

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 12, 2018 at 1:00 p.m.

1. [18-22107](#)-B-13 WALLEN YEP OBJECTION TO CONFIRMATION OF
[EAT](#)-1 Jonathan D. Matthews PLAN BY WELLS FARGO BANK, N.A.
Thru #3 5-16-18 [[40](#)]

MATTER CONTINUED TO 7/10/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 6/21/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

2. [18-22107](#)-B-13 WALLEN YEP OBJECTION TO CONFIRMATION OF
[EAT](#)-2 Jonathan D. Matthews PLAN BY WELLS FARGO BANK, N.A.
5-17-18 [[43](#)]

MATTER CONTINUED TO 7/10/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 6/21/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

3. [18-22107](#)-B-13 WALLEN YEP OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Jonathan D. Matthews PLAN BY JAN P. JOHNSON
5-24-18 [[49](#)]

MATTER CONTINUED TO 7/10/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 6/21/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

June 12, 2018 at 1:00 p.m.

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4. [18-22209](#)-B-13 EDWARD ANE-STRUB AND OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 SANDRA ANE PLAN BY JAN P. JOHNSON
W. Scott de Bie 5-24-18 [[14](#)]

MATTER CONTINUED TO 6/26/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 6/21/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

5. [18-22110](#)-B-13 VICTORIA BEERS
[APN-1](#) Mark A. Wolff
- OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
4-30-18 [[14](#)]

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court's decision is to overrule the objection as moot.

An order approving stipulation regarding the valuation of secured collateral for Toyota Motor Credit Corporation was entered on May 23, 2018. See dkt. 24. The order provided that the Debtor shall amend the Chapter 13 plan and accompanying Schedules, as and if necessary, to ensure that the same conform with the terms set forth in the stipulation filed May 23, 2018, as docket 25.

There being no other objection to confirmation, the plan filed April 9, 2018, will be confirmed as amended in the order confirming to conform with the stipulation.

The court will enter an appropriate minute order.

6. [18-22112](#)-B-13 THOMAS ALGER OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Michael Benavides PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-24-18 [[21](#)]

MATTER CONTINUED TO 7/10/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 7/05/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

7. [18-22221](#)-B-13 BENJAMIN/CYNTHIA BELASCO
[JPJ](#)-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-24-18 [[17](#)]

Tentative Ruling: 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 Debtors, 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 court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The plan cannot be assessed for feasibility or effectively administered. The Debtors appear to have inadvertently filed two separate plans as one document on April 13, 2018. See dkt. 5. The two plans have different plan payment amounts and different Class 2A claim amounts and monthly dividend amounts. The Trustee served the first of the two plan on the creditors on April 28, 2018, but Debtors testified at their May 17, 2018, meeting of creditors that they thought the second of the two plans was the correct plan. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed April 13, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

8. [17-27645](#)-B-13 LISA BINSFELD OBJECTION TO CLAIM OF CAVALRY
[PGM-1](#) Peter G. Macaluso SPV I, LLC, CLAIM NUMBER 7
4-23-18 [[27](#)]

Final Ruling: No appearance at the June 12, 2018, hearing is required.

Debtor's Objection to Claim #7-1, Filed by Cavalry SPV I, LLC on March 13, 2018 and Attorney Fees in Defense Thereof 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. 7-1 of Cavalry SPV I, LLC and deny the request for attorney's fees.

Lisa Binsfeld, the Debtor ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 7-1. The claim is asserted to be unsecured in the amount of \$11,432.39. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about October 16, 2006, which is more than four years prior to the filing of this case. Hence, when the case was filed on November 21, 2017, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Attorney's Fees Requested

Although requested, Objector has not stated either a contractual or statutory basis for the award of attorney's fees in connection with this Objection. Objector is not awarded any attorney's fees.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

9. [18-22045](#)-B-13 ALLEAN BROWN OBJECTION TO CONFIRMATION OF
[JPJ-1](#) Pro Se PLAN BY JAN P. JOHNSON
Thru #10 5-24-18 [[23](#)]

MATTER CONTINUED TO 7/03/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 6/21/18 AND THE TRUSTEE'S MOTION TO DISMISS HELD 6/26/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

10. [18-22045](#)-B-13 ALLEAN BROWN OBJECTION TO CONFIRMATION OF
[MJ-1](#) Pro Se PLAN BY WELLS FARGO BANK, N.A.
5-15-18 [[19](#)]

MATTER CONTINUED TO 7/03/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD 6/21/18 AND THE TRUSTEE'S MOTION TO DISMISS HELD 6/26/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

11. [18-20749](#)-B-13 JACKIE MELLOW OBJECTION TO CLAIM OF LVNV
[MJD-2](#) Matthew J. DeCaminada FUNDING, LLC, CLAIM NUMBER 4
Thru #12 4-20-18 [[27](#)]

Final Ruling: No appearance at the June 12, 2018, hearing is required.

