

**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 18, 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 18, 2023 at 1:00 p.m.

-
1. [20-20612](#)-B-13 WILLIAM/MELIDA BAUMIESTER MOTION TO INCUR DEBT
[HLG](#)-2 Kristy A. Hernandez 3-15-23 [[53](#)]

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.

Debtors move for permission to obtain a FEMA loan in the amount of \$13,800.00 to facilitate repair work on their home located at 2014 Le Mans Place, Stockton, California. During severe rainstorms in December 2022, Debtors' backyard became flooded and the rear part of their house foundation sank a few inches due to the soggy ground underneath the foundation. Debtors state that they cannot afford to repair the foundation of their home without the FEMA loan and believe that failure to complete the needed repairs now could continue to cause the home to sink, requiring even greater cost of repair in the future.

Under the terms of the loan, an installment payment of \$115.00 will begin 12 months from the date of initial disbursement of the loan. The balance of principal and interest will be payable 15 years from the date of each advance. The interest rate of 4.625% per annum will begin to accrue 12 months from the initial disbursement date.

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.

April 18, 2023 at 1:00 p.m.

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2. [23-20042](#)-B-13 GARY FRAZIER
[GW-1](#) Geoff E. Wiggs

MOTION TO CONFIRM PLAN
3-8-23 [[29](#)]

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.

3. [23-20242](#)-B-13 ADRIAN/LISA HIGDON
[RDG](#)-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-29-23 [[14](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed January 26, 2023, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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. [18-24845](#)-B-13 VICTOR HERRADA MOTION TO MODIFY PLAN
[PGM](#)-5 Peter G. Macaluso 3-6-23 [[122](#)]

CONTINUED TO 6/20/23 AT 1:00 P.M. TO ALLOW THE PROCESSING OF DEBTOR'S APPLICATION UNDER THE CALIFORNIA RELIEF PROGRAM.

Final Ruling

No appearance at the April 18, 2023, hearing is required. The court will issue an order.

5. [19-26557](#)-B-13 IGNACIO EROSA
[JCK](#)-4 Gregory J. Smith

MOTION TO MODIFY PLAN
3-6-23 [[104](#)]

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 Debtor has 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 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.

6. [23-20365](#)-B-13 TERRY CASE
[CLB](#)-1 Taras Kurta
Thru #7

OBJECTION TO CONFIRMATION OF
PLAN BY MATRIX FINANCIAL
SERVICES CORP.
3-29-23 [[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.

Objecting creditor Matrix Financial Services Corp. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$322.79 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed February 3, 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.

7. [23-20365](#)-B-13 TERRY CASE
[RDG](#)-1 Taras Kurta

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-27-23 [[14](#)]

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, feasibility depends on the filing and granting of a motion to value collateral of Citibank NA. To date, a motion to value collateral has not been filed.

Second, the plan provides for total unsecured priority claims in the amount of \$0.00. Brian Case has filed proof of claim 6-1 with a priority portion of \$20,000.00. Debtor's plan payment is insufficient to pay this claim.

Third, the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's schedules list non-exempt assets totaling \$5,457.00, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtor's general unsecured creditors of \$5,457.00. Based on Debtor's schedules and in order to meet the liquidation test, Debtor's plan must pay 12.92% to general unsecured creditors. Debtor's plan provides for only 11.00% dividend to general unsecured creditors and therefore fails the liquidation test.

The plan filed February 3, 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.

8. [18-24867](#)-B-13 CHRISTOPHER MURRAY
[TLA](#)-3 Thomas L. Amberg

MOTION TO MODIFY PLAN
3-9-23 [[48](#)]

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

The court will issue an order.

9. [23-20469](#)-B-13 DARRELL HALSELL
[MET](#)-1 Carl R. Gustafson

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-21-23 [[15](#)]

BANK OF THE WEST 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 automatic stay.

Bank of the West ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2009 Monaco Camelot Motor Home (the "Vehicle"). The moving party has provided the Declaration of Aimee Nanon to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Nanon Declaration states that there are two pre-petition payments in default totaling \$970.99.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$128,294.49, as stated in the Nanon Declaration, while the value of the Vehicle is determined to be \$105,150.00, as stated in Schedules A/B and D filed by Debtor.

The Debtor has listed the Vehicle in Class 3 of the plan as collateral to be surrendered.

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 Debtor 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).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

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.

10. [23-20374](#)-B-13 NATALIE TORRES AND MOTION TO VALUE COLLATERAL OF
[PGM-1](#) CHRISTIAN SAFE CREDIT UNION
Thru #11 Peter G. Macaluso 3-18-23 [[25](#)]

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 value the secured claim of Safe Credit Union at \$4,500.00 and continue the matter to May 2, 2023, at 1:00 p.m.**

Debtors move to value the secured claim of Safe Credit Union ("Creditor"). Debtor is the owner of a 2016 Ford Fusion ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$4,500.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 11-1 filed by Safe Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in November 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$10,748.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$4,500.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 21, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). 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 motion will be deemed granted 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 May 2, 2023, 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 May 2, 2023, at 1:00 p.m.

