

**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 11, 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 11, 2020 at 1:00 p.m.**

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1. <a href="#"><u>19-25404</u></a> -B-13    ART BRACAMONTE <a href="#"><u>RDG</u></a> -3                Richard Kwun	OBJECTION TO CLAIM OF TRANSPORTATION ALLIANCE BANK, CLAIM NUMBER 13 7-2-20 [ <a href="#"><u>56</u></a> ]
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**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 continue the hearing to August 25, 2020, at 1:00 p.m. and conditionally sustain the objection to Claim No. 13 of Transportation Alliance Bank and disallow the claim in its entirety.

Chapter 13 Trustee Russell Greer ("Objector") requests that the court disallow the claim of Transportation Alliance Bank ("Creditor"), Proof of Claim No. 13 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$51,520.73. 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 November 6, 2019. 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.

**August 11, 2020 at 1:00 p.m.**

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.

#### **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 August 18, 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 sustained 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 25, 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 25, 2020, at 1:00 p.m.

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)(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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended 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 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.

3. [19-25214](#)-B-13 MICHAEL YBARRA  
[RDG-3](#) David Foyil

OBJECTION TO CLAIM OF  
TWENTY-ONE-EIGHTY FIVE,  
LLC/STATE FARM BANK, FSB, CLAIM  
NUMBER 7  
7-2-20 [[62](#)]

### 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 continue the hearing to **August 25, 2020, at 1:00 p.m.** and conditionally sustain the objection to Claim No. 7 of Twenty-One Eighty-Five, LLC/State Farm Bank, FSB and disallow the claim in its entirety.

Chapter 13 Trustee Russell Greer ("Objector") requests that the court disallow the claim of Twenty-One Eighty-Five, LLC/State Farm Bank, FSB ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$11,368.97. 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 October 29, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed January 9, 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.

#### **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 August 18, 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 sustained 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 25, 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 25, 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 continue the hearing to **August 25, 2020, at 1:00 p.m.** and conditionally sustain the objection to Claim No. 6 of Netcredit and disallow the claim in its entirety.

Chapter 13 Trustee Russell Greer ("Objector") requests that the court disallow the claim of Netcredit ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$2,739.60. 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 7, 2020. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed February 12, 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.

#### **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 August 18, 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 sustained 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 25, 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 25, 2020, at 1:00 p.m.

The court will issue an order.



5. [20-21419](#)-B-13 SHAHAR JONES  
[PGM-2](#) Peter G. Macaluso

MOTION TO RECONSIDER DISMISSAL  
OF CASE AND/OR MOTION TO VACATE  
DISMISSAL OF CASE  
7-28-20 [[31](#)]

## **Final Ruling**

### Introduction

This case was dismissed by an order filed on July 30, 2020. Dkt. 37. On July 28, 2020, two days before the dismissal order was filed, Debtor Shahar A. Jones ("Debtor") filed a motion for reconsideration of the dismissal order.<sup>1</sup> Dkt. 31.

The court has reviewed the Debtor's motion and its related documents. The court has also reviewed and takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c) (1).

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); see also *Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, \*1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). Further briefing is also not necessary. See Local Bankr. R. 9014-1(f) (2) (C). This decision is therefore issued as a Final Ruling.

The court's decision is to deny the motion for reconsideration of the dismissal order.

### Discussion

Treated as filed within 14 days of the entry of the dismissal order, the Debtor's motion is governed by Federal Rule of Civil Procedure 59(e) which is applicable by Federal Rule of Bankruptcy Procedure 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, \*1-2 (Bankr. E.D. Cal. 2012). There are four grounds on which a Rule 59(e) motion may be granted: (1) to correct manifest errors of law or fact upon which the judgment rests; (2) to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Relief under Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Id.*

The Debtor does not argue that the second and fourth grounds apply. The court also finds no basis for application of the first or third grounds.

The court dismissed this case pursuant to 11 U.S.C. § 1324(b). Dkt. 36-38. The notice of commencement of this case set a June 2, 2020, confirmation hearing date, no hearing was held, and when this case was dismissed the time within which a confirmation hearing could be held had expired. See dkt. 36.

The Debtor points out there was no objection to confirmation of the initial plan filed with the petition on March 10, 2020. See dkt. 3. That is true. And it is also true that the notice of commencement of this case states that in the absence of a timely-filed objection there would be no hearing and the initial plan filed March 10, 2020,

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<sup>1</sup>Although filed two days before the dismissal order, the court treats Debtor's motion as if it was filed immediately after the dismissal order was filed.

could be confirmed without a hearing. Dkt. 12. The Debtor states there was no timely objection and, thence, no need for a confirmation hearing. It is not that simple.

If the initial plan were still at issue, and assuming the Debtor was current with payments under the initial plan, the Debtor might have an argument that the case should not have been dismissed and the initial plan confirmed because, as noted, no confirmation hearing was required in the first instance. And under those circumstances the court would likely grant relief.

