

**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: January 17, 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.

## Eastern District of California

**January 24, 2023 at 1:00 p.m.**

- No appearance at the January 24, 2023, hearing is required. The court will issue an order.

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3. [22-22607](#)-B-7 JONATHAN PINOS MONCAYO MOTION TO CONFIRM PLAN  
[CRG](#)-1 Carl R. Gustafson 12-13-22 [[26](#)]

CASE CONVERTED: 01/05/2023

**Final Ruling**

No appearance at the January 24, 2023, hearing is required. This case was converted to a chapter 7 bankruptcy on January 5, 2023. The motion to confirm plan is denied as moot.

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

The court will issue an order.

4. [22-22908](#)-B-13 JUAN/ALMA VAZQUEZ  
[CJK](#)-1 Peter G. Macaluso  
**Thru #7**  
WITHDRAWN BY M.P. OBJECTION TO CONFIRMATION OF  
PLAN BY LAND HOME FINANCIAL  
SERVICES, INC.  
1-3-23 [[21](#)]

**Final Ruling**

Land Home Financial Services, Inc. having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

5. [22-22908](#)-B-13 JUAN/ALMA VAZQUEZ  
[RDG](#)-1 Peter G. Macaluso  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
1-3-23 [[17](#)]

**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). No written reply has been filed to the 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.

First, the plan relies on a motion to value collateral being filed for Ally listed in Class 2b. To date, Debtors have not filed a motion to value collateral. If the motion is not filed and granted, Debtors' plan does not have sufficient monies to pay the claim in full.

Second, Form 122C-1 fails to report income received from Debtor's spouse. Debtors' testified that this was an error and that they will be filing an amended form. Until this is filed, it cannot be determined whether the plan provides that all disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Third, Debtor has failed to provide the Chapter 13 Trustee with a copy of his liability riders and workers' compensation riders, if applicable, for his business Juan Vazquez Landscape. Until this is provided for review, it cannot be determined whether Debtors' plan is feasible. 11 U.S.C. § 1325(a)(6).

The plan filed November 9, 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.

6. [22-22908](#)-B-13 JUAN/ALMA VAZQUEZ OBJECTION TO CONFIRMATION OF  
[TJS](#)-1 Peter G. Macaluso PLAN BY ALLY BANK  
1-4-23 [[30](#)]

**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). No written reply has been filed to the 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 the objection, but deny confirmation of the plan filed November 9, 2022, for reasons stated at Item #5, RDG-1.

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

The court will issue an order.

7. [22-22908](#)-B-13 JUAN/ALMA VAZQUEZ OBJECTION TO CONFIRMATION OF  
[USA](#)-1 Peter G. Macaluso PLAN BY INTERNAL REVENUE  
SERVICE  
1-3-23 [[24](#)]

**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). No written reply has been filed to the 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.

The Debtors' plan fails to address the Internal Revenue Service's secured claim and understates the priority claim. The IRS filed proof of claim number 2-1 on December 19, 2022. The plan must pay priority claims in full. 11 U.S.C. § 1322(a)(2). Because it does not, the plan is not feasible and the Debtors' failure to properly address tax liability shows the absence of good faith. 11 U.S.C. § 1325(a)(3).

The plan filed November 9, 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.

**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 permit the requested modification and confirm the modified plan.

The issues raised by the Chapter 12 Trustee have been resolved. Specifically, Debtors have filed amended Schedule I to reflect their updated income, the modified plan payment will be \$4,196.00 from January 25, 2023, through completion of the plan, the \$ 7.04 post-petition arrears to Summit Funding shall be stated as \$2,830.34 in the order confirming, and the \$ 7.05 post-petition arrears to Summit Funding shall be stated as \$4,245.51 in the order confirming.

The modified 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 Debtors 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.

9. [20-23237](#)-B-13 KATRINA BAMBULA-SANTOS MOTION TO MODIFY PLAN  
[JCK](#)-1 Gregory J. Smith 12-19-22 [[23](#)]

**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.

10. [18-20638](#)-B-13 BRIAN/JESSICA CAMPOS  
[JCK](#)-6 Gregory J. Smith

MOTION TO MODIFY PLAN  
12-14-22 [[99](#)]

### **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 Debtors have 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 Debtors 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.



