

**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 4, 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

**January 4, 2022 at 1:00 p.m.**

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1.     [21-90422](#)-B-13     JAMES RIDDLE                             MOTION TO CONFIRM PLAN  
          [JV-3](#)                 Jason N. Vogelpohl                             11-17-21 [[44](#)]

**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 amended plan.

First, all sums required by the plan have not been paid and the Debtor may not be able or willing to make the plan payments based on the current delinquency under the pending plan. 11 U.S.C. §§ 1325(a) (2) and (6). Debtor's plan provides for payments of \$962.00 in months one and two, and \$2,472.00 thereafter. The Debtor has paid \$0.00 into the plan to date, and is \$1,924.00 delinquent in plan payments. The next scheduled payment of \$2,472.00 is due on December 25, 2021.

Second, feasibility of the plan is dependant on Debtor receiving \$1,000.00 in contributions from his non-debtor parents. No declaration from the Debtor's parents has been provided that attests their willingness and ability to contribute this amount during the life of the plan.

Third, monthly plan payments along with the Trustee's fees and expenses total \$2,580.83. Debtor's proposed monthly plan payment is only \$962.00 per month in months 1 and 2 and \$2,472.00 in months 3 through 60. Debtor's plan is not feasible. 11 U.S.C. § 1325(a) (6).

Fourth, feasibility depends on the granting of a motion to value a 2012 Toyota Yaris Sedan 4D. That motion was denied without prejudice on December 7, 2021. Dkt. 55.

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.

2. [21-90441](#)-B-13 SHARON HAMILTON  
[RDG-1](#) Pro Se

CONTINUED MOTION TO DISMISS  
CASE  
12-7-21 [[17](#)]

### **Final Ruling**

This matter was continued from December 21, 2021, to allow any party in interest to file an opposition or response by 5:00 p.m. Thursday, December 30, 2021. Although the Debtor did not file a response, she did file a first amended plan with a scheduled confirmation hearing date of February 15, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 23 and the continued hearing on January 4, 2022, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

**That said, the Debtor filed the petition that commenced this chapter 13 case on September 15, 2021, pro se. See dkt. 1 at 6. Attorney David C. Johnston filed the amended plan, the motion to confirm it, and all related documents on December 29, 2021, as the Debtor's attorney. No substitution of attorney has been filed. See Local Bankr. R. 2017-1.**

**FURTHER ORDERED that Attorney David C. Johnston shall file a substitution of attorney and upload a corresponding order by 5:00 p.m. on January 6, 2022, or the documents filed at Dockets 27-33 will be deemed fugitive documents filed by an attorney who is not the Debtor's attorney of record and stricken without further hearing.**

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

The court will issue an order.

3. [18-90644](#)-B-13 CARRIE FLORES  
[JBA](#)-9 Joseph Angelo

MOTION TO MODIFY PLAN  
11-4-21 [[165](#)]

**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.

Debtor is \$1,989.50 delinquent under the proposed plan. Through November 2021, month 39, Debtor's proposed plan payments should total \$9,925.00 but the Chapter 13 Trustee's records indicate that Debtor has only remitted a total of \$7,935.50 through November 2021.

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.

4. [21-90554](#)-B-13 LOUIS/AUDRA MUNOZ  
[MJD](#)-1 Matthew J. DeCaminada

MOTION TO VALUE COLLATERAL OF  
MOSCE FEDERAL CREDIT UNION  
12-7-21 [[10](#)]

### **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 value the secured claim of Mocse Federal Credit Union at \$8,615.00.

Debtor moves to value the secured claim of Mocse Federal Credit Union ("Creditor"). Debtors are the owners of a 2010 Ford Expedition ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$8,615.00 as of the petition filing date. As the owners, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 4-1 filed by Mocse Federal Credit Union is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in October 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,471.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$8,615.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

5. [21-90164](#)-B-13 EVARISTO AVILA  
[RDG](#)-4 Pro Se

CONTINUED MOTION TO DISMISS  
CASE  
12-7-21 [[75](#)]

**Final Ruling**

This matter was continued from December 21, 2021, to allow any party in interest to file an opposition or response by 5:00 p.m. Thursday, December 30, 2021. Nothing was filed. Therefore, the court's conditional ruling at dkt. 79, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on January 4, 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.

### **Final Ruling**

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, 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 sustain the objection to Claim No. 14-1 of Alameda County DCSS and continue the matter to January 11, 2022, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Alameda County DCSS ("Creditor"), Claim No. 14-1. The claim is asserted to be priority in the amount of \$5,646.00. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was May 3, 2021, and for a government unit was August 19, 2021. The Creditor's claim was filed September 30, 2021.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim will be disallowed in its entirety as untimely. The objection to the proof of claim is conditionally sustained.

