

**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: March 7, 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

March 7, 2023 at 1:00 p.m.

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1. [22-21126](#)-B-13 DOUGLAS/NYLA STONE MOTION FOR COMPENSATION BY THE
[CRG](#)-4 Carl R. Gustafson LAW OFFICE OF LINCOLN LAW, LLP
Thru #8 FOR CARL R. GUSTAFSON, DEBTORS
ATTORNEY(S)
1-31-23 [[120](#)]

Final Ruling

Debtors' attorney requests compensation in the amount of \$11,675.00 for work preparing and filing Debtors' bankruptcy, preparing an appeal, and other legal services. Counsel provided 41.30 hours of service. This includes 25.30 hours of attorney time at a voluntarily-reduced rate of \$400.00/hr. (from a \$475.00 hourly rate contracted for) and 16.00 hours of paralegal time at \$150.00/hour.

The Disclosure of Compensation of Attorney for Debtors (dkt. 1, p. 57), the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys (dkt. 5), and the confirmed plan filed 9/09/22 (dkt. 63) reflect that Debtors' attorney was paid \$845.00 before the case was filed and that any other legal services rendered would be charged "TBD". The confirmed plan also shows at Section 3.05 that fees would be requested under 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

Although the court appreciates the voluntary reduction in the attorney's hourly rate, this court recently, *i.e.*, November 2022, reduced this attorney's hourly rate to \$375.00. See *e.g.*, *In re Dokkham*, case no. 22-90153, dkts. 110, 112. The court's analysis in *Dokkham* is equally applicable here and is incorporated herein in its entirety by this reference. The court will make the same reduction here.

Based on the reduction, fees and expenses are approved and allowed as follows:

Attorney @ \$375.00/hr	25.30 hours	\$ 9,487.50
Paralegal @ \$150.00/hr.	16.00 hours	\$ 2,400.00
Total	41.30 hours	\$11,887.50
Fees Paid Prepetition		\$ (845.00)
Additional Compensation		\$11,042.50
Expenses Incurred		\$ 552.30
Total fees & Expenses		\$11,594.80

The motion is ORDERED GRANTED in part as stated in the minutes.

The court will issue an order.

March 7, 2023 at 1:00 p.m.

2. [22-21126](#)-B-13 DOUGLAS/NYLA STONE
[RDG-3](#) Carl R. Gustafson

OBJECTION TO CLAIM OF MOORE
WEST FEDERAL CREDIT UNION,
CLAIM NUMBER 9
1-31-23 [[99](#)]

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. 9 of Moore West Federal Credit Union and continue the matter to March 14, 2023, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Moore West Federal Credit Union ("Creditor"), Claim No. 9. The claim is asserted to be in the amount of \$9,894.16. 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 25, 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, March 10, 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 March 14, 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 March 14, 2023, at 1:00 p.m.

3. [22-21126](#)-B-13 DOUGLAS/NYLA STONE
[RDG](#)-4 Carl R. Gustafson
OBJECTION TO CLAIM OF MOORE
WEST FEDERAL CREDIT UNION,
CLAIM NUMBER 10
1-31-23 [[102](#)]

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. 10 of Moore West Federal Credit Union and continue the matter to March 14, 2023, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Moore West Federal Credit Union ("Creditor"), Claim No. 10. The claim is asserted to be in the amount of \$54,051.63. 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 25, 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.

March 7, 2023 at 1:00 p.m.

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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, March 10, 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 March 14, 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 March 14, 2023, at 1:00 p.m.

4. 22-21126 -B-13 DOUGLAS/NYLA STONE RDG -5 Carl R. Gustafson	OBJECTION TO CLAIM OF MOORE WEST FEDERAL CREDIT UNION, CLAIM NUMBER 11 1-31-23 [105]
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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. 11 of Moore West Federal Credit Union and continue the matter to March 14, 2023, at 1:00 p.m.

The Chapter 13 Trustee requests that the court disallow the claim of Moore West Federal Credit Union ("Creditor"), Claim No. 11. The claim is asserted to be in the amount of \$41,668.92. 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 25, 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, March 10, 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 March 14, 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 March 14, 2023, at 1:00 p.m.

5. [22-21126](#)-B-13 DOUGLAS/NYLA STONE
[RDG](#)-6 Carl R. Gustafson

OBJECTION TO CLAIM OF MOORE
WEST FEDERAL CREDIT UNION,
CLAIM NUMBER 12
1-31-23 [[108](#)]

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 of Moore West Federal Credit Union and continue the matter to March 14, 2023, at 1:00 p.m.

The Chapter 13 Trustee requests that the court disallow the claim of Moore West Federal Credit Union ("Creditor"), Claim No. 12. The claim is asserted to be in the amount of \$7,930.94. 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 25, 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, March 10, 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 March 14, 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 March 14, 2023, at 1:00 p.m.

6.	<u>22-21126</u> -B-13 DOUGLAS/NYLA STONE <u>RDG</u> -7 Carl R. Gustafson	OBJECTION TO CLAIM OF MOORE WEST FEDERAL CREDIT UNION, CLAIM NUMBER 13 1-31-23 [<u>111</u>]
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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 of Moore West Federal Credit Union and continue the matter to March 14, 2023, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Moore West Federal Credit Union ("Creditor"), Claim No. 13. The claim is asserted to be in the amount of \$2,178.82. 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 25, 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, March 10, 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 March 14, 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 March 14, 2023, at 1:00 p.m.

7. <u>22-21126</u> -B-13 DOUGLAS/NYLA STONE <u>RDG</u> -8 Carl R. Gustafson	OBJECTION TO CLAIM OF MOORE WEST FEDERAL CREDIT UNION, CLAIM NUMBER 14 1-31-23 [<u>114</u>]
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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 of Moore West Federal Credit Union and continue the matter to March 14, 2023, at 1:00 p.m.

