

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

November 13, 2018 at 10:00 a.m.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

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1.	18-26202-D-13	MYRON SMITH	MOTION TO VALUE COLLATERAL OF
	MJH-1		FLAGSHIP CREDIT ACCEPTANCE, LLC
	Tentative ruling:		10-3-18 [8]

This is the debtor's motion to value collateral of Flagship Credit Acceptance LLC ("Flagship"), a 2016 Dodge Journey Utility 4d SXT. The motion will be denied for the following reasons.

First, the proof of service does not state the date of service and fails to adequately describe the manner of service. It states only that the declarant served a copy of the following documents on the following parties. Assuming service was made by mail, the proof of service should state that copies of the following documents were placed in sealed envelopes with postage prepaid, addressed to the following parties at the listed addresses, and placed in the United States Mail.

Second, the debtor's Schedule D indicates the debtor incurred the debt in August of 2016, which was within the 910-day period prior to the filing of this case. Thus, it appears the debtor is precluded by the hanging paragraph following § 1325(a)(9) from valuing Flagship's secured claim, and the debtor has failed to show otherwise.

The court will hear the matter.

2. 18-25303-D-13 CAROLYN VALDEZ  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
10-15-18 [14]

3. 18-23708-D-13 STANLEY ASBURY AND  
GSJ-3 KATHRINE STEWART ASBURY

MOTION TO CONFIRM PLAN  
10-8-18 [45]

4. 17-24412-D-13 JEANINE DAVIS  
RDG-5

OBJECTION TO CLAIM OF LOBEL  
FINANCIAL CORP, CLAIM NUMBER 13-1  
10-4-18 [128]

**Tentative ruling:**

This is the trustee's objection to the claim of Lobel Financial Corp. ("Lobel"), Claim No. 13 on the court's claims register, on the ground it was filed late. Lobel has filed opposition. For the following reason, the objection will be sustained.

Lobel does not dispute that its proof of claim was filed late; it argues instead that it did not receive notice of the bankruptcy case in time to file a timely proof of claim. Pursuant to Fed. R. Bankr. P. 9006(b)(3), the court may enlarge the time for taking action under Fed. R. Bankr. P. 3002(c) (time for filing proofs of claim) only to the extent and under the conditions stated in that rule. Rule 3002(c), in the form that applies in this case (see n.1, below), provides for the allowance of late-filed claims in a variety of circumstances; none is present here. Thus, the court lacks discretion to enlarge the time for filing claims. Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) ("a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules"); In re Coastal Alaska Lines, Inc., 920 F.2d 1428, 1432-33 (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"); In re Johnson, 262 B.R. 831, 845 (Bankr. D. Idaho 2001) ("Given the unambiguous language of Rule 9006(b)(3) and controlling case law, this Court concludes it is simply not permitted to equitably enlarge the time period for filing proofs of claim absent facts which place Creditors within one of the express exceptions of Rule 3002.").<sup>1</sup>

Lobel argues that if its claim is disallowed, the claim should not be discharged. A request for a determination of nondischargeability is not appropriate in the context of an objection to claim.

Because the court lacks discretion to allow the late claim, the objection will be sustained. The court will hear the matter.

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1 One court has noted that "Rule 3002(c)(6) was amended in 2017 'to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim.'" In re Lovo, 584 B.R. 79, 80, n.1 (Bankr. S.D. Fla. March 27, 2018), quoting Rule 3002 advisory committee's note to 2017 amendment. The court need not consider the amended rule because, as in Lovo, it was not in effect when this case was filed. (The amendment went into effect December 1, 2017; this case was filed July 3, 2017.)

5. 17-26727-D-13 BEVERLY LUCIO  
KRW-3

MOTION TO MODIFY PLAN  
9-20-18 [52]

6. 13-29733-D-13 ALAN BERNER  
CLH-1

CONTINUED MOTION FOR  
SUBSTITUTION OF TODD BERNER AS  
THE SUCCESSOR TO THE DECEASED  
DEBTOR AND/OR MOTION FOR  
CONTINUED ADMINISTRATION OF THE  
CASE UNDER CHAPTER 13, MOTION  
FOR WAIVER OF THE POST  
CERTIFICATION REQUIREMENT FOR  
ENTRY OF DISCHARGE FOR THE  
DECEASED DEBTOR  
9-10-18 [58]

**Tentative ruling:**

This is the motion of the debtor's son for omnibus relief on account of the debtor's death. UNCLE Credit Union has opposed the motion. For the following reasons, the motion will be granted with a limitation on what is covered by the order.

