

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Wednesday, November 27, 2013
Place: Department B – Courtroom #12
Fresno, California
INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

9:00 A.M.

1. [13-16845](#)-B-11 KEYSTONE MINE MANAGEMENT MOTION TO EMPLOY PHILLIP W.
PWG-1 II GILLET, JR. AS ATTORNEY(S)
KEYSTONE MINE MANAGEMENT II/MV 11-5-13 [[9](#)]
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

This matter has been rescheduled to November 26, 2013, at 11:30 p.m. No appearance is necessary on November 26.

2. [13-17297](#)-B-11 MARIA PEDRO CONTINUED MOTION TO USE CASH
TOG-2 COLLATERAL
MARIA PEDRO/MV 11-14-13 [[4](#)]
THOMAS GILLIS/Atty. for dbt.

10:30 A.M.

1. [13-10302](#)-B-11 GMC DAIRY FARMS LP STATUS CONFERENCE RE: COMPLAINT
[13-1103](#) 9-24-13 [[1](#)]
GMC DAIRY FARMS, L.P. V. SOLA
ET AL
THOMAS GILLIS/Atty. for pl.

This status conference will be dropped from calendar because the record does not show that the summons and complaint were properly and/or timely served in compliance with FRBP 7004(b) & (e). The clerk of the court will issue a notice of intent to dismiss for unreasonable delay and failure to prosecute if the plaintiff does not get the complaint properly served with a reissued summons within 30 days. No appearance is necessary.

2. [13-10603](#)-B-7 OMAR ENRIGUEZ CONTINUED STATUS CONFERENCE
[13-1049](#) AMENDED COMPLAINT, JURY DEMAND
HEREDIA V. ENRIGUEZ 10-16-13 [[41](#)]
GABRIEL WADDELL/Atty. for pl.

This matter will be continued to December 11, 2013, at 9:00 a.m., to be called with the defendant's motion to dismiss. The court will prepare a minute order. No appearance is necessary.

3. [11-63503](#)-B-7 FRANK/ALICIA ITALIANE STATUS CONFERENCE RE: AMENDED
[13-1084](#) COMPLAINT
SALVEN V. ITALIANE ET AL 9-30-13 [[13](#)]
TRUDI MANFREDO/Atty. for pl.
SET FOR TRIAL 12/13/13,
RESPONSIVE PLEADING

4. [12-60054](#)-B-7 DWIGHT/NELLIE LONG STATUS CONFERENCE RE: COMPLAINT
[13-1100](#) 9-17-13 [[1](#)]
HAWKINS V. CITIBANK, N.A.
ROBERT HAWKINS/Atty. for pl.

It appears the defendant's default has been entered. The status conference will be dropped from calendar and may be reset by any party on 10 days' notice. No appearance is necessary. The clerk of the court may close the adversary proceeding without notice in 60 days unless the adversary proceeding has been concluded or set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue a civil minute order.

1:30 P.M.

1. [12-12100](#)-B-13 DOUGLAS MCDONOUGH MOTION TO MODIFY PLAN
TCS-2 10-11-13 [[51](#)]
DOUGLAS MCDONOUGH/MV
TIMOTHY SPRINGER/Atty. for dbt.

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

2. [13-13903](#)-B-13 GARY CROCKER MOTION TO VALUE COLLATERAL OF
JDW-1 WELLS FARGO HOME EQUITY
GARY CROCKER/MV 10-23-13 [[32](#)]
JOEL WINTER/Atty. for dbt.

The motion will be denied without prejudice. No appearance is necessary. The named respondent in the motion is Wells Fargo Home Equity. Based on the proof of claim, the holder of this mortgage lien appears to be Wells Fargo Bank, N.A.

3. [11-62106](#)-B-13 ANTHONY SHOLARS AND MOTION TO MODIFY PLAN
TCS-3 ISABEL BORGES-SHOLARS 10-10-13 [[42](#)]
ANTHONY SHOLARS/MV
TIMOTHY SPRINGER/Atty. for dbt.

