

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY

DATE: DECEMBER 6, 2017

CALENDAR: 9:00 A.M. CHAPTERS 12 AND 13 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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. [17-13211](#)-A-13 **IN RE: GORDIE GORDON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-25-2017 [[20](#)]

PHILLIP GILLET
\$160.00 INSTALLMENT PAYMENT ON 11/1/17

Final Ruling

The fee paid in full, the order to show cause is discharged and the case shall remain pending.

2. [17-13211](#)-A-13 **IN RE: GORDIE GORDON**
[PWG-1](#)

MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE CORPORATION
11-10-2017 [[22](#)]

GORDIE GORDON/MV
PHILLIP GILLET

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: Written opposition filed by responding party

Disposition: Continued for evidentiary hearing

Order: Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;

(8) whether the alternate-direct testimony procedure will be used;
(9) the deadlines for any dispositive motions or evidentiary motions;
(10) the dates for the evidentiary hearing and the trial time that will be required;
(11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

3. [17-10812](#)-A-13 **IN RE: CARLOS HERNANDEZ**
[ASW-1](#)

MOTION TO MODIFY PLAN
10-16-2017 [\[30\]](#)

CARLOS HERNANDEZ/MV
ALLAN WILLIAMS

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The plan was amended to reflect the proper description of a vehicle. The plan proposes to pay \$579.00 per month for 60 months, and this is the ninth month of the plan.

PLAN MODIFICATION STANDARDS

"[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("Furthermore, § 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

INSUFFICIENT EVIDENCE

The supporting declaration does not offer probative evidence showing that the necessary elements of § 1325(a) have been satisfied. The motion contains no

evidence that the plan satisfies the liquidation test of § 1325(a)(4), and the attorney, not the debtor, would ordinarily be the individual with personal knowledge to offer testimony on such points.

The supporting declaration also does not address the plan's feasibility. § 1325(a)(6). No recent Schedules I and J have been filed, moreover. The last Schedules I and J that were filed in this case were filed 222 days before this motion was filed. Without recently updated Schedules I and J, the court cannot find that the modified plan is feasible.

Section 1325(a)(8) requires the debtor's payment of all post-petition amounts required to be paid under a domestic support obligation. No evidence has been offered for the court to find that this element has been satisfied. And no evidence has been offered to show that the debtor has filed all applicable federal, state and local tax returns. See 11 U.S.C. § 1325(a)(9).

INSUFFICIENT NOTICE

All creditors and parties in interest have not received the notice required by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address. By way of example only, the court identifies the following creditors that have not received notice: LVNV Funding LLC, Midland Funding, Wells Fargo Bank, N.A., and Portfolio Recovery Associates, LLC.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the motion being noticed.

LOCAL RULES VIOLATIONS

The motion and supporting papers violate a number of provisions of the court's local rules. The court references Local Rule 1001-1(g), which identifies the sanctions that the court may impose for failure of counsel to comply with the court's local rules. The following local rules that have been violated include:

1. LBR 9004-2(a)(3). The documents filed are barely legible. Given the method of copying or preparation of the documents, the background is not white but a mixture of grey and white splotches. The individual letters appear hazy and blurred.
2. LBR 9004-2(d)(1)-(2). Exhibits are not attached as a separate document, and there is no index of exhibits provided.
3. LBR 3015-1(d)(2). The notice of hearing uses the notice procedure of LBR 9014-1(f)(2). Motions to modify a plan after confirmation are required to rely on the notice procedure of LBR 9014-1(f)(1).
4. LBR 9004-2(e)(1)-(2). Different proofs of service are attached to each substantive document filed.

CIVIL MINUTE ORDER

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

The debtor's motion to modify a confirmed plan has been presented to the court. Given the lack of evidence in support and the procedural deficiencies discussed by the court in its ruling,
IT IS ORDERED that the motion is denied.

4. [17-13418](#)-A-13 IN RE: GENE/ADRIENNE SMITH
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A.
11-15-2017 [\[24\]](#)

CITIBANK, N.A./MV
D. GARDNER
JAMIE HANAWALT/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained

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.

OBJECTION TO CONFIRMATION

Citibank, N.A., as trustee for CMLTI Asset Trust (Secured Creditor) objects to confirmation on several different grounds including (1) failure to distribute at least the allowed amount of Secured Creditor's claim, § 1325(a)(5)(B)(ii), (2) failure to promptly cure arrearages on Secured Creditor's claim, § 1322(b)(5), and (3) lack of feasibility.

Evidentiary Objection

The debtors argue that Secured Creditor has not filed a proof of claim or any evidence supporting its objection. The debtors are correct. Secured Creditor has not filed a proof of claim that is deemed allowed, see 11 U.S.C. § 502(a), and it has not filed any evidence to support the objection in violation of LBR 9014-1(d)(3)(D). The court sustains this evidentiary objection, though it does not affect the outcome of the court's decision.

Lack of Feasibility

The creditor argues that the plan lacks feasibility. The court takes judicial notice of the chapter 13 plan and Schedules I and J filed on its docket and the contents of those documents. Fed. R. Evid. 201(b)-(c). The statements in the plan and schedules are non-hearsay admissions of the debtors. See Fed. R. Evid. 801(d)(2).

