

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
510 19th Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY  
**DATE:** MARCH 5, 2020  
**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-13701](#)-A-13     **IN RE: PAUL/KATHERINE MCCURRY**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
11-26-2019    [[23](#)]

MICHAEL MEYER/MV  
D. GARDNER/ATTY. FOR DBT.

**No Ruling**

2. [19-15201](#)-A-13     **IN RE: TRAVALE/CAMELA SHORTER**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-7-2020    [[16](#)]

JEFFREY MEISNER/ATTY. FOR DBT.

**Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition  
required

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The plan does not comply with 11 U.S.C. §1322(a). Debtors' monthly plan payment is insufficient to pay the mortgage contract installment, the mortgage arrears, the Class 2 monthly dividend and the attorneys' fees each month. If attorney's fees are reduced to \$200.00 a month the plan payment would be sufficient.

The plan does not meet disposable income requirements under 11 U.S.C. §1325(b). Debtors' are above median and must pay their disposable income required on line 45 of their Form 122C-2 each month to their general unsecured creditors. Debtors' line 45 shows \$2,937.02 per month. Debtors have proposed a 0.83% plan, paying about \$900.00 to their general unsecured creditors.

Debtors have not demonstrated that the expenses taken on line 43 qualify as a "special circumstance" under the code. Debtors took an expense on line 41, but indicated at the meeting of the creditors that this was for a voluntary 401k deduction, which is disallowed under *Parks v. Drummond*, 475 B.R. 703, 709 (B.A.P. 9th Cir. 2012). Debtors took an expense for "additional" public transportation on

line 15. Debtors have 2 or more vehicles and indicated at the meeting of the creditors that they do not use public transportation.

#### **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 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

3. [15-13005](#)-A-13     **IN RE: RONALD/DENISE GRANT**  
[RSW-3](#)

MOTION TO INCUR DEBT  
2-20-2020    [[49](#)]

RONALD GRANT/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

#### **No Ruling**

4. [19-15045](#)-A-13     **IN RE: JESUS VELEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-6-2020    [[39](#)]

MICHAEL MEYER/MV  
STEVEN ALPERT/ATTY. FOR DBT.

#### **No Ruling**

5. [19-14161](#)-A-13     **IN RE: GARY GOODMAN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-10-2020    [[30](#)]

MICHAEL MEYER/MV  
PHILLIP GILLET/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

**Notice:** LBR 9014-1(f)(2); no 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). 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).

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. 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 \$3,700.00.

### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor 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 because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

### **IMPROPER NOTICE**

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The motion and supporting pleadings must be served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee. 28 days' notice is

required. Here, 24 days' notice was provided. The court notices the movant to comply with the applicable notice period for all filings.

6. [17-14665](#)-A-13     **IN RE: VICKI/ANGELA VALENTYN**  
[RSW-4](#)

MOTION TO MODIFY PLAN  
1-10-2020    [[119](#)]

VICKI VALENTYN/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
DISMISSED 1/28/20

**Final Ruling**

The case having been dismissed on January 28, 2020, the motion is dropped as moot.

7. [19-14266](#)-A-13     **IN RE: BENJAMIN TORRES**  
[PLG-1](#)

MOTION TO CONFIRM PLAN  
1-2-2020    [[21](#)]

BENJAMIN TORRES/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.

**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 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 has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

8. [18-14494](#)-A-13     **IN RE: BRENDA CANFIELD**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
1-15-2020    [[28](#)]

BRENDA CANFIELD/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

**No Ruling**

9. [19-14498](#)-A-13     **IN RE: VICENTE/FLOR GONZALES**  
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE  
2-19-2020    [[16](#)]

VICENTE GONZALES/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

**Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]

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

**Disposition:** Continued to April 3, 2020 at 9:00 a.m. due to insufficient service

**Order:** Civil Minute Order

**INSUFFICIENT SERVICE**

Service on federal government agencies must be made pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(5). Fed. R. Bankr. P. 7004(b)(5). Under this rule, service must be made both (1) on the agency, and (2) on the United States. See *id.* Rule 7004(b)(4) prescribes the manner of service on the United States and requires service to be made to the attention of the civil process clerk at the U.S. attorney's office for this district and division and to the attention of the Attorney General of the United States at Washington, District of Columbia. Fed. R. Bankr. P. 7004(b)(4).

This court will continue the hearing for this matter to April 3, 2020 at 9:00 a.m. for the movant to comply with the 7004(b)(5) service requirements. Any opposition is to be filed not later than March 20, 2020.

10. [19-14498](#)-A-13     **IN RE: VICENTE/FLOR GONZALES**  
[RSW-2](#)

MOTION TO AVOID LIEN OF LVNV FUNDING LLC  
2-19-2020    [\[21\]](#)

VICENTE GONZALES/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

**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.

11. [17-12799](#)-A-13     **IN RE: ANGELA ADAMS**  
[RSW-4](#)

MOTION TO MODIFY PLAN  
1-15-2020    [\[68\]](#)

ANGELA ADAMS/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

12. [20-10569-A-12](#) IN RE: BHAJAN SINGH AND BALVINDER KAUR  
[DRJ-1](#)

MOTION TO USE CASH COLLATERAL  
3-2-2020 [[24](#)]

BHAJAN SINGH/MV  
DAVID JENKINS/ATTY. FOR DBT.  
OST 3/3/20

**No Ruling**