

**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: January 10, 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

January 10, 2023 at 1:00 p.m.

1. [17-90806](#)-B-13 KAY PARKER
[SSA](#)-2 Pro Se

CONTINUED MOTION TO EXPUNGE
AND/OR MOTION FOR COMPENSATION
BY THE LAW OFFICE OF BORTON
PETRINI, LLP FOR STEVEN S.
ALTMAN, CREDITORS ATTORNEY(S)
11-21-22 [[31](#)]

DEBTOR DISMISSED: 10/20/2017

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, and a reply was filed by the movant. 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 expunge lis pendens and deny without prejudice the motion for compensation.

Harminder Deol ("Deol") purchased real property, 4104 Spring Mountain Court, Modesto, California ("Property"), at a foreclosure sale. This Property was the previous residence of debtor Kay Parker ("Debtor"). Deol was provided with a Trustee's Deed Upon Sale, which he duly recorded with the Stanislaus County Recorder on January 3, 2018. Thereafter, Debtor recorded a lis pendens concerning the Property with the Stanislaus County Recorder on May 10, 2019. Deol now moves to expunge the lis pendens and also moves for reasonable attorney's fees and costs due to Debtor's frivolously recorded lis pendens and refusal to remove it after numerous demands.

Discussion

A lis pendens is a "notice of the pendency of an action in which a real property claim is alleged." California Code of Civil Procedure § 405.2. A "real property claim" is a cause or causes of action in a pleading which would, if meritorious, affect title to, or the right to possession of, specific real property. California Code of Civil Procedure § 405.4. If an underlying action does not assert a "real property claim," the owner of the subject property may move to expunge the lis pendens. California Code of Civil Procedure §§ 405.30 and 405.31.

Under California law, "a court shall order that the notice [of pendency of action] be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim." Cal. Civ. Proc. Code § 405.32. See also Cal. Civ. Proc. Code § 405.30 (claimant bears the burden of proof under section 405.32). The statute "requires the court to evaluate the merits of the underlying claim." *Orange County v. Hongkong & Shanghai Banking Corp. Ltd.*, 52 F.3d 821, 824 (9th Cir. 1995). Where a "claimant loses at trial, the lis pendens must be expunged unless the trial court is willing to find that the probabilities are that its own decision will be reversed on appeal." *Gonzalez v. Aurora Loan Servs. LLC (In re Gonzalez)*, 2012 Bankr. LEXIS 673, at *14-15 (9th Cir. BAP 2012) (citing *Mix v. Superior*

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Ct., 124 Cal. App. 4th 987, 996, 21 Cal. Rptr. 3d 826 (2004)). Moreover, where a bankruptcy court dismisses an adversary proceeding to which a lis pendens relates, the lis pendens itself is ineffective. *Id.* at *16.

Here, Debtor's purported legal claims concerning wrongful foreclosure of her previous Property have all been dismissed by the court in previous bankruptcy and adversary proceedings. As such, no complaint is in existence and Debtor cannot show any factual or legal grounds that she can advance any valid legal and possessory claims that affect title or any rights to possession of the subject property.

Given the aforementioned, the court finds the request to expunge lis pendens appropriate. The motion will be granted.

The request for attorney's fees and costs is denied at this time. Deol's counsel may file a separate motion for compensation with task billing analysis and supporting evidence of the services provided.

The motion is ORDERED GRANTED IN PART AND DENIED IN PART for reasons stated in the minutes.

The court will issue an order.

2. [20-90428](#)-B-13 ANGEL MEDRANO
[BSH](#)-5 Brian S. Haddix

MOTION TO MODIFY PLAN
11-20-22 [[77](#)]

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. 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. [22-90328](#)-B-13 NICASIO MALDONADO CONTINUED OBJECTION TO
[KMB](#)-1 Pro Se CONFIRMATION OF PLAN BY PLANET
Thru #4 HOME LENDING, LLC
11-14-22 [[24](#)]

CONTINUED TO 1/31/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 1/25/22.

Final Ruling

No appearance at the January 10, 2023, hearing is required. The court will issue an order.

4. [22-90328](#)-B-13 NICASIO MALDONADO CONTINUED OBJECTION TO
[RDG](#)-1 Pro Se CONFIRMATION OF PLAN BY RUSSELL
D. GREER
11-15-22 [[31](#)]

CONTINUED TO 1/31/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 1/25/22.