The Chapter 13 Trustee requests that the court disallow the claim of Moore West Federal Credit Union ("Creditor"), Claim No. 14. The claim is asserted to be in the amount of \$1,965.00. 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 25, 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, March 10, 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 March 14, 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 March 14, 2023, at 1:00 p.m.

8. [22-21126](#)-B-13 DOUGLAS/NYLA STONE
[RDG-9](#) Carl R. Gustafson
OBJECTION TO CLAIM OF MOORE
WEST FEDERAL CREDIT UNION,
CLAIM NUMBER 15
1-31-23 [[117](#)]

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. 15 of Moore West Federal Credit Union and continue the matter to March 14, 2023, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Moore West Federal Credit Union ("Creditor"), Claim No. 15. The claim is asserted to be in the amount of \$54,051.63. 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 25, 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, March 10, 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 March 14, 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 March 14, 2023, at 1:00 p.m.

9. [22-23332](#)-B-13 JOHN/TEPORA ASAIVAO OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Peter G. Macaluso PLAN BY RUSSELL D. GREER
2-13-23 [[18](#)]

CONTINUED TO 3/14/23 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 3/08/23.

Final Ruling

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

10. [19-23047](#)-B-13 ROBERT/SOPHIA BLANTON MOTION TO WITHDRAW CLAIM NUMBER
[WLG](#)-4 James P. Mootz 9
2-14-23 [[98](#)]

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 grant the motion to withdraw claim number 9 and continue the matter to March 14, 2023, at 1:00 p.m.**

Debtors Robert Blanton and Sophia Blanton ("Debtors") move to withdraw proof of claim no. 9-1 that they filed on behalf of the Franchise Tax Board. FTB contacted Debtors' counsel and stated that the Debtors' debt is \$0.00. FTB requested that Debtors withdraw the claim on its behalf. The motion to withdraw claim is therefore conditionally granted.

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, March 10, 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 March 14, 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 March 14, 2023, at 1:00 p.m.

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 grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on January 12, 2023, for delinquency in plan payments (case no. 22-21288, dkt. 38). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that the previous case was filed primarily to cure the arrears on Debtor's home and that she became delinquent on plan payments due to a lapse in income after she changed jobs. Debtor asserts that her circumstances have changed because she is currently employed and receiving income from her job with Prosomnus Sleep Technologies, Inc. Debtor's schedules reflect that her income is enough to cover all necessary obligations, fund the plan, and obtain a discharge.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

12. [21-23493](#)-B-13 EMILIE/KENNETH BURTON
[AP-1](#) Richard L. Sturdevant

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-1-23 [[53](#)]

WILMINGTON TRUST, NATIONAL
ASSOCIATION VS.

Final Ruling

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

Wilmington Trust, National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 9760 North Alpine Road, Stockton, California (the "Property"). Movant has provided the Declaration of Roberto Umanzor to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Umanzor Declaration states that there are 3 post-petition payments in default totaling \$5,403.66.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$223,764.62 as stated in the Umanzor Declaration and Schedule D filed by the Debtors. The value of the Property is determined to be \$535,000.00 as stated in Schedules A/B and D filed by Debtors.

Discussion

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Creditor has not met this burden.

Movant values the Property at \$535,000.00. This valuation is consistent with the Debtors' schedules. Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court values the Property at \$535,000.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$223,764.62 as of February 2023 and that the cost of sale at 8% would be \$107,000.00. Based on the Property's \$535,000.00 value, that leaves equity of \$204,235.38, which in turn creates an equity cushion of 38.175%. Creditor is therefore adequately protected, even in the absence of postpetition payments.

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

The court will issue an order.

13. [22-23299](#)-B-13 NICOLE PRUITT
[RDG](#)-1 Michael K. Moore

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
2-13-23 [[15](#)]

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). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan.

First, based on Debtor's schedules, the projected disposable income available to be applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B) is \$277.03 for 60 months or \$16,621.80, which would result in an 89% dividend to general unsecured creditors in the amount of \$18,749.00. However, Debtor's plan provides for a 6% distribution to Debtor's general unsecured creditors. Therefore, Debtor's plan fails to comply with 11 U.S.C. § 1325(b)(1)(B).

Second, Debtor's amended Schedule I lists gross monthly wages of \$9,321.27. However, based on Debtor's pay advises, her gross monthly income is \$9,741.33. Further clarification is needed in order to determine whether the plan is Debtor's best effort under 11 U.S.C. § 1325(b).

Third, Debtor has testified that her 2022 income tax returns have been prepared and stated that tax refunds are due in the approximate amount of \$9,200.00. The Debtor is to provide the Chapter 13 Trustee with a copy of her 2022 federal and state income tax returns, and an amended Schedule B if appropriate.

The plan filed January 13, 2023, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

14. [22-22902](#)-B-13 WILLIAM BURGESS
[RDG](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
2-10-23 [[33](#)]

Final Ruling

This matter was continued from February 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 43, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 43.

The court will issue an order.

15. [22-23079](#)-B-13 JULIA NORMAN
[RDG](#)-1 Gabriel E. Liberman

CONTINUED MOTION TO DISMISS
CASE
2-10-23 [[21](#)]

Final Ruling

This matter was continued from February 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 26, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 26.

The court will issue an order.

16. [22-22493](#)-B-13 BERNARDO DE GUZMAN
[RDG](#)-2 Simran Singh Hundal

CONTINUED MOTION TO DISMISS
CASE
2-10-23 [[40](#)]

Final Ruling

This matter was continued from February 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 54, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dk. 54.

The court will issue an order.