

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: 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
Sacramento, California

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

-
1. [20-20610](#)-B-13 JOSHUA/AMANDA GOMEZ AMENDED OBJECTION TO CLAIM OF
[JCK](#)-4 Kathleen H. Crist SUNPOWER, CLAIM NUMBER 23
10-6-20 [[56](#)]

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. 23-1 of SunPower and disallow the claim in its entirety.

Debtors Joshua Gomez and Amanda Gomez ("Debtors") request that the court disallow the claim of SunPower ("Creditor"), Proof of Claim No. 23-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$430.41. Debtors assert that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was April 14, 2020. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed August 28, 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

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

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. 19-1 of Check City Online and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Check City Online ("Creditor"), Proof of Claim No. 19-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$200.00. 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 June 18, 2020. Notice of Bankruptcy Filing and Deadlines, dkt. 11. The Creditor's proof of claim was filed July 1, 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. 16-1 of Forward Financing LLC and disallow the claim in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Forward Financing LLC ("Creditor"), Proof of Claim No. 16-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$31,617.53. 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 April 14, 2020. Notice of Bankruptcy Filing and Deadlines, dkt. 11. The Creditor's proof of claim was filed May 11, 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. [20-24318](#)-B-13 VALERIE LEWIS
[GTB](#)-1 George T. Burke
Thru #6

MOTION TO VALUE COLLATERAL OF
USE CREDIT UNION
11-14-20 [[32](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Due to COVID-19 closures, 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 deny the motion to value collateral of USE Credit Union

Debtor's motion to value the secured claim of USE Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2017 Ford Fusion SE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$9,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor also submits as an exhibit the Kelley Blue Book private party valuation for the Vehicle.

Opposition

Creditor has filed an opposition asserting the Vehicle's valuation at \$11,028.00. This valuation relies upon the Kelley Blue Book.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 3-1 filed by USE Credit Union is the claim which may be the subject of the present motion.

Discussion

The court finds issue with both the Debtor's and Creditor's valuations. Both parties valuation of the Vehicle is based on a Kelley Blue Book printout but this is a third-party industry source and, therefore, both opinions of value are based on hearsay. Fed R. Evid. 801-803; see also *In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]").

Separately, the Debtor's exhibits show a "private party" value being utilized. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time value is determined is the date of filing of the petition without deduction for costs of sale or marketing. *Id.*

The Debtor has not persuaded the court regarding her position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will issue an order.

5. [20-24318](#)-B-13 VALERIE LEWIS
[RDG](#)-1 George T. Burke

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-9-20 [[28](#)]

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.

Feasibility depends on the granting of a motion to value collateral of USE Credit Union. That motion is heard at Item #4, GTB-1, and is denied without prejudice.

The plan filed September 21, 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.

6. [20-24318](#)-B-13 VALERIE LEWIS
[RDW](#)-1 George T. Burke

OBJECTION TO CONFIRMATION OF
PLAN BY USE CREDIT UNION
10-13-20 [[22](#)]

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). A 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.

Feasibility depends on the granting of a motion to value collateral of USE Credit Union. That motion is heard at Item #4, GTB-1, and is denied without prejudice.

The plan filed September 21, 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. [20-23025](#)-B-13 RAMON PADILLA
[MJH](#)-1 Mark J. Hannon

MOTION TO CONFIRM PLAN
10-23-20 [[40](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) (when opposing party has not yet served an answer) or 41(a)(2) (dismissal at the plaintiff's request only by court order, on terms that the court considers proper) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed October 23, 2020, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and 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.

8. [20-24357](#)-B-13 SERGIO/FABIOLA CASTANEDA OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Robert W. Fong PLAN BY RUSSELL D. GREER
11-9-20 [[14](#)]

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.

Debtors' plan is not feasible under 11 U.S.C. §1325(a)(6). Debtors' Schedule I, line 4, indicates gross wages of \$2,332.66 for Debtor Sergio Abram Castaneda. Debtor testified at the meeting of creditors that he is currently earning unemployment income of \$57.00 per week. It appears that the Debtors will be unable to make the plan payment.

The plan filed September 15, 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.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

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 not confirm the first amended plan.

First, paragraph 6.02 of Debtors' plan provides that they shall maintain insurance as required by any law or contract and they shall provide evidence of that insurance as required by 11 U.S.C. § 1326(a)(4). Dkt. 41, page 6. This has not been provided to the Chapter 13 Trustee.

Second, Debtors' plan is not their best effort under 11 U.S.C. §1325(b). Debtors admitted at their meeting of creditors that they filed their 2019 tax returns and received total tax refunds of \$8,949.00 (\$3,675.00 federal, \$5,274.00 state). These tax refunds have not been listed on Debtors' Schedule A/B, or exempted on Schedule C. Dkt. 1, pp. 10-23. Trustee requests that Debtors be required to file all federal and state tax returns no later than April 15th of each year, provide copies of these returns to him not later than April 30 of each year for the duration of the plan, and modify the plan if appropriate. Trustee further requests that all tax refunds shall be turned over to the Chapter 13 Trustee as additional payments into the plan and identified as such by the Debtors upon submission. Trustee further requests that all tax payments received shall be paid to the Trustee within 10 days of receipt by the Debtors. These requests by the Trustee are granted.

