

**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

DAY: TUESDAY

DATE: October 23, 2018

CALENDAR: 1:00 P.M. CHAPTER 13

**PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION
PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.**

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

October 23, 2018 at 1:00 p.m.

1. [18-24417](#)-B-13 JUAN ANTONIO BENITES AND MOTION TO CONFIRM PLAN
[SDH](#)-1 ALMA LOZANO 9-14-18 [[18](#)]
Scott D. Hughes

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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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. Debtors have 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

October 23, 2018 at 1:00 p.m.

2. [16-25118](#)-B-13 RICHARD CHASTAIN
[JPJ](#)-3 David P. Ritzinger

MOTION TO CONVERT CASE TO
CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
9-13-18 [[65](#)]

No Ruling

TELEPHONE APPEARANCE

TOYOTA MOTOR CREDIT
CORPORATION VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

Toyota Motor Credit Corporation, servicing agent for Toyota Lease Trust ("Movant"), seeks relief from the automatic stay with respect to a 2015 Lexus GX460 VIN JTJBM7FX3F5120135 (the "Vehicle"). The moving party has provided the Declaration of Rahnae Spooner, a Supplier Management Administrator employed by Toyota Motor Credit Corporation, to introduce into evidence the documents upon which it bases the claim and the obligation owed by debtor Andrey Gleyim ("Debtor").

The Spooner Declaration provides testimony that Debtor entered into a lease agreement with monthly payments of \$531.22 per month. That lease agreement reached maturity on September 1, 2018, at which point Debtor was required to pay the remainder of the balance due of \$34,726.05 or surrender the Vehicle. Also, the Spooner Declaration states that Debtor does not have equity in the property. Dkt. 32.

Discussion

The court notes that the plan filed May 25 2017, which was confirmed on July 11, 2017, assumed the unexpired lease of Creditor under Section 3.02 of the plan. Dkt. 22, p. 4. From the evidence submitted, and only for the purposes of this motion, the balance due under the matured lease is determined to be \$34,726.05. No evidence was presented that Debtor paid the balance due on the assumed lease postconfirmation.

A bankruptcy court may grant relief from stay "for cause, including the lack of adequate protection of an interest in property." 11 U.S.C. § 362(d)(1). Failure to make payments under a confirmed Chapter 13 plan may also constitute cause to grant relief. *Ellis v. Parr (In re Parr)*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985) ("Failure to make postconfirmation payments can constitute cause for lifting the stay"); *In re Hileman*, 451 B.R. 522, 526 (Bankr. C.D. Cal. 2011) ("The terms of the plan as confirmed fix the legal rights of the parties and the only cause for relief from the stay after the confirmation is the debtor's material failure to adhere to the payment terms set forth in the plan."). A proponent of the stay has the ultimate burden of showing that there is no cause to terminate the stay. *In re Parr*, 60 B.R. at 435. Here, Movant presented evidence that Debtor defaulted on the lump sum payment due on September 1, 2018, which was a provision of the lease assumed in Section 3.02 of Debtor's confirmed plan. Because Debtor failed to file an opposition, this default constitutes cause to terminate the automatic stay.

In addition, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, 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). Because no opposition or showing was 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.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

4. [17-23520](#)-B-13 REV ANDERSON
[KG-5](#) Kayla M. Grant
WITHDRAWN BY M.P.

MOTION TO MODIFY PLAN
9-11-18 [[71](#)]

Final Ruling

The Debtor having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, dkt. 85, 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 Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan (DC No. KG-5) is dismissed without prejudice.

THE COURT WILL PREPARE A MINUTE ORDER.

Final Ruling

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 7 of Directv, LLC, by American InfoSource LP as agent, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Directv, LLC, by American InfoSource LP as agent, the creditor ("Creditor"), Proof of Claim No. 7 ("Claim") on the Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$586.56. Objector 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 March 13, 2018. Amended Notice of Bankruptcy Filing and Deadlines, dkt. 15. The Creditor's proof of claim was filed April 23, 2018.