The plan is not feasible. See 11 U.S.C. § 1325(a)(6). Schedules I and J show that the debtor will have monthly net income of approximately \$200.27, but the plan requires a monthly payment of \$1135.00. Thus, the debtor's monthly net income is less than the proposed monthly plan payment. Even if the court accounts for the inclusion of the first mortgage on Schedule J, Line 4, the plan is still not feasible. The current net income plus the amount on Line 4 equals \$836.39, which is still substantially less than the plan payment. The debtors' reply indicates, moreover, the need to amend Schedule J. Accordingly, the court will sustain the objection on this ground.

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.

Citibank, N.A.'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.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

5. [17-13519](#)-A-13 **IN RE: ELISEO BERMUDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-20-2017 [[33](#)]

Tentative Ruling

If the installment of \$77 due November 13, 2017, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

MOTION TO DISMISS CASE
11-13-2017 [\[27\]](#)

MICHAEL MEYER/MV

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); 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). 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).

CASE DISMISSAL

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with required tax returns (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

The debtor has failed to appear at a scheduled § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

The debtor has failed to provide credit a counseling certificate showing that the debtor received the required credit counseling within the 180-day period preceding the petition date. With exceptions not applicable here, an individual cannot be a debtor under Title 11 unless such individual has received credit counseling as prescribed by § 109(h)(1). And credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

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 has been presented to the court. Having entered the default of the 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

7. [14-12223](#)-A-13 **IN RE: ANDRES ALVAREZ AND ELVIRA DE CAMPOS**
[LKW-10](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
11-8-2017 [[197](#)]

LEONARD WELSH

Tentative Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Offices of Leonard K. Welsh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1705.00 and reimbursement of expenses in the amount of \$44.08.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Law Offices of Leonard K. Welsh's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$1705.00 and reimbursement of expenses in the amount of \$44.08. The aggregate allowed amount equals \$1749.08. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$0.00 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid directly by the debtors.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

8. [17-12356](#)-A-13 **IN RE: LARRY/SILVIA HULSEY**
[MHM-2](#)

MOTION TO DISMISS CASE
11-3-2017 [\[55\]](#)

MICHAEL MEYER/MV
WILLIAM OLCOTT

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); 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). 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).

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to comply with the 75-day order the court imposed for achieving confirmation of a chapter 13 plan in this case. The court issued a 75-day order requiring that a plan be confirmed no later than the first hearing date available 75 days after the prior confirmation hearing date. The debtor has missed this deadline. The court will dismiss 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 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 given the debtor's failure to confirm a chapter 13 plan no later than the 75-day deadline established by the court. The court hereby dismisses this case.

9. [17-13263](#)-A-13 **IN RE: JASON/DANELLE BLACK**
[APN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO
BANK, N.A.,
10-10-2017 [[37](#)]

WELLS FARGO BANK, N.A./MV
D. GARDNER
AUSTIN NAGEL/ATTY. FOR MV.

Tentative Ruling

According to the status report filed November 29, 2017, the objection has been resolved by the parties. The debtors will be filing a modified plan after December 6, 2017. Because a modified plan has not yet been filed, the court will sustain the objection consistent with the debtors' intention in the joint status report to propose a modified plan.

10. [17-13263](#)-A-13 **IN RE: JASON/DANELLE BLACK**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
10-10-2017 [[46](#)]

MICHAEL MEYER/MV
D. GARDNER
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [17-13863](#)-A-13 **IN RE: MARK GENTRY AND KATRINA MCDONALD**
GENTRY
[VVF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AMERICAN HONDA FINANCE
CORPORATION
10-19-2017 [[15](#)]

AMERICAN HONDA FINANCE
CORPORATION/MV
NEIL SCHWARTZ
VINCENT FROUNJIAN/ATTY. FOR MV.

No Ruling

12. [17-13863](#)-A-13 **IN RE: MARK GENTRY AND KATRINA MCDONALD**
GENTRY
[VVF-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY AMERICAN HONDA FINANCE
CORPORATION
10-19-2017 [[21](#)]

AMERICAN HONDA FINANCE
CORPORATION/MV
NEIL SCHWARTZ
VINCENT FROUNJIAN/ATTY. FOR MV.

No Ruling

13. [16-10073](#)-A-13 **IN RE: DONALD WILLIFORD**
[RSW-6](#)

OBJECTION TO CLAIM OF TAMMY MARTINEZ, CLAIM NUMBER 9
9-30-2017 [[123](#)]

DONALD WILLIFORD/MV
ROBERT WILLIAMS

Final Ruling

After the filing of this objection, the claim was amended to reduce the claim from \$34,946 to \$2700. In addition, the objection is not supported by any competent evidence. LBR 9014-1(d)(3)(D). The court will overrule the objection without prejudice.

14. [16-12498](#)-A-13 **IN RE: PAMELA SUNIGA**
[RSW-1](#)

MOTION TO MODIFY PLAN
10-10-2017 [[21](#)]

PAMELA SUNIGA/MV
ROBERT WILLIAMS
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [16-12498](#)-A-13 **IN RE: PAMELA SUNIGA**
[RSW-2](#)

MOTION TO MODIFY PLAN
11-9-2017 [[33](#)]

PAMELA SUNIGA/MV
ROBERT WILLIAMS
OST DENIED 11/10/17

Final Ruling

The debtor filed an amended notice resetting the hearing for January 3, 2018. The matter is dropped from calendar.