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

4. [13-16616](#)-B-13 JOE BOSS MOTION FOR RELIEF FROM
HTP-1 AUTOMATIC STAY
UNITED SECURITY BANK/MV 10-30-13 [[19](#)]
SCOTT LYONS/Atty. for dbt.
HANNO POWELL/Atty. for mv.
RESPONSIVE PLEADING

5. [13-16219](#)-B-13 KARL/BRENDA KAUFMANN
GH-1
KARL KAUFMANN/MV
GARY HUSS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
9-20-13 [[8](#)]

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted for cause shown without oral argument. Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtor(s) may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. *Unless the chapter 13 plan has been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.* The debtor(s) shall submit a proposed order consistent with this ruling. No appearance is necessary.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

6. [10-64630](#)-B-13 JOSE/MARISOL ESTRADA
MHM-2
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF
DEPARTMENT OF THE TREASURY -
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 7
10-11-13 [[79](#)]

SUSAN MOORE/Atty. for dbt.
RESPONSIVE PLEADING

7. [13-13431](#)-B-13 GREGORY VALENZUELA
TCS-2
GREGORY VALENZUELA/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO MODIFY PLAN
10-8-13 [[26](#)]

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

8. [10-12438](#)-B-13 JUDITH SMITH
TCS-2
JUDITH SMITH/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
10-9-13 [[41](#)]

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

9. [10-60938](#)-B-13 MEILY YIP

MEILY YIP/MV
BRUCE NICKEL/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
10-11-13 [[69](#)]

10. [10-60938](#)-B-13 MEILY YIP

BRUCE NICKEL/Atty. for dbt.

ORDER DIRECTING ATTORNEY BRUCE
NICKEL, ESQ. TO DISGORGE FEES
OR TO APPEAR AND TO SHOW CAUSE
11-8-13 [[74](#)]

11. [13-15147](#)-B-13 FRANK/BETTY JOHNSON
JDW-1
FRANK JOHNSON/MV
JOEL WINTER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CHASE HOME FINANCE, LLC
10-23-13 [[17](#)]

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted for cause shown without oral argument. Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtor(s) may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. *Unless the chapter 13 plan has been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.* The debtor(s) shall submit a proposed order consistent with this ruling. No appearance is necessary.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

12. [13-15254](#)-B-13 JERAL RICHARDSON MOTION TO CONFIRM PLAN
JMA-4 9-20-13 [[35](#)]
JERAL RICHARDSON/MV
JOSEPH ARNOLD/Atty. for dbt.
RESPONSIVE PLEADING

13. [11-18158](#)-B-13 RAUL/MARIA TORRES MOTION TO MODIFY PLAN
GH-4 10-1-13 [[59](#)]
RAUL TORRES/MV
GARY HUSS/Atty. for dbt.
PLAN WITHDRAWN

The motion has been withdrawn. No appearance is necessary.

14. [12-16958](#)-B-13 BENJAMIN BRUFFETT MOTION TO INCUR DEBT
TCS-3 11-13-13 [[37](#)]
BENJAMIN BRUFFETT/MV
TIMOTHY SPRINGER/Atty. for dbt.

15. [13-15363](#)-B-13 STEVEN/KATHERINE JANTZ CONTINUED OBJECTION TO
PPR-1 CONFIRMATION OF PLAN BY THE
THE BANK OF NEW YORK MELLON/MV BANK OF NEW YORK MELLON
10-1-13 [[32](#)]
WILLIAM COLLIER/Atty. for dbt.
CASSANDRA RICHEY/Atty. for mv.
CASE DISMISSED

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

16. [11-12668](#)-B-13 ALVINA FISCHER OBJECTION TO NOTICE OF MORTGAGE
AF-1 PAYMENT CHANGE
ALVINA FISCHER/MV 10-31-13 [[92](#)]
ALVINA FISCHER/Atty. for mv.

