

**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: June 22, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

June 22, 2021 at 1:00 p.m.

1. [19-90316](#)-B-13 TERESA AGUILAR MOTION TO WAIVE FINANCIAL
[BSH](#)-5 Brian S. Haddix MANAGEMENT COURSE
Thru #2 REQUIREMENT, WAIVE SECTION 1328
CERTIFICATE
REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE
PARTY, AS TO DEBTOR
DEBTOR DISMISSED: 05/24/2021 6-2-21 [[72](#)]

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 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). This matter will therefore be decided on the papers.

The court's decision is to conditionally substitute Ernesto Aguilar to continue administration of the case, conditionally waive the deceased Debtor's certification otherwise required for entry of a discharge, and continue the matter to June 29, 2021, at 1:00 p.m.

Ernesto Aguilar moves to act as the representative of the deceased debtor, Teresa Aguilar, who passed away on February 14, 2021, in this bankruptcy proceeding. Ernesto Aguilar is the son of the deceased debtor.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may

June 22, 2021 at 1:00 p.m.

also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b) (4).

Based on the evidence submitted, the court will conditionally grant the relief requested, specifically to substitute Ernesto Aguilar for Teresa Aguilar as successor-in-interest, and to waive the § 1328 and financial management requirements for Teresa Aguilar. The continued administration of this case is in the best interests of all parties.

Conditional Nature of this Ruling

A certificate of death was not filed to accompany the motion. This certificate shall be filed by 5:00 p.m. on Friday, June 25, 2021.

Separately, 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, June 25, 2021, 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 the United States trustee by facsimile or email.

If no opposition or response is timely filed and served and the certificate of death has been filed, 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 June 29, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on June 29, 2021, at 1:00 p.m.

The court will issue an order.

2. 19-90316-B-13 TERESA AGUILAR MOTION TO VACATE DISMISSAL OF
BSH-8 Brian S. Haddix CASE
6-2-21 [81]
DEBTOR DISMISSED: 05/24/2021

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 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). This matter will therefore be decided on the papers.

The court's decision is to conditionally grant the motion to vacate dismissal of case and **continue the matter to June 29, 2021, at 1:00 p.m.**

This is a motion to vacate the order dismissing this Chapter 13 case. The Chapter 13 case was dismissed on May 24, 2021, for failure to make plan payments. Payments were not current because Debtor passed away on February 14, 2021. Deceased Debtor's son Ernesto Aguilar has moved to act as representative of the deceased, and his motion was conditionally granted. See Item #1, BSH-5. Concurrently with this motion, a motion to confirm has also been filed and plan payments are current. Ernesto Aguilar seeks to continue administration of this case and continue plan payments in order to keep his late mother's home.

Discussion

Federal Rule of Civil Procedure 60(b) (1), applicable by Federal Rule of Bankruptcy Procedure 9024, permits the court to relieve a party from a final judgment or order for

"mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Relief for excusable neglect is governed by the *Pioneer-Briones* factors, i.e., (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

Danger of prejudice to creditors is minimal. The motion to vacate dismissal was filed nine days after the case was dismissed. Vacating dismissal will not delay these proceedings since Ernesto Aguilar is prepared to begin making monthly plan payments. Dismissal also resulted from an oversight by Debtor's counsel, who had served an omnibus motion upon death on the Chapter 13 Trustee ("Trustee"), U.S. Trustee, and all creditors but had failed to file the documents through the eCalWebFiling e-file portal. That the documents were not e-filed was not realized until the Trustee filed a declaration in support of order dismissing case on May 21, 2021. There is no indication of any bad faith by the Debtor.

Therefore, the Debtor's motion to vacate the order dismissing this Chapter 13 case will be granted, the dismissal order at dkt. 70 vacated, and this case ordered reinstated.¹

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, June 25, 2021, 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 the United States trustee 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 June 29, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on June 29, 2021, at 1:00 p.m.

The court will issue an order.

