

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: December 1, 2020

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

December 1, 2020 at 1:00 p.m.

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| 1. 20-90001 -B-13 CARLA TURNER RDG -1 Jessica A. Dorn | OBJECTION TO CLAIM OF TITLEMAX OF CALIFORNIA, INC., CLAIM NUMBER 7 9-29-20 [96] |
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Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 7-1 of TitleMax of California, Inc. and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of TitleMax of California, Inc. ("Creditor"), Proof of Claim No. 7-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$9,916.14. 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 12, 2020. Notice of Bankruptcy Filing and Deadlines, dkt. 28. The Creditor's proof of claim was filed April 13, 2020.

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

December 1, 2020 at 1:00 p.m.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

2. [19-90808](#)-B-13 JOSE/LUCIA ROMO
[RDG](#)-1 Mark S. Nelson

OBJECTION TO CLAIM OF
COMMERCIAL TRADE, INC., CLAIM
NUMBER 9
9-29-20 [[25](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 9-1 of Commercial Trade, Inc. and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Commercial Trade, Inc. ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$715.16. 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 November 12, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed February 3, 2020.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

3. [19-90817](#)-B-13 GARY COOKSEY OBJECTION TO CLAIM OF AHERN
[RDG](#)-4 Brian S. Haddix RENTALS, INC., CLAIM NUMBER 12
Thru #4 9-29-20 [[136](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 12-1 of Ahern Rentals, Inc. and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Ahern Rentals, Inc. ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$19,611.08. 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 November 15, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 22. The Creditor's proof of claim was filed January 4, 2020.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

4. [19-90817](#)-B-13 GARY COOKSEY OBJECTION TO CLAIM OF HERC
[RDG](#)-5 Brian S. Haddix RENTALS, INC., CLAIM NUMBER 13
9-29-20 [[139](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 13-1 of Herc Rentals Inc. and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Herc Rentals Inc. ("Creditor"), Proof of Claim No. 13-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$28,965.39. 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 November 15, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 22. The Creditor's proof of claim was filed March 2, 2020.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 6-1 of Commercial Trade Inc and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Commercial Trade Inc ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$647.91. 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 January 27, 2020. Notice of Bankruptcy Filing and Deadlines, dkt. 22. The Creditor's proof of claim was filed February 3, 2020.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

6. [20-90627](#)-B-13 SILVIA HERNANDEZ OBJECTION TO CONFIRMATION OF
AP-1 Chinonye Ugorji PLAN BY WELLS FARGO BANK
Thru #7 NATIONAL ASSOCIATION
11-10-20 [[25](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to sustain the objection for reasons below and as stated at Item #7, RDG-1.

Objecting creditor Wells Fargo Bank National Association, LLC d/b/a Mr. Cooper holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$8,133.48 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed September 28, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

7. [20-90627](#)-B-13 SILVIA HERNANDEZ OBJECTION TO CONFIRMATION OF
[RDG-1](#) Chinonye Ugorji PLAN BY RUSSELL D. GREER
11-9-20 [[21](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion.

See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to sustain the objection and deny confirmation of the plan.

First, Debtor's plan classifies Wells Fargo Bank National Association, LLC d/b/a Mr. Cooper ("Mr. Cooper"), the holder of a mortgage on Debtor's residence, as a Class 4 creditor to be paid directly by Debtor. Class 4 is a class of claims that are not in default. Mr. Cooper has filed proof of claim number 1-1, which sets forth arrears of \$8,133.48, indicating that the loan is in default. Until Debtor establishes that this loan is not in default, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

Second, Debtor's Schedule I lists net business income of \$5,800.00. Debtor admitted at her meeting of creditors that her net business income is much lower than that figure. The Chapter 13 Trustee has requested that Debtor provide a year-to-date profit and loss statement of Debtor's business to show that Debtor has the ability to fund the plan. The Debtor has failed to provide such a statement. It therefore cannot be determined whether the Debtor's plan is feasible. 11 U.S.C. § 1325(a)(6).

