

**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: February 1, 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

February 1, 2022 at 1:00 p.m.

1. [20-90218](#)-B-13 JAMES BLANCO CONTINUED OBJECTION TO CLAIM OF
[JAD](#)-2 Jessica A. Dorn INTERNAL REVENUE SERVICE, CLAIM
Thru #2 NUMBER 3
10-22-21 [[36](#)]

Final Ruling

This matter was continued from December 14, 2021, to allow Debtor to serve the United States Attorney at the proper address. A Certificate of Service showing service on the United States Attorney for the Internal Revenue Service as required by the Local Bankruptcy Rules was filed on December 13, 2021. See Dkt. 48. There has been no additional response from the Internal Revenue Service or the United States Attorney on behalf of the Internal Revenue Service. The Debtor has submitted sufficient evidence to overcome the presumptive validity of the subject proof claim. Therefore, the objection to claim of Internal Revenue Service for Claim Number 3 is sustained and Claim No. 3 is disallowed in its entirety, except to the extent already paid by the Chapter 13 Trustee.

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

The court will issue an order.

2. [20-90218](#)-B-13 JAMES BLANCO CONTINUED AMENDED MOTION TO
[RDG](#)-1 Jessica A. Dorn DISMISS CASE
10-14-21 [[34](#)]

Final Ruling

The motion was originally set for hearing on 28-days notice pursuant to Local Bankruptcy Rule 9014-1(f)(1) and heard on December 14, 2021, but continued to February 1, 2022. See dkt. 50.

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 amended motion to dismiss case.

Chapter 13 Trustee Russell Greer ("Trustee") moves to dismiss the case on grounds that the plan is over-extended due to a discrepancy with the claim filed by the Internal Revenue Service ("IRS") listing a priority claim in the amount of \$8,734.04.

Debtor James Blanco ("Debtor") filed an objection to the IRS' claim, JAD-2, dkt. 36, and stated that he obtained account transcripts for years 2014, 2015, 2018, and 2019 showing that he had \$0.00 in income. The court overruled the objection due to Debtor's failure to serve the United States Attorney at the proper address required by the Local Bankruptcy Rules. The United States Attorney on behalf of the Internal Revenue Services

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was belatedly served at the Local Bankruptcy Rule address on December 13, 2021. Neither the Internal Revenue Service nor the United States Attorney on behalf of the Internal Revenue Service have responded to the claim objection and the IRS claim has been disallowed.

Because the IRS' claim is disallowed, the issue as to the plan's over-extension based on the IRS claim is moot. Therefore, cause does not exist to dismiss this case. The motion is denied and the case is not dismissed.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

3. [21-90418](#)-B-13 MIGUEL TERRIQUEZ MOTION TO CONVERT CASE FROM
[SSA](#)-3 Richard L. Jare CHAPTER 13 TO CHAPTER 7 ,
MOTION TO DISMISS CASE
12-30-21 [[64](#)]

This motion was resolved and the hearing vacated by an order from chambers filed on January 25, 2022.

No appearance is necessary.

4. [18-90023](#)-B-13 JOSEPH SHAW AND MARY MOTION TO COMPROMISE
[RLF](#)-5 Inderbitzin-Shaw CONTROVERSY/APPROVE SETTLEMENT
Shane Reich AGREEMENT WITH MEMORIAL
MEDICAL, ET AL.
1-12-22 [[91](#)]

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 and continue the matter to February 8, 2022, at 1:00 p.m.

Debtors Joseph Shaw and Mary Inderbitzin-Shaw ("Debtors") request that the court approve a compromise and settle competing claims and defenses with Memorial Medical Center et. al. ("Defendants"). The claims and disputes to be resolved by the proposed settlement are related to a medical malpractice lawsuit filed in Stanislaus Superior Court against Defendants. Debtor Joseph Shaw ("Debtor") alleged loss of income and earning capacity, pain and suffering, and medical expenses due to alleged negligence of medical providers.

Debtor and Defendants have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 93.

Discussion

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Debtor argues that the four factors have been met:

Probability of Success

There is substantial uncertainty associated with the lawsuit and the Defendants have aggressively denied liability. All of the Defendants have provided support for their positions through expert witness declarations. Plaintiff's expert has disputed this position. The settlement is the result of two mediation sessions between the parties.

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Difficulties in Collection

Recovery will be collected through Defendants and is more or less straightforward.

