

**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 11, 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.

2. [21-23701](#)-B-13 BEN MACKIE
[RDG-1](#) Robert W. Fong

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-20-21 [[14](#)]

CONTINUED TO 2/15/22 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO PROVIDE DEBTOR
ADDITIONAL TIME TO COMPILE AND SUBMIT DOCUMENTS REQUESTED BY THE CHAPTER 13
TRUSTEE.

Final Ruling

No appearance at the January 11, 2022, hearing is required. The court will issue an
order.

3. [21-23801](#)-B-13 ROBERT MOLINA OBJECTION TO CONFIRMATION OF
[KSR](#)-1 Nicholas Wajda PLAN BY CHRISTINA MOLINA
Thru #4 12-17-21 [[19](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 sustain the objection and deny confirmation of the plan.

Creditor Christina Molina has filed a timely proof of claim in which she asserts a secured claim of \$99,328.38 stemming from Debtor's failure to comply with various family court orders and divorce decree. Creditor asserts that the plan incorrectly classifies the claim as unsecured when it is actually secured since Creditor has two separate judgment liens against Debtor's personal property. The Debtor has not filed an objection to the proof of claim and therefore it is deemed allowed pursuant to 11 U.S.C. § 502(a).

The plan filed November 17, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

4. [21-23801](#)-B-13 ROBERT MOLINA OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Nicholas Wajda PLAN BY RUSSELL D. GREER
12-22-21 [[33](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 sustain the objection and deny confirmation of the plan.

First, Debtor appeared at the continued § 341 meeting of creditors held January 5, 2022, and it was concluded as to the Debtor.

Second, the plan is not proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) because the Debtor has not provided all disposable income, specifically his non-filing

spouse's income, on Schedule I.

Third, Debtor's Schedule I includes income of \$1,717.17 per month for VA disability. The Debtor has not provide supporting documentation so it cannot be determined whether the plan is feasible.

Fourth, although the Debtor has filed a Rights and Responsibilities indicating that payments of attorney fees are to be made pursuant to Local Bankr. R. 2016-1(c) or Debtor's plan, no box has been checked in Section 3.05 of the plan.

The plan filed November 17, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

5. [21-22719](#)-B-13 ANTHONY MONTOYA MOTION TO CONFIRM PLAN
[NAR-1](#) Charles L. Hastings 12-1-21 [[47](#)]

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, Debtor is delinquent \$2,166.72 in plan payments. The next scheduled payment of \$1,419.41 is due on December 25, 2021. The Debtor may not be able or willing to make the plan payments based on his current delinquency under the pending plan. 11 U.S.C. §§ 1325(a)(2) and (a)(6).

Second, Debtor's plan payment is \$1,419.14 per month from month 1 through 12. However, Schedules I and J show that Debtor's monthly net income is only \$1,285.00. Therefore, the Debtor will be unable to make the proposed plan payments. Debtor's plan is not feasible pursuant to 11 U.S.C. §1325(a)(6).

Third, Debtor's proposed refinance of the real property he expects to inherit and full payoff of the Chapter 13 plan within 12 months is speculative and not feasible until he is able to provide more information regarding the status of the probate case and status of a pending refinance application. 11 U.S.C. §1325(a)(6).

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.

6. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO OBJECTION TO CONFIRMATION OF
[ELP-2](#) Michael M. Noble PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
Thru #7, Add-on #16 12-22-21 [[27](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 overrule as moot the objection and deny confirmation of the plan for reasons stated at Item #7, RDG-1.

The plan filed November 7, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

7. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO OBJECTION TO CONFIRMATION OF
[RDG-1](#) Michael M. Noble PLAN BY RUSSELL D. GREER
12-20-21 [[21](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 sustain the objection and deny confirmation of the plan.

First, Debtors' plan is not feasible under 11 U.S.C. §1325(a)(6). Paragraph 2.01 of Debtors' plan provides for a monthly plan payment of \$1,815.00. Debtors have failed to provide admissible evidence that the plan is mathematically feasible. Trustee's calculations indicate that Debtors' plan payment will need to be at least \$117,108.00 per month for the plan term of 12 months in order for Debtors' plan to be feasible.

Second, Debtors' plan provides for payment to Franklin Mortgage for the property located at 611 Cathedral Way as a Class 2 claim with a monthly installment of \$1,280.00. The claim of Franklin Mortgage is misclassified as a Class 2 claim and should be classified as a Class 1 claim since the secured claim matures after the completion of the plan and has pre-petition mortgage arrears that need to be cured.