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 six 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.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

6. [17-23827](#)-B-13 HEATHER BUCHFIRER OBJECTION TO CLAIM OF SITEONE
[JPJ](#)-2 Mohammad M. Mokarram LANDSCAPE SUPPLY, CLAIM NUMBER
17
9-7-18 [[49](#)]

Final Ruling

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 17 of Siteone Landscape Supply LLC, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Siteone Landscape Supply LLC, the creditor ("Creditor"), Proof of Claim No. 17 ("Claim") on the Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$9,393.52. Objector 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 October 18, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 14. The Creditor's proof of claim was filed August 31, 2018.

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 six 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.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

Final Ruling

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 17 of Navient Solutions, LLC, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions LLC, the creditor ("Creditor"), Proof of Claim No. 17 ("Claim") on the Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$31,886.51. Objector 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 14, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed August 29, 2018. The court notes that the creditor listed on Proof of Claim No. 17 is "NAVIENT CFC," while the name listed to receive payments is "Navient Solutions, LLC."

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 six 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.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

8. [16-25429](#)-B-13 JANET/ROBERT FAWCETT OBJECTION TO CLAIM OF NAVIENT
[JPJ](#)-3 Steele Lanphier SOLUTION, LLC, CLAIM NUMBER 16
9-7-18 [[41](#)]

Final Ruling

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 16 of NAVIENT PC TRUST, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions LLC, the creditor ("Creditor"), Proof of Claim No. 16 ("Claim") on the Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$6,925.84. Objector 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 14, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed August 29, 2018. The court notes that the creditor listed on Proof of Claim No. 16 is "NAVIENT PC TRUST," while the name listed to receive payments is "Navient Solutions, LLC."

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 six 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.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

9. 16-25429 -B-13 JANET/ROBERT FAWCETT JPJ -4 Steele Lanphier	OBJECTION TO CLAIM OF NAVIENT SOLUTIONS, LLC, CLAIM NUMBER 15 9-7-18 [37]
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Final Ruling

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 15 of NAVIENT PC TRUST, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions LLC, the creditor ("Creditor"), Proof of Claim No. 15 ("Claim") on the Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$22,030.02. Objector 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 14, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed August 29, 2018. The court notes that the creditor listed on Proof of Claim No. 15 is "NAVIENT PC TRUST," while the name listed to receive payments is "Navient Solutions, LLC."

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 six 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.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

SYSTEMS & SERVICES
TECHNOLOGIES, INC. VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

Systems & Services Technologies, Inc., as servicer for Medallion Bank ("Movant"), seeks relief from the automatic stay with respect to assets identified as a 2017 Riverhawk 20 SH Coastal Boat (Hull No. IPN01464H617), a 2015 Tohatsu Motor (Serial No. BANJ-6000208), and a 2017 Karavan Trailer (VIN 5KTBS2315HF502945) (collectively the "Property"). The moving party has provided the Declaration of Kelley Zwick to introduce into evidence the documents upon which it bases the claim and the obligation owed by Gary Valdez, the debtor ("Debtor").

The Zwick Declaration provides testimony that Debtor has not made four post-petition payments, with a total of \$2,168.84 in post-petition payments past due. The Declaration also provides evidence that there is one pre-petition payment in default, with a pre-petition arrearage of \$542.21.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$37,230.76, as stated in the Zwick Declaration, while the value of the Property is determined to be \$44,465.00, as stated in the Zwick Declaration. The court notes that a 2015 Riverhawk 20 SH Coastal Boat is listed on Debtor's Amended Schedule A/B, while all three items of the Property are listed in a Security Agreement presented to the court in Exhibit A. *Compare* Dkt. 12, Am. Sch. A/B pp. 4-11, and dkt. 48, Exh. A, p. 2.

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 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).

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 Property, 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.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN
(7) DAYS.

