

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: SEPTEMBER 16, 2015
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-12203](#)-A-13 WILLIAM SEUELL
KK-1
GREEN TREE SERVICING LLC/MV

OBJECTION TO CONFIRMATION OF
PLAN BY GREEN TREE SERVICING
LLC
8-24-15 [[43](#)]

SCOTT LYONS/Atty. for dbt.
KATELYN KNAPP/Atty. for mv.

Final Ruling

Matter: Objection to Chapter 13 Plan

Notice: LBR 3015-1(c) (4); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

Creditors and the trustee may file an objection to confirmation of the Chapter 13 plan within 7 days after the first date set for the creditors' meeting held under § 341 of the Bankruptcy Code. LBR 3015-1(c) (4). But if the debtor withdraws the plan or files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot any pending objection to confirmation of the previously filed plan.

2. [15-12203](#)-A-13 WILLIAM SEUELL
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-14-15 [[33](#)]

SCOTT LYONS/Atty. for dbt.

Final Ruling

Matter: Objection to Chapter 13 Plan

Notice: LBR 3015-1(c) (4); no written opposition required

Disposition: Overruled as moot and 75-day order

Order: Civil minute order

MOOTNESS

Creditors and the trustee may file an objection to confirmation of the Chapter 13 plan within 7 days after the first date set for the creditors' meeting held under § 341 of the Bankruptcy Code. LBR 3015-1(c) (4). But if the debtor withdraws the plan or files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot any pending objection to confirmation of the previously filed plan.

75-DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c) (1).

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the objection is overruled as moot.

MOTION TO DISMISS CASE
8-14-15 [37]

The motion withdrawn, the matter is dropped as moot.

- MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-14-15 [74]

OBJECTION TO CONFIRMATION OF
PLAN BY HSBC MORTGAGE SERVICES,
INC.
9-1-15 [23]

No tentative ruling.

6. [15-12232](#)-A-13 TERESA VANDERLINDEN
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-14-15 [[31](#)]

PETER MACALUSO/Atty. for dbt.

[The hearing on this matter will follow the hearing on the trustee's motion to dismiss this case having docket control no. MHM-2.]

No tentative ruling.

7. [15-12232](#)-A-13 TERESA VANDERLINDEN
MHM-2
MICHAEL MEYER/MV
PETER MACALUSO/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
8-14-15 [[34](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition filed by debtor

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The trustee has submitted evidence that a checklist of required / requested documents was sent to debtor and her attorney. These requests were made on or about June 3, 2015. The trustee's request for documents included retirement loan documentation and—for debtors who are above median and have completed form B22C—information supporting tax analysis and involuntary deductions from employment. (The debtor has completed form B22C and is above median based on the form she submitted. See ECF No. 28.)

The trustee's declaration, executed on August 13, 2015, states that the debtor has not provided a tax analysis. Velasco Decl. ¶ 6. The trustee's declaration also supports the conclusion that no information supporting the involuntary payroll deductions (line 17 of B22C-2) has been provided. *Id.* ¶ 7.

The debtor also has retirement loans. *Id.* ¶ 7. The trustee implies that much information relating to these loans has not yet been provided despite request of the trustee. *Id.* The trustee's declaration shows that the trustee is still requesting proof of balances, interest rates, monthly payment amounts, and payoff dates. Some of this information—the balance due, the payments (i.e. amounts), number of months remaining (i.e. payoff dates)—had been requested by the trustee in the original checklist on or about June 3, 2015.

The debtor provides exhibits that at least appear to some extent responsive to the trustee's requests. Exhibit A is retirement loan information. Exhibit B is a paycheck summary worksheet. This worksheet appears to provide some tax information, though the amount deducted may or may not reflect the ultimate amount of the debtor's 2015 tax liability (the debtor may over-withhold or under-withhold

taxes).

The debtor failed to provide the trustee with required or requested documents in a timely manner. The debtor's waiting until the opposition to this dismissal motion was filed to provide documents requested approximately 2 months earlier by the trustee constitutes unreasonable delay prejudicial to creditors. See 11 U.S.C. § 521(a)(3)-(4). Cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having reviewed the motion, the opposition and the trustee's reply, and the evidence offered and any oral argument presented at the hearing,

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

8. [15-12243](#)-A-13 WILLIAM NILMEIER
WSC-2
WILLIAM NILMEIER/MV
WILLIAM COLLIER/Atty. for dbt.
WILLIAM NILMEIER/Atty. for mv.

MOTION TO CONFIRM PLAN
7-29-15 [[33](#)]

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

9. [12-16658](#)-A-13 BER/CHAO XIONG
GGL-3
BER XIONG/MV
GEORGE LOGAN/Atty. for dbt.