The plan filed September 28, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

8. [19-90335](#)-B-13 JOBERT/CARLEY VERCELES OBJECTION TO CLAIM OF
[RDG-2](#) Jennifer G. Lee DEVELOPERS SURETY AND INDEMNITY
COMPANY, CLAIM NUMBER 20
9-29-20 [[64](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 20-1 of Developers Surety and Indemnity Company and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Developers Surety and Indemnity Company ("Creditor"), Proof of Claim No. 20-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$24,404.46. 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 June 24, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 16. The Creditor's proof of claim was filed November 27, 2019.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

9. [19-90545](#)-B-13 EDGAR DOMINGUEZ AND OBJECTION TO CLAIM OF EXCEL
[RDG](#)-3 MEGHAN MOORE MANTECA LP, CLAIM NUMBER 11
Flor De Maria A. Tataje 9-29-20 [[104](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 11-1 of Excel Manteca LP and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Excel Manteca LP ("Creditor"), Proof of Claim No. 11-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$51,479.53. 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 August 20, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 16. The Creditor's proof of claim was filed November 13, 2019.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

10. [20-90046](#)-B-13 KYLE RASH
[RK-3](#) Richard Kwun

MOTION TO MODIFY PLAN
10-16-20 [[58](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor 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 Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

11. [20-90060](#)-B-13 ALAN ESPERA AND GHICELLE
[PGM-1](#) LOU CARTOJANO
Peter G. Macaluso
OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES AND/OR
MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
10-7-20 [[29](#)]

Final Ruling

The objection 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). Opposition was filed.

Due to the courthouse closure resulting from the COVID-19 pandemic, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

Introduction

Debtors Alan M. Espera and Gichelle Lou Garsuta Cartojano ("Debtors") object to the Notice of Post-Petition Mortgage, Expenses, and Charges filed by secured creditor Nation's Direct Mortgage ("Creditor"). Dkt. 29. Creditor filed a response, dkt. 34, and an amended response. Dkt. 36. Creditor submitted evidence with the response. The Debtors filed a reply. Dkt. 41.

The court takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c)(1).

Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

Discussion

On April 23, 2020, Creditor filed a Bankruptcy Rule 3002.1 notice which purports to assess post-petition attorney's fees and expenses under the applicable note and deed of trust totaling \$1,306.80. Attorneys' fees are \$1,300.00 and consist of the following:

- (1) 2/23/2020 plan review in the amount of \$400.00;
- (2) 3/11/2020 proof of claim B410 preparation in the amount of \$550.00;
- (3) 3/11/2020 proof of claim B410A preparation in the amount of \$250.00; and
- (4) 4/8/2020 notice of fees, expenses, and charges in the amount of \$100.00.

Expenses are \$6.80 and consist of a 3/11/20 cost for mailing the proof of the claim.

Debtors object to the attorney's fees and expenses on the basis that there is no court order allowing either, no billing statements are provided, and the fees and expenses are not reasonable. Creditor contends that neither detailed billing records nor an explanation of the fees assessed is required. Creditor also contends that Bankruptcy Rule 3002.1 is a notice provision, and it provided the Debtors with sufficient notice of the post-petition fees and expenses assessed under the applicable note and deed of trust. Creditor is only partially correct.

As an initial matter, the court is not bound by the Fannie Mae guidelines on which Creditor relies to substantiate the attorney's fees and expenses it has assessed. The court is also not bound by any "flat fee" agreement between Creditor and its attorneys. Rather, the court's responsibility is to determine whether the attorney's fees assessed and requested are reasonable on a time expended basis. *In re Covemaker*, 2011 WL 2020856 at *1 (Bankr. C.D. Ill. May 23, 2011) ("So even flat fee arrangements must be evaluated for reasonableness on the basis of time expended.").

That said, as Creditor states, the official Bankruptcy Rule 3002.1 form does not require the holder of a claim to attach supporting documents and there are no form instructions which reference documentation requirements. Thus, the lack of documentation with Creditor's Rule 3002.1 notice is not necessarily fatal to the evidentiary burden that Creditor bears in its response to the Debtors' Rule 3002.1(e) objection. See *In re Morris*, 603 B.R. 127, 132-34 (Bankr. W.D. Okl. 2019) (citations omitted). However, as Creditor has done here, a creditor assessing post-petition attorney's fees must produce evidence of "time records with a description of exactly what services were performed, the regular and preferential hourly rates charged for such services, the number of hours worked, and the name of the law firm's employee performing the work." *Id.* at 134. Submission of such evidence shifts the analysis to one of reasonableness of the attorney's fees. *Id.*; see also *In re Trudelle*, 2017 WL 4411004 *10 (Bankr. S.D. Sept. 29, Ga. 2017) (stating that the party seeking attorney's fees under Rule 3002.1 must demonstrate the fees are reasonable).

Plan Review

Creditor spent a total of 1.81 hours on this task. Of that, .75 hours of attorney time was billed at \$395.00 per hour and 1.75 hours of paralegal time was billed at \$175.00 per hour. Actual fees incurred for the task are \$480.88. However, Creditor billed the task at a flat rate of \$400.00. At a blended hourly rate of \$285.00, the \$400.00 flat rate represents 1.40 hours.

