

**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 15, 2025

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
Sacramento, California

April 15, 2025 at 1:00 p.m.

1. [25-20003](#)-B-13 ADELAIDA RUIZ MOTION TO CONFIRM PLAN
[FAT](#)-2 Flor De Maria A. Tataje 3-4-25 [[23](#)]

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 plan.

First, objecting creditor UNCLE Credit Union holds a deed of trust secured by Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$39,167.56 in pre-petition arrearages. However, the plan proposes to cure only \$20,000 in arrears. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Second, Debtor's plan is not feasible. Debtor's schedules show a disposable income of \$3,540.57. However, the Debtor proposes monthly plan payments of \$4,406. Debtor lacks income to fund the plan. 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.

April 15, 2025 at 1:00 p.m.

2. [24-25020](#)-B-13 CANDY WALKER CONTINUED MOTION TO DISMISS
[LGT](#)-2 Peter G. Macaluso CASE
Thru #3 2-11-25 [[27](#)]

CONTINUED TO 4/29/25 AT 1:00 P.M. AT SACRAMENTO COURTROOM.

Final Ruling

No appearance at the April 15, 2025, hearing is required. The court will issue an order.

3. [24-25020](#)-B-13 CANDY WALKER MOTION TO CONFIRM PLAN
[PGM](#)-1 Peter G. Macaluso 3-10-25 [[33](#)]

Final Ruling

The motion to confirm plan is **continued to April 29, 2025, at 1:00 p.m.** at the Sacramento courtroom. The objection will be sustained if trial loan documents are not filed and provided to the Chapter 13 Trustee by April 22, 2025, based on Debtor's representation that the documents would be filed prior to the April 15, 2025, hearing.

No appearance at the April 15, 2025, hearing is required. The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). 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 permit the requested modification and not confirm the modified plan.

First, Debtor failed to make the January 2025 payment proposed in the plan. Therefore, Debtor is delinquent \$2,810.00. 11 U.S.C. § 1325(a)(2).

Second, Debtor's proposed plan payment is \$330.00 per month for months 1 through 5. However, monthly payments to secured creditors total \$525.00, and with the Chapter 13 Trustee's compensation and expense would total \$576.92 per month. Accordingly, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

The modified plan does not comply with 11 U.S.C. §§ 1322 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. [24-22492](#)-B-13 SHANA BRADLEY
[PGM](#)-2 Peter G. Macaluso

MOTION TO MODIFY PLAN
3-6-25 [[88](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

ONTRACK MORTGAGE 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 for relief from stay pursuant to § 362(d)(4).

OnTrack Mortgage ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 2300 Klamath Court, Lodi, California (the "Property"). Movant has provided the Declaration of Erik Jorissen to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Jorissen Declaration states that there Debtor has not paid the monthly payment of \$2,150.00 since May 1, 2024, resulting in 11 past due pre-petition payments totaling \$23,650.00.

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 \$261,934.69 as stated in the Jorissen Declaration. Movant does not list any value of the Property in its moving papers, and Debtor's schedules also fail to indicate any value.

Discussion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. Where there is sufficient equity cushion in the property, the creditor is adequately protected. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). In this case, Movant fails to provide its valuation of the Property. Debtor's schedules are also silent on this matter since Schedules A/B and D were not filed. In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Movant has not met this burden under § 362(d)(1).

On the other hand, Movant also seeks relief under § 362(d)(4). To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the Debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

Here, Movant states that on the eve of foreclosure on January 28, 2025, Debtor commenced a chapter 13 bankruptcy in the U.S. Bankruptcy Court, Northern District of California. This first case prevented Movant from conducting its foreclosure on the Property set for the following day, February 29, 2025. The first case was subsequently dismissed on February 27, 2025, for failure to file required documents after an extension was given. The trustee's sale was continued to March 12, 2025, and on the eve of foreclosure on March 11, 2025, Debtor commenced this second chapter 13 bankruptcy case in the Eastern District of California. Additionally, Debtor failed to list the prior bankruptcy in his petition. Movant argues that this history of commencing two bankruptcies before foreclosures shows Debtor's scheme to delay, hinder, or defraud creditors. Based on the record, the court agrees.

"Multiple bankruptcy filings alone, even if they have the effect of delaying a creditor's foreclosure efforts, will not satisfy § 362(d)(4)'s requirement of a scheme to hinder, delay or defraud for in rem stay relief." *In re Lovato*, 2021 WL 3410462, *6 (Bankr. D. New Mexico Aug. 4, 2021); *In re Yellowman*, 2023 WL 5658795, *5 (Bankr. D. New Mexico Aug. 31, 2023) ("multiple filings are not per se a scheme to delay, hinder, or defraud creditors[.]"). At the same time, the *Lovato* court noted:

[A]lthough two bankruptcy cases does not seem to fit the standard definition of 'multiple,' there is no per se rule that two bankruptcy cases cannot support a claim for in rem stay relief under § 362(d)(4). See *In re Giambrone*, 600 B.R. 207, 213 (Bankr. E.D.N.Y. 2019) ("[R]elief under § 362(d)(4) may be warranted upon the filing of two bankruptcy cases affecting the same real property."). Two successive bankruptcy cases might support a claim for in rem stay relief under § 362(d)(4) if there are no changed circumstances for the Debtor and the facts surrounding the filing of both cases indicate that both cases were filed to delay the creditor's foreclosure efforts. See, e.g., *In re Hymes*, No. A12-00599-GS, 2013 WL 653060, at *5 (Bankr. D. Alaska Feb. 20, 2013) (debtors' two cases filed four years apart and filed on the eve of scheduled foreclosure sales supported in rem stay relief under § 362(d)(4) where debtors were evasive in their testimony regarding the purpose of their current filing).