MOTION TO AVOID LIEN OF HSBC
MORTGAGE SERVICES, INC.
8-13-15 [[64](#)]

Tentative Ruling

Motion: Avoid Lien

Notice: LBR 9014-1(f) (1); no written opposition filed

Disposition: Denied without prejudice to the relief sought being requested in a properly filed and served adversary proceeding

Order: Civil minute order

PROCEDURE

The debtors allege that they have completed their plan payments. They move the court for a judgment voiding a lien of respondent HSBC Mortgage Services, Inc. (HSBC) for all purposes. This lien is a second mortgage on real property located at 2590 Pinedale Ave., Merced, CA. The lien was valued at \$0.00 by this court's order, meaning the respondent's secured claim was treated as \$0.00 for purposes of treatment under the chapter 13 plan. The stipulation attached to the order stated: "Upon entry of a discharge or completion of plan payments in Debtor's Chapter 13 case, the Lien shall be voided for all purposes, and upon application by Debtor, the Court will enter an appropriate from [sic] of judgment voiding the Lien."

The relief requested is a proceeding to determine the validity and extent of respondent's lien. Accordingly, an adversary proceeding is the correct procedural approach to be used to obtain the desired judgment. Fed. R. Bankr. P. 7001(2). A motion is not the proper procedure for the relief sought.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtors' motion to avoid a junior lien (for all purposes) has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice to the relief sought being requested in a properly filed and served adversary proceeding.

10. [15-12763](#)-A-13 FRANK MOOSIOS
DRJ-1
LOUIS MOOSIOS/MV
TRUDI MANFREDO/Atty. for dbt.
DAVID JENKINS/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY LOUIS MOOSIOS
9-1-15 [[28](#)]

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Continued to October 22, 2015, at 9:00 a.m.

Order: Civil minute order

GROUND FOR OBJECTION

Louis Moosios asserts a claim against the debtor for \$85,502.49 as of the date of filing. He contends that this claim is secured by judgment liens on real and personal property. Louis objects to confirmation on several grounds including (i) lack of feasibility, (ii) lack of adequate protection to him, and (iii) lack of good faith. He contends that the plan is speculative and improperly shifts the risk of a diminution in value of the debtor's assets to the creditors.

Louis further objects that the plan lacks a commitment as to how long it will take for the debtor to get money out of Moosios Farms, Inc. to pay creditors. The plan states that Moosios Farms, Inc. owns real property valued at \$5,000,000, which will be sold to pay 100% of the balance owed on unsecured claims totaling approximately \$90,057.09. But Louis's objection complains that evidence of the value of the debtor's shares in such company has not been given.

CONTINUANCE

The debtor has requested a reasonable continuance to allow time to file a complete response. The court will continue the hearing on this matter to October 22, 2015, at 9:00 a.m. An opposition may be filed no later than October 1, 2015. A reply may be filed no later than October 15, 2015.

11. [15-12169](#)-A-13 MIRIAM GONZALEZ
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-14-15 [[21](#)]

STEVEN ALPERT/Atty. for dbt.

Final Ruling

Matter: Objection to Chapter 13 Plan

Notice: LBR 3015-1(c)(4); no written opposition required

Disposition: Overruled as moot and 75-day order

Order: Civil minute order

MOOTNESS

Creditors and the trustee may file an objection to confirmation of the Chapter 13 plan within 7 days after the first date set for the creditors' meeting held under § 341 of the Bankruptcy Code. LBR 3015-1(c)(4). But if the debtor withdraws the plan or files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Modifying the plan renders moot any pending objection to confirmation of the previously filed plan.

75-DAY ORDER

A Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Trustee Michael H. Meyer's objection to confirmation has been presented to the court. Because the objection to confirmation has been rendered moot by the filing of an amended chapter 13 plan by the debtor,

IT IS ORDERED that the objection is overruled as moot.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

12. [15-12169](#)-A-13 MIRIAM GONZALEZ
MHM-2
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
8-14-15 [[25](#)]

FINAL RULING

The motion withdrawn, the matter is dropped as moot.

13. [15-12174](#)-A-13 VICTOR/EVILA NAJERA CONTINUED MOTION TO CONVERT
AOE-2 CASE FROM CHAPTER 13 TO CHAPTER
VICTOR NAJERA/MV 12
7-13-15 [[30](#)]
ANTHONY EGBASE/Atty. for dbt.

[The hearing on this matter will be concurrent with the hearing on the trustee's motion to dismiss this case having docket control no. MHM-1.]

Tentative Ruling

Motion: Convert Case from Chapter 13 to Chapter 12

Notice: LBR 9014-1(f) (1) / Continued date of hearing; written opposition required

Disposition: Continued to October 1, 2015, at 9:00 a.m.

Order: Civil minute order

The court continued the hearing to allow service on the trustee, and the U.S. Trustee. The motion was served on the chapter 13 trustee. However, the United States Trustee has not been served with the motion at the correct address for the Fresno division: the motion itself was served improperly on the U.S. Trustee at the Sacramento, CA, division.

