

**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: JUNE 12, 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-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
5-14-2019 [\[21\]](#)

NEIL SCHWARTZ

Final 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).

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,

IT IS ORDERED that the motion is granted. The court converts this case from chapter 7 to chapter 13.

2. [19-10909](#)-A-7 **IN RE: GURVINDER BAL**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-30-2019 [\[11\]](#)

JERRY LOWE

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 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 June 24, 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).

3. [14-13913](#)-A-7 **IN RE: DESIREE/JOSEPH GONZALES**
[JRL-2](#)

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS
5-15-2019 [\[155\]](#)

DESIREE GONZALES/MV
JERRY LOWE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$46,684.80

All Other Liens (non-avoidable): \$76,850

Exemption: \$76,850

Value of Property: \$136,000

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.

4. [14-13913](#)-A-7 **IN RE: DESIREE/JOSEPH GONZALES**
[JRL-3](#)

MOTION TO AVOID LIEN OF FIRST RESOLUTION INVESTMENT
CORPORATION
5-15-2019 [\[159\]](#)

DESIREE GONZALES/MV
JERRY LOWE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$5,608.85

All Other Liens (non-avoidable): \$76,850

Exemption: \$76,850

Value of Property: \$136,000

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.

5. [14-13913](#)-A-7 **IN RE: DESIREE/JOSEPH GONZALES**
[JRL-4](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
5-15-2019 [\[163\]](#)

DESIREE GONZALES/MV
JERRY LOWE

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$4,883.62

All Other Liens (non-avoidable): \$76,850

Exemption: \$76,850

Value of Property: \$136,000

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.

6. [14-13913](#)-A-7 **IN RE: DESIREE/JOSEPH GONZALES**
[JRL-5](#)

MOTION TO AVOID LIEN OF CACH, LLC
5-15-2019 [\[167\]](#)

DESIREE GONZALES/MV
JERRY LOWE

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 corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. ECF No. 170.

Finally, service of the motion papers on a related entity, Resurgent Capital Services, LP, does not satisfy the service requirements for the respondent Cach, LLC. They are two different entities and the court has been given no reason why it should disregard the corporate form of Cach, LLC.

7. [16-13315](#)-A-7 **IN RE: KASSANDRA HOELSCHER**
[FW-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SAFECO INSURANCE COMPANY OF AMERICA AND JAMES
D. BIERNAT
5-15-2019 [\[114\]](#)

JAMES SALVEN/MV
PETER BUNTING
TRUDI MANFREDO/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).

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 movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. ECF No. 118. 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 hereby approves the compromise that is reflected in the settlement agreement attached to the motion as exhibit and filed at docket no. 118.

8. [16-13315](#)-A-7 **IN RE: KASSANDRA HOELSCHER**
[FW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DONAHUE DAVIES,
LLP FOR JAMES R. DONAHUE, SPECIAL COUNSEL(S)
5-15-2019 [\[121\]](#)

JAMES DONAHUE/MV
PETER BUNTING
JAMES DONAHUE/ATTY. FOR MV.

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, James Donahue of Donahue Davies, LLP with co-counsel Robert Buccola of Dreyer Babich Buccola Wood Campora, LLP, collectively special counsel for the trustee, have applied for an allowance of final compensation (only as to Donahue Davies) and reimbursement of expenses (as to Donahue Davis and Dreyer Babich). 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 \$740,000, as to Donahue Davis only, and reimbursement of expenses in the amount of \$233,541.28, combined as to both Donahue Davis and Dreyer Babich.

"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.

Donahue Davies, LLP and Dreyer Babich Buccola Wood Campora, LLP's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent(s) for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$740,000 and reimbursement of expenses in the amount of \$233,541.28.

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

9. [19-11315](#)-A-7 **IN RE: ROBERT LEWIS**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-14-2019 [\[17\]](#)

BMW BANK OF NORTH AMERICA/MV
ROBERT WILLIAMS
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 328i 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 (\$22,181) exceeds the value of the collateral (\$13,716) 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.

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 a 2014 BMW 328i 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.

10. [19-11026](#)-A-7 **IN RE: JUAN GUZMAN CAMACHO**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-15-2019 [\[13\]](#)

JAMES SALVEN/MV

Final Ruling

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

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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 debtor has claimed exemptions under section 703.140(b) of the California Code of Civil Procedure. The trustee objects to the debtor's claim of exemptions because the debtor has not filed the required spousal waiver in writing of the right to claim the exemptions allowed under applicable provisions of Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure, excluding the exemptions allowed under section 703.140(b). See Cal. Civ. Proc. Code §§ 703.140(a)(2), (b).

