

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: February 14, 2023

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
Sacramento, California

February 14, 2023 at 1:00 p.m.

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1. [22-22902](#)-B-13 WILLIAM BURGESS CONTINUED MOTION FOR RELIEF
[CCM](#)-1 David C. Johnston FROM AUTOMATIC STAY
Thru #2 12-13-22 [[16](#)]
SOUTHERN CALIFORNIA SECONDS,
INC. VS.

Final Ruling

Before the court is a motion for relief from the automatic stay filed by secured creditor Southern California Seconds, Inc. ("Secured Creditor"). Secured Creditor requests relief from the automatic stay of 11 U.S.C. § 362(a) to exercise its state law rights and remedies with regard to real property located at 8391 East Sedan Ave., Manteca, California.

The motion was filed on December 13, 2022. It was set for hearing and served under Local Bankr. R. 9014-1(f)(1) with an initial hearing date of January 24, 2023. The hearing was continued to February 14, 2023, to follow the continued § 341 creditors' meeting on February 8, 2023, at which the Debtor failed to appear.

The Chapter 13 Trustee filed a response but does not oppose the motion. The motion is not opposed by the Debtor. The Debtor's default is entered pursuant to Fed. R. Civ. P. 55 applicable by Fed. R. Bankr. P. 7055.

The court has reviewed the motion and all related documents. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). The court has determined that oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

There is cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) insofar as the Debtor is not making payments to Secured Creditor or the Trustee, postpetition payments included. *Dangcil v. JP Morgan Chase Bank, N.A. (In re Dangcil)*, 2017 WL 1075045, *7 (9th Cir. BAP March 21, 2017); *Aguilar v. Ocwen Loan Servicing, LLC (In re Aguilar)*, 2014 WL 6981285, *4 (9th Cir. BAP Dec. 10, 2014), *aff'd*, 2017 WL 393763 (9th Cir. Jan. 30, 2017).

The motion will be granted and the automatic stay terminated to permit Secured Creditor, and any other party with standing, to exercise their rights and remedies with regard to the above-referenced property under applicable non-bankruptcy law, including foreclosure. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

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

The court will issue an order.

February 14, 2023 at 1:00 p.m.

2. [22-22902](#)-B-13 WILLIAM BURGESS CONTINUED OBJECTION TO
 [RDG](#)-1 David C. Johnston CONFIRMATION OF PLAN BY TRUSTEE
 RUSSELL D. GREER
 1-3-23 [[23](#)]

CONTINUED TO 3/14/2023 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 3/08/2023.

Final Ruling

No appearance at the February 7, 2023, hearing is required. The court will issue an
order.

3. [22-23005](#)-B-13 TERRY FASY MOTION TO VALUE COLLATERAL OF
[PGM-2](#) Peter G. Macaluso WELLS FARGO BANK N.A.
Thru #4 1-16-23 [[33](#)]

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 value the secured claim of Wells Fargo Bank N.A. at \$52,000.00.

Debtor moves to value the secured claim of Wells Fargo Bank N.A. ("Creditor"). Debtor is the owner of a 2020 Tesla ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$52,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 2-1 filed by Wells Fargo Bank N.A., d/b/a Wells Fargo Auto is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on December 18, 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$60,514.39. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$52,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

4. [22-23005](#)-B-13 TERRY FASY MOTION TO VALUE COLLATERAL OF
[PGM-3](#) Peter G. Macaluso CALIFORNIA EMPLOYMENT
DEVELOPMENT DEPARTMENT
1-16-23 [[38](#)]

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 deny without prejudice the motion to value secured claim of California Employment Development Department.

Debtor moves to value the secured claim of California Employment Development Department ("Creditor"). Debtor is the owner of a various personal property including household goods, appliances, clothes, costume jewelry, solar panels, tools, cash, and bank accounts (collectively "Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$38,550.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 4-1 filed by Employment Development Department is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by Claim No. 4-1 filed by Employment Development Department is \$255,237.43. The Debtor states in his declaration that the price a retail merchant would charge for the Personal Property is \$38,550.00 based on his personal knowledge and "review of want ads, newspapers, sales ads and Craigslist." The Debtor's valuation is therefore based on hearsay and cannot be considered by the court.

The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will issue an order.