In addition, an amended declaration should address the standards for chapter 12 eligibility more precisely. Where a standard refers to "noncontingent and liquidated" debt (excluding a debt for a principal residence unless the debt arises out of a farming operation) that arises out of a farming operation of the debtor, then the debtors should address that standard in their circumstances by reference to the same terminology. In addition, where the standards refer to "gross income" for a given taxable year or years, then the debtors must represent their income in the same specific terms rather than the use of general terms like "income." See 11 U.S.C. § 101(18) (A).

14. [15-12174](#)-A-13 VICTOR/EVILA NAJERA MOTION TO DISMISS CASE
MHM-1 9-1-15 [[62](#)]
MICHAEL MEYER/MV
ANTHONY EGBASE/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f) (2); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtors have not completed their credit counseling certificates timely within the 180 days prior to filing the petition. The debtors have failed to commence making plan payments under § 1307(c)(4).

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

15. [10-11779](#)-A-12 WILLIAM BUCHNOFF
HDN-2
WILLIAM BUCHNOFF/MV
HENRY NUNEZ/Atty. for dbt.

MOTION TO INCUR DEBT
8-27-15 [[42](#)]

Tentative Ruling

Motion: Approve Incurring of New Debt

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks to incur new debt in the amount of \$200,000. The debt will complete retire all prepetition debt and all remaining allowed claims to be paid in this case. The debtor is current on post-petition payments on his residence. Absent opposition by the trustee, the court will grant the motion, and the trustee will approve the order as to form and content.

16. [15-12684](#)-A-13 JOHN/DIANE URIAS
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
8-19-15 [[24](#)]

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case. This case was filed on July 3, 2015. A plan has been filed but not yet set for hearing. If a plan were set for hearing as of today's hearing date, the hearing on confirmation of such plan would not be until October 28, 2015, nearly 4 months after the case was filed. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted given the debtor's failure set a chapter 13 plan for hearing in a timely manner. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

17. [15-12685](#)-A-13 JAMES CULVER
CH-1
EXPRESSLOAN.COM, INC./MV
PETER BUNTING/Atty. for dbt.
COBY HALAVAIS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-28-15 [[51](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice unless movant waives on the record the time limits described in § 362(e)(1) and (2), in which case the court will continue the hearing to October 1, 2015, at 9:00 a.m., and require that any supplemental proof of service be filed no later than 14 days in advance of the continued hearing

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014.

The proof of service shows that the motion was not mailed to the debtor's current address as shown on the petition. Fed. R. Bankr. P. 4001(a)(1). If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was made on the debtor's attorney at the correct address.

18. [15-12685](#)-A-13 JAMES CULVER
PBB-2
JAMES CULVER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
8-3-15 [[42](#)]

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests confirmation of the Chapter 13 plan in this case. 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1). Creditor Expressloan.com, Inc. opposes the motion, objecting

to confirmation. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the creditor's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the creditor's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

19. [12-17996](#)-A-13 NONIE/ZENAIDA MISAL
PBB-5
NONIE MISAL/MV

OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, INC., CLAIM NUMBER
17
8-3-15 [[67](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

20. [12-17996](#)-A-13 NONIE/ZENAIDA MISAL
PBB-6
NONIE MISAL/MV

OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, INC., CLAIM NUMBER
18
8-3-15 [[72](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

21. [12-17996](#)-A-13 NONIE/ZENAIDA MISAL
PBB-7
NONIE MISAL/MV

OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, INC., CLAIM NUMBER
19
8-3-15 [[77](#)]

PETER BUNTING/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof

of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).

22. [12-17996](#)-A-13 NONIE/ZENAIDA MISAL
PBB-8
NONIE MISAL/MV

OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, INC., CLAIM NUMBER
20
8-3-15 [\[82\]](#)

PETER BUNTING/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Ordinarily, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). The only exceptions to this rule are tardily filed claims permitted under § 726(a) or under the Federal Rules of Bankruptcy Procedure. See *id.*; Fed. R. Bankr. P. 3002(c)(1)-(6).

Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

Further, Ninth Circuit precedent makes clear that the court does not have discretion under Rule 9006 to enlarge the time for filing a proof of claim except as provided in Rule 3002(c). See *In re Gardenhire*, 209 F.3d 1145, 1148-49 (9th Cir. 2000); *In re Coastal Alaska Lines*,

Inc., 920 F.2d 1428, 1432-33 (9th Cir. 1990) (holding that court cannot enlarge time for filing a proof of claim unless one of the six grounds in Rule 3002(c) exists); see also Fed. R. Civ. P. 9006(b)(3). Equitable tolling cannot be applied to enlarge the time to file proofs of claim other than pursuant to the exceptions in Rule 3002(c). See *Gardenhire*, 209 F.3d at 1148.

Here, the responding party has not opposed the sustaining of the objection and asserted that any of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The responding party's claim was filed after the deadline for filing proofs of claim, so the claim will be disallowed. Fed. R. Bankr. P. 3002(c).