

**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: 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
Sacramento, California

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

-
1. [18-21214](#)-B-13 JOSE PATINO OBJECTION TO CLAIM OF NAVY
[RDG](#)-3 Peter G. Macaluso FEDERAL CREDIT UNION, CLAIM
NUMBER 24
6-29-20 [[89](#)]

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. 24 of Navy Federal Credit Union and disallow the claim in its entirety.

Chapter 13 Trustee Russell Greer ("Objector") requests that the court disallow the claim of Navy Federal Credit Union ("Creditor"), Proof of Claim No. 24 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$16,222.63. 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 May 11, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed January 8, 2020.

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

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

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.

2. [20-23338](#)-B-13 ALICIA YASSIN
[DCJ](#)-1 David C. Johnston

CONTINUED MOTION TO EXTEND
AUTOMATIC STAY
7-7-20 [[10](#)]

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 20 shall be the court's final decision. The automatic stay of § 362(a) is extended as to all parties and parties in interest and for all purposes.

The court will issues an order.

3. [19-27839](#)-B-13 ELINOR BANKS
[RPZ](#)-1 Len ReidReynoso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-29-20 [[36](#)]

U.S. BANK NATIONAL
ASSOCIATION 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). Opposition was filed by the Debtor. A response 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 continue the matter to **August 11, 2020, at 1:00 p.m.**

U.S. Bank National ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 9527 Durham Court, Stockton, California (the "Property"). Movant asserts that the Debtor is delinquent four post-petition payments.

Debtor filed an objection acknowledging she fell behind on payment and that this was due to the effects related to COVID-19 sheltering in place. However, Debtor contends that she is now current on her plan payments, which provide for Movant as a Class 1 claim, and that the motion should be denied.

The Trustee filed a response stating that post-petition mortgage payments representing months January 2020 through May 2020 were disbursed to Movant, and that the Debtor is delinquent \$1,629.88 for the June 2020 post-petition mortgage payment. However, based on the funds currently on hand in Debtor's case, a payment in the amount of \$1,629.88 will disburse to Movant on July 31, 2020. Should debtor tender a timely July 2020 plan payment, additional funds may be available to disburse to the post-petition mortgage payment.

Therefore, this matter will be continued to August 11, 2020, at 1:00 p.m. so that the Trustee can confirm whether the Debtor timely made the July 2020 plan payment and if funds existed to cure the post-petition mortgage payment. The Trustee shall file a reply by 5:00 p.m. on Wednesday, August 5, 2020, as to the status of the post-petition mortgage payment. If the Debtor is current on post-petition mortgage payments, the motion will be denied without prejudice and the hearing set for August 11, 2020, will be vacated.

The court will issue an order.

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. 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 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 second amended plan.

The Chapter 13 Trustee raises various objections to confirmation related to Debtor's income and expenses, and the Debtor has filed a response explaining her household size and income.

Nonetheless, at a minimum the Debtor does not appear to be eligible for Chapter 13 relief under 11 U.S.C. § 109(e). A review of the claims register shows total unsecured claims filed to date in the amount of \$519,449.90, which exceeds the eligibility limit for Chapter 13 of \$419,275.00. Debtor's response states that this is due to the proofs of claim filed by the Internal Revenue Service and/or Franchise Tax Board that were categorized as unsecured general claims rather than as secured claims, and they should be treated as joint debts shared with her former spouse.

Normally, the court would look to the schedules as originally filed to determine eligibility. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). However, the omission and/or gross understatement in the schedules of otherwise known federal and state tax debt raises the specter of bad faith given that schedules are filed under penalty of perjury and certified to be accurate. See Fed. R. Bankr. P. 1008. So too does the improper claiming of expenses as the Trustee notes. Therefore, in making the eligibility determination, the court exercises its discretion to look beyond the Debtor's schedules. See *In re Cox*, 2016 WL 5854214 at * 1 (Bankr. E.D. Wash. 2016). In doing so the court takes judicial notice of the claims register and the IRS and FTB proofs of claim which assert unsecured debt in an amount that exceeds the statutory cap of § 109(e).¹

Moreover, the Debtor has failed to file any objection to the IRS and FTB proofs of claim. Section 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). Since the Debtor has not objected to either proofs of claim, they are allowed as unsecured general claims in their total amounts and the Debtor is therefore over the debt limit for Chapter 13 relief.

