

**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: April 4, 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

April 4, 2023 at 1:00 p.m.

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

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 Debtor has failed to provide the Chapter 13 Trustee with a copy of Debtor's 2021 federal and state income tax returns. Until these returns are reviewed, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. § 1325(a)(6) and (b)(1).

Second, the Debtor has failed to provide the Trustee with a profit and loss statement for Debtor's business Terry's Green Power to show that Debtor has the ability to fund the plan. Until this document is reviewed, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

Third, Amended Form 122C at lines 15, 16, and 17, show that Debtor is an above median income debtor, and that the applicable commitment period is 5 years. Debtor has proposed a plan with a commitment period of only 48 months. The plan fails to comply with 11 U.S.C. § 1325(b) since it fails to provide a 100% distribution to Debtor's unsecured creditors or to apply all of Debtor's projected disposable income to be received in the 5-year commitment period to payments to unsecured creditors under the plan.

Fourth, the plan classifies JP Morgan/New Rez as a Class 1 claim with pre-petition arrears in the amount of \$457,963.22 but fails to provide a dividend to pay those arrears. Without providing for the monthly dividend to pay that claim, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

Fifth, although the Debtor states that he is not modifying the rights of JP Morgan/New Rez, which holds a claim secured by the Debtor's principal residence, the Nonstandard Provisions at Section 7.02 of the plan does not set forth a reasonable schedule and time period for the payment of the arrearages owed to the secured creditor.

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

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The motion is ORDERED DENIED 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)(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). 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 permit the requested modification and not confirm the modified plan.

First, Debtors are delinquent under the proposed plan. Section 7.01 of Debtors' plan provides for plan payments of \$3,300.00 beginning February 25, 2023, until end of 60-month plan. Debtors did not make the February 25, 2023, payment. As such, Debtors are delinquent \$3,300.00 under the proposed plan.

Second, Section 7.01 of Debtors' plan provides for plan payments of \$3,300.00 per month beginning February 2023 to the end of 60-month plan. Debtors have failed to provide admissible evidence that the plan is mathematically feasible given that monthly plan payments will need to be at least \$3,443.00 beginning March 2023 in order for Debtors' plan to be feasible to pay unsecured creditors 32.00%.

Third, although Debtors filed amended Schedules I and J, it is unclear whether the Debtors can afford plan payments. Schedule I states that Debtors receive family support payments in the amount of \$10,099.00 per month and that this is their only source of income. No declarations have been filed by any family members stating their ability or willingness to provide Debtors with regular payments.

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

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

The court will issue an order.

3. [22-21927](#)-B-13 ORLANDO ANDRADE MOTION TO CONFIRM PLAN
[FAT](#)-5 Flor De Maria A. Tataje 2-17-23 [[63](#)]

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.

4. [20-25455](#)-B-13 GARY/SANDRA ELLENBOLT MOTION TO INCUR DEBT
[JCK](#)-7 Gregory J. Smith 3-7-23 [[61](#)]

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 grant the motion to incur debt.

The motion seeks permission to purchase a used 2020 Ford Fusion, the total purchase price of which is \$17,738.83, with monthly payments of \$364.42. Although the interest rate is 13.39%, Debtors state that they can afford the car payments since it is comparable to the lease payments they have already been making. Debtors' leased vehicle is now being turned into a purchase transaction. Debtors are current on plan payments and state that they can afford to make monthly plan payments and pay the car payment outside of the plan.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

The court will issue an order.

5. [22-21362](#)-B-13 CLAUDIA CASTRO OBJECTION TO CLAIM OF
[RDG-2](#) Richard Kwun FLEXSHOPPER, LLC, CLAIM NUMBER
8
2-27-23 [[51](#)]

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 Flexshopper, LLC and continue the matter to April 11, 2023, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Flexshopper, LLC ("Creditor"), Claim No. 8. The claim is asserted to be in the amount of \$2,107.56. 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 August 8, 2022. The Creditor's claim was filed February 21, 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 will be 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, April 7, 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 April 11, 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 April 11, 2023, at 1:00 p.m.