11. [22-22863](#)-B-13 MARIA ANAYA  
[KMB](#)-1 T. Mark O'Toole  
**Thru #12**

OBJECTION TO CONFIRMATION OF  
PLAN BY BOSCO CREDIT, LLC  
12-23-22 [[17](#)]

**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). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the objection, the Debtor filed an amended plan on January 16, 2023. The confirmation hearing for the amended plan is scheduled for February 21, 2023. The earlier plan filed November 3, 2022, is not confirmed.

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

The court will issue an order.

12. [22-22863](#)-B-13 MARIA ANAYA  
[RDG](#)-1 T. Mark O'Toole

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-29-22 [[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). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the objection, the Debtor filed an amended plan on January 16, 2023. The confirmation hearing for the amended plan is scheduled for February 21, 2023. The earlier plan filed November 3, 2022, is not confirmed.

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

The court will issue an order.

13. [22-22971](#)-B-13 ALEXANDER CHEUNG  
[RDG](#)-1 Richard Kwun

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
1-3-23 [[18](#)]

### **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). No written reply has been filed to the 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.

Debtor's plan fails the liquidation test of 11 U.S.C. §1325(a)(4). Debtor's schedules list non-exempt assets totaling \$274,587.00, unsecured priority claims totaling \$0.00, and non-priority general unsecured claims totaling \$138,341.00. Accordingly, in order to meet the liquidation test, Debtor's plan must pay 100% to general unsecured creditors, plus interest at the Federal Judgment Rate of 4.73% since the value of the non-exempt assets exceeds the amount of the general unsecured claims. Debtor's plan provides for a 95.80% dividend.

The plan filed November 15, 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.

14. [22-21174](#)-B-13 STACEY LILLARD  
[RPK](#)-3 Ryan Keenan

MOTION TO MODIFY PLAN  
12-12-22 [[57](#)]

### **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.

All sums required by the plan have not been paid. 11 U.S.C. §1325(a)(2). Debtor has failed to make the full December 2022 plan payment as proposed in the plan. Debtor is delinquent \$200.00 under the proposed plan.

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.

15. [22-21184](#)-B-13 BERTHA VALENTINE  
[22-2086](#) FI-2  
VALENTINE V. HOLMES, III ET AL  
**Thru #18**

MOTION FOR SUMMARY JUDGMENT  
AND/OR MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
12-12-22 [[63](#)]

**Tentative Ruling**

**I.  
Introduction**

Before the court is a motion for summary judgment or partial summary judgment filed by Plaintiff Bertha Valentine. See Dkt. 63. Plaintiff moves for summary judgment or partial summary judgment against Defendant Roy B. Holmes, III, on claims alleged in the First, Second, Third, Fourth, Fifth, and Seventh Claims for Relief in the amended complaint filed on December 7, 2022, and served on Holmes on December 8, 2022.<sup>1</sup> See Dkts. 55, 62.

Common to the First, Second, Third, Fourth, and Fifth Claims for Relief is that they all seek to void a Quitclaim Deed dated June 16, 2021, recorded with the San Joaquin County Recorder on June 17, 2021, as Document No. 2021-104274, under which Plaintiff is the Grantor and Holmes is the Grantee ("Quitclaim Deed"). The subject of the Quitclaim Deed is the Plaintiff's residence located at 3854 Townshend Circle, Stockton, California ("Stockton Residence"). Plaintiff alleges Holmes fraudulently obtained the Quitclaim Deed from her or otherwise obtained it in violation of California law. The Seventh Claim for Relief is a damages claim related to the claim in the Fourth Claim for Relief.

Holmes and all other defendants were given appropriate notice of the motion and the hearing on the motion set on January 24, 2023, at 1:00 p.m. See Dkt. 66. No defendant, Holmes in particular, filed an opposition to the motion.

The court has reviewed the motion and all related documents. The court has also reviewed and takes judicial notice of the dockets in the adversary proceeding and in the parent Chapter 13 case.<sup>2</sup> See Fed. R. Evid. 201(c)(1). The amended memorandum decision and the amended order, both of which were filed on December 2, 2022 ("Amended Decision"), are fully incorporated into and made a part of this order by this reference. See Dkts. 48, 49. For the reasons explained below, relief will be granted as follows:

(1) The court will grant partial summary judgment for Plaintiff on the Fourth Claim for Relief in the amended complaint to the extent that the court will void the Quitclaim Deed so that it is of no effect whatsoever. The court will also direct the entry of a final judgment on this aspect of the Fourth Claim for Relief under Federal Rule of Civil Procedure 54(b)-applicable by Federal Rule of Bankruptcy Procedure 7054-seeing no just reason for any delay to have the Quitclaim Deed voided.

