

**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: May 10, 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  
Sacramento, California

May 10, 2022 at 1:00 p.m.

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1. [21-21810](#)-B-13 ANTHONY/KAMIE GAMBINI OBJECTION TO CLAIM OF INTERNAL  
[RDG](#)-1 Yasha Rahimzadeh REVENUE SERVICE, CLAIM NUMBER  
8-1  
4-4-22 [[43](#)]

**Final Ruling**

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

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

The court's decision is to **conditionally sustain the objection to Claim No. 8-1 of the Internal Revenue Service and continue the matter to May 17, 2022 at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of the Internal Revenue Service ("Creditor"), Claim No. 8-1. The claim is asserted to be unsecured in the amount of \$1,462.09. 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 November 15, 2021. The Creditor's claim was filed February 14, 2022.

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

May 10, 2022 at 1:00 p.m.

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.

#### **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, May 13 2022, 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 17, 2022, 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 17, 2022, at 1:00 p.m.

### **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, and may appear at the hearing to offer oral argument.

The court's decision is to grant the motion.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on August 4, 2021, after Debtor failed to make payments to the chapter 13 Trustee (case no. 20-23338, dkt. 41 Notice of Entry of Dismissal). The Debtor's second bankruptcy case was dismissed on March 4, 2022, after Debtor failed to propose a new plan after the Debtor's original plan was denied (case no. 21-23226, dkt. 50 Notice of Entry of Dismissal).

### **Discussion**

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

Debtor's attorney has filed a Declaration in conjunction with the motion. In the Declaration, Debtor's attorney states that on February 7, 2022, he became ill with COVID-19, and remained in bed, unable to work, from February 7, 2022 to February 27, 2022. Debtor's attorney further states that his long-time secretary had died of COVID-19 prior to his becoming infected with COVID-19, leaving no one in the office to open mail, check calendar hearings, or arrange for other attorneys to reach stipulations to continue hearings which he could neither attend nor oppose.

As a result of Debtor's attorney's illness, he was not aware of the court's conditional order filed on February 22, 2022, or that he had three days until February 25, 2022 to file opposition to the conditional order dismissing Debtor's case. Debtor's attorney was unable to properly represent Debtor during his illness, and was unable to prepare an amended plan, and unable to oppose Trustee's motion for dismissal based on the lack of an amended plan.

The Debtor has offered sufficient explanation from which the court can conclude that her financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

The motion is granted and the automatic stay is imposed for all purposes and parties.

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

The court will issue an order.

3. [21-23548](#)-B-13 SHAHAR JONES  
[RDG-1](#) Peter G. Macaluso

OBJECTION TO CLAIM OF MARIA DE  
LOURDEZ VIDAL ROSAS, CLAIM  
NUMBER 8  
4-4-22 [[27](#)]

### **Final Ruling**

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

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

The court's decision is to **conditionally sustain the objection to Claim No. 8-1 of Maria De Lourdez Vidal Rosas and continue the matter to May 17, 2022 at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Maria De Lourdez Vidal Rosas ("Creditor"), Claim No. 8-1. The claim is asserted to be unsecured in the amount of \$21,700.00. 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 22, 2021. The Creditor's claim was filed on February 17, 2022.

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.

**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, May 13 2022, 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 17, 2022, 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 17, 2022, at 1:00 p.m.

4. [22-20470](#)-B-13 JULIA NORMAN  
[AP-2](#) Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF  
PLAN BY REVERSE MORTGAGE  
FUNDING LLC  
4-6-22 [[20](#)]

### **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). A written reply has been filed to the objection.

Secured Creditor Reverse Mortgage Funding, LLC ("Secured Creditor") objects to confirmation of the chapter 13 plan filed by debtor Julia Ann Norman ("Debtor"). The Debtor has filed a response. No objection was filed by the Chapter 13 Trustee.

The court has reviewed the objection, response, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Oral argument will not assist in the decision making process or resolution of the objection. See Local Bankr. R. 1001-1(f), 9014-1(h). The objection will be decided on the papers.

### **Background**

The objection concerns real property located at 24945 Ridge Crest Drive, Pioneer, California 95666 ("Property"). Secured Creditor holds a first deed of trust on the property based on a reverse mortgage obtained by the original borrower, Gary Baker. The Debtor is not a borrower under the original loan documents. However, the Debtor acquired an interest in the Property from the original borrower pursuant to a September 2019 grant deed. The Debtor currently occupies the Property as her primary residence.

The original borrower died in May 2020. Upon his death, the note became due and payable in full. When note was not timely satisfied, Secured Creditor initiated foreclosure proceedings in October 2021 with a sale date of March 1, 2022. The debtor filed her chapter 13 petition on March 1, 2022.

In an effort to proceed with a rescheduled foreclosure on May 10, 2022, Secured Creditor filed a motion for relief from the automatic stay on March 30, 2022. On the basis that Secured Credit is adequately protected by a substantial equity cushion of over 32%, the motion was heard and denied on May 3, 2022. Secured Creditor now objects to confirmation of the Debtor's plan.

The Debtor's plan classifies Secured Creditor's claim as a Class 2(A) claim to be paid in full through the plan. More precisely, the plan provides for adequate protection payments of \$1,250.00 per month for six months with the balance of the claim refinanced or paid in full by the seventh month. Based on this treatment, Secured Creditor asserts that the plan was not filed in good faith as required by 11 U.S.C. § 1325(a)(3). The court disagrees.