¹This may present an even larger problem for the Debtor. Inasmuch as a motion to dismiss would likely be granted under § 109(e), the Debtor may only have two options: (1) convert; or (2) voluntarily dismiss. Moreover, because eligibility is determined as of the petition date, *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 918 (9th Cir. BAP 2006), any potential postpetition reduction of the unsecured tax debt by the Debtor is not relevant. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999); accord *In re Mohr*, 425 B.R. 457, 461 (S.D. Ohio 2010).

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.

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 approve the loan modification and continue the matter to **August 18, 2020, at 1:00 p.m.**

Debtor seeks court approval a trial loan modification for the first deed of trust of Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 1. The Trial loan modification will reduce Debtor's mortgage payment from the current \$2,405.00 a month to \$2,331.63 a month. Debtor states that the trial payments shall commence on August 1, 2020, through October 1, 2020. The motion is supported by the Declaration of Kim Walker.

The Chapter 13 Trustee filed a response stating that he does not otherwise oppose Debtor's motion, but wanted the court and Debtor to be aware that the Debtor is delinquent for the July 2020 plan payment and that the Trustee is unable to make the trial payments by the first of the month due to standard procedure of disbursing checks on the last business day of the month and mailing them out to creditors within the first week of the following month.

Debtor filed a reply stating that she is now current on plan payments, and that she understands the limitations regarding the Trustee's standard disbursement procedures and nonetheless is fine with the inevitably later disbursement of trial modification payments to Creditor.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), 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.

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 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.

The Chapter 13 Trustee objects to confirmation on grounds that the plan fails to provide for post-petition arrears totaling \$1,647.66, for the months of April 2020 and May 2020, to Class 1 creditor Bayview Loan Servicing LLC and the Debtor has failed to file amended Schedules I and/or J to support the plan payment of \$2,461.00 in July 2020 as stated in Section 7.01 of the plan.

Debtor has filed a response stating that he will provide for the post-petition arrears owed to Bayview Loan Servicing in the order confirming. Debtor also filed amended Schedules I and J on July 20, 2020, showing that he can make the plan payment of \$2,461.00.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) 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.

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. 14 of Asset Management Holdings, II LLC and disallow the claim in its entirety.

Chapter 13 Trustee Russell Greer ("Objector") requests that the court disallow the claim of Asset Management Holdings, II LLC ("Creditor"), Proof of Claim No. 14 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$45,201.08. 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 July 15, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 25. The Creditor's proof of claim was filed August 12, 2019.

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.

8. [20-22995](#)-B-13 GILBERT/BLANCA LUIS MOTION TO VALUE COLLATERAL OF
[PGM](#)-1 Peter G. Macaluso FORD MOTOR CREDIT, LLC
Thru #9 6-24-20 [[11](#)]

REMOVED FROM CALENDAR PER ORDER AT DKT. 40.

9. [20-22995](#)-B-13 GILBERT/BLANCA LUIS MOTION TO VALUE COLLATERAL OF
[PGM](#)-2 Peter G. Macaluso SAFEAMERICA CREDIT UNION
6-24-20 [[16](#)]

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 value the secured claim of SafeAmerica Credit Union at \$18,000.00.

Debtors' motion to value the secured claim of SafeAmerica Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2016 Ford F150 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$18,000.00 as of the petition filing date. Given the absence of contrary evidence, Debtors' opinion of value may be accepted as conclusive. 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. 38-1 filed by SafeAmerica Credit Union 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 27, 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 \$33,406.25. 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 \$18,000.00. 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 granted.

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

The court will issue an order.

10. [19-22298](#)-B-13 DORIAN/CATHERINE ANNE OBJECTION TO CLAIM OF UNIFIED
[RDG](#)-4 COLBERT MORTGAGE SERVICE, INC. LOAN
Mikalah R. Liviakis SERVICING, CLAIM NUMBER 14
6-30-20 [[53](#)]

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. 14 of United Mortgage Service, Inc. Loan Servicing and disallow the claim in its entirety.

Chapter 13 Trustee Russell Greer ("Objector") requests that the court disallow the claim of United Mortgage Service, Inc. Loan Servicing ("Creditor"), Proof of Claim No. 14 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$194,000.00. 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 June 21, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 16. The Creditor's proof of claim was filed April 4, 2020.

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.

11. [19-27899](#)-B-13 JUDITH SIMON
[HWW](#)-3 Hank W. Walth

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PERFORMANT
FINANCIAL CORPORATION
6-24-20 [[33](#)]

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 47 shall be the court's final decision.

The court will issues an order.