

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

November 23, 2021 at 1:30 p.m.

1.	17-26434 -C-13	TRINA ENOS	MOTION TO MODIFY PLAN
	PLG -12	Rabin Pournazarian	10-8-21 [145]

Final Ruling: No appearance at the November 22, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 150.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

<p>The Motion to Modify Plan is granted.</p>

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtor, Trina Rae Enos, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt. 147) meets the

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requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

2. [18-25843](#)-C-13 RICHARD DIMES-WILLIAMS OBJECTION TO CLAIM OF U.S.
[WIL](#)-4 AND CRYSTAL DEPARTMENT OF EDUCATION, CLAIM
Yasha Rahimzadeh NUMBER 18
10-13-21 [[52](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 41 days' notice was provided. Dkt. 56.

The Objection to Proof of Claim is XXXXXX

The debtors Richard Dimes-Williams and Crytal Lopez-Williams filed this Objection to Proof of Claim, No. 18, filed by the United States Department of Education ("Creditor").

The Objection argues that Creditor's loan agreement underlying its claim, at Section 15, provides that loan repayment is deferred until 6 months after the debtor Crytal Lopez-Williams completes college, which was May 21, 2021. The Objection further represents that Creditor has agreed to a forbearance of student loan debt until January 31, 2022.

The debtors argue Creditor's debt can be paid outside the Chapter 13 plan.

DISCUSSION

The debtors' position is that Creditor's debt had not come due by the time of filing. But, the requested relief is not clear.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by United States Department of Education, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 18 of United States Department of Education is
xxxxxxxxxx

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 19.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 16) filed on October 19, 2021.

The trustee filed an Opposition (Dkt. 20) on November 1, 2021, opposing confirmation on the following grounds:

1. The debtor is \$2,550.00 delinquent in plan payments.
2. The plan mathematically requires a payment of \$3,359.38 per month, which is greater than the proposed \$2,550.00 payment in month 1 of the plan.

DISCUSSION

The trustee's Opposition is well-taken. The debtor has not met his burden to show the plan is feasible given the \$2,550.00 plan payment delinquency, and given that the plan mathematically requires a payment of \$3,359.38 per month, which is greater than the proposed \$2,550.00 payment in month 1 of the plan.

That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Brian D. Singletary, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

4. [18-27659](#)-C-13 BRITTANY HOLMES
[PSB](#)-3 Pauldeep Bains

MOTION FOR COMPENSATION FOR
PAULDEEP BAINS, DEBTORS
ATTORNEY(S)
10-22-21 [[59](#)]

Final Ruling: No appearance at the November 22, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 63.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney ("Applicant") for Brittany Nakita Holmes, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Applicant requests fees in the amount of \$2,400.00. The services rendered include preparation and prosecution of two modified plans, which became necessary due to unanticipated reductions to the debtor's income.

FEES AND COSTS & EXPENSES ALLOWED

The unique facts surrounding the case, including preparation and prosecution of two modified plans, raise substantial and unanticipated work for the benefit of the Estate, the debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,400.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, Professional Employed by Brittany Nakita Holmes
("Debtor")

Fees in the amount of \$2,400.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that the Chapter 13 trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

Thru #7

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(1) procedure which requires 44 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 47.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The debtor Gunvant Patel filed this Objection arguing that Proof of Claim, No. 8, filed by Michelle Kennedy was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is July 29, 2021. Notice of Bankruptcy Filing and Deadlines, Dkt. 12. The Proof of Claim subject to this Objection was filed July 30, 2021.

The debtor also argues that the Proof of Claim and supporting attachments loosely allege a claim for "personal injury and habitability" but do not establish liability or the amount of the claim.

The debtor argues further that the Proof of Claim does not meet the requirements of 11 U.S.C. § 502(c) for an estimated claim.

CREDITOR'S OPPOSITION

The Creditor filed an Opposition on November 10, 2021. Having been filed 13 days prior to the hearing, the Opposition was not timely filed.