However, the initial plan is no longer at issue. The Debtor filed an amended plan and motion to confirm it on July 24, 2020, which now requires a new confirmation hearing. Dkts. 24-28. That confirmation hearing is set on September 1, 2020. Dkt. 25. The new - and the first - confirmation hearing in this case is now more than 45 days after the April 29, 2020, § 341 meeting date which expired on June 15, 2020. See dkt. 36. So even if the case should not have been dismissed due to the absence of a confirmation hearing on the initial plan of March 10, 2020, it nevertheless would be dismissed based on the timing of the September 1, 2020, confirmation hearing on the Debtor's July 24, 2020, amended plan.

So that the Debtor may re-file a new Chapter 13 case, the court concludes that dismissal rather than conversion is in the best interest of creditor's and the estate.

For the foregoing reasons, the Debtor's motion for reconsideration is denied.

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

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 of the plan on grounds that the Debtors' proposed monthly plan payment of \$1,100.00 to secured creditors commencing July 2020 is insufficient. Debtor's plan does not provide a plan payment of \$1,340.00 until August 2020.

The Debtors respond that the plan payment to secured creditors is to commence August 2020, and not July 2020, to coincide with the plan payment of \$1,340.00 per month for 67 months. The Debtors request that this correction be made in the order confirming.

Provided that the order confirming will clarify that plan payments are to begin August 2020, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

7. [18-24845](#)-B-13 VICTOR HERRADA  
[PGM](#)-5 Peter G. Macaluso

MOTION TO MODIFY PLAN  
7-7-20 [[103](#)]

**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.

8. [19-20350](#)-B-13 LUIS CAVAZOS  
[Thru #9](#) Mark Shmorgon

NOTICE OF MORTGAGE PAYMENT  
CHANGE  
7-23-20 [[87](#)]

**Final Ruling**

The objection 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 sustain the objection.

Luis Cavazos ("Debtor") had made a request with U.S. Bank Trust National Association ("Creditor") to forbear mortgage payments based upon financial hardship caused by the COVID-19. Creditor approved Debtor's forbearance request for the period of May 1, 2020, to October 1, 2020. Debtor now requests the court to disallow the approved forbearance in its entirety and states that he made an error in requesting the forbearance. This approved forbearance, with its terms of forbearing mortgage payments until the end of the forbearance period, impedes confirmation of the plan filed July 3, 2020.

The Debtor having been the party who requested the forbearance that was approved by the Creditor and who now requests its disallowance, the approved forbearance is disallowed in its entirety.

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

The court will issue an order.

9. [19-20350](#)-B-13 LUIS CAVAZOS  
[MS-4](#) Mark Shmorgon

MOTION TO MODIFY PLAN  
7-3-20 [[79](#)]

**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 monthly plan payment of \$1,543.00 from July 2020 through January 2026 is insufficient to pay 100% of general unsecured creditors plus the federal judgment rate of 2.58% as proposed in the plan. In order for the plan to be feasible, payments must be at least \$1,613.00. Debtor filed a response stating that he is amenable to increasing plan payments and making this change in the order confirming.

Separately, the Trustee also objects to confirmation on grounds that it fails to address payment of the post-petition mortgage payments, which U.S. Bank Trust National Association has agreed to forebear due to financial hardship caused by COVID-19, that will be due after October 2020. Dkt. 87. However, this issue is resolved since the court has disallowed by approved forbearance. See Item #8, MS-5.

Provided that the order confirming state that plan payments are increased to \$1,613.00, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be 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 motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended 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.

11. [19-26960](#)-B-13 FRANCISCO FRANCO  
[PLG](#)-1 Steven A. Alpert

MOTION TO MODIFY PLAN  
7-6-20 [[34](#)]

### **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.



12. [18-24864](#)-B-13 ERIC BARBARY AND MARIAN MOTION TO MODIFY PLAN  
[PGM](#)-5 CORK-BARBARY 7-6-20 [[99](#)]  
Peter G. Macaluso

**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.

### 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 continue the hearing to August 25, 2020, at 1:00 p.m. and conditionally sustain the objection to Claim No. 14 of MDG USA Inc. and disallow the claim in its entirety.

Chapter 13 Trustee Russell Greer ("Objector") requests that the court disallow the claim of MDG USA Inc. ("Creditor"), Proof of Claim No. 14 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$347.11. 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 October 10, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed October 11, 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.

#### **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 August 18, 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 sustained 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 25, 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 25, 2020, at 1:00 p.m.

The court will issue an order.

14. [19-24282](#)-B-13 JUAN/MARIA SALAS  
[PGM](#)-4 Peter G. Macaluso

MOTION TO MODIFY PLAN  
7-7-20 [[74](#)]

### **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.

15. [19-27839](#)-B-13 ELINOR BANKS  
[RPZ](#)-1 Len ReidReynoso

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

U.S. BANK NATIONAL  
ASSOCIATION VS.

**Final Ruling**

This matter was continued from August 4, 2020, to allow the Debtor to make her July 2020 plan payment and for the Chapter 13 Trustee to confirm whether the Debtor is current on post-petition payments.

The Trustee filed a supplemental response on August 3, 2020, stating that Debtor timely made her July 2020 payment to the Trustee and that payments to creditor U.S. National Bank for post-petition mortgage payments are current under the terms of Debtor's plan.

Therefore, the motion for relief from automatic stay is denied without prejudice and the hearing set for August 11, 2020, is vacated.

The court will issue an order.