

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

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: April 5, 2022

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
Modesto, California

April 5, 2022 at 1:00 p.m.

- | | | |
|----|---|---|
| 1. | <u>21-90302</u> -B-13 MARGIE DANA
<u>SLH</u> -1 Seth L. Hanson | OBJECTION TO CLAIM OF CAPITAL
ONE AUTO FINANCE, CLAIM NUMBER
4
2-17-22 [<u>22</u>] |
|----|---|---|

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

AIS Portfolio Services, LP, bankruptcy servicer for Creditor Capital One Auto Finance, having filed a notice of withdrawal of its proof of claim, listed as claim number 4, on March 21, 2022, the objection is overruled as moot pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) or (a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will issue an order.

2. [17-91007](#)-B-13 JOANN LOPES
[LBF](#)-1 Tamie L. Cummins

MOTION TO MODIFY PLAN
2-22-22 [[87](#)]

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 permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee filed an opposition to Debtor's motion to modify Chapter 13 plan on March 8, 2022. On March 22, 2022, Debtor filed a response to Trustee's opposition to the second modified plan. Subsequently, Trustee filed a supplemental ex parte motion to dismiss his opposition to Debtor's motion to modify Chapter 13. In his supplemental ex parte motion, Trustee states that Debtor has filed a response agreeing to pay a plan payment of \$1,359.00, and that Debtor has filed a proposed order confirming as an exhibit to provide a plan payment of \$1,359.00 beginning month 51 (March 2022), and a monthly dividend of \$317.87 to pay the balance of pre-petition mortgage arrears owed to Loan Depot. Accordingly, Trustee's opposition has been satisfied.

There being no other objections to confirmation, Debtor's modification will be permitted.

The modified 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.

3. [22-90016](#)-B-13 ALEO PONTILLO OBJECTION TO CONFIRMATION OF
[EGS](#)-1 David C. Johnston PLAN BY MICHAEL R. ESPARZA
[Thru #4](#) 3-8-22 [[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). 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 overrule the objection as moot.

The court denied confirmation of Debtor's modified plan at Item 4, RDG-1. The plan filed February 2, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The plan filed January 31, 2022, 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 OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

4. [22-90016](#)-B-13 ALEO PONTILLO OBJECTION TO CONFIRMATION OF
[RDG](#)-1 David C. Johnston PLAN BY RUSSELL D. GREER
3-4-22 [[18](#)]

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, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed or a written statement that no such documentation exists. At the meeting of creditors held March 16, 2022, Debtor testified that he will be filing his 2021 tax returns on that same day. Trustee has requested Debtor provide a copy of his filed 2021 tax returns. The Debtor has not complied with

11 U.S.C. § 521(e) (2) (A) (i).¹

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a) (1) (B) (iv).

Third, Debtor's plan is not feasible. Creditor Michael Esparza has filed a proof of claim listing a secured amount of \$563,328.97. Debtor's plan does not provide for this secured claim. Without providing for this claim, it cannot be determined whether Debtor intends to pay this creditor. 11 U.S.C. § 1325(a) (6).

Fourth, the Debtor has not provided the Trustee with requested copies of Debtor's most current three months of profit and loss statements from his businesses. Until these copies are provided, it cannot be determined whether Debtor's plan is feasible. 11 U.S.C. § 1325(a) (6).

Fifth, the attachment to Debtor's Schedule I, which provides for Debtor's business income and expenses, needs to be filed. Without information relating to Debtor's business income and expenses, it cannot be determined whether the plan provides that all of Debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Sixth, Debtor's plan provides for total unsecured priority claims in the amount of \$0.00. The Internal Revenue has filed a proof of claim 2 with a priority portion of \$57,450.52. Debtors' plan payment is insufficient to pay this claim. The plan is not feasible under 11 U.S.C. § 1325(a) (6).

The plan filed January 31, 2022, 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.

¹There is authority for the proposition that a trustee may not use § 521 to compel a debtor to turnover state income tax returns. See e.g., *Romeo v. Maney (In re Romeo)*, 2018 WL 1463850, *5-6 (9th Cir. BAP 2018). An objection that state income taxes have not been produced under § 521 may therefore not survive scrutiny. That said, withholding state income tax returns and thereby preventing the trustee from performing statutory duties may nevertheless be interpreted as bad faith conduct sufficient to warrant a denial of confirmation or even dismissal. The court need not reach this issue here because the Trustee's other objections are a sufficient basis on which confirmation may be denied.

5. [21-90418](#)-B-13 MIGUEL TERRIQUEZ
[RJ-1](#) Richard L. Jare

MOTION TO CONFIRM PLAN
2-2-22 [[106](#)]

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 deny the motion as moot and not confirm the plan.

