

**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: May 3, 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.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

May 3, 2022 at 1:00 p.m.

-
1. [19-90801](#)-B-13 ALEXANDER/CECILIA SUAREZ MOTION TO INCUR DEBT
[MSN](#)-3 Mark S. Nelson 3-25-22 [[66](#)]

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 refinance.

Debtors seek court approval to refinance real property commonly known as 2916 Westport Circle, Oakdale, California, 95361 ("Property") with Nations Direct Mortgage, LLC ("Creditor"), holder of the first deed of trust. Creditor has agreed to a refinance that will provide to the Debtor cash to close in the amount of \$27,000.00, or the amount necessary to pay their bankruptcy case off in full in May 2022. Debtors intends to use the proceeds to pay off approved unsecured creditors at 100% and discharge their Chapter 13 bankruptcy case. The refinance will increase the interest rate from 3.250% to 4.625%, while granting Debtors the ability to refinance after six months of good payment history. Additionally, the refinance will increase the monthly mortgage payment from \$2,139.59 to \$3,237.56, and Debtors state they will have no problem making this new monthly mortgage payment without the \$1,400.00 monthly Chapter 13 plan payments.

The motion is supported by the Declarations of Alexander and Cecilia Suarez. The Declarations affirm Debtors' desire to refinance the Property. Debtors initially planned to sell the house, but the obstacles in that course of action led them to choose to refinance the home instead. The Declaration states that the proceeds will pay off approved unsecured creditors and that remaining funds will be used to upgrade their home and for much-needed repairs for their two vehicles. The refinance will additionally help secure a better starting point for Debtors' children. Debtors hope to pay off their financial obligations and increase their credit score, allowing them to refinance again at a better interest rate, if applicable.

The repayment of the new loan does not appear to unduly jeopardize Debtors' performance of the plan filed September 2, 2019. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The Debtors have also provided to the Trustee the following provisions be included in the order approving the sale of real property:

1. The refinance is approved provided all liens, if any, are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered.
2. Trustee shall approve the escrow and title company to be used in connection with the transaction.

May 3, 2022 at 1:00 p.m.

3. Trustee shall approve the estimated closing statement to be prepared in connection with the refinance, and when approved, disbursement may only be made in accordance with the approved estimated closing statement.

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

The court will issue an order.

2. [21-90418](#)-B-13 MIGUEL TERRIQUEZ
[SSA](#)-4 Richard L. Jare

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
3-30-22 [[153](#)]

Final Ruling

The court has before it a motion to dismiss this chapter 13 case or convert it to a chapter 7 case filed by creditor Griselda Solorzano ("Creditor"). See Dkts. 153-159. Debtor Miguel Terriquez ("Debtor") filed a one-page opposition which refers to the court's civil minutes of April 5, 2022, dkt. 162, and its order of April 8, 2022, dkt. 163, requiring the debtor to file, set, and serve an amended plan and motion to confirm it by April 12, 2022, or face a potential dismissal of this case. No reply was timely filed.

The court's decision is to convert rather than dismiss this chapter 13 case as in the best interest of creditors and the estate.

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

This case was filed on September 2, 2021. The Debtor has been unable to confirm a plan during the eight months this case has been pending. As noted above, the court provided the Debtor with an opportunity to file, set, and serve an amended plan and motion to confirm it by April 12, 2022, or face dismissal upon an ex parte request of the Chapter 13 Trustee ("Trustee"). See Dkts. 162, 163. An amended plan and motion to confirm were not timely filed, set, and served. The Trustee has not filed an ex parte application to dismiss this case.

There is cause to dismiss or convert this chapter 13 case. The Debtor's inability to propose a confirmable plan and the resulting absence of a confirmed plan in the eight months this case has been pending is unreasonable delay by the Debtor that is prejudicial to creditors. See 11 U.S.C. § 1307(c)(1). The Debtor's failure to file, set, and serve an amended plan and motion to confirm it by April 12, 2022, as the court ordered, is a failure by the Debtor to timely file a plan and a denial of a request for additional time after denial of confirmation of a plan. See 11 U.S.C. § 1307(c)(3), (5).

The court determines that conversion rather than dismissal is in the best interest of creditors and the estate.

The Debtor asserts a 50% ownership interest in real property located at 5912 Squire Wells Way, Riverbank, California, which is valued in the initial schedules at \$400,000.00. See Dkt. 1 at Sch. A. An objection to the Debtor's claim of a homestead exemption in the property was sustained earlier in the case and the claimed homestead exemption was disallowed. See Dkts. 1 at Sch. C, 82, 84.¹

Based on claims filed, liens on the property total approximately \$223,868.00. They include the following:

¹The Debtor failed to avail himself of an opportunity to respond to the objection to his claim of a homestead exemption. See Dkts. 49, 53, 57. The Debtor also did not appeal the order sustaining the objection and disallowing the homestead exemption.

