

**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: October 15, 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.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a) (3) is 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.

2. [24-21500](#)-B-13 NATASHA JACKSON MOTION FOR RELIEF FROM
[BPN](#)-2 Jennifer B. Reichhoff AUTOMATIC STAY
9-13-24 [[45](#)]
I.L.W.U. CREDIT UNION 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.

I.L.W.U. Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2001 Kia K5 (the "Vehicle"). The moving party has provided the Declaration of Steven Robertson to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Robertson Declaration states that there are four post-petition payments in default totaling \$2,216.08.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$20,390.15, as stated in the Robertson Declaration, while the value of the Vehicle is determined to be \$12,774.00, as stated in Schedules A/B and D filed by Debtor.

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 since the Debtor and the estate have not made post-petition payments. 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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2).

And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is 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.

3. [10-23503](#)-B-13 KEITH/JENNIFER O'DAY
Michael S. Martin

MOTION FOR PAYMENT OF UNCLAIMED
FUNDS IN THE AMOUNT OF \$
2139.84 WITH CITIBANK N.A
9-10-24 [[130](#)]

CASE CLOSED: 12/30/13

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 payment of unclaimed funds.

Citibank, N.A. ("Movant") has filed the instant Motion for Payment of Unclaimed Funds and seeks to recoup the sum of \$2,139.84 from the unclaimed dividends paid into the court in the underlying Chapter 13 case. The case commenced on February 13, 2010, and a discharge was entered on December 16, 2013. On August 27, 2013, the Chapter 13 Trustee filed with the court a Notice of Unclaimed Dividend(s) by Creditor(s) indicating that the sum of \$2,139.84 was paid into the court as unclaimed funds, which should have otherwise gone to Citibank NA. Dkt. 103.

On September 10, 2024, Movant filed the instant motion, accompanied inter alia by documents that purport to be (1) a notarized Application for Payment of Unclaimed Funds; (2) photocopies of a driver's license, ID card, and business card confirming the identity of Angelo Valletta, who is a vice president of Movant; (3) a Request for Payee Information and TIN Certification form, and (4) a Form W-9. Dkt. 130.

The court is satisfied that Movant has demonstrated its entitlement to the unclaimed funds properly owed to Citibank NA. Accordingly, the motion is granted.

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

The court will issue an order.

4. [19-23718](#)-B-13 JAMES SHROPSHIRE
[JCK-7](#) Gregory J. Smith

OBJECTION TO CLAIM OF SHEFFIELD
FINANCIAL, CLAIM NUMBER 1-2
8-30-24 [[149](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant 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 sustain the objection to Claim No. 1-2 of Sheffield Financial and disallow the claim in its entirety.

Debtor James Shropshire ("Debtor") requests that the court disallow the claim of Sheffield Financial ("Creditor"), Claim No. 1-2. The claim is asserted to be in the amount of \$3,505.44. 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 August 20, 2019. The Creditor's claim was filed August 15, 2024.

Significantly, Claim No. 1-2 provides at Section 4 that the claim does not amend one already filed, and therefore cannot relate back to the date of the timely filed Claim No. 1-1. See *In re Jackson*, No. BAP EC-15-1072-DJUF, 2015 WL 7939568, at *4 (B.A.P. 9th Cir. Dec. 4, 2015) ("It has long been established in the Ninth Circuit that an amendment to a timely proof of claim relates back to a timely filed claim when the original claim provided fair notice of the conduct, transaction, or occurrence that forms the basis of the claim asserted in the amendment.").

Separately, in Debtor's third amended plan filed August 26, 2019, and confirmed on October 10, 2019, Creditor's classification is switched from general unsecured to Class 3 surrender collateral.

Discussion

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.

Furthermore, even if Claim No. 1-2 were deemed to have been timely filed by relating back to the filing date of Claim No. 1-1, it would nonetheless be disallowed as a duplicate. Indeed, the pages, content within the pages, execution date, and the person completing and signing the proof of claims are identical in Claim Nos. 1-2 and 1-1.

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.

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

The court will issue an order.

5. [24-21128](#)-B-13 KEITH BUREN
[KMM](#)-1 Jasmin T. Nguyen

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-16-24 [[25](#)]

GLOBAL LENDING SERVICES LLC
VS.

Final Ruling

Global Lending Services LLC having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

6. [24-23239](#)-B-13 SETH/TORY RUFUS
[PPR-1](#) Jasmin T. Nguyen

MOTION FOR RELIEF FROM
CO-DEBTOR STAY
9-17-24 [[21](#)]

TRANSFORM CREDIT, INC. 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 co-debtor stay.

Transform Credit, Inc. ("Movant") seeks relief from the co-debtor stay against Dewayne Mayes ("Co-Debtor"). Debtors had executed a promissory note with Movant, and Co-Debtor signed as a guarantor. Debtors' plan filed July 24, 2024, fails to pay Movant in full. Debtor has defaulted one post-petition payment totaling \$197.90.

No opposition was filed by Debtors or Co-Debtor.

