

**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: WEDNESDAY
DATE: APRIL 24, 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. [18-15100](#)-A-7 **IN RE: ANGELINA LOPEZ**
[NES-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
3-27-2019 [[11](#)]

NEIL SCHWARTZ

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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

Disposition: Denied without prejudice

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 court cannot grant the motion. First, the motion is unsupported by any evidence, including a declaration or affidavit establishing the factual assertions in the motion.

Second, while the motion says that the debtor believes to be eligible for chapter 13 relief, there are no factual assertions in the motion to support this opinion of the debtor.

Third, while the motion says that the debtor believes to have the ability to make chapter 13 plan payments to her creditors, there are no factual assertions in the motion to support this opinion of the debtor.

On the contrary, the last Schedules I and J filed by the debtor in this case, on the petition date, reflect that the debtor's monthly net income is a negative \$2,566.25. ECF No. 1 at 34. The debtor cannot confirm a chapter 13 plan with non-existent income.

Given the foregoing deficiencies, the motion will be denied without prejudice.

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 motion is denied without prejudice.

2. [19-10701](#)-A-7 **IN RE: DWAYNE MILLER**

MOTION FOR RELIEF FROM AUTOMATIC STAY , AND
MOTION/APPLICATION TO SELL
3-29-2019 [[21](#)]

THE GOLDEN 1 CREDIT UNION/MV
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 Jeep Wrangler 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. In addition, in the statement of intention, the debtor has stated an intent to surrender 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 Jeep Wrangler 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.

3. [18-12304](#)-A-7 **IN RE: CHRISTOPHER/KEELEY FRIES**
[PFT-1](#)

CONTINUED 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

Motion: Approve Compromise of Controversy

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).

The hearing on this motion was continued from March 21 in order for the movant to supplement the record with respect to what was at stake in the dispute being settled.

The movant filed a supplemental declaration on April 10, 2019, providing the requested information. ECF No. 40. The court is satisfied with the movant's additional information about the proposed settlement. Accordingly, the motion will be granted as prescribed in this ruling.

APPROVAL OF 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 parties request approval of a compromise. A settlement agreement reflecting the parties' compromise has not been attached to the motion as an exhibit. The material terms and conditions of the compromise include a \$7,500 payment by the debtors to the trustee in full satisfaction of the estate's interest in four post-petition deposits by the debtors into their bank account, totaling \$10,710.27. The deposits appear to have been connected, at least in part, to the debtors withdrawing from their bank account, immediately prior to filing this case, \$5,393.84. Two of the post-petition deposits, in the amounts of \$1,503.47 and \$6,206.80, were for payroll.

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.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 7 trustee's motion to approve a compromise 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 court approves the parties' compromise, which settles a dispute about four post-petition deposits by the debtors into their bank account, totaling \$10,710.27. The material terms and conditions of the compromise include a \$7,500 payment by the debtors to the trustee, in full satisfaction of the estate's interest in the deposits.

4. [19-10712](#)-A-7 **IN RE: DANIEL/AMANDA CULP**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-18-2019 [[11](#)]

BMW BANK OF NORTH AMERICA/MV
JEFFREY ROWE
CHERYL SKIGIN/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2014 BMW 3 Series 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. In addition, in the statement of intention, the debtor has stated an intent to surrender 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.

BMW Bank of North America'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 2014 BMW 3 Series 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.

5. [19-10018](#)-A-7 **IN RE: ARCHIE CHAPMAN**
[EMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-15-2019 [[28](#)]

LAKEVIEW LOAN SERVICING,
LLC/MV
TIMOTHY SPRINGER
ERIN MCCARTNEY/ATTY. FOR MV.
NON-OPPOSITION

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Civil minute order

Subject: 904 Rockwood Ave. Bakersfield, California

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third-party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion in part and deny the motion in part.

SECTION 362(d)(4) RELIEF

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) a transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A, of which the court takes judicial notice. Fed. R. Evid. 201. The debtor also disputes any knowledge of the transfer at issue or the borrower who made the transfer. ECF No. 34. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

In addition, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

SECTION 362(d)(1) RELIEF

Given that some uncertainty exists about whether the stay applies and given that the debtor has filed a non-opposition to prospective relief from stay with respect to the property, the court will grant stay relief. The court grants stay relief for cause under § 362(d)(1) because the property is not estate property and because the property's transfer was unauthorized.