Third, Debtors' plan provides for Franklin Mortgage as a Class 2 claim in the amount of \$339,500.00 to be paid at 10% interest a monthly dividend of \$1,280.00. Debtors' plan is a 12-month plan and the monthly dividend proposed for the Class 2 claim of Franklin Mortgage will take 999 months to pay said claim

The plan filed November 7, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

8. [21-23729](#)-B-13 EDUARDO RAMOS
[RDG-1](#) Lars T. Fuller

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-20-21 [[15](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 sustain the objection and deny confirmation of the plan.

Debtor's Schedule I includes wages from Debtor's employment at Altos Building Maintenance, Inc. and Chilton Auto Body of Santa Clara, Inc. Debtor testified at his § 341 meeting of creditors that he no longer works at Chilton Auto Body, and that the information on the Schedule I filed at the inception of the case is no longer accurate. Debtor also testified that his girlfriend has increased her portion of the mortgage expense accordingly, and the information on Schedule J is no longer accurate. Until Debtor files amended Schedules I and J to accurately reflect his current budget, it cannot be determined whether Debtor is paying all of his projected disposable income to his unsecured creditors under their plan in accordance with 11 U.S.C. § 1325(b).

The plan filed October 29, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

9. [21-23844](#)-B-13 MARITA GALIZA
[RDG](#)-1 Eric L. Seyvertsen

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-20-21 [[16](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on January 7, 2022. However, the confirmation hearing for the amended plan has not been scheduled. Nonetheless, the earlier plan filed November 9, 2021, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

10. [20-24252](#)-B-13 CHRISTINA/RICHARD LOPEZ MOTION FOR RELIEF FROM
MF-1 Michael K. Moore AUTOMATIC STAY
12-13-21 [[33](#)]

JERRY WALKER CONSTRUCTION,
INC. VS.

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 grant the motion to retroactively annul the automatic stay.

Jerry Walker Construction, Inc. ("Movant") seeks to retroactively annul the automatic stay to permit its state court judgment to stand. Movant holds a mechanics lien against real property commonly known as 14050 Diamond Avenue, San Jose, California ("Property"), that arose and was properly perfected before Debtors' bankruptcy case was commenced. After Movant recorded its claim of mechanics lien and commenced a state court action, *Jerry Walker Construction, Inc. v. Lopez, et al.*, case no. 19CV360489, on December 18, 2019, to enforce its mechanics lien, the Debtors filed for chapter 13 relief on September 3, 2020.

Without notice or knowledge of Debtors' bankruptcy, Movant proceeded with the state court action and on October 20, 2020, the state court entered default judgment against the Debtors in the amount of \$18,000.00. Movant recorded a copy of the judgment in the official records of Santa Clara County on November 25, 2020.

On December 3, 2020, the Debtors' confirmed their chapter 13 plan. It did not mention or provide for Movant's claim or lien. In fact, Movant was entirely omitted from Debtors' schedules.

Movant asserts that in light of the lack of notice and knowledge of Debtors' bankruptcy, the Debtors' own bad faith in failing to include Movant in their bankruptcy schedules and plan, the relative efficiency of having the claim determined in state court, and the unnecessary costs, delay and risk that would result from having to "re-do" the judgment, the automatic stay should be retroactively annulled to permit the judgment to stand.

No parties have filed opposition to the motion to date.

The court finds that the nature of the state court litigation warrants relief from stay for cause. The issues appear to have been already litigated and the state court entered a default judgment against the Debtors. Therefore, judicial economy dictates that the state court ruling be allowed to continue after considerable time and resources have been already put forth in the matter.

The court shall issue an order modifying the automatic stay as it applies to the Debtors to allow the state court's ruling to stand.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. The state court judgment obtained shall be brought back to this court for the proper treatment under the Bankruptcy Code.

No other or additional relief is granted by the court.

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

The court will issue an order.

11. [21-23755](#)-B-13 DONALD VUONG OBJECTION TO CONFIRMATION OF
[JHK](#)-1 Colby D. LaVelle PLAN BY TD AUTO FINANCE LLC
Thru #12 11-24-21 [[13](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 sustain the objection and deny confirmation of the plan.

Creditor TD Auto Finance LLC ("Creditor") objects to confirmation of Debtor's plan on the basis that it does not provide any treatment as to Creditor's claim. Creditor timely filed proof of claim no. 6. See 11 U.S.C. § 1325(a)(5)(B).