Third, Debtors' plan provides for PNC Bank as a Class 2 claim and proposes to pay the value of the collateral securing that claim. The Non-standard Provisions of the plan at 7.03 state that \$27,000.00 will be paid to satisfy the claim in full at a monthly dividend of \$500/month starting in November 2020. The Debtors and PNC Bank filed a stipulation on November 13, 2020, whereby PNC Bank shall have a secured claim in the amount of \$38,233.76, to be amortized over the life of Debtors' plan at 5.25% interest per annum. Because the values stated in Debtors' plan contradict the stipulation, the plan is not feasible.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.

10. [20-24683](#)-B-13 CARLOS PITTS
[MET](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-16-20 [[21](#)]

ALVERNAZ PARTNERS LLC VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Due to COVID-19 closures, 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 continue the matter to Tuesday, January 5, 2021, at 1:00 p.m. No further continues shall be permitted.

Alvernaz Partners LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1711 North Stanford Avenue, Stockton, California (the "Property"). Movant has provided the Declaration of Dan Alexander to introduce into evidence the documents upon which it bases the claim and the obligation.

The Alexander Declaration states that Movant is the owner of the Property after purchasing it from a Maria Pitts. Debtor Carlos Pitts ("Debtor") and other occupants are generally family members of Mrs. Pitts and are holdover occupants. Movant served a Three Day Notice to Pay Rent or Quit on January 6, 2020, and filed an unlawful detainer complaint on January 17, 2020. The unlawful detainer action was scheduled for November 20, 2020, but will be continued until Movant obtains relief from stay.

Debtor, who is pro se, filed a response requesting at least six weeks to amend his petition, schedules, plan, and other documentation related to his Chapter 13 case.

The court's decision is to continue the matter by five weeks to Tuesday, January 5, 2021, at 1:00 p.m. No further continues shall be permitted.

The court will issue an order.

11. [20-23784](#)-B-13 MARK/TRACY WEBSTER
[MJH](#)-2 Mark J. Hannon

MOTION TO CONFIRM PLAN
10-21-20 [[39](#)]

Final Ruling

The motion been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, an amended plan was filed on November 9, 2020. The confirmation hearing for the amended plan is scheduled for January 12, 2020. The earlier plan filed October 21, 2020, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objection ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

12. [19-23886](#)-B-13 SEAN/NATALIE HAMILTON
[MC-4](#) Muoi Chea

MOTION TO MODIFY PLAN
10-19-20 [[49](#)]

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 Debtors have 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 Debtors 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.

13. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA MOTION TO CONFIRM PLAN
[NAR](#)-3 Natali A. Ron 10-23-20 [[94](#)]

Final Ruling

The Debtors having filed a first amended plan on November 6, 2020, and an amended notice of hearing on the motion to confirm first amended plan, this matter is continued to January 5, 2020, at 1:00 p.m. No appearance at the December 1, 2020, hearing is necessary.

The court will enter a minute order.

14. [20-22995](#)-B-13 GILBERT/BLANCA LUIS
[PGM](#)-3 Peter G. Macaluso

MOTION TO CONFIRM PLAN
10-23-20 [[72](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). Opposition was filed.

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 not permit the requested modification and not confirm the modified plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,840.00. The Nonstandard Provisions of Debtor's plan provides for plan payments of \$2,840.00 beginning October 2020. Trustee records indicate Debtor failed to make a plan payment in October 2020. As such, Debtor is \$2,840.00 delinquent under the proposed plan. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Debtor's plan fails to provide for post-petition arrears totaling \$6,921.82 to Class 1 creditor Wells Fargo Bank NA representing the months of July 2020, August 2020, September 2020, and October 2020. Without providing for these post-petition arrears, it cannot be determined whether the Debtor's plan is feasible.

Third, Section 7.03 of Debtor's plan provides that administrative claims shall be paid \$400.00 per month during months 1-3 (March 2020 through May 2020) and months 8-9 (October 2020 through November 2020). Trustee is unable to retroactively administer this provision of Debtor's plan. Due to the plan delinquency of \$14,100.00 under the presently confirmed plan, the administrative claims have not received disbursements in March 2020 through May 2020, or any disbursements to date.

Fourth, Section 7.04 of Debtor's plan provides that Class 1 arrearage dividends shall be paid to Wells Fargo Mortgage at the rate of \$725.00 per month during months 6-60 (August 2020 through February 2025) of the plan. The Trustee is unable to disburse the monthly dividend in the months 6-7 (August 2020 through September 2020) as Debtor's plan payment is \$0 in those months.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

The court will issue an order.

16. [20-24099](#)-B-13 JESUS/REFUGIO GARCIA
[HWW](#)-2 Hank W. Walth

MOTION TO CONFIRM PLAN
10-26-20 [[25](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

17. [20-23741](#)-B-13 ARNOLD GIULIERI
[RDG](#)-2 Pro Se

CONTINUED MOTION TO DISMISS
CASE
11-2-20 [[39](#)]

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 47 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. [20-24047](#)-B-13 JOHN DADZIE
[RDG](#)-1 Pauldeep Bains

CONTINUED MOTION TO DISMISS
CASE
11-10-20 [[19](#)]

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 23 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.