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.

Lakeview Loan Servicing, LLC'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 in part as to relief under 11 U.S.C. § 362(d)(1). The automatic stay is vacated for cause under § 362(d)(1) with respect to the property described in the motion, commonly known as 904 Rockwood Ave. Bakersfield, California, 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 the motion is denied in part as to relief under 11 U.S.C. § 362(d)(4). No other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs against the debtor for bringing this motion, the request is denied.

6. [19-10724](#)-A-7 **IN RE: ANDREW RODRIGUEZ**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-26-2019 [\[18\]](#)

BANK OF THE WEST/MV
ERIC ESCAMILLA
MARY TANG/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 Civic Hatchback 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.

Bank of the West'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 Civic Hatchback 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. [19-11133](#)-A-7 **IN RE: NELIDA VARGAS**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-3-2019 [[9](#)]

HONDA LEASE TRUST/MV
R. BELL
VINCENT FROUNJIAN/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: repossessed 2017 Honda Pilot 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

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make monthly payments to the moving party pursuant to a lease agreement by which the debtor leases the vehicle described above. The debtor defaulted under such lease agreement pre-petition and the movant repossessed the vehicle in February 2019, before this case was filed on March 24, 2019. The moving party's having possession of the vehicle is cause for the granting of relief from stay.

Therefore, cause exists to grant relief under § 362(d)(1). 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.

Honda Lease Trust'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 Pilot 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.

8. [18-11439](#)-A-7 **IN RE: BRANDON/LESLIE SMART**
[MBW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-8-2019 [\[59\]](#)

PENTAGON FEDERAL CREDIT
UNION/MV
TIMOTHY SPRINGER
DANIEL BURBOTT/ATTY. FOR MV.

Final Ruling

Motion: Relief from Stay
Disposition: Denied without prejudice
Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

The court continued the hearing on this motion from March 22 in order for the movant to serve the chapter 7 trustee, as the case had been converted from chapter 13 to chapter 7 after this motion was filed. See ECF No. 79. However, the court sees nothing on the docket indicating that the chapter 7 trustee Peter Fear was noticed with this motion. The chapter 7 trustee is not among the parties served with the notice of continued hearing filed on March 22. See ECF Nos. 77 & 78. The service of the motion was insufficient and did not comply with Rules 7004 and 9014. Accordingly, this motion will be denied without prejudice.

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.

IT IS ORDERED that the motion is denied without prejudice, given the insufficient notice of the motion papers on the chapter 7 trustee.

9. [18-14242](#)-A-7 **IN RE: ELIZABETH FRANCO**
[SL-3](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER
13
2-19-2019 [[25](#)]

SCOTT LYONS

Tentative Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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).

The hearing on this motion was continued from March 21 in order for the debtor 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; and filing 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 debtor filed Amended Schedules I and J, as well as a declaration outlining the reasons her monthly net income has changed from negative \$27 to \$300. ECF Nos. 32 & 34. The court is satisfied with the debtor's explanation of how and why her monthly net income has changed from negative \$27 to \$300. Accordingly, the motion will be granted as prescribed in this ruling.

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.

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 motion is granted. The court converts this case from chapter 7 to chapter 13.

10. [19-10351](#)-A-7 **IN RE: SAMANTHA BEJARANO**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
3-12-2019 [[14](#)]

SCOTT MITCHELL

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled initial meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for April 29, 2019 at 9:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

11. [18-14755](#)-A-7 **IN RE: ELIZABETH ALVAREZ**
[MAZ-1](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
3-7-2019 [\[17\]](#)

ELIZABETH ALVAREZ/MV
MARK ZIMMERMAN

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$8,254.04

All Other Liens (non-avoidable): \$130,433

Exemption: \$175,000

Value of Property: \$190,000 (542 W. Paradise Ave.)

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.

