

**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: September 3, 2024**

**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

September 3, 2024 at 1:00 p.m.

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1. [24-21632](#)-B-13 MARTIN VEGA MOTION TO CONFIRM PLAN  
[AF-1](#) Arasto Farsad 7-11-24 [[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 by creditor Superior Loan Servicing, as Servicer for James Hamilton ("Creditor"), and the Chapter 13 Trustee ("Trustee"). Debtor Martin Vega ("Debtor") filed a response to the creditor's objection.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the second amended plan.

Creditor Superior Loan Servicing, as Servicer for James Hamilton, filed an objection to confirmation of the plan listing various issues with the plan including Debtor's lack of regular income, that the sale or refinance of real property is not plausible based on its lack of equity, and that Debtor has failed to account for the yearly property taxes and insurance premium required to insure the real property. Debtor filed a response addressing the issues. However, problematic and at a minimum, the future sale or refinance of Debtor's real property is speculative and therefore the plan is not confirmable.

The Trustee also filed an objection to confirmation of the plan and stated that the plan does not account for the Trustee's disbursement in May 2024 to creditor Lobel Financial Group who was reclassified from Class 2 to Class 4, Section 3.05 states that Debtor's attorney accepted more than 25% of the total attorney's fees prior to filing in violation of Local Bankruptcy Rule 2016-1(c) (plan Section 3.06 provides \$5,187.00 was paid prior to filing and \$0.00 is to be paid in the plan), and Debtor failed to use a new docket control number for the present motion as required by Local Bankruptcy Rule 9014-1(c).

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

**Debtor's attorney shall also return \$3,890.25 to the Debtor and file proof that funds have been returned to the Debtor, both by 5:00 p.m. on Friday, September 6, 2024.**

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

IT IS FURTHER ORDERED that funds shall be returned to the Debtor as provided in the minutes.

September 3, 2024 at 1:00 p.m.

The court will issue an order.

2. [23-23459](#)-B-13 HOWARD BINDER  
[HWW](#)-4 Hank W. Walth  
**Thru #3**

MOTION TO MODIFY PLAN  
7-17-24 [[58](#)]

**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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

3. [23-23459](#)-B-13 HOWARD BINDER  
[HWW](#)-5 Hank W. Walth

OBJECTION TO CLAIM OF SUNRUN  
INC, CLAIM NUMBER 7  
8-3-24 [[71](#)]

**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, parties in interest were not required to file a written response or opposition.

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 **conditionally sustain the objection to Claim No. 7-1 of Sunrun Inc. and continue the matter to September 10, 2024, at 1:00 p.m.**

Debtor requests that the court disallow the claim of Sunrun Inc. ("Creditor"), Claim No. 7-1. The claim is asserted to be in the amount of \$4,482.54. Debtor 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 December 11, 2023. The Creditor's claim was filed July 15, 2024.

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

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

#### **Conditional Nature of this Ruling**

Because the objection 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, September 6, 2024, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection 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 September 10, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on September 10, 2024, at 1:00 p.m.

4. [24-22459](#)-B-13 JAMIE BRIDGEMAN CONTINUED OBJECTION TO  
[DKF](#)-1 Michael K. Moore CONFIRMATION OF PLAN BY  
**Thru #6** PATRICIA OMALLEY, AS TRUSTEE OF  
THE PATRICIA A. OMALLEY  
SEPARATE PROPERTY TRUST, DATED  
11-19-2010  
7-19-24 [[27](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS  
SET FOR 9/19/24.

**Final Ruling**

No appearance at the August 20, 2024, hearing is required. The court will issue an  
order.

5. [24-22459](#)-B-13 JAMIE BRIDGEMAN CONTINUED OBJECTION TO  
[LGT](#)-1 Michael K. Moore CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
7-18-24 [[23](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS  
SET FOR 9/19/24.

**Final Ruling**

No appearance at the August 20, 2024, hearing is required. The court will issue an  
order.

6. [24-22459](#)-B-13 JAMIE BRIDGEMAN CONTINUED OBJECTION TO  
[RAS](#)-1 Michael K. Moore CONFIRMATION OF PLAN BY WELLS  
FARGO BANK, N.A.  
7-18-24 [[20](#)]

CONTINUED TO 9/24/24 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS  
SET FOR 9/19/24.

**Final Ruling**

No appearance at the August 20, 2024, hearing is required. The court will issue an  
order.

7. [24-21060](#)-B-13 ANNETTE ULIBARRI  
[PGM](#)-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN  
7-24-24 [[34](#)]

### **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. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

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. 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 Lobel Financial Corporation at \$9,612.00.

Debtor moves to value the secured claim of Lobel Financial Corporation ("Creditor"). Debtor is the owner of a 2013 GMC Yukon SLT Sport Utility 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$9,612.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 1-1 filed by Lobel Financial Corporation 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 in December 2021, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$15,309.74. 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 \$9,612.00. 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.



9. [24-22492](#)-B-13 SHANA BRADLEY  
[MAD](#)-1 Peter G. Macaluso

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-5-24 [[33](#)]

STEVEN B. JAKUES, TRUSTEE OF  
THE T&S BLUESTONE TRUST 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.

Steven B. Jaques, Trustee of the T&S Bluestone Trust ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 5224 East Shippee Lane, Stockton, California (the "Property"). Movant has provided the Declaration of Marc Duxbury to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Duxbury Declaration states that there are 26 pre-petition payments in default totaling \$406,354.36. Additionally, there is one post-petition payments in default totaling \$7,305.00.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$406,354.36 as stated in the Duxbury Declaration. The value of the Property is determined to be \$700,000.00 as stated in Schedules A filed by Debtor and as stated in the Duxbury Declaration.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012). [This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

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.