### **Analysis**

Secured Creditor's lack of good faith argument can be reduced to two points: (1) the Debtor is not a party to the loan documents and therefore has no rights or obligations under the note and deed of trust; (2) refinancing or paying the loan within six months is speculative because the Debtor lacks employment and income.

As to the first point, ¶ 13 of the note and ¶ 17 of the deed of trust state that "[n]otwithstanding anything to the contrary herein, upon the death of the last surviving Borrower, the Borrower's successors and assigns will be bound to perform the Borrower's obligation under this [Note at to ¶ 13] [Security Instrument as to ¶ 17][.]" Having received an interest in the Property under the grant deed, the Debtor is an assign of

the original borrower. The Debtor thus has the same right and obligation to satisfy the note and deed of trust as the original borrower, *i.e.*, in full upon the original borrower's death. And § 1322(c)(1) gives the Debtor the right to do so until the Property is sold at a foreclosure sale. See 11 U.S.C. § 1322(c)(1).<sup>1</sup>

"For § 1322(c)(1) to be applicable, there must be, first, a default with respect to a lien on the debtor's principal residence and, second, the possibility of a foreclosure sale, whether strict, judicial, or nonjudicial, pursuant to nonbankruptcy law." *Frazer v. Drummond (In re Frazer)*, 377 B.R. 621, 629 (9th Cir. BAP 2007); see also *In re Richter*, 525 B.R. 734, 743 (Bankr. C.D. Cal. 2015) (§ 1322(c)(1) is applicable when debtor seeks to cure default with respect to a lien on the principal residence and "the lien can be enforced by foreclosure"). Each of the § 1322(c)(1) elements are satisfied here: (1) the Property is the Debtor's principal residence; (2) the lien on the Property is in default because the amount due on the corresponding note remains unpaid following the original borrower's death; (3) Secured Creditor's lien on the Property is enforceable by foreclosure; and (4) the Property has not been sold at a foreclosure sale.

The point here is that the Debtor's treatment of Secured Creditor's claim in the plan - and the plan itself - are consistent with what the Code permits and therefore meet the good faith requirement of § 1325(a)(3). Specifically, through the plan, the Debtor, as an assignor of an interest in the Property, seeks to cure a default on a lien that encumbers her primary residence (in the only manner the default may be cured) by making adequate protection payments and refinancing or obtaining a new loan to pay the obligation secured by the lien in full until the Property is sold at foreclosure.<sup>2</sup> Secured Creditor's first point of objection is therefore overruled.

As to the second point, the Debtor has produced evidence of current employment and income. Of particular note, the Debtor has sufficient income to fund the plan and, she has made her first plan payment. Secured Creditor's second point of objection is therefore overruled.

The Debtor's plan satisfies 11 U.S.C. § 1325(a)(3). Secured Creditor's objection to confirmation of the plan is therefore overruled and the Debtor's plan will be confirmed.

The court will prepare an order.

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<sup>1</sup>Section 1322(c)(1) states as follows:

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law[.]

11 U.S.C. § 1322(c)(1).

<sup>2</sup>Inasmuch as the court denied Secured Creditor's recent request for relief from the automatic stay on the basis that Secured Creditor is adequately protected by an equity cushion of over 32%, and with the additional protection now afforded Secured Creditor in the form of adequate protection payments under the plan, the court does not foresee a foreclosure sale occurring at any time within the next six or seven months.

### **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 grant the motion to sell and continue the matter to May 17, 2022 at 1:00 p.m.**

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 2459 Felino Lane, Lodi, California, 95240 ("Property").

Proposed purchaser Thien V. Dang have agreed to purchase the Property for \$480,000.00. The sale will be "as-is", and was agreed to by seller on March 31, 2022. The disbursement date and closing date set for the transaction is May 13, 2022.

The chapter 13 Trustee filed a response to Debtor's motion to sell stating (1) there is no declaration from the Debtor in support of the motion, (2) Debtor does not indicate if the sale is an arms' length transaction, and (3) the motion proposes to pay unsecured creditors 100%. Trustee requests that any order granting the motion state that the motion proposes to pay unsecured creditors 100%.

Subsequent to Trustee's response, Debtor has filed a reply to Trustee's response and a declaration in support of the motion to sell. Dkt. 54. In his declaration, Debtor states that the sale is an arms' length transaction, and further he has agreed that the order granting the motion is to include the requested language by the Trustee.

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 conditionally granted.

The Debtor has indicated that the following provisions be included in the order approving the sale of real property:

1. The sale is approved provided all liens are paid in a manner consistent with the plan. Shellpoint Mortgage Servicing will be paid in full subject to a proper payoff quote.
2. The Trustee must approve of the Title Company and Escrow Company to be used in connection with the sale. His approval shall not be unreasonably withheld.
3. The sale is approved provided that the Trustee approves the estimated closing statement to be prepared in connection with the sale, and when approved, disbursements may only be made in accordance with the approved closing statement.
4. \$48,805.00 of the proceeds from the sale will be paid directly to the Trustee from escrow. Debtor will receive the balance of the proceeds directly from escrow.

### **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, May 13, 2022, to file and serve an opposition or other response to the motion. 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 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 17, 2022, 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 17, 2022, at 1:00 p.m.

6.     [21-23653](#)-B-13   ROBERT VALENTINE AND                   CONTINUED MOTION TO MODIFY PLAN  
          [RWF](#)-3           TERRY ENGELHARDT                   3-15-22 [[40](#)]  
                      Robert W. Fong

**Final Ruling**

This matter was continued from May 3, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, May 7, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 53, granting the motion, shall become the court's final decision. The continued hearing on May 10, 2022, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 53.

The court will issue an order.