

**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: August 4, 2020

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

August 4, 2020 at 1:00 p.m.

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1. [19-91006](#)-B-13 CASANDRA LYNNETTE COXUM MOTION FOR COMPENSATION BY THE
[BJS](#)-1 Bradley J. Swingle LAW OFFICE OF ARATA SWINGLE VAN
EGMOND & HEITLINGER FOR BRADLEY
J. SWINGLE, DEBTORS ATTORNEY(S)
6-29-20 [[22](#)]

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 deny without prejudice the motion for compensation.

Fees and Costs Requested

Bradley J. Swingle ("Applicant"), the attorney to Chapter 13 Debtor, makes a request for the allowance of \$3,500.00 in fees pursuant to 11 U.S.C. § 330(a). Applicant had substituted into this case after Debtor's original attorney, Randal K. Walton, had passed away prior to confirmation of Debtor's plan. Mr. Walton had filed a Notice of Rights and Responsibilities requesting attorney fees in the total amount of \$4,000.00, of which \$500.00 was paid pre-petition.

As part of Applicant's substitution into the bankruptcy case, Applicant and Debtor had agreed to attorney's fees of \$3,500.00 to be paid to Applicant. Applicant had filed a Notice of Rights and Responsibilities on January 31, 2020, listing total fees in the amount of \$4,000.00, of which \$500.00 was paid to Mr. Walton and \$3,500.00 is to be paid through the plan to Applicant. Nothing has been paid to Applicant's office.

However, Applicant does not provide any task billing analysis and supporting evidence of services provided. A review of the court's docket shows that no plan has been confirmed despite the case being filed on November 8, 2019. It is unclear what services Applicant has provided to the Debtor that would warrant \$3,500.00 in attorney's fees besides filing a substitution of attorney and related documents.

Without any task billing analysis or supporting evidence, the court cannot determine whether Applicant's services are beneficial to the Debtor and bankruptcy estate. Therefore, the motion is denied without prejudice.

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

The court will issue an order.

August 4, 2020 at 1:00 p.m.

2. [19-91012](#)-B-13 KATHLEEN MILBURN
[RDR](#)-6 Robert D. Rodriguez

MOTION TO CONFIRM PLAN O.S.T.
7-10-20 [[128](#)]

Final Ruling

The motion set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Opposition was filed by 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 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 third amended plan.

First, the Debtor does not appear to be able to make plan payments pursuant to 11 U.S.C. § 1325(a)(6). Although the Debtor has filed an amended Schedule J to reflect an additional expense of \$350.00 toward mortgage payments for her residence, her monthly net income is now \$2,427.43. This is less than the proposed monthly plan payment of \$2,430.44. The Debtor therefore appears to be unable to make her monthly plan payment.

Second, Debtor's plan provides for United Party Rentals as a Class 2 claim. This creditor filed Claim No. 6 on July 20, 2020. The deadline to file a proof of claim for a creditor that is not a governmental unit was April 17, 2020. Dkt. 52. Therefore, it appears that this proof of claim was untimely filed; however, no objection to claim has been filed by any interested party.

Nonetheless, for the first reason stated above, the 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.

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.

However, in light of General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due 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 determined this matter may be decided on the papers. 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 conditionally grant the motion to incur debt and continue the matter to **August 18, 2020, at 1:00 p.m.**

The motion seeks permission to incur a mortgage loan of approximately \$384,750.00 to purchase real property. Monthly payments are estimated to be \$2,872.74. The mortgage will be through First Capital Mortgage. Debtor asserts that the new mortgage payment will have no effect on her Chapter 13 creditors since her bankruptcy is complete and awaiting discharge.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on August 11, 2020, 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 Debtor's attorney, 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 August 18, 2020, 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 August 18, 2020, at 1:00 p.m.

The court will issue an order.

4. [20-90346](#)-B-13 SOPHIA TITH CONTINUED OBJECTION TO
[RDG-1](#) Brian S. Haddix CONFIRMATION OF PLAN BY RUSSELL
Thru #5 D. GREER
7-1-20 [[17](#)]

Final Ruling

The Chapter 13 Trustee's objection to confirmation was continued from July 21, 2020, to be heard in conjunction with the Trustee's objection to Debtor's claim of exemptions. See Item #5, RDG-2. The Trustee objected to confirmation solely on grounds that the Debtor was not entitled to a homestead exemption in the amount of \$100,000.00. The objection to Debtor's claim of exemptions was overruled. Therefore, the Trustee's objection to confirmation is resolved and overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 13, 2020, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

5. [20-90346](#)-B-13 SOPHIA TITH OBJECTION TO DEBTOR'S CLAIM OF
[RDG-2](#) Brian S. Haddix EXEMPTIONS
7-1-20 [[21](#)]

Final Ruling

The objection has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4003(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 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 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.

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.730 to exempt \$100,000.00 of the equity in her real property since the Debtor is not age 55 or above and is not permanently disabled.