Lovato, 2023 WL 3410462 at *6. The *Lovato* court further noted:

Factors relevant to whether a debtor has engaged in a scheme to hinder, delay or defraud a creditor by filing multiple bankruptcy cases include: (a) serial filings to stop a foreclosure; (b) the timing of the bankruptcy filings relative to each other, to proceedings in the foreclosure action, and to scheduled foreclosure sales; (c) lack of changed circumstances between bankruptcy filings; (d) failure to prosecute bankruptcy cases or to honor the obligations of a debtor in the bankruptcy cases, or other bad faith conduct in connection with the bankruptcy cases; (e) the inability to fund a plan; (f) multiple bankruptcy filings by multiple parties to protect common property; and (g) failure to make any mortgage payments for a long time.

Id.

Although one factor is inapplicable here, the factors that are applicable support the conclusion that the Debtor filed this case as part of a scheme to hinder, delay, or defraud Movant and, thus, support Movant's request for relief under § 362(d)(4).

Factors (a) and (b) weigh in favor of § 362(d)(4) relief. The Debtor's first and second bankruptcy cases were filed six weeks apart. The Debtor's first and second bankruptcy cases were also filed to stop a foreclosure on the Property. Further, the first case was filed on the eve of a scheduled foreclosure and the second case was filed on the eve of a re-scheduled foreclosure after the first case was dismissed.

Factor (c) weighs in favor of § 362(d)(4) relief. The Debtor did not respond to or otherwise oppose the present motion. The court may therefore infer that the Debtor has nothing to add (or dispute) and, thus, circumstances between the first and second cases have not changed.

Factor (d) weighs in favor of § 362(d)(4) relief. The Debtor failed to properly prosecute the first bankruptcy case inasmuch as he failed to comply with his duties as Debtor and file all required schedules, statements, and documents, even after the court granted him an extension to do so. Same with this second case. The court takes judicial notice that on March 13, 2025, the clerk issued a notice of missing documents which informed the Debtor that a Chapter 13 Plan, Form 122C-1 Statement of Monthly Income, Schedules A through J, a Statement of Financial Affairs, and a Summary of Assets and Liabilities must be filed by March 25, 2025, or the case may be dismissed. The court also takes judicial notice of the docket that none of these missing documents have been filed as of the date of these civil minutes.¹

The court is not able to evaluate factor (e) because, as noted above, the Debtor has not filed a Chapter 13 Plan, Schedules, a Statement of Financial Affairs, or Monthly Income forms.

Factor (f) is inapplicable.

Factor (g) supports § 362(d)(4) relief. The Debtor made his last mortgage payment to Movant in April 2024. At the time the present motion was filed, the Debtor was 11 payments in default. There is no evidence the Debtor has made the April 2025 postpetition mortgage payment.

Based on the foregoing, the court is persuaded that, albeit only two, the Debtor's multiple bankruptcy filings were part of a scheme to delay, hinder, or defraud creditors from exercising their rights against the Property and will grant relief under § 362(d)(4).

The court shall issue an order terminating and vacating the automatic stay pursuant to § 362(d)(4) 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)(4) is 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.

¹Even if the case is dismissed because the Debtor has not timely filed missing documents, the court may still consider Movant's request for 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 2018) (noting that request for § 362(d)(4) relief survives dismissal and foreclosure); *Azkam v. U.S. Bank N.A.*, 2020 WL 1700028, *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.").

7. [24-25197](#)-B-13 DENISE REES
[LGT](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
1-2-25 [[26](#)]

Final Ruling

The *initial* Chapter 13 Plan filed November 15, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to April 22, 2025, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

The Chapter 13 Trustee's supplemental objection to confirmation states that the Debtor is delinquent in plan payments, that Schedule I needs to be amended, and an attachment to Schedule I needs to be provided. The Trustee also stated nonopposition to continuing the matter by 45 days to allow Debtor to obtain newly earned payroll documents and for the Trustee to review the pay advices and amended schedules.

This matter was continued and now 50 days have passed since the Trustee's supplemental objection was filed. There is no indication that the Debtor has provided newly earned payroll documents since starting her veterinary job on March 15, 2025, and no amended schedules have been filed.

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

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on April 18, 2025, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no 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 April 22, 2025, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on April 22, 2025, at 1:00 p.m.

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

The court will issue an order.