An objection to the confirmation of this plan was filed on February 3, 2022, see dkt. 115, and sustained on March 8, 2022. See Dkts. 140, 142.

This case was filed on September 2, 2021, and Debtor Miguel Terriquez ("Debtor") has so far been unable to propose a confirmable plan. It is apparent to the court that the Debtor filed this chapter 13 case primarily to deal with a dispute involving the real property located at 5912 Squire Wells Way, Riverbank, California ("Riverbank Property"). By an order filed on March 9, 2022, the court permitted the Debtor to resolve that dispute in a pending state court action. See Dkt. 137.

Because this case has been pending for seven months and the Debtor has been unable to confirm a plan, the Debtor shall have one more opportunity to propose a confirmable plan. To that end, the Debtor shall have until April 12, 2022, to file, set, and serve a chapter 13 plan and a motion to confirm it. If a plan and motion to confirm it are not timely filed this case may be dismissed on the Chapter 13 Trustee's ex parte application. If a plan and motion to confirm it are timely filed, set, and served it shall not provide for a speculative sale of the Riverbank Property as previous plans have. And to assist the Debtor's attorney in his understanding of what the court means by "speculative," the court means a proposed sale at some point in the future without evidence that a sale is actually under contract or in escrow. Further, if a plan and motion to confirm it are timely filed, set, and served and if not confirmed this case will be dismissed.

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

The court will issue an order.

6. [22-90020](#)-B-13 KATHEY BROWN
[RDG-1](#) Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-8-22 [[18](#)]

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, the Debtor did not appear at the meeting of creditors set for March 2, 2022, or the continued meeting of creditors set for March 16, 2022, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent in the amount of \$1,921.00. An additional payment of \$1,921.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed or a written statement that no such documentation exists. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(i).¹

Fourth, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

The plan filed February 2, 2022, 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.

¹There is authority for the proposition that a trustee may not use § 521 to compel a debtor to turnover state income tax returns. See e.g., *Romeo v. Maney* (*In re Romeo*), 2018 WL 1463850, *5-6 (9th Cir. BAP 2018). An objection that state income taxes have not been produced under § 521 may therefore not survive scrutiny. That said, withholding state income tax returns and thereby preventing the trustee from performing statutory duties may nevertheless be interpreted as bad faith conduct sufficient to warrant a denial of confirmation or even dismissal. The court need not reach this issue here because the Trustee's other objections are a sufficient basis on which confirmation may be denied.

7. [22-90023](#)-B-13 JAMES JENSEN
[RDG](#)-1 Simran Singh Hundal

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-8-22 [[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). 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, the Debtor did not appear at the meeting of creditors set for March 2, 2022, or the continued meeting of creditors set for March 30, 2022, as required pursuant to 11 U.S.C. § 343. At the March 2, 2022 meeting of creditors, Trustee was informed that Debtor is deceased.

Second, the plan payment in the amount of \$3,315.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus Trustee's fees is \$3,390.83. The plan does not comply with Section 5.02 of the mandatory form plan.

Third, pursuant to Paragraph 6.02 of Debtor's plan, which requires that Debtor shall maintain insurance as required by any law or contract and Debtor shall provide evidence of that insurance as required by 11 U.S.C. §1326(a)(4), Trustee has requested Debtor provide a copy of his liability and worker's compensation riders, if appropriate.

The plan filed February 2, 2022, 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.

8. [21-90535](#)-B-13 EDUARDO BARAJAS AND ERIKA MOTION TO CONFIRM PLAN
[TMO](#)-1 HERRERA 2-22-22 [[36](#)]
T. Mark O'Toole

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 Debtors have 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 Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

9. [21-90538](#)-B-13 JERRY JUDD MOTION TO CONFIRM PLAN
[SMJ](#)-1 Scott M. Johnson 2-28-22 [[21](#)]
Thru #10

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 confirm the first amended plan.

The Chapter 13 Trustee filed an opposition to confirmation of the plan on grounds that the feasibility of Debtor's plan is contingent upon the court granting Debtor's motion for order approving loan modification. The court has granted Debtor's motion for order approving loan modification at Item #10, SMJ-2. Accordingly, Trustee's grounds for objecting to confirmation have been resolved and this objection will be overruled.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, 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. [21-90538](#)-B-13 JERRY JUDD MOTION TO APPROVE LOAN
[SMJ](#)-2 Scott M. Johnson MODIFICATION
3-8-22 [[28](#)]

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 permit the loan modification.