The debtor is married but has not filed a joint petition with debtor's spouse. The debtor may not claim exemptions under section 703.140(b) because both spouses have not filed the required spousal waiver described in section 703.140(a)(2).

11. [19-11236](#)-A-7 **IN RE: ROBERT GARFIAS**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-29-2019 [\[10\]](#)

PETER BUNTING

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 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 June 13, 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).

12. [19-11637](#)-A-7 **IN RE: LARRY/TERRI HEADINGS**
[ETL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-14-2019 [\[25\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
ERICA LOFTIS/ATTY. FOR MV.
RESPONSIVE PLEADINGS

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1429 South Miles Road Merced, CA

The movant, U.S. Bank, N.A. seeks relief from stay as to the subject property, in order to exercise its applicable state law rights against the property.

The debtors oppose the motion, contending that:

(1) the movant does not have standing to bring this motion; and

(2) the debtors have various claims against the movant and other entities involved in the subject loan and servicing of such loan, including claims for breaches of the duty of care, claims for willful, malicious, and intentional infliction of economic injury, claims for debt entrapment and predatory lending practices; some of the claims seem to involve the debtors' loan modification and/or refinancing efforts in saving the subject property from foreclosure.

Motions for relief from stay are summary proceedings, meaning that **the court does not finally determine the validity of the movant's claim.** *Arkison v. Griffin (In re Griffin)*, 719 F.3d 1126, 1128 (9th Cir. 2013) (emphasis added); *Veal v. American Home Mortgage Servicing, Inc., (In re Veal)*, 450 B.R. 897, 914-15 (B.A.P. 9th Cir. 2011); *Biggs v. Stovin (In re Luz Int'l)*, 219 B.R. 837, 841-42

(B.A.P. 9th Cir. 1998). **"[A] party seeking stay relief need only establish that it has a colorable claim to the property at issue."** *Griffin* at 1128. **"A party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate."** *Veal* at 914-15 (emphasis added).

"Relief from stay hearings are limited in scope to adequacy of protection, equity, and necessity to an effective reorganization; **the validity of underlying claims is not litigated.** *In re Johnson*, 756 F.2d 738, 740 (9th Cir.1985), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985). **Stay relief hearings do not involve a full adjudication on the merits of claims, defenses, or counterclaims, but simply a determination as to whether a creditor has a colorable claim."**

In re Robbins, 310 B.R. 626, 631 (B.A.P. 9th Cir. 2004) (emphasis added).

"The [stay-relief] hearing is not . . . the forum in which to determine the merits of the claims presented in support of relief from the automatic stay. Rather the motion for relief from stay hearing is merely a threshold requirement which, if met by the creditor, allows a creditor to fully pursue its claims against the debtor without incurring liability for violating the automatic stay." *In re Luz Int'l, Ltd.*, 219 B.R. 837, 842 (B.A.P. 9th Cir. 1998) (citing *In re Johnson*, 756 F.2d 738, 740 (9th Cir. 1985)).

As to standing, the debtors complain that the movant's deed of trust assignment was invalid. The debtors suggest that the deed referenced in the assignment does not correspond to the note. They also say that there is nothing indicating when the assignment took place, who are parties to the assignment, and what interest was conveyed by the assignment.

First, the debtors' claims of lack of standing and of holding various causes of action against the movant are inconsistent and contradictory. The alleged causes of action against the movant are contractually-based. They would not exist outside of a contractual relationship between the debtors and the movant. Hence, if the debtors indeed have such causes of action against the movant, the movant has at least some colorable claim to enforce a right against the property. If the movant does not have a colorable claim to enforce a right against the property, the debtors could not have any claims against the movant because such claims necessarily involve others' enforcement of claims against the subject property.

In other words, the debtors' contention of claims against the movant tends to refute the movant's lack of standing. The opposition does not address these irreconcilability of the positions.

Second, the movant has produced the assignment that gives rise to its interest in the property and it contains all information the debtors claim it is missing from the assignment. ECF No. 29 Ex. C.

