

**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 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

February 21, 2023 at 1:00 p.m.

1. [17-90806](#)-B-13 KAY PARKER
[SSA](#)-3 Pro Se

MOTION FOR COMPENSATION FOR
STEVEN S. ALTMAN, CREDITORS
ATTORNEY(S)
1-20-23 [[56](#)]

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. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant in part the motion for compensation.

Fees and Costs Requested

Steven S. Altman ("Movant"), attorney for Harminder Deol ("Claimant"), who was the prevailing party in a motion to expunge lis pendens, see dkt. 48, moves the court for a first and final allowance of compensation for professional services against former debtor Kay McKenzie Parker ("Debtor"). The total sum requested is \$5,270.99 (\$4,875.00 fees + \$395.99 costs) for the period of October 11, 2022, through February 21, 2023, which includes the hearing on this matter. The application is made pursuant to California Code of Civil Procedure § 405.38 and Local Bankr. R. 9014-1(f)(1).

Movant states that he performed vital and necessary services on behalf of Claimant that resulted in the court adjudicating the removal of the lis pendens that Debtor refused to remove despite multiple requests by Claimant, his former state court counsel Rowe Law Firm, and also present counsel the Law Offices of Steven Altman, PC.

California Code of Civil Procedure § 405.38 provides that the court is required to direct an award to the prevailing party of the reasonable attorney fees and costs of making or opposing the motion unless it finds that either: [1] "the other party acted with substantial justification"; or [2] "other circumstances make the imposition of attorney's fees and costs unjust."

Here, Movant was the prevailing party in the motion for lis pendens expungement. Movant's attorney fees were reasonable at a rate of \$300.00 per hour for 15.5 hours, and costs of \$395.99 also appear reasonable less the \$22.50 court call for the February 21, 2023 hearing, since the matter is a Final Ruling. The court finds that the modified compensation is reasonable and the court will approve the motion.

The motion is ORDERED GRANTED IN PART for fees of \$4,875.00, and costs and expenses of \$395.99 - \$22.50.

The court will issue an order.

February 21, 2023 at 1:00 p.m.

2. [22-90311](#)-B-13 JAVIER MEZA AND ALONDRA MOTION TO CONFIRM PLAN
 [SSH](#)-1 AVILA-DIAZ 1-3-23 [[29](#)]
 Simran Singh Hundal

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended 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.

3. [20-90616](#)-B-13 ROSEVELT/LATONIA EALY MOTION TO MODIFY PLAN
[JLL](#)-2 Jennifer G. Lee 1-9-23 [[38](#)]

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.

4. [22-90323](#)-B-13 PAUL/SUSAN GOLDEN
[APN](#)-1 Lauren Franzella

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-18-23 [[15](#)]

MORGAN STANLEY MORTGAGE LOAN
TRUST 2007-7AX VS.

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). 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 deny the motion as unnecessary.

Debtors' Chapter 13 Plan filed on September 15, 2022, dkt. 3, and confirmed on January 23, 2023, dkt. 21, classifies Movant's claim as a Class 4 claim. Dkt. 3, § 3.10; Dkt. 26 at 1, ¶ 2 ("Debtors' Chapter 13 Plan provides for Movant as a Class 4 Creditor for the property locate [sic] at 4709 Via Giardiano, Modesto, California, to be paid outside of the plan."). In relevant part, § 3.11(a) of the Debtors' confirmed Chapter 13 Plan, applicable to Class 4 claims, states as follows: "Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract[.]"

Because the automatic and co-debtor stays were modified to allow Movant to exercise its rights to the subject property in the event of a default, there is no automatic or co-debtor stay to terminate. The court cannot terminate a terminated stay and, in fact, doing so is an abuse of discretion. *Khabushani v. Anderson (In re Khabushani)*, 2021 WL 2562113, *2 (9th Cir. BAP June 22, 2021) (citations omitted).

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

The court will issue an order.

5. [21-90535](#)-B-13 EDUARDO BARAJAS AND ERIKA MOTION FOR RELIEF FROM
[MMJ](#)-1 HERRERA AUTOMATIC STAY
T. Mark O'Toole 1-19-23 [[54](#)]

CAPITAL ONE AUTO FINANCE VS.

Final Ruling

An amended notice of hearing was filed on February 10, 2023. To provide debtors Eduardo Barajas and Erika Herrera at least 14 days preceding the date of the hearing to respond to movant Capital One Auto Financing as stated in the amended notice of hearing, this matter will be **continued to February 28, 2023, at 1:00 p.m.**

The court will issue an order.

6. 22-90447-B-13 HECTOR ALVAREZ
RDG-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-31-23 [[18](#)]

CONTINUED TO 2/28/2023 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 2/22/2023.

Final Ruling

No appearance at the February 21, 2023, hearing is required. 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)(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 first amended plan.

