

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: JUNE 2, 2016
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. [15-11801](#)-A-13 TAMARA STOCKS MOTION TO DISMISS CASE
MHM-1 4-20-16 [[31](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

2. [14-11110](#)-A-13 MELISSA OMOS MOTION TO DISMISS CASE
MHM-1 4-20-16 [[51](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

3. [16-10323](#)-A-13 JOHN/DESIREE STUHAAN MOTION TO DISMISS CASE
MHM-1 5-2-16 [[41](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

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 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.

4. 16-11025 -A-13 TIM/CHERIE WILKINS JHW-1 TD AUTO FINANCE LLC/MV PETER FEAR/Atty. for dbt. JENNIFER WANG/Atty. for mv.	OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE LLC 4-28-16 [20]
--	---

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.

TILL AND THE INTEREST RATE ON RESPONDENT'S CLAIM

The debtors have proposed a plan that places respondent TD Auto Finance LLC's secured claim in class 2. The claim is not reduced by the value of the collateral and is secured by a 2015 BMW 4-Series 428i with 28,000 miles.

TD Auto Finance objects because the interest rate is too low to provide it the present value of its secured claim. The plan provides for a 1.74% interest rate on its 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 1.74%. 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., May 31, 2016, http://online.wsj.com/mdc/public/page/mdc_bonds.html (last visited May 31, 2016). The last prime rate of interest published on May 31, 2016, was 3.5%.

Adjusting this rate upwards, given the nature of the collateral, a vehicle that generally depreciates more than the typical collateralized asset, by one to two percent equals a rate of 4.5 - 5.5%.

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.

5. [16-11025](#)-A-13 TIM/CHERIE WILKINS
JLP-1
DS PASO CROSSING LLC/MV
PETER FEAR/Atty. for dbt.
JENNIFER PRUSKI/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY DS PASO CROSSING LLC
5-6-16 [[26](#)]

[This matter will be called subsequent to the motion for administrative expenses, JLP-2.]

No tentative ruling.

6. [16-11025](#)-A-13 TIM/CHERIE WILKINS MOTION FOR ADMINISTRATIVE
JLP-2 EXPENSES
DS PASO CROSSING LLC/MV 5-6-16 [[31](#)]
PETER FEAR/Atty. for dbt.
JENNIFER PRUSKI/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

7. [16-10845](#)-A-13 STEVEN JACQUES MOTION TO DISMISS CASE
MHM-1 5-4-16 [[21](#)]
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 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 set a plan for hearing with notice to creditors. The case has been pending for about 77 days with no plan confirmed or set for hearing for confirmation. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. 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. The court hereby dismisses this case.

8. [16-11150](#)-A-13 TERRY/MARIA THEIS
TFJ-1
TERRY THEIS/MV

CONTINUED MOTION TO VALUE
COLLATERAL OF INTERNAL REVENUE
SERVICE
4-7-16 [[10](#)]

THOMAS JEFFREY/Atty. for dbt.

Tentative Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

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

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

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.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as all debtors' personal property is valued at \$1050. The lien is not a purchase money security interest. See § 1325(a) (hanging paragraph). The court values the collateral at \$1050.

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 non-vehicular, personal property collateral 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 all debtors' personal property has a value of \$1050. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1050 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

9. [16-10055](#)-A-13 MICHAEL/ROBIN BRIGGS MOTION TO DISMISS CASE
MHM-3 4-27-16 [[64](#)]
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.
DISMISSED

Final Ruling

The case dismissed, the matter is denied as moot.

10. [15-13960](#)-A-13 JAMES BARR MOTION TO DISMISS CASE
MHM-1 4-20-16 [[41](#)]
JAMES BARR/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [15-10764](#)-A-13 JUAN DIAZ MOTION TO MODIFY PLAN
FW-1 4-21-16 [[33](#)]
JUAN DIAZ/MV
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 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)(2), 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, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) 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. The court will grant the motion and approve the modification of the plan.

12. [15-12669](#)-A-13 BECKY BARNES
MHM-2
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE
4-20-16 [[46](#)]

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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2562.

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. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2562. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [13-15583](#)-A-13 THOMAS MARINEZ
MHM-3
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE
4-20-16 [[57](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

Federal Rule of Bankruptcy Procedure 1017(f)(1) states that a motion to dismiss is governed by Rule 9014. Rule 9014(a) requires reasonable notice and opportunity for hearing to be afforded to the party against whom relief is sought, and Rule 9014(b) requires service under Rule 7004. Rule 7004(b)(9) and (g) govern the service requirements here. Under these rules, service is to be made upon the debtor and the debtor's attorney. After review of the proof, the court finds that the motion was not served on the debtor at the correct address.

CIVIL MINUTE ORDER

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

The trustee's motion to dismiss has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

14. [14-12485](#)-A-13 FREDDIE/TERESITA
MHM-2 LEONGUERRERO
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
4-20-16 [[49](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

15. [16-10790](#)-A-13 JOSE/MARIA CASILLAS
MHM-1
MICHAEL MEYER/MV
JANINE ESQUIVEL/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-4-16 [[19](#)]

No tentative ruling.