The plan filed in this case is six pages. It provides for the treatment of Creditor's claim in Class 4. Creditor did not object to confirmation of the plan. Given the direct-pay treatment of Creditor's claim all Creditor had to do with the plan was look at the document. To do that .20 hours is reasonable. At a blended hourly rate of \$285.00, the court will allow **\$57.00** as reasonable compensation for this task.

Proof of Claim B410

Creditor spent a total of 4.30 hours on this task. Of that, .1 hours of attorney time was billed at \$395.00 per hour and 4.29 hours of paralegal time was billed at \$175.00 per hour. Actual fees incurred for the task are \$790.25. However, Creditor billed the task at a flat rate of \$550.00. At a blended hourly rate of \$285.00, the \$550.00 flat rate represents approximately 1.90 hours.

The proof of claim is a three-page fill-in-the-blank standardized form. Entries are minimal. Preparing and electronically filing the proof of claim form does not require nearly an entire day and, frankly, the assertion that in this case it did is offensive. For this task the court will allow .50 hours. At a blended hourly rate of \$285.00, the court will allow **\$142.50** as reasonable compensation for this task.

Proof of Claim B410A

Creditor spent a total of 1.00 hour on this task. Of that, .1 hours of attorney time was billed at \$395.00 per hour and .9 hours of paralegal time was billed at \$175.00 per hour. Actual fees incurred for the task are \$197.00. However, Creditor billed the task at a flat rate of \$250.00. At a blended hourly rate of \$285.00, the \$250.00 flat rate represents approximately .90 hours.

The proof of claim attachment is a two page-standardized form with Creditor's records attached to it. It is interesting that this task, which appears to be more labor intensive insofar as requires significantly more entries than are required for the proof of claim and also includes attachments, took less time than the proof of claim itself. In any case, for this task the court will allow .50 hours. At a blended

hourly rate of \$285.00, the court will allow **\$142.50** as reasonable compensation for this task.

Notice of Fees, Expenses, and Charges

Creditor spent a total of 2.20 hours on the task. Of that, .25 hours of attorney time was billed at \$395.00 per hour and 1.95 hours of paralegal time was billed at \$175.00 per hour. Total fees incurred for this task are \$440.00. However, Creditor billed the task at a flat rate of \$100.00. At a blended hourly rate of \$285.00, the \$100.00 flat rate represents approximately .35 hours.

The Bankruptcy Rule 3002.1 form is one and one-half pages. It requires minimal entries. It is not is not labor intensive and, in fact, is less so than the proof of claim form for which the court allowed .5 hours. Therefore, a reasonable charge for completing this form is .30 at the blended rate of \$285.00 for total compensation of **\$85.50** for this task.

Mailing Expense

The \$6.80 charge for mailing the proof of claim is not reasonable. The proof of claim could have easily been filed electronically. In fact, Creditor's attorneys are required to file electronically. Copies of the filed proof of claim are also available electronically. The expense is therefore disallowed in its entirety.

Debtors' Attorney's Fees

Debtors initially requested in their objection that the attorney's fees and expenses assessed on Creditor's Bankruptcy Rule 3002.1 notice be denied and disallowed in their entirety. The relief that Debtors request is amended in the reply to include only a reduction of attorney's fees to \$550.00 and, thus, disallowance of attorney's fees in the amount of \$750.00.

Based on the court's disallowance of expenses in their entirety and a reduction of attorney's fees to \$427.50-and thus disallowance of attorney's fees in the amount of \$872.50-Debtors are the prevailing parties in this matter. See *Hsu v. Abbata*, 9 Cal. 4th 863, 875-77 (1995) (en banc). And based on Creditor's statement in its opposition that the applicable deed of trust clearly and unambiguously provides for its recovery of attorney's fees, Debtors shall be allowed reasonable attorney's fees pursuant to Cal. Civ. Code § 1717 in the amount of \$912.50 as follows:

| | | | |
|---------|--|---------------------|----------|
| 10/5/20 | Reviewed Proof of Claim and Notice of Post-Petition Mortgage Fees, Expenses, and Charges , filed 4/23/20 | .50 @ \$350.00/hr. | \$175.00 |
| 10/6/20 | Draft objection, notice of motion, proof of service | 2.00 @ \$350.00/hr. | \$700.00 |
| 10/7/20 | Finalize pleadings and upload and file with court; ensure proper service. | .50 @ \$75.00/hr. | \$37.50 |
| 12/1/20 | Appearing at Hearing for Objection to Claim | n/a | \$0.00 |