5. [22-21861](#)-B-13 BASILIO MIRANDA MOTION TO WAIVE SECTION 1328
[CLH](#)-1 Charles L. Hastings CERTIFICATE REQUIREMENT,
CONTINUE CASE
ADMINISTRATION, SUBSTITUTE
PARTY, AS TO DEBTOR
1-31-23 [[34](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has 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 substitute widow Rosalba Rodriquez to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge and continue the hearing to February 21, 2023 at 1:00 p.m.**

Widow non-debtor Rosalba Rodriquez gives notice of the death of her husband Debtor Basilio Miranda and requests the court to substitute Rosalba Rodriquez in place of Basilio Miranda for all purposes within this Chapter 13 proceeding.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Rosalba Rodriquez for Basilio Miranda as successor-in-interest, and to waive the § 1328 and financial management requirements for Basilio Miranda. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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, February 17, 2023, 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 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 February 21, 2023, 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 February 21, 2023, at 1:00 p.m.

6. [22-22683](#)-B-13 MONIQUE ZE CONTINUED OBJECTION TO
[JCW](#)-1 Richard L. Sturdevant CONFIRMATION OF PLAN BY CENLAR
Thru #7 FSB
12-6-22 [[31](#)]

CONTINUED TO 3/14/2023 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 3/08/2023.

Final Ruling

No appearance at the February 7, 2023, hearing is required. The court will issue an
order.

7. [22-22683](#)-B-13 MONIQUE ZE CONTINUED OBJECTION TO
[RDG](#)-1 Richard L. Sturdevant CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-20-22 [[36](#)]

CONTINUED TO 3/14/2023 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 3/08/2023.

Final Ruling

No appearance at the February 7, 2023, hearing is required. The court will issue an
order.

8. [18-25195](#)-B-13 DANNY/CHERYL PHIPPS
[MKM](#)-1 Michael K. Moore

MOTION TO MODIFY PLAN
1-6-23 [[45](#)]

Final Ruling

The motion 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). 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 requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

Final Ruling

Introduction

Before the court is a motion to confirm a first amended Chapter 13 plan filed by Debtor Gregorio Dasalla ("Debtor"). The Chapter 13 Trustee ("Trustee") filed an opposition and objects to confirmation. The Debtor filed a reply.

The court has reviewed the motion, opposition, reply, and all related documents. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). The court has determined that oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

For the reasons explained below, the motion to confirm the first amended plan will be denied without prejudice and the first amended plan will not be confirmed.

Discussion

The primary dispute concerns the claim of Americredit Financial which matures before the Debtor's Chapter 13 plan is completed. The mandatory form Chapter 13 plan used in this district classifies claims that mature before the plan is completed as Class 2 claims to be paid by the Trustee. The first amended plan includes nonstandard provisions in which the Debtor proposes to pay Americredit claim directly, which arguably re-classifies the Americredit claim as a Class 4 claim under the mandatory form plan's classification structure.

As the Debtor notes, nothing prohibits a debtor from making payments directly to a creditor. See *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), adopted and affirmed, 550 F.3d 1202 (9th Cir. 2008). Even this court's local rules recognize that under appropriate circumstances and in an appropriate case the court may deviate from the claim classification structure in the mandatory form Chapter 13 plan. See Local Bankr. R. 1001-1(f). At the same time, a debtor's right to make direct payments is not absolute. The bankruptcy court may, in its discretion, determine if direct payments should be allowed and condition the circumstances under which direct payments may be made. *Id.* at 46-47, 53; *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 685 & 690-91 (9th Cir. BAP 2010). Indeed, as the Debtor aptly recognizes, determining whether to allow a debtor to make direct payments requires fact-finding by the court. See dkt. 56 at 2:12-14.¹

In the fact-finding process, the court must confirm a plan if it finds that the plan "complies with the provisions of [Chapter 13]." 11 U.S.C. § 1325(a)(1). As the plan proponent, the Debtor bears the burden of establishing that the plan complies with all applicable Chapter 13 provisions. *Drummond v. Welsh (In re Welsh)*, 465 B.R. 843, 847 (9th Cir. BAP 2012). This includes 11 U.S.C. § 1326(c) which *Lopez* cites as the source of the debtor's authority to make direct payments. See *Lopez*, 372 B.R. at 46. The Debtor has not met that burden.