12. [19-10460](#)-A-7 **IN RE: SEC SUPPLY, INC.**
[DMG-2](#)

MOTION TO EMPLOY GOULD AUCTIONS AND APPRAISAL, LLC AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
4-3-2019 [\[13\]](#)

JEFFREY VETTER/MV
LEONARD WELSH
D. GARDNER/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property and Employ and Compensate Auctioneer

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

Disposition: Granted

Order: Prepared by moving party

Property: Electric supply inventory, office furniture, and office equipment

Sale Type: Public auction

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).

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. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

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.

13. [19-11062](#)-A-7 **IN RE: JULIO GEORGE**
[KSR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-9-2019 [[13](#)]

STEVEN ROBINSON/MV
MARK ZIMMERMAN
KIRK RIMMER/ATTY. FOR MV.

Tentative Ruling

Motion: Relief from Stay

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

Disposition: Granted in part, denied in part

Order: Civil minute order

Subject: 8545 Palladay Road, Elverta California

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third-party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion in part and deny the motion in part.

SECTION 362(d)(4) RELIEF

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) a transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A, of which the court takes judicial notice. Fed. R. Evid. 201. The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor.

The court also denies the request to declare that the subject property is not property of the estate or property of the debtor. Such relief requires an adversary proceeding and cannot be granted on a motion. See Fed. R. Bankr. P. 7001(2) (determining the validity, priority, or extent of an interest in property requires an adversary proceeding).

SECTION 362(d)(1) RELIEF

Given that some uncertainty exists about whether the stay applies, the court will grant stay relief. The court grants stay relief for cause under § 362(d)(1) because the property does not appear to be estate property and because the property's transfer was unauthorized.

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.

Robinson Schaffner Family Trust Dated 5/28/97'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 in part as to relief under 11 U.S.C. § 362(d)(1). The automatic stay is vacated for cause under § 362(d)(1) with respect to the property described in the motion, commonly known as 8545 Palladay Road, Elverta California, 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 the motion is denied in part as to relief declaring that the subject property is not property of the estate or property of the debtor, given that such relief requires an adversary proceeding.

IT IS FURTHER ORDERED that the motion is denied in part as to relief under 11 U.S.C. § 362(d)(4). No other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs against the debtor for bringing this motion, the request is denied.

14. [19-10369](#)-A-7 **IN RE: CURTIS EVANS**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
3-4-2019 [[12](#)]

No Ruling

15. [13-14772](#)-A-7 **IN RE: TONY GIMINEZ AND TRACY FLORES**
[NEA-7](#)

MOTION TO AVOID LIEN OF C B MERCHANT SERVICES
3-26-2019 [[69](#)]

TONY GIMINEZ/MV
NICHOLAS ANIOTZBEHERE

Final Ruling

The motion having been withdrawn, the matter is dropped from calendar.

16. [13-14772](#)-A-7 **IN RE: TONY GIMINEZ AND TRACY FLORES**
[NEA-8](#)

MOTION TO AVOID LIEN OF VELOCITY INVESTMENTS, LLC
3-26-2019 [[73](#)]

TONY GIMINEZ/MV
NICHOLAS ANIOTZBEHERE

Final Ruling

The motion having been withdrawn, the matter is dropped from calendar.

17. [18-13672](#)-A-7 **IN RE: ARTURO/EMILIA GONZALEZ**
[DMG-2](#)

MOTION TO SELL
3-20-2019 [[83](#)]

JEFFREY VETTER/MV
PATRICK KAVANAGH
D. GARDNER/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted in part and denied in part
Order: Prepared by moving party

Property: 320 Brentwood Ct., McFarland, CA
Buyer: Humberto and Maria Gonzales
Sale Price: \$150,000
Encumbrances: equal or less than \$115,000
Sale Type: Private sale subject to overbid opportunity

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)(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, in part.

The requested "good faith" finding under section 363(m) will be denied because the court does not have a declaration from the buyer as to whom the good faith finding is requested.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

The limited opposition by AmeriHome Mortgage Company, which holds a sole mortgage claim for approximately \$101,063, arguing that the order should contain language for its lien to attach to sales proceeds, will be overruled as unnecessary. This is not a free and clear sale. The court is not approving the sale free and clear of AmeriHome's claim, meaning that AmeriHome's claim must be paid out of escrow in full in order for the trustee to effectuate the sale, as approved by the court. As such, it is unnecessary for the order to state that AmeriHome's claim will attach to the sale proceeds.

Further, the court is approving the sale also only if the estate will receive a benefit from the sale. The trustee represents that the estate is estimated to generate approximately \$27,000 from the sale, after payment of all encumbrances, liens, and costs of sale. The motion is not anticipating and the court is not approving a sale that will not pay all encumbrances, including AmeriHome's, in full.

18. [19-10072](#)-A-7 **IN RE: TIANI SMALL**

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-26-2019 [\[29\]](#)

TITAN INVESTORS GROUP/MV

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Subject: 236 Ohio Dr., Unit A, Bakersfield, California

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

This motion is brought by two movants, Titan Investors Group, Inc. and a non-attorney individual named Emilia Mendoza.

The motion will be denied as to Titan because Titan is a corporation that is appearing in this proceeding without the representation of an attorney. This violates the court's local rules. Local District Rule 183(a), as incorporated by Local Bankruptcy Rule 1001-1(c), prescribes that "A corporation or other entity may appear only by an attorney."

Titan Investors Group, Inc. is not represented by an attorney in this motion. The motion will be denied as to Titan.

The motion will be denied as to both movants also because it provides little or no information about the pre-petition relationship between the parties, including between Titan and Ms. Mendoza and between the movants and the debtor. The court cannot tell from the record which of the movants, if any, has standing to prosecute this motion.

The motion simply says that the debtor did not pay rent for the subject property pre-petition. But, the motion says nothing about the contractual relationship, if any, between the movants and the debtor. For instance, among other things, it is not clear from the motion who is the lessor to the debtor, assuming the debtor is indeed a lessee of the property. The motion is also unclear about the relationship between Titan and Ms. Mendoza.

For example, on one hand, the declaration of Emilia Mendoza says that she is a custodian of the books and records of the movant - presumably referring to Titan. ECF No. 29 at 5. She also says that

the movant is the plaintiff in the underlying unlawful detainer action. *Id.* On the other hand, Emilia Mendoza also appears to be listed as a movant on this motion. ECF No. 29 at 1. And, her declaration describes the title of the unlawful detainer action as "Emilia Mendoza vs. Tiani Lanet Small [debtor] & John Albert Perkins." ECF No. 29 at 5.

The court should not have to speculate about such basic information. Given these deficiencies, the court cannot grant the motion.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Titan Investors Group, Inc. and Emilia Mendoza's motion for relief from the automatic stay has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice, given the deficiencies identified in the ruling on the motion.

19. [19-10185](#)-A-7 **IN RE: SEQUOIA SURGICAL SPECIALISTS MEDICAL INC.**
[JES-1](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL CO. AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
2-28-2019 [\[15\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN

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: Office and medical equipment

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.

20. [19-11085](#)-A-7 **IN RE: DAVID/LOIS JOHN**
[DRJ-2](#)

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND/OR
MOTION FOR AN ORDER TO WAIVE THE CREDIT COUNSELING COURSE
3-27-2019 [\[13\]](#)

DAVID JOHN/MV
DAVID JENKINS

Final Ruling

Motion: Exempting Debtor David John from Pre-Petition Credit Counseling and Post-Petition Debtor Education Requirements

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).

The debtors are seeking for debtor David John only exemption from the pre-petition credit counseling requirement and post-petition debtor education requirements, as Mr. John >>>>>>>*(^)*&^*&^

DISCUSSION

Waiver of Pre-Petition Credit Counseling Requirement

11 U.S.C. § 109(h)(1) prohibits an individual from being a debtor under any chapter unless that individual received a "briefing" from an "approved nonprofit budget and credit counseling agency" before the petition is filed.

A debtor can apply for an exception of the counseling requirement under section 109(h)(4), in the event of incapacity, disability, or service in the military. See *infra*.

Waiver of Post-Petition Debtor Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. Under 11 U.S.C. 727(a)(11):

The court shall grant the debtor a discharge unless . . .
 . after filing the petition, the debtor failed to
 complete an instructional course concerning personal
 financial management described in section 111, except
 that this paragraph shall not apply to a debtor who is a
 person described in section 109(h)(4).

Section 109(h)(4) provides:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity**, disability, or active military duty in a military combat zone. For the purposes of this paragraph, **incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities;** and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C.A. § 109(h)(4) (emphasis added).

As of February 18, 2019, the debtor David John suffers from dementia which prevents him from participating in the courses to satisfy the pre-petition credit counseling and post-petition education requirements. ECF No. 16 Ex. B. Given this, the court will grant debtor David John an exemption from these requirements.

CIVIL MINUTE ORDER

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

The debtors' motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, if any, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted. Debtor David John is exempted from the pre-petition creditor counseling requirement of 11 U.S.C. § 109(h)(1) and the post-petition debtor education requirement of 11 U.S.C. 727(a)(11).

21. [19-10995](#)-A-7 **IN RE: STEPHEN/MARIA FISHER**
[SL-1](#)

MOTION TO COMPEL ABANDONMENT
4-8-2019 [[14](#)]

STEPHEN FISHER/MV
SCOTT LYONS

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

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

Order: Prepared by moving party pursuant to the instructions below

Business Description: beauty salon business (including furnishings, equipment, inventory)

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).

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

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

NOTICE OF INTENT TO CLOSE CASE WITHOUT ENTRY OF DISCHARGE
2-6-2019 [\[17\]](#)

RESPONSIVE PLEADING

Tentative Ruling

Pleading: Opposition to Notice of Intent to Close Case Without Entry of Discharge (due to the debtor having been granted a discharge in a case commenced within 8 years before the date of the filing of the instant case, as proscribed by 11 U.S.C. § 727(a)(8))

Notice: N/A; ECF No. 37

Disposition: Opposition overruled

Order: Civil minute order

11 U.S.C. § 727(a)(8)

11 U.S.C. § 727(a)(8) provides that the court shall grant the debtor a discharge unless the debtor has been granted discharge under this section in a case commenced within eight years before the date of the filing of the instant petition.

DISCUSSION

The debtor was granted a chapter 7 discharge on September 10, 2012 in a case filed on June 7, 2012, less than seven years prior to the filing of the instant chapter 7 case on January 15, 2019. See Case No. 12-15179, ECF Nos. 1 & 19. Accordingly, the debtor is not entitled to a chapter 7 discharge in this case.

The debtor opposes the notice of intent to close the case without entry of discharge, arguing that the clerk who accepted her petition in this case told her that, in spite of the eight-year rule, she "could not be denied to file [this case]." She also contends that she has great need of the bankruptcy discharge because she has serious health challenges (including two strokes, brain lesions, MS) and has no source of income, but is living off her son's supplemental security income of \$840 a month.

While the court is quite sensitive and sympathetic to the debtor's health and economic situations, the court does not have discretion to waive or overrule the prohibition in section 727(a)(8). The court is without ability to do anything for the debtor.

With respect to the comments of the clerk who took the debtor's petition in this case, comments by clerks are not legal advice, much less binding in any way in any judicial proceeding.

Moreover, the clerk's comments were correct. The court cannot deny taking a bankruptcy petition for filing from a debtor who has had a discharge in a case within the prior eight years, as provided in section 727(a)(8). This is because chapter 7 cases can be administered even if the debtor is ineligible for discharge.

Section 727(a)(8) does not prohibit the administration of a bankruptcy case. It only prohibits the discharge of a debtor if he has had a prior discharge, as specified by section 727(a)(8), within the prior eight years.

Given the foregoing, the debtor's opposition to the notice of intent to close the case without a discharge will be overruled.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The debtor's opposition to the Notice of Intent to Close Case Without Entry of Discharge has been presented to the court. Having considered the well-pleaded facts of the opposition,

IT IS ORDERED that the debtor's opposition to the Notice of Intent to Close Case Without Entry of Discharge be overruled.

23. [19-10434](#)-A-7 **IN RE: MARIA QUIROZ**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
3-12-2019 [\[19\]](#)

THOMAS GILLIS

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled initial meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the

continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

The court reminds the debtor that the filing of a motion to convert does not absolve her from complying with her obligations in this bankruptcy case.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for April 29, 2019 at 10:00 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).