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<sup>1</sup>The caption of the motion refers to the Sixth Claim for Relief. However, neither the first sentence nor the "Analysis" section of the motion refer to the Sixth Claim for Relief. The Sixth Claim for Relief is the subject of its own motion designated as Dkt. 67, DCN FI-3, and has been addressed and resolved by a separate order.

<sup>2</sup>In so doing, the court does not limit its review to the materials submitted with the motion but, instead, exercises its discretion to consider the entire record. See Fed. R. Civ. P. 56(c)(3) ("The court need not consider only the cited materials, but it may consider other materials in the record."); Fed. R. Bankr. P. 7056.

(2) Inasmuch as the Second and Third Claims for Relief in the amended complaint request that the court void the Quitclaim Deed, they request relief duplicative of the relief that will be granted on the Fourth Claim for Relief. The Second and Third Claims for Relief are therefore moot and will be dismissed as such.

(3) To the extent the First, Fourth, Fifth, and Seventh Claims for Relief in the amended complaint request damages in addition to the equitable relief of voiding the Quitclaim Deed, material facts remain which must be resolved by further discovery and trial. Summary judgment on the damages aspects of the claims in the First, Fourth, Fifth, and Seventh Claims for Relief will therefore be denied.

## **II.**

### **Procedural Background Relevant to Holmes**

Plaintiff filed the initial complaint on August 29, 2022. See Dkt. 1. Holmes was served with a summons and a copy of the initial complaint on September 2, 2022. See Dkts. 10, 11. When Holmes failed to timely answer or otherwise respond to the initial complaint, his default was entered on October 6, 2022. See Dkt. 16. Holmes filed a late answer on October 25, 2022, and his default was vacated on October 26, 2022. See Dkts. 23, 26.

The court granted Plaintiff leave to file an amended complaint in an order that issued on December 5, 2022. See Dkt. 52. Plaintiff filed the amended complaint on December 7, 2022, and served it on December 8, 2022. See Dkts. 55, 62. The amended complaint adds two new claims for relief against a new defendant and makes no changes to the First, Second, Third, Fourth, Fifth, and Seventh Claims for Relief as to Holmes- or otherwise. Compare Dkt. 1 with Dkt. 55.

Holmes has not answered or responded to the amended complaint.<sup>3</sup> Holmes has therefore offered no evidence that creates any dispute as to any fact identified as undisputed for purposes of the motion for summary judgment or partial summary judgment. All facts identified as undisputed may therefore be deemed admitted. See *Beard v. Banks*, 548 U.S. 521, 527 (2006).

## **III.**

### **Undisputed Facts Relevant to Holmes**

Holmes is the cousin of the ex-husband of Plaintiff's adult granddaughter, Shankela Gonzalez, who resides with Plaintiff at the Stockton Residence. See Dkt. 6 at ¶ 10. In the course of a casual conversation between Gonzalez and Holmes on or about May 26-27, 2021, Holmes learned that on or around May 14, 2021, foreclosure proceedings were initiated against the Stockton Residence and Plaintiff needed about \$20,000.00 to cure then-existing mortgage arrears. *Id.* at ¶¶ 8-10, 12.

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<sup>3</sup>The absence of an answer to an amended complaint is not a procedural bar to the entry of summary judgment when, as here, facts are not in dispute. *PrimSource Building Products, Inc. v. United States*, 505 F. Supp. 3d 1352, 1356 (Ct. Int'l Trade 2021) (under USCIT Rule 56 identical to Fed. R. Civ. P. 56). In such circumstances an answer to the original complaint may serve as the answer to the amended complaint when, again as here, the relevant facts and claims remain unchanged in the amended complaint. *Whittaker v. Morgan State Univ.*, 2011 WL 4072193, \*2 (D. Md. Sept. 12, 2011) (citations omitted). Moreover, in the absence of an order or local rule to the contrary, as is also the case here, "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." Fed. R. Civ. P. 56(b); Fed. R. Bankr. P. 7056.