**Conditional Nature of this Ruling**

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, January 7, 2022, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on January 11, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on January 11, 2022, at 1:00 p.m.

The court will issue an order.

7. [19-90571](#)-B-13 LATONA BOWERS  
[LBF-6](#) Lauren Franzella

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH MERCEDES BENZ OF  
MODESTO  
12-7-21 [[116](#)]

### **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 deny the motion without prejudice.

Debtor again requests that the court approve a compromise and settle competing claims and defenses with Mercedes Benz of Modesto. This motion is nearly identical to that filed on November 2, 2021, LBF-4, the hearing of which was vacated by the court after it entered an order denying the debtor's ex parte application to file the settlement agreement under seal. See dkt. 111, LBF-5.

The court further reiterated its decision in a second order entered December 9, 2021, denying Debtor's ex parte motion to seal. See dkt. 122, LBF-7.

Since the entering of the court's two orders, no settlement agreement has been filed for the court to review. The court is unable to determine whether the compromise is in the best interest of creditors and the estate.

The motion is denied without prejudice.

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

The court will issue an order.

8. [20-90177](#)-B-13 JONATHAN REIF  
[MDA-1](#) Mary D. Anderson

MOTION TO MODIFY PLAN  
11-29-21 [[27](#)]

**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.

### 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 grant the motion to extend the automatic stay.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on November 10, 2021, for failure to appear at the § 341 meeting of creditors (case no. 21-90312, dkt. 21). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

### Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors assert that their previous case was filed in good faith but that they failed to attend the § 341 meeting of creditors due to medical issues. Debtors further reiterate that the present case is filed in good faith because they seek to reorganize their car loan, taxes, and other unsecured debts. Debtors state that they are motivated and willing to make this present plan successful. The Debtors' previously dismissed case was a chapter 7 case. This is a chapter 13 case. Based on the Debtors' election to file under chapter 13 which provides for payment to creditors rather than re-file another chapter 7 case, the court can infer that the Debtors' medical issues are resolved or, at a minimum, are not a significant impediment to the Debtors' ability to perform under a chapter 13 plan.<sup>1</sup>

In any case, for present purposes, the Debtors have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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<sup>1</sup>There may be other issues that arise from the Debtors' history of filing bankruptcy cases. In addition to the November 10, 2021, dismissal of the most recent chapter 7 case, no. 21-90312, an earlier chapter 13 case, no. 17-90216, was dismissed on April 19, 2017, shortly after it was filed on February 21, 2017. The Debtors also obtained two chapter 7 discharges in case nos. 09-90913 and 99-91238.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

10. [21-90183](#)-B-13 SECO BROWN AND LINDA OBJECTION TO CLAIM OF FRANCHISE  
[RDG-1](#) WILLIAMS-BROWN TAX BOARD, CLAIM NUMBER 5  
Flor De Maria A. Tataje 11-22-21 [[45](#)]

### **Final Ruling**

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, 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 sustain the objection to Claim No. 5-1 of Franchise Tax Board and continue the matter to January 11, 2022, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Franchise Tax Board ("Creditor"), Claim No. 5-1. The claim is asserted to be priority in the amount of \$5,646.00. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was July 2, 2021, and for a government unit was October 20, 2021. The Creditor's claim was filed November 5, 2021.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim will be disallowed in its entirety as untimely. The objection to the proof of claim is conditionally sustained.

**Conditional Nature of this Ruling**

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, January 7, 2022, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on January 11, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on January 11, 2022, at 1:00 p.m.

The court will issue an order.

11. [21-90496](#)-B-13 SUZANNE NIETO  
[EAT](#)-1 Matthew M. Spielberg

OBJECTION TO CONFIRMATION OF  
PLAN BY FLAGSTAR BANK, F.S.B.  
12-1-21 [[19](#)]

WITHDRAWN BY M.P.

**Final Ruling**

Creditor Flagstar Bank, F.S.B. filed a notice of withdrawal of its objection. Therefore, 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.

Nonetheless, the plan filed October 13, 2021, will not be confirmed since the Debtor filed an amended plan on December 2, 2021. However, a confirmation hearing for the amended plan has not been scheduled. **The Debtor shall file, set, and serve a motion to confirm the amended plan, together with the amended plan, by 5:00 p.m. on January 7, 2022, or the case may be dismissed on the Chapter 13 Trustee's ex parte application. See 11 U.S.C. § 1307(c)(1).**

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.