

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Modesto, California

**September 27, 2018 at 2:00 p.m.**

---

1. [18-90204-E-12](#) LYNN/DONNA PORTER CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
3-29-18 [1]

Debtors' Atty: David C. Johnston

**The Status Conference is continued to 2:00 p.m. on ~~xxxxxxx~~, 2018**

Notes:

Continued from 8/2/18 to be heard in conjunction with the continued Motion to Confirm Chapter 12 Plan

**SEPTEMBER 27, 2018 STATUS CONFERENCE**

On September 24, 2018, the Debtors filed a Motion to Dismiss this Chapter 12 case. Dckt. 36. The Motion states that Debtors request the dismissal of the case, no other grounds given.

This is not Debtors first, second, or even third recent bankruptcy case. This is Debtor's fourth bankruptcy case. The prior cases are 16-90133 (Chapter 13), 16-91155 (Chapter 12), and 17-90808.

In dismissing case 16-90133, the court's findings as stated in the Civil Minutes from the August 10, 2017 hearing include the following:

“This is Debtor's second attempted Chapter 12 case. The prior case was filed on February 16, 2016, and was dismissed on March 8, 2016, for failure to file the basic documents required to prosecute a Chapter 12 case (including Schedules and Statement of Financial Affairs).

The current case was filed on December 30, 2016. The Chapter 12 Plan was filed on March 30, 2017, with confirmation denied on May 9, 2017. Order, Dckt. 44. In denying confirmation, the court determined that Debtor in Possession failed to provide the court with credible evidence showing an ability to perform the proposed Plan. Civil Minutes, p. 7; Dckt. 41. The testimony provided by one debtor was merely that persons personal findings of fact and dictating to the court that person's

conclusions of law. *Id.* The court also noted that the expenses asserted to be reasonable as stated on Schedule J appeared to be a fiction, with Debtor purporting to state that the two adults have no home maintenance expenses, no clothing expenses, no medical expenses, no entertainment expenses, no health insurance expenses, and never pays any taxes (including self-employment taxes). *Id.* at 8.

The court also put into question Debtor's veracity and good faith, stating:

"Debtor and Debtor in Possession appear to be filing and prosecuting a Chapter 12 case and plan built on misinformation, inaccurate, and undisclosed information. Take at face value, Debtor and Debtor in Possession have and know of significantly more income than disclosed - readily having at hand an "extra"\$400 to produce when "caught" by the Chapter 12 Trustee in having underfunded the Chapter 12 Plan. Debtor and Debtor in Possession appear to have whatever "extra" money they need to funnel to the creditor having a lien on Debtor's home.

*Id.* at 9.

Though given the opportunity to step forward in the three months since the May 4, 2017 hearing on the prior plan, the Debtor in Possession has remained silent, not addressing the "financial reality" concerns of the court."

16-91155; Civil Minutes, Dckt. 54.

Debtors' bankruptcy strategy appears to continue in this case. File, not confirm a plan, delay, and then instead of stepping up to prosecute the case, dismiss it or let it be dismissed, the Debtor slinking back into the shadows, waiting for another day when they and their counsel will pop out another bankruptcy filing.

Since filing their first Chapter 12 case on February 16, 2016, (16-90133) the Debtors have been represented by the same attorney. The Debtors and their attorneys have continued with the bankruptcy prosecution efforts of filing, handing on, and dismissing, never confirming a bankruptcy plan.

It may be that the Debtors and Deutsche Bank National Trust Company have consummated an (unauthorized) modification of the loan for which the Debtors appear to have been desperately filing (nonproductive) bankruptcies to delay the foreclosure sale. Unfortunately, the Debtors and their counsel fail (or refuse) to provide that information in the Motion to Dismiss.

At the Status Conference **XXXXXXXXXXXXXXXXXXXXXXX**

**Tentative Ruling:** The Motion to Confirm has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

-----

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Confirm the Plan is denied.**

**REVIEW OF MOTION**

Lynn Porter and Donna Porter ("Debtor") move for confirmation of a Chapter 12 plan requiring thirty-six monthly payments of \$3,300.00, beginning August 10, 2018. Debtor states that after those payments, they "will continue to make monthly payments directly to . . . Deutsche Bank, and USDA . . . on their secured claims, and on general unsecured claims." Dckt. 24 at 1–2.

**CHAPTER 12 TRUSTEE'S OPPOSITION**

Jan Johnson (“the Chapter 12 Trustee”) filed an Opposition on July 16, 2018. Dckt. 27. The Chapter 12 Trustee argues that the Plan is infeasible and cannot be administered because it fails to specify if the claim of CarFinance.com will be paid by Debtor directly or by the Chapter 12 Trustee as part of the plan payment. He notes that Debtor’s declaration indicates that the Chapter 12 Trustee will make the payment as part of the plan payment, but the filing deadline for non-governmental units was June 7, 2018, and no proof of claim was filed for that creditor.