¹The court reaches the same result under Civil Rule 59(e) incorporated into Bankruptcy Rule 9023. Inasmuch as dismissal resulted from circumstances beyond the Debtor's control, i.e., nonpayment due to death, vacating the dismissal order will prevent a manifest injustice. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (Civil Rule 59(e) relief available to prevent manifest injustice); *Ciralsky v. Central Intelligence Agency*, 355 F.3d 661, 673 (D.C. Cir. 2004) (manifest injustice addresses circumstances outside party's control).

3. [20-90627](#)-B-13 SILVIA HERNANDEZ MOTION TO CONFIRM PLAN
[NUU](#)-2 Chinonye Ugorji 5-12-21 [[70](#)]

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 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 not confirm the second amended plan.

All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2), and the Debtor may not be able or willing to make the Plan payments based on their current delinquency under the pending plan. 11 U.S.C. §1325(a)(6). Debtor's plan provides for plan payments of \$3,829.28 in months 1 through 7, and \$5,144.10 in months 8 through 60. Debtor is \$4,608.96 delinquent in plan payments, as the last payment in the amount of \$5,000.00 was posted on May 3, 2021. The next scheduled payment of \$5,144.10 is due on May 25, 2021.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.

4. [21-90155](#)-B-13 GLENN/KATRINA MAROWSKI OBJECTION TO CONFIRMATION OF
[APN-1](#) Matthew J. DeCaminada PLAN BY THE BANK OF NEW YORK
Thru #5 MELLON
5-3-21 [[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 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 sustain the objection and deny confirmation of the plan.

Objecting creditor CWABS Inc., Asset-Backed certificates, Series 2006-7, as serviced by NewRez LLC d/b/a Shellpoint Mortgage Servicing, holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$1,518.33 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 April 6, 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.

5. [21-90155](#)-B-13 GLENN/KATRINA MAROWSKI OBJECTION TO CONFIRMATION OF
[RDG-1](#) Matthew J. DeCaminada PLAN BY RUSSELL D. GREER
6-2-21 [[21](#)]

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 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 sustain the objection and deny confirmation of the plan.

First, Debtors' Schedule D lists a secured claim for Newres-she but the plan does not provide for this secured claim. Without providing for this claim, it cannot be

determined whether Debtors intend to pay this creditor and, if it is to be paid, how it is to be paid. This impacts whether Debtors will be able to make all payments under the plan and comply with the plan. 11 U.S.C. §1325(a)(6).

Second, Debtors have attached Section 7 to the plan and reference "Additional Provisions". However, Debtors have failed to indicate that the plan includes nonstandard provisions at Section 1.02. A non-standard provision will be given no effect unless this section indicates one is included in Section 7 and it appears in Section 7. Accordingly, Debtors' plan is not feasible. 11 U.S.C. § 1325(a)(6).

Third, Debtors' Plan is not feasible as proposed paying unsecured creditors 100%. Creditor Navient Solutions LLC on behalf of Ascendium Education Solutions has filed a proof of claim (5-1) for Debtors' student loans in the amount of \$102,218.87. Because the additional provisions have not been incorporated into the plan, the student loans must be paid through the plan. 11 U.S.C. §1325(a)(6).

The plan filed April 6, 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.

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 sustain the objection to Claim No. 11 of TFC Credit Corporation and disallow the claim in its entirety.

Debtors request that the court disallow the claim of TFC Credit Corporation ("Creditor"), Claim No. 11. The claim is asserted to be in the amount of \$10,195.42. Debtors assert 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 February 8, 2021. The Creditor's claim was filed March 22, 2021.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the 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 is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

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

The court will issue an order.

7. [20-90684](#)-B-13 J JESUS GOMEZ AND MARIA MOTION TO CONFIRM PLAN
[TMO](#)-2 TRIGUEROS 4-23-21 [[69](#)]
T. Mark O'Toole

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 by the Chapter 13 Trustee.

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 not confirm the plan.

The Chapter 13 Trustee filed an objection to Debtors' plan. Debtors filed a non-opposition to the Trustee's objection and state that they will file an amended plan.

The plan filed April 23, 2021, does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.

8. [19-90999](#)-B-13 GUSTAVO JIMENEZ
[JCK](#)-4 Gregory J. Smith

MOTION TO MODIFY PLAN
5-17-21 [[93](#)]

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.