The Creditor argues in its Opposition:

1. The Proof of Claim was not timely filed due to a power outage occurring July 29, 2021, as well as unspecified technical difficulties with the court's electronic filing system. The court should grant relief pursuant to Federal Rule of Civil Procedure 60(B), on the basis there was mistake, inadvertence, surprise, or excusable neglect.
2. The Creditor's claims have merit (the Opposition describes the claims in detail). A case is pending against the debtor and the debtor's LLC wherein the Creditor alleges claims for (1) Failure to Provide Habitable Dwelling; (2) Breach of Covenant and Right to Quiet Enjoyment and Possession of the Property; (3) Nuisance; and (4) Negligence.

DEBTOR'S RESPONSE

The debtor filed a Response arguing:

1. Federal Rule of Civil Procedure 60(B) does not pertain to the filing deadline of proofs of claim. Federal Rule of Bankruptcy Procedure 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 special circumstances listed in Rule 3002(c). None of the seven exceptions are applicable here.
2. Creditor's counsel does not explain why Creditor waited until the deadline for filing to file its Proof of Claim when the Bankruptcy Notice was sent 6 weeks prior.
3. Creditor's Opposition was filed 13 days prior to the hearing, and is therefore untimely.
4. Despite the Creditor providing extensive details in its Opposition as to the basis of its alleged claims, the Creditor has not sought relief from the automatic stay to proceed with liquidating its claims.

DISCUSSION

The Creditor admits its Proof of Claim was not timely filed, but seeks to use Federal Rule of Civil Procedure 60(B) to have its Proof of Claim allowed. Even if that Rule were applicable, it clearly states that such relief can be granted "On motion and just terms . . ." The Creditor has not filed a Motion, but instead has made the request for relief within an opposition.

And, as argued by the debtor, that Rule is not applicable. Federal Rule of Bankruptcy Procedure 3002 governs the filing of proofs of claim. That Rule provides for extension of the time to file a proof of claim under certain criteria, specifically "[o]n motion filed by a creditor . . ." Fed. R. Bankr. P. 3002(c)(6). No motion has been filed by the Creditor here.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the debtor Gunvant Patel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 8 of Michelle Kennedy is sustained, and the claim is disallowed in its entirety.

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (1) procedure which requires 44 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 51.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The debtor, Gunvant Patel, filed this Objection arguing that Proof of Claim, No. 9, filed by Brian Ciokewicz was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is July 29, 2021. Notice of Bankruptcy Filing and Deadlines, Dkt. 12. The Proof of Claim subject to this Objection was filed July 30, 2021.

CREDITOR'S OPPOSITION

The Creditor filed an Opposition on November 10, 2021. Having been filed 13 days prior to the hearing, the Opposition was not timely filed.

The Creditor argues in its Opposition:

1. The Proof of Claim was not timely filed due to a power outage occurring July 29, 2021, as well as unspecified technical difficulties with the court's electronic filing system. The court should grant relief pursuant to Federal Rule of Civil Procedure 60(B), on the basis there was mistake, inadvertence, surprise, or excusable neglect.
2. The Creditor's claims have merit (the Opposition describes the claims in detail). A case is pending against the debtor and the debtor's LLC wherein the Creditor alleges claims for (1) Failure to Provide Habitable Dwelling; (2) Breach of Covenant and Right to Quiet Enjoyment and Possession of the Property; (3) Nuisance; and (4) Negligence.

DEBTOR'S RESPONSE

The debtor filed a Response arguing:

1. Federal Rule of Civil Procedure 60(B) does not pertain to the filing deadline of proofs of claim. Federal Rule of Bankruptcy Procedure 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 special circumstances listed in Rule 3002(c). None of the seven exceptions are applicable here.

2. Creditor's counsel does not explain why Creditor waited until the deadline for filing to file its Proof of Claim when the Bankruptcy Notice was sent 6 weeks prior.
3. Creditor's Opposition was filed 13 days prior to the hearing, and is therefore untimely.
4. Despite the Creditor providing extensive details in its Opposition as to the basis of its alleged claims, the Creditor has not sought relief from the automatic stay to proceed with liquidating its claims.

