

**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: July 6, 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

July 6, 2021 at 1:00 p.m.

1. [16-90219](#)-B-13 SHARON HAMILTON MOTION TO RECONSIDER DISMISSAL
[DCJ-7](#) David C. Johnston OF CASE
5-26-21 [[309](#)]

DEBTOR DISMISSED:
05/12/2021
WITHDRAWN BY M.P.

Final Ruling

The Debtor having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

2. [20-90663](#)-B-13 JUAN DIAZ AND SUPINDER OBJECTION TO CLAIM OF WESTLAKE
[RDG-1](#) LIDHAR FINANCIAL SVC, CLAIM NUMBER 26
Brian S. Haddix 5-24-21 [[54](#)]

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). 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). This matter will therefore be decided on the papers.

The court's decision is to conditionally sustain the objection to Claim No. 26 of Westlake Financial Svc and **continue the matter to July 13, 2021, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Westlake Financial Svc ("Creditor"), Claim No. 26. The claim is asserted to be secured in the amount of \$4,689.27. 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 October 23, 2020. The Creditor's claim was filed December 11, 2020.

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

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

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

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

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

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

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

conditionally sustained.

Conditional Nature of this Ruling

Because the motion 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, July 9, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 3007-1(b)(2). 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 motion will be deemed granted 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 July 13, 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 July 13, 2021, at 1:00 p.m.

The court will issue an order.

3. [21-90164](#)-B-13 EVARISTO AVILA
[RDG-1](#) Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-10-21 [[17](#)]

CONTINUED TO 7/13/2021 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF
CREDITORS SET FOR 7/07/2021.

Final Ruling

No appearance at the July 6, 2021, hearing is required. The court will issue an order.

4. [19-90999](#)-B-13 GUSTAVO JIMENEZ
[JHK](#)-1 Gregory J. Smith

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-1-21 [[100](#)]

TD AUTO FINANCE LLC VS.

Final Ruling

The motion has been set for hearing on 28-days' notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Responses were filed by the Debtor, Chapter 13 Trustee, and TD Auto Finance LLC.

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). This matter will therefore be decided on the papers.

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

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Hyundai Veloster (the "Vehicle"). Movant states that the Vehicle is in default and that the last payment made by Gustavo Jimenez ("Debtor") was in February 2021.

Debtor filed a response stating that a modified plan filed on May 17, 2021, provides for Movant to be paid in full. The modified plan was confirmed on June 22, 2021.

Therefore, Movant's motion for relief from automatic stay will be denied without prejudice.

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

The court will issue an order.

5. [20-90627](#)-B-13 SILVIA HERNANDEZ
[RDG](#)-4 Chinonye Ugorji

CONTINUED MOTION TO DISMISS
CASE
6-7-21 [[79](#)]

Final Ruling

This matter was continued from June 29, 2021, to allow any party in interest to file a response or opposition by 5:00 p.m. on Friday, July 2, 2021. No response or opposition was filed. Therefore, the court's conditional ruling at dkt. 85 shall become the court's final decision. The continued hearing on July 6, 2021, is vacated.

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

The court will issue an order.

6. [19-90496](#)-B-13 BRUCE/LESLIE DUDLEY
[RDG](#)-4 Scott M. Johnson

CONTINUED MOTION TO DISMISS
CASE

6-14-21 [[65](#)]

Final Ruling

This matter was continued from June 29, 2021, to allow any party in interest to file a response or opposition by 5:00 p.m. on Friday, July 2, 2021. No response or opposition was filed. Therefore, the court's conditional ruling at dkt. 69 shall become the court's final decision. The continued hearing on July 6, 2021, is vacated.

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

The court will issue an order.