The assignment is to the movant, "AS TRUSTEE, SUCCESSOR IN INTEREST TO DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR MORTGAGEIT

TRUST 2005-ARI, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-ARI." ECF No. 29 Ex. C. The assignment refers to both the debtors and the subject property on its face. The assignment also clearly states that the assignor, "MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. [("MERS")], AS NOMINEE FOR MORTGAGEIT, INC., ITS SUCCESSORS AND ASSIGNS . . . , does hereby grant, sell, assign, transfer and convey, unto U.S. BANK NATIONAL ASSOCIATION . . . all interest under a certain Deed of Trust made and executed by **LARRY V. HEADINGS AND TERRI L. HEADINGS**, HUSBAND AND WIFE AS JOINT TENANTS, upon the following property located at **1429 SOUTH MILES ROAD, MERCED, CALIFORNIA 95340** and situated in MERCED COUNTY, State of CALIFORNIA." ECF No. 29 Ex. C (emphasis added).

The assignment was entered into on January 31, 2014. ECF No. 29 Ex. C.

Under the deed of trust, the assignor "MERS is the beneficiary under this [deed of trust]." ECF No. 29 Ex. B at 2.

Under the assignment, then, MERS assigned its beneficiary interest in the deed of trust to the movant. As such, the movant

Based on the foregoing, the court rejects the debtors' contention of a lack of standing. The movant has established a colorable claim of standing on this motion, as the beneficiary under the deed of trust securing the mortgage claim against the property. As a beneficiary under the deed of trust, the movant has a colorable claim to enforce a right against property.

Importantly, this determination by the court does not bar the debtors from asserting the same contention against the movant in state court, in any litigation involving the movant's interest in the property, the debtors' interest in the property, and/or foreclosure of the property. As mentioned above, stay relief proceedings are summary in nature and do not finally decide the parties' rights to the property or as to each other.

Third, the court makes no determination about any claims the debtors may have against the movant or anyone else pertaining to the property. The court cannot resolve monetary damage claims, of the nature asserted by the debtors, on a motion, much less on an opposition to a stay relief motion. As such, the court is making ruling with respect to such claims, to the extent the debtors may be seeking any determination from this court about such claims.

Fourth, 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) (emphasis added).

In this case, the aggregate amount due all liens (\$1,324,507) exceeds the value of the collateral (\$787,998, according to Schedule A/B), meaning that the debtor has no equity in the property. The

debtors do not dispute that there is no equity in the property. In reaching this conclusion, the court adopts the debtors' valuation of the property at \$787,998 in Schedule A/B. And, this case is a chapter 7 proceeding, meaning that reorganization is not an option. At a minimum, the movant's claim is without adequate protection.

Accordingly, 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.

U.S. Bank, N.A.'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 1429 South Miles Road Merced, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. 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.

13. [19-11540](#)-A-7 **IN RE: CAMILA LEDESMA LEMUS**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
4-16-2019 [\[2\]](#)

SCOTT LYONS
RESPONSIVE PLEADINGS

Final Ruling

Motion: Waiver of Filing Fee

Notice: Order Setting Hearing, April 17, 2019, ECF # 7; written opposition required

Disposition: Denied

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 by the debtor. The default of the debtor 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).

DISCUSSION

In forma pauperis fee waivers are governed by 28 U.S.C. § 1930(f). That subsection authorizes the court to waive the filing fee for Chapter 7 debtors: (1) whose income is "less than 150 percent of the income official poverty line . . . applicable to a family of the size involved"; and (2) who is otherwise "unable to pay that fee in installments." The debtor bears the burden of proving by a preponderance of the evidence that both prongs of § 1930(f)(1) have been satisfied. *In re Ross*, 508 B.R. 777 (Bankr. N.D. Ga. 2014).

Here, the debtor filed an ex parte application for waiver of the filing fee. Unable to reconcile the debtor's representations about household size the court set the matter for hearing and ordered the debtor to file a declaration clarifying the issue not later than 7 days prior to the hearing. The debtor has not done so. Accordingly, the court draws the adverse inference and finds that the debtor has not sustained her burden of proof as to entitlement of the fee waiver. The application will be denied.

CIVIL MINUTE ORDER

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

Camila Ledesma Lemus' application has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the application is denied without prejudice.

14. [19-11058](#)-A-7 **IN RE: ALFRED GALVAN**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-30-2019 [\[11\]](#)

BENNY BARCO

Final Ruling

The hearing on this motion will be continued to June 26, 2019 at 9:00 a.m., in order for it to be heard in conjunction with the debtor's motion for continued administration of the case and waiver of the post-petition education course requirement, DCN BDB-1.