6. [23-20374](#)-B-13 NATALIE TORRES AND
[SKI](#)-1 CHRISTIAN
Peter G. Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-23-23 [[12](#)]

CREDIT ACCEPTANCE
CORPORATION 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 grant the motion for relief from stay.

Credit Acceptance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Chevrolet Volt (the "Vehicle"). The moving party has provided the Declaration of Matthew Netter to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor. The Netter Declaration states that there are one partial and three regular pre-petition payments in default totaling \$1,410.48.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$6,331.22, as stated in the Netter Declaration. The plan filed February 6, 2023, provides for the surrender of the Vehicle in Class 3.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). Moreover, Debtors' plan provides for the surrender of the Vehicle.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will issue an order.

7. [23-20075](#)-B-13 LARRY/ROCHELLE LACOMBA
[RDZ](#)-1 Gabriel E. Liberman
OBJECTION TO CONFIRMATION OF
PLAN BY CALIFORNIA FRANCHISE
TAX BOARD AND/OR MOTION TO
DISMISS CASE , MOTION TO
CONVERT CASE FROM CHAPTER 13 TO
CHAPTER 7
3-20-23 [[30](#)]

Final Ruling

An objection to confirmation was filed by California Franchise Tax Board. The objection was not filed in accordance with Local Bankruptcy Rules 3015-1(c)(4), which requires that an objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). The first meeting of creditors was set for February 22, 2023. Therefore, objections to confirmation had to be filed and served by March 1, 2023. This objection was untimely filed and served on March 20, 2023. Therefore, the objection is overruled.

Furthermore, even if the objection was properly filed, the objection would nonetheless be overruled as moot given that the court already deemed the plan not confirmable on March 21, 2023. See dkt. 39.

The request for dismissal of the case or conversion to a chapter 7 is denied.

The objection to confirmation to is ORDERED OVERRULED and the motion to dismiss or convert case is ORDERED DENIED 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 **continue this matter to April 18, 2023, at 1:00 p.m.**

The Chapter 13 Trustee objects to plan confirmation on grounds that the Debtors have failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(B)(iv). Without these documents, it cannot be determined whether the plan is proposed in good faith pursuant to 11 U.S.C. § 1325(b)(3), and whether the plan is feasible and pays all projected disposable income to general unsecured creditors pursuant to 11 U.S.C. § 1325(a)(6) and (b)(1).

Although the Debtors have filed a declaration to address the Trustee's issues, it appears that the declaration was not properly served since it is not accompanied by any certificate of service.

Given Debtors' lack of service on the Trustee and creditors, and rather than denying the motion to confirm, the Debtors shall have until April 6, 2023, to serve their declaration at dkt. 38 and the Trustee shall file a supplemental response by April 13, 2023, addressing the declaration.

The court will issue an order.

9. [22-22398](#)-B-13 GREGORIO DASALLA
[CRG](#)-5 Carl R. Gustafson

MOTION TO CONFIRM PLAN
2-24-23 [[67](#)]

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.

10. [22-22612](#)-B-13 LAWRENCE/JENNY BOLDON
[RDG](#)-1 Brian S. Haddix

CONTINUED MOTION TO DISMISS
CASE
3-9-23 [[67](#)]

Final Ruling

This matter was continued from March 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 31, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 79, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on April 4, 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.

11. [22-23055](#)-B-13 ALBERT EGU
[RDG](#)-2 Jennifer G. Lee

CONTINUED MOTION TO DISMISS
CASE
3-9-23 [[29](#)]

Final Ruling

This matter was continued from March 28, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 31, 2023. Debtor filed a timely response and a first amended plan with a scheduled confirmation hearing date of May 16, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 33 and the continued hearing on April 4, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.