

**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: November 21, 2023**

**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**

**November 21, 2023 at 1:00 p.m.**

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|---|---|
| 1. <a href="#">20-90020</a> -B-13   JOHN DIAZ<br>Bradley J. Swingle | MOTION TO WAIVE SECTION 1328<br>CERTIFICATE<br>REQUIREMENT, SUBSTITUTE PARTY,<br>AS TO DEBTOR<br>11-6-23 [ <a href="#">53</a> ] |
|---|---|

**Final Ruling**

Although counsel for Debtor John Diaz utilized the Official Certificate of Service Form required by Local Bankr. R. 7005-1, there was no attachment listing the names and addresses of the parties in interest served.

Rather than deny the motion, the court shall permit counsel to file an amended Certificate of Service by 5:00 p.m. on November 24, 2023, and the matter will be continued to November 28, 2023, at 1:00 p.m.

The motion is ORDERED CONTINUED to November 28, 2023 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

**November 21, 2023 at 1:00 p.m.**

2. [23-90423](#)-B-13 LISA ALVAREZ  
[SCF](#)-1 Mark S. Nelson

OBJECTION TO CONFIRMATION OF  
PLAN BY NEWREZ, LLC  
10-16-23 [[20](#)]

### **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). Debtor Lisa Alvarez ("Debtor") filed a written reply to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

NewRez, LLC d/b/a Shellpoint Mortgage Servicing, LLC, its successors and/or assignees ("Creditor"), holds a deed of trust against real property located at 1212 Moffett Road, Modesto, California ("Property"). Creditor objects to confirmation of the plan on grounds that the plan does not provide for arrears owed to it in the amount of \$1,465.40.

Debtor filed a response stating that the plan provides for Creditor as a Class 4 secured claim to be paid directly by the Debtor and her boyfriend, who is a one-half owner of the Property. Debtor states that she has been current on all monthly payments owed to Creditor and has been paying a total monthly payment of \$2,510.63 toward. Debtor has filed as exhibits proof of monthly mortgage payments and a copy of the mortgage statement dated September 4, 2023, showing her last monthly payment of \$2,510.63 and late charges of \$0.00. Another \$2,510.63 payment was made to Creditor on October 3, 2023, less than two weeks prior to the Creditor filing its objection.

Based on the evidence before the court, there appears to be no arrears owed to Creditor. The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed September 6, 2023, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

3. [23-90326](#)-B-13 KRISTOPHER COOPER MOTION BY FLOR DE MARIA A.  
[FAT](#)-4 Flor De Maria A. Tataje TATAJE TO WITHDRAW AS ATTORNEY  
11-6-23 [[69](#)]

### **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.

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 **conditionally grant the motion to withdraw as attorney and continue the matter to November 28, 2023, at 1:00 p.m.**

Flor De Maria A. Tataje ("Movant"), attorney for Debtor, moves to withdraw as attorney from this case on grounds that Debtor Kristopher Cooper ("Debtor") is taking the case in a direction that the attorney cannot follow and has thus rendered it difficult for her to carry out representation within the California Rules of Professional Conduct. Movant states that Debtor has breached his client duties listed in the law firm's retainer agreement, has failed to provide Movant with the documents requested and required to represent Debtor to the best of Movant's abilities, and has withheld information from counsel and the Chapter 13 Trustee.

Local Bankr. R. 2017-1(e) provides that an attorney who has appeared may not withdraw leaving the client in propria persona without leave of the court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal of an attorney is governed by the Rules of Professional Conduct of the State Bar of California and Counsel shall conform to the requirements of those rules.

Movant states that she provided the Debtor with almost one-month's notice to provide her with requested documents or to find new counsel, and that Debtor failed to provide the documents or find new counsel. Movant further states in her declaration that Debtor has knowingly and freely assented to termination of Movant's employment for the remainder of the case, and that Movant will refund attorney fees of \$3,000.00 to the Debtor if the motion is granted. Movant provides Debtor's last known address, phone number, and email address in the declaration in accordance with Local Rules.

Pursuant to California Rule of Professional Conduct 1.16, formerly California Rule of Professional Conduct 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Cal. Rules Prof. Conduct 1.16(b).

Movant asserts that Debtor breached his duty of providing documents and information to Movant, failed to disclose all assets and debts to Movant, and thus breached their attorney-client agreement. The attorney-client relationship has also irreparably broken down. These are cause for permitting the Movant's withdrawal pursuant to California Rule of Professional Conduct 1.16.

