

**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 13, 2021

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 13, 2021 at 1:00 p.m.

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1. [20-90401](#)-B-13 ISAAC/CRISTINA QUEVEDO OBJECTION TO LATE FILED CLAIM
[RDG](#)-2 Michael Benavides OF DEPARTMENT OF
TREASURY-INTERNAL REVENUE
SERVICE, CLAIM NUMBER 13
3-8-21 [[50](#)]

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, the claimant is not required to file written opposition to the objection.

The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to sustain the objection to Claim No. 13 of Department of Treasury-Internal Revenue Service and **continue the matter to April 20, 2021, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Department of Treasury-Internal Revenue Service ("Creditor"), Claim No. 13. The claim is asserted to be in the amount of \$9,181.15. 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 government unit was December 7, 2020. The Creditor's claim was filed February 26, 2021.

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 six 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.

April 13, 2021 at 1:00 p.m.

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 shall be disallowed in its entirety as untimely. The objection to the proof of claim shall 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 16, 2021, to file and serve an opposition or other response to the objection. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee 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 20, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 20, 2021, at 1:00 p.m.

The court will issue an order.

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). A response was filed by the Chapter 13 Trustee.

The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to overrule the objection to Claim No. 3 of Internal Revenue Service.

Debtor James Blanco ("Debtor") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Claim No. 3. The claim is asserted to be priority in the amount of \$8,734.04 and \$200.00 as general unsecured. The priority amount of the claim is listed as an estimate for the 2018 and 2019 tax years. The note at the bottom of the claim states that it is estimated as the tax returns for those years have not been filed. The general unsecured amount of the claim is for the 2014 and 2015 tax years and are also listed as estimated due to unfiled tax returns.

Debtor states that he has not worked since 2011 and has not been required to file a tax return since 2012. Therefore, Debtor did not have a need to file tax returns after 2012. Debtor requests that Creditor provide documents supporting the reason why Debtor should be required to file tax returns for those years. No opposition or response was filed by Creditor.

The Chapter 13 Trustee ("Trustee") filed a response stating that it does not oppose the Debtor's objection but requests that any order sustaining the objection provide that the claim is disallowed except to the extent already paid by the Trustee. To date, the Trustee has paid \$40.02 in principle to Creditor.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtor has not satisfied his burden of overcoming the presumptive validity of the claim. The IRS proof of claim is filed in accordance with the applicable rules and therefore is presumptively valid. See Fed. R. Bankr. P. 3001(f).

All the Debtor offers in response to the properly-filed and presumptively-valid IRS

proof of claim is the unsupported and unsubstantiated statement of his attorney that he (the Debtor) is not required to file tax returns, the IRS has not shown that he (the Debtor) is required to file tax returns, and the IRS does not have a tax claim unless and until it shows that he (the Debtor) is obligated to file tax returns. Statements of the Debtor's attorney in the objection are not evidence. *Singh v. I.N.S.*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000). The objection is therefore tantamount to a mere assertion that the IRS debt is not owed which, as noted above, is insufficient to overcome the presumptive validity of the IRS proof of claim.¹

The objection to the proof of claim is overruled.

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

The court will issue an order.

¹Although the court need not reach the issue, it is also doubtful that the attorney's unsupported and unsubstantiated statements amount to the credible evidence required to shift the burden of proof on income tax liability. See 26 U.S.C. § 7491(a)(1).

3. [19-91026](#)-B-13 NICHOLAS/JENNI DENT
[MSN](#)-4 Mark S. Nelson

MOTION TO MODIFY PLAN
3-2-21 [[65](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

4. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN
[JAD](#)-10 Steven S. Altman

MOTION FOR COMPENSATION FOR
STEVEN ALTMAN, DEBTORS
ATTORNEY(S)
3-5-21 [[291](#)]

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 compensation.

Request for Additional Fees and Costs

As part of confirmation of the Debtors' Chapter 13 plan, Jessica A. Dorn ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, dkt. 97, with \$1,400.00 paid by the Debtors and \$2,600.00 paid through the Chapter 13 plan. Applicant now seeks additional compensation in the amount of \$3,100.00 in fees.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 296, exh. A. The specific work for which additional compensation is sought includes services rendered through February 5, 2021. Applicant indicates which services were not anticipated on the Description of Services by marking the billing matter as "U" for unanticipated.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant here does not address the foregoing standard. Instead, the Applicant merely states that "subsequent unanticipated Motions or additional work are not covered by the initial \$4,000.00 and therefore subject to additional compensation to the Attorney." Dkt. 294, para. 12. A review of the Applicant's billing shows that the unanticipated services charged pertained to work surrounding a motion to modify plan, a motion to dismiss case, motion for compensation, and a loan modification. However, it is not the responsibility of the court to justify Applicant's services as work sufficiently greater than a typical Chapter 13 case. That burden lies with Applicant. Accordingly, the motion for compensation is denied without prejudice.

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

The court will issue an order.

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, the claimant is not required to file written opposition to the objection.

The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to conditionally sustain the objection to Claim No. 16 of Navient Solutions, LLC and **continue the matter to April 20, 2021, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Navient Solutions, LLC ("Creditor"), Claim No. 16. The claim is asserted to be in the amount of \$36,439.80. 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 November 7, 2019. The Creditor's claim was filed March 1, 2021.

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 six 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."

April 13, 2021 at 1:00 p.m.

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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 shall be disallowed in its entirety as untimely. The objection to the proof of claim shall 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 16, 2021, to file and serve an opposition or other response to the objection. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee 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 20, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 20, 2021, at 1:00 p.m.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Opposition was filed by the Chapter 13 Trustee.

The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to deny without prejudice the motion to incur debt.

The motion seeks permission to purchase a home located at 6013 Soares Place, Riverbank, California. Debtor states that his girlfriend will gift him the amount of \$46,995.53 as down payment and that the home will be financed at \$320,512.00. Debtor states that the payment on the loan will be \$2,027.14 per month. Debtor's plan provides for payment of 42% to unsecured creditors. Debtor states that he will be filing amended Schedules I and J to reflect his current income and expenses.

The Chapter 13 Trustee opposes Debtor's request to incur debt on grounds that no Schedule I or J have been filed and that, without this information, the Trustee is not able to determine how the purchase will impact Debtor's budget or performance of the plan. 11 U.S.C. § 1325(a)(6). Currently, Debtor's house expense is \$1,400.00 and the purchase of the home will result in an increased \$600.00 per month housing expense.

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).

Based on the unique facts and circumstances at this time, the court cannot determine whether the purchase of the house will negatively impact Debtor's budget or performance of the plan. The Trustee's objection is sustained and the Debtor's motion is denied without prejudice.

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

The court will issue an order.

7. [20-90339](#)-B-13 BRIAN/TERI SMITH
[JHK](#)-1 Richard Kwun

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-8-21 [[63](#)]

SANTANDER CONSUMER USA INC.
VS.

Final Ruling

This matter was continued from April 6, 2021. Santander Consumer USA Inc. withdrew its motion for relief from stay on April 6, 2021. Therefore, the motion is dismissed without prejudice.

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

The court will issue an order.

8. [21-90109](#)-B-13 MARK ESCALANTE
[TAM](#)-2 Thomas A. Moore

CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
3-24-21 [[16](#)]

Final Ruling

This matter was continued from April 6, 2021, to allow declarations, opposition, or responses to be filed by 5:00 p.m. on April 9, 2021. Declarations were timely filed by Debtor's adult children stating that they are gainfully employed and willing to contribute money to their father. The motion to extend automatic stay is granted and the continued hearing scheduled for April 13, 2021, is vacated.

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

The court will issue an order.