Expense, Inconvenience and Delay of Continued Litigation

The parties have already engaged in mediation and Debtor believes reasonable costs of taking the case through trial would be significant. Defendants have also asserted offers pursuant to Cal. Civ. Proc. 998 that could shift certain costs to Debtor. The case is set for jury trial.

Paramount Interest of Creditors

Debtor argues that settlement is in the paramount interests of creditors since the compromise provides prompt payment to creditors, which could be consumed by the additional costs and administrative expenses created by further litigation.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the estate. The motion will be 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, February 4, 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 herein above, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 8, 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 February 8, 2022, at 1:00 p.m.

5. [21-90538](#)-B-13 JERRY JUDD
[NLG](#)-1 Scott M. Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
1-12-22 [[14](#)]

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, objecting creditor Wilmington Savings Fund Society, FSB ("Creditor") holds a deed of trust secured by the Debtor's residence. The Creditor has filed a timely proof of claim in which it asserts \$55,373.44 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Second, the plan fails to specify a cure of the post-petition arrearage owed to Creditor in Class 1 in the amount of \$500.00 per month. The plan does not comply with 11 U.S.C. § 1322(b)(5).

Third, the Debtor has failed to provide evidence that the plan is mathematically feasible. Debtor's Schedule J filed in the Bankruptcy Action indicates that Debtor has a monthly disposable income of \$559.85. Dkt. 1, p. 29. Based on the claims that have been filed to date, the Debtor's monthly plan payment will need to be increased by at least \$922.89 in order to cure Creditor's pre-petition arrears for the plan to be feasible. The plan does not comply with 11 U.S.C. § 1325(a)(6).

The plan filed November 12, 2021, 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. [21-90554](#)-B-13 LOUIS/AUDRA MUNOZ OBJECTION TO CLAIM OF CAVALRY
[MJD](#)-2 Matthew J. DeCaminada SPV 1, LLC, CLAIM NUMBER 1
12-22-21 [[18](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice as required by Local Bankruptcy Rule 3007-1(b)(1). However, there appears to be insufficient service of process on Cavalry SPV 1, LLC. The address used by the Debtors does not appear on the California Secretary of State website, Better Business Bureau website, or the U.S. Bankruptcy Court Eastern District of California's Roster of Governmental Agencies. Additionally, it does not correspond with the Proof of Claim 1-1 address that appears on the court's docket. 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. [21-90418](#)-B-13 MIGUEL TERRIQUEZ
[RDG](#)-3 Richard L. Jare

CONTINUED MOTION TO DISMISS
CASE
1-11-22 [[77](#)]

Final Ruling

This matter was continued from January 25, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 28, 2022. Nothing was filed. However, on January 25, 2022, the court also issued its order denying a motion to dismiss filed by a creditor in this chapter 13 case, DC No. SSA-3, based on the same grounds as this motion to dismiss filed by the Chapter 13 Trustee, *i.e.*, the Debtor's failure to file, set, and serve an amended plan and motion to confirm after confirmation of the initial plan was denied. See Dkt. 99. The January 25, 2022, order also sets a February 1, 2022, deadline for the Debtor to file, set, and serve an amended plan and motion to confirm it. And it permits the moving creditor to submit an ex parte order dismissing this chapter 13 case if an amended plan and motion to confirm it are not timely filed, set, and served. As a result of the January 25, 2022, order the Chapter 13 Trustee's motion to dismiss is moot.

Therefore, the court's conditional ruling at dkt. 102, granting the motion to dismiss case, shall be vacated and replaced by this ruling denying the motion to dismiss as moot. The continued hearing on February 1, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

8. [21-90422](#)-B-13 JAMES RIDDLE
[RDG](#)-2 Jason N. Vogelpohl

CONTINUED MOTION TO DISMISS
CASE
1-10-22 [[64](#)]

Final Ruling

This matter was continued from January 25, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, January 28, 2022. Although Debtor filed a response and a motion to value collateral on January 26, 2022, Debtor has still not filed a third amended plan. The Debtor's January 26, 2022, response admits as much:

A Third Amended Chapter 13 Plan was prepared and forwarded to the Debtor, along with a Declaration regarding the status of his mortgage payments; however, Debtor failed to return the signed documents along with other documents that had been sent him. Counsel has advised Debtor of the missing documents and expects them to be filed shortly.

Dkt. 76 at 1:12-15.

The response further states that the Debtor remains delinquent in plan payments. *Id.* at 1:16.

In other words, the grounds for dismissal of the case, namely the delinquency in plan payments and failure to file, set, and serve a third amended plan, have not been resolved.

Therefore, the court's conditional ruling at dkt. 74, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 1, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.