

**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: DECEMBER 13, 2018

CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-14403](#)-A-13 **IN RE: RODOLFO TORRES AND MARIA DE CAZARES**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
11-20-2018 [\[10\]](#)

RODOLFO TORRES/MV
THOMAS GILLIS
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: Written opposition filed by responding party

Disposition: Continued for evidentiary hearing

Order: Civil Minute Order

The motion seeks to value collateral consisting of a motor vehicle. The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

All parties shall appear at the hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines. Alternatively, the court may continue the matter to allow the parties to file a joint status report that states:

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the resolution of these issues.

Unless the parties request more time, such a joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

2. [15-10004](#)-A-13 **IN RE: LARRY VALENCIA**
[TCS-9](#)

MOTION TO MODIFY PLAN
10-31-2018 [[144](#)]

LARRY VALENCIA/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

No Ruling

3. [18-14606](#)-A-13 **IN RE: KENNETH/JANE HOSTETLER**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-26-2018 [[12](#)]

KENNETH HOSTETLER/MV
TIMOTHY SPRINGER

Tentative Ruling

Motion: Extend the Automatic Stay

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).

EXTENSION OF THE STAY

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). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial

excuse . . . [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

Here, the previous case was dismissed for failure to complete the terms of a confirmed plan and a presumption of lack of good faith arises. In a close case, the court finds the presumption rebutted. The debtor has filed the petition, schedules and statement, as well as a plan. The debtor has paid the filing fee in full. The debtor's income appears sufficient to fund the plan and the debtor has offered a sufficient explanation for their previous plan failure. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

4. [18-14012](#)-A-13 **IN RE: AARON/MARIA BOWDEN**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY QUICKEN LOANS INC.
10-29-2018 [\[14\]](#)

QUICKEN LOANS INC./MV
PETER BUNTING
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

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 motion; opposition may be presented at the hearing. LBR 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.

Section 3.02 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section.

The objection will be sustained. The proof of claim controls. Here, the amount and classification of the creditor's claim has not been altered by a court order. The proof of claim reflects pre-petition arrearages in the amount of \$1,166.54. The debtor has incorrectly classified the claim in Class 4. Accordingly, the objection will be sustained.

75-DAY ORDER

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 bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

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

Having considered the present objection to confirmation 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.

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 bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

5. [18-13713](#)-A-13 **IN RE: DEQUAN/ALEXIS KELSEY**
[MHM-3](#)

MOTION TO DISMISS CASE
11-13-2018 [\[32\]](#)

MICHAEL MEYER/MV
JOEL WINTER
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

6. [18-14713](#)-A-13 **IN RE: BRIAN/KARI COLEMAN**
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-28-2018 [\[9\]](#)

BRIAN COLEMAN/MV
SCOTT LYONS

Tentative Ruling

Motion: Extend the Automatic Stay

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).

EXTENSION OF THE STAY

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). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court

must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

Here, the previous case was dismissed for failure to complete the terms of a confirmed plan and a presumption of lack of good faith arises. In a close case, the court finds the presumption rebutted. The debtor has filed the petition, schedules and statement, as well as a plan. The debtor's income appears sufficient to fund the plan and the debtor has offered a sufficient explanation for their previous plan failure. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

7. [14-10218](#)-A-13 **IN RE: JESUS CASTELLANO AND ANGIE VEGA**
[JDW-7](#)

MOTION TO VACATE DISMISSAL OF CASE
11-29-2018 [[81](#)]

JESUS CASTELLANO/MV
JOEL WINTER
DISMISSED 11/16/2018

Final Ruling

The motion is not supported by a certificate of service and will be denied. A civil minute order will issue.

8. [18-13019](#)-A-13 **IN RE: RENEE BURTON**
[SL-1](#)

MOTION TO CONFIRM PLAN
10-31-2018 [[41](#)]

RENEE BURTON/MV
SCOTT LYONS
RESPONSIVE PLEADING

No Ruling

9. [18-13223](#)-A-13 **IN RE: ISMAEL/RITA HERRERA**
[MHM-3](#)

MOTION TO DISMISS CASE
11-5-2018 [[36](#)]

MICHAEL MEYER/MV
JERRY LOWE
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [18-14128](#)-A-13 **IN RE: JEROME LEWIS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-15-2018 [[21](#)]

Tentative Ruling

If the installments of \$79 due November 13, 2018, and \$77 due December 10, 2018, have not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

11. [17-14529](#)-A-13 **IN RE: BRIAN FOLLAND**
[PPR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-7-2018 [[133](#)]

CIT BANK, N.A./MV
DAVID JENKINS
SYLVIA BLUME/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part; Denied as moot in part

Order: Civil minute order

Subject: 1530 E. La Quinta Drive, Fresno, California

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).