The plan filed October 30, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

12. [21-23755](#)-B-13 DONALD VUONG OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Colby D. LaVelle PLAN BY RUSSELL D. GREER
12-20-21 [[18](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 sustain the objection and deny confirmation of the plan.

First, Debtor's Schedule I includes a Retirement Loan Repayment in the amount of \$569.99 per month. Debtor's plan does not provide for increased plan payments, and Debtor has testified at the § 341 meeting of creditors that the loan repayment will continue for approximately two years. Without evidence as to when the loan will be paid off and to whom the loan is paid, it cannot be determined whether Debtor's plan meets the projected disposable income test. 11 U.S.C. § 1325(b).

Second, Form 122C-2, line 41, lists a deduction of \$1,139.98 for qualified retirement deductions while Schedule I lists only a retirement loan repayment of \$569.99 a month.

Trustee needs evidence as to how this amount of \$1,139.98 was determined. Without evidence as to how the \$1,139.98 was calculated, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Third, the projected disposable income available to be applied to make payments to unsecured creditors pursuant to 11 U.S.C. §1325(b) (1) (B) is \$1,800.00 for 60 months or \$108,000.00, which would result in a 47% dividend to the general unsecured creditors. However, Debtor's plan provides for a 43% distribution to Debtors' general unsecured creditors. Debtor's plan fails to comply with 11 U.S.C. §1325(b) (1) (B) and may not be confirmed.

The plan filed October 30, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

13. [21-22565](#)-B-13 MICHAEL/TANIKA ZUNIGA
[MKM](#)-1 Michael K. Moore

MOTION TO CONFIRM PLAN
12-2-21 [[33](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors 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.

14. [21-23777](#)-B-13 NATALIE YOST
[RDG-1](#) Jennifer G. Lee

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-22-21 [[12](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 sustain the objection and deny confirmation of the plan.

First, Debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor's Schedule I fails to provide any income information for Debtor's non-filing spouse. The Chapter 13 Trustee was informed at the Debtor's § 341 meeting of creditors that the Schedule I does not list the non-filing spouse's disability, social security, and VA award income. Until an amended Schedule I is filed, it cannot be determined whether Debtor's plan is proposed in good faith, is feasible, and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and (b)(1).

Second, Debtor's Schedule J, line 15b, indicates a monthly expense of \$707.00 for health insurance. Debtor admitted at her § 341 meeting of creditors that this expense is reimbursed by her employer. This reimbursement has not been provided for on Debtor's Schedule I. Until an amended Schedule I is filed, it cannot be determined whether Debtor's plan is proposed in good faith, is feasible, and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and (b)(1).

The plan filed November 1, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

15. [21-22400](#)-B-13 MICHAEL/CAROL DAVIS CONTINUED OBJECTION TO CLAIM OF
[RDG-1](#) Mikalah R. Liviakis LOYALTY PAWN, INC., CLAIM
NUMBER 8
11-22-21 [[27](#)]

Final Ruling

This matter was continued from January 4, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 7, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 30, sustaining the objection to claim, shall become the court's final decision. The continued hearing on January 11, 2022, at 1:00 p.m. is vacated.

The motion is ORDERED SUSTAINED for reasons stated in the minutes at dkt. 30.

The court will issue an order.

16. [21-23825](#)-B-13 ANGELINA/MIGUEL PEINADO CONTINUED MOTION FOR RELIEF
[ELP-1](#) Michael M. Noble FROM AUTOMATIC STAY
12-17-21 [[15](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling

Before the court is a *Motion for Relief From the Automatic Stay and Memorandum of Points and Authorities Thereof* filed by secured creditor Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1 ("Secured Creditor").¹ The motion was conditionally granted by an order filed on January 5, 2022. The order conditionally granting the motion provided Debtors Angelina and Miguel Peinado ("Debtors") with an opportunity to file an opposition or other response by 5:00 p.m. on January 7, 2022. Debtors timely filed an opposition. The conditional order is therefore VACATED and superceded by this Final Ruling.

The court has reviewed the motion, opposition, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1).

The motion is appropriate for disposition without oral argument which will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h). Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

Background

The motion concerns the Debtors' home at 611 Cathedral Way, Tracy, California ("Property"). Secured Creditor holds a deed of trust on the Property. The deed of trust secures the Debtors' obligation under a promissory note assigned to Secured Creditor.

