

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

Honorable Fredrick E. Clement
Modesto Federal Courthouse
1200 I Street, Suite 4
Modesto, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: AUGUST 13, 2019
CALENDAR: 11:00 A.M. CHAPTERS 13 AND 12

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. [17-90812](#)-D-13 **IN RE: PAMELA LOOPER**
[PGM-3](#)

CONTINUED MOTION TO MODIFY PLAN
5-27-2019 [\[108\]](#)

RESPONSIVE PLEADING

No Ruling

2. [13-92116](#)-D-13 **IN RE: DIANA ROCHA**
[DJR-2](#)

CONTINUED MOTION TO SUBSTITUTE ATTORNEY
7-9-2019 [\[129\]](#)

RESPONSIVE PLEADING

Tentative Ruling

Motion: Substitute Debtor in Pro Per in the Place of Attorney of Record Christian Younger

Disposition: Granted

Order: Civil minute order

The debtor is seeking to substitute herself in pro per, in the place of her attorney of record, Christian Younger, who is no longer involved in the case. Mr. Younger apparently referred the case to another attorney, for substitution of counsel, subject to approval by the debtor.

The trustee has filed a non-opposition, stating that the debtor's:

- plan payments are complete,
- debtor education certificate was filed on January 15, 2019,
- § 522(q) exemptions certificate was filed on January 15, 2019, and
- § 1328 certificate was filed on March 22, 2019.

As the debtor's attorney of record, Christian Younger, is no longer involved in the case, and the debtor's case has been completed, the court is inclined to grant the requested substitution. The court also notes that the debtor was formerly a bankruptcy paralegal and has basic understanding of the bankruptcy process. As such, the debtor is likely to navigate successfully through the entry of discharge in the case.

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

IT IS ORDERED that the motion is granted. The debtor, in pro per, is hereby substituted in the place of her attorney of record. The debtor's address is 3667 Pine Valley Court Turlock, CA 95382.

3. [16-90219](#)-D-13 **IN RE: SHARON HAMILTON**
[DCJ-3](#)

MOTION TO MODIFY PLAN
7-2-2019 [[135](#)]

RESPONSIVE PLEADING

No Ruling

4. [16-90323](#)-D-13 **IN RE: RICHARD/PAMELA DAMIN**
[JAD-2](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT,
SUBSTITUTE PARTY, AS TO DEBTOR
7-16-2019 [[23](#)]

Final Ruling

Motion: Waiver of Requirement to File § 1328 Certifications

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

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).

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CONTINUED ADMINISTRATION OF THE CASE

Rule 1016 is applicable to this case. Rule 1016 provides that when a debtor dies, "[i]f a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Further administration is possible and in the best interests of the debtor and creditors in this case. Fed. R. Bankr. P. 1016. Pursuant to § 105(a), Federal Rules of Bankruptcy Procedure 1001 and 1016, and Local Bankruptcy Rule 1016-1(b), the court will authorize further administration of this case.

SUBSTITUTION OF THE PROPER PARTY

Furthermore, the court will order substitution of the proper party. Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bankr. P. 7025; LBR 1016-1(b)(1). The court will substitute the surviving joint debtor in the stead of the deceased debtor. The court will authorize the surviving joint debtor's service as the deceased debtor's representative.

WAIVER OF POST-PETITION EDUCATION REQUIREMENT

The motion also requests a waiver of the requirement to complete, after the petition date, the personal financial management course described in § 111. See 11 U.S.C. § 1328(g)(1). But this post-petition requirement does not apply when the debtor is a person described in § 109(h)(4). *Id.* § 1328(g)(2). The court finds that the joint-debtor's death constitutes incapacity under § 109(h)(4) and will grant a waiver of the § 1328(g)(1) requirement.

ORDER INSTRUCTIONS

The operative provisions of the order shall state only the following: "It is ordered that the motion is granted as to the deceased debtor. The court waives the requirement that [deceased debtor's name] complete and file certifications concerning compliance with § 1328. The court also waives the requirement that the debtor complete an instructional course concerning personal financial management as required by § 1328(g). It is further ordered that the court finds that continued administration of the estate is possible and in the best interests of the parties. The court substitutes [surviving debtor's name] in the stead of the deceased debtor, and authorizes the surviving joint debtor's service as the deceased debtor's representative."