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 subject hearing on the dismissal of the case is continued to June 26, 2019 at 9:00 a.m.

15. [19-10962](#)-A-7 **IN RE: MOSES AGUILAR**
[PK-1](#)

MOTION TO AVOID LIEN OF TBSC HOLDING COMPANY
5-9-2019 [\[12\]](#)

MOSES AGUILAR/MV
PATRICK KAVANAGH

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$9,794.91

All Other Liens (non-avoidable): \$143,551

Exemption: \$134,449

Value of Property: \$278,000

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.

16. [19-10962](#)-A-7 **IN RE: MOSES AGUILAR**
[PK-2](#)

MOTION TO AVOID LIEN OF BUREAUS INVESTMENT GROUP PORTFOLIO
NO 12 LLC
5-14-2019 [\[20\]](#)

MOSES AGUILAR/MV
PATRICK KAVANAGH

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$4,243.09

All Other Liens (non-avoidable): \$143,551

Exemption: \$134,449

Value of Property: \$278,000

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.

17. [19-10962](#)-A-7 **IN RE: MOSES AGUILAR**
[PK-3](#)

MOTION TO AVOID LIEN OF DEPARTMENT STORES NATIONAL
BANK/MACY'S
5-14-2019 [\[27\]](#)

MOSES AGUILAR/MV
PATRICK KAVANAGH

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$6,077.77

All Other Liens (non-avoidable): \$143,551

Exemption: \$134,449

Value of Property: \$278,000

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.

18. [19-10962](#)-A-7 **IN RE: MOSES AGUILAR**
[PK-4](#)

MOTION TO AVOID LIEN OF CAPITAL ONE N.A.
5-14-2019 [\[34\]](#)

MOSES AGUILAR/MV
PATRICK KAVANAGH

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Judicial Lien Avoided: \$2,848.95

All Other Liens (non-avoidable): \$143,551

Exemption: \$134,449

Value of Property: \$278,000

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.

19. [19-11665](#)-A-7 **IN RE: HECTOR MUNOZ**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-29-2019 [\[13\]](#)

EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
MARK ZIMMERMAN
DON POOL/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part and denied in part without prejudice

Order: Civil minute order

Subject: 2017 Chevrolet Silverado vehicle

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on April 24, 2019 and a meeting of creditors is first scheduled for May 28, 2019. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 24. The debtor filed a statement of intention on the petition date, indicating an intent to reaffirm the debt secured by the property.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property. This means that the debtor has until June 27 to enter into a reaffirmation agreement with the movant (30 days after the May 28 initial meeting of creditors).

Given the debtor's stated intent to reaffirm the debt secured by the subject property and given that the debtor still has until June 27 to do so, the court is not inclined to grant relief from stay at this time as to the debtor. Accordingly, the motion will be denied without prejudice as to the debtor.

As to the estate, the analysis is different. The trustee filed a no asset report on May 29, 2019, indicating that he will not be administering the property. This is cause for the granting of relief from stay. See 11 U.S.C. § 362(d)(1). Accordingly, as to the estate, the motion will be granted.

CIVIL MINUTE ORDER

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

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

Educational Employees 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 as to the bankruptcy estate. The automatic stay is vacated as to the bankruptcy estate with respect to the property described in the motion, commonly known as a 2017 Chevrolet Silverado vehicle. 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 ORDERED that the motion is denied without prejudice as to the debtor.

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.

20. [19-12173](#)-A-7 **IN RE: MARIO/MICHELLE NAVARRO**
[MZ-1](#)

MOTION TO DISMISS DUPLICATE CASE
5-28-2019 [\[12\]](#)

MARIO NAVARRO/MV
MARK ZIMMERMAN

Final Ruling

The motion will be denied without prejudice because it was served and filed on less than 21 days' notice, in violation of Fed. R. Bankr. P. 2002(a)(4). The motion was served and filed on May 28, 2019, only 15 days prior to the June 12 hearing on the motion. ECF No. 14.

21. [19-12176](#)-A-7 **IN RE: JUAN ALCALA SOTO**
[MZ-1](#)

MOTION TO DISMISS CASE
5-28-2019 [\[12\]](#)

JUAN ALCALA SOTO/MV
MARK ZIMMERMAN

Final Ruling

The motion will be denied without prejudice because it was served and filed on less than 21 days' notice, in violation of Fed. R. Bankr. P. 2002(a)(4). The motion was served and filed on May 28, 2019, only 15 days prior to the June 12 hearing on the motion. ECF No. 14.

