

**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 20, 2024

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 20, 2024 at 1:00 p.m.

1. [20-21602](#)-B-13 JOSE/LETICIA GONZALEZ MOTION TO MODIFY PLAN
[GSJ](#)-5 Grace S. Johnson 12-14-23 [[129](#)]

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 fourth 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 Debtors 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.

February 20, 2024 at 1:00 p.m.

2. [20-22226](#)-B-13 DEREK NEWTON
[LGT-1](#) Peter G. Macaluso
Thru #3

OBJECTION TO CLAIM OF SALLIE
MAE BANK, CLAIM NUMBER 12-1
1-11-24 [[35](#)]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, 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 sustain the objection to Claim No. 12-1 of Sallie Mae Bank and continue the matter to February 27, 2024, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Sallie Mae Bank("Creditor"), Claim No. 12-1. The claim is asserted to be unsecured in the amount of \$10,431.64. 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 July 6, 2020. The Creditor's claim was filed November 20, 2023.

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 disallowed in its entirety as untimely. The objection to the proof of claim will be sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, February 23, 2024, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 27, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on February 27, 2024, at 1:00 p.m.

3. [20-22226](#)-B-13 DEREK NEWTON OBJECTION TO CLAIM OF SALLIE
[LGT](#)-2 Peter G. Macaluso MAE BANK, CLAIM NUMBER 13-1
1-11-24 [[38](#)]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, 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 sustain the objection to Claim No. 13-1 of Sallie Mae Bank and continue the matter to February 27, 2024, at 1:00 p.m.

The Chapter 13 Trustee requests that the court disallow the claim of Sallie Mae Bank ("Creditor"), Claim No. 13-1. The claim is asserted to be unsecured in the amount of \$14,608.06. 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 July 6, 2020. The Creditor's claim was filed November 20, 2023.

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 disallowed in its entirety as untimely. The objection to the proof of claim will be sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, February 23, 2024, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 27, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on February 27, 2024, at 1:00 p.m.

4. [23-24536](#)-B-13 FRANK/KRISTEN VAN KEMPEN OBJECTION TO CONFIRMATION OF
[LGT-1](#) Michael Benavides PLAN BY LILIAN G. TSANG
Thru #5 1-29-24 [[26](#)]

CONTINUED TO 2/27/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 2/22/24.

Final Ruling

No appearance at the February 20, 2024, hearing is required. The court will issue an
order.

5. [23-24536](#)-B-13 FRANK/KRISTEN VAN KEMPEN OBJECTION TO CONFIRMATION OF
[PA-1](#) Michael Benavides PLAN BY DINWIDDIE-HINES
CONSTRUCTION, INC.
2-1-24 [[41](#)]

CONTINUED TO 2/27/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 2/22/24.

Final Ruling

No appearance at the February 20, 2024, hearing is required. The court will issue an
order.

6. [23-24359](#)-B-13 MARLON PAMPLONA AND DIANA OBJECTION TO CONFIRMATION OF
[LGT](#)-1 AVILES-PAMPLONA PLAN BY LILIAN G. TSANG
Eric L. Seyvertsen 1-30-24 [[18](#)]

Final Ruling

The *initial* Chapter 13 Plan filed December 5, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to February 27, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, the Debtors' gross income listed in Form 122C-1 does not correspond with the pay stubs provided to the Chapter 13 Trustee. Until a detailed month-by-month analysis is provided by the Debtors to the Trustee, it cannot be determined whether the plan provides all of the Debtors' projected disposable income to be received in the applicable commitment period to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Second, Debtors' plan provides for attorney fees of \$3,000.00, of which \$500.00 was paid prior to filing with a balance of \$2,500.00 to be paid through the plan at \$357.14 a month. The plan fails to comply with Local Bankruptcy Rule 2016-1(c)(4)(B), which provides for payments by the Chapter 13 Trustee to debtors' counsel in equal monthly installments over the term of the most recently confirmed Chapter 13 Plan a sum equal to the flat fee less any retainer received. Debtors' attorney is limited to a monthly dividend of \$41.67 ($\$41.67 \times 60 = \$2,500.02$).