Debtor seeks court approval to incur post-petition credit. Statebridge Company, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's mortgage payment to \$485.31 a month. When Debtor filed this bankruptcy case on November 12, 2021, he indicated he intended to dispute the claim of Creditor. On January 10, 2022, Creditor filed Proof of Claim No. 2 asserting a secured claim of \$105,179.97. Debtor and Creditor subsequently agreed to a resolution of prior disputes by agreeing to the terms of the present loan modification. The modification will cure any defaults existing at the time of filing and the terms of the modification have been incorporated into Debtor's motion to confirm first amended

plan.

The motion is supported by the Declaration of Jerry Judd Jr. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it cures any defaults existing at the time of filing.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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

The court will issue an order.

11. [21-90554](#)-B-13 LOUIS/AUDRA MUNOZ OBJECTION TO CLAIM OF CAVALRY
[MJD](#)-3 Matthew J. DeCaminada SPV, 1 LLC, CLAIM NUMBER 1
Thru #13 2-9-22 [[31](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 1-1 of Cavalry SPV 1, LLC and disallow the claim in its entirety.

Debtors request that the court disallow the claim of Cavalry SPV 1, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be unsecured in the amount of \$616.26. The Debtors assert that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about February 15, 2016, which is more than four years prior to the filing of this case. Hence, when the case was filed on November 24, 2021, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will issue an order.

12. [21-90554](#)-B-13 LOUIS/AUDRA MUNOZ OBJECTION TO CLAIM OF JEFFERSON
[MJD](#)-4 Matthew J. DeCaminada CAPITAL SYSTEMS LLC, CLAIM
NUMBER 10
2-9-22 [[35](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 10-1 of Jefferson Capital Systems LLC and disallow the claim in its entirety.

Debtors requests that the court disallow the claim of Jefferson Capital Systems LLC ("Creditor"), Claim No. 10-1. The claim is asserted to be unsecured in the amount of

\$1,121.40. The Debtors assert that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about November 15, 2016, which is more than four years prior to the filing of this case. Hence, when the case was filed on November 24, 2021, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will issue an order.

13.	<u>21-90554</u> -B-13 LOUIS/AUDRA MUNOZ <u>MJD</u> -5 Matthew J. DeCaminada	OBJECTION TO CLAIM OF LVNV FUNDING LLC, CLAIM NUMBER 11 2-9-22 [<u>39</u>]
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Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 sustain the objection to Claim No. 11-1 of LVNV Funding, LLC and disallow the claim in its entirety.

Debtors request that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 11-1. The claim is asserted to be unsecured in the amount of \$402.04. The Debtors assert that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about October 18, 2017, which is more than four years prior to the filing of this case. Hence, when the case was filed on November 24, 2021, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will issue an order.

14. [21-90158](#)-B-13 JILL MURPHY MOTION TO MODIFY PLAN
[LBF](#)-3 Lauren Franzella 2-28-22 [[42](#)]

Final Ruling

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

15. [20-90177](#)-B-13 JONATHAN REIF MOTION TO SELL
[MDA-2](#) Mary D. Anderson 3-8-22 [[38](#)]

Final Ruling

The motion has been set for hearing on the notice required by 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). The defaults of the non-responding parties are entered.

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 sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303 (which allows debtor to sell). Debtor proposes to sell the property described as 463 Market Street, San Andreas, California ("Property").

Proposed purchaser William Glover has agreed to purchase the Property for \$365,000.00. The total down payment for the purchase will be \$10,000.00. The total initial deposit amount will be \$3,500.00, or 1% of the purchase price. Close of Escrow will be 60 days after acceptance. Debtor desires to conclude the sale as soon as possible. The estimated net proceeds the Debtor will receive is \$344,464.30. Debtor has claimed an exemption on this property of \$2,320.00, and understands the court may direct Debtor to turn over excess net proceeds above the amount claimed as exempt.

Secured Creditor Freedom Mortgage Corporation ("Creditor") has filed a response stating their non-opposition of entry of an order authorizing the sale of the Property. However, Creditor's response sets forth that it does not consent, for purposes of 11 U.S.C. §363(f) or otherwise, to any sale free and clear of its lien unless it receives proceeds sufficient to satisfy its lien in full, the amount of which is to be determined by the lien's full loan balance and any corresponding payoff demand. Debtor's motion states that the sale is to be approved provided all liens are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered.

Additionally, Debtor requests that the 14-day stay period imposed by Rule 6004(h) be waived. There being no opposition filed by Creditor, the 14-day stay period is waived.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is granted.

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

Debtor's attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

16. [21-90583](#)-B-13 ANTONIO GONZALEZ MEJIA MOTION TO CONFIRM PLAN
[LBF](#)-1 Lauren Franzella 2-10-22 [[26](#)]

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.