

**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 10, 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

August 10, 2021 at 1:00 p.m.

1.	18-24819 -B-13	JAVIER CONTRERAS	CONTINUED MOTION TO DISMISS
	RDG -2	Joseph Angelo	CASE
			7-6-21 [32]

Final Ruling

This matter was continued from July 20, 2021, to allow the Debtor to file any response to the motion to dismiss case by 5:00 p.m. on July 23, 2021. Debtor filed an untimely response on July 28, 2021, stating that he intends to file a modified plan that will resolve the plan duration that exceeds 60 months. A review of the court's docket shows that a modified plan was filed on July 29, 2021, and the confirmation hearing has been set for September 7, 2021, at 1:00 p.m.

The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

August 10, 2021 at 1:00 p.m.

2. [21-20824](#)-B-13 WILLIAM MARTINEZ
[KVP](#)-1 Arasto Farsad

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-28-21 [[27](#)]

VICTORIA PETERSON 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 automatic stay.

Victoria Peterson ("Movant") moves for relief from the automatic stay of her personal injury action against debtor William J. Martinez ("Debtor"), entitled *Peterson v. Martinez*, case no. 19-cv-01447 (N.D. Cal. Mar. 20, 2019). The moving party has provided the Declaration of Maile Yeats-Rowe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Debtor filed a non-opposition to Movant's request for relief from the automatic stay.

The court finds that the nature of the district court litigation warrants relief from stay for cause. Therefore, judicial economy dictates that Movant be permitted to continue litigating her personal injury tort claims against Debtor in the district court.

The court shall issue an order modifying the automatic stay as it applies to the Debtor to allow the Movant to continue the district court litigation.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

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.

3. [21-20149](#)-B-13 JAMES/SHERINE MCMANUS MOTION TO CONFIRM PLAN
[JLL](#)-1 Jennifer G. Lee 6-11-21 [[29](#)]

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 first amended plan.

First, Debtor's plan fails the liquidation test of 11 U.S.C. §1325(a)(4). There are non-exempt assets available for distribution to Debtors' general unsecured creditors of \$57,919.18 (\$57,919.18 minus \$0.00). Based on the Debtors' schedules, that Debtors have non-priority general unsecured claims totaling \$208,320.92. Accordingly, in order to meet the liquidation test of 11 U.S.C. §1325(a)(4), Debtors' plan must pay 27% (\$57,919.18 divided by \$208,320.92) to Debtors' general unsecured creditors. Debtors' plan only pays 17%.

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 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. No appearance at the hearing is required.

The court's decision is to **continue the hearing to August 24, 2021, at 1:00 p.m.**

Wells Fargo Bank, N.A. ("Secured Creditor") moves for an order authorizing a loan modification with partial claims agreement and subordinate mortgage regarding real property. Debtors Vernon and Edwina Dayo ("Debtors") are in default in the amount of \$6,762.84 under the current loan terms and are unable to cure or maintain the required monthly payments required under the First Deed of Trust and Note. Debtors applied for loss mitigation as an effort to resolve that delinquency.

<u>Initial Principal Balance</u>	<u>Partial Claim</u>	<u>New Principal Balance</u>
\$162,864.82	\$6,762.84	\$161,741.48

The motion fails to comply with Local Bankr. R. 3015-1(h)(2). More precisely, after plan payments are completed and before the case is closed, the "debtor may request by *ex parte* motion that the court authorize the debtor . . . to incur debt . . . if the trustee's written consent is filed with or as part of the motion." Local Bank. R. 3015-1(h)(2)(A) (former emphasis added, latter emphasis in original). Otherwise, "[i]f the trustee does not provide approval for an *ex parte* motion . . . the debtor may file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1." Local Bankr. R. 3015-1(h)(2)(B) (former emphasis in original, latter emphasis added).

Plan payments were completed on March 8, 2021. Dkt. 38. The motion is therefore effectively one to incur debt after the completion of plan payments. Problem is, the motion was filed by Secured Creditor and not the Debtors. There is also no evidence in the form of declarations from the Debtors that the Debtors consent to the motion or to the relief requested in the motion.

Rather than deny the motion, in the interests of judicial economy and to avoid unnecessary delay, the court will continue the hearing on the motion to August 24, 2021, at 1:00 p.m. Debtors' declarations of consent shall be filed by August 17, 2021.

The motion is ORDERED CONTINUED for the reasons stated.

The court will enter an order.

5. [20-25153](#)-B-13 MICHAEL/JOLENE YATES MOTION TO CONFIRM PLAN
 [CLH](#)-4 Charles L. Hastings 7-6-21 [[88](#)]

CONTINUED TO 8/24/2021 AT 1:00 P.M.

Final Ruling

No appearance at the August 10, 2021, hearing is required. The court will issue an order.

6. [21-21966](#)-B-13 EDSON/GENEALYN DELSOCORA CONTINUED MOTION TO AVOID LIEN
[JAD](#)-1 Jessica A. Dorn OF MIDLAND FUNDING LLC
6-29-21 [[17](#)]

Final Ruling

No appearance at the August 10, 2021, hearing is required. An order granting the motion and vacating the continued hearing date was entered on July 30, 2021. Dkt. 34.