Debtor filed a response stating that she has filed amended Schedule C to specify her utilization of California Code of Civil Procedure § 704.730(a)(2), and has amended Schedule J to list her dependent child. Debtor states that she is entitled to utilize \$100,00.00 in the homestead exemption since she has a family member. The court agrees with the Debtor.

The Trustee's objection is therefore overruled.

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

The court will issue an order.

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.

However, in light of General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due 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 determined this matter may be decided on the papers. 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 conditionally value the secured claim of Ally Financial at \$14,675.00 and continue the matter to **August 18, 2020, at 1:00 p.m.**

Debtor's motion to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Chevy Traverse LT 2WD ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$14,675.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 5 filed by Ally Financial is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on July 16, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$18,137.91. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$14,675.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on August 11, 2020, 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 Debtor's attorney, 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 August 18, 2020, 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 August 18, 2020, at 1:00 p.m.

The court will issue an order.

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, the claimant is not required to file written opposition to the objection and may appear at the hearing to offer oral argument.

However, in light of General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due 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 determined this matter may be decided on the papers. 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 to Claim No. 17 of ECMC and disallow the claim in its entirety.

Russell Greer ("Objector") requests that the court disallow the claim of ECMC ("Creditor"), Proof of Claim No. 17 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$41,427.29. Objector 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 19, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed March 11, 2016.

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 six 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.

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.

9. [20-90470](#)-B-13 STEPHEN WEAVER
[DCJ](#)-1 David C. Johnston

CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
7-7-20 [[7](#)]

Final Ruling

This matter was continued from July 21, 2020, to allow an opposition or response to be filed by any party in interest. No opposition or response was filed. Therefore, the court's conditional ruling at docket 18 shall be the court's final decision.

The court will issues an order.

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). Opposition was filed by 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 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 conditionally grant the motion to incur debt.

Debtor seeks permission to purchase real property in Modesto, California, to be used as her primary residence since her family has outgrown their current residence. Debtor states that the net proceeds from the sale of her current residence will be used as a down payment toward the new home. The net sale proceeds are approximately \$95,668.21. Dkt. 42. Debtor has claimed a homestead exemption of \$91,929.00 under California Code of Civil Procedure § 704.730. Dkt. 1, p. 20. Debtor's declaration states that the balance of the sale proceeds will be used to improve the new residence.

The Chapter 13 Trustee filed an opposition requesting that the remaining sale proceeds not used as a down payment, approximately \$40,000.00, be deposited in the Debtor's attorney's trust account, and that a monthly accounting of the funds spent toward home improvement be provided to the Trustee. Trustee further requests that any and all remaining sale proceeds not used to improve the property within 6 months as required under California Code of Civil Procedure § § 704.720(b) shall be turned over to the Trustee as an additional plan payment.

The Debtor did not file any response by July 28, 2020. Dkt. 54.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. The Trustee's opposition is also well taken. Therefore, the Debtor's motion is granted provided that the Trustee's conditions are satisfied. Specifically, sale proceeds not used as a down payment, approximately \$40,000.00, shall be deposited in the Debtor's attorney's trust account, and the Debtor shall provide the Trustee with a monthly accounting of funds spent towards home improvement.

That said, to the extent any sale proceeds deposited in the Debtor's attorney's trust account are exempt homestead proceeds those exempt proceeds are not "actually received" by the Debtor which means the six-month reinvestment period of § 704.720(b) will not begin to run. Stated another way, the six-month reinvestment period under § 704.720(b)

begins to run only from the time the Debtor has actual physical possession of exempt homestead proceeds which, under the Trustee's scenario here, would be upon disbursement of any such proceeds not used as a down payment from the Debtor's attorney's client trust account to the Debtor. See e.g., *Gill v. Woodburn (In re Gill)*, Adv. No.2:12-ap-02035-RK, at p.13 (Bankr. C.D. Cal. Dec. 6, 2012); see also *Bencomo v. Avery*, 2016 WL 4203918, *1 (9th Cir. BAP 2016) (recognizing that debtor "actually received" exempt homestead proceeds under § 704.720(b) when the debtor negotiated check and not when property sold and sale proceeds were tendered to debtor's attorney nine days earlier); *In re Harrison*, case no. 18-26946 (Bankr. E.D. Cal. 2018) at dkt. 115 (so holding).

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

The court will issue an order.

11. [19-90999](#)-B-13 GUSTAVO JIMENEZ
[RDG](#)-2 Gregory J. Smith

CONTINUED OBJECTION TO CLAIM OF
PACIFIC ENTERPRISE BANK, CLAIM
NUMBER 18
6-9-20 [[58](#)]

Final Ruling

This matter was continued from July 21, 2020, to allow an opposition or response to be filed by any party in interest. No opposition or response was filed. Therefore, the court's conditional ruling at docket 75 shall be the court's final decision.

The court will issues an order.