The Chapter 12 Trustee also opposes confirmation on the ground that the plan payment of \$3,300.00 is insufficient if it is supposed to include payment to CarFinance.com. Payment by the Chapter 12 Trustee would mean that plan payments need to be \$3,456.26, and direct payment by Debtor would mean that plan payments need to be \$3,358.26.

The Chapter 12 Trustee argues that the Plan is infeasible because it relies upon the court granting two motions to value for Deutsche Bank and USDA that have not been filed with the court, let alone ruled upon. A review of the docket shows that those motions have not been filed. The court cannot determine if the Plan is feasible without ruling on those necessary motions.

## **CREDITOR’S OPPOSITION**

Deutsche Bank National Trust Company, Trustee, on behalf of the certificate holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC3, Mortgage Pass Through Certificates, Series 2004-NC3, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing, Inc., (“Creditor”) filed an Opposition on July 19, 2018. Dckt. 29. Creditor argues that Debtor has not filed a motion to value its claim, so the plan improperly bifurcates its claim into secured and unsecured.

Creditor also argues that the (improper) unsecured treatment proposed in the Plan is unfair because the Plan treats Creditor’s claim differently than it does other unsecured claims. 11 U.S.C. § 1222(a)(3). Specifically, Creditor notes that the proposal for its unsecured claim to be treated at 0% is different than USDA’s, which is proposed to receive a 20% dividend.

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 4.9%. Creditor’s claim is secured by a deed of trust on Debtor’s real property commonly known as 4249 Ellenwood Road, Oakdale, California. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. As justification for raising the interest rate by 5.00%, Creditor argues that Debtor’s default ranges back to October 2012, that no post-petition payments have been made, that no property taxes and insurance payments have been made; that the plan is cramming down the value of Creditor’s claim; and that Debtor has bad credit. The court fixes the interest rate as the prime rate in effect at the commencement of the case, 4.75%.

## August 2, 2018 Hearing—Continuance

On July 31, 2018, Debtor in Possession, Deutsche Bank National Trust Company, as Trustee, and the Chapter 13 Trustee filed a joint request (titled as “Stipulation” but which the court construes as an *ex parte* motion for continuance of the hearing) addressing the efforts to resolve the oppositions to the Motion. The court granted the request and continued the hearing to September 27, 2018, at 2:00 p.m.

No supplemental pleadings have been filed since the August 2, 2018, hearing on the Motion.

## RULING

If the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor’s projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor’s projected disposable income for such period.

(2) For purposes of this subsection, “disposable income” means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor’s business.

As both the Chapter 12 Trustee and Creditor have shown, there are additional motions to value that Debtor needs to file and have the court rule on favorably before the Plan can be feasible. Those motions have not been filed, however. Additionally, the Plan is infeasible because it requires Debtor to make a larger plan payment than has been proposed.

The Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 12 Plan filed by Lynn Porter and Donna Porter (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm is denied, and the proposed Chapter 12 Plan is not confirmed.

3. [17-90320-E-7](#)      **JESUS ALVARADO RODRIGUEZ**      **CONTINUED STATUS CONFERENCE RE:**  
[17-9014](#)                **AMENDED COMPLAINT**  
12-22-17 [26]

**EDMONDS V. SALINAS ET AL**

**Final Ruling: No appearance at the September 27, 2018 Status Conference is required.**

Plaintiff’s Atty: Steven S. Altman  
Defendants’ Atty: Randall K. Walton

Adv. Filed: 9/21/17  
Answer: Alejandra A. Alvarado 10/31/17 [same document filed twice]  
          Joanna Salinas 11/27/17  
Amd. Cmplt. Filed: 12/22/17  
Answer: Joanna Salinas, Alejandra Alvarado 1/3/18  
          Jose Juarez, Aline Alvarado 1/3/18

Nature of Action:  
Approval of sale of property of estate and of a co-owner

**The Status Conference is continued to 2:00 p.m. on November 29, 2018**

Notes:  
Continued from 7/12/18, the Parties having worked out the funding for the Settlement.

**SEPTEMBER 27, 2018 STATUS CONFERENCE**

The Plaintiff-Trustee reports that the court approved settlement is being prosecuted and anticipates that is should be concluded within a month, which will then conclude this Adversary Proceeding. The Plaintiff-Trustee requests the Status Conference be continued. The court continues the Status Conference to allow the Parties to focus on concluding the settlement and to avoid them incurring otherwise unnecessary costs and expense of attending a perfunctory Status Conference.

