

**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: February 13, 2024

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

February 13, 2024 at 1:00 p.m.

1. [22-22533](#)-B-13 ALONZO STEENS MOTION TO MODIFY PLAN
[JNV](#)-1 Jason N. Vogelpohl 12-14-23 [[40](#)]

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.

February 13, 2024 at 1:00 p.m.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankr. R. 9014-1(f)(2). Parties in interest were not required to file a written response or opposition. However, as explained below, there is cause to continue the hearing and to set a briefing schedule. See Local Bankr. R. 9014-1(f)(1)(C).

The court's decision is to continue the hearing to **March 5, 2024, at 1:00 p.m.** and to require additional briefing on the three issues identified hereinbelow.

Introduction

Before the court is a *Notice of Death and Motion for Continued Administration* ("Notice and Motion"). See Dkt. 30. The Notice and Motion was filed on January 30, 2024.

The Notice and Motion is notice to the court of the death of debtor Ella Walker ("Debtor") who passed away during the pendency of this Chapter 13 case on September 2, 2023, and, somewhat interestingly, it is also a request by the deceased Debtor to continue the administration of this Chapter 13 case and appoint Tonia Murphy to act as the deceased Debtor's representative in this bankruptcy proceeding. See dkt. *Id.* at 1:19-20 and 2:15-17 ("Debtor(s), by and through their attorney Mark A. Wolff of Wolff & Wolff, hereby notifies the Court, Trustee and Creditors of the death of Debtor Ella Walker and . . . Debtor requests that the Court authorize the continued administration of the estate pursuant to Fed. R. Bankr. P.1016, and authorize Tonia Murphy to act as the representative of the estate[.]").

Ms. Murphy is the deceased Debtor's daughter. She apparently is one of three beneficiaries of the Debtor's probate estate. However, no probate case has yet been opened.

Payments under the deceased Debtor's confirmed Chapter 13 plan have been completed. The Chapter 13 Trustee ("Trustee") filed a notice of completed plan payments and obligation to file documents on January 10, 2024. Dkt. 28.

Discussion

A Chapter 13 case in which the debtor dies may be dismissed "or if *further administration is possible* and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bankr. P. 1016 (emphasis added). To facilitate this, the bankruptcy court may substitute another party for a deceased debtor upon notice of the debtor's death. See Fed. R. Civ. P. 25(a); Fed. R. Bankr. P. 7025, 9014(c). Notice of a debtor's death during the case "shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor." Local Bankr. R. 1016-1(a).

The Notice and Motion raises three questions which must be addressed to determine if the relief requested is warranted and appropriate.

First:

The court fails to understand how the deceased Debtor can move for any type relief, much less the continued administration of the bankruptcy estate and the appointment of her daughter to act on her - and thence the estate's - behalf. The court also fails to understand how the deceased Debtor can authorize her former attorney to even request relief on her behalf when she is no longer the former attorney's client. These issues need to be addressed and explained or, alternatively, a proper motion needs to be brought by a person authorized to act for and on behalf of the deceased Debtor and/or

her estate. The source of Ms. Murphy's authority to act for the deceased Debtor as her representative and as a representative of the bankruptcy estate, if she is to be appointed, also needs to be explained.

Second:

The Debtor died on September 2, 2023. Notice of the deceased Debtor's death was not filed until January 30, 2024, which means notice of the Debtor's death was filed 151 days after the Debtor's death. The appropriate moving party shall address this delay and whether, based on the delay, the relief requested may (or should) be granted. At a very minimum, the delay requires explanation.

Third:

As noted above, Fed. R. Bankr. P. 1016 provides for the continuation and conclusion of a Chapter 13 case rather than dismissal when the debtor dies only "if further administration is possible." This determination must be made on a case-by-case basis regardless of objection or consent and it is one which the party seeking to continue the case bears the burden of demonstrating. *In re Goldston*, 627 B.R. 841, 864-65 (Bankr. D.S.C. 2021).

Chapter 13 cases are administered by a trustee. At least one court in the Ninth Circuit - with the blessing of the Ninth Circuit - has noted that the administration of a Chapter 13 case ends when the Chapter 13 trustee's plan payments are completed:

When the bankruptcy court entered its Order, [the Chapter 13 trustee] had already disbursed all of [the debtor's] payments under [the debtor's] confirmed Chapter 13 Plan. In other words, the administration of [the debtor's] Chapter 13 estate was complete.

Silva v. Midland Mortgage (In re Silva), 2021 WL 3772853, at *2 (C.D. Cal. Aug. 24, 2021), *aff'd*, *Silva v. Danielson*, 2022 WL 2340802 (9th Cir. June 9, 2022).

Plan payments required by the deceased Debtor's confirmed Chapter 13 plan were completed no later than January 10, 2024. The appropriate moving party shall therefore explain how "further administration" of this Chapter 13 case is possible. In other words, if the completion of plan payments means that there is nothing further to administer, how then can the case proceed and conclude and why would it not be dismissed?

Conclusion

Based on the foregoing, and other good cause appearing:

An appropriate moving party shall, and any other party in interest may, file additional points and authorities addressing the three issues identified above by **February 27, 2024.**

The hearing is ORDERED CONTINUED to **March 5, 2024, at 1:00 p.m.**

The court will issue an appropriate order.

3. [23-24454](#)-B-13 JEROME CHAPEL AND AMIE MOTION TO AMEND DEBTOR'S PLAN
[JCK](#)-1 DENNER 12-27-23 [[8](#)]
Kathleen H. Crist

CONTINUED TO 3/05/24 AT 1:00 P.M. AT THE SACRAMENTO COURTROOM TO BE HEARD IN
CONJUNCTION WITH A MOTION TO VALUE COLLATERAL FOR CAPITAL ONE.

Final Ruling

No appearance at the February 13, 2024, hearing is required. The court will issue an
order.

4. [23-24142](#)-B-13 FRANK CANO
[LGT](#)-1 Mary D. Anderson

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
1-8-24 [[24](#)]

Final Ruling

This matter was continued from February 6, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, February 9, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 28, sustaining the objection, shall become the court's final decision. The continued hearing on February 13, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

5. [23-24047](#)-B-13 MANUEL ROMAN
[LGT](#)-1 Marc Voisenat

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
1-9-24 [[19](#)]

Final Ruling

This matter was continued from February 6, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, February 9, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 24, sustaining the objection, shall become the court's final decision. The continued hearing on February 13, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

6. [23-21951](#)-B-13 RICARDO/CHRISTINE URREA CONTINUED OBJECTION TO CLAIM OF
[LGT](#)-1 Pauldeep Bains US DEPARTMENT OF
Thru #7 EDUCATION/MOHELA, CLAIM NUMBER
24
1-4-24 [[28](#)]

Final Ruling

This matter was continued from February 6, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 9, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 36, sustaining the objection to claim, shall become the court's final decision. The continued hearing on February 13, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

7. [23-21951](#)-B-13 RICARDO/CHRISTINE URREA CONTINUED OBJECTION TO CLAIM OF
[LGT](#)-2 Pauldeep Bains US DEPARTMENT OF
EDUCATION/MOHELA, CLAIM NUMBER
23
1-4-24 [[31](#)]

Final Ruling

This matter was continued from February 6, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 9, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 37, sustaining the objection to claim, shall become the court's final decision. The continued hearing on February 13, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.