

**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: November 10, 2020

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

November 10, 2020 at 1:00 p.m.

1. [20-90532](#)-B-13 RICHARD COLE MOTION FOR RELIEF FROM
[APN](#)-1 Muoi Chea AUTOMATIC STAY
10-6-20 [[30](#)]
HARLEY-DAVIDSON CREDIT CORP.
VS.

CONTINUED TO 11/23/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE ORDER TO SHOW CAUSE FOR FAILURE TO PAY THE \$181.00 FEE FOR THE FILING OF THE MOTION FOR RELIEF FROM AUTOMATIC STAY.

Final Ruling

No appearance at the November 10, 2020, hearing is required. The court will enter a minute order.

November 10, 2020 at 1:00 p.m.

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2. [20-90339](#)-B-13 BRIAN/TERI SMITH OBJECTION TO CLAIM OF RESURGENT
RK-1 Richard Kwun CAPITAL SERVICES, CLAIM NUMBER
Thru #5 13
9-17-20 [[41](#)]

Final Ruling

The objection 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 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 sustain the objection to Claim No. 13-1 of Resurgent Capital Services and disallow the claim in its entirety.

Debtors Brian Smith and Teri Smith ("Debtors") request that the court disallow the claim of Resurgent Capital Services ("Creditor"), Claim No. 13-1. The claim is asserted to be in the amount of \$386.83. Debtors assert 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 June 24, 2011, which is more than four years prior to the filing of this case. Hence, when the case was filed on May 12, 2020, 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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

3. [20-90339](#)-B-13 BRIAN/TERI SMITH OBJECTION TO CLAIM OF RESURGENT
RK-2 Richard Kwun CAPITAL SERVICES, CLAIM NUMBER
15
9-17-20 [[45](#)]

Final Ruling

The objection 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 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 sustain the objection to Claim No. 15-1 of Resurgent Capital Services and disallow the claim in its entirety.

Debtors Brian Smith and Teri Smith ("Debtors") request that the court disallow the claim of Resurgent Capital Services ("Creditor"), Claim No. 15-1. The claim is

5. [20-90339](#)-B-13 BRIAN/TERI SMITH
[RK-4](#) Steven S. Altman

OBJECTION TO CLAIM OF RESURGENT
CAPITAL SERVICES, CLAIM NUMBER
14
9-17-20 [[37](#)]

Final Ruling

The objection 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 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 sustain the objection to Claim No. 14-1 of Resurgent Capital Services and disallow the claim in its entirety.

Debtors Brian Smith and Teri Smith ("Debtors") request that the court disallow the claim of Resurgent Capital Services ("Creditor"), Claim No. 14-1. The claim is asserted to be in the amount of \$5,405.96. Debtors assert 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, 2006, which is more than four years prior to the filing of this case. Hence, when the case was filed on May 12, 2020, 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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

6. [20-90458](#)-B-13 DANIEL/DONNA BOUCHER MOTION TO SELL
[JAD-1](#) Jessica A. Dorn 10-19-20 [[30](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). In light of the COVID-19 pandemic and court closures, 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 conditionally grant the motion to sell and **continue the matter to November 17, 2020, at 1:00 p.m.**

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 4421 Diamond Court, Salida, California ("Property"). Since filing, the Debtors have decided to separate and file for a divorce. Debtors have put their home on the market since they can no longer afford the Property after their separation.

Proposed purchaser Genoveva Bravo has agreed to purchase the Property for \$485,000.00. The purchase is all cash. All costs of sale will be paid from the money received for the Property in the sale. Any proceeds over the Debtors' claimed exemption of \$100,000.00 shall be turned over to the Trustee.

The Chapter 13 Trustee objects to the sale on grounds that it would ordinarily request that funds be dispersed pursuant to the terms of the current plan absent any order confirming, but that there is no amended plan filed as stated by the Debtors. The Trustee separately requests that in the event the motion to sell is granted, that standard language is included in the order granting.