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

The debtor has missed 11 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CO-DEBTOR STAY OF § 1301

The scope of the automatic stay is broader in chapter 13 cases than it is in chapters 7 and 11 cases. Section 1301(a) creates a co-debtor stay applicable in chapter 13 cases. 11 U.S.C. §§ 1301(a).

"After a Chapter 12 or 13 petition is filed, the stay extends to individuals who are "codebtors" with the debtor on a consumer debt—e.g., relatives, friends and others who cosigned or guaranteed a note (or other obligation) with the debtor." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:145 (rev. 2018). "The codebtor stay only applies where the codebtor is liable on the consumer debt and liable with the debtor to a third party. Stated otherwise, both the debtor and the codebtor must be liable to a third party and liable on the particular debt the third party is trying to collect." *Id.* ¶ 8:147. "A court may grant relief from the codebtor stay where the Chapter 13 debtor's plan proposes *not* to pay the debt. [11 USC § 1301(c)(2)]" *Id.* ¶ 8:1421. "[Twenty] days after filing of a motion for relief, the codebtor stay is *automatically terminated* for the creditor movant unless, before expiration of the 20-day period, the debtor or codebtor files and serves on the creditor a *written objection*." *Id.* ¶ 8:1422.

In this case, 11 U.S.C. § 1301(c)(2) is triggered because the plan fails to provide for secured creditor's claim. See Debtor's Third Modified Chapter 13 Plan, ECF No. 145. As a result, 11 U.S.C. § 1301(d) is applicable. The motion was filed on November 7, 2018 and the 20-day period expired on November 27, 2018. Since neither the debtor or codebtor filed a written opposition, the co-debtor stay has automatically terminated.

The motion will be denied as moot, as to the codebtor stay.

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.

CIT Bank, N.A.'s motion for relief from the automatic stay and co-debtor stay 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 as to the stay against the debtor and denied as moot as to the codebtor stay. The automatic stay is vacated with respect to the property described in the

motion, commonly known as 1530 E. La Quinta Drive, Fresno, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

12. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-1](#)

OBJECTION TO CLAIM OF PORTFOLIO RECOVERY ASSOCIATES, LLC,
CLAIM NUMBER 25
10-25-2018 [[73](#)]

BRANDY BUMP/MV
JERRY LOWE

No Ruling

13. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-2](#)

OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 18
10-25-2018 [[69](#)]

BRANDY BUMP/MV
JERRY LOWE

No Ruling

14. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-3](#)

OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 16
10-25-2018 [[77](#)]

BRANDY BUMP/MV
JERRY LOWE

No Ruling

15. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-4](#)

OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 14
10-25-2018 [[81](#)]

BRANDY BUMP/MV
JERRY LOWE

No Ruling

16. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-5](#)

OBJECTION TO CLAIM OF NAVIENT PC TRUST, CLAIM NUMBER 12
10-25-2018 [[85](#)]

BRANDY BUMP/MV
JERRY LOWE

No Ruling

17. [17-14334](#)-A-13 **IN RE: BRANDY BUMP**
[JRL-7](#)

OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 20
10-25-2018 [[89](#)]

BRANDY BUMP/MV
JERRY LOWE

No Ruling

18. [18-11439](#)-A-13 **IN RE: BRANDON/LESLIE SMART**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
9-20-2018 [[41](#)]

TIMOTHY SPRINGER

No Ruling

19. [18-14239](#)-A-13 **IN RE: SILVIA ARIAS**
[TVM-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-29-2018 [[26](#)]

CHUR, LLC./MV
THOMAS MILES/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1121 E. Ponderosa, Reedley, California

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).

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Chur, LLC's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 1121 E. Ponderosa, Reedley, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-

bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

20. [16-12740](#)-A-13 **IN RE: BRUCE/DANIELLE CAMPBELL**
[JDR-5](#)

MOTION TO INCUR DEBT
11-30-2018 [[51](#)]

BRUCE CAMPBELL/MV
JEFFREY ROWE

Tentative Ruling

Motion: Approve 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 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.

21. [18-13940](#)-A-13 **IN RE: ROLANDO DUARTE AND NANCY AMAYA**
[SSW-1](#)

MOTION TO ALLOW LATE OBJECTION TO MOTION TO VALUE COLLATERAL
- NOTE AND LIEN HELD BY CITIZENS ONE AUTO FINANCE
11-8-2018 [[24](#)]

CITIZENS BANK, N.A./MV
THOMAS GILLIS
SCOTT WELTMAN/ATTY. FOR MV.
ORDER DROPPING FROM CALENDAR ECF NO.38

Final Ruling

Pursuant to Order, ECF #38, the matter is dropped as moot.

