

**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: MARCH 21, 2019
CALENDAR: 9:00 A.M. CHAPTER 7 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. [19-10202](#)-A-7 **IN RE: MARIA OROZCO**
[NLG-1](#)
MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-2019 [[13](#)]
FIRST TECH FEDERAL CREDIT
UNION/MV
THOMAS GILLIS
NICHOLE GLOWIN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Honda Accord 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).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

First Tech Federal Credit Union'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 2017 Honda Accord 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.

2. [18-12304](#)-A-7 **IN RE: CHRISTOPHER/KEELEY FRIES**
[PFT-1](#)
MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CHRISTOPHER LEE FRIES AND KEELEY CHERI FRIES
2-19-2019 [[32](#)]
PETER FEAR/MV
DAVID JENKINS
PETER FEAR/ATTY. FOR MV.

Final Ruling

Matter: Motion to Approve Compromise

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

Disposition: Continued

The hearing on this motion will be continued to April 24, 2019 at 9:00 a.m., in order for the moving party, the trustee, to supplement the record with respect to what was at stake in the dispute being settled.

The motion says that the trustee's settlement with the debtors was over "some amount of cash and funds in bank accounts at the time of filing." ECF No. 32 at 2. It also says that "[t]here was some question between Debtors and Trustee as to the precise amount of these funds that would be property of the bankruptcy estate." *Id.*

However, the motion says nothing about how much in funds was the dispute over, between the trustee and the debtors. Accordingly, no later than April 10, 2019, the trustee shall supplement the motion, to remedy the above-mentioned deficiency. Specifically, the court is looking for information that will enable it to evaluate the proposed settlement in light of the *A & C Properties* case factors. *In re A & C Properties*, 784 F.2d 1377 (9th Cir. 1986).

3. [18-14415](#)-A-7 **IN RE: ANTONIO LOPEZ**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ANTONIO ALINIS LOPEZ AND PRE-EMPLOY.COM
AND/OR MOTION FOR COMPENSATION FOR LINDA DEOS, SPECIAL
COUNSEL(S)

2-20-2019 [\[40\]](#)

JAMES SALVEN/MV

JEFFREY ROWE

PETER FEAR/ATTY. FOR MV.

Final Ruling

Matter: (1) Motion to Approve Compromise; and (2) Application for Allowance of Compensation and Expense Reimbursement

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

Disposition: (1) Motion to approve compromise granted; and (2) Application for compensation and expense reimbursement 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 motion and application 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).

COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the estate's interest in fair credit reporting claims against Pre-Employ.com. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 44. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable

considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

COMPENSATION AND EXPENSES

In this Chapter 7 case, Deos Law, P.C. and John B. Keating and Law Offices of Craig Davis, special counsel for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. The applicant requests that the court allow compensation in the amount of \$77,634.34 (40% of \$194,085.86) and reimbursement of expenses in the amount of \$25,914.14 (\$17,146.89 advanced by John Keating; \$5,583.20 advanced by Craig Davis; \$3,184.05 advanced by Linda Deos).

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

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.

The trustee's motion to approve the present compromise and application for allowance of final compensation and reimbursement of expenses have 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 motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 44.

IT IS FURTHER ORDERED that the application for compensation and reimbursement of expenses is approved on a final basis. The court allows final compensation in the amount of \$77,634.34 and reimbursement of expenses in the total amount of \$25,914.14, representing \$17,146.89 to John Keating, \$5,583.20 to Craig Davis, and \$3,184.05 to Linda Deos.

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

4. [18-14415](#)-A-7 **IN RE: ANTONIO LOPEZ**

[UST-1](#)

MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B) AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR

2-4-2019 [\[36\]](#)

TRACY DAVIS/MV

JEFFREY ROWE

JARED DAY/ATTY. FOR MV.

Final Ruling

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

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).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

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

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through May 1, 2019.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

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

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through May 1, 2019.

5. [18-14527](#)-A-7 **IN RE: DANIEL/BARBARA FEE**
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
2-6-2019 [\[18\]](#)
JAMES SALVEN/MV
PETER BUNTING
JAMES SALVEN/ATTY. FOR MV.

Final Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: 2008 Lexus vehicle

Sale Type: Public auction

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *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 363(b) SALE

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.

1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion.

SECTION 328(a) EMPLOYMENT AND COMPENSATION

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis. The court finds that the compensation sought is reasonable and will approve the application.