Third, the petition fails to list all prior names used by joint debtor Diana Aviles-Pamplona within the last 8 years. Until Debtors file an amended petition, the plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

The plan filed December 5, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on February 23, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 27, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on February 27, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.

The court will issue an order.

7. [23-22580](#)-B-13 LINDA GRANATO MOTION TO CONFIRM PLAN
 [LRR](#)-3 Len ReidReynoso 1-9-24 [[62](#)]

Final Ruling

The case having been dismissed on February 9, 2024, the motion to confirm plan is denied as moot.

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

The court will issue an order.

8. [23-21890](#)-B-13 ESTHER CHAVEZ
[LGT-2](#) James D Hornbuckle

MOTION TO CONFIRM PLAN
1-8-24 [[61](#)]

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 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 not confirm the first amended plan.

First, there are various procedural defects. The Debtor has improperly repeated usage of a docket control number for the present motion to confirm plan as required by Local Bankr. R. 9014-1(c)(3), the Debtor has failed to file a declaration in support of the motion as required by Local Bankr. R. 3015-1(d)(1) and 11 U.S.C. § 1324(a), and the Debtor has failed to use official certificate of service form EDC 007-005 as required by Local Bankr. R. 7005-1.

Second, feasibility depends on Debtor filing and the court granting a motion to avoid lien of second mortgage lender MRC/United Wholesale. Nothing has been filed by the Debtor to date.

Third, the proposed payments of \$1,150.00 per month in months 1 through 5 and \$1,250.00 per month thereafter is not sufficient to pay secured creditors and the Trustee's compensation and expenses, which total \$2,675.14 per month. 11 U.S.C. § 1325(a)(6).

Fourth, Debtor's plan provides for Select Portfolio Servicing as a Class 1 claim to be paid the post-petition mortgage payment of \$1,336.20 per month. Debtor's plan payment was insufficient for the Chapter 13 Trustee to disburse post-petition mortgage payments to the creditor for the months of July 2023 and November 2023 and, accordingly, the claim is in arrears \$2,672.40. Debtor's plan does not propose a cure for the post-petition default and is not feasible. 11 U.S.C. § 1325(a)(6).

Fifth, Debtor's Amended Schedule J at line 21 includes an improper mortgage expense of \$1,354.00 payable to Select Portfolio Servicing for the first mortgage on the Paragon Avenue property. This creditor is already listed in Class 1 claim in the plan.

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.

Final Ruling

The *initial* Chapter 13 Plan filed December 22, 2023, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to **continue the hearing to February 27, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.**

First, Debtor has failed to provide the Chapter 13 Trustee with a copy of his most recent federal and state income tax returns. 11 U.S.C. §§ 1325(a)(6), (b)(1).

Second, Debtor has failed to provide the Trustee with copies of his payment advices as required by 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankr. R. 1007-1. See also 11 U.S.C. §§ 1325(a)(6), (b)(1).

Third, Debtor cannot afford to make the payments or comply with the plan since feasibility relies on the filing and granting of a motion to value collateral of Fast Auto Loan, Inc. 11 U.S.C. § 1325(a)(6). To date the debtor has failed to file a motion to value collateral.

Fourth, Paragraph 2.01 of Debtor's plan provides for a monthly plan payment of \$600.00 for 36 months. Debtor has failed to provide admissible evidence that his plan is mathematically feasible. The Trustee's calculations indicate that Debtor's plan payment will need to be at least \$1,891.00 to be feasible as proposed paying unsecured creditors 100%. 11 U.S.C. § 1325(a)(6).

Fifth, Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6) since his projected disposable monthly income as listed on Schedule J is \$328.00. The proposed plan payment is \$600.00.

The plan filed December 22, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), party in interest shall have until 5:00 p.m. on February 23, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 27, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on February 27, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.

The court will issue an order.