Sometime in early June 2021, Holmes telephoned Plaintiff in Las Vegas, Nevada, where she was visiting with her daughter. *Id.* at ¶ 11. Holmes told Plaintiff he would help her save the Stockton Residence and stop the foreclosure by loaning Plaintiff funds to pay the mortgage arrears. *Id.* Holmes promised to provide Plaintiff with a written agreement detailing how he would help her with the foreclosure. *Id.* However, without providing any such agreement, Holmes nevertheless proceeded to advise Plaintiff regarding the mortgage arrears, a loan to cure the mortgage arrears, the foreclosure, and how to stop the foreclosure. *Id.*

On June 16, 2021, Holmes traveled to Las Vegas, Nevada, where he met with Plaintiff and her daughter. *Id.* at ¶ 12. During the meeting, Holmes told Plaintiff that, as a condition of loaning Plaintiff funds to pay her mortgage arrears, Plaintiff would be required to sign a quitclaim deed granting him the Stockton Residence. *Id.* Holmes then pressured Plaintiff into signing a quitclaim deed to the Stockton Residence by telling Plaintiff that she needed to sign the document immediately because the time within which to stop the foreclosure was running out. *Id.* Plaintiff, who was 79 years old at the time, had no experience with a quitclaim deed and had never heard of such a document. *Id.* But nevertheless, in reliance on Holmes' assurances that he would loan Plaintiff funds to pay the mortgage arrears and stop the pending foreclosure, Plaintiff signed a Nevada form quitclaim deed on June 16, 2021. *Id.*

Shortly thereafter, Holmes realized that he erroneously prepared, and Plaintiff erroneously signed, a Nevada quitclaim deed form. *Id.* at ¶ 14. Holmes informed Plaintiff that to fix the problem, without Plaintiff's authorization, he transferred Plaintiff's information from the Nevada form to a California form. *Id.* Holmes also told Plaintiff that, again without her authorization, he electronically transferred Plaintiff's signature from the Nevada form to the California form, *i.e.*, the Quitclaim Deed. The Quitclaim Deed was thereafter recorded on June 17, 2021. See Dkt. 65.

To her surprise, several days later Plaintiff learned of the effect of the Quitclaim Deed. See Dkt. 6 at ¶ 15. After some discussion, Holmes initially agreed to return the Stockton Residence to Plaintiff; however, he ultimately refused to do so unless he was paid \$6,000.00 in addition to the \$4,850.00 he had already received from Plaintiff's family on Plaintiff's behalf. *Id.* at ¶ 16.

#### **IV. Jurisdiction and Venue**

The court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b)(2) and 1334. The Fourth Claim for Relief concerns the Stockton Residence which is administered under the Plaintiff's confirmed Chapter 13 plan and in which this court has determined Plaintiff has an interest as property of the estate protected by the automatic stay of 11 U.S.C. § 362(a). To that extent, the Fourth Claim for Relief is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (E), and (G). Holmes also acknowledges that the adversary proceeding is a core proceeding. See Dkt. 23.

Venue is proper under 28 U.S.C. §§ 1408 and 1409.

#### **V. Applicable Legal Standard**

Summary judgment is warranted when there is no genuine dispute as to any material fact and judgment may be entered as a matter of law. See Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056. A motion for summary judgment calls for a "threshold inquiry" into whether a trial is necessary, that is, whether there are "any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The court does not weigh evidence or assess credibility; rather, it determines which facts are not disputed then draws all inferences and views all evidence in the light most favorable to the non-moving party. See *Id.* at 255; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at 587.

## VI. Analysis

The Fourth Claim for Relief includes a meritorious claim for equitable relief voiding the Quitclaim Deed under California Civil Code § 2945.4(e). In relevant part, the statute states as follows: "It shall be a violation for a foreclosure consultant to: . . . (e) Acquire any interest in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted. Any interest acquired in violation of this subdivision shall be voidable[.]"

A "foreclosure consultant" is defined under California Civil Code § 2945.1 as "any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

(1) [s]top or postpone [a] foreclosure sale[;]

[ . . . ]

(6) assist the owner to obtain an loan or advance of funds[; or]

[ . . . ]

(8) save the owner's residence from foreclosure.

A "person" includes "any individual[.]" Cal. Civ. Code § 2945.1(d).

An "owner" is defined the "record title owner of the residential real property in foreclosure at the time the notice of default was recorded." Cal. Civ. Code §§ 2945.1(g), 1695.1(f).

"Property in foreclosure" means "a residence in foreclosure as defined in 1695.1." Cal. Civ. Code § 2945.1(f). In turn, "residence in foreclosure" is defined to mean, in relevant part, "residential real property consisting of one- to four-family dwelling units, one of which the owner occupies as his or her principal place of residence, and against which there is an outstanding notice of default [] recorded[.]" Cal. Civ. Code § 1695.1(b).