11. [23-20374](#)-B-13 NATALIE TORRES AND OBJECTION TO CONFIRMATION OF
[RDG-1](#) CHRISTIAN PLAN BY RUSSELL D. GREER
Peter G. Macaluso 3-27-23 [[36](#)]

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, additional information regarding Co-Debtor Christian Torres-Fernandes' income needs to be provided. Amended Form 122C lists his monthly gross income as \$3,969.10. However, the pay stub for December 2022 shows a monthly gross income of \$6,444.82. Until additional information is provided, it cannot be determined whether the plan provides that all the Debtors' projected disposable income received in the applicable commitment period will be applied to making payments to unsecured creditors. 11 U.S.C. § 1325(b).

Second, the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Amended Schedule I shows a total payroll deduction of \$919.10 per month for voluntary contribution to a retirement plan. This expense is not reasonable or necessary in any amount. Also the Statement of Financial Affairs at #4 fails to list gross income for the last calendar year.

The plan filed February 6, 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.

12. [23-20075](#)-B-13 LARRY/ROCHELLE LACOMBA
[SKI](#)-1 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF
PLAN BY CARMAX BUSINESS
SERVICES, LLC
3-20-23 [[34](#)]

Final Ruling

An objection to confirmation was filed by Carmax Business Services, LLC. 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 *dk*t. 39.

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

The court will issue an order.

13. [19-23382](#)-B-13 MICHAEL CICAIIROS
[JCK](#)-5 Gregory J. Smith

MOTION TO MODIFY PLAN
3-14-23 [[41](#)]

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 Debtor has 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 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.

14. [23-20383](#)-B-13 LORAINÉ/WINNIEFREDO OBJECTION TO CONFIRMATION OF
[RDG](#)-1 MACANDOG PLAN BY RUSSELL D. GREER
Peter L. Cianchetta 3-29-23 [[16](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

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

Subsequent to the filing of the objection to confirmation, the Debtors filed an amended plan on April 5, 2023. The confirmation hearing for the amended plan must still be scheduled. The Debtors shall have until April 21, 2023, to set and notice a confirmation hearing on the amended plan filed April 5, 2023.

Nonetheless, this renders the earlier plan filed February 7, 2023, moot and it is not confirmed.

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

The court will issue an order.

15. [20-24486](#)-B-13 AMANDA STEWART
[CYB](#)-1 Candace Y. Brooks

MOTION TO MODIFY PLAN
3-10-23 [[29](#)]

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 Debtor has 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 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.

16. [23-20390](#)-B-13 KIMBERLY WHITAKER
[RDG](#)-1 Nicholas Wajda

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-27-23 [[16](#)]

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's Disclosure of Compensation of Attorney for Debtor (Form 2030) at Line 6 states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances and relief from stay actions. This is contradictory to the Rights and Responsibilities signed by Debtor and their attorney. These services are included in the "No Look Fee" and may not be excluded.

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Internal Revenue Service has filed a proof of claim listing a secured portion of \$58,418.25. However, the Debtor's plan does not list this claim. Schedules I and J and the Statement of Financial Affairs are silent as to treatment of this creditor. It cannot be determined whether the Debtor intends to pay this creditor and, if it is to be paid, how it is to be paid. This impacts whether the Debtor will be able to make all payments under the plan and comply with the plan.

Third, the Debtor's plan may not be her best effort pursuant to 11 U.S.C. § 1325(b). Debtor's plan payment is \$1,775.00 per month but Schedule J shows that she has a net income of \$1,821.67 per month. Accordingly, the Debtor is not contributing all of her net income into the plan.

The plan filed February 8, 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.

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. 62 of Mariner Finance, LLC and continue the matter to May 2, 2023, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Mariner Finance, LLC ("Creditor"), Claim No. 17-1. The claim is asserted to be in the amount of \$10,698.08. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was December 9, 2022. The Creditor's claim was filed January 17, 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 shall 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 21, 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 May 2, 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 May 2, 2023, at 1:00 p.m.

18. [22-23195](#)-B-13 WILLIAM/CINDY STACY
[DAB](#)-1 David A. Boone

CONTINUED MOTION TO CONFIRM
PLAN
2-23-23 [[31](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed February 3, 2023, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

19. [20-24933](#)-B-13 THOMAS/RENEE IRELAND
[BSH](#)-4 Brian S. Haddix

CONTINUED MOTION TO WAIVE
FINANCIAL MANAGEMENT COURSE
REQUIREMENT, WAIVE SECTION 1328
CERTIFICATE
REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE
PARTY, AS TO DEBTOR
3-23-23 [[62](#)]

Final Ruling

This matter was continued from April 11, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 14, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 67, granting the motion, shall become the court's final decision. The continued hearing on April 18, 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.