The Credit Union has not made a strong showing in opposition to the specific relief requested in the motion - that the debtor's son be substituted as the debtor's successor in this case; that the court allow the continued administration of the case; and that the usual requirement that the debtor sign certain certificates prior to entry of a discharge be waived.<sup>1</sup> The debtor's reply to the Credit Union's opposition, however, raised an issue that needs to be addressed.

The debtor died on June 13, 2016, three years into a confirmed five-year chapter 13 plan. The debtor's son and sole heir continued to make the plan payments, which he has now completed. The Credit Union's main opposition to the motion was that the debtor's son appeared to be seeking to strip off the Credit Union's second deed of trust against the debtor's residence, whereas the debtor and his son were co-owners of the property when the case was filed and co-obligors on the note and deed of trust. In August of 2013, the debtor had filed a motion to value the Credit Union's collateral at \$0. In resolution of the motion, in November of 2013, the Credit Union and the debtor (but not the debtor's son) stipulated to a value of \$12,000, which has been paid through the plan. The Credit Union's position in opposition to this motion was that the debtor's son should not obtain the benefit of the November 2013 stipulation because he is a co-borrower on the Credit Union's loan and a co-trustor on its deed of trust, but is not a debtor in this case. In essence, the argument is that the debtor's son was trying to obtain for himself one of the benefits of bankruptcy without subjecting himself to its burdens.

The reply filed by the debtor's son strongly suggested that is what he intended to do. He argued the Credit Union should have raised the issue at the time the motion to value and stipulation were filed, and he charged the Credit Union with trying to renege on the stipulation and take advantage of the debtor's death. According to the debtor's son, "[t]he [Credit Union's] argument that '[its] lien on the Property cannot be removed' is not understood nor supported by authority." Debtor's Reply, filed Oct. 9, 2018, at 3:4-5.

The Credit Union is correct on this issue. Although the debtor's motion to value collateral cited no authority, the motion was clearly brought pursuant to § 506(a) of the Bankruptcy Code, which provides that an allowed claim secured by a lien on property in which the estate has an interest is a secured claim to the extent of the value of the creditor's interest in the estate's interest in such property, and an unsecured claim as to the balance. "That value which the court is charged with determining under section 506 . . . is the value of the creditor's secured claim against property of the estate." In re Maynard, 264 B.R. 209, 214 (9th Cir. BAP 2001) (citation omitted; emphasis added). Thus, "[i]f the debtor . . . has a 50% interest in the property, then the secured creditor has a secured claim as to the value of that 50% only-insofar as the debtor's interest is concerned-and an unsecured claim for the entire balance of the obligation. [¶] This results in the creditor still having a secured claim in the full amount of the obligation as to the 50% of the property not belonging to the estate, but belonging to the co-owner/co-obligor." In re Rodriguez, 156 B.R. 659, 660 (Bankr. E.D. Cal. 1993).

The hearing on this motion was continued to permit the parties to determine whether, at the commencement of the case, the property was owned by the debtor alone or by the debtor and his son. The Credit Union has submitted evidence that as of a date three weeks before the debtor filed this case, the property was owned by the debtor and his son, each as to an undivided one-half interest as joint tenants. The debtor's son has now acknowledged that is how the property was held when the case was filed. He also "acknowledges the discharge may not result in the extinguishment of the credit union's deed of trust against the property." Debtor's Supp. Brief, filed Oct. 30, 2018, at 1:26-27.

The court is prepared to grant the motion with the limitation that the order will have no effect on the issue of the Credit Union's remaining interest in the property. It appears that issue is governed by § 524(e) of the Code, which provides that "[e]xcept as provided in subsection (a)(3) of this section [not applicable here], discharge of a debt of the debtor does not affect the liability of any other

entity on, or the property of any other entity for, such debt." Because the court's motion as originally pitched up did not seek any relief with regard to the Credit Union's lien, but because the debtor's son's reply to the opposition indicated he intended the motion and order to affect that issue, the court will order that the granting of the motion will not affect the issue.

The court will hear the matter.