First, the plan classifies Rushmore Loan as a Class 1 claim with pre-petition arrears in the amount of \$90,099.11 but fails to provide a dividend to pay those arrears. Without providing for the monthly dividend to pay that claim, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

Second, the plan estimates priority claims in the amount of \$0.00. The Franchise Tax Board has filed a proof of claim 10-1 with a priority portion of \$1,190.99. Debtor's plan does not provide for that priority claim. Accordingly, Debtor's plan fails to comply with 11 U.S.C. § 1322(a)(2).

Third, the Debtor's proposed monthly plan payments to secured creditors total \$1,945.00 per month without the Chapter 13 Trustee's compensation and expense. With the Trustee's current compensation and expense, the total is \$2,123.36 per month. Debtor's plan payment is only \$2,000.00 per month. Accordingly, plan is not feasible. 11 U.S.C. § 1325(a)(6).

Fourth, the plan proposes to pay Rushmore Loan Management only adequate protection payments rather than the contractual mortgage payments that are due to the lender. Therefore, the Debtor's plan fails to comply with 11 U.S.C. § 1322(b)(2).

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. [21-90557](#)-B-13 DUANE SHUGART
[EML](#)-5 Evan Livingstone
Thru #9

MOTION TO MODIFY PLAN
1-5-23 [[74](#)]

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.

First, the plan fails to suspend the plan delinquency in the amount of \$29,804.00. Accordingly, the Debtor's plan is not feasible.

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Section 2.01 of Debtor's plan provides for plan payments of \$771.46, but fails to provide a start date for the new monthly payment. Without this clarification, it cannot be determined whether the plan is feasible.

Third, the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4). In order to meet the liquidation test, Debtor's plan must pay 100% to general unsecured creditors and interest at the Federal Judgment Rate of 0.21% since the value of Debtor's non-exempt assets exceeds the amount of Debtor's general unsecured claims. Debtor's plan provides for 0% dividend to general unsecured creditors and therefore fails the liquidation test.

Fourth, the plan relies on an order approving the objection to claim of U.S. Bank Trust National Association, EML-6. The hearing on that matter has been continued to February 28, 2022, at 1:00 p.m.

At a minimum for the first through third reasons stated above, 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.

9. [21-90557](#)-B-13 DUANE SHUGART
[EML](#)-6 Evan Livingstone

OBJECTION TO CLAIM OF U.S. BANK
TRUST NATIONAL ASSOCIATION,
CLAIM NUMBER 3
1-5-23 [[80](#)]

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 continue the matter to February 28, 2022, at 1:00 p.m. to provide Debtor the opportunity to submit supporting documentation, and the hearing on this matter will be continued to February 28, 2022, at 1:00 p.m.

Debtor Duane Shugart ("Debtor") requests that the court disallow the claim of U.S. Bank Trust national Association ("Creditor"), Claim No. 3. The claim is asserted to be secured in the amount of \$58,434.15. The Debtor asserts that he had applied for the California Mortgage Relief Program, and that a payment of \$19,015.79 was sent to and applied to the loan by Debtor's servicer. This is supported by Debtor's declaration and an email correspondence filed as an exhibit.

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 Debtor has failed to satisfy his burden of overcoming the presumptive validity of the claim. Although the Debtor has filed as evidence an alleged copy of an email from camortgagerelief.org, it is not authenticated. On the other hand, assuming the court can rely on the email, the Debtor has failed to submit as an exhibit the approved application MRP-0013854 that is cited by the email and which the Debtor can view by logging onto the Intake Portal.

Rather than overruling the objection to claim, the court will provide Debtor the opportunity to submit supporting documentation by 5:00 p.m. on Friday, February 17, 2022. The hearing on this matter will be continued to February 28, 2022, at 1:00 p.m.

The court will issue an order.

10. [22-90477](#)-B-13 KAL KIRKLE
[DCJ](#)-1 David C. Johnston

MOTION TO DISMISS CASE
2-4-23 [[23](#)]

Final Ruling

Debtor Kal Kirkle ("Debtor") filed a motion to voluntarily dismiss this Chapter 13 case on February 4, 2023. Dkt. 23. Ordinarily, the motion would have been granted in the ordinary course and an order dismissing the Chapter 13 case would be entered without the need for a hearing. However, in the course of reviewing the Debtor's motion, the court noted that it followed a motion for relief from the automatic stay filed on January 12, 2023. Dkt. 11. So on February 7, 2023, the court issued an *Order and Notice of Intent to Grant Motion to Voluntarily Dismiss Subject to 11 U.S.C. § 109(g)(2)* in which the court stated its intent to dismiss this Chapter 13 case under 11 U.S.C. § 349(a) and pursuant to 11 U.S.C. § 109(g)(2), explained the reason for doing so, and permitted the Debtor (or any other party in interest) to file a response by February 14, 2023. Dkt. 25. Nobody responded, the Debtor included.

