UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 20, 2018 at 1:00 p.m.

1.	17-24500-B-13 PPR-1	MICHAEL/ANTOINETTE CORTEZ Mary Ellen Terranella	MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE 1-19-18 [54]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The Motion for Order Deeming Claim Timely Filed has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to deny the motion without prejudice.

Second Chance Home Loans LLC ("Creditor") seeks an order permitting it to file a late claim based on excusable neglect and the informal claim doctrine. Prior to the filing of this bankruptcy, Creditor recorded and served on Debtors a Notice of Default on March 10, 2017, and a Notice of Sale on June 15, 2017, in preparation for the foreclosure of real property located at 901 Innisfree Court, Vallejo, California. Creditor states that despite Debtors' knowledge of Creditor's identity, they failed to properly notice Creditor of their bankruptcy filed July 8, 2017.

Schedule D lists as creditor 2.2 PNC Bank, which was the successor by merger to National City Bank.[1] The amended plan filed November 28, 2017, also lists PNC Bank in Class 1. Creditor asserts that it had no actual knowledge of the bankruptcy or claims bar date because it did not receive actual notice of the bankruptcy nor was it served the amended plan. It was only until an employee checked PACER that it learned of Debtors' filing.[2]

Discussion

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. A proof of claim in a Chapter 13 case is timely filed if

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[1] National City Bank transferred the claim to Creditor via assignment of mortgage recorded on August 9, 2016, prior to the filing of this bankruptcy.

[2] Creditor apparently knew that a Chapter 13 filing was a possibility as early as June 2017 yet did not conduct any PACER review until February 2018. Thus, not only did Creditor have at least inquiry notice before the claims bar date but Creditor apparently knows how to use and search PACER.

it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a). *See* Rule 3002(c). That date here, i.e., November 1, 2017, is consistent with the date first set for the § 341 meeting in this case, i.e., August 3, 2017.

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 six circumstances listed 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."). Creditor does not argue that any of those six circumstances apply in this case.

Instead, relying on *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993), Creditor maintains that its late-filed claim should be allowed on the basis of excusable neglect. Creditor's argument lacks merit because 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 explained 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 (citation omitted).[3] 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."

Nonetheless, a late-filed proof of claim may be allowed if it is found to relate back to an "informal" proof of claim that was filed prior to the bar date. The informal claim doctrine, "equitable in nature, permits a court to declare that a creditor who failed to file a timely proof of claim will nevertheless be treated as if it had done so, if warranted by the equities of the case." *In re Brooks*, 370 B.R. 194, 58 Collier Bankr. Cas. 2d (MB) 357 (Bankr. C.D. Ill. 2007).

Since Ninth Circuit precedent prevents the court from granting Creditor relief to file a late claim in this Chapter 13 case on the basis of excusable neglect, that leaves Creditor's request to deem its notices of default and sale as an "informal" proof of claim to which Creditor's late-filed claim relates back. The elements necessary for a creditor to establish an informal proof of claim in the Ninth Circuit have been summarized as follows:

> (1) presentment of a writing;
> (2) within the time for the filing of claims;
> (3) by or on behalf of the creditor;
> (4) bringing to the attention of the court;
> (5) the nature and amount of a claim asserted against the estate.

Pac. Resource Credit Union v. Fish (In re Fish), 456 B.R. 413, 417 (9th Cir. BAP 2011) (quoting *Dicker v. Dye (In re Edelman)*, 237 B.R. 146, 154 (9th Cir. BAP 1999)).

The writing need not be filed with the bankruptcy court. *Edelman*, 237 B.R. at 154)

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[3] *Pioneer* also states that Rule 3002(c) is excluded from the operation of the excusable neglect standard. *See* 507 U.S. at 389 n. 4.

(citing *Anderson-Walker Industries, Inc. v. Lafayette Metals, Inc. (In re Anderson-Walker Industries, Inc.)*, 798 F.2d 1285 (9th Cir. 1986); *Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants, Inc.)*, 754 F.2d 811 (9th Cir. 1985). But it must be received by a representative of the estate no later than the claims bar date. *Id.*

The documents that Creditor asserts here constitute an informal proof of claim are the notices of default and sale. They were recorded and served on the Debtors on March 10, 2017, and June 15, 2017, respectively. The problem is that this Chapter 13 case was not filed until July 8, 2017. That means the documents that Creditors asserts are an informal proof of claim are *prepetition* writings. And that raises three problems for Creditors.

First, the writings were not served on the Debtors "within the time for filing claims" because, before the petition was filed on July 8, 2017, there was no requirement to file claims - anywhere - and therefore no time within which claims were required to be filed. Second, and even more problematic, although Chapter 13 debtors are estate representatives, *see* 11 U.S.C. §§ 1303 & 323, because an estate does not exist until a petition is filed, *see* 11 U.S.C. § 541(a), the Debtors in this case were not representatives of any estate when the prepetition notices of default and sale were recorded and served because there was then no estate in existence at that time. And third, because there was no estate when Creditor recorded and served its notices of default and sale, neither are (or can qualify as) a demand against the estate. *See Barker*, 839 F.3d at 1196 (requirement of informal proof of claim is demand against estate or intent to hold estate liable). In short, Creditor's prepetition writings, cannot be deemed to be an informal proof of claim. *See In re Rolyn*, 266 B.R. 453, 454-455 (Bankr. N.D. Cal. 2001); *Matter of Thompson McKinnon, Inc.*, 130 B.R. 721, 723 (Bankr. S.D.N.Y. 1991); *In re Honda*, 106 B.R. 204, 207 (Bankr. D. Hawai'i 1989).[4]

Therefore, for the foregoing reasons, Creditor's motion, and its requests for relief from the claims bar date on the basis of excusable neglect and to deem prepetition notices of default and sale as informal proofs of claim, is denied.

One final note. Denial of Creditors' motion and the relief requested therein is without prejudice. *See* 11 U.S.C. 502(j); Fed. R. Bankr. P. 3008. Creditor is also not entirely without hope. Rule 3004 permits the debtor or the trustee to file a proof of claim 30 days after the expiration of the bar date. And while that time may have passed, unlike Rule 3002(c), which through Rule 9006(b)(3) can only be extended for the reasons stated in Rule 3002(c), nothing in Rule 9006(b) precludes an extension of the time under Rule 3004 for excusable neglect. *See In re Sprague*, 2013 WL 6670576, *3 (Bankr. D. Idaho 2013). But, at this juncture, that is relief that only the Debtors or Trustee may request. And that is up to either.

The court will enter an appropriate minute order.

[4] To the extent Creditor maintains the Debtors' schedules, which include the amounts due as stated on the prepetition notices of default and sale, are themselves somehow informal proofs of claim, that argument also fails. *See Barker*, 839 F.3d at 1196-1197.

2. 17-28002-B-13 ERLINDA GIL MOTION TO CONFIRM PLAN
AF-3 Arasto Farsad 1-6-18 [33]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The case having been converted to a Chapter 11 on February 7, 2018, the motion to confirm is dismissed as moot.

The court will enter an appropriate minute order.

3. 13-35113-B-13 ARMANDO SEGURA MOTION TO MODIFY PLAN
SDB-1 W. Scott de Bie 1-11-18 [24]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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 filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on January 11, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

4. 17-27815-B-13 ROBERT MOLDEN — MOTION TO CONFIRM PLAN
CYB-1 Candace Y. Brooks — 1-9-18 [21]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The Motion for Confirmation of Debtors' [sic] First Amended Chapter 13 Plan has been set for hearing on the 42-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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on January 9, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

5. 17-27916-B-13 SHANNON LAWRENCE MOTION TO CONFIRM PLAN
MJD-2 Matthew J. DeCaminada 1-4-18 [17]

Tentative Ruling: Debtor's Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, unsecured debtors would receive a higher distribution in a Chapter 7 proceeding and therefore the plan does not comply with 11 U.S.C. § 1325(a)(4). This is based on the Chapter 13 Trustee's preliminary investigation that Debtor's real property located at 1420 Greenhills Road, Sacramento, California is $435,000.00 and not $290,000.00 as valued by the Debtor in her schedules. Using the value according to the Trustee's preliminary investigation, the total amount of non-exempt property in the estate is $149,075.00. The amount that would be paid to unsecured creditors in a Chapter 7 proceeding after deducting fees is $138,371.25. The plan pays unsecured creditors only $1,454.20.

Second, feasibility depends on the granting of a motion to value collateral for Wells Fargo Dealer Services for a 2009 Chevrolet Suburban. That motion was heard and granted on February 6, 2018.

Third, Debtor is delinquent to the Chapter 13 Trustee in the amount of $290.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

For the first and third reasons stated above, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

6. 14-32325-B-13 AMELIA PARRISH MOTION TO INCUR DEBT
WW-4 Mark A. Wolff 2-6-18 [101]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Incur Debt is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

Debtor permission incur a new single loan to refinance her residence and obtain sufficient cash-out to complete her Chapter 13 plan and pay post-petition taxes that have come due. Debtor estimates that the amount to complete the plan will be approximately $22,000.00. Debtor's obligations to the Internal Revenue Service and Franchise Tax Board are approximately $32,000.00 for the 2016 tax year. The proposed new loan will be in the approximate amount of $110,000.00 with an interest rate of 4.00% and monthly payments of approximately $740.00 for a term of 30 years. The current principal balance on the residence is $51,000.00.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court will enter an appropriate minute order.

7. 17-27330-B-13 TAG-2 **Thru #8**
ROBERT/SUSAN OBY
Aubrey L. Jacobsen
MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING
1-18-18 [44]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The Motion to Value Collateral has been set for hearing on the notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Ocwen Loan Servicing at $0.00.

Debtors' motion to value the secured claim of Ocwen Loan Servicing ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 324 Prewett Drive, Folsom, California ("Property"). Debtors seek to value the Property at a fair market value of $500,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $670,552.00. Creditor's second deed of trust secures a claim with a balance of approximately $30,000.00 according to Schedule D. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

8. 17-27330-B-13 ROBERT/SUSAN OBY — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
VVF-1 Aubrey L. Jacobsen — 2-2-18 [50]

HONDA LEASE TRUST VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

The court's decision is to grant the motion for relief from stay.

Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Honda Pilot, VIN ending in 4836 (the "Vehicle"). The moving party has provided the Declaration of Whitney Rae to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtors.

The Rae Declaration provides testimony that Debtors have not made 2 post-petition lease payments, with a total of $764.56 in post-petition payments past due. Additionally, the Debtors have not made 0.99 pre-petition lease payments, with a total of $378.56 in pre-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the Vehicle is a lease from Movant and Debtors have no equity in the property.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the

collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Toyota Motor Credit Corporation, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

9. 17-23834-B-13 APRIL LIND
APN-1 Mikalah R. Liviakis

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-18 [24]

TOYOTA MOTOR CREDIT CORPORATION VS.

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion for relief from stay.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Toyota Scion IA, VIN ending in 9968 (the "Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spooner Declaration provides testimony that Debtor has not made 3 post-petition lease payments, with a total of $693.85 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the Vehicle is a lease from Movant and Debtor has no equity in the property.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Toyota Motor Credit Corporation, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Attorneys' Fees Requested

Although requested in the Motion, Movant has not stated either a contractual or

statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorneys' fees.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

10.	17-23337-B-13 JPJ-1	DOUGLAS/TRINA HAMMONS Robert S. Gimblin	OBJECTION TO CLAIM OF OPERATING ENGINEERS FEDERAL CREDIT UNION, CLAIM NUMBER 12 1-5-18 [41]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 12 of Operating Engineers Federal Credit Union and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Operating Engineers Federal Credit Union ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $8,364.05. Objector 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 September 13, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 11. The Creditor's Proof of Claim was filed September 14, 2017.

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 six 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 is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

11. 17-27445-B-13 BRIAN/WENDY NICKLE MOTION TO CONFIRM PLAN
MJD-2 Matthew J. DeCaminada 1-3-18 [33]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

Debtors' Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the first 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 filed on January 3, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

12. 15-28549-B-13 SHARON WILDEE
PGM-5 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)
1-23-18 [100]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The Application for Additional Attorney Fees has been set for hearing on the notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 46. Applicant now seeks additional compensation in the amount of $1,260.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 103.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would require a modified plan to provide for a § 1305 postpetition Internal Revenue Service claim. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$1,260.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

13. 14-31850-B-13 TUA/SHING VANG
PGM-5 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)
1-19-18 [77]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The Application for Additional Attorney Fees has been set for hearing on the notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtors' Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 38. Applicant now seeks additional compensation in the amount of $1,410.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 80.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would require a loan modification with Ocwen Loan Servicing, LLC, that the loan would thereafter be transferred to servicer Caliber Home Loans Inc., and for property taxes to be unpaid by Caliber Home Loans. Applicant states that he engaged in services including, but not limited to, general correspondences, emails, telephone calls, and filing review to resolve all issues. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtors, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$1,410.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

14.	17-23053-B-13 JPJ-1	STEVEN/TAMARA WILLIAMS Bruce Charles Dwiggins	OBJECTION TO CLAIM OF WILLIAMSON AND BROWN LLC, CLAIM NUMBER 13 1-5-18 [32]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 13 of Williamson and Brown LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Williamson and Brown LLC ("Creditor"), Proof of Claim No. 13 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $609.30. Objector 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 September 6, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 15. The Creditor's Proof of Claim was filed September 7, 2017.

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 six 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 is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

15. 16-28259-B-13 PAULA BOYD
RS-4 Richard L. Sturdevant

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FINANCIAL RELIEF LAW CENTER FOR RICHARD STURDEVANT, DEBTORS ATTORNEY(S)
1-9-18 [101]

DEBTOR DISMISSED: 12/20/2017

Final Ruling: No appearance at the February 20, 2018, hearing is required.

A motion for compensation exceeding $1,000.00 must provide at least 21-days' notice per Bankruptcy Rule 2002(a)(6). The notice of hearing and proof of service were filed on February 1, 2018. This is only 19 days before the scheduled hearing date. The motion is therefore denied without prejudice for defective service.

The court will enter an appropriate minute order.

16. 16-20564-B-13 KATRINA NOPEL — MOTION TO MODIFY PLAN
PLC-6 Peter L. Cianchetta — 1-9-18 [84]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan 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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

The Debtor has failed to make plan payments since April 21, 2017. The Chapter 13 Trustee had filed a Notice of Default and Application to Dismiss on June 28, 2017. In response, the Debtor filed a modified plan that was confirmed on September 29, 2017, but the Debtor did not make any payments to the Trustee under the terms of that plan. The Debtor is delinquent to the Chapter 13 Trustee in the amount of $7,812.33, which represents two plan payments under the terms of the modified plan filed January 9, 2018. Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

17.	17-22467-B-13 JPJ-1	SCOTT/DAWN SMITH Matthew J. Gilbert	OBJECTION TO CLAIM OF TRAVIS CREDIT UNION, CLAIM NUMBER 24 1-5-18 [20]

Final Ruling: No appearance at the February 20, 2018, hearing is required.

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 24 of Travis Credit Union and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Travis Credit Union ("Creditor"), Proof of Claim No. 243 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $8,150.09. Objector 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 August 16, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's Proof of Claim was filed November 3, 2017.

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 six 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 is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

18. 17-27167-B-13 WILLIAM NADO
RTD-2 Mikalah R. Liviakis

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
2-5-18 [38]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion to extend the deadline.

Schools Financial Credit Union ("Creditor") requests an extension to file a complaint objecting to discharge of the Debtor. The current deadline was February 5, 2018, and Creditor filed its motion on that date. Creditor requests that the deadline be extended to April 6, 2018.

Creditor is the holder of two claims: charges made on a credit card and a loan secured by a 2016 Hyundai Sonata. Creditor has filed proofs of claim numbers 2 and 3. Creditor contends that at the time Debtor made credit card charges and entered into the loan agreement for the vehicle, Debtor was insolvent and knew he had no ability to repay Creditor. This is because the credit card charges and loan agreement were made after a judgment was entered against Debtor in the approximate amount of $26,000 for domestic support obligations. Creditor asserts that cause exists to extend the deadline pursuant to Federal Rule of Bankruptcy Procedure 4007(c).

Discussion

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b) and 4007(c). Creditor believes it is not economically prudent to proceed with discovery or to file an adversary complaint until the amount of any deficiency balance is ascertained and it is determined whether Debtor will proceed in Chapter 13 and what the terms of any plan may be. Creditor does not explain whether the "deficiency balance" is in reference only to the balance that will remain after the vehicle's resale or whether this includes the credit card charges. Nonetheless, the court already entered an order on February 6, 2018, granting Creditor's motion for relief as to the vehicle, waiving the 14-day stay under Rule 4001(a)(3), and granting no additional relief. *See* dkt. 45.

The court finds the Creditor's need to perform further investigation is sufficient cause. Therefore, the motion is granted and the deadline for the Creditor to object to Debtor's discharge is extended to April 6, 2018.

The court will enter an appropriate minute order.

19. 13-35778-B-13 FRANK/JOSIE OLIVAS
WW-4 Mark A. Wolff

CONTINUED MOTION OBJECTION TO DEUTSCHE BANK NATIONAL TRUST COMPANY'S RESPONSE TO NOTICE OF FINAL CURE
12-6-17 [53]

Tentative Ruling: The Debtors' Objection to Deutsche Bank National Trust company's Response to Notice of Final Cure has been set for hearing on the 28-days notice required by 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 having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

This matter was continued from January 23, 2018, to provide Debtors and Deutsche Bank National Trust Company additional time to work toward a resolution as requested by creditor.

The court will enter an appropriate minute order.

20. 16-27293-B-13 ELLE RUBINGER MOTION TO MODIFY PLAN
MS-1 Mark Shmorgon 12-29-17 [57]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation 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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

The Debtor has agreed to make changes to the plan to resolve the issues raised by the Chapter 13 Trustee. These changes involve providing for 3 post-petition arrearage payments and increasing plan payments. Such changes are too significant to be made in the order confirming. Instead, Debtor shall file, serve, and set for hearing a new modified plan so that all creditors are on notice and have the opportunity to review the changes and object, if necessary.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

21. 17-26694-B-13 TAMARA GEREN MOTION TO CONFIRM PLAN
PLC-3 Peter L. Cianchetta 1-9-18 [40]

Tentative Ruling: The Motion to Modify Chapter 13 Plan has been set for hearing on the 42-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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, feasibility depends on the granting of a motion to value collateral for Wells Fargo Bank for a 2005 Ford Mustang. That motion was heard and granted on February 6, 2018.

Second, the plan payments for months 10-60 ($1,800.00 for months 10-12, $2,125.97 for months 13-60) do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee are as follows: $2,145.21 for months 10-12, $2,177.81 for months 13-18, $2,448.61 for months 19-60. The plan does not comply with Section 5.2 of the mandatory form plan. The Debtor's calculations do not appear to take into account the increased mortgage payment of $1,239.62 pursuant to the Notice of Mortgage Payment Change filed with the court on January 5, 2018. Dkt. 30. The plan does not comply with Section 5.02(a) of the mandatory form plan.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

22. 17-27894-B-13 ANTHONY BARCELLOS MOTION TO CONFIRM PLAN
MJD-2 Matthew J. DeCaminada 1-8-18 [21]

Tentative Ruling: Debtor's Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-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 has been filed by the Chapter 13 Trustee and Deutsche Bank National Trust Company.

The court's decision is to not confirm the first amended plan.

First, Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,995.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Deutsche Bank National Trust Company holds a second deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $54,593.09 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 payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

23.	17-25899-B-13 CYB-5	CARLOS/ROBIN ROBLES Candace Y. Brooks	CONTINUED OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 5 11-16-17 [78]

Tentative Ruling: The Objection to Claim Number 5 Filed by Wells Fargo Bank, N.A. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The matter will be determined at the scheduled hearing.

This matter was continued from December 19, 2017, and again from February 6, 2018. The court determined on a tentative basis at the February 6, 2018, hearing that the September 2017 payment constituted a post-petition payment and that there is no pre-petition delinquency. Debtors' counsel requested on the record in open court additional time to review Debtors' property statements, including taxes, to determine how the Debtors could be delinquent in payments when their monthly mortgage has decreased.

The matter will be determined at the scheduled hearing.

24. 17-28225-B-13 TIA MCDANIELS
JPJ-1 Pauldeep Bains

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-24-18 [14]

Tentative Ruling: This matter was continued from February 13, 2018, in order to be heard after the continued meeting of creditors scheduled on February 15, 2018. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other 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.

The matter will be determined at the scheduled hearing.

The Debtor did not appear at the meeting of creditors set for January 18, 2018, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to February 15, 2018, to allow the Debtor another opportunity to appear and be examined.

At the February 13, 2018, hearing, the Debtor represented that it has served upon the Trustee a Class 1 Checklist and Authorization to Release Information and provided the Trustee with copies of payment advices received within the 60-day period prior to the filing of the petition. The Debtor has complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6) and 11 U.S.C. § 521(a)(1)(B)(iv), respectively.

Provided that the issues are resolved, the plan filed December 20, 2017, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

25.	12-40480-B-13 PGM-1	JUSTIN/JESSICA ROBERTS Peter G. Macaluso	MOTION TO SELL AND/OR MOTION TO PURCHASE REAL PROPERTY O.S.T. 2-13-18 [99]

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The motion will be determined at the scheduled hearing.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 1864 Hardial Drive, Yuba City, California ("Hardial Drive Property"). Debtors further request to subsequently purchase real property commonly known as 2863 Carmelita Drive, Yuba City, California ("Carmelita Drive Property"). Debtors completed their plan payments as of November 29, 2017, and are awaiting a discharge from the court.

The proposed buyer intends to purchase the Hardial Drive Property for $319,000.00. Debtors expect to receive approximately $114,889.09 from the sale and intend to use the funds for the down payment of the Carmelita Drive Property, pay back taxes owed to the IRS, and purchase a new work truck for their business. Debtors state that the Chapter 13 Trustee must approve of the title company to be used in connection with the sale and purchase of the two properties. Debtors requested to hear this matter on shortened time so that escrow can close as scheduled by February 28, 2017, to avoid losing the sale.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Debtors and will have no effect on the Estate.

The court will enter an appropriate minute order.