Debtor's Objection to Allowance of Claim 4-1 of LVNV Funding, LLC 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. 4-1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Jackie Mellow, the Debtor ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of \$1,290.01. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about December 28, 1998, which is more than four years prior to the filing of this case. Hence, when the case was filed on February 12, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

12. [18-20749](#)-B-13 JACKIE MELLOW OBJECTION TO CLAIM OF PINNACLE
[MJD-3](#) Matthew J. DeCaminada CREDIT SERVICES, LLC, CLAIM
NUMBER 6
4-23-18 [[31](#)]

Final Ruling: No appearance at the June 12, 2018, hearing is required.

Debtor's Objection to Allowance of Claim 6-1 of Pinnacle Credit Services, LLC 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. 6-1 of Pinnacle Credit Services, LLC and the claim is disallowed in its entirety.

Jackie Mellow, the Debtor ("Objector"), requests that the court disallow the claim of

Pinnacle Credit Services, LLC ("Creditor"), Claim No. 6-1. The claim is asserted to be in the amount of \$499.15. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last transaction was reported on or about September 7, 2005, which is more than four years prior to the filing of this case. Hence, when the case was filed on February 12, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court will enter an appropriate minute order.

13. [17-20155](#)-B-13 RUMMY SANDHU
[PGM-6](#) Peter G. Macaluso

OBJECTION TO NOTICE OF MORTGAGE
PAYMENT CHANGE AND REQUEST FOR
ATTORNEY FEES
4-24-18 [[100](#)]

Tentative Ruling: The Objection to Notice of Mortgage Payment Change Filed by Wells Fargo Bank, National Association on February 16, 2018, and Request for Attorney Fees as Prevailing Party has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(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 court's decision is to overrule the objection and deny the request for attorney's fees.

Debtor objects to the Notice of Mortgage Payment Change filed on February 16, 2018, by Wells Fargo Bank, N.A. as trustee for Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2006-AR2, Mortgage Pass-Through Certificates, Series 2006-AR2 ("Creditor"). According to the Debtor, Creditor seeks an increased escrow payment from \$65.41 to \$765.64 beginning April 1, 2018, for a new total payment from \$1,132.03 to \$1,897.67. An amended proof of claim no. 8-2 was filed on February 27, 2018, by Creditor. Debtor asserts that it has not seen any documentation to support the Creditor's demand amount.

Creditor has filed a response asserting that the payment change is correct. According to the Creditor, the new \$765.64 escrow payment consists of a regular escrow payment of \$572.18 for property taxes and property insurance and \$193.46 for escrow shortages. The estimated property tax disbursements are \$6,200.18 and the estimated property insurance disbursements are \$666.00 for a total of \$6,866.18, which divided by 12 equals \$572.18. The escrow shortage of \$6,964.52 was caused by the under-estimation of the prior year property tax disbursements. Creditor states that Debtor has the option of paying the \$6,964.52 in full in a lump sum, but for the purposes of the escrow analysis the shortage will be collected over 36 months at \$193.46 per payment.

Discussion

This Objection is a contested matter to the claim being asserted by Creditor. Federal Rule of Bankruptcy Procedure 3002.1(e) provides that, on motion of the debtor or trustee, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code. This contested matter is a core matter arising under Title 11, including 11 U.S.C. § 502. 28 U.S.C. § 157(b)(2)(A), (B), and (O).

The court has reviewed the Notice of Mortgage Payment Change filed February 16, 2018, and amended proof of claim no. 8-2 filed by Creditor. The court finds Creditor's explanation, attachments, and exhibits as to how the it computed the new payment to be clear and convincing.

Based on the evidence before the court, the Debtor's objection to the notice of mortgage payment change is overruled and the request for attorney's fees denied.

The court will enter an appropriate minute order.

14. [16-24559](#)-B-13 STEVEN SIPE
[LES](#)-1 Lucas B. Garcia

CONTINUED STATUS CONFERENCE RE:
MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
4-17-18 [[94](#)]

JAMES CARTER VS.

15. [18-20559](#)-B-13 DANIEL/GUILLERMINA
[JPJ](#)-1 CASTANEDA
Brian Barboza

MOTION TO CONFIRM PLAN
4-24-18 [[31](#)]

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The Motion to Confirm Second Amended Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 second 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 April 24, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

16. [18-20467](#)-B-13 DAVID BRUCE AND ELAINE MOTION TO CONFIRM PLAN
[FF-1](#) CRAWFORD-BRUCE 5-8-18 [[21](#)]
Gary Fraley

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated May 7, 2018, 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 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.

The plan cannot be effectively administered. The plan signed by the Debtors on May 7, 2018, and filed on May 8, 2018, contains nonstandard provisions in Section 7. However, the box at Section 1.02 was not checked so the nonstandard provisions will be given no effect. Therefore, the plan does not properly specify the monthly plan payments.