DISCUSSION

The Creditor admits its Proof of Claim was not timely filed, but seeks to use Federal Rule of Civil Procedure 60(B) to have its Proof of Claim allowed. Even if that Rule were applicable, it clearly states that such relief can be granted "On motion and just terms . . ." The Creditor has not filed a Motion, but instead has made the request for relief within an opposition.

And, as argued by the debtor, that Rule is not applicable. Federal Rule of Bankruptcy Procedure 3002 governs the filing of proofs of claim. That Rule provides for extension of the time to file a proof of claim under certain criteria, specifically "[o]n motion filed by a creditor . . ." Fed. R. Bankr. P. 3002(c)(6). No motion has been filed by the Creditor here.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the debtor Gunvant Patel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 9 of Brian Ciokevicz is sustained, and the claim is disallowed in its entirety.

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (1) procedure which requires 44 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 55.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The debtor Gunvant Patel filed this Objection arguing that Proof of Claim, No. 10, filed by Anthony Ydrogo was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is July 29, 2021. Notice of Bankruptcy Filing and Deadlines, Dkt. 12. The Proof of Claim subject to this Objection was filed July 30, 2021.

CREDITOR'S OPPOSITION

The Creditor filed an Opposition on November 10, 2021. Having been filed 13 days prior to the hearing, the Opposition was not timely filed.

The Creditor argues in its Opposition:

1. The Proof of Claim was not timely filed due to a power outage occurring July 29, 2021, as well as unspecified technical difficulties with the court's electronic filing system. The court should grant relief pursuant to Federal Rule of Civil Procedure 60(B), on the basis there was mistake, inadvertence, surprise, or excusable neglect.
2. The Creditor's claims have merit (the Opposition describes the claims in detail). A case is pending against the debtor and the debtor's LLC wherein the Creditor alleges claims for (1) Failure to Provide Habitable Dwelling; (2) Breach of Covenant and Right to Quiet Enjoyment and Possession of the Property; (3) Nuisance; and (4) Negligence.

DEBTOR'S RESPONSE

The debtor filed a Response arguing:

1. Federal Rule of Civil Procedure 60(B) does not pertain to the filing deadline of proofs of claim. Federal Rule of Bankruptcy Procedure 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 special circumstances listed in Rule 3002(c).
None of the seven exceptions are applicable here.

2. Creditor's counsel does not explain why Creditor waited until the deadline for filing to file its Proof of Claim when the Bankruptcy Notice was sent 6 weeks prior.
3. Creditor's Opposition was filed 13 days prior to the hearing, and is therefore untimely.
4. Despite the Creditor providing extensive details in its Opposition as to the basis of its alleged claims, the Creditor has not sought relief from the automatic stay to proceed with liquidating its claims.

DISCUSSION

The Creditor admits its Proof of Claim was not timely filed, but seeks to use Federal Rule of Civil Procedure 60(B) to have its Proof of Claim allowed. Even if that Rule were applicable, it clearly states that such relief can be granted "[o]n motion and just terms . . ." The Creditor has not filed a Motion, but instead has made the request for relief within an opposition.

And, as argued by the debtor, that Rule is not applicable. Federal Rule of Bankruptcy Procedure 3002 governs the filing of proofs of claim. That Rule provides for extension of the time to file a proof of claim under certain criteria, specifically "[o]n motion filed by a creditor . . ." Fed. R. Bankr. P. 3002(c)(6). No motion has been filed by the Creditor here.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the debtor Gunvant Patel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 10 of Anthony Ydrogo is sustained, and the claim is disallowed in its entirety.

8. [21-23299](#)-C-13 KRISTIN/SEAN RAYMOND
[MET](#)-1 Seth Hanson

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-25-21 [[19](#)]

BANK OF THE WEST VS.

Final Ruling: No appearance at the November 22, 2021 hearing is required.

The parties filed a Stipulation resolving this Motion on November 12, 2021.
Dkt. 28. The court issued an Order Approving Stipulation on the same day.
Dkt. 29.

Therefore, the Motion will be dismissed as moot.