

**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: APRIL 5, 2017
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-13005](#)-A-13 RONALD/DENISE GRANT
RSW-2
RONALD GRANT/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO INCUR DEBT
3-22-17 [[32](#)]

Tentative Ruling

Motion: Approve Debtor's Incurring New Debt [Vehicle Loan]

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

Disposition: Granted

Order: Prepared by moving party

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).

The debtor seeks to incur new debt to finance the purchase of a vehicle. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest (approximately \$700 / month) that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

2. [17-10021](#)-A-13 TERRY/MAUREEN HENDERSON
JHW-1
TD AUTO FINANCE LLC/MV
D. GARDNER/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY TD AUTO FINANCE LLC
2-17-17 [[15](#)]

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.

TD Auto Finance LLC has filed an objection to confirmation of the proposed chapter 13 plan. TD Auto Finance has also filed a proof of claim showing its security interest in a 2016 Dodge Ram 1500. This claim is deemed allowed as no party in interest has objected. § 502(a).

The proposed plan lists the Dodge Ram in Class 2, but identifies the creditor as Toyota Finance. The present objection is directed at the interest rate provided in the plan for TD Auto Finance's class 2

claim. The plan provides for a 4% interest rate on TD Auto Finance's Class 2 secured claim.

This interest rate should be evaluated under the principles established in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The court in *Till* held that the "prime-plus or formula rate best comports with the purposes of the Bankruptcy Code." *Till v. SCS Credit Corp.*, 541 U.S. at 480.

The *Till* Court found that "[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors' objections and receiving the advice of the trustee, the judge is persuaded that 'the debtor will be able to make all payments under the plan and to comply with the plan.' Together with the cramdown provision, this requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

Here, the plan provides for an interest rate of 4%. The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., Mar. 30, 2017, http://online.wsj.com/mdc/public/page/mdc_bonds.html.

A rate of 4.75% proposed by the creditor is a reasonable upward adjustment of the interest rate that best comports with the Code and the prime-plus rate set forth in *Till*. Accordingly, the interest rate of 4.75% must be paid on TD Auto Finance's class 2 claim. And the plan must correctly identify TD Auto Finance as the secured creditor holding the claim secured by the 2016 Dodge Ram in Class 2.

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.

TD Auto Finance LLC'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. To the extent the plan provides for TD Auto Finance LLC's claim as a Class 2 claim to be paid under § 1325(a)(5)(B), then the interest rate must be at least 4.75% on such claim.

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).

3. [12-13429](#)-A-13 RICHARD/KIMIE HUGHES
LKW-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LEONARD K. WELSH
FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
3-7-17 [[124](#)]

LEONARD WELSH/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); 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). Written opposition to this application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, the Law Offices of Leonard K. Welsh has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$1265.00 and reimbursement of expenses in the amount of \$13.50. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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 a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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 Law Offices of Leonard K. Welsh's application for allowance of final 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,

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. [17-10234](#)-A-13 LUCIA/MICHAEL LOPEZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-1-17 [[22](#)]

No tentative ruling.

6. [17-10234](#)-A-13 LUCIA/MICHAEL LOPEZ OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV 3-20-17 [[30](#)]
SEAN FERRY/Atty. for mv.

No tentative ruling.

7. [17-10234](#)-A-13 LUCIA/MICHAEL LOPEZ MOTION TO DISMISS CASE
MHM-1 3-13-17 [[26](#)]
MICHAEL MEYER/MV

Tentative 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 debtors have failed to provide credit counseling certificates. 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). Credit counseling certificates are required to be filed pursuant to § 521(b) and Fed. R. Bankr. P. 1007(b)(3).

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 § 341 meeting of creditors. See 11 U.S.C. §§ 341, 343.

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.

8. [16-13343](#)-A-13 AIDE/JAMES BLANCO MOTION TO DISMISS CASE
MHM-1 2-24-17 [[56](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

[The hearing on this matter will be concurrent with the hearing on the debtors' motion to value collateral in this case having docket control no. PK-3.]

No tentative ruling.

9. [16-13343](#)-A-13 AIDE/JAMES BLANCO MOTION TO VALUE COLLATERAL OF
PK-3 HYUNDAI CAPITAL AMERICA
AIDE BLANCO/MV 3-15-17 [[60](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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 respondent 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).

