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MAY 01 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:

Mark Alan Shoemaker

Debtor(s).

CHAPTER 7

Case No.: 1:14-bk-15182-GM
Adv No: 1:14-ap-01206-GM

**TENTATIVE RULING ON DEFENDANT'S
MOTION TO RECONSIDER ORDER
DENYING APPLICATION TO WAIVE
REQUIRED FEES ON APPEAL**

U.S. Trustee

Plaintiff(s),

v.

Mark Alan Shoemaker

Defendant(s).

Date: May 1, 2018
Time: 10:00 AM
Courtroom: 303

Mr. Shoemaker appealed the judgment to the BAP and requested a fee waiver (IFP). The BAP referred the IFP request to me on 2/27/18 and on 3/6/18 I ordered a hearing on 3/13/18. According to the motion, the notice of the hearing was not actually

1 mailed until 3/8/18 and was only received on 3/14/18, the day after the hearing.
2 Because no opposition was filed, the IFP application was denied. Shoemaker then
3 contacted Kenneth Lau at the OUST and advised him that he would be filing the motion.
4 Lau stated that the OUST did not take a position on this. Attached to this motion is a
5 copy of a recent affidavit submitted in one of the Ninth Circuit appeals to show greater
6 detail in the income and expenses. [He requests -sort of - that this be kept under seal
7 for reasons of privacy.] He adds that his calculation of mailing fees for "these matters"
8 (apparently those for other appeals) was \$75 per month and in actuality it will be over
9 \$100 since January 2018. After the expenses listed in the affidavit, income would be
10 \$90 per month. If the motion for IFP is denied, Shoemaker requests a payment plan of
11 \$25 per month.

12
13 OUST Response

14 The statement of non-opposition was clearly only as to the filing of the motion to
15 reconsider, not of the content of that motion. The affidavit discloses income and
16 employment information that is in conflict with similar information contemporaneously
17 disclosed in his IFP application filed in Shoemaker v. United States, CV 18-615. There
18 is a list of discrepancies.

19
20 Reply

21 The OUST has no standing because this is between Shoemaker and the Court.
22 Shoemaker admits to some income and has voluntarily provided the Ninth Circuit with
23 additional information because it is more explanatory. [Shoemaker adds many
24 comments about the integrity of the OUST, which is not relevant to this application.]
25 Because of the cost, Shoemaker rests on the papers and will not be attending the
26 hearing in person or by phone. [Shoemaker also believes that the Court has animus
27 towards this case.]
28

Proposed Ruling

To the extent that there is a request to file the affidavit under seal, that is denied. This does not meet the requirements of a document that qualifies to be filed under seal. 11 USC §107. Also, the papers on the Ninth Circuit docket are not under seal.

The present affidavit filed in the Ninth Circuit on 3/21/18 shows income received from 3/17-3/18 of \$2,622 per month average from employment and \$2,140 from unemployment benefits. This totals \$4,862 per month. However, Shoemaker states that the amount expected for April is \$2,140.

On his IFP application to the BAP (filed on 2/15/18), Shoemaker states under penalty of perjury that his average monthly income (take home pay) is \$1,800.

28 USC §1930(f) allows the bankruptcy court to waive filing fees if the debtor has income of less than 150% of the income official poverty line applicable to a family of that size and is unable to pay the fee in installments. The maximum income for a single person is \$1507.50 per month. No matter which calculation is used, Shoemaker exceeds this.

Even if he were to have met the income requirement, looking at the breakdown of expenses on the Ninth Circuit application, it appears that he can pay the filing fee at this time. He is spending \$225 per month for transportation (not including motor vehicle payments). This is a high amount. His claimed \$100 per month for mailing is also high. The BAP filing fee is \$298.

Deny the motion for reconsideration. The full filing fee is to be paid within 10 days of the entry of the order.

Date: May 1, 2018



Geraldine Mund
United States Bankruptcy Judge