

**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: AUGUST 2, 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. [17-12105](#)-A-13 ALEXANDER JOHNSON
PK-1
ALEXANDER JOHNSON/MV

MOTION TO VALUE COLLATERAL OF
LENDMARK FINANCIAL SERVICES,
LLC
7-18-17 [[31](#)]

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).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2004 Nissan Titan. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$3000.

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 2004 Nissan Titan has a value of \$3000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$3000 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.

2. [17-10021](#)-A-13 TERRY/MAUREEN HENDERSON MOTION TO CONFIRM PLAN
DMG-3 6-15-17 [[52](#)]
TERRY HENDERSON/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). After the debtor files a modification under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot any pending confirmation motion for a previously filed plan. Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). The debtor has filed a modified plan. The court will deny the motion as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to confirm is denied as moot.

3. [16-12426](#)-A-13 PATSY ALLEN CONTINUED MOTION FOR RELIEF
PPR-1 FROM AUTOMATIC STAY
CHAMPION MORTGAGE COMPANY 4-26-17 [[49](#)]
(NATIONSTAR MORTGAGE, LLC,
ROBERT WILLIAMS/Atty. for dbt.
BONNI MANTOVANI/Atty. for mv.
RESPONSIVE PLEADING
MOTION WITHDRAWN

Final Ruling

The motion withdrawn by the moving party, the matter is dropped as moot.

4. [17-11264](#)-A-13 JUSTIN/KATHARINE FARMER MOTION FOR COMPENSATION FOR
PK-1 PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
7-11-17 [[18](#)]

PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Continued to September 6, 2017, at 9:00 a.m.;
supplemental declaration regarding client consent or opposition to be
filed at least 14 days before the hearing.

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, Patrick Kavanagh has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3050 and reimbursement of expenses in the amount of \$0.

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. Assuming the debtors' have consented to the fees requested before the continued hearing, the court will approve the fees on an interim basis. The court will continue the hearing to allow a supplemental declaration to be filed regarding the client-debtors' consent or opposition to the fees sought.

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.

Patrick Kavanagh'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 continued to September 6, 2017, at 9:00 a.m. No later than August 23, 2017, the applicant shall file a supplemental declaration indicating the debtors' consent or opposition to the fees requested.

5. [16-10073](#)-A-13 DONALD WILLIFORD
RSW-5
DONALD WILLIFORD/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TAMMY M.
MARTINEZ AND DENNIS MARTINEZ
7-17-17 [[115](#)]

ROBERT WILLIAMS/Atty. for dbt.

No tentative ruling.

6. [17-11274](#)-A-13 CLINT/JUDITH HARRISON

EXETER FINANCE CORP./MV
ROBERT WILLIAMS/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY EXETER FINANCE CORP
5-10-17 [[26](#)]

No tentative ruling.

7. [17-11884](#)-A-13 MONTE LAMONT
AP-1
WELLS FARGO BANK, NA/MV
ROBERT WILLIAMS/Atty. for dbt.
ALEXANDER LEE/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, NA
6-12-17 [[14](#)]

No tentative ruling.

8. [17-11884](#)-A-13 MONTE LAMONT
APN-1
WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
6-29-17 [[17](#)]

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.

VALUATION OF COLLATERAL

The plan proposes to reduce a Class 2 secured claim based on the value of the collateral. The Class 2 claim reduced is the claim of Wells Fargo Bank in the approximate amount of \$16,401.29 and secured by a 2012 Toyota Camry. No motion to value this claim appears on the court's docket. Wells Fargo has objected to plan confirmation on two grounds, one of which is the debtor's understatement of the value of the collateral securing its Class 2 claim. The proper forum to dispute the value of the collateral is within a contested motion to value collateral, but no such motion has been filed. The failure to file a motion to value such collateral that is granted before or in conjunction with the hearing on confirmation warrants denial of confirmation of the plan. LBR 3015-1(j); see also Ch. 13 Plan § 2.09(c).

INTEREST RATE

The plan's interest rate on this Class 2 claim 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 5% on Wells Fargo Bank's Class 2 claim secured by a vehicle. 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., July 27, 2017, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The prime rate on July 27, 2017, was 4.25%. The creditor seeks an interest rate of 7%. The court finds that the appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor as other factors that would warrant upward adjustment.

CIVIL MINUTE ORDER

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

Wells Fargo Bank, N.A.'s objection to confirmation has been presented to the court. Having considered the objection together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is sustained on the ground that the plan improperly reduces the value of Wells Fargo Bank, N.A.'s collateral without having brought a motion to value that collateral.

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).

9. [17-10596](#)-A-13 JACQUELINE SCOTT
MHM-1
MICHAEL MEYER/MV
MICHAEL AVANESIAN/Atty. for dbt.

CONTINUED MOTION TO DISMISS
CASE
4-10-17 [[21](#)]

No tentative ruling.