The motion will be denied without prejudice. The moving papers do not include an appropriate docket control number as required by Local Rule 9014-1(c), and were filed without a notice of hearing and without a proof of service to show that they were served on the respondent.

In addition, the respondent has withdrawn the disputed mortgage payment notice. The motion requests an award of damages without any supporting evidence or authority. No further relief appears to be necessary. No appearance is necessary.

17. [10-10969](#)-B-13 JEFFERY/MONIQUE DOWNS MOTION TO MODIFY PLAN
TCS-4 10-23-13 [[60](#)]
JEFFERY DOWNS/MV
TIMOTHY SPRINGER/Atty. for dbt.

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

18. [10-10969](#)-B-13 JEFFERY/MONIQUE DOWNS MOTION TO APPROVE LOAN
TCS-5 MODIFICATION
JEFFERY DOWNS/MV 11-8-13 [[66](#)]
TIMOTHY SPRINGER/Atty. for dbt.

19. [13-15871](#)-B-13 DOMENICO FERRUA AND MOTION TO CONFIRM PLAN
PLF-1 SHAWNA GILES 10-16-13 [[21](#)]
DOMENICO FERRUA/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

20. [13-15871](#)-B-13 DOMENICO FERRUA AND COUNTER MOTION FOR LEGAL FEES
VC-1 SHAWNA GILES AND EXPENSES
DOMENICO FERRUA/MV 11-13-13 [[41](#)]
PETER FEAR/Atty. for dbt.

The motion will be denied without prejudice. The moving papers do not include an appropriate docket control number as required by Local Rule 9014-1(c)(4), nor was the countermotion noticed as required by 9014-1(d)(2).

In addition, the countermotion prays for an award of attorneys fees and costs pursuant to 28 U.S.C. 1927. That code section is not applicable to the bankruptcy court. See *In re Deville*, 280 B.R. 483, 495(9th Cir. BAP 2002) (*aff'd*. 361 F.3d 539(9th Cir. 2004)). Attorney fees and costs may be awarded under Rule 9011. However the court is not persuaded that sanctions (which must be paid to the court) are warranted under Rule 9011(c)(1)(B). Attorney fees and costs may only be awarded to the prevailing party under Rule 9011(c)(1)(A) and only after the moving party has "precisely complied" with the "safe harbor" procedure of Rule 9011(c)(1)(A). *In re Markus*, 268 B.R. 556, 565-66 (9th Cir. BAP 2001).

Finally, the prayer includes a request for fees and costs according to California Civil Code § 1717 without supporting evidence. A motion for attorney fees pursuant to applicable nonbankruptcy law must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. The court will enter a civil minute order. No appearance is necessary.

21. [13-15871](#)-B-13 DOMENICO FERRUA AND MOTION FOR RELIEF FROM
VC-1 SHAWNA GILES AUTOMATIC STAY
TOP FINANCE CO., INC./MV 10-22-13 [[31](#)]
PETER FEAR/Atty. for dbt.
MICHAEL VANLOCHEM/Atty. for mv.
RESPONSIVE PLEADING

22. [10-64286](#)-B-13 SIXTO/PATRICIA SANDOVAL MOTION TO MODIFY PLAN
SL-1 10-15-13 [[46](#)]
SIXTO SANDOVAL/MV
SCOTT LYONS/Atty. for dbt.

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

23. [12-60289](#)-B-13 MARTHA GARCIA MOTION TO MODIFY PLAN
MLG-4 10-15-13 [[58](#)]
MARTHA GARCIA/MV
MARTHA GARCIA/Atty. for mv.

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

24. [12-19594](#)-B-13 NICOLE DAVIS MOTION TO MODIFY PLAN
TCS-3 10-10-13 [[35](#)]
NICOLE DAVIS/MV
TIMOTHY SPRINGER/Atty. for dbt.