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- 1 The Credit Union's principal objection is discussed below. The Credit Union also argued the motion should be denied on the grounds that (1) notice of the debtor's death was filed over two years after the deadline set by the applicable local rule; and (2) because he is deceased, the debtor does not need a discharge, and therefore, creditors should receive distributions through probate. As to the first, the debtor's attorney testifies the delay in filing the notice of death resulted from his neglect. The second argument, if valid, would essentially eliminate Fed. R. Bankr. P. 1016, which permits a chapter 13 case to be dismissed or, if further administration is possible and in the best interest of the parties, to proceed and be concluded as if the debtor's death had not occurred. In the case cited by the Credit Union, In re Hennessy, 2013 Bankr. LEXIS 3034, \*3-4, 2013 WL 3939886, \*2 (Bankr. N.D. Cal. 2013), the court chose dismissal as the better alternative. The facts of that case were distinguishable in significant ways from those in this case.

7. 18-21534-D-13 HECTOR/MARIA PEREZ MOTION FOR COURT APPROVAL OF  
SSA-1 STIPULATION  
10-10-18 [51]

Tentative ruling:

This is the motion of Chico Trucking for approval of a stipulation. The proof of service was filed October 10, 2018 but it states that service was made and the proof of service was signed on November 10, 2018. The moving party will need to file a corrected proof of service; otherwise, the motion will be denied. The court will hear the matter.

8. 18-25336-D-13 GERALDINE WILLIAMS OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
10-15-18 [35]

9. 18-25241-D-13 GERARDO/REBECCA HERNANDEZ OBJECTION TO CONFIRMATION OF  
CAS-1 PLAN BY EXETER FINANCE, LLC  
10-12-18 [16]

10. 18-25343-D-13 LATASHA POWELL OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
10-15-18 [12]

**Final ruling:**

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. The trustee objects on the ground that the plan is not feasible because it fails to provide for the filed secured claims of Central State Credit Union, \$39,417 and \$8,294. The debtor has filed a reply stating she does not oppose the objection and is in the process of filing an amended plan that will provide for the two secured claims. Because the debtor does not oppose the objection, the objection will be sustained by minute order. No appearance is necessary.

11. 18-25445-D-13 JAMAICA MOON AND VIDAL OBJECTION TO CONFIRMATION OF  
RDG-1 DANIELS PLAN BY RUSSELL D. GREER  
10-15-18 [15]

**Final ruling:**

This is the trustee's objection to the debtors' proposed chapter 13 plan. On October 25, 2018, the debtors filed an amended plan. As a result of the filing of the amended plan, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

12. 18-20855-D-13 WALTER/SHIRLEY SAUNDERS CONTINUED MOTION TO APPROVE  
TAG-3 LOAN MODIFICATION  
9-12-18 [113]

13. 18-25165-D-13 FRANK/MYRA RUEDA OBJECTION TO CONFIRMATION OF  
DWE-1 PLAN BY MILL CITY MORTGAGE LOAN  
TRUST 2018-2  
10-15-18 [16]

14. 18-23967-D-13 EMMA WILLIAMS MOTION TO CONFIRM PLAN  
TAG-2 9-18-18 [29]

15. 18-25069-D-13 GODOFREDO/GLORIA AYRAN OBJECTION TO DEBTORS' CLAIM OF  
RDG-2 EXEMPTIONS  
10-1-18 [20]

**Final ruling:**

**This is the trustee's objection to the debtors' claim of exemption of certain life insurance policies. On October 26, 2018, the debtors filed an amended Schedule C on which they made changes to the claim of exemption as to the insurance policies. As a result of the filing of the amended Schedule C, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.**

16. 18-25171-D-13 LORENA LOPEZ-ALVAREZ OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
10-15-18 [24]

17.	18-25375-D-13 RDG-1	BENJAMIN/MARGARET CONTRERAS	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-15-18 [17]
18.	18-24279-D-13 JCK-1	TONJA GOINS	MOTION TO CONFIRM PLAN 9-28-18 [18]
19.	18-24984-D-13 RKW-1	MIKE/OLIVIA BANUELOS	MOTION TO CONFIRM PLAN 10-3-18 [27]
20.	18-25195-D-13 RDG-1	DANNY/CHERYL PHIPPS	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-15-18 [18]



21.	18-20855-D-13	WALTER/SHIRLEY SAUNDERS	CONTINUED MOTION TO CONFIRM
	TAG-2		PLAN
			9-12-18 [107]