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 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 permit the requested modification and not confirm the modified plan.

First, the Chapter 13 Trustee ("Trustee") objects to confirmation of the plan on grounds that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3) since Debtor does not adequately explain the plan delinquencies totaling \$11,900.00 for four months. Debtor filed a response stating that the delinquencies were due to repairs to his truck totaling \$6,100.00. His truck was out of service for six weeks, thus impacting his ability to earn money as a self-employed truck driver. After monthly expenses, Debtor was unable to make his plan payments. Debtor states that he had a good payment history and will be making the July 25, 2021, modified plan payment on time and will do his best to make future payments on time.

Second, Nationstar Mortgage LLC, d/b/a Mr. Cooper ("Creditor") filed a limited objection stating that the plan does not reflect the correct ongoing monthly mortgage payment of \$1,780.68 and does not provide for the cure of a COVID-19 forbearance. Creditor states that it has discussed with the Debtor a resolution of the issues in an order confirming. Debtor filed a response stating that he agrees to provide in the order confirming a monthly mortgage payment of \$1,781 and payment of \$2,004.00 per month paid directly to Creditor to cure the forbearance period.

Although the Debtor states that the issues can be resolved in an order confirming, the Debtor has not adequately explained when the \$2,004.00 monthly payments paid directly to Creditor will cease and how he has this excess of funds to pay Creditor.

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.

8. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON CONTINUED MOTION FOR RELIEF
Thru #9 Brian S. Haddix FROM AUTOMATIC STAY
6-24-21 [[110](#)]

ROCKY TOP RENTALS, LLC VS.

Final Ruling

This matter was continued from July 20, 2021, to allow any parties in interest to file a response by 5:00 p.m. on July 23, 2021. No response was filed. Therefore, the court's order at dkt. 132 conditionally granting the motion for relief from automatic stay will become the court's final order. The August 10, 2021, hearing is vacated.

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

The court will issue an order.

9. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON OBJECTION TO CLAIM OF ROCKY TOP
[RDG](#)-3 Brian S. Haddix RENTALS, LLC, CLAIM NUMBER 40
7-7-21 [[126](#)]

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). The court has determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to conditionally sustain the objection to Claim No. 40 of Rocky Top Rentals, LLC and **continue the matter to August 17, 2021, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Rocky Top Rentals, LLC ("Creditor"), Claim No. 40. The claim is asserted to be in the amount of \$3,068.38. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was October 13, 2020. The Creditor's claim was filed June 29, 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)

August 10, 2021 at 1:00 p.m.

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 will be disallowed in its entirety as untimely. The objection to the proof of claim is conditionally sustained.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, August 13, 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 August 17, 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 August 17, 2021, at 1:00 p.m.

The court will issue an order.

10. [21-21792](#)-B-13 CHE LUCKY
[RDG](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-12-21 [[36](#)]

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.

Debtor's plan is not feasible under 11 U.S.C. § 1325(a)(6). Monthly plan payments plus Trustee's fees and expenses total \$6,487.34 per month. Debtor's plan payment is only \$4,930.00 in month 1.

The plan filed June 10, 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.

11. [21-21196](#)-B-13 GREGORY RENWICK CONTINUED OBJECTION TO
[APN](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY TOYOTA
Thru #13 MOTOR CREDIT CORPORATION
5-18-21 [[23](#)]

Final Ruling

No appearance at the August 10, 2021, hearing is required. Toyota Motor Credit Corporation ("Creditor") and debtor Gregory Renwick ("Debtor") entered into a stipulation regarding the value and interest rate of a 2015 Toyota Camry, and that Debtor agrees to amend the plan and/or accompanying schedules, as and if necessary, to ensure that they confirm to the vehicle's valuation and interest rate. The court entered an order approving the stipulation on July 8, 2021.

Creditor's objection is therefore overruled and the continued hearing on August 10, 2021, as to Creditor's objection is vacated.

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

The court will issue an order.

12. [21-21196](#)-B-13 GREGORY RENWICK CONTINUED MOTION TO VALUE
[PGM](#)-2 Peter G. Macaluso COLLATERAL OF TOYOTA MOTOR
CREDIT CORPORATION
5-26-21 [[30](#)]

Final Ruling

No appearance at the August 10, 2021, hearing is required. Toyota Motor Credit Corporation and debtor Gregory Renwick entered into a stipulation regarding the value and interest rate of a 2015 Toyota Camry. The court entered an order approving the stipulation on July 8, 2021. The continued hearing on August 10, 2021, is vacated.

The court will issue an order.

13. [21-21196](#)-B-13 GREGORY RENWICK CONTINUED OBJECTION TO
[RDG](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-2-21 [[38](#)]

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.

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 overrule the objection and confirm the plan.

First, the valuation of a 2015 Toyota Camry has been resolved.

Second, Debtor filed amended Form 122C-1 on June 16, 2021.

Third, Debtor filed amended Schedule J on June 16, 2021, to reflect the financial support that he provides to his adult son and adult daughter.

Fourth, Debtor filed amended Schedule I to reflect his employer's post-petition deduction for taxes.

Provided that the Chapter 13 Trustee's issues are resolved, the plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed April 1, 2021, 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.