

**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: August 24, 2021

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

August 24, 2021 at 1:00 p.m.

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1. [20-21219](#)-B-13 LEONARD/RHONDA HENDRICKS MOTION TO MODIFY PLAN
[DEF-2](#) David Foyil 6-30-21 [[33](#)]
Thru #2

Final Ruling

The motion 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, feasibility depends on the court sustaining an objection to claim of Internal Revenue Service. That matter is heard and sustained at Item #2, DEF-3.

Second, Section 3.08 of Debtors' proposed plan (DN 35) provides for the Internal Revenue Service's secured claim in the amount of \$4,260.96, to be paid a monthly dividend of \$129.04, at 10% interest. Debtors do not clarify which confirmation date the interest date of 10% shall begin, whether it be the date the first modified plan is confirmed by the court, or the original plan confirmation date of June 1, 2020.

Due to the unresolved second issue stated above, 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.

2. [20-21219](#)-B-13 LEONARD/RHONDA HENDRICKS OBJECTION TO CLAIM OF INTERNAL
[DEF-3](#) David Foyil REVENUE SERVICE, CLAIM NUMBER 4
6-30-21 [[41](#)]

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

August 24, 2021 at 1:00 p.m.

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. 4-1 of the Internal Revenue Service as to the amount owed on their 2019 tax return only.

Debtors Leonard Hendricks and Rhonda Hendricks "(Debtors") request that the court disallow the claim of the Internal Revenue Service ("Creditor"), Claim No. 4-1, as to the alleged 2019 unsecured priority debt only and not with request to the total amount of the claim. Debtors state that on April 27, 2020, the Creditor filed its claim that listed the unsecured priority debt in the amount of \$8,821.82. The claim estimated taxes due for taxes period December 31, 2019, in the amount of \$6,890.10.

On July 9, 2020, Creditor accepted the Debtors' application for automatic extension for the 2019 tax return. On October 1, 2020, Creditor accepted Debtors' 2019 tax return. Dkt. 44, exh. B.

On May 17, 2021, Debtors paid to Creditor the amount owed for their 2019 tax return. Dkt. 44, exh. C.

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 court finds that Debtors have satisfied their burden of overcoming the presumptive validity of Creditor's claim. Debtors submitted an application for automatic extension for their 2019 tax return, submitted their completed 2019 tax return, and paid the amount owed on their 2019 tax return.

Based on the evidence before the court, the Creditor's claim is disallowed as to the alleged 2019 unsecured priority debt. 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.

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 second amended plan.

First, Paragraph 3.06 of Debtor's plan fails to state the monthly dividend payable for attorney fees of \$2,800.00.

Second, Debtor's plan proposes the following monthly payments to secured creditors: Nissan Motor, Class 2, \$409.20 per month and Toyota, Class 2, \$195.03 per month. These monthly payments total \$604.23 per month, and with the current Trustee compensation and expense total \$637.37 per month. These figures do not include a monthly dividend for attorney fees as no figure has been provided in Section 3.06 of the plan. Therefore, Debtor's plan payment of only \$228.00 per month in months 1 through 6 is insufficient.

Separately, the Debtor has filed amended Schedules I and J on August 6, 2021, showing that he has a monthly net income of \$738.89.

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.

4. [17-26152](#)-B-13 VERNON/EDWINA DAYO
[NLL](#)-1 Gary Ray Fraley

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
7-7-21 [[51](#)]

Final Ruling

This matter was continued from August 10, 2021, so that debtors Vernon Dayo and Edwina Dayo can file declarations of consent to Wells Fargo Bank, N.A.'s loan modification by August 17, 2021. No declarations were filed.

Therefore, Wells Fargo's motion for an order authorizing a loan modification with partial claims agreement and subordinate mortgage regarding real property is denied.

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

The court will issue an order.

5. [20-25153](#)-B-13 MICHAEL/JOLENE YATES MOTION TO CONFIRM PLAN
 [CLH](#)-4 Charles L. Hastings 7-6-21 [[88](#)]

Final Ruling

No appearances necessary. The motion is continued to September 7, 2021, at 1:00 p.m. per the joint request to continue hearing.

The court will issue an order.

6. [14-22555](#)-B-13 MELANIO/ELLEN VALDELLON MOTION FOR CONTEMPT AND/OR
WW-4 Mark A. Wolff MOTION FOR SANCTIONS FOR
Thru #7 VIOLATION OF THE DISCHARGE
INJUNCTION
8-10-21 [[158](#)]

Final Ruling

No appearances necessary. The court issued an order in the related adversary proceeding no. 21-2008 (Item No. 7) on August 20, 2021, which states that the motion will be dismissed as moot because it requests the same relief requested in Count 1 of the amended complaint filed in the adversary proceeding. Adv. dkt. 68. Therefore, the motion is ORDERED DISMISSED AS MOOT.

The court will enter an order.

7. [14-22555](#)-B-13 MELANIO/ELLEN VALDELLON MOTION TO DISMISS CASE
[21-2008](#) PHH-2 7-26-21 [[62](#)]
VALDELLON ET AL V. WELLS FARGO
BANK, N.A. ET AL

Final Ruling

No appearances necessary. The court issued an order on August 20, 2021. Dkt. 68.