22. [18-14146](#)-A-13 **IN RE: JULIAN/GLORIA TORRES**
[JHW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AMERICREDIT FINANCIAL
SERVICES, INC.
11-16-2018 [\[16\]](#)

AMERICREDIT FINANCIAL
SERVICES, INC./MV
NIMA VOKSHORI
JENNIFER WANG/ATTY. FOR MV.

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 and confirmation denied

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.

IMPROPER INTEREST RATE

The plan's interest rate on a secured 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*, 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).

"The appropriate size of that risk adjustment depends, of course, on
such factors as the circumstances of the estate, the nature of the
security, and the duration and feasibility of the reorganization
plan." *Id.* at 479. Without deciding the issue of the proper scale of
the risk adjustment, the plurality opinion noted that other courts
have generally approved upward adjustments of 1% to 3% to the
interest rate. See *id.* at 480.

Here, the plan provides for an interest rate of 0.00% on the objecting creditor's class 2 secured claim. 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., December 12, 2018, http://www.wsj.com/mdc/public/page/mdc_bonds.html. Fed. R. Bankr. P. 201(b)(2).

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 that would warrant upward adjustment. So the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The proper interest rate on this class 2 claim should be at least 6.25.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce AmeriCredit Financial Services, Inc.'s Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

75-DAY ORDER

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 bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 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.

Creditor AmeriCredit Financial Services, Inc.'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. The court denies confirmation of the chapter 13 plan.

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 bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

23. [18-14354](#)-A-13 **IN RE: DAVID JAMES**
[NLL-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
11-6-2018 [[11](#)]

HSBC BANK USA, NATIONAL
ASSOCIATION/MV
NANCY LEE/ATTY. FOR MV.

Tentative Ruling

Motion: Confirm Absence of Automatic Stay

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).

CONFIRMATION OF THE STAY'S TERMINATION

If a debtor who files a petition has had one bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay terminates with respect to the debtor on the 30th day after the filing of the later case, unless the stay is extended. 11 U.S.C. § 362(c)(3)(A). 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 *id.* § 362(c)(3)(B). And a party in interest may request an order confirming that no stay is in effect. *Id.* § 362(j) (authorizing the court to issue orders confirming the termination of the automatic stay). In this case, the debtor has had 1 case pending within the preceding 1-year period that was dismissed. More than 30 days have passed since the petition date. The stay has terminated.

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.

HSBC Bank USA, National Association's motion to confirm the termination of the stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby confirms that the automatic stay is not in effect in this case.

24. [18-12363](#)-A-13 **IN RE: MANUEL/JINA VILLALOVOS**
[SL-2](#)

MOTION TO SELL
11-28-2018 [\[52\]](#)

MANUEL VILLALOVOS/MV
SCOTT LYONS

Tentative Ruling

Motion: Sell Property [Real Property]

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

Property: Lot 62 Lake Point Drive, Florence, Oregon

Buyer: Roger Center

Sale Price: \$71,500.00

Sale Type: Private sale subject to overbid opportunity

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).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation. Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization

purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

25. [18-12768](#)-A-13 **IN RE: TONI MACABEO**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
9-12-2018 [[16](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

26. [14-15473](#)-A-13 **IN RE: THOMAS SMITH**
[MHM-3](#)

MOTION TO DISMISS CASE
11-5-2018 [[49](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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)(6) to dismiss the case, as the plan will take over 74 months to fund.

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 court hereby dismisses this case.

27. [18-14077](#)-A-13 **IN RE: BENITO/ANNA ALVAREZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
11-19-2018 [[17](#)]

JAMES MILLER

Final Ruling

The plan withdrawn, the objection is overruled as moot.

28. [18-13182](#)-A-13 **IN RE: WANDA CLEMMONS**
[MHM-4](#)

MOTION TO DISMISS CASE
11-6-2018 [[51](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

No Ruling

29. [18-14083](#)-A-13 **IN RE: SAMUEL/JULIE ROMBAOA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
11-19-2018 [[14](#)]

DAVID JENKINS

No Ruling

30. [11-13085](#)-A-13 **IN RE: MARCOS GARCIA AND MARIA FRUTOZ-GARCIA**
[MAC-5](#)

MOTION TO RECONVEY LIEN AND/OR MOTION FOR DECLARATORY RELIEF
10-29-2018 [[140](#)]

MARCOS GARCIA/MV
GARY HUSS

No Ruling

31. [18-13785](#)-A-13 **IN RE: KRISTIN VOOLSTRA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-26-2018 [[47](#)]

TIMOTHY SPRINGER
11/28/18 INSTALLMENT FEE PAID \$77

Final Ruling

The installment payment made, the order to show cause is discharged.

32. [18-12790](#)-A-13 **IN RE: ROBINSON/MARIA POLANCO**
[RS-2](#)

MOTION TO CONFIRM PLAN
11-1-2018 [[57](#)]

ROBINSON POLANCO/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

No Ruling