

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: January 4, 2022

CALENDAR: 1:00 P.M. CHAPTER 13

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 and no appearance is necessary. 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 seven (7) days of the final hearing on the matter.

allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): “[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is ‘rigid’ and the bankruptcy court lacks equitable power to extend this deadline after the fact.”

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor’s claim will be disallowed in its entirety as untimely. The objection to the proof of claim is conditionally sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, January 7, 2022, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court’s final decision, and the continued hearing on January 11, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on January 11, 2022, at 1:00 p.m.

The court will issue an order.

2. [21-20402](#)-B-13 ALFONSO PULIDO
[PGM](#)-3 Peter G. Macaluso

MOTION TO MODIFY PLAN
11-30-21 [[63](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

3. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO MOTION FOR RELIEF FROM
[ELP-1](#) Michael M. Noble AUTOMATIC STAY
12-17-21 [[15](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant annulment of the automatic stay retroactively to November 7, 2021, and continue the matter to January 11, 2022, at 1:00 p.m.**

Deutsche Bank National Trust ("Movant") seeks annulment of the automatic stay with respect to real property commonly known as 611 Cathedral Way, Tracy, California (the "Property"). Movant has provided the Declaration of Gina Delia to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

Movant states that a foreclosure sale was scheduled and performed on November 8, 2021, after Debtors had obtained a discharge in a prior chapter 7 bankruptcy, case no. 19-25989, but were still in substantial default with respect to the loan on the Property. Movant states that it performed a routine PACER search using Debtor's social security number ending in -8059 and Joint Debtor's social security number ended in -0872, and no pending bankruptcy appeared.

Unbeknownst to Movant, Debtors had filed for chapter 13 relief on November 7, 2021, one day before the foreclosure sale. Debtor and Joint Debtor's social security numbers were switched in the Notice of Bankruptcy Case Filing by either the Debtors or the intake clerk. Movant asserts that this resulted in Debtors' names not populating on PACER, and the loan was therefore cleared for the foreclosure sale. Movant also states that Debtors and their attorney did not provide Movant with any separate notice of the pending bankruptcy.

Movant contends that cause exists to retroactively annul the automatic stay pursuant to 11 U.S.C. § 362(d)(1) because it was not aware of Debtor's pending bankruptcy and it would be prejudiced to unwind the foreclosure sale. Movant also seeks relief pursuant to 11 U.S.C. § 362(d)(4) since this is the second time Debtors filed a bankruptcy petition the eve of a foreclosure sale; the first time was Debtors' prior chapter 7 bankruptcy.

Discussion

Annulment is appropriate in this case given that Movant was not aware of Debtors' pending bankruptcy, Movant had timely filed a motion for annulment from the automatic stay after learning about Debtors' bankruptcy filing, Debtors' proposed plan does not provide any restructuring of the debt owed to Movant, the expense and delay that Movant would incur if required to unwind the foreclosure sale, and the Debtors' apparent failure to inform Movant of this case. See *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24-25 (Bankr. 9th Cir. 2003) (factors to consider in granting annulment).

The court shall issue an order annulling the automatic stay retroactively to November 7, 2021, as to Movant and Movant's actions in the foreclosure sale so that all such post-petition actions taken by Movant, its agents, representatives, members, directors, officers, and employees arising in or related to the foreclosure proceedings are deemed to not have violated the automatic stay.

Movant's request for relief pursuant to 11 U.S.C. § 362(d)(4) is denied. Although Debtors did file two separate bankruptcies the eve of two scheduled foreclosure sales, Debtor's prior chapter 7 bankruptcy resulted in a successful discharge. This is evidence that the Debtors acted in good faith in fulfilling their duties as chapter 7 debtors and did not delay, hinder, or defraud creditors from exercising their rights.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, January 7, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on January 11, 2022, at 1:00 p.m. will be vacated. The Debtor is cautioned that any opposition or response to the motion will be closely scrutinized in the context of Fed. R. Bankr. P. 9011 and the court's inherent sanctioning authority.

If an opposition or response is timely filed and served, the court will hear the motion on January 11, 2022, at 1:00 p.m.

The court will issue an order.

4. [21-23531](#)-B-13 DIANA QUIROGA
[RJ-2](#) Richard L. Jare

MOTION TO CONFIRM PLAN
11-9-21 [[27](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). 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) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the amended plan.

First, feasibility depends on the granting of a motion to value collateral of Onemain Financial. However, a motion to value collateral has not been filed by the Debtor.