8. [21-22762](#)-B-13 FREDERICK PRINCE
[BRL](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-10-21 [[13](#)]

DEBTOR DISMISSED:
08/10/2021
KARL BROWN VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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 conditionally grant the motion to annul the automatic stay of 11 U.S.C. § 362(a), deny the request for relief under 11 U.S.C. § 362(d)(4), and continue the hearing to **August 31, 2021, at 1:00 p.m.**

Creditors Provident Trust Group LLC, FBO Steven F. Zwinger IRA #130900106, Karl Brown, Provident Trust Group, LLC, FBO Suzy Pessutti IRA #DPMCTRA186477, Provident Trust Group, LLC FBO Brett M. Goldstock IRA #160100108, Keith Kressin, Janet Kressin, Pradeep Atur, Savitha Atur, Ravi S. Kamojhala, Prashanti Kamojbala, Bhupesh Umatt, Seema Pai, and Hyunju Hwang (collectively "Movants") seek relief from the automatic stay with respect to real property commonly known as 1029-1045 N. El Dorado Street, Stockton, California (the "Property"). Movants have provided the Declarations of Alison Haberstroh and Benjamin Levinson to introduce into evidence the documents upon which it bases the claim.

Movants first obtained an order terminating the stay in bankruptcy case no. 20-24691 filed by Freedom 123, LLC ("Freedom"), of which Frederick Prince ("Debtor") was a managing member, as to its loan secured by a first deed of trust on the Property. The order terminating stay was entered on May 4, 2021. The Freedom bankruptcy case was filed as a chapter 11 on October 7, 2020, and converted to a chapter 7 on March 2, 2021. Gary Farrar was appointed Chapter 7 Trustee and abandoned the Property in the Freedom bankruptcy.

After obtaining the relief from stay, Movants conducted a foreclosure sale on July 30, 2021, at 9:30 a.m. The amount owing to Movants at the time was \$871,859.53 and Movants were the highest bidders by credit bid of \$800,000.00. Unbeknownst to Movants, Debtor had filed for chapter 13 pro se that same day. Movants received a facsimile showing Debtor's bankruptcy filing after the foreclosure sale had concluded.

Movants assert that Debtor has no ownership in the Property and seek an annulment of the stay back to the filing date of this bankruptcy on July 30, 2021, to the extent it exists, and to validate the foreclosure sale. Alternatively, Movants state that this bankruptcy was not filed in good faith and was part of a scheme to delay, hinder, or defraud creditors under 11 U.S.C. § 362(d)(4), and that the stay must be terminated so that the trustee's deed may be recorded and the Debtor evicted from the commercial rental unit at the Property.

Discussion

Movants do not provide a properly authenticated/certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Instead Movants provide exhibits consisting of, but not limited to, a promissory note from Freedom to Movants, a deed of trust from Freedom to Movants, and a notice of trustee's sale. Dkt. 17. Movants also provide as an exhibit the order entered pre-petition on May 3, 2021, terminating stay in the Freedom bankruptcy. Dkt. 19. Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this Property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-

MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

Annulment is particularly appropriate in this case given the Movants authority to proceed with a foreclosure sale of the Property, Movants' alleged purchase of the Property at a foreclosure sale, the expense that Movants incur while the Debtor unlawfully remains in possession of the Property without payment to Movants, and Movants' stay of all action upon learning of this case after the conclusion of the foreclosure sale. See *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24-25 (Bankr. 9th Cir. 2003) (factors to consider in granting annulment).

The court shall issue an order annulling the automatic stay in its entirety as to Movants' post-petition actions so that all such post-petition actions taken by Movants, their agents, representatives, members, directors, officers, and employees are deemed to not have violated the automatic stay. This includes, but is not limited to, the foreclosure sale held July 30, 2021.

Finally, the court will deny relief under § 362(d)(4). Creditor has not carried its burden of demonstrating a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property under § 362(d)(4).

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

No other or additional relief is granted by the court.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, August 27, 2021, 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 in part and denied in part 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 August 31, 2021, 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 August 31, 2021, at 1:00 p.m.

The court will enter an order.

9. [21-22483](#)-B-13 HAROLD/KATHY NORMAN
[JCK](#)-1 Gregory J. Smith

CONTINUED MOTION TO VALUE
COLLATERAL OF SYSTEMS &
SERVICES TECHNOLOGIES, INC
7-12-21 [[10](#)]

Final Ruling

This matter was continued from August 17, 2021, at the request of creditor Systems & Services Technologies, Inc. ("Creditor"), to allow it to procure an appraisal or other expert evaluation of a 2017 Shadow Cruiser 26' RV ("Vehicle"). Creditor did not specify a continuation date in its original opposition, and no appraisal, evaluation, or response was filed after the court's tentative ruling was posted on the court website on August 17, 2021.

The court's decision is to further continue this matter to September 14, 2021, at 1:00 p.m. Creditor shall file and serve its appraisal, or a status report that includes a time frame for obtaining an appraisal if one is not available, by September 7, 2021.

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

The court will issue an order.