11. [18-24433](#)-B-13 THEODORE/LORI RAMIREZ
[JJC](#)-1 Julius J. Cherry
Thru #12

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
9-5-18 [[21](#)]

Final Ruling

Debtors Theodore and Lori Ramirez ("Debtors") have filed a Motion to Value Secured Portion of Collateral re: Wells Fargo Bank, N.A. Dkt 21. Debtors' motion is designated as JJC-01 and it is set for hearing on October 23, 2018, at 1:00 p.m. For the reasons explained below, the motion will be continued (in lieu of denied without prejudice) to permit proper service.

Wells Fargo Bank, N.A. ("Wells Fargo") is an insured depository institution which means, absent exceptions not applicable here, it must be served "by certified mail addressed to an officer of the institution[.]" FED. R. BANKR. P. 7004(h). The certificate of service that corresponds with the motion at JJC-01 reflects that Wells Fargo was served by certified mail addressed as follows: "Attn: Officer, Partner, Managing Member, or Agent For Service of Process." Dkt 26. In other words, service on Wells Fargo was not solely to an officer.

Service on Wells Fargo in the manner above fails to comply with Bankruptcy Rule 7004(h). Bankruptcy Rule 7004(h) requires service solely to the attention of an officer of an insured depository institution. Nothing in Bankruptcy Rule 7004(h) or its legislative history suggests that Congress intended the term "officer" to include anything other than an officer of the respondent creditor. See *Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

This court has previously dismissed and/or denied matters without prejudice as non-compliant with Bankruptcy Rule 7004(h) when service was not solely to the attention of an officer of an insured depository institution. See *In re Muir*, No. 18-21924 (Bankr. E.D. Cal. 2018) (Docket 25); *In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dockets 24, 26). Other judges in this district have done the same. See *In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dockets 62, 64). This court has also continued matters when service was not solely to an officer of an insured depository institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). See *In re Robles*, No. 17-25899 (Dockets 56, 60); *In re Petty*, No. 12-24999 (E.D. Cal. 2012) (Docket 42). For reasons of judicial economy and to avoid undue delay and expense to the Debtors, the court will continue the hearing on the Debtors' motion to permit the Debtors to properly serve Wells Fargo rather than deny the motion without prejudice for defective service.

Therefore, for the foregoing reasons, the hearing on the Debtors' motion filed at JJC-01 currently set to be heard on October 23, 2018, at 1:00 p.m. will be continued to November 13, 2018, at 1:00 p.m. The Debtors shall serve Wells Fargo in the manner required by Bankruptcy Rule 7004(h) to the attention of an officer of the respective institution (and only to an officer of the institution) by October 30, 2018.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

12. [18-24433](#)-B-13 THEODORE/LORI RAMIREZ
[JPJ](#)-1 Julius J. Cherry

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
8-23-18 [[18](#)]

Final Ruling

This matter is continued to November 13, 2018, at 1:00 p.m. to be heard with line item #11 above.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

13. [18-25945](#)-B-13 STEVE URBANO
[SMR](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-25-18 [[8](#)]

ANDREW ROCKLIN VS.

Tentative Ruling

The court's decision is to deny this motion as moot. Steve Urbano, the debtor ("Debtor"), was ordered to file the required documents listed in the Notice of Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed ("NOID"). Dkt 3. The original deadline of October 4, 2018, was extended to October 18, 2018 by Debtor's request. Dkt. 21. A review of the court's docket shows these documents were not filed by the extended deadline. In addition, as stated in the order extending Debtor's deadline, "**IT IS FURTHER ORDERED** that no further extensions of time to file the Missing Documents will be granted by ex parte application." Dkts. 21, 23. No noticed motion to extend the filing deadline has been filed. Therefore, the case is ordered dismissed for failure to timely file documents, the motion for stay relief filed (dkt. 8) is denied as moot, and the request for a continuance filed by the Debtor's non-filing spouse (dkt. 23) is denied as moot.

THE COURT WILL PREPARE A MINUTE ORDER.