**LOPEZ V. ARAMBEL**

**Final Ruling: No appearance at the September 27, 2018 Status Conference is required.**

Plaintiff's Atty: Michael F. Babitzke  
Defendant's Atty: Iain A. Macdonald

Adv. Filed: 1/13/16  
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]  
          2/23/16 [Johnny Massella; Mary Massella]  
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]  
Answer: None  
Counterclaim Dismissed 5/2/16  
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]  
Answer: None  
Counterclaim Dismissed 5/2/16

Nature of Action:  
Validity, priority or extent of lien or other interest in property

<p><b>The Status Conference is continued to 2:00 p.m. on November 29, 2018.</b></p>
---

Notes:

Continued from 6/21/18. The court has allowed the Plaintiff through and including 7/16/18 to file a First Amended Complaint [*time extended pursuant to Stipulation and Order dated 7/13/18*].

Stipulation Regarding Jeffrey Edward Arambel Adversary Complaint filed 7/13/18 [Dckt 21]; Order approving filed 7/13/18 [Dckt 22]

Defendant's Status Conference Statement filed 9/19/18 [Dckt 23]

### **SEPTEMBER 27, 2018 STATUS CONFERENCE**

In the Status Report filed on September 19, 2018 by the Defendant-Debtor, it is reported that while the parties have been unable to settle this matter, the filing on an amended complaint was stayed in light of the Defendant believing that he, as Debtor in Possession, would soon be confirming a Plan that provided for this claim. The Defendant requests that this Status Conference be continued to April 12, 2019, which is nine months from the stipulation to stay these proceedings.

The court is reluctant to so continue this Status Conference that long in light of the events transpiring in Defendant-Debtor's bankruptcy case. The court continues it to November 29, 2018, to see what transpires

in the next several months, whether a bankruptcy trustee is appointed in the bankruptcy case, and whether it is reasonable to allow the Plaintiff to slumber on the prosecution of this Adversary Proceeding.

5. [18-90033-E-7](#)  
[18-9004](#)

SHIMON/DORIS KHAMO

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
6-1-18 [8]

REDLINE AUTO SALES, INC. V.  
KHAMO ET AL

ADVERSARY PROCEEDING CLOSED:  
09/04/2018

**Final Ruling: No appearance at the September 27, 2018 Status Conference is required.**

Plaintiff's Atty: Steven S. Altman  
Defendant's Atty: Pro Se

Adv. Filed: 5/2/18  
Answer: none  
Amd. Cmpl. Filed: 6/1/18  
Answer: none

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - willful and malicious injury

Judgment having been entered in this Adversary Proceeding, **this Status Conference is concluded and the matter removed from the Calendar.**

Notes:  
Continued from 8/2/18

Stipulation for Entry of Judgment, Complaint to Determine Non-Dischargeability of Debts to Plaintiff filed 8/14/18 [Dckt 18]

Judgment Pursuant to Stipulation filed 8/17/18 [Dckt 19]



6. [17-90494-E-7](#)      **DALJEET MANN**  
[18-9012](#)

**STATUS CONFERENCE RE:  
COMPLAINT  
7-27-18 [1]**

**EDMONDS V. MANN ET AL**

**Final Ruling: No appearance at the September 27, 2018 Status Conference is required.**

Plaintiff's Atty: Steven S. Altman

Defendant's Atty: Unknown

Adv. Filed: 7/27/18

Answer: none

Nature of Action:

Injunctive relief - other

Recovery of money/property - fraudulent transfer

**The Status Conference is continued to 2:00 p.m. on January 24, 2019.**

Notes:

Application by Trustee to Defer Payment of Fee for Filing Complaint filed 7/27/18 [Dckt 7]; Order granting filed 7/27/18 [Dckt 8]

[SSA-1] Motion for Temporary Restraining Order Pending Hearing and Preliminary Injunction and Other Relief filed 8/2/18 [Dckt 10]; Temporary Restraining Order, Order Setting Hearing on Preliminary Injunction and Statement of Decision filed 8/2/18 [Dckt 18]

[SSA-1] Order Granting Preliminary Injunction filed 8/14/18 [Dckt 23]

Request for Entry of Default by Plaintiff [re Ninder Mann] filed 9/7/18 [Dckt 30]; Entry of Default and Order re Default Judgment Procedures filed 9/7/18 [Dckt 32]

Request for Entry of Default by Plaintiff [re Jasleen Mann] filed 9/7/18 [Dckt 31]; Entry of Default and Order re Default Judgment Procedures filed 9/7/18 [Dckt 33]

Plaintiff's First Status Conference Statement filed 9/12/18 [Dckt 34]

### **SEPTEMBER 27, 2018 STATUS CONFERENCE**

The court having extended the time for the Plaintiff-Trustee to file a motion for entry of default judgment to and including November 15, 2018, the Status Conference is continued to 2:00 p.m. on January 24, 2019.

**September 27, 2018 at 2:00 p.m.**

- Page 9 of 10 -

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Status Conference having been conducted, the time for filing a Motion for Entry of Default having been extended (Order, Dckt. 39), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **2:00 p.m. on January 24, 2019**.