

**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: June 1, 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
Sacramento, California

June 1, 2021 at 1:00 p.m.

1. [20-25200](#)-B-13 DAVIE HUMPHREY MOTION TO FILE CLAIM AFTER
GB-1 Marc Voisenat CLAIMS BAR DATE
5-3-21 [[41](#)]

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 file a claim after the claims bar date.

U.S. Bank Trust National Association, as Trustee of the Cabana Series IV Trust, ("Creditor") seeks an order permitting it to file a late claim based on excusable neglect. Debtor filed the current bankruptcy petition on November 13, 2020. The claims bar date for non-governmental entities expired on January 22, 2021. See dkt. 16.

The only creditor listed on the Master Address list is Nationstar Mortgage. Nationstar Mortgage did agree to a loan modification with Debtor in 2010, but has not had any interest in the loan since September 23, 2019, when it assigned its interest to US Bank Trust National as trustee of the Igloo Series IV Trust. The mortgage was subsequently assigned to Creditor. SN Servicing has serviced Creditor's loan since September 24, 2019. Additionally, SN Servicing has sent the Debtor monthly mortgage statements every month since October 2019. Despite this, Debtor failed to provide notice of the bankruptcy to either SN Servicing or Creditor.

Creditor only became aware of the bankruptcy filing on April 26, 2021. Since becoming aware of the filing, Creditor expeditiously retained counsel, filed a late proof of claim, and filed this motion. Creditor asserts that its late-filed claim should be allowed based on excusable neglect. Creditor's proof of claim appears to be Claim No. 2 filed on May 4, 2021.

Discussion

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. A proof of claim in a Chapter 13 case is timely filed if it is filed not later than 70 days after the order for relief under that chapter. Based on a November 13, 2020, petition date, the claims bar date is January 22, 2021.

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 seven circumstances listed in Rule 3002(c).

Relying on *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993), Creditor maintains that its late-filed claim should be allowed on the basis of excusable neglect. Creditor's argument lacks merit because the excusable neglect

June 1, 2021 at 1:00 p.m.

Page 1 of 12

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 explained in *Coastal Alaska Lines, Inc.*, 920 F.2d 1428 (9th Cir. 1990):

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

Id. at 1432 (citation omitted).¹ 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."

Nevertheless, Creditor has identified one of the permissible circumstances in which the bankruptcy court may permit a late claim to be filed in a Chapter 13 case. Bankruptcy Rule 3002(c)(6) permits the court to extend the time to file a proof of claim after the time to file a claim has expired, after a hearing on a noticed motion, and for not more than 60 days from the date of the order granting the motion, if notice of the bankruptcy filing "was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)[.]" Fed. R. Bankr. P. 3002(c)(6)(A).

The list required by Bankruptcy Rule 1007(a) was filed in this case. However, Creditor is omitted from it. It is therefore as if no rule-required list was timely-filed as to Creditor. Under these circumstances, Creditor could not timely file a proof of claim before the claims bar date expired on January 22, 2021, inasmuch as Creditor did not know of this case until some three months later on April 26, 2021. An extension under Bankruptcy Rule 3002(c)(6) to permit Creditor to file a late proof of claim is therefore warranted. See *In re Mazik*, 592 B.R. 812, 818 (Bankr. E.D. Pa. 2018) ("I also hold that the requirement before an extension may be granted under the Rule 3002(c)(6)(A) – i.e., that the lack of notice must be caused by the debtor's 'failure to timely file the list of creditors' names and addresses required by Rule 1007(a)' is satisfied if the debtor files a list of creditors that omits the name and address of the creditor seeking relief under the rule."); see also *In re Fitzgerald*, 2020 WL 5745973 at *4 (Bankr. M.D. Fla. May 18, 2020) (stating that inaccurate or incomplete Rule 1007(a) list gives court discretion to extend bar date under Rule 3002(c)(6); *In re Jackson*, 2019 WL 3797580 (Bankr. D.S.C. July 24, 2019).

Therefore, for the foregoing reasons, Creditors' motion will be granted. The time for Creditor to file a proof of claim is extended and Claim No. 2 is deemed to be a timely-filed claim for all purposes in this Chapter 13 case.

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

The court will issue an order.

¹ *Pioneer* also states that Rule 3002(c) is excluded from the operation of the excusable neglect standard. See 507 U.S. at 389 n. 4.

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee and a response was filed by the Debtor.

