (b)(5). The trustee has calculated the debtors' exemptions under those provisions as totaling \$29,125.

But the debtor filed an Amended Schedule C after the trustee brought this objection. ECF No. 25. The objection therefore will be overruled as moot.

30. [19-10875](#)-A-13 **IN RE: MARTHA JACKSON**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF HYUNDAI CAPITAL AMERICA
5-9-2019 [\[17\]](#)

MARTHA JACKSON/MV
PETER BUNTING

Final Ruling

Motion: Value Collateral [Personal Property; 2016 Kia Optima vehicle]

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 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

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2016 Kia Optima vehicle. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$14,026.

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 collateral consisting of a motor vehicle 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 personal property collateral described as a 2016 Kia Optima vehicle has a value of \$14,026. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$14,026 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.

31. [19-10975](#)-A-13 **IN RE: EDUARDO FRANCO**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-15-2019 [\[22\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
THOMAS GILLIS
AUSTIN NAGEL/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Toyota RAV4 vehicle

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Because the plan which has not been confirmed provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under section 362(d)(2) is warranted.

The intended surrender of the property is also cause for the granting of relief from stay under section 362(d)(1) as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Toyota Motor Credit Corporation's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as a 2018 Toyota RAV4 vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

32. [18-14682](#)-A-7 **IN RE: LUIS AVALOS**
[MHM-2](#)

MOTION TO DISMISS CASE
5-13-2019 [\[58\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
WITHDRAWN, CONVERTED

Final Ruling

The case converted to Chapter 7, the matter is dropped as moot.

33. [19-10787](#)-A-13 **IN RE: TERELL WAGGONER**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-8-2019 [\[28\]](#)

MICHAEL MEYER/MV
ERIC ESCAMILLA

Final Ruling

Objection: Objection to Claim of Exemptions for Failure to File Spousal Waiver

Disposition: Overruled as moot

Order: Civil minute order

The debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objected to the

debtor's claim of exemption because the debtor had not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure other than the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

But the debtor has filed the spousal waiver since the trustee brought this objection. ECF No. 32. The objection will be overruled as moot.

34. [19-10889](#)-A-13 **IN RE: ANTONIO VERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-16-2019 [[25](#)]

BENNY BARCO
\$77.00 INSTALLMENT PAYMENT 5/20/19

Final Ruling

The installment having been paid, the order to show cause is discharged. The case will remain pending.

35. [19-11189](#)-A-13 **IN RE: ARMANDO GONZALES AND CLAUDIA BATZ**
[MHM-2](#)

MOTION TO DISMISS CASE
5-15-2019 [[27](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

No Ruling

36. [18-14190](#)-A-13 **IN RE: ADRIANE ASHFORD**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-9-2019 [\[26\]](#)

WILMINGTON SAVINGS FUND
SOCIETY, FSB/MV
MARK ZIMMERMAN
NICHOLE GLOWIN/ATTY. FOR MV.

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

Subject: 1928 Pinewood Way Marysville, CA

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).

STAY RELIEF UNDER SECTION 362(D) (1)

There has been a default on a loan held by the moving party and secured by the subject property, and postpetition payments are past due. In addition, the confirmed plan provides that the failure to include a secured claim in Class 1, 2, 3, or 4 of the plan may be cause to terminate the automatic stay. The plan does not provide for the moving party's secured claim. This is cause for granting relief from stay under section 362(d) (1).

The basis for granting relief from stay under section 362(d) (4) below is further cause for the granting of prospective relief from stay under section 362(d) (1).

Accordingly, prospective relief from stay will be granted and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived.

SECTION 362(d) (4)

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).

In this case, an individual named Eva Purdom ("Borrower") borrowed money in 2007 from the movant's predecessor in interest to finance the purchase of the subject property. The movant acquired interest in the deed of trust on the property on February 22, 2019. ECF No. 29 Ex. 3.

Borrower defaulted on the loan in 2010 and, as a result, the movant recorded a notice of default and notice of foreclosure sale, set for September 6, 2011. Borrower however filed a chapter 13 case in this district, Case No. 11-41612, on the same date, stopping the sale. The case was dismissed on June 13, 2012 for failure to make plan payments.

Borrower filed another chapter 13 case in this district, Case No. 12-32733, on July 9, 2012. The case was dismissed on October 27, 2014 for failure to make plan payments.

In April 2017, Borrower and the movant's predecessor in interest at the time entered into a loan modification agreement. Borrower defaulted on the loan again. This led to the recordation of a notice of default and notice of foreclosure sale, set for October 16, 2018.

On October 9, 2018, Borrower transferred the property to herself and the debtor in this case, as tenants in common, without permission from the movant's predecessor in interest at the time.

The instant bankruptcy case was filed on October 15, 2018, just one day prior to the scheduled foreclosure sale.

The movant is a creditor secured by the subject property.

From the close timing of the transfer of the property interest to the debtor, the date for the foreclosure sale, and the date this case was filed, the court infers that the filing of this case is part of a scheme to delay, hinder, or defraud creditors, including the movant. This scheme involves both the transfer of interest in the property without creditor consent or court approval and multiple bankruptcy filings affecting the property, including the filings of Borrower and the debtor. Accordingly, relief under section 362(d) (4) is appropriate.

CIVIL MINUTE ORDER

Wilmington Savings Fund Society, FSB's motion for relief from the automatic stay under § 362(d) (1) and (4) 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 1928 Pinewood Way Marysville, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a) (3) is waived.

IT IS FURTHER ORDERED that the co-debtor stay is vacated as to the co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a) (3) is also waived with respect to the vacating of the co-debtor stay. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED AND DECLARED, under 11 U.S.C. § 362(d) (4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved transfer of part ownership of the aforesaid real property without the consent of the secured creditor or court approval and multiple bankruptcy filings affecting such real property.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

37. [19-11493](#)-A-13 **IN RE: KENNETH/LAVERNE BRISTER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
5-17-2019 [\[18\]](#)

TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

38. [19-11493](#)-A-13 **IN RE: KENNETH/LAVERNE BRISTER**
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF NOBLE CREDIT UNION
5-9-2019 [\[12\]](#)

KENNETH BRISTER/MV
TIMOTHY SPRINGER

Final Ruling

Motion: Value Collateral [Personal Property; 2015 Honda Pilot vehicle]

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 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

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the

property at the time value is determined.” *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor’s ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral’s value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor’s personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2015 Honda Pilot vehicle. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$27,075.

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 collateral consisting of a motor vehicle 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 personal property collateral described as a 2015 Honda Pilot vehicle has a value of \$27,075. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$27,075 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.

39. [19-11395](#)-A-13 **IN RE: ORA DOUANGPHOUXAY**
[MHM-1](#)

MOTION TO DISMISS CASE
5-16-2019 [\[23\]](#)

MICHAEL MEYER/MV
GABRIEL WADDELL
RESPONSIVE PLEADING

Final Ruling

The motion was withdrawn, the matter is dropped as moot.