

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

WEDNESDAY

MARCH 18, 2015

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [15-10010](#)-A-13 ANTONIO ALVAREZ
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE FOR
FAILURE TO FILE DOCUMENTS ,
MOTION TO DISMISS CASE
2-13-15 [[23](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Each of the following grounds supports dismissal both independently and in combination with the other grounds.

The debtor has failed to appear at one § 341 meeting of creditors. The plan that the debtor filed is incomplete. The plan lacks a term stating the duration of payments. In addition, no creditors have been properly provided for in the plan—class 2 states what appears to be the name of a creditor and the amount claimed by that creditor, but it contains no description of the collateral and no monthly dividend amount. The plan is not confirmable. The trustee asserts further that the debtor has not set a hearing on his plan in any event. No other class contains a creditor or claim.

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The trustee requested documents by sending a Trustee Packet. The packet included a Class 1 mortgage checklist with payment coupon or last statement, 2013 state and federal tax return, and proof of all income. From the schedules, of which the court takes judicial notice, the debtor has admitted that he has income of \$1200 per month (see page 1 of Official Form B 61, Schedule I at the beginning and header line for Part 2). In addition, Schedule J at line 23a shows combined monthly income of \$1200. Schedule D also suggests the existence of several mortgages on several real properties. Further, the debtor has not opposed the motion stating he did not have any of the documents requested.

The schedules and Statement of Financial Affairs (SOFA) are inaccurate or incomplete. Schedules I and J, as discussed, show debtor has income. But the debtor's response to Items No. 1 and 2 on the SOFA, questions asking for income from employment or operation of business or income other than from such sources, are both negative. Schedule A is incomplete and inconsistent within itself. It shows several real property addresses but then also contains the word "None" in the

column for description and location of property. It fails to include nature of debtor's interest in property and secured claim amounts and the current values. Schedule D is also incomplete as it fails to include creditors' names, the dates the creditors' claims were incurred, the nature of the liens securing such claims, the amount of the claims without deducting the value of collateral (although perhaps the amount of the claims, and not the property values are shown in the 2nd column), and the unsecured portion of such claims, if any. Nor can the trustee ask the debtor about these incomplete schedules and statements or inconsistencies because the debtor has not appeared at the § 341 meeting of creditors.

For the reasons stated in this ruling, the court will dismiss the case. The grounds provided show unreasonable delay by the debtor that is prejudicial to creditors.

2. [14-15811](#)-A-13 NADER SHOKRY
MHM-1
MICHAEL MEYER/MV
RABIN POURNAZARIAN/Atty. for dbt.

MOTION TO DISMISS CASE
2-17-15 [[39](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied as moot

Order: Civil minute order

Given the court's disposition of the trustee's other motion to dismiss this case, the court will deny this motion as moot.

3. [14-15811](#)-A-13 NADER SHOKRY
MHM-2
MICHAEL MEYER/MV
RABIN POURNAZARIAN/Atty. for dbt.

MOTION TO DISMISS CASE
2-17-15 [[43](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). No opposition has been filed, and a non-opposition 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the

proposed plan are delinquent in the amount of \$800. The debtor has advised his attorney that he wishes for his case to be dismissed.

4. [13-18013](#)-A-13 MADELINE MEDINA
SSD-1
ELISE DIAZ/MV
PETER BUNTING/Atty. for dbt.
STEVEN DIAS/Atty. for mv.
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-4-15 [[35](#)]

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

5. [11-17015](#)-A-13 LARRY/ANNIE ANDERSON
DRJ-1
LARRY ANDERSON/MV
M. ENMARK/Atty. for dbt.
DISMISSED
- MOTION TO SET ASIDE DISMISSAL
OF CASE
2-26-15 [[99](#)]

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

6. [15-10019](#)-A-13 MICHAEL/NATALIE FAGUNDES
BHT-1
OCWEN LOAN SERVICING, LLC/MV

PETER FEAR/Atty. for dbt.
BRIAN TRAN/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY OCWEN LOAN SERVICING,
LLC
1-22-15 [[16](#)]