Final Ruling

No appearance at the January 10, 2023, hearing is required. The court will issue an order.

5. [22-90378](#)-B-13 ROBERT HARDING
[ETW](#)-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TIMOTHY
G. HANAGAN
10-31-22 [[9](#)]

And #10

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). A written reply has been filed to this objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 overrule as moot the objection, but deny confirmation of the plan for reasons stated at Item #10, RDG-1.

The Debtor states that he and creditor Timothy Hanagan ("Creditor") are engaging in settlement discussions concerning the objections raised by Creditor. The Debtor states that the last communication with Creditor was on November 21, 2022, but that the lack of communication since then is not due to an impasse but rather due to a delay in ability to reply. Regardless of the status of the settlement discussions, the plan is not confirmable for reasons stated at Item #10, RDG-1.

The plan filed October 17, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

The court will issue an order.

6. [19-90983](#)-B-13 KIRK TROMBLEY
[MSN](#)-4 Charles L. Hastings

OBJECTION TO CLAIM OF LAKEVIEW
LOAN SERVICING, LLC, CLAIM
NUMBER 9-1
11-14-22 [[87](#)]

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). However, there appears to be insufficient service of process on Lakeview Loan Servicing, LLC ("Creditor"). The addresses used by the Debtor do not correspond with Proof of Claim 9-1 and its attachments. Specifically, the zip code for Creditor where notices are to be sent is incorrect, and the entire mailing address for Creditor's counsel Nichole L. Glowin is incorrect. Therefore, the court's decision is to overrule the objection without prejudice.

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

The court will issue an order.

7. [22-90093](#)-B-13 JAMES RIDDLE MOTION TO CONFIRM PLAN
[JNV](#)-6 Jason N. Vogelpohl 12-6-22 [[75](#)]

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.

All sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). Debtor is \$1,038.20 delinquent in plan payments through November 2022. The last payment in the amount of \$1,118.00 was posted on December 13, 2022. The next scheduled payment of \$1,118.00 was due on December 25, 2022.

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.

8. [22-90395](#)-B-13 DANIELLE SCAPARRO PALM OBJECTION TO CONFIRMATION OF
[APN](#)-1 T. Mark O'Toole PLAN BY THE BANK OF NEW YORK
Thru #9 MELLON
12-21-22 [[29](#)]

CONTINUED TO 2/07/23 AT 1:00 P.M. AT MODESTO COURTROOM AT THE REQUEST OF THE DEBTOR TO ALLOW DEBTOR AND CREDITOR TO REACH A SETTLEMENT WITH REGARD TO ARREARAGES.

Final Ruling

No appearance at the January 10, 2023, hearing is required. The court will issue an order.

9. [22-90395](#)-B-13 DANIELLE SCAPARRO PALM OBJECTION TO CONFIRMATION OF
[RDG](#)-1 T. Mark O'Toole PLAN BY RUSSEL D. GREER
12-20-22 [[25](#)]

CONTINUED TO 2/07/23 AT 1:00 P.M. AT MODESTO COURTROOM AT THE REQUEST OF THE DEBTOR TO ALLOW DEBTOR AND CREDITOR TO REACH A SETTLEMENT WITH REGARD TO ARREARAGES

Final Ruling

No appearance at the January 10, 2023, hearing is required. The court will issue an order.

10. [22-90378](#)-B-13 ROBERT HARDING
[RDG-1](#) Charles L. Hastings

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-6-22 [[18](#)]

See Also #5

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). A written reply has been filed to this objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan.

A number of the issues raised by the Chapter 13 Trustee have been resolved. Nonetheless, at a minimum, the Debtor cannot make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's proposed plan payment is \$100.00 and yet his projected disposable monthly income listed on Schedule J is -\$86.00.

The Debtor filed a declaration stating that he received a retroactive award for his Social Security sometime before filing his petition and that he had \$9,500 in his bank account left over from the award. The Debtor states that he will fund the plan by living frugally, and at month 12 will sell his home and pay his creditors in full. However, the sale of Debtor's home in month 12 is speculative. Additionally, while the Debtor states that he will make additional income from seeking employment, Debtor's employment is also speculative.

The plan filed October 17, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.