Secured Creditor submitted no evidence of the Property's value. The schedules, however, value the Property at \$925,000.00 subject to liens, including Secured Creditor's, totaling \$660,714.98 (Carrington Mortgage @ \$326,000.00 and Secured Creditor @ \$334,714,98). See Sch. A, D.²

Secured Creditor conducted a foreclosure sale of the Property at 9:30 a.m. on November 8, 2021. The Property was sold to Secured Creditor in satisfaction of its note and deed of trust. Secured Creditor recorded the trustee's deed on November 30, 2021.

Meanwhile, the Debtors filed the petition that commenced this chapter 13 case at 9:45 p.m. on November 7, 2021.³ Secured Creditor concedes that the filing of this case was "was entered on November 7, 2021, at 9:50 PM." Dkt. 17 at ¶ 8.

¹The declaration in support of the motion is filed by Franklin Credit Management Corporation. Franklin is Secured Creditor's loan servicer.

²Schedules are signed and filed under penalty of perjury. See Fed. R. Bankr. P. 1008. As such, they have evidentiary value. See *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969 (9th Cir. 2012). Here, they are the only evidence of value.

³This is the Debtors' fifth bankruptcy case. However, as discussed below, there is no indication that any of the Debtors' prior bankruptcy cases were nonproductive bad faith filings. As is also noted below, the court rejects Secured Creditor's argument that the Debtors filed this chapter 13 case as a scheme to hinder or delay Secured Creditor's enforcement of its note and deed of trust.

Nevertheless, Secured Creditor states that it was not aware that this case was filed late on November 7, 2021, when it conducted its foreclosure sale early the following day on November 8, 2021. Secured Creditor states that at 7:36 a.m. on the morning of the foreclosure sale it searched PACER using the last name Peinado, the first name Miguel, and a social security number ending in 0872. Secured Creditor asserts these search parameters returned no active bankruptcy filing---this case included. As a result, the foreclosure sale was cleared to proceed.

Secured Creditors attributes the absence of search results for this case, and thus its apparent lack of knowledge that this case had been filed at the time of the foreclosure sale, to transposed social security numbers.⁴ In other words, although Angelina's social security number ends in 8059 and Miguel's social security number ends in 0872, the Debtors' social security numbers were transposed in this case causing Angelina's name to be associated with the social security number ending in 0872 and Miguel's name to be associated with the social security number ending in 8059.

Discussion

The court initially reaffirms its denial of Secured Creditor's request for relief from the automatic stay under 11 U.S.C. § 362(d)(4) for the reasons stated below and in the January 4, 2021, civil minutes which are adopted and incorporated herein by this reference. See dkt. 31. That leaves Secured Creditor's request for an annulment or termination of the automatic stay under 11 U.S.C. § 362(d)(1).

The court may annul the automatic stay for cause. See 11 U.S.C. § 362(d)(1). The court considers the *Fjeldsted* factors when determining whether an annulment of the automatic stay for cause is warranted. See *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24-25 (Bankr. 9th Cir. 2003).

In *Fjeldsted*, the Ninth Circuit's Bankruptcy Appellate Panel held that the "balancing of the equities" test applied and articulated standards for the bankruptcy court to employ when considering a motion for an annulment of the automatic stay. In addition to the oft-cited standard of (1) whether the creditor was aware of the bankruptcy petition, and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor, the BAP compiled a list of factors to consider when deciding whether to annul the automatic stay:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor; and
12. Whether stay relief will promote judicial economy or other efficiencies.

Id. at 25.

The BAP was careful to emphasize that the list of factors was a "framework for analysis

⁴The Debtors acknowledge that the error regarding their social security numbers was "their error." Dkt. 34 at 1:18.

and not a scorecard.” *Id.* It also noted that in the context of the particular facts of a case, a single factor may be of such import that it is dispositive on the issue. *Id.*

As to the first and second factors, it is true that the Debtors are on their fifth bankruptcy filing with this case. However, the most recent prior case, no. 19-25989, resulted in a successful chapter 7 discharge. The chapter 7 case prior to that, 14-22890, was closed without a discharge based on the Debtors’ failure to pay the filing fee and an apparent reluctance to pay the reopening fee to pay the filing fee. Other than the failure to pay the filing fee and the loss of a discharge, there is nothing unusual on the docket. The chapter 13 case prior to that, no. 04-31019, resulted in a successful chapter 13 discharge. And the case prior to that, no. 01-92235, was transferred from the Modesto to the Sacramento division and became case no. 04-31019. The salient point here with regard to the first and second factors is that although the Debtors are repeat filers, they have not repeatedly filed nonproductive bankruptcy cases in bad faith or in an effort to hinder, delay, or defraud Secured Creditor. Relief in each of the Debtors’ prior cases was appropriately sought or, to the Debtors’ detriment, forfeited. Consequently, the number of prior cases in this situation does not weigh in favor of annulment.