5. [18-90738](#)-D-13 **IN RE: LARRY FOSTER**
[DCJ-4](#)

MOTION TO CONFIRM PLAN
7-2-2019 [[91](#)]

RESPONSIVE PLEADING

No Ruling

6. [17-90564](#)-D-13 **IN RE: DANIEL/GERARDEE DONNAN**
[EGS-1](#)

CONTINUED MOTION TO ALLOW ACCESS TO REAL PROPERTY LOCATED AT
274 TIMBERWOOD DRIVE, OAKDALE, CA 95361 TO INSPECT THE
INTERIOR OF MOVANT'S COLLATERAL
6-25-2019 [[109](#)]

RESPONSIVE PLEADING

No Ruling

7. [17-90564](#)-D-13 **IN RE: DANIEL/GERARDEE DONNAN**
[JAD-5](#)

STATUS CONFERENCE AFTER REMAND RE: OBJECTION TO CLAIM OF
BAYVIEW LOAN SERVICING, LLC, CLAIM NUMBER 8
2-16-2018 [[62](#)]

RESPONSIVE PLEADING

No Ruling

8. [19-90068](#)-D-13 **IN RE: CAROL MOHR**
[DCJ-1](#)

MOTION TO CONFIRM PLAN
7-2-2019 [[33](#)]

RESPONSIVE PLEADING

No Ruling

9. [17-90869](#)-D-13 **IN RE: KAY PARKER**
[MLF-3](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
MELLEN LAW FIRM FOR DUNCAN MCGEE NEFCY, DEBTOR'S ATTORNEY(S)
7-9-2019 [\[168\]](#)

Tentative Ruling

Application: Compensation and Expense Reimbursement

Notice: N/A (Continued, Deficient)

Disposition: Denied without prejudice

Order: Civil minute order

Judge Robert Bardwil continued the hearing on this motion from July 23, 2019, in order for the movant to address several deficiencies in the motion:

The court will continue the hearing to August 13, 2019 at 11:00 a.m. and Counsel shall, no later than July 23, 2019 (the 21st day before the hearing date):

(1) file a notice of continued hearing that includes the amount of compensation sought and by whom;

(2) serve the notice of continued hearing on the debtor's attorney in the parent case and all creditors; and

(3) serve the notice of continued hearing on the chapter 13 trustee, the debtor, and counsel for the other parties in the adversary proceedings.

The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(2); that is, it shall specifically state no written opposition is required and that opposition, if any, may be presented at the hearing. A proof of service shall be filed concurrently with the notice of continued hearing, or not more than three days after it is filed.

ECF No. 175.

The motion will be denied without prejudice because the movant has not complied with Judge Bardwil's order.

While a notice of continued hearing was filed and served by the movant, not all required parties have been served with the notice.

For example, creditors Mid Valley Services, Placer Title Co., and Placer Foreclosure, Inc. have not been served with the notice of continued hearing. See ECF Nos. 4 & 173.

Given the second continuance of this motion, the filing of an unnecessary new motion, and the potential confusion arising from multiple hearings, multiple continuances, and fragmented servicing, this motion will be denied without prejudice. The movant shall

refile the motion, complying with all national and local rules pertinent to compensation motions.

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.

Mellen Law Firm's motion for compensation has been presented to the court. Having considered the motion,

IT IS ORDERED that the motion is denied without prejudice.

10. [19-90189](#)-D-13 **IN RE: SHEILA PRICE**
[JAD-2](#)

MOTION TO CONFIRM PLAN
6-20-2019 [\[42\]](#)

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 the 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.

11. [19-90599](#)-D-13 **IN RE: LINDA EXPOSE**

MOTION TO VALUE COLLATERAL OF SOUTHERN CASCADE AND OF FAST
AUTO TITLE LOAN
7-1-2019 [\[9\]](#)

Tentative Ruling

Motion: Value Collateral [Two Vehicles; 2014 Dodge Avenger & 2014 Lexus 300 hybrid]

Notice: N/A

Disposition: Denied without prejudice

Order: Civil minute order

The motion will be denied without prejudice because service of the motion does not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . 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 and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Fast Auto Title Loan without addressing it "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." ECF No. 11.

The motion is also unsupported by admissible evidence, in violation of LBR 9014-1(d)(3)(D). There is no proper declaration or affidavit that establishes the factual assertions in the motion and authenticates the exhibits to the motion. While the debtor has placed the last paragraph typically found in declarations at the end of her motion, this does not make her motion a declaration. Basic requirements of identification of declarant and personal knowledge are not satisfied. ECF No. 9.

The motion also says nothing about who are the creditors on the loans secured by the two vehicles in the motion. It says nothing about the loan amounts. It says nothing about whether the loans are purchase money or non-purchase money. It says nothing about when the loans were incurred.

Accordingly, the motion will be denied without prejudice.

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

IT IS ORDERED that the motion is denied without prejudice.