

**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 21, 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 21, 2023 a 1:00 p.m.

1. [22-23005](#)-B-13 TERRY FASY MOTION TO CONFIRM PLAN
 [PGM](#)-1 Peter G. Macaluso 1-13-23 [[26](#)]

CONTINUED TO 3/04/23 AT 1:00 P.M.

Final Ruling

No appearance at the February 21, 2023, hearing is required. The court will issue an order.

2. [22-21609](#)-B-13 FRANCISCO/MARIA PADILLA MOTION TO EMPLOY REAL ESTATE
[PGM](#)-1 Peter G. Macaluso PROFESSIONALS AS REALTOR(S)
2-2-23 [[53](#)]

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 deny the motion as unnecessary.

Debtors Francisco Padilla and Maria Padilla ("Debtors") seek to employ Jesus Sandoval of Real Estate Professionals to assist the Debtors in the marketing and the sale of the real commercial property commonly known as 120 W. Harding Way, Stockton, California. Mr. Sandoval has substantial experience in the valuation, marketing and sale of real property in San Joaquin County, California, where the property is located. He has reviewed the history of ownership of the property, evaluated its condition, and is prepared to list it for sale. Mr. Sandoval has not received any retainers or advanced fees for his services, and does not represent or hold any interest adverse to the Debtors or the estate.

This court has previously held that 11 U.S.C. § 327 does not apply to Chapter 13 debtors who employ professionals, including real estate professionals. See e.g., *In re Jackson*, 17-25179 at dkt. 52; *In re Fonseca*, 16-28212 at dkts. 42, 43. See also *Smith v. Yncera (In re Yncera)*, 2009 WL 7751418 at *5 n.15 (9th Cir. BAP June 26, 2009).

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

The court will issue an order.

3. [22-23010](#)-B-13 SALVADOR CHAPARRO
[RDG](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-31-23 [[59](#)]

Final Ruling

The objection 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 filed a non-opposition to the objection to confirmation. The court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to sustain the objection and not confirm the plan.

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

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 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, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtors' proposed plan payment is \$5,675.00 per month but their Schedules I and J show that they have a monthly net income of only \$5,075.00 per month. Therefore, the Debtors' cannot afford the proposed plan payments.

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). The plan proposes payments of \$5,675.00 for 60 months. Debtors have failed to make all payments due to date and have paid partial payments. Thus, the Debtors are delinquent \$6,150.00 through January 2023.

Third, the plan relies on motions to value collateral for Rudolph Inc., Comenity Bank, SYNCB. To date, the Debtors have failed to file these motions to value collateral. If they are not filed and granted, the plan does not have sufficient monies to pay the claims in full.

Fourth, the plan provides for Harley Davidson as a Class 2 claim in the amount of \$5,980.78 to be paid at 8.50% interest a monthly dividend of \$122.70. Harley Davidson filed a proof of claim 16-1 with a secured portion of \$15,432.23. Debtors' plan is a 60-month plan, and the average monthly dividend proposed for the Class 2 claim of Harley Davidson will take 314 months to pay said claim in full. 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.

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. 8 of OE Federal Credit Union and continue the matter to February 28, 2023, at 1:00 p.m.

The Chapter 13 Trustee requests that the court disallow the claim of OE Federal Credit Union ("Creditor"), Claim No. 8. The claim is asserted to be in the amount of \$6,685.05. 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 12, 2022. The Creditor's claim was filed July 18, 2022.

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 is conditionally 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 24, 2023, 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 28, 2023, 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 28, 2023, at 1:00 p.m.

6. [22-22533](#)-B-13 ALONZO STEENS
[RDG](#)-1 Jason N. Vogelpohl

OBJECTION TO CLAIM OF SANTANDER
CONSUMER USA INC., CLAIM NUMBER
14-1
1-18-23 [[22](#)]

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. 14-1 of Santander Consumer USA Inc. and continue the matter to February 28, 2023, at 1:00 p.m.

The Chapter 13 Trustee requests that the court disallow the claim of Santander Consumer USA Inc. ("Creditor"), Claim No. 14-1. The claim is asserted to be in the amount of \$4,672.18. 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 December 13, 2022. The Creditor's claim was filed January 4, 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 is conditionally 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 24, 2023, 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 28, 2023, 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 28, 2023, at 1:00 p.m.

7. [22-23153](#)-B-13 PATRICIA MORENO
[RDG](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-31-23 [[21](#)]

Final Ruling

The objection 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). 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). A written reply has been filed to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the Debtor has not filed amended Schedules I and J to accurately reflect her current income. Without these documents, it cannot be determined whether the plan is feasible and pays all projected disposable income to general unsecured creditors. 11 U.S.C. § 1325(a)(6), (b)(1).

Debtor filed a response stating that she filed amended Schedules I and J to reflect her new employment. A review of the court's docket shows that amended schedules were filed on February 14, 2023.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed December 19, 2023, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

8. [22-22863](#)-B-13 MARIA ANAYA
[TMO](#)-1 T. Mark O'Toole

MOTION TO CONFIRM PLAN
1-16-23 [[32](#)]

Final Ruling

The motion 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) 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.

9. [22-21184](#)-B-13 BERTHA VALENTINE
[22-2086](#) BLF-1
VALENTINE V. HOLMES, III ET AL

MOTION TO REQUEST ASSIGNMENT TO
THE BANKRUPTCY DISPUTE
RESOLUTION PROGRAM
1-26-23 [[111](#)]

Final Ruling

No appearance at the hearing on February 21, 2023, is required. The motion is granted by order filed on February 15, 2023. Dkt. 135. This matter is removed from calendar.

10. [22-23195](#)-B-13 WILLIAM/CINDY STACY
[RDG](#)-1 David A. Boone

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-31-23 [[22](#)]

Final Ruling

The objection 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). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

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

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtors filed an amended plan on February 3, 2023. The confirmation hearing for the amended plan must be set. Nonetheless, the earlier plan filed December 9, 2022, is not confirmed.

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

The court will issue an order.

11. [22-21861](#)-B-13 BASILIO MIRANDA
[CLH](#)-1 Charles L. Hastings

CONTINUED MOTION TO WAIVE
SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE
PARTY, AS TO DEBTOR
1-31-23 [[34](#)]

Final Ruling

This matter was continued from February 14, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 17, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 42, granting the motion for substitution, continued administration of the case, and waiver of post-petition education requirement for discharge, shall become the court's final decision. The continued hearing on February 21, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 42.

The court will issue an order.