

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: September 13, 2022

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.

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

September 13, 2022 at 1:00 p.m.

1. [22-90202](#)-B-13 JESUS/VERNA LISA SERNA OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Simran Singh Hundal PLAN BY TRUSTEE RUSSELL D.
GREER
8-22-22 [[21](#)]

CONTINUED TO 9/20/22 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS' MOTION TO AVOID LIEN.

Final Ruling

No appearance at the September 13, 2022, hearing is required. The court will issue an order.

2. [18-90908](#)-B-13 HIRAM KEMP
[DCJ](#)-6 David C. Johnston

MOTION TO MODIFY PLAN
8-1-22 [[87](#)]

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.

3. [20-90342](#)-B-13 RUBEN ALVAREZ
[PLG](#)-4 Rabin Pournazarian

MOTION TO MODIFY PLAN
8-9-22 [[62](#)]

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.

Final Ruling

The motion has 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, Section 7.01 of Debtors' plan provides for plan payments of \$1,994.00 beginning July 2022 (month 29). Debtors have failed to provide admissible evidence that the plan is mathematically feasible. Calculations indicate that Debtors' average plan payment will need to be at least \$2,155.00 in order for the plan to be feasible as paying unsecured creditors 0%.

Second, Debtors have failed to file supplemental Schedules I and/or Schedule J to support the plan payment of \$1,994.00 beginning July 2022. Without updated schedules and pay advices, it cannot be determined whether the proposed plan is feasible.

Third, Debtors' plan provides for Internal Revenue Service as a Class 2 claim in the amount of \$48,532.86 to be paid at 5% interest and a monthly dividend of \$1,435.00 beginning July 2022. Debtors' plan is a 60-month plan and the monthly dividend proposed for the Class 2 claim of Internal Revenue Service will take 31 months to pay. An approximate average monthly dividend of \$1,479.06 is necessary to pay the claim in full at 5% interest within Debtors' 60-month plan term.

Fourth, Debtors are delinquent \$394.00 under the proposed plan. Section 7 of Debtors' plan provides for plan payments of \$1,000.00 for 12 months, \$1,335.00 for 12 months, \$1,600.00 for 4 months, and \$1,994.00 for 32. Debtors paid \$1,600.00 and not the required \$1,994.00 for the July 25, 2022, payment. As such, Debtors are \$394.00 delinquent under the proposed plan.

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.

5. [22-90078](#)-B-13 CERISE CAMERON-GRICE AND MOTION TO CONFIRM PLAN
[EJV](#)-2 JOSEPH GRICE 8-2-22 [[41](#)]
Eric J. Gravel

Final Ruling

The motion 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 court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, an amended plan was filed on September 7, 2022. The confirmation hearing for the amended plan is scheduled for October 18, 2022. The earlier plan filed August 2, 2022, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objection ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

6. [19-90986](#)-B-13 NICHOLAS/LORENA JONES MOTION TO MODIFY PLAN
[TLC](#)-2 Tamie L. Cummins 8-5-22 [[52](#)]

WITHDRAWN BY M.P.

Final Ruling

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

7. [22-90095](#)-B-13 CHERYL PORTER
SCHIMMELFENNIG
Gordon G. Bones

CONTINUED OBJECTION TO CLAIM OF
SPECIALIZED LOAN SERVICE, CLAIM
NUMBER 1
7-6-22 [[49](#)]

Final Ruling

This matter was continued from August 9, 2022, at the request of the parties. The objection was originally set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). 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 overrule the objection to Claim No. 1 of Specialized Loan Servicing LLC.

Debtor Cheryl Porter ("Debtor") requests that the court disallow the claim of Specialized Loan Servicing LLC ("Creditor"), Claim No. 1 as to the amount of \$181,579.47 and allow the lower amount of \$141,802.71 at 4%. The claim is asserted to be secured in the amount of \$181,579.47. The Debtor asserts that she was unaware that a debt was owed to Creditor in the form of a home equity line of credit because she believed the debt to have been discharged in her 2013 chapter 7 bankruptcy, case no. 13-90191. To further this belief, Debtor did not receive any monthly statements from Creditor between 2013 to 2018 as required in the Home Equity Line of Credit Agreement and Promissory Note (Secondary Lien), para. 10, exh. A, dkt. 51. Debtor only became aware that the home equity line of credit still existed when she sought to refinance her home in early-2018.

After becoming aware of the existing home equity line of credit, Debtor requested the payoff amount of the loan. Debtor states that she received varying payoff amounts from different servicers including \$158,297.85 from Seterus on March 30, 2018, exh. B, dkt. 51, and \$86,702.15 from Specialized Loan Servicing LLC on April 30, 2018, exh. C, dkt. 51.

In an attempt to compromise, Debtor is willing to provide for Creditor's claim in the amount of \$141,802.71 at 4% with Creditor listed as a Class 2A creditor in the plan.

Creditor has filed a response stating that the Debtor has not presented any evidence to rebut the presumption of validity created by its timely filed proof of claim. The court agrees with Creditor.¹

Discussion

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). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtor has failed to satisfy its burden of overcoming the presumptive validity of the proof of claim. The objection is not supported by a

¹The court also notes that the objection lacks the Docket Control Number required by Local Bankr. R. 3015-1(c)(4).

declaration, or by any other admissible evidence. Statements in the objection are not evidence. See *Singh v. INS*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000). And a number of the exhibits are not authenticated. So at best, the objection is tantamount to an unsupported and unsubstantiated statement that the debt represented by Creditor's proof of claim is not owed or that the proof of claim is not valid. Neither are sufficient to overcome the presumptive validity of Creditor's proof of claim. Additionally, the Debtor has not explained how she reached the payoff amount of \$141,802.71 at 4%.

Based on the evidence before the court, the Creditor's claim is not disallowed. The objection to the proof of claim is overruled.

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

The court will issue an order.