- (1) a first deed of trust in the approximate amount of \$157,121.00, see Claim No. 9-1;
- (2) a second deed of trust in the approximate amount of \$45,000.00, see Claim No. 3-1; and
- (3) and an IRS tax lien in the approximate amount of \$21,747.00, see Claim 4-2.

Assuming a \$400,000.00 valuation (although the value is likely to be much higher), at a minimum there is \$176,132.00 (\$400,000.00 - \$223,868.00) in equity in the property. Based on a claim of a 50% interest ownership interest in the property, the Debtor's non-exempt share is \$88,066.00.

The individual who also asserts an interest in the property attempted to have the property sold. See Dkt. 24 at 3:4-7. When those efforts were unsuccessful, she commenced a prepetition state court action for partition and sale. *Id.* at 3:8-13. The court granted relief from the automatic stay to allow the state court action to proceed. See Dkt. 137. However, the state court action may be unnecessary if this chapter 13 case is converted to a chapter 7 case, a chapter 7 trustee sells the property, and the co-owner consents to the sale which she is likely to do given her prior attempts to have the property sold.

Based on the foregoing, the court concludes that the interests of creditors and the estate are better served by conversion of this chapter 13 case to a chapter 7 case rather than dismissal.

The motion to dismiss or converted is ORDERED GRANTED IN PART AND DENIED IN PART: The motion is GRANTED as to conversion and DENIED AS MOOT as to dismissal.

The court will prepare an order.

3. [21-90441](#)-B-13 SHARON HAMILTON
[DCJ](#)-3 David C. Johnston

MOTION TO SELL FREE AND CLEAR
OF LIENS
3-18-22 [[60](#)]

Final Ruling

The motion has been set for hearing on the notice required by 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). The defaults of the non-responding parties are entered.

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 deny the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 1410 Cherrywood Drive, Modesto, California ("Property"). The gross sale is \$312,500.00, all payable in cash at the close of escrow. The net proceeds to Debtor will total approximately \$38,500.00, which will be deposited into a blocked bank account. The buyer is the adult grandson of the Debtor, and Debtor believes that despite the close relationship, the transaction will generate more net proceeds than if the Property had been listed and sold through a real estate broker.

Debtor must be able to clear title prior to completing the sale, which she has not done because of the federal tax lien against her husband. Debtor alleges that the Internal Revenue Service ("IRS") refuses to cooperate with Debtor, and insists that the liens against Debtor's husband are entitled to be satisfied from Debtor's separate property, which Debtor argues is unwarranted under California law. Debtor acknowledges that federal tax liens of approximately \$35,000.00 filed against her and her husband for joint income tax returns are valid liens against the Property, subordinate to the HUD deed of trust executed by the former owner. IRS is listed as a secured creditor for such sum in Debtor's schedule D. The proposed sale will generate sufficient funds to pay these liens. The disputed federal tax liens filed against Debtor's husband total approximately \$146,000.00.

Debtor seeks authority to sell the Property free and clear of the disputed liens of the IRS pursuant to 11 U.S.C. §363(f)(4) because there is a bona fide dispute as to whether the federal tax liens against the Debtor's husband are enforceable against the Debtor's separate property received as a gift. Debtor has made multiple attempts to resolve the dispute with the IRS, but the title company will not close the escrow without an acknowledgment by the IRS that the disputed liens have not attached to the Property or a court order. However, the IRS has refused to provide the "certificate of non-attachment."

The Chapter 13 Trustee opposes the motion on several grounds.

First, the court denied confirmation of Debtor's plan and Debtor has not filed another plan. Without a pending plan, it cannot be determined what impact the proposed sale will have on the Debtor's case.

Second, Debtor has failed to provide a copy of the estimated closing statement with her motion papers. Until a copy has been provided, it cannot be determined the impact of the sale upon any potential plan filed by Debtor.

Third, Debtor's dispute with the IRS has not been resolved.

Fourth, Debtor has proposed that net proceeds of approximately \$38,500.00 will be

deposited into a blocked bank account. Debtor has failed to identify who will be in control of the blocked account.

Fifth, The documents filed in Exhibit A to this Motion are outdated and internally inconsistent. Specifically, the Purchase Agreement is signed and dated June 16, 2021, Paragraph 5 of the Purchase Agreement states that Buyer made payment of \$1,000.00 as consideration on May 24, 2021, however the attached check for \$1,000.00 is dated July 2, 2021. Additionally, Paragraph 9 of the Purchase Agreement states that escrow shall close on or before August 15, 2021, and that any extension of the Closing must be agreed upon in writing by the Buyer and Seller. However, there is no written agreement to extend the deadline to close provided by the Debtor, as a result it is uncertain whether the Purchase Agreement is still valid.

Sixth, the Trustee is uncertain that the sales price is the fair market value of the property. The buyer of the property is Debtor's grandson and the Purchase Agreement lists the sales price as \$312,000.00. The Debtor has not provided an appraisal, or any third party evidence of the Property's value.