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

7. [14-15473](#)-A-13 THOMAS SMITH
MHM-1

SCOTT LYONS/Atty. for dbt.
WITHDRAWN
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
2-12-15 [[31](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

8. [14-15473](#)-A-13 THOMAS SMITH
MHM-2
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR
UNREASONABLE DELAY THAT IS
PREJUDICIAL TO CREDITORS AND/OR
MOTION TO DISMISS CASE
2-12-15 [[34](#)]

SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

9. [10-15076](#)-A-13 KIMBERLY BIRD
DRJ-1
KIMBERLY BIRD/MV
M. ENMARK/Atty. for dbt.
DISMISSED

MOTION TO SET ASIDE DISMISSAL
OF CASE
2-26-15 [[117](#)]

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

10. [10-15076](#)-A-13 KIMBERLY BIRD
MNE-6
KIMBERLY BIRD/MV
M. ENMARK/Atty. for dbt.
DISMISSED

MOTION TO MODIFY PLAN
1-29-15 [[104](#)]

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

11. [14-15879](#)-A-13 VIRGINIA MOORE
TCS-2
VIRGINIA MOORE/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO SELL
3-3-15 [[35](#)]

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

12. [14-15882](#)-A-13 DELIA GALLARDO
JDR-1
DELIA GALLARDO/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO CONFIRM PLAN
2-3-15 [[20](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

13. [14-15690](#)-A-13 DONALD/MARIA LUISA SMITH
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
2-11-15 [[23](#)]

GEORGE LOGAN/Atty. for dbt.
WITHDRAWN

Final Ruling

The objection withdrawn, the matter is dropped as moot.

14. [15-10660](#)-B-13 STEVEN/BRANDI AVALOS
EPE-1
STEVEN AVALOS/MV
ERIC ESCAMILLA/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
3-10-15 [[14](#)]

Final Ruling

The hearing on this matter is continued to March 20, 2015, at 9:00 a.m.

15. [15-10857](#)-A-13 LARRY/JENNIE ROMERO MOTION TO EXTEND AUTOMATIC STAY
GEG-1 3-11-15 [[10](#)]
LARRY ROMERO/MV
GLEN GATES/Atty. for dbt.

Final Ruling

The hearing on this matter is continued to March 20, 2015, at 9:00 a.m.

10:00 a.m.

1. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED MOTION BY SCOTT LYONS
SL-6 TO WITHDRAW AS ATTORNEY
2-23-15 [[306](#)]
SCOTT LYONS/Atty. for dbt.

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

2. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED MOTION TO COMPROMISE
[13-1124](#) GEG-2 CONTROVERSY/APPROVE SETTLEMENT
STORMS ET AL V. LEMONS AGREEMENT WITH LINDSAY LEMONS
12-16-14 [[46](#)]
GLEN GATES/Atty. for mv.

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

3. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED STATUS CONFERENCE RE:
[13-1124](#) COMPLAINT
STORMS ET AL V. LEMONS 11-12-13 [[1](#)]
GLEN GATES/Atty. for pl.

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

4. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED MOTION TO CONFIRM
SL-2 PLAN
LINDSAY LEMONS/MV 11-26-13 [[79](#)]
SCOTT LYONS/Atty. for dbt.

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

5. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED OBJECTION TO CLAIM OF
SL-3 WES STORMS, CLAIM NUMBER 2
LINDSAY LEMONS/MV 11-7-13 [[49](#)]
SCOTT LYONS/Atty. for dbt.

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

6. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED OBJECTION TO CLAIM OF
SL-4 WAYLENCO, CLAIM NUMBER 3
LINDSAY LEMONS/MV 11-7-13 [[54](#)]
SCOTT LYONS/Atty. for dbt.

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.

7. [13-15181](#)-A-13 LINDSAY LEMONS CONTINUED OBJECTION TO CLAIM OF
SL-5 WAYNE STORMS, CLAIM NUMBER 1
LINDSAY LEMONS/MV 10-24-13 [[134](#)]
SCOTT LYONS/Atty. for dbt.

Final Ruling

The hearing on this matter is continued to April 2, 2015, at 9:00 a.m.