22. [19-12177](#)-A-7 **IN RE: IRENE BOTELLO**
[MZ-1](#)

MOTION TO DISMISS DUPLICATE CASE
5-28-2019 [\[12\]](#)

IRENE BOTELLO/MV
MARK ZIMMERMAN

Final Ruling

The motion will be denied without prejudice because it was served and filed on less than 21 days' notice, in violation of Fed. R. Bankr. P. 2002(a)(4). The motion was served and filed on May 28, 2019, only 15 days prior to the June 12 hearing on the motion. ECF No. 14.

23. [18-14993](#)-A-7 **IN RE: JOSE SANCHEZ**
[NES-2](#)

MOTION TO DISMISS CASE
5-13-2019 [\[21\]](#)

JOSE SANCHEZ/MV
NEIL SCHWARTZ

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause."

The debtor is asking the court to dismiss the case because the "case was filed inadvertently before the allowable time to file and receive a discharge in Chapter 7 bankruptcy." ECF No. 21.

The debtor seeks dismissal then because he is not eligible for discharge in this case.

However, while this may be true as to the debtor, this does not automatically constitute cause for dismissal under section 707(a). Ineligibility for discharge by itself does not make the case eligible for dismissal.

This is because, despite the ineligibility for discharge, the debtor's bankruptcy estate can still be administered. Ineligibility for discharge also does not disqualify the debtor from being a debtor in chapter 7. And, while not entitled to discharge, the debtor may still have the protections and benefits of the automatic stay, exemptions, and lien avoidances.

"Nothing in the [section 727(a)] provision suggests it is intended to preclude such a debtor from becoming a debtor under Chapter 7. Instead, if an individual's eligibility to receive a Chapter 7 discharge had been intended to be a prerequisite to being a Chapter 7 debtor, the restriction would have been placed in § 109 instead of § 727, which becomes applicable only after the individual has already become a Chapter 7 debtor."

2009 WL 161625, at *2 (emphasis added). *See also In re Smith*, 133 B.R. 467, 469 (Bankr.N.D.Ind.1991) (reasoning that Congress knew how to restrict the availability of bankruptcy relief and that if Congress had intended to prevent multiple or serial filings, the prohibition against it would "be found in § 109[.]").

As the authors of Collier on Bankruptcy observe “[e]ven in a proceeding in which the debtor is not entitled to a discharge, a debtor may still obtain protection for property, since the exemptions and lien avoidance powers provided by section 522 of the Code would still apply as in any other case.” 6 Collier on Bankruptcy ¶ 727.11[a], at 727-53 (15th ed rev.).

In re Harkins, 445 B.R. 414, 416-17 (Bankr. E.D. Pa. 2009) (quoting *In re Rogers*, No. 08-21487-13, 2009 WL 161625 (Bankr. D. Kan. Jan. 14, 2009)) (emphasis added).

In other words, the debtor’s ineligibility for discharge is not by itself cause for dismissal under section 707(a).

Yet, besides his ineligibility for discharge, the debtor has not advanced any other reason for dismissal of the case.

Moreover, dismissal should be denied if it would prejudice the debtor’s creditors. *Bartee v. Ainsworth (In re Bartee)*, 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004).

This case has been pending since December 15, 2018. The creditors have been prevented from enforcing claims and/or collecting on debt for approximately five months now. The trustee has conducted four meetings of creditors. The debtor has failed to appear in the last three meetings. It appears that the trustee has been unable to conclude the meeting of creditors. With the protracted movements in the case, the debtor has benefited from the automatic stay for approximately five months now. As such, dismissal of the case without conclusion of the meeting of creditors and administration of the estate would prejudice the creditors of the estate. Dismissal is not appropriate.

Finally, the court notes that the debtor filed a nearly-identical motion to dismiss, ex parte, on January 18, 2019. ECF Nos. 14, 15, 16. As the motion was not set for hearing and the debtor did not submit an order to the court – as the court sees no order disposing of the motion – the motion was never presented to the court. Without a notice of hearing or an order lodged with the court, the court has no way of knowing that anything has been filed in a case.

Thus, the debtor knew of his ineligibility for discharge early in the case, but he did virtually nothing to seek dismissal. The case remained pending and so did the automatic stay. The debtor’s tardiness in bringing this motion before the court is a further reason for dismissal.

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 dismiss has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied.