

**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: April 20, 2021

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

April 20, 2021 at 1:00 p.m.

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1. [19-90252](#)-B-13 ERIC/HEATHER OLSON MOTION TO TRANSFER ASSETS AND
[JAD-2](#) Jessica A. Dorn APPROVE JUDGMENT ON RESERVED
ISSUES
3-5-21 [[46](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion.

Debtors seek court order authorizing them to transfer assets and approve a marital settlement agreement. Debtors separated on September 1, 2019, and Joint-Debtor filed for a divorce on October 29, 2019. Due to the automatic stay, the family law court is unable to divide the marital assets without the bankruptcy court's approval. Debtors therefore seek the bankruptcy court to allow certain inter-spousal transfers per the Debtors' agreement and ask the court to grant their motion to transfer and approve the judgment on reserved issues. A copy of the judgment on reserved issues is filed as Exhibit A, dkt. 49.

The motion is supported by the Declaration of Eric Olson and Heather Olson. The Declaration affirms Debtors desire to transfer assets and approve judgment on reserved issues.

Discussion

Pursuant to Local Bankr. R. 3015-1(h)(1)(E), the court may approve a motion to transfer assets if the Debtors wish to transfer property on terms and conditions that are not authorized by Subparagraphs (A), (B), (C), or (D) of Paragraph (1). In this instance the Debtors seek to transfer on terms and conditions not authorized by the Subparagraphs. The assets Debtors wish to transfer are listed on the judgment of reserved issues at Exhibit A, dkt. 49.

The court finds a proper purpose for this transfer and approves the judgment on reserved issues. The motion will be granted.

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

The court will issue an order.

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Final Ruling

The motion 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

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

First, all sums required by the plan have not been paid. 11 U.S.C. §1325(a)(2). Debtor is delinquent \$950.00 under the proposed plan. The Nonstandard Provisions of Debtor's plan provides for plan payments of \$475.00 beginning January 2021. The Chapter 13 Trustee's records indicate that Debtor failed to make a plan payment in January 2021, February 2021, and March 2021. As such, he is \$1,425.00 delinquent under the proposed plan.

Second, Debtor's plan is not proposed in good faith under 11 U.S.C. §1325(a)(3). The Debtor's current plan provides for a plan payment increase in August 2020 due to a retirement loan being paid off within the plan term. Debtor's Schedule I provides that a retirement loan of \$512.00 per month pays off July 2020. Debtor no longer provides for a plan payment increase in Debtor's most recent proposed plan when this loan pays in full. Given that Debtor's retirement loan should be paid in full, the net income available based on the current schedules I and J filed is \$987.00 (\$475.00 + \$512.00). Debtor is not contributing all of his disposable income into the plan. Trustee has raised this same issue in his prior opposition to motion to modify.

Third, Debtor's Motion to Confirm Third Modified Chapter 13 Plan (BSH-4), dkt. 71, was heard and denied on October 20, 2020. Debtor again has utilized docket control number BSH-4 for the present motion to modify. Debtor has failed to comply with LBR 9014-1(c)(3).

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.

3. [20-90458](#)-B-13 DANIEL/DONNA BOUCHER OBJECTION TO CLAIM OF VALLEY
[RDG-1](#) Jessica A. Dorn FIRST CREDIT UNION, CLAIM
NUMBER 17
3-18-21 [[85](#)]

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, the claimant is not required to file written opposition to the objection.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to sustain the objection to Claim No. 17 of Valley First Credit Union and **continue the matter to April 27, 2021, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Valley First Credit Union ("Creditor"), Claim No. 17. The claim is asserted to be unsecured in the amount of \$20,591.81. 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 September 8, 2020. The Creditor's claim was filed February 24, 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 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

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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 shall be disallowed in its entirety as untimely. The objection to the proof of claim shall be 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, April 23, 2021, to file and serve an opposition or other response to the objection. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the 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 April 27, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 27, 2021, at 1:00 p.m.

The court will issue an order.

4. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN MOTION TO MODIFY PLAN
[JAD](#)-11 Jessica A. Dorn 3-5-21 [[298](#)]
Thru #5

Final Ruling

The motion 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

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

First, Section 7.05 of Debtors' plan provides that the Chapter 13 Trustee shall pay Class 1 Creditor, Bayview Loan Servicing/Community Loan Servicing a total of \$40,196.87 through month 43 for the ongoing mortgage payments. Trustee records indicate Trustee has actually disbursed \$41,459.53 through month 43 (February 2021).

Second, Debtors' plan is not be feasible under 11 U.S.C. §1325(a)(6). Class 1 Creditor Community Loan Servicing LLC filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges on March 31, 2021 listing Attorney fees of \$2,879.66. Trustee records indicate an average plan payment of \$760.00 is needed in order to pay these fees. Debtor's average plan payment for April 2021 through July 2024 (month 84) is only \$677.80.

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.

5. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN MOTION TO APPROVE LOAN
[JAD](#)-12 Jessica A. Dorn MODIFICATION
3-5-21 [[306](#)]

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 permit the loan modification.

Debtors seek court approval to incur post-petition credit. Bayview Loan Servicing, LLC

("Creditor"), whose claim the plan provides for in Class 4, has agreed to put all mortgage arrears at the end of the loan. The new mortgage payment will be \$2,135.93, which includes property taxes and homeowner's insurance.

The motion is supported by the Declaration of Daniel Allen and Gerardee Donnan. The Declaration affirms Debtors desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms. Debtor's filed amended Schedules I and J to reflect the changes to our income and expenses. Debtors states that if they are not allowed to modify their existing home loan, they may lose it since they cannot afford the original mortgage payment with the mortgage arrears through the plan.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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

The court will issue an order.

Final Ruling

The motion 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

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

First, Debtor's plan is not be feasible under 11 U.S.C. §1325(a)(6). Section 3.01 of Debtor's plan provides that a claim will not be paid pursuant to this plan unless a proof of claim is filed by or on behalf of a creditor, including a secured creditor. The last line of the Nonstandard Provisions of Debtor's plan states "For postpetition IRS and Franchise Board amounts due, the dividend shall be \$716 per month beginning in Month 38 (October 2019)." A proof of claim for Debtor's post-petition taxes has not been filed pursuant to 11 U.S.C. §1305. Accordingly, Trustee is unable to administer this provision of Debtor's plan. Additionally, without the filed post-petition claim amount, it cannot be determined if Debtor's plan is feasible. The Trustee has raised this same issue in two prior opposition to motions to modify.

Second, the Debtor's 2018 tax returns provided to the trustee indicate Debtor's tax filing status as "Married filing separately." Trustee has requested a copy of the non-filing spouse's 2018 federal tax return. Until Trustee is able to review this return, Trustee is unable to determine whether Debtor's plan is feasible and proposed in good faith. Trustee has previously requested this information in three prior oppositions to motions to modify.

Third, confirmation of Debtor's current plan was contingent upon Debtor providing her state and federal tax returns to the Trustee on or before April 30 each year during the pendency of this case. As of March 29, 2021, Debtor has not provided her 2019 state and federal tax returns to the Trustee. Trustee has requested this information in a prior opposition to motion to modify.

Fourth, Debtor's Motion to Confirm Fifth Modified Chapter 13 Plan (BSH-10), dkt. 108, was heard and denied on September 22, 2020. Debtor again has utilized docket control number BSH-10 for the present motion to modify. Debtor has failed to comply with LBR 9014-1(c)(3).

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.

7. [20-90401](#)-B-13 ISAAC/CRISTINA QUEVEDO CONTINUED OBJECTION TO LATE
[RDG-2](#) Michael Benavides FILED CLAIM OF DEPARTMENT OF
TREASURY-INTERNAL REVENUE
SERVICE, CLAIM NUMBER 13
3-8-21 [[50](#)]

Final Ruling

This matter was continued from April 13, 2020, to allow any response or objection to be filed by 5:00 p.m., April 16, 2020. None was filed. Therefore, the court's conditional ruling at *dkt.* 53 will be the court's final decision and the objection is sustained. The continued hearing on April 20, 2021, is vacated.

The court will issue an order.

8. [19-90791](#)-B-13 RAUL/MARIZA HERROZ
[RDG-1](#) Thomas O. Gillis

CONTINUED OBJECTION TO CLAIM OF
NAVIENT SOLUTIONS, LLC, CLAIM
NUMBER 16
3-8-21 [[42](#)]

Final Ruling

This matter was continued from April 13, 2020, to allow any response or objection to be filed by 5:00 p.m., April 16, 2020. None was filed. Therefore, the court's conditional ruling at dkt. 45 will be the court's final decision and the objection is sustained. The continued hearing on April 20, 2021, is vacated.

The court will issue an order.