6. [19-10427](#)-A-7 **IN RE: JOSE BRIBIESCA**
[BPC-1](#)
MOTION FOR RELIEF FROM AUTOMATIC STAY
2-22-2019 [[12](#)]
THE GOLDEN 1 CREDIT UNION/MV
THOMAS GILLIS
JARRETT OSBORNE-REVIS/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Kia Sorento vehicle

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).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

The Golden 1 Credit Union'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 2017 Kia Sorento 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.

7. [18-15028](#)-A-7 **IN RE: SATPAL SINGH**

[KDG-1](#)

MOTION TO AVOID LIEN OF BMO HARRIS BANK N.A.

2-11-2019 [\[22\]](#)

SATPAL SINGH/MV

HAGOP BEDOYAN

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien #1 Avoided: \$340,582.38

Judicial Lien #2 Avoided: \$429,850.34

All Other Liens (non-avoidable): \$202,812.69

Exemption: \$100,000

Value of Property: \$268,465

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 liens, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the subject judicial liens. As a result, the responding party's judicial liens will be avoided entirely.

8. [18-15028](#)-A-7 **IN RE: SATPAL SINGH**
[KDG-2](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
2-11-2019 [\[28\]](#)
SATPAL SINGH/MV
HAGOP BEDOYAN

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$2,177.13

All Other Liens (non-avoidable): \$202,812.69

Exemption: \$100,000

Value of Property: \$268,465

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.

9. [18-11533](#)-A-7 **IN RE: RICARDO RODRIGUEZ FLORES AND**
 ESPERANZA VICTORIA CLEMENTE
 [GT-1](#)
 MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
 2-13-2019 [[25](#)]
 RICARDO RODRIGUEZ FLORES/MV
 MICHAEL RIVERA

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail and was not addressed to an officer of the responding party. See ECF No. 32. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

10. [18-14341](#)-A-7 **IN RE: THERESE SHARDLOW**
[PBB-1](#)
MOTION TO AVOID LIEN OF CACH, LLC
2-5-2019 [[19](#)]
THERESE SHARDLOW/MV
PETER BUNTING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$14,346.67

All Other Liens (non-avoidable): \$169,413.39

Exemption: \$100,000

Value of Property: \$290,000 (the debtor owns one-half interest in the property)

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).

There is no equity in the property for the debtor to support the judicial lien, after accounting for the \$169,413.39 in consensual liens and the debtor's \$100,000 exemption claim in the property. As a result, the responding party's judicial lien against the debtor's interest in the property will be avoided entirely.

11. [18-14242](#)-A-7 **IN RE: ELIZABETH FRANCO**
[SL-3](#)
MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
2-19-2019 [[25](#)]
SCOTT LYONS

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Continued
Order: Civil minute order

CONVERSION UNDER § 706(a)

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

Nevertheless, the court cannot grant the motion. The debtor's existing Schedules I and J state that the debtor has monthly net income of -\$27. ECF No. 1. The debtor cannot confirm a chapter 13 plan with non-existent income. The court is not satisfied that the debtor has sufficient monthly net income to fund a chapter 13 plan.

Accordingly, the court will continue the hearing on this motion to provide the debtor with opportunity to supplement the record, including filing Amended Schedules I and J, reflecting the income the debtor claims to have for funding a chapter 13 plan. In addition, the court expects the debtor to file a declaration explaining what has changed in the debtor's financial circumstances, allowing her to have income now to fund a chapter 13 plan. The hearing on the motion will be continued to April 24, 2019 at 9:00 a.m. The debtor shall supplement the record in accordance with this ruling no later than April 10, 2019.

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 convert this case from chapter 7 to chapter 13 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, if any,

IT IS ORDERED that the hearing on the motion is continued to April 24, 2019 at 9:00 a.m., in order for the debtor to supplement the record in accordance with the minutes for the motion's March 21 hearing. The debtor shall supplement the record no later than April 10, 2019.

12. [18-14743](#)-A-7 **IN RE: JESUS/LORRAINE SIFUENTES**

[DMG-1](#)

MOTION TO AVOID LIEN OF ROSEDALE BAKERSFIELD RETAIL VI, LLC

2-18-2019 [\[12\]](#)

JESUS SIFUENTES/MV

D. GARDNER

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$10,159.08

All Other Liens (non-avoidable): \$212,402 (two mortgages)

Exemption: \$100,000

Value of Property: \$255,000

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.