A review of the court's docket shows that the Debtors filed an amended plan on November 3, 2020. Therefore, the Trustee's issue is resolved.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The attorney for the Debtors shall prepare an appropriate order that includes the standard language requested by the Trustee. The order shall further provide that all liens are paid in full pursuant to escrow demand and in accordance with the Trustee's standard sale order language. All other objections are overruled.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, November 13, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Movant, 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 November 17, 2020, 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 November 17, 2020, at 1:00 p.m.

The court will issue an order.

7. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN MOTION TO APPROVE LOAN
[EGS-5](#) Jessica A. Dorn MODIFICATION
10-11-20 [[266](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). In light of the COVID-19 pandemic and court closures, 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 **continue the matter to December 8, 2020, at 1:00 p.m.**

Creditor Bayview Loan Servicing, LLC ("Creditor") seeks court approval to enter into a loan modification agreement with debtors Daniel Donnan and Gerardee Donnan ("Debtors"). The proposed loan modification increases the Class 1 ongoing mortgage payment from \$1,262.66 to \$2,135.93 beginning June 1, 2020.

The Chapter 13 Trustee has filed an objection stating that the loan modification requires the Debtors to file a motion to modify plan, the Debtors have failed to file amended Schedules I and J, and they Debtors are delinquent in the amount of \$25,550.00.

The Debtors appear to have resolved some of the issues raised by the Trustee. First, a motion to modify plan was filed on November 2, 2020, and the confirmation hearing is set for December 8, 2020. Second, amended schedules were filed on November 2, 2020. Third, while there is no evidence that the Debtors have cured their delinquency, this issue may be resolved if the Debtors' modified plan is confirmed.

Therefore, the motion to approve loan modification is continued to December 8, 2020, at 1:00 p.m. to be heard in conjunction with Debtors' motion to modify plan.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined 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 confirm fourth amended plan.

The Debtor is delinquent to the Chapter 13 Trustee. The Debtor must pay \$14,100.00 by the date of the hearing on this matter to be current. The Debtor does not appear to be able to make plan payments proposed and has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

The court will issue an order.

9. [19-91083](#)-B-13 SANDRA NEVILLE
[RK-3](#) Richard Kwun

OBJECTION TO CLAIM OF RESURGENT
CAPITAL SERVICES, CLAIM NUMBER
3
9-20-20 [[53](#)]

Final Ruling

The objection 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 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 sustain the objection to Claim No. 3-1 of Resurgent Capital Services and disallow the claim in its entirety.

Debtor Sandra Neville ("Debtor") requests that the court disallow the claim of Resurgent Capital Services ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of \$791.69. Debtor 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 November 14, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed on December 16, 2019, 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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

10. [20-90398](#)-B-13 DAVID SIERRA
[SSA](#)-3 Steven S. Altman

MOTION FOR COMPENSATION FOR
STEVEN S. ALTMAN, DEBTORS
ATTORNEY(S)
10-15-20 [[33](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). In light of the COVID-19 pandemic and court closures, 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 conditionally grant the motion for compensation and **continue the matter to November 17, 2020, at 1:00 p.m.**

Fees and Costs Requested

Steven Altman ("Applicant"), the attorney to Chapter 13 Debtor, makes a request for the allowance of \$6,265.00 in fees and \$368.10 in expenses. Counsel for the Debtor has opted out of the no-look fee in this case. Dkt. 21. The period for which the fees are requested is for June 5, 2020, through October 12, 2020.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 37, exhs. 1-3.

Statutory Basis for Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

November 10, 2020 at 1:00 p.m.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtor and bankruptcy estate and reasonable.

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

Fees	\$6,265.00
Costs and Expenses	\$ 368.10

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, November 13, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Movant, 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 November 17,

2020, 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 November 17, 2020, at 1:00 p.m.

The court will issue an order.