The Debtor has not demonstrated by admissible evidence why, in this case, the court should exercise its discretion and allow the Debtor to deviate from the mandatory form Chapter 13 plan classification structure, which would require classification of the Americredit claim as a Class 2 claim, and instead allow the Debtor to pay Americredit directly. All the Debtor has submitted is legal argument by his attorney in the motion

¹On this point the Debtor correctly cites *Geisbrecht* for the proposition that "bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate." *Id.* at 2:8-9.

and in the response to the Trustee's objection to the effect that nothing prohibits the Debtor from making direct payments and so the Debtor can make direct payments to Americredit in this case. See dkt. 56 at 2:1-14. The problem is the attorney's statements are not evidence. *Singh v. INS*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000) (statements by counsel in briefs are not evidence).²

Based on the record before it, the court will deny confirmation of the first amended plan. Denial is without prejudice to the re-filing of a second amended plan supported by admissible evidence that demonstrates why the court should deviate from the classification structure in the mandatory form Chapter 13 plan and allow the Debtor to make direct payments to Americredit.

In the event the Debtor elects to re-file a plan that proposes direct payments to Americredit rather than classification of the claim under Class 2, the Debtor shall also note on the Notice of Hearing that an evidentiary hearing is requested. If an evidentiary hearing is requested, the Debtor and his attorney will be required to appear in person on the confirmation hearing date. Telephonic and video appearances will not be permitted. If the Debtor re-files a plan that does not deviate from the classification structure in the mandatory form Chapter 13 plan with regard to the Americredit claim, the confirmation hearing may be set in the ordinary course.

The court also finds merit in the Trustee's second objection. The Trustee asserts that since Americredit will be paid off in December 2022/January 2023, there will be an additional \$837.00 of disposable income in January 2023 and the first amended plan does not provide for an increase in plan payments at that time. Currently, the plan is proposed to pay 100% of unsecured creditors over a 60-month term at a payment of \$2,000.00 per month. However, after Americredit is paid off, the Trustee asserts that the Debtor may have approximately \$1,219.45 to contribute to the plan and that the plan would end in 31 months. At Debtor's current proposed plan payment, creditors are left to wait an additional 19 months to receive payment of their claims.

Any amended plan and motion to confirm it shall be filed, set, and served by February 21, 2023.

Conclusion

The motion to confirm the first amended plan is ORDERED DENIED WITHOUT PREJUDICE and the first amended plan is NOT CONFIRMED for the reasons stated in the minutes.

The court will issue an order.

10.	22-22398 -B-13	GREGORIO DASALLA	MOTION TO VACATE
	CRG -2	Carl R. Gustafson	12-22-22 [35]

Final Ruling

Debtor Gregorio Dasalla ("Debtor") has filed a motion to vacate the court's order sustaining the Chapter 13 Trustee's objection to confirmation of the *original* plan. See dkt. 27. The Chapter 13 Trustee filed an opposition. The Debtor filed a reply.

The court has reviewed the motion, opposition, reply, and all related documents. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). The court has determined that oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

²The Debtor's declaration is not helpful in this endeavor either insofar as it merely notes that the first amended plan lists the Americredit claim as a direct-pay claim and includes a conclusory statement that the Debtor will be able to make all plan payments. See dkt. 32 at ¶¶ 6, 7.

For the reasons explained below, the motion to vacate will be denied as moot.

On December 22, 2022, the Debtor filed a first amended plan and motion to confirm it concurrently with the present motion to vacate.

The first amended plan is now the operative plan. See 11 U.S.C. § 1323(b); *In re Gibson*, 556 B.R. 743, 745 (Bankr. D.S.C. 2016) ("Section 1323(b) provides that a debtor may modify a plan any time before confirmation. Upon filing the modified plan becomes the plan, replacing the previously filed document."); 8 *Collier on Bankruptcy* P 1323.03 (16th 2022) ("Once a modified plan has been filed, it is that plan which the court must consider in ruling on confirmation.").

And because the first amended plan is now the operative plan, it moots confirmation issues related to the original plan. See e.g., *Nielsen v. DLC Invest., Inc. (In re Nielsen)*, 211 B.R. 19, 22-23 (8th Cir. BAP 1997) (error for the bankruptcy court to consider confirmation issues related to original plan after a modified plan is filed before confirmation because under § 1323(b) "[t]he modified plan replaced the original plan and the good faith and best interest of creditors requirements under the Bankruptcy Code must be considered under the plan the Debtor is attempting to confirm.").