13. [13-14772](#)-A-7 **IN RE: TONY GIMINEZ AND TRACY FLORES**
[NEA-3](#)

MOTION TO AVOID LIEN OF C B MERCHANT SERVICES
1-31-2019 [[37](#)]
TONY GIMINEZ/MV
NICHOLAS ANIOTZBEHERE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Judicial Lien Avoided: \$69,459.90

All Other Liens (non-avoidable): \$404,800

Exemption: \$1.00

Value of Property: \$220,000

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 motion will be denied because the record is incomplete. The motion's supporting declaration is not signed and it is not dated. There is no signature, electronic or otherwise, at the end of the declaration. The signature spaces in the declaration are empty. And, the date for the declaration is "January _____, 2019," without specifying a day for the date. ECF No. 39. From these deficiencies, the court infers that the declaration was never even seen by the debtors. As such, the motion is unsupported by evidence or admissible evidence.

Additionally, the supporting declaration refers to an "exhibit 'A'" that is attached somewhere in the record. However, there are no exhibits in the record anywhere. ECF No. 39. Given the above deficiencies, the motion will be denied.

14. [13-14772](#)-A-7 **IN RE: TONY GIMINEZ AND TRACY FLORES**
[NEA-4](#)
MOTION TO AVOID LIEN OF VELOCITY INVESTMENTS, LLC
1-31-2019 [[41](#)]
TONY GIMINEZ/MV
NICHOLAS ANIOTZBEHERE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Judicial Lien Avoided: \$13,517.41

All Other Liens (non-avoidable): \$404,800

Exemption: \$1.00

Value of Property: \$220,000

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 motion will be denied because the record is incomplete. The motion's supporting declaration is not signed and it is not dated. There is no signature, electronic or otherwise, at the end of the declaration. The signature spaces in the declaration are empty. And, the date for the declaration is "January _____, 2019," without specifying a day for the date. ECF No. 43. From these deficiencies, the court infers that the declaration was never even seen by the debtors. As such, the motion is unsupported by evidence or admissible evidence.

Additionally, the supporting declaration refers to an "exhibit 'A'" that is attached somewhere in the record. However, there are no exhibits in the record anywhere. ECF No. 43. Given the above deficiencies, the motion will be denied.

15. [18-13182](#)-A-7 **IN RE: WANDA CLEMMONS**
[RSW-2](#)

MOTION TO RECONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
3-6-2019 [[89](#)]
ROBERT WILLIAMS

Tentative Ruling

Motion: Re-convert Case from Chapter 7 to Chapter 13
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Denied
Order: Civil minute order

RE-CONVERSION UNDER § 706(a)

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

A split of authority exists on the question whether the court may authorize a debtor to reconvert a case under section 706(a) when the case was already converted to chapter 7. See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 5:1732-5:1734 (rev. 2016) (citing cases on both sides of the issue).

This court's reading of section 706(a) is that it has the authority to reconvert a case to chapter 13. See *In re Johnson*, 376 B.R. 763, 764 (Bankr. D.N.M. 2007) ("This Court agrees with those courts which conclude that reconversion is permitted under 706(a), and that such determination falls within the Court's discretion.").

Nevertheless, given the debtor's prior inability to obtain confirmation of a chapter 13 plan, given the debtor's failure to provide documents to the chapter 13 trustee, given the court's determination of lack of good faith on the part of the debtor during the chapter 13 portion of the case, and given that the chapter 7 trustee has now found assets that can be administered for the benefit of the estate and the creditors, reconversion to chapter 13 is not appropriate. ECF Nos. 49 at 12:00-13:10 & 50.

The court also notes that the debtor admits to converting to a chapter 7 even though she was ineligible to receive a chapter 7 discharge, meaning that she did not intend to remain in chapter 7. ECF No. 91 at 2. This is bolstered by her admission to converting her case to chapter 7 "as [she] knew that there was a possibility of obtaining funds shortly to be able to prevent the sale" of a real property on which the secured creditor had obtained stay relief during the chapter 13 portion of the case. ECF No. 91 at 1. In light of the foregoing, the court is not convinced that the requested reconversion is in good faith. Reconversion is not appropriate. The motion will be denied.

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 reconvert this case from chapter 7 to chapter 13 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 denied. The case remains a chapter 7 proceeding.