Therefore, for the reasons stated in the order and notice, which the court adopts and incorporates herein in its entirety by this reference, this Chapter 13 case is ORDERED DISMISSED pursuant to 11 U.S.C. §§ 109(g)(2) and 349(a).

The court FURTHER ORDERS that the Debtor is BARRED from refiling any single or joint bankruptcy case for a period of 180 days from the dismissal of this Chapter 13 case.

The motion is ORDERED GRANTED for the 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 not permit the requested modification and not confirm the modified plan.

First, Section 2.03 of Debtor's plan provides for a term of 84 months. Debtor's plan may not be extended beyond 60 months under 11 U.S.C. § 1329(d)(2) since the COVID-19 Bankruptcy Relief Extension Act of 2021 expired on March 27, 2022.

Second, the plan states that all Class 1 pre-petition and post-petition arrears owed to Select Portfolio Services have been paid in full. Debtor states in her declaration that she was approved for relief under the California Relief Program. Until Select Portfolio Services files an amended proof of claim or the Debtor successfully objects to the claim filed by Select Portfolio Services, Debtor's plan is not feasible.

Third, Section 7.01 of Debtor's plan provides for plan payments of \$2,965.00 per month beginning February 2023. Debtor has failed to provide admissible evidence that the plan is mathematically feasible. Trustee's calculations indicate that Debtor's plan payment will need to be at least \$3,733.00 beginning February 2023 in order for Debtor's plan to be feasible as paying unsecured creditors 100.00% in 60 month.

Fourth, the Debtor has failed to file any exhibits regarding the California Mortgage Relief Program with this current motion to modify plan. It is unclear whether the Debtor was able to secure approval through the mortgage relief program.

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.

12. [22-90477](#)-B-13 KAL KIRKLE
[JCW](#)-1 David C. Johnston
See Also #10

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
1-12-23 [[11](#)]

U.S. BANK TRUST NATIONAL
ASSOCIATION VS.

Final Ruling

Before the court is a motion by U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee of LSF10 Master Participation Trust, its assignees and/or successors, by and through its servicing agent Fay Servicing, LLC, its assignees and/or successors in interest ("Movant") for relief from the automatic stay of 11 U.S.C. § 362(a). Movant requests relief under 11 U.S.C. §§ 362(d)(1) and (d)(4) as to real property generally described as 24150 & 24152 Highway 108, Twain Harte, CA 95383, ("Property" herein).

The motion was filed on January 12, 2023, with an initial hearing date of February 14, 2023. See Dkts. 11, 12. On February 14, 2023, the court continued the hearing to February 21, 2023, to coincide with a motion to voluntarily dismiss this Chapter 13 case filed by Debtor Kal Kirkle ("Debtor"), see dkt. 23, and a hearing on the motion to dismiss set by the court's notice of intent to dismiss under 11 U.S.C. § 109(g)(2). Dkt. 25.

Debtor has not opposed the motion for relief from the automatic stay. Nor has any other party in interest.

The court has reviewed the motion and its related documents. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case and of all other bankruptcy cases cited in the motion and memorandum of points and authorities. See Fed. R. Evid. 201(c)(1). The court has determined that oral argument is not necessary and it will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

As an initial matter, the court has ordered this Chapter 13 case dismissed in Calendar Item #10, Docket 23 [DCJ-1]. Dismissal moots the request for relief under § 362(d)(1) (and any request for relief from any co-debtor stay under 11 U.S.C. § 1301). See *Khabushani v. Anderson (In re Khabushani)*, 2021 WL 2562113, *2 (9th Cir. BAP June 22, 2021) (citations omitted).

Dismissal, however, does not necessarily moot the request for relief § 362(d)(4). See *Benzeen, Inc. v. JP Morgan Chase Bank (In re Benzeen, Inc.)*, 2018 WL 6627275 at *4 (9th Cir. BAP 2018) (noting that request for § 362(d)(4) relief survives dismissal and foreclosure); *Azkam v. U.S. Bank N.A.*, 2020 WL 1700028, *3 (E.D. Cal. April 8, 2020) ("An order granting relief under [§ 362(d)(4)] may survive the dismissal of the bankruptcy in some cases.").

With regard to the request for relief under § 362(d)(4), based on the absence of any opposition or response by the Debtor, the Debtor's default is entered. See Fed. R. Civ. P. 55, Fed. R. Bankr. P. 7055, and Fed. R. Bankr. P. 9014(c). The Debtor's default permits the court takes all well-plead factual allegations in the motion and related documents as they pertain to the request for relief under § 362(d)(4) as true. See *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). And on that basis, the motion is granted with respect to the request for relief under § 362(d)(4).

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

The court will issue an order.