

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, May 2, 2019
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
9-7-2018 [[1](#)]

RILEY WALTER

NO RULING.

2. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-1](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR CREATION OF A
PACA TRUST ACCOUNT
11-15-2018 [[108](#)]

VERSA MARKETING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-93](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
3-25-2019 [[1272](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

1:30 PM

1. [19-10305](#)-B-13 **IN RE: RUBEN/MARIA QUINTANILLA**
[RMP-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
4-11-2019 [\[19\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
SCOTT LYONS
RENEE PARKER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part and overruled in part.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party
will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection in part. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Creditor U.S. Bank National Association ("Creditor") objects to plan confirmation because the plan fails to fully provide for Creditor's pre-petition arrears and fails to provide for payment of pre-petition property taxes. Doc. #19, claim #2. The Debtor's schedules do not state property taxes are due. Doc. #1.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #2. Creditor's proof of claim, filed March 11, 2019, states a claimed arrearage of \$25,258.84. This claim is classified in class 1 - paid by the chapter 13 trustee. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly.

Debtors' plan understates the amount of arrears. The plan states arrears of \$23,283.29. Doc. #2. Creditor's claim states arrears of \$25,258.84. Section 3.02 of the plan provides that the proof of claim, and not the plan itself, determines the amount that will be repaid. The plan presently must pay the arrearage in full. The plan currently does not fund. Though the objection claims there is a pre-petition property tax arrearage, the tax collector has not filed a claim and objection provides no evidence. That objection is

overruled for lack of proof. Section 3.07(b) (2) requires that the payment be adjusted accordingly for a class 1 claim.

Therefore, this objection is SUSTAINED IN PART and OVERRULED IN PART.

2. [15-10407](#)-B-13 **IN RE: STEPHEN/KYMBERLY SALTER**
[TCS-3](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
4-15-2019 [\[48\]](#)

STEPHEN SALTER/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(e) (2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

In this case, no proof of service was filed. Therefore this motion is DENIED WITHOUT PREJUDICE.

3. [18-14519](#)-B-13 **IN RE: JODI GOLDEN-BAYHURST**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-29-2019 [\[48\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Sustained.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be deemed a waiver of any opposition to the sustaining of the objection. Cf. Ghazali v.

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on March 20, 2019 and this objection was filed on March 29, 2019, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Trustee objects to the \$175,000.00 homestead exemption under California Civil Procedure § 704.730 on the grounds that debtor neither specifies which subsection of the statute she makes her claim under, nor has proven she qualifies for the exemption. Doc. #48. C.C.P. § 704.730 requires that the debtor either be 65 years of age or older, physically or mentally disabled, or 55 years of age or older with a combined gross annual income not greater than \$35,000.00. The debtor did not oppose this objection.

The court finds that the trustee is correct, and in the absence of any objection or opposing evidence, SUSTAINS the trustee's objection.

4. [18-15127](#)-B-13 **IN RE: FRANCISCO GUADRON AND MARIA CHAVOYA-GUADRON**
[JRL-1](#)

MOTION TO CONFIRM PLAN
3-22-2019 [\[28\]](#)

FRANCISCO GUADRON/MV
JERRY LOWE

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

In this case, no proof of service was filed. Therefore this motion is DENIED WITHOUT PREJUDICE.

5. [18-13832](#)-B-13 **IN RE: ANDREA SOUSA**
[JRL-4](#)

MOTION TO CONFIRM PLAN
3-27-2019 [\[76\]](#)

ANDREA SOUSA/MV
JERRY LOWE
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to May 30, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The chapter 13 trustee and creditor Wells Fargo Bank N.A. (collectively "Objectors") have filed detailed objections to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the Objectors' oppositions to confirmation are withdrawn, the debtor shall file and serve a written response not later than May 16, 2019. The response shall specifically address each issue raised in the objections to confirmation, state whether the issues are disputed or undisputed, and include admissible evidence to support the debtor's position. The Objectors shall file and serve replies, if any, by May 23, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than May 23, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

6. [19-10140](#)-B-13 **IN RE: KENNETH/PAULANNA INGLE**
[SL-1](#)

MOTION TO CONFIRM PLAN
3-21-2019 [\[19\]](#)

KENNETH INGLE/MV
SCOTT LYONS

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. [19-10073](#)-B-13 **IN RE: THERESE DOZIER**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-29-2019 [\[30\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ
DISMISSED 4/4/19

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #36.

8. [19-10181](#)-B-13 **IN RE: ARNULFO/LETICIA OLGUIN**
[PBB-2](#)

MOTION TO CONFIRM PLAN
3-26-2019 [\[27\]](#)

ARNULFO OLGUIN/MV
PETER BUNTING
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to May 30, 2019 at 1:30 p.m. The court
sets July 18, 2019 as a bar date by which a chapter
13 plan must be confirmed or the case will be
dismissed.

ORDER: The court will issue an order.

The chapter 13 trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than May 16, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. The trustee shall file and serve a reply, if any, by May 23, 2019.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than May 23, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set July 18, 2019 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

9. [18-15084](#)-B-13 **IN RE: ROBERT SANFORD**
[SL-1](#)

MOTION TO CONFIRM PLAN
3-21-2019 [\[35\]](#)

ROBERT SANFORD/MV
SCOTT LYONS
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to May 30, 2019 at 1:30 p.m. The court sets July 18, 2019 as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed.

ORDER: The court will issue an order.

The court must first note movant's procedural error. Local Rule of Practice 9004-2(c)(1) requires that motions, exhibits, *inter alia*, to be filed as separate documents. Here, the motion, chapter 13 plan, and Official Form 309I were combined into one document and not filed separately. Failure to conform with this rule in the future will result in future motions being denied without prejudice.

The chapter 13 trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than May 16, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by May 23, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than May 23, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set July 18, 2019 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.