The court will permit the Movant's withdrawal from this bankruptcy case. The motion will be conditionally granted. If no opposition is filed by 5:00 p.m. on Friday, November 24, 2023, Movant shall mail Debtor his case file within seven (7) days at the last known address of the Debtor.

### **Conditional Nature of this Ruling**

**November 21, 2023 at 1:00 p.m.**

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, November 24, 2023, 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 November 28, 2023, 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 November 28, 2023, at 1:00 p.m.

4. [22-90429](#)-B-13 MARY LYNN LEBOW  
SC-1 David C. Johnston

**Add on \$6**

BRECKENRIDGE PROPERTY FUND  
2016, LLC VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION TO  
CONFIRM TERMINATION OR ABSENCE  
OF STAY  
10-23-23 [[40](#)]

**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.

Breckenridge Property Fund 2016, LLC ("Movant") seeks annulment of the automatic stay with respect to real property commonly known as 1410 Tenaya Drive, Modesto, California (the "Property"), so that the service of a Notice to Quit and the filing of a state court unlawful detainer action are not considered in violation of the automatic stay. Movant has provided the Declaration of Olivia Reyes to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Reyes Declaration states that it purchased the Property on June 23, 2023, following a regularly noticed and properly conducted non-judicial foreclosure sale. Thereafter, Movant commenced a state court action to recover possession of the Property and was thereafter informed of this bankruptcy petition through a notice of removal filed by Debtor Mary Lebow ("Debtor") in state court. Debtor opened adversary case no. 23-9016.

An examination of the docket shows that the original lender, Brilena, Inc. et al., filed a motion for relief from stay as to the Property, the motion was unopposed after 28-days notice, and the court granted the motion on June 6, 2023.

**Discussion**

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Stanislaus on August 30, 2023. Dkt. 43, exh. 2.

Movant has provided a properly copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dkt. 43, exh. 1. 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 original lender's authority to proceed with a foreclosure sale of the Property, Movant's purchase of the Property at a properly-conducted foreclosure sale, Movant's service of a notice to quit without notice or knowledge of this case, Movant's prosecution of an unlawful detainer action without notice or knowledge of this case, and Movant's stay of all action in the unlawful detainer proceedings upon learning of this case.

**November 21, 2023 at 1:00 p.m.**

The court shall issue an order annulling the automatic stay in its entirety as to Movant and Movant's actions in the state court unlawful detainer so that all such post-petition actions taken by Movant, its agents, representatives, members, directors, officers, and employees arising in or related to the state court unlawful detainer proceedings are deemed to not have violated the automatic stay. This includes, but is not limited to, the following: the purchase of the Property that occurred on June 23, 2023; the service of the notice to quit that occurred on August 22, 2023, and the filing of the state court unlawful detainer that occurred on August 30, 2023.

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.

5. [21-90082](#)-B-13 TRACY BELL  
[LGT](#)-1 Matthew J. DeCaminada

OBJECTION TO CLAIM OF CAPITAL  
ONE AUTO FINANCE, CLAIM NUMBER  
1-2  
10-12-23 [[69](#)]

### **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. 1-2 of Capital One Auto Finance and disallow the claim in its entirety.

The Chapter 13 Trustee ("Trustee") requests that the court disallow the claim of Capital One Auto Finance ("Creditor"), Claim No. 12-1 in the amount of \$3,452.28. The Trustee states that Creditor is not entitled to an allowed deficiency claim as filed in its amended Claim No. 1-2 in the amount of \$3,452.28 because Debtor's plan specifically omits Class 4 claims, such as Creditor's, in Section 3.11(c) when discussing claims entitled to a deficiency balance being satisfied as a Class 7 unsecured claim.

Creditor has not filed any opposition to the Trustee's objection to its claim.

### **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 the Trustee 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 in its entirety. 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.



6. [22-90429](#)-B-13 MARY LYNN LEBOW  
[23-9016](#) CAE-1  
BRECKENRIDGE PROPERTY FUND  
2016, LLC V. LEBOW ET AL  
**See Also #4**

CONTINUED STATUS CONFERENCE RE:  
NOTICE OF REMOVAL  
9-13-23 [[1](#)]

CONTINUED TO 12/12/23 AT 1:00 P.M. IN MODESTO COURTROOM TO BE HEARD IN CONJUNCTION WITH  
THE MOTION TO REMAND.

**Final Ruling**

No appearance at the November 21, 2023, hearing is necessary. The court will issue an  
order.