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

25. [12-16895](#)-B-13 DARREN/JENNIFER COMBS
TCS-3
DARREN COMBS/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
10-15-13 [[76](#)]

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

26. [11-16697](#)-B-13 RONALD/DONNA HOFFART

NOTICE OF DEFAULT AND MOTION TO
DISMISS CASE
6-13-13 [[76](#)]

ANDY WARSHAW/Atty. for dbt.
ORDER 11/14, RESPONSIVE
PLEADING

27. [13-13398](#)-B-13 LORENZO/CRISPINA GIRON
PLF-1
LORENZO GIRON/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WELLS FARGO
BANK, N.A.
10-30-13 [[35](#)]

PETER FEAR/Atty. for dbt.

The motion will be granted in part and continued in part. The debtors are authorized to enter into the proposed "Settlement Agreement" with Wells Fargo Bank, N.A., for return of the funds. The debtors shall submit an appropriate order and file a report with the court when the funds have been received. The funds shall be held in debtors' counsel's trust account pending further order of the court.

The motion to approve a contingency fee for debtors' counsel will be continued to December 12, 2013, at 1:30 p.m. Debtors' counsel shall file copies of his billing records showing what time and effort was expended in a reasonable effort to recover the money from Wells Fargo Bank in the ordinary course of counsel's duty to represent his clients, and before the debtors signed the contingency fee agreement. The applicant shall also file billing records to show how much time and effort was expended to actually recover the money during the three week interval between execution of the contingency fee agreement and the settlement agreement. The court notes that debtors' counsel had already sent a demand letter to Wells Fargo Bank and commenced communications with the Bank regarding return of the money before the hearing on August 22, 2013 (TR 4:22-23). The motion is silent as to the Bank's response and the issues that subsequently gave rise to the need for a contingency fee agreement. Resolution of this matter did not require the commencement of an adversary proceeding. Pursuant to 11 U.S.C. § 329(b), the court may cancel any agreement for fees to be paid in connection with this case if the agreed compensation exceeds the reasonable value of the services rendered. Here, the court cannot evaluate the "reasonable value" of the proposed contingency fee without more information regarding the difficulties encountered and the risk to debtors' counsel. No appearance is necessary.

28. [11-17899](#)-B-13 BILLY EVANS
MHM-1
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF
CITIMORTGAGE, INC., CLAIM
NUMBER 11
10-10-13 [[41](#)]

GARY HUSS/Atty. for dbt.
SARAH VELASCO/Atty. for mv.

The objection will be sustained as modified below. Claim # 11 was untimely and will not receive any distribution in this chapter 13 proceeding. However, if this case is converted to a case under any other chapter, and a new bar date is set for the filing of claims, this claim shall be deemed timely and shall be allowed pursuant to 11 U.S.C. § 502(a), without the necessity of filing a new proof of claim. The objecting party shall submit a proposed order consistent with this ruling. No appearance is necessary.

29. [12-18699](#)-B-13 GARY/LISA RIGGINS
JHW-1
AMERICREDIT FINANCIAL
SERVICES, INC./MV
BENJAMIN SHEIN/Atty. for dbt.
JENNIFER WANG/Atty. for mv.
WITHDRAWN

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-16-13 [[57](#)]

The motion has been withdrawn. No appearance is necessary.

30. [13-17027](#)-B-13 JUAN MARTINEZ
JDM-1
JUAN MARTINEZ/MV
JAMES MILLER/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
11-19-13 [[10](#)]

31. [13-17167](#)-B-13 SHARON GARNICA
JDM-1
SHARON GARNICA/MV
JAMES MILLER/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
11-19-13 [[14](#)]

2:00 P.M.

1. [13-16226](#)-B-13 ABEL ALEMAN
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt. MOTION TO DISMISS CASE
11-13-13 [[23](#)]

2. [13-15768](#)-B-13 RICHARD/JANET SOESMAN
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt. MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-6-13 [[17](#)]

3. [13-14395](#)-B-13 DARLA RAMBONGA
MHM-2
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt. MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
11-6-13 [[41](#)]