The term "'service' means and includes, but is not limited to, any of the following:

(1) Debt, budget, or financial counseling of any type[; or]

[ . . . ]

(7) Giving any advice, explanation, or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, . . . or the postponement or avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

Cal. Civ. Code §§ 2945.1(e) (1), (7).

In the present context, Holmes is an "individual" and therefore a person under California Civil Code § 2945.1.

Plaintiff is an "owner" of "residential real property in foreclosure" inasmuch as the Stockton Residence is a single-family dwelling which Plaintiff was the record title owner of and which she occupied as her principal residence when her lender initiated foreclosure proceedings in May 2021.

Holmes acted as a "foreclosure consultant" when he spoke with Plaintiff by telephone and subsequently met with Plaintiff personally in Las Vegas, Nevada.

Holmes provided a "service" when he advised Plaintiff on issues concerning a then-pending foreclosure against the Stockton Residence and by offering to obtain a loan for Plaintiff that would allow her to cure a then-existing mortgage default and stop the pending foreclosure proceeding. Holmes received \$4,850.00 for his service.

Holmes violated California Civil Code § 2945.4(e) when, acting as a "foreclosure consultant," he acquired an interest in the Stockton Residence through the Quitclaim Deed in the course of the "services" he provided to Plaintiff.

Obtained in violation of California Civil Code § 2945.4(e), the court will void the Quitclaim Deed so that it is of absolutely no effect whatsoever. To that extent, partial summary judgment will be granted on this aspect of the Fourth Claim for Relief and a final judgment on this aspect of the Fourth Claim for Relief will be entered for the Plaintiff and against Holmes.

## **VII. Conclusion**

Based on the foregoing, and other good cause appearing:

IT IS ORDERED that the motion for partial summary is **GRANTED** as to the Fourth Claim for Relief in the amended complaint and judgment on that claim for relief voiding the Quitclaim Deed-as defined hereinabove-will be entered for Plaintiff so that the Quitclaim Deed-as defined hereinabove-is of no force or effect whatsoever.

IT IS FURTHER ORDERED that there is no just reason to delay the entry of judgment on the Fourth Claim for Relief of the amended complaint voiding the Quitclaim Deed.

IT IS FURTHER ORDERED that the Second and Third Claims for Relief in the amended complaint are moot and-as such-both claims for relief will be **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that summary judgment or partial summary judgment on all damages claims in the First, Fourth, Fifth, and Seventh Claims for Relief in the amended complaint is **DENIED**.

The court will issue a separate order and judgment.

16. [22-21184](#)-B-13 BERTHA VALENTINE  
[22-2086](#) FI-3  
VALENTINE V. HOLMES, III ET AL

MOTION FOR SUMMARY JUDGMENT  
AND/OR MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
12-12-22 [[67](#)]

## **Final Ruling**

This matter is removed from calendar. No appearance at the January 24, 2023, hearing is required for FI-3. An order denying as moot the motion for summary judgment or partial summary judgment was entered by the court on January 17, 2023.



17. [22-21184](#)-B-13 BERTHA VALENTINE  
[22-2086](#) FI-4  
VALENTINE V. HOLMES, III ET AL

MOTION FOR SUMMARY JUDGMENT  
AND/OR MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
12-12-22 [[71](#)]

**Final Ruling**

This matter is removed from calendar. No appearance at the January 24, 2023, hearing is required for FI-4. An order denying the motion for summary judgment or partial summary judgment was entered by the court on January 17, 2023.

18. [22-21184](#)-B-13 BERTHA VALENTINE  
Fred A. Ihejirika

CONTINUED MOTION TO CONFIRM AN  
11 U.S.C. 362(A) & (B)  
EXCEPTION TO THE AUTOMATIC STAY  
RELATING TO A STATE COURT CASE  
10-29-22 [[21](#)]

**Final Ruling**

This matter is removed from calendar. No appearance at the January 24, 2023, hearing is required. An order denying as moot the motion for relief from automatic stay was entered by the court on January 3, 2023.

19. [22-22899](#)-B-13 MARLENE DOUGLAS OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 Peter G. Macaluso PLAN BY RUSSELL D. GREER  
12-29-22 [[24](#)]

CONTINUED TO 2/14/23 AT 1:00 P.M. AT THE SACRAMENTO COURTROOM TO BE HEARD AFTER  
THE CONTINUED MEETING OF CREDITORS SET FOR 2/08/23.

**Final Ruling**

No appearance at the January 24, 2023, hearing is required. The court will issue an  
order.