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

Here, the debtor does not argue that the vehicle is collateral outside the scope of the hanging paragraph. Instead, the debtor argues that only a portion of the respondent's claim, secured by the present collateral, described as a 2016 Kia Sorento EX, is unprotected by the hanging paragraph because it resulted from financing for the negative-equity portion of the vehicle traded in at the time of the debtor's purchase of the present collateral.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the "negative equity" of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not part of the purchase money security interest (PMSI) protected by the hanging paragraph.

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to respondent on its claim. The product is the amount of the present claim protected by the hanging paragraph of § 1325(a). The amount of the present claim that exceeds this product is considered the "non-PMSI" portion of the claim which may be treated as unsecured so long as the value of the collateral does not support it.

The PMSI portion of the amount originally financed was \$27,397.18. This is 85.9% of the total amount financed. It follows that 14.1% is the non-PMSI amount that financed negative equity on the trade-in vehicle.

Multiplying 85.9% by the present claim amount of \$27,840.72 equals \$23,915.18, the PMSI portion of the present claim held by respondent. The non-PMSI portion equals \$3,925.54. The non-PMSI portion is not

protected by the hanging paragraph, and, as a result, may be treated as an unsecured claim if it is uncollateralized. The debtor has offered evidence that the vehicle is worth \$24,936.30.

The vehicle's value is more than the PMSI-portion of the respondent's claim, and its value is less than the total amount of this claim, which includes the negative-equity debt. Thus, the portion of the claim exceeding the value of the collateral is not protected by the hanging paragraph because it relates to negative-equity financing. The respondent has a secured claim of \$24,936.30 equal to the value of the collateral and an unsecured claim for the balance of its claim exceeding the collateral's value.

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 consisting of a motor vehicle 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 motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2016 Kia Sorento EX has a value of \$24,936.30. The respondent has a secured claim in the amount of \$24,936.30 equal to the value of the collateral. The respondent has a general unsecured claim for the balance of the claim.

10. [15-11654](#)-A-13 ELLIOT BADGER AND BRENDA MOTION TO MODIFY PLAN
RSW-4 VAQUERA 3-7-17 [[89](#)]
ELLIOT BADGER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

11. [16-11354](#)-A-13 ODILON/SAURISARET CONTINUED MOTION TO DISMISS
MHM-4 PEREZ-FLORES CASE
MICHAEL MEYER/MV 2-3-17 [[121](#)]
PHILLIP MYER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The motion to dismiss will be denied as moot. The basis for the motion was failure to confirm a plan, and the court will be confirming the plan by a ruling on this day's calendar.

12. [16-11354](#)-A-13 ODILON/SAURISARET MOTION TO CONFIRM PLAN
PIM-4 PEREZ-FLORES 2-6-17 [[125](#)]
ODILON PEREZ-FLORES/MV
PHILLIP MYER/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 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 bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

13. [16-14267](#)-A-13 MANSOOR ALAWGAREY CONTINUED OBJECTION TO
MHM-1 CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-13-17 [[20](#)]

WILLIAM OLCOTT/Atty. for dbt.

No tentative ruling.

14. [16-10074](#)-A-13 RONALD TAYLOR CONTINUED MOTION TO MODIFY PLAN
RSW-1 12-21-16 [[34](#)]
RONALD TAYLOR/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
OPPOSITION WITHDRAWN

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 bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

15. [16-14083](#)-A-13 DANIEL/KIMBER LIESCH CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 2-3-17 [[17](#)]
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

16. [16-14084](#)-A-13 MICHAEL/JOANNA COUCH CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 2-9-17 [[34](#)]
NEIL SCHWARTZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

17. [16-14084](#)-A-13 MICHAEL/JOANNA COUCH OBJECTION TO CONFIRMATION OF
MHM-3 PLAN BY MICHAEL H. MEYER
MICHAEL MEYER/MV 3-13-17 [[53](#)]
NEIL SCHWARTZ/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

18. [17-10823](#)-A-13 SIMON/RUTH LOPEZ
JRL-2
SIMON LOPEZ/MV
JERRY LOWE/Atty. for dbt.
OST

MOTION TO EXTEND AUTOMATIC STAY
3-29-17 [[29](#)]

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted except as to any creditor without proper notice of this motion

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). 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).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

19. [13-12504](#)-A-13 ROEL/ALMA CALO
AP-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
OST

MOTION TO EXTEND DISCOVERY
DEADLINES
3-30-17 [[70](#)]

No tentative ruling.