Even if the court could consider issues related to confirmation of the original plan after the Debtor filed the first amended plan, vacating the order denying confirmation of the original plan would not provide the Debtor with the relief he seeks, i.e., confirmation of the original plan. The original plan was not confirmed, in part because, without explanation, the Americredit claim, a claim that matures before the plan is completed, was not included in the mandatory form Chapter 13 plan as a Class 2 claim as it was apparently being paid directly by the Debtor. See dkts. 23 at 2:9-15, 27, 28. Inasmuch as confirmation of the first amended plan is denied for the same reason, as explained in the Final Ruling on Item No. 9 (dkt. 29, CRG-1), the original plan is likewise not confirmable. In other words, although a debtor may make direct payments to a creditor, the Debtor has not carried his burden of demonstrating why, in this case, he should be permitted to deviate from the mandatory form Chapter 13 plan and pay Americredit directly rather than through Class 2 with regard to both the original and first amended plans.

The court will consider all confirmation issues as they pertain to the first amended plan which is Calendar Item No. 9, docket 29, CRG-1.

The motion to vacate is ORDERED DENIED AS MOOT for the reasons stated in the minutes.

The court will issue an order.

11.	22-22398 -B-13 CRG-3	GREGORIO DASALLA Carl R. Gustafson	OBJECTION TO CLAIM OF FIRST TECH FEDERAL CREDIT UNION, CLAIM NUMBER 2 12-22-22 [38]
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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). Opposition was filed.

The court has 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 overrule the objection to Claim No. 2 of First Tech Federal Credit Union.

Debtor Gregorio Dasalla ("Debtor") requests that the court disallow the claim of First Tech Federal Credit Union ("Creditor"), Claim No. 2. The claim is asserted to be in the amount of \$15,790.60. The Debtor asserts that the claim should be disallowed because the proof of claim does not provide adequate supporting documentation listing a date of the last transaction and date of last payment.

Creditor filed a response acknowledging the that the originally filed claim did not strictly comply with the requirements of Fed. R. Bankr. P. 3001(c)(3)(A). However, Creditor has subsequently filed an amended Claim No. 2-2 that shows the date of the last transaction to be December 18, 2021, and the date of last payment to be November 30, 2021.

Discussion

According to the amended proof of claim, the underlying debt is a contract claim. 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 amended proof of claim, the last payment was received on or about November 30, 2021, which is less than four years prior to the filing of this case. Hence, when the case was filed on September 22, 2022, this debt was not time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337, and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is valid.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

The court will issue an order.

12. [22-22398](#)-B-13 GREGORIO DASALLA
[CRG](#)-4 Carl R. Gustafson
OBJECTION TO CLAIM OF UNITED
STATES DEPARTMENT OF EDUCATION,
CLAIM NUMBER 6
12-23-22 [[44](#)]

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 overrule as moot the objection to Claim No. 6 of United States Department of Education.

Debtor Gregorio Dasalla ("Debtor") requests that the court disallow the claim of United States Department of Education ("Creditor"), Claim No. 6. Debtor states that he received a letter on November 17, 2022, from the U.S. Department of Education stating that it has determined that the loans received to attend a school owned and operated by Corinthian Colleges Inc., are eligible for full loan discharge. This means the remaining balance on the loans will be forgiven and that the Debtor does not have to make any more payments on the loans. The letter further informed Debtor that he did not have to take any further action to receive the discharge.

Great Lakes Educational Loan Services, Inc. filed an amended proof of claim, Claim No.

6-2, stating its withdrawal of the proof of claim in the amount of \$25,002.80 since it was filed in error. The court's docket currently lists the amount claimed as \$0.00.

The creditor having withdrawn its proof of claim, the Debtor's objection is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

13. [22-22899](#)-B-13 MARLENE DOUGLAS CONTINUED OBJECTION TO
[RDG](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY RUSSELL
D. GREER
12-29-22 [[24](#)]

Final Ruling

The case having been dismissed on February 3, 2023, the objection to confirmation of plan is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

14. [22-21460](#)-B-13 SAMUEL/NOREEN TABOFUNDA CONTINUED MOTION TO RECONVERT
[RDG](#)-1 G. Michael Williams CASE FROM CHAPTER 13 TO CHAPTER
7
1-13-23 [[62](#)]

Final Ruling

This matter was continued from February 7, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 10, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 72, granting the motion to convert case from a chapter 13 to a chapter 7, shall become the court's final decision. The continued hearing on February 14, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.