The court has determined 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 not permit the requested modification and not confirm the modified plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Ramon Padilla ("Debtor") does not provide supporting documentation as to the monthly expense of \$1,650.00 for income taxes at Schedule J, Line 16, dkt. 85. Additionally, Debtor's motion and declaration are silent as to why the debtor is delinquent \$19,740.00 under the currently confirmed plan, why these funds were not paid, whether the cause for the delinquency has been rectified, and if the Debtor will be able to make future plan payments.

The Debtor filed a response stating that the monthly expense of \$1,650.00 represents anticipated state and federal income taxes that will be due. Debtor also states that his delinquency was caused by a loss of workers and contracts in his construction business during the pandemic, and customers not timely paying their bills. Debtor states that the issue is now resolved since his business is back to normal and he will be able to make timely plan payments.

Although the Debtor's response acknowledges that issues raised by the Trustee, the Debtor does not provide a sufficient explanation as to the duration of the tax payments and whether he anticipates owing taxes in subsequent tax years. It cannot be determined whether the Debtor is contributing all of his disposable income into the plan.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

The court will issue an order.

3. [19-27633](#)-B-13 MICHAEL/CATHERINE MURRAY MOTION TO MODIFY PLAN
[SMJ](#)-1 Scott M. Johnson 4-21-21 [[21](#)]

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. [21-20437](#)-B-13 ANGELA WARE-PERKINS
[HWW](#)-2 Hank W. Walth

CONTINUED MOTION TO CONFIRM
PLAN
4-12-21 [[27](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined 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 not confirm the first amended plan.

Both debtor Angela Ware-Perkins ("Debtor") and the Chapter 13 Trustee have each filed separate responses stating that the Debtor intends to file a second amended plan and set a confirmation hearing. Therefore, the motion to confirm first amended plan will be denied.

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

The court will issue an order.

5. [19-27839](#)-B-13 ELINOR BANKS
[AP-1](#) Len ReidReynoso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-22-21 [[59](#)]

WELLS FARGO BANK, N.A. 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 stay.

Wells Fargo Bank, N.A., d/b/a Wells Fargo Auto ("Movant") seeks relief from the automatic stay with respect to insurance claim proceeds in the amount of \$2,905.19 ("Insurance Claim Proceeds") as a result of a total loss insurance claim paid on a 2004 Cadillac Escalade ESV Sport Utility 4D ("Vehicle"). The moving party has provided the Declaration of Brian J. Moss to introduce into evidence the documents upon which it bases the claim and the obligation owed by the debtor Elinor Banks ("Debtor").

Movant states that it is in possession of the Insurance Claim Proceeds and that it intends to apply them to satisfy the remaining balance owed on the Debtor's contract with Movant related to the Vehicle.

Due to payments made to Movant by the Chapter 13 Trustee pursuant to the Debtor's confirmed chapter 13 plan, there may be an overpayment on the contract once the Insurance Claim Proceeds are applied, which Movant will address through a refund to the Chapter 13 Trustee. Movant seeks relief from the automatic stay so that it may administer the Insurance Claim Proceeds, reconcile the accounting on the contract, and address any potential over payment on the claim by the Trustee.

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). Here, cause exists to terminate the automatic stay since the Vehicle was involved in a total loss claim. Movant is in possession of the Insurance Claim Proceeds and intends to apply the funds to satisfy the remaining balance owed on the contract. Movant that it will also address any potential over payment on the claim by the Trustee.

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 apply the Insurance Claim Proceeds to the Vehicle and resolve any overpayment on the claim by the Trustee.

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.

6. [20-21351](#)-B-13 DAVID/ANN READING
[ASW](#)-1 Jessica A. Dorn

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-28-21 [[78](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). Responses were filed by Debtors and the Chapter 13 Trustee.

The court has determined 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 the motion for relief from stay.

Deutsche Bank National Trust Company ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 764 Buckinghouse Drive, Tracy, California (the "Property") due to default in post-petition payments. Debtors filed a response stating that they have filed a third modified plan that will cure the post-petition payments owed to Movant. Trustee's response provides a history of Debtors' plan payments and the filing of their third modified plan with the confirmation hearing scheduled for June 15, 2021.

Because a third modified plan has been filed to address the delinquency in post-petition payments, the motion for relief from stay will be denied without prejudice.

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

The court will issue an order.

7. [19-26152](#)-B-13 OLIVO/NATIVIDAD
[JCK](#)-3 CIENFUEGOS
Gregory J. Smith

MOTION TO MODIFY PLAN
4-21-21 [[63](#)]

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined 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 permit the requested modification and confirm the modified plan.

