

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

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: April 9, 2024

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.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

April 9, 2024 at 1:00 p.m.

1. [23-90607](#)-B-13 KRISTOPHER COOPER CONTINUED OBJECTION TO
[LGT](#)-1 David C. Johnston CONFIRMATION OF PLAN BY LILIAN
G. TSANG, CHAPTER 13 TRUSTEE
2-8-24 [[30](#)]

CONTINUED TO 5/07/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 5/01/24.

Final Ruling

No appearance at the April 9, 2024, hearing is required. The court will issue an order.

2. [23-90509](#)-B-13 ANITA STUBENRAUCH
[MDM-2](#) Matthew D Metzger

MOTION TO CONFIRM PLAN
3-8-24 [[49](#)]

Final Ruling

The motion was not 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). Only 32-day' notice was provided. Therefore, the motion to confirm plan is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

3. [23-90575](#)-B-13 THUY JACKSON
[KMB-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-8-24 [[33](#)]

DEBTOR DISMISSED:
01/31/2024
U.S. BANK TRUST NATIONAL
ASSOCIATION 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 request for annulment of the automatic stay.

U.S. Bank Trust National Association ("Movant") seeks annulment of the automatic stay with respect to real property commonly known as 1508 Rose Garden Court, Modesto, California (the "Property"). Movant has provided the Declaration of Angela Viale to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Viale Declaration states that Movant proceeded with a scheduled foreclosure sale on January 12, 2024, after the court entered an order on January 2, 2024, dismissing the bankruptcy case for failure to timely file documents. The Property was sold to a third-party purchaser on January 12, 2024. However, sometime after the foreclosure sale had already concluded, dkt. 20 was updated to indicate "Notice Deleted - Requested in Error." Movant asserts that no notice was ever received to indicate that the dismissal order had been reversed. On January 31, 2024, a second order dismissing the case was entered. See dkt. 31.

Discussion

Section 362(d) "gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 572 (9th Cir. 1992). Retroactive relief validates acts which violate the automatic stay and would otherwise be void. *Id.* at 573; *Lone Star Sec. & Video, Inc. v. Gurrola (In re Gurrola)*, 328 B.R. 158, 172 (9th Cir. BAP 2005); see also *E. Refractories Co. v. Forty Eight Insulations, Inc.*, 157 F.3d 169, 172 (2d Cir. 1998) (retroactive annulment of the stay validates actions taken in contravention of such stay, where as termination, modification, and conditioning generally take effect only as of the date such relief is granted). Under this approach, the bankruptcy court considers "(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." *In re Nat'l Env'tl. Waste Corp.*, 129 F.3d at 1055. In *Fjeldsted v. Lien et al. (In re Fjeldsted)*, 293 B.R. 12, 24 (BAP 9th Cir. 2003), the court identified twelve additional factors that can be relevant in deciding whether retroactive annulment of the stay is justified.

Movant seeks annulment of the stay based on the sale that was conducted on January 12, 2024 as a result of its understanding that the Debtor's current case had been dismissed and the automatic stay terminated based on the first dismissal order. Movant received no notice that the first dismissal order had been vacated and that it had been requested in error until after the foreclosure sale date. Additionally, the Property sold to a third-party purchaser for value. Both Movant and the bona fide purchaser would be harmed if they were required to unwind the sale that already took place especially since Movant was not aware that the first dismissal order had been vacated.

Second, it appears that Debtor filed this case with no intention of following through with it. Initially, Debtor filed a skeletal petition except for Schedule D, which only included the Property and servicer. No other creditors were listed in the Schedule D that was filed. Debtor then requested an extension of time to file schedules and provide required information three separate times. Debtor never filed additional schedules or information. Ultimately, Debtor allowed the case to be dismissed with the entry of the second dismissal order. The Debtor has also failed to respond to this motion for annulment of the automatic stay. Thus, it appears unlikely that there would be any irreparable injury to the Debtor should the court grant Movant's request for annulment of the automatic stay in this case.

The court shall issue an order annulling the automatic stay in its entirety 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 sale are deemed to not have violated the automatic stay.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

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.

4. [23-90576](#)-B-13 GURMAIL SINGH AND KULDEEP CONTINUED MOTION FOR RELIEF
[KMM-1](#) KAUR FROM AUTOMATIC STAY
David C. Johnston 2-28-24 [[44](#)]
HARLEY-DAVIDSON CREDIT CORP.
VS.

Final Ruling

This matter was continued from April 2, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 5, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 63, granting the motion for relief from automatic stay, shall become the court's final decision. The continued hearing on April 9, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.