

**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 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.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

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

1. [22-21609](#)-B-13 FRANCISCO/MARIA PADILLA OBJECTION TO CONFIRMATION OF
[RDG-1](#) Peter G. Macaluso PLAN BY RUSSELL D. GREER
8-23-22 [[17](#)]

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 objection. 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.

First, Debtors have not filed their 2021 federal and state tax returns. Until those returns are filed and reviewed, it cannot be determined whether the plan is feasible.

Second, the Attachment to Schedule I which provides for Debtors' business income and expenses needs to be filed. Without this document, it cannot be determined whether Debtors' plan is feasible and pays all projected disposable income for the applicable commitment period to general unsecured creditors.

Third, creditor Internal Revenue Service has filed a secured claim in the amount of \$73,652.22 (claim no. 2-1). Debtors' plan does not provide for this secured claim.

Fourth, Debtors' plan provides for total unsecured priority claims in the amount of \$36,180.60. The Internal Revenue Service has filed a claim no. 2-1 with a priority portion of \$118,537.96. Debtors' plan payment is insufficient to pay these claims.

Fifth, Paragraph 2.01 of the plan provides for a monthly plan payment of \$4,000.00 for 60 months and a lump sum payment of \$290,000.00 on or before month 60. The Debtors have failed to provide admissible evidence that their plan is mathematically feasible.

Sixth, Debtors' plan provides for San Joaquin Tax Collector as a Class 2 claim in the amount of \$251,070.79 to be paid at 18% interest a monthly dividend of \$3,500.00. Debtors' plan is a 60-month plan and the monthly dividend proposed for the Class 2 claim of San Joaquin Tax Collector will take 999 months to pay.

Seventh, Debtors' plan fails the liquidation test of 11 U.S.C. § 1325(a)(4). Debtors' schedules list non-exempt assets totaling \$615,607.02, and unsecured priority claims totaling \$118,537.96. Accordingly, there are non-exempt assets available for distribution to Debtors' general unsecured creditors of \$497,069.06 (\$615,607.02 minus \$118,537.96).

September 13, 2022 at 1:00 p.m.
Page 1 of 11

The plan filed June 29, 2022, 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.

2. [22-21619](#)-B-13 RICHARD/DENISE MARGIE OBJECTION TO CONFIRMATION OF
[RDG-1](#) Muoi Chea PLAN BY RUSSELL D. GREER
8-17-22 [[15](#)]

CONTINUED TO 9/20/22 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 9/14/22.

Final Ruling

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

3. [22-21927](#)-B-13 ORLANDO ANDRADE MOTION TO VALUE COLLATERAL OF
[FAT-1](#) Flor De Maria A. Tataje HARLEY DAVIDSON CREDIT
8-8-22 [[10](#)]

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 deny the motion to value collateral.

Debtor moves to value the secured claim of Harley Davidson Credit ("Creditor"). Debtor is the owner of a 2020 Harley Davidson Road Glide Motorcycle "Vehicle". The Debtor seeks to value the Vehicle at a replacement value of \$18,400.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The court finds issue with Debtor's valuation. The accompanying declaration states that the valuation of the Vehicle is based local newspaper ads, trade articles, and websites such as Kelley Blue Book and NADA. However, these are third-party industry sources and, therefore, Debtor's opinion of value is based on hearsay. Fed R. Evid. 801-803; see also *In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]").

The Debtor has not persuaded the court regarding his position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will issue an order.

4. [22-21028](#)-B-13 DORIAN/CATHERINE ANNE OBJECTION TO CLAIM OF ADVANCE
[RDG-1](#) COLBERT AMERICA, CASH ADVANCE CENTERS
Mikalah R. Liviakis OF CA, LLC, CLAIM NUMBER 9-1
8-9-22 [[21](#)]

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. 9-1 of Advance America, Cash Advance Centers of CA, LLC and continue the matter to September 20, 2022, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Advance America, Cash Advance Centers of CA, LLC ("Creditor"), Claim No. 9-1. The claim is asserted to be in the amount of \$2,190.19. 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 July 5, 2022. The Creditor's claim was filed July 18, 2022.

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."

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

Page 5 of 11

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 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, September 16, 2022, 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 September 20, 2022, 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 September 20, 2022, at 1:00 p.m.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

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 grant the motion to extend the automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on June 28, 2022, for failure to make plan payments (case no. 19-20155, dkt. 91). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that she fell behind on plan payments in the prior bankruptcy because she experienced a loss in income to her childcare business, which was forced to close for several months due to state regulations pertaining to COVID-19. When Debtor's business was able to operate again, many parents did not have a need for Debtor's services because many parents were now working from home and forewent childcare services. Since the filing of the present case, Debtor's income has returned to more stable levels since parents have returned to work and have re-enrolled their children in daycare.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

6. [22-21557](#)-B-13 MARINA GALINDO
[DB-2](#) Gabriel E. Liberman

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY
STOCKTON MORTGAGE INC.
8-26-22 [[48](#)]

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 objection. 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.

Objecting creditor Stockton Mortgage Inc. ("Creditor") holds a deed of trust secured by the Debtor's residence. Creditor objects to confirmation on grounds that the plan's nonstandard provision providing for the refinance or sale of the residence on or before month 12 is speculative, the plan does not provide for Creditor's claim filed as claim no. 6, the plan does not pay interest on the Creditor's claim, and feasibility depends on the outcome of the extent to which the automatic stay is terminated under § 362(c)(3) as to Debtor's residence. The court agrees.

The plan filed June 23, 2022, 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.

7. [21-22917](#)-B-13 STEVEN/EMELDA CLYMER
[RDG-2](#) G. Michael Williams

CONTINUED MOTION TO DISMISS
CASE
8-15-22 [[99](#)]

Final Ruling

This matter was continued from September 6, 2022, to provide the Debtors with additional time to file, set, and serve a new plan on or before September 12, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 107, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 13, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

8. [22-20924](#)-B-13 MEAGAN MONAGHAN CONTINUED MOTION FOR RELIEF
[DWE](#)-1 Pro Se FROM AUTOMATIC STAY AND/OR
Thru #11 MOTION FOR ADEQUATE PROTECTION
8-4-22 [[57](#)]
FREEDOM MORTGAGE CORPORATION
VS.

Final Ruling

The case is dismissed for reasons stated at Item #9, RDG-3. Therefore, the motion for relief from stay is denied as moot.

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

The court will issue an order.

9. [22-20924](#)-B-13 MEAGAN MONAGHAN CONTINUED MOTION TO DISMISS
[RDG](#)-3 Pro Se CASE
8-11-22 [[68](#)]

Final Ruling

This matter was continued from September 6, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, September 9, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 92, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on September 13, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

10. [22-20924](#)-B-13 MEAGAN MONAGHAN CONTINUED OBJECTION TO
[DWE](#)-1 Pro Se CONFIRMATION OF PLAN BY FREEDOM
MORTGAGE CORPORATION
6-1-22 [[24](#)]

Final Ruling

The case is dismissed for reasons stated at Item #9, RDG-3. Therefore, the objection to confirmation is overruled as moot.

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

The court will issue an order.

11. [22-20924](#)-B-13 MEAGAN MONAGHAN CONTINUED OBJECTION TO
[RDG](#)-1 Pro Se CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-1-22 [[16](#)]

Final Ruling

The case is dismissed for reasons stated at Item #9, RDG-3. Therefore, the objection

to confirmation is overruled as moot.

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

The court will issue an order.