Conclusion

Based on the foregoing, the court ORDERS as follows:

- (1) Debtors' objection to Creditor's Bankruptcy Rule 3002.1 notice filed on April 23, 2020, is SUSTAINED IN PART and OVERRULED IN PART.
- (2) Debtors' objection is SUSTAINED to the extent of the above-stated disallowance of expenses and reduction of attorney's fees.
- (3) Debtors' objection is OVERRULED to the extent that Creditor is allowed \$427.50 in

attorney's fees pursuant to its Bankruptcy Rule 3002.1 notice filed on April 23, 2020.

(4) Debtors are awarded \$912.50 in attorney's fees which Creditor shall pay-and file proof of payment-by December 8, 2020.

No other relief is ordered. The court will prepare an order.

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 6-1 of Lendmark Financial Services, LLC and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Lendmark Financial Services, LLC ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$1,115.09. 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 July 8, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed October 10, 2019.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

13. [18-90689](#)-B-13 AUDREY MCGILL
[AP-1](#) David C. Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-29-20 [[26](#)]

U.S. BANK TRUST NATIONAL
ASSOCIATION VS.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

U.S. Bank Trust National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 5312 Rulon Court, Salida, California (the "Property"). Movant has provided the Declaration of Calvin Dawson to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. The Dawson Declaration states that there are 10 post-petition payments in default totaling \$14,031.60.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$191,502.49 as stated in the McGill Declaration. The Property is not disclosed in the Debtor's schedules or confirmed plan.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

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

The court will issue an order.

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 11-1 of Titan Receivables Inc and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Titan Receivables Inc ("Creditor"), Proof of Claim No. 11-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$3,545.00. 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 12, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed December 17, 2019.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 18-1 of Quantum3 Group LLC and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Quantum3 Group LLC ("Creditor"), Proof of Claim No. 18-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$828.15. 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 16, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed January 7, 2020.

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 objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

16. [19-91014](#)-B-13 SANDRA RODRIGUEZ
[RDG](#)-2 Brian S. Haddix

CONTINUED MOTION TO DISMISS
CASE
11-9-20 [[112](#)]

Final Ruling

This matter was continued from November 24, 2020, to allow any opposition to be filed by Friday, November 27, 2020, at 5:00 p.m. No opposition was filed. The conditional ruling granting the motion to dismiss case at docket 116 shall be the court's final decision. The continued hearing on December 1, 2020, at 1:00 p.m. is vacated.

The court will issue an order.

17. [19-90850](#)-B-13 MARK ESCALANTE
[RDG](#)-2 Thomas A. Moore

CONTINUED MOTION TO DISMISS
CASE
11-9-20 [[35](#)]

Final Ruling

This matter was continued from November 24, 2020, to allow any opposition to be filed by Friday, November 27, 2020, at 5:00 p.m. No opposition was filed. The conditional ruling granting the motion to dismiss case at docket 39 shall be the court's final decision. The continued hearing on December 1, 2020, at 1:00 p.m. is vacated.

The court will issue an order.

18. [20-90486](#)-B-13 JONATHAN STOKES
[RDG](#)-2 Jessica A. Dorn

CONTINUED MOTION TO DISMISS
CASE
11-9-20 [[23](#)]

Final Ruling

Due to court closures in response to the COVID-19 pandemic, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

This matter was continued from November 24, 2020, to allow any opposition to be filed by Friday, November 27, 2020, at 5:00 p.m. A response was filed by the Debtor on November 24, 2020, stating that an amended plan has been filed. A review of the court's docket shows that an amended plan was filed on November 20, 2020, and a confirmation hearing has been set. Therefore, the Debtor has taken further action to confirm a plan in this case and has not caused unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The Chapter 13 Trustee's motion to dismiss the case will be denied.

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

The court will issue an order.

19. [18-90644](#)-B-13 CARRIE FLORES
[JBA](#)-5 Joseph Angelo

CONTINUED OBJECTION TO
PROFESSIONAL FEES OF SAGARIA
LAW, P.C.
11-16-20 [[105](#)]

Final Ruling

This matter was continued from November 24, 2020, to allow any opposition to be filed by Friday, November 27, 2020, at 5:00 p.m. No opposition was filed. The conditional ruling sustaining the objection to professional fees at docket 111 shall be the court's final decision. The continued hearing on December 1, 2020, at 1:00 p.m. is vacated.

The court will issue an order.