Second, Debtor's plan provides for total priority claims in the amount of "\$20,000.00 a low side estimate." The Internal Revenue Service has filed a proof of claim with a priority portion of \$106,104.51. Debtors' plan fails to comply with 11 U.S.C. § 1322(a) (2).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

5. [19-27058](#)-B-13 JULIET WILLIAMS
[JLL](#)-2 Jennifer G. Lee

MOTION TO MODIFY PLAN
11-8-21 [[42](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

6. [21-23879](#)-B-13 STEFANI MILLER
[ETW-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-17-21 [8]

PROVIDENT TRUST GROUP VS.

DEBTOR DISMISSED: 11/23/21

Final Ruling

The motion has been set for hearing on 28-days notice. 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to deny in part and grant in part the motion for relief from automatic stay.

Provident Trust Group FBO Doug White, IRA ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 10609 Davis Road, Stockton, California (the "Property"). Movant has provided the Declaration of Doug White to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The White Declaration states that there are pre-petition payments in default and that they loan is all due and payable on March 1, 2022. The declaration also states that this is the Debtor's second consecutive bankruptcy filing days before two separate trustee's sales. Both cases were dismissed. Movant believes the Debtor is trying to delay the foreclosure and has no intent or ability to fund a chapter 13 plan, which itself has not been filed.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$230,028.70 as stated in the White Declaration. Movant seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

Discussion

This case was dismissed on November 23, 2021. The automatic stay terminated when the case was dismissed. Therefore, Movant's request to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1) is denied as moot.

However, the court will grant prospective relief under § 362(d)(4). *See Benzeen, Inc. v. JP Morgan Chase Bank (In re Benzeen, Inc.)*, 2018 WL 6627275 at *4 (9th Cir. BAP Dec. 18, 2018) (noting that request for § 362(d)(4) relief survives dismissal and foreclosure); *Azkam v. U.S. Bank N.A.*, 2020 WL 1700028 at *3 (E.D. Cal. April 8, 2020) ("An order granting relief under [§ 362(d)(4)] may survive the dismissal of the bankruptcy in some cases."). That section prescribes:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .

"with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

"(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting such real property."

The Debtor has filed nonproductive bankruptcy cases a total of two times in the last three months in an effort to thwart Movant from foreclosing on the Property. In each of the two bankruptcies, Debtor had filed her petition days before scheduled trustee's sales. In both cases, Debtor's bankruptcy was dismissed for failure to timely file necessary schedules and other related documents. The Debtor has presented no changed circumstances since the filing of the first case in October 2021 and the second case in November 2021. The court finds that the Debtor's multiple nonproductive bankruptcy filings in very close proximity to one another and in very close proximity to a foreclosure were part of a scheme to delay, hinder, or defraud creditors from exercising their rights against the Property.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

This order shall be binding in any other case purporting to affect the Property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED IN PART AND DENIED IN PART for reasons stated in the minutes.

The court will issue an order.

7. [19-23382](#)-B-13 MICHAEL CICAIIOS
[JCK-4](#) Gregory J. Smith

MOTION TO MODIFY PLAN
11-17-21 [[31](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

8. [21-20499](#)-B-13 SUSAN MAHLER OBJECTION TO CLAIM OF MIDLAND
[WLG-3](#) Nicholas Wajda CREDIT MANAGEMENT, INC., CLAIM
Thru #14 NUMBER 6
11-22-21 [[52](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

9. [21-20499](#)-B-13 SUSAN MAHLER OBJECTION TO CLAIM OF MIDLAND
[WLG-4](#) Nicholas Wajda CREDIT MANAGEMENT, INC., CLAIM
NUMBER 7
11-22-21 [[57](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

10. [21-20499](#)-B-13 SUSAN MAHLER OBJECTION TO CLAIM OF MIDLAND
[WLG-5](#) Nicholas Wajda CREDIT MANAGEMENT, INC., CLAIM
NUMBER 8
11-22-21 [[62](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

11. [21-20499](#)-B-13 SUSAN MAHLER OBJECTION TO CLAIM OF MIDLAND
[WLG-6](#) Nicholas Wajda CREDIT MANAGEMENT, INC., CLAIM
NUMBER 9
11-22-21 [[67](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

12. [21-20499](#)-B-13 SUSAN MAHLER OBJECTION TO CLAIM OF MIDLAND
[WLG-7](#) Nicholas Wajda CREDIT MANAGEMENT, INC., CLAIM
NUMBER 10
11-22-21 [[72](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

13. [21-20499](#)-B-13 SUSAN MAHLER OBJECTION TO CLAIM OF LVNV
[WLG-8](#) Nicholas Wajda FUNDING, LLC., CLAIM NUMBER 17
11-22-21 [[77](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

14. [21-20499](#)-B-13 SUSAN MAHLER
[WLG](#)-9 Nicholas Wajda

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC., CLAIM NUMBER 18
11-22-21 [[82](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.