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.

17. [18-22067](#)-B-13 PETER KAVADELES
[JPJ](#)-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-24-18 [[20](#)]

Tentative Ruling: 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 court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan.

Trustee objects to confirmation on the ground that Debtor did not appear at the meeting of creditors set for May 17, 2018, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to June 7, 2018, to allow Debtor another opportunity to appear and be examined. Debtor and Debtor's counsel appeared and the meeting was concluded as to Debtor.

The plan filed April 19, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, motion to dismiss denied, and the plan is confirmed.

The court will enter an appropriate minute order.

18. [13-35778](#)-B-13 FRANK/JOSIE OLIVAS
[WW-4](#) Mark A. Wolff

CONTINUED EVIDENTIARY HEARING
RE: MOTION OBJECTION TO
DEUTSCHE BANK NATIONAL TRUST
COMPANY'S RESPONSE TO NOTICE OF
FINAL CURE
12-6-17 [[53](#)]

Final Ruling: No appearance at the June 12, 2018, hearing is required.

This matter was continued from January 23, 2018, and again from February 20, 2018, to provide Debtors and Deutsche Bank National Trust Company additional time to work toward a resolution as requested by the creditor. Since no resolution was reached at the March 20, 2018, hearing, the court set an evidentiary hearing for May 14, 2018, at 9:30 a.m. That evidentiary hearing was subsequently continued to June 12, 2018, at 1:00 p.m. See dkt. 84.

An order was entered on May 30, 2018, to further continue the evidentiary hearing to June 26, 2018, at 9:30 a.m. It further ordered that no additional extensions shall be granted. See dkt. 87.

The court will enter an appropriate minute order.

19. [17-27891](#)-B-13 JOHN REAL
FF-2 Diane Egglar

OBJECTION TO CLAIM OF MERCY SAN
JUAN HOSPITAL, CLAIM NUMBER 3
AND/OR MOTION FOR COMPENSATION
BY THE LAW OFFICE OF FRALEY &
FRALEY PC FOR DIANE EGGLEL,
DEBTOR'S ATTORNEY(S)
4-27-18 [[48](#)]

Add #23

Final Ruling: No appearance at the June 12, 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. 3-1 of Mercy San Juan Medical Center and but deny the request for attorney's fees.

John Real, the Debtor ("Objector"), requests that the court disallow the claim of [Creditor Name] ("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$112,774.25. 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 February 9, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 17. The Creditor's proof of claim was filed February 20, 2018.

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."

Additionally, according to the proof of claim the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last transaction date was on or about February 1, 2013, which is more than four years prior to the filing of this case. Hence, when the case was filed on December 1, 2017, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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. Additionally, the underlying debt is time barred by the statute of limitations.

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.

Attorney's Fees Requested

Although requested, Objector has not stated either a contractual or statutory basis for the award of attorney's fees in connection with this Objection. Objector is not awarded any attorney's fees.

The court will enter an appropriate minute order.

20. [18-21994](#)-B-13 ALVIN CATLIN OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Lucas B. Garcia PLAN BY JAN P. JOHNSON AND/OR
Thru #21 MOTION TO DISMISS CASE
5-24-18 [[41](#)]

MATTER CONTINUED TO 6/26/18 AT 1:00 P.M. TO BE HEARD AFTER THE MOTION TO VALUE COLLATERAL FOR CAPITAL ONE AUTO FINANCE HELD 6/19/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

21. [18-21994](#)-B-13 ALVIN CATLIN OBJECTION TO CONFIRMATION OF
[LBG](#)-101 Lucas B. Garcia PLAN BY 2005 RESIDENTIAL TRUST
3-1
5-24-18 [[36](#)]

MATTER CONTINUED TO 6/26/18 AT 1:00 P.M. TO BE HEARD AFTER THE MOTION TO VALUE COLLATERAL FOR CAPITAL ONE AUTO FINANCE HELD 6/19/18.

Final Ruling: No appearance at the June 12, 2018, hearing is required.

The court will enter an appropriate minute order.

22. [17-27015](#)-B-13 GERARDO LOPEZ
[JWC](#)-3 Peter G. Macaluso

MOTION FOR CONTEMPT
5-31-18 [[100](#)]

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 matter will be determined at the scheduled hearing.

23. [17-27891](#)-B-13 JOHN REAL
FF-1 Diane Egger
Add #19

CONTINUED MOTION TO CONFIRM
PLAN
4-23-18 [[39](#)]

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan Dated April 23, 2018, 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 having been filed, the court will address the merits of the motion at the hearing.

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

Feasibility depends on the court sustaining Debtor's objection to claim no. 3 filed by Mercy San Juan Hospital on February 20, 2018, and attorney's fees in defense thereof. That matter was heard at Item #19 and sustained as to the objection to claim no. 3 but denied as to attorney's fees.

Since the objection was sustained, the amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.