First, the Debtors have failed to tender the April 2021 plan payment in the amount of \$1,896.00. Debtors filed a response stating that, with a family contribution, they will be able to make two payments of \$1,896.00 (for a total of \$3,792.00) before the date of the hearing on this matter.

Second, the Debtors agree to list the additional post-petition arrears owed to JPMorgan Chase at \$2,286.46 in the order confirming. This is a difference of only \$206.67 from the amount listed in the proposed modified plan.

Provided that the above issues are resolved as stated in Debtors' response, the plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a), and the plan will be 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.

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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, 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 and deny confirmation of the plan.

First, the Debtor has not provided either a declaration or evidence of the fair market value of a Georgia property to which she has legal title. It cannot be determined whether the plan passes the liquidation test of 11 U.S.C. § 1325(a)(4).

Second, feasibility depends on the granting of a motion to value collateral for the Internal Revenue Service. The Debtor states in her response that she will file a motion to value the collateral in the absence of a proof of claim. The IRS has not yet filed a proof of claim and the deadline to file for a governmental unit is August 31, 2021. The Debtor has not filed a motion to value.

Third, the Debtor's proposed plan payments are not feasible pursuant to 11 U.S.C. § 1325(a)(6). Monthly payments to secured creditors totals \$475.00 per month, and with the addition of the Trustee's compensation and expenses totals \$501.05 per month. Debtor stated in her response that this increase can be included in an order confirming.

Nonetheless, since the first and second issues above remain unresolved, the plan filed March 4, 2021, 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.

9. [21-20771](#)-B-13 DAVID SCHEIDT
[APN-1](#) David S. Van Dyke

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
4-5-21 [[14](#)]

Thru #10

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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, 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 and deny confirmation of the plan.

Objecting creditor Deutsche Bank National Trust Company ("Creditor") holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$103,335.71 in pre-petition arrearages. The plan does not propose to cure the full arrearages.

Debtor filed a response stating that he disputes the sum of pre-petition arrearages and requests that Creditor provide a more detailed accounting of the mortgage balance that accrued from the inception of the loan in 2006 through the present. Debtor also states that his attorney and Creditor's attorney have had conversations regarding this issue. It was indicated that the Creditor may be willing to work out this matter so that Debtor may keep his home.

Although there have been conversations between Creditor and Debtor, 11 U.S.C. § 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. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991). The Debtor has not filed a separate objection to Creditor's proof of claim and therefore Creditor's proof of claim is presumptively valid.

Since 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 March 4, 2021, 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.

10. [21-20771](#)-B-13 DAVID SCHEIDT
[RDG-1](#) David S. Van Dyke

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
5-3-21 [[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 a confirmation order, 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. Nonetheless, the plan is not confirmed for reasons stated at Item #9, APN-1.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor does not provide a declaration from his fiancée stating her ability and willingness to provide a monthly financial contribution of \$3,500.00 to the Debtor, that the Disclosure of Compensation of Attorney for Debtor (Form 2030) improperly excludes certain services.

The Debtor filed the Declaration of Laura Lyons on May 6, 2021, which states Ms. Lyons' ability and willingness to provide the aforementioned contribution. Additionally, the Debtor filed an amended Disclosure of Compensation of Attorney for Debtor that removes the improper exclusion of services. Therefore, the issues raised by the Trustee are resolved and the objection is overruled.

Nonetheless, the plan filed March 4, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #9, APN-1. The plan is not confirmed.

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

The court will issue an order.

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 a confirmation order, 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 and deny confirmation of the plan.

First, the plan will take approximately 77 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). This increase in duration is due to creditor Rushmore Loan Management Services LLC having filed proof of claim 1-1, which provides a pre-petition arrearage of \$34,382.17. Debtor's plan listed arrears to the creditor at \$27,000.00. Based on the Chapter 13 Trustee's calculations, the Debtor's plan payment will need to be at least \$2,013.00 in order for Debtor's plan to be feasible as proposed paying unsecured creditors 100%.

Second, Debtor testified at his 341 meeting of creditors that he expects an estimated refund of \$1,000.00 based on his 2020 tax returns. Until the Trustee is able to review Debtor's 2020 tax returns, the Trustee is unable to determine whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. § 1325(b)(1).

Third, Debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtor testified at his 341 meeting of creditors that his girlfriend contributes \$200.00 to \$400.00 per week to the household. However, this contribution has not been indicated on Debtor's schedules and no declaration has been provided by the girlfriend regarding her ability and willingness to financially assist the Debtor.

The plan filed March 26, 2021, 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.