Discussion

A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c). The second ground for relief under both of these provisions is that "the plan filed by the debtor proposes not to pay such claim." *Id.* §§ 1301(c)(2), 1201(c)(2). Under these provisions, if the plan fails to provide any amount to the creditor on its claim for which the co-debtor is also liable, the creditor is entitled to relief from stay.

When the plan pays only a fraction of the amount owed to the creditor on the claim for which the co-debtor is liable, the creditor is nevertheless entitled to relief from the co-debtor stay. The bankruptcy appellate panel has held that the co-debtor stay should be lifted when the plan provided for only 15% of the creditor's claim. The panel reasoned, "There is no limitation on the creditor's right to sue the co-debtor for the amount not provided for by the plan. There is no requirement that suit be deferred while the debtor pays under the plan during a period of years." *In re Jacobsen*, 20 B.R. 648, 650 (B.A.P. 9th Cir. 1982).

"It would make little sense to defer such relief when it is known that the creditor will never receive the unprovided-for amount, under the plan, from the debtor. To put it otherwise, the debtor has in effect stated [in the plan] the respective dimensions of his liability and that of the co-maker. Section 1301(a)(2) provides the creditor with freedom to pursue, to the latter extent, its claim against a co-debtor." *Id.*

In this case, the confirmed plan fails to provide for full payment of Movant's claim. It pays only a 41% dividend on unsecured claims such as Movant's deficiency claim. As a result, Movant is entitled to relief from the Co-debtor stay in this case.

The Co-debtor stay is vacated as to the Co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

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

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

The court will issue an order.

7. [24-23050](#)-B-13 NERY LIMON
G. Michael Williams

CONFIRMATION OF PLAN
8-6-24 [[31](#)]

Final Ruling

There is no indication that debtor Nery Limon filed, set, and served a motion to confirm the plan consistent with the confirmation hearing date and the applicable Local Rules as ordered by the court. See dkt. 39. Therefore, this confirmation of plan is denied.

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

The court will issue an order.

8. [24-20853](#)-B-13 MELANIE/SHANE BRITT MOTION TO CONFIRM PLAN
[PGM](#)-5 Peter G. Macaluso 9-10-24 [[89](#)]

CONTINUED TO 10/29/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO PROVIDE DEBTOR ADDITIONAL TIME TO FILE REQUESTED AMENDMENTS AND PROVIDE FURTHER DOCUMENTATION. CHAPTER 13 TRUSTEE SHALL FILE A SUPPLEMENTAL RESPONSE BY 10/25/24 AS TO WHETHER ISSUES ARE RESOLVED.

Final Ruling

No appearance at the October 15, 2024, hearing is required. The court will issue an order.

9. [24-22973](#)-B-13 MARIA SANCHEZ
[LRR-1](#) Len ReidReynoso

MOTION TO CONFIRM PLAN
9-11-24 [[27](#)]

Final Ruling

The motion was not 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). Only 34 days' notice was provided. Therefore, the motion to modify plan is denied without prejudice.¹

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

The court will issue an order.

¹The court separately notes that Debtor filed a third (and not first as stated by Debtor) amended plan on October 11, 2024, with a confirmation hearing date scheduled for November 19, 2024. Therefore, even if 35 days' notice was provided for the plan filed September 11, 2024, this motion to confirm would be rendered moot.

10. [24-23783](#)-B-13 JULIE HANG
[MC-1](#) Muoi Chea

MOTION TO CONFIRM PLAN
9-10-24 [[19](#)]

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.

11. [24-23014](#)-B-13 SENGPHET/SYPHONG CONTINUED OBJECTION TO
[LGT](#)-1 PHIMMASENE CONFIRMATION OF PLAN BY LILIAN
Matthew J. DeCaminada G. TSANG
8-29-24 [[25](#)]

Final Ruling

This matter was continued from October 8, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, October 11, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 41, sustaining the objection, shall become the court's final decision. The continued hearing on October 15, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

12. [24-23214](#)-B-13 TONY/TERESA SOUZA CONTINUED OBJECTION TO
[JCW](#)-1 Michael Benavides CONFIRMATION OF PLAN BY
Thru #13 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION
9-11-24 [[32](#)]

Final Ruling

This matter was continued from October 8, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, October 11, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 44, sustaining the objection, shall become the court's final decision. The continued hearing on October 15, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

13. [24-23214](#)-B-13 TONY/TERESA SOUZA CONTINUED OBJECTION TO
[LGT](#)-1 Michael Benavides CONFIRMATION OF PLAN BY LILIAN
G. TSANG
9-10-24 [[29](#)]

Final Ruling

This matter was continued from October 8, 2024, to allow any party in interest to file a response by 5:00 p.m. Friday, October 11, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 43, sustaining the objection, shall become the court's final decision. The continued hearing on October 15, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.

14. [19-21550](#)-B-13 DANIEL/JAMIE DOLE
[JCK](#)-4 Gregory J. Smith

CONTINUED MOTION TO SELL AND/OR
MOTION TO INCUR DEBT
9-20-24 [[77](#)]

Final Ruling

This matter was continued from October 8, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, October 11, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 83, granting the motion to sell and incur debt, shall become the court's final decision. The continued hearing on October 15, 2024, at 1:00 p.m. is vacated.

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

Debtors' attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.