

**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 23, 2024

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 23, 2024 at 1:00 p.m.

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1. [23-90506](#)-B-13 KARLA GREER-TIASCALA OBJECTION TO CLAIM OF VALLEY
[LGT](#)-1 Simran Singh Hundal FIRST CREDIT UNION, CLAIM
NUMBER 6
3-18-24 [[20](#)]

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. 6-1 of Valley First Credit Union and continue the matter to April 30, 2024, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Valley First Credit Union ("Creditor"), Claim No. 6-1. The claim is asserted to be in the amount of \$7,297.73. 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 January 9, 2024. The Creditor's claim was filed February 9, 2024.

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

April 23, 2024 at 1:00 p.m.

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court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): “[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is ‘rigid’ and the bankruptcy court lacks equitable power to extend this deadline after the fact.”

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor’s claim is disallowed in its entirety as untimely. The objection to the proof of claim is conditionally sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, April 26, 2024, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court’s final decision, and the continued hearing on April 30, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on April 30, 2024, at 1:00 p.m.

2. [20-90146](#)-B-13 CHARLES/DAWN ROBINSON MOTION TO MODIFY PLAN
[DCJ-5](#) David C. Johnston 2-16-24 [[91](#)]

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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

3. [23-90451](#)-B-13 CHRISTOPHER JACKSON OBJECTION TO CLAIM OF VALLEY
[LGT-1](#) Mikalah Liviakis FIRST CREDIT UNION, CLAIM
NUMBER 14
3-18-24 [[20](#)]

Final Ruling

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

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally sustain the objection to Claim No. 14-1 of Valley First Credit Union and continue the matter to April 30, 2024, at 1:00 p.m.**

The Chapter 13 Trustee ("Trustee") requests that the court disallow the claim of Valley First Credit Union ("Creditor"), Claim No. 14-1. The claim is asserted to be in the amount of \$54,409.57. 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 7, 2023. The Creditor's claim was filed March 6, 2024.

In opposition to the Trustee's motion, the Declaration of Kevin Poole was filed by Creditor.¹ The declaration acknowledges that the proof of claim was not timely filed but states that Creditor was not aware of the bankruptcy filing until January 31, 2024² - after the deadline for non-government units to file a proof of claim - when Mr. Poole, manager of Member Solutions for Creditor, discovered the electronic notice of the bankruptcy case in his junk folder while researching another bankruptcy case. Mr. Poole then reached out to Debtor's counsel that same date. Debtor's counsel did not call back, and Mr. Poole then called again on February 15, 2024. It was not until March 5, 2024, that Debtor's counsel called back confirming that Debtor had filed for bankruptcy and informed the collector who took the call that Creditor would need to fill out a proof of claim before receiving any payment from the Trustee. Mr. Poole

¹The court also notes that Mr. Poole's declaration appears to have been filed by attorney Michael D. Vanlochem whose name appears in the upper left-hand corner of the document. That constitutes an appearance on Creditor's behalf. See Local Bankr. R. 2017-1(b)(2)(B). Attorney Vanlochem does not appear to be admitted to the bar of the Eastern District of California, which means he is ineligible and not authorized to appear in this case on Creditor's behalf. See Local Bankr. R. 1001-1(c); Local Dist. Ct. R. 180(b). Mr. Poole's declaration is therefore STRICKEN as a fugitive document. But even if the court were to consider the declaration, the opposition would still be overruled for the reasons explained below.

²Prior to this, Debtor contacted Creditor in October 2023 saying that he was "in the process" of filing chapter 13 bankruptcy relief. The Poole Declaration does not state whether Creditor looked further into the matter. In reality, the petition had actually already been filed on September 28, 2023.

immediately referred the matter to bankruptcy servicer Tribute Capital Partners, LLC, who prepared a proof of claim and filed it with the court on March 6, 2024.

The Poole Declaration states that prior to Creditor filing its proof of claim and according to bankruptcy documents filed with the court, notice was mailed to the Creditor at inappropriate addresses. Based on the court's review, notices had been mailed to either a branch address or payment address, and not an address where notices should be sent.

Discussion

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.").

The court infers the Poole Declaration as arguing that Rule 3002(c)(6) should apply in this situation. Under this rule, a court may extend the time to file a proof of claim where the court finds that notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

The court acknowledges based on the matrix list of creditors that in September 2023 Creditor was served at branch and payment addresses and not an address where notices should be sent. However, Creditor was nonetheless placed on notice in October 2023 that bankruptcy was in the process. Had Creditor immediately done further research, it would have confirmed that a petition had already been filed on September 28, 2023.

Furthermore, although an electronic notice was redirected to Mr. Poole's junk folder, notice was nonetheless received by Mr. Poole. And although failure by Mr. Poole to regularly check a junk folder is reasonable, excusable neglect 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 despite being put on notice by the Debtor post-petition in October 2023 of a chapter 13 bankruptcy filing.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is conditionally sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, April 26, 2024, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on April 30, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on April 30, 2024, at 1:00 p.m.

4. [23-90576](#)-B-13 GURMAIL SINGH AND KULDEEP CONTINUED MOTION FOR RELIEF
[JBS](#)-1 KAUR FROM AUTOMATIC STAY
David C. Johnston 3-19-24 [[55](#)]
JMS FINANCIAL, INC. VS.

Final Ruling

This matter was continued from April 16, 2023, to allow JMS Financial, Inc., et al. ("Movants") to file Form EDC 3-486, Relief from stay Summary Sheet, as required by Local Bankr. R. 4001-1. Movants did so.

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 for relief from automatic stay.

Movants seek relief from the automatic stay with respect to mixed commercial and residential rental property located at 14199 Bradbury Road, Delhi, California (the "Property"). Movants have provided the Declaration of Dan Goldfield to introduce into evidence the documents upon which they base the motion.

The Goldfield Declaration states that Movants are a pool of investors who, through a licensed real estate lender/broker, made a \$600,000 pre-petition loan to debtors Gurmail Singh and Kuldeep Kaur ("Debtors"). Debtors soon defaulted on the loan. After a pre-petition foreclosure sale, Movants became the owners of the Property after being successful credit bidders. The Goldfield Declaration states that the residential portion of the Property is rented to parties believed to be unrelated to the Debtors. Also the Property has a "yard" area where Debtor's commercial transportation business stores semi-tractor trailers for Debtor's company US Jet Trans, Inc., for free.

No opposition was filed by the Debtors. The Chapter 13 Trustee filed a supplemental response stating that it received a damaged cashier's check from Debtors, that it was returned to Debtors for replacement, and that upon receipt of the replacement cashier's check the Debtors will be current under the terms of their plan.

Movants filed a reply stating that the Trustee raises no position for or against the merits of the motion for relief from automatic stay. Movants reiterate that they are the owners of the Property after a full credit bid at a pre-petition foreclosure sale, that they have no claim against Debtors for the pre-petition \$600,000 loan, and that the filing of a proof of claim would be improper.

Discussion

Movants present evidence that it is the owner of the mixed commercial and residential rental property. Movants commenced an unlawful detainer action in California Superior Court, County of Merced on October 11, 2023. Dkt. 57, exh. 8. Movants have also provided a copy of the recorded Trustee's Deed Upon Sale to substantiate their claim of ownership. Dkt. 57, exh. 6. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2).

Movants have presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11

U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movants, and their agents, representatives and successors, to exercise their rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not 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.