Final Ruling

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 7 of Midland Funding, LLC, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Midland Credit Management, the creditor ("Creditor"), Proof of Claim No. 7 ("Claim") on the Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$472.90. Objector 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 March 22, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed April 16, 2018. Creditor filed an amended proof of claim September 21, 2018. The court notes that the creditor listed on Proof of Claim No. 7 is "Midland Funding, LLC," while the name listed to receive notices to the creditor is "Midland Credit Management, Inc., as agent for Midland Funding, LLC."

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 six 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.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

15. [18-24377](#)-B-13 PETE GARCIA
[PGM](#)-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
CALHFA MORTGAGE ASSISTANCE
GROUP
9-21-18 [[34](#)]

Final Ruling

The motion has been set for hearing on the 28-days notice required by 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of CALHFA Mortgage Assistance Group at \$0.00.

Debtor Pete Garcia's ("Debtor's") motion to value the secured claim of CALHFA Mortgage Assistance Group ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6573 Park Riviera Way, Sacramento, California 95831 ("Property"). Debtor seeks to value the Property at a fair market value of \$450,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

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 first deed of trust secures a claim with a balance of approximately \$513,603.59. Creditor's second deed of trust secures a claim with a balance of approximately \$100,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

16. [18-20180](#)-B-13 JOHN GARBE
[JPJ](#)-1 Mikalah R. Liviakis

OBJECTION TO CLAIM OF MIDLAND
CREDIT MANAGEMENT, CLAIM NUMBER
16
9-7-18 [[43](#)]

Final Ruling

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 16 of Midland Funding, LLC, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Midland Credit Management, the creditor ("Creditor"), Proof of Claim No. 16 ("Claim") on the Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$2,998.35. Objector 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 March 23, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 15. Creditor's proof of claim was filed April 16, 2018. The court notes that the creditor listed on Proof of Claim No. 16 is "Midland Funding, LLC," while the name listed to receive notices to the creditor is "Midland Credit Management, Inc., as agent for Midland Funding, LLC."

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 six 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.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

17. [18-20181](#)-B-13 MARCUS WOODFORK AND SHERI OBJECTION TO CLAIM OF MIDLAND
[JPJ](#)-1 TOMKINS CREDIT MANAGEMENT, CLAIM NUMBER
Mikalah R. Liviakis 15
9-7-18 [[23](#)]

Final Ruling

The objection to proof of claim 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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 15 of Midland Funding, LLC, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objectors"), requests that the court disallow the claim of Midland Credit Management, the creditor ("Creditor"), Proof of Claim No. 15 ("Claim") on the Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$613.10. Objectors assert 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 March 23, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 16. The Creditor's proof of claim was filed April 16, 2018. The court notes that the creditor listed on Proof of Claim No. 15 is "Midland Funding, LLC," while the name listed to receive notices to the creditor is "Midland Credit Management, Inc., as agent for Midland Funding, LLC."

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 six 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.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

18. [18-24684](#)-B-13 STEVEN/SUSAN GARDNER
[JPJ](#)-2 Nikki Farris

TELEPHONE APPEARANCE
OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
9-19-18 [[17](#)]

Tentative Ruling

The objection has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the objection at the hearing.

The court's decision is to overrule the objection as moot.

Trustee's Objection

Jan Johnson, the Chapter 13 Trustee ("Trustee"), objects to the use of exemptions under California Code of Civil Procedure §§ 703 and 704 by debtors Steven and Susan Gardners ("Debtors"). Trustee argues Debtors did not present authority to use exemptions under both systems.

Debtors' Opposition

Debtors state that the claim of exemption filed was an inadvertent error by Debtors' counsel, which was resolved through filing an amended Schedule C on October 8, 2018.

Discussion

A review of the court's docket confirms that an amended Schedule C was filed on October 8, 2018. Dkt. 25. The amended schedule only claims exemptions under California Code of Civil Procedure § 704. *Id.* at pp. 3-4. Thus, Trustee's objection is denied as moot.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.