Given the substantial defects pointed out by the Trustee, the court has serious concerns about the legitimacy the purported sale and sale motion, particularly when the motion to sell was filed without a plan pending for confirmation and confirmation of a plan depends on a motion to sell. To remedy this problem, the Debtor shall have until **May 10, 2022**, to file, set, and serve (1) an amended plan, (2) a motion to confirm the amended plan, and (3) a renewed motion to sell. All matters are to be set and noticed for hearing on the same date and time. The Debtor shall also file a separate detailed memorandum of points and authorities that (1) addresses each of the trustee's objections noted hereinabove or states the objection has been resolved and (2) explains the feasibility of the plan in the context of the sale.

If an amended plan, a motion to confirm, a motion to sell, and the detailed memorandum of points and authorities are not timely filed in accordance with the order entered on these civil minutes this case will be dismissed without further notice or hearing. See 11 U.S.C. § 1307(c) (1), (3).

Based on the evidence before the court, the court determines that the proposed sale is not in the best interest of the Estate.

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

The court will enter a minute order.

4. [21-90442](#)-B-13 THOMAS GILLIS
[TOG](#)-1 Pro Se

MOTION TO CONFIRM PLAN
2-11-22 [[64](#)]

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 Debtor has 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 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.

5. [19-90448](#)-B-13 MICHAEL/JANET NIELSEN MOTION TO APPROVE LOAN
[DCJ](#)-2 David C. Johnston MODIFICATION
4-12-22 [[46](#)]

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, and may appear at the hearing to offer oral argument.

The court's decision is to **conditionally grant the motion to approve loan modification and continue the hearing to May 10, 2022, at 1:00 p.m.**

Debtors seek court approval to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce Debtors' mortgage payment from the current \$1,950.00 a month to \$1,568.55 a month. The modification will allow Debtors to retain their home, waives \$23,027.94 of delinquent monthly payments, reduces the Debtors' monthly home loan payment, reduces the interest rate on the home loan to 3.125% per annum, and extends the maturity date by nine years.

The motion is supported by the Declaration of Michael Nielsen. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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, May 6, 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 the United States trustee 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 May 10, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on May 10, 2022, at 1:00 p.m.

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

The court will issue an order.

6. [21-90158](#)-B-13 JILL MURPHY MOTION TO MODIFY PLAN
 [LBF](#)-7 Lauren Franzella 3-28-22 [[68](#)]

Final Ruling

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

7. [20-90698](#)-B-13 SYLVIA ZEPEDA
[SLH](#)-2 Seth L. Hanson

OBJECTION TO CLAIM OF SCOLOPAX,
LLC, CLAIM NUMBER 15
3-8-22 [[28](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 sustain the objection to Claim No. 15-1 of Scolopax, LLC and disallow the claim except to the extent already paid by the Trustee.

The Debtor requests that the court disallow the claim of Scolopax, LLC ("Creditor"), Claim No. 15-1. The claim is asserted to be unsecured in the amount of \$49,716.73. The Debtor asserts that the debt in question was the result of identity theft, and the proof of claim does not attach any evidence of a contractual relationship between Debtor and Loan Me, who was the original party from whom Creditor apparently purchased its claim. Debtor filed a declaration asserting that she never borrowed money from Loan Me, nor entered into a contract to pay them any money.

The Chapter 13 Trustee ("Trustee") filed a response stating that it does not oppose the Debtor's objection but requests that any order sustaining the objection provide that the claim is disallowed except to the extent already paid by the Trustee. To date, the Trustee has paid \$9,768.34 in principle to Creditor.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The Chapter 13 Trustee asserts that the deadline to file an objection to the Notice of Filed Claims has passed. Pursuant to Local Bankr. R. 3007-1(d)(3), objections to claims shall be filed no later than 60 days after service of the Notice of Filed Claims. In this case, more than five months have passed. Pursuant to Local Bankr. R. 3007-1(d)(4), any objection filed after the 60 day period, if sustained, shall not result in any order that the claimant refund amounts paid on account of its claim. The Trustee has already paid Creditor \$9,768.34 and filed a response requesting that if the objection were sustained, that the claim be disallowed except to the extent already paid by the Trustee.

The court finds that the Debtor has satisfied its burden of overcoming the presumptive validity of the claim. Based on the evidence before the court, the Creditor's claim is disallowed except to the extent already paid by the Trustee. The objection to the proof of claim is sustained.

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

The court will issue an order.

8. [22-90017](#)-B-13 IVAN/JANET AGASSI
[RDG](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
4-12-22 [[14](#)]

Final Ruling

This matter was continued from April 26, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 29, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 20, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on May 3, 2022, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 20.

The court will issue an order.

9. [22-90020](#)-B-13 KATHEY BROWN
[RG-2](#) Richard L. Sturdevant

CONTINUED MOTION TO DISMISS
CASE
4-11-22 [[24](#)]

Final Ruling

This matter was continued from April 26, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 29, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 30, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on May 3, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.