The third factor does not weigh in favor of annulment. Secured Creditor acquired the Property so there is no third-party purchaser who will suffer prejudice in the absence of annulment.

The fourth factor is neutral or weighs slightly in favor of annulment. This is not the Debtors’ first bankruptcy case which means the Debtors know how to accurately complete bankruptcy forms and they understand the importance of doing so. Indeed, in all of their prior cases, the Debtors correctly identified their respective social security numbers. So not doing so in this case creates an impression that the Debtors transposed their social security numbers in an attempt to sow confusion with a late-night bankruptcy filing and a foreclosure sale scheduled for early the following morning. Mitigating against that conclusion is that the form on which social security numbers are disclosed (filed under seal but available to the court) reflects that the Debtors signed and dated the form with transposed social security numbers on November 5, 2021. The court also notes that Secured Creditor bears some responsibility for a less than thorough search. PACER allows searches using names only and there is no evidence that Secured Creditor performed a search using that parameter. To the extent the case was entered at 9:50 p.m. on November 7, 2021, had Secured Creditor performed a search of Miguel’s name only it likely would have discovered this case.

The fifth factor weighs against annulment. Even assuming that Secured Creditor was not aware of this case at 9:30 a.m. on November 8, 2021, its loan servicer, and thence its agent, was made aware of this case on November 20, 2021, when it received electronic notice of the filing from the Bankruptcy Noticing Center. And yet, with that knowledge Secured Creditor proceeded to record the trustee’s deed 10 days later (and some 22 days after the foreclosure sale) on November 30, 2021. So even assuming that the foreclosure sale was a “technical” violation of the automatic stay because Secured Creditor was unaware of this case, Secured Creditor may have compounded its stay violation problem with another stay violation by recording the trustee’s deed postpetition, 22 days after the foreclosure sale, and with knowledge of this case.

The sixth factor weighs against annulment. The Debtors have filed required documents and so far have complied with their obligations under the Bankruptcy Code and the and the Bankruptcy Rules.

The seventh factor weighs against annulment because the Property was acquired by Secured Creditor and not a third-party purchaser which facilitates restoring the parties to the status quo ante.

The eighth factor weighs against annulment. If the automatic stay is annulled, the Debtors lose their home (and an opportunity to save it) along with exempt equity. Loss of the home may also result in conversion or dismissal to the detriment of creditors, who lose the potential benefit of non-exempt equity in the Debtors’ other assets.

The ninth factor weighs against annulment. Aware of the Debtors' bankruptcy filing on November 20, 2021, Secured Creditor waited nearly one month before moving for relief.

The tenth factor weighs against annulment because, as noted above, Secured Creditor followed one stay violation, *i.e.*, the foreclosure sale, with another potential stay violation, *i.e.*, unilaterally recording the trustee's deed postpetition, 22 days after the foreclosure sale, and with knowledge of this case.

The eleventh factor weighs against annulment. If the stay is annulled the Debtors lose their home through foreclosure, which is irreparable harm. *Alcaraz v. Wachovia Mortg. FSB*, 592 F. Supp. 2d 1296, 1302 (E.D. Cal. 2009); *see also Lane v. Citimortgage, Inc.*, 2014 WL 6670648 at *6 (E.D. Cal. Nov. 21, 2014); *In re Casner*, 302 B.R. 695, 704 (Bankr. E.D. Cal. 2003).

The twelfth factor is inapplicable or neutral.

Upon consideration of the foregoing factors, the court is hard-pressed to conclude that an annulment of the automatic stay is warranted under the facts of this case. Secured Creditor's request for an annulment of the automatic stay will therefore be denied.

The court will also deny without prejudice Secured Creditor's request to terminate the automatic stay prospectively. There is equity in the Property of \$264,285.02 which translates to an equity cushion of approximately 28.57%. An equity cushion of 20% is considered sufficient adequate protection, even in the absence of payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984). And, as noted above, because the Property is the Debtors' home, it is absolutely necessary to the Debtors for their effective reorganization.

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

The court will issue an order.