

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 1, 2020 at 1:30 p.m.

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

1.	20-21208 -C-13	VLADI ZAVER	OBJECTION TO CLAIM OF DEPARTMENT
	RDG -2	Mark Shmorgon	OF THE TREASURY-INTERNAL REVENUE
			SERVICE, CLAIM NUMBER 14-1
			10-8-20 [43]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 54 days' notice was provided. Dckt. 45.

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

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 14, filed by Department of the Treasury-Internal Revenue Service was filed late and should be disallowed.

The deadline for governmental units to file proofs of claim in this case was August 27, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 19. The Proof of Claim subject to this Objection was filed September 2, 2020.

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

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 14 of Department of the Treasury-Internal Revenue Service is sustained, and the claim is disallowed in its entirety.

2. [20-22010](#)-C-13 VIOLET SOMERA
[RDG](#)-2 Mikalah Liviakis

OBJECTION TO CLAIM OF BROOKWOOD
LOANS OF CALIFORNIA, LLC, CLAIM
NUMBER 19-1
10-8-20 [[30](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 54 days' notice was provided. Dckt. 32.

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

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 19, filed by Brookwood Loans of California, LLC was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is June 18, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 12. The Proof of Claim subject to this Objection was filed July 9, 2020.

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

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 19 of Brookwood Loans of California, LLC is sustained, and the claim is disallowed in its entirety.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dckt. 27.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor's plan provides for Travis Credit Union as a Class 2 claim and proposes to pay the value of the collateral securing that claim. However, the court has not valued that secured claim yet.
2. Debtor has are nonexempt assets available for distribution to Debtor's general unsecured creditors of \$31,145.05. Debtor's plan must pay 42.63% (\$31,145.05 divided by \$73,066.51) to pass the liquidation test.

DISCUSSION

The trustee's arguments are well-taken. The plan provides for the secured claim of Travis Credit Union to be valued, meaning the plan is not feasible until the claim is actually valued.

Additionally, the debtor has nonexempt assets available for distribution to Debtor's general unsecured creditors of \$31,145.05. Dkt. 26. The present plan proposes to pay only \$14,613.40 to unsecured claims, and therefore does not pass the liquidation test.

That is reason to deny confirmation. 11 U.S.C. § 1325(a)(4) & (a)(6). Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

4. [20-24912](#)-C-13 JAVIER CASTELLANOS AND MOTION TO VALUE COLLATERAL OF
[RJ-1](#) ALEJANDRA ALCANTAR HONDA FINANCIAL SERVICES
Richard Jare 10-28-20 [[12](#)]

Thru #5

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dckt. 15.

However, as discussed supra, it is unclear whether the proponent party in interest was served.

The Motion to Value is denied without prejudice.

The debtor filed this Motion seeking to value the portion of "Honda Financial Services" claim secured by 2018 Honda Accord (the Motion also erroneously lists a 2006 Honda Civic).

On November 18, 2020, American Honda Finance Corporation filed Proof of Claim, No. 6. The claim is stated to be secured in the amount of \$30,582.24 by a 2018 Honda Accord.

The address for service listed on the Proof of Claim, and showing on the California Secretary of State's website, are different from where debtor served the Motion. Therefore, it appears the debtor did not serve the proper party in interest to this motion.

The Motion is denied without prejudice due to improper service.

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

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

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

5. [20-24912](#)-C-13 JAVIER CASTELLANOS AND MOTION TO VALUE COLLATERAL OF
RJ-2 ALEJANDRA ALCANTAR SAFEAMERICA CREDIT UNION
Richard Jare 10-28-20 [[17](#)]

Final Ruling: No appearance at the December 1, 2020 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dckt. 21.

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

The Motion to Value is granted.

The debtor filed this Motion seeking to value the portion of Safe America Credit Union's ("Creditor") claim secured by the debtor's property commonly known as 2013 Honda Civic(the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$7,000. Declaration, Dckt. 20.

DISCUSSION

Upon review of the record, the court finds the value of the Property is \$7,000. Therefore, Creditor's secured claim is determined to be \$7,000. 11 U.S.C. § 506(a).

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

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

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Safe America Credit Union ("Creditor") secured by property commonly known as 2013 Honda Civic (the "Property") is determined to be a secured claim in the amount of \$7,000, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

6. [20-20122](#)-C-13 DEBRA BAKER
[RDG](#)-1 Mikalah Liviakis

OBJECTION TO CLAIM OF
CASHNETUSA, CLAIM NUMBER 9-1
10-8-20 [[18](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 54 days' notice was provided. Dckt. 20.

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

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 9, filed by Creditor CashNetUSA was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is March 19, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 10. The Proof of Claim subject to this Objection was filed March 20, 2020.

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

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 56 days' notice was provided. Dckt. 34.

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

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 9, filed by PG&E was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is August 10, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 12. The Proof of Claim subject to this Objection was filed August 14, 2020.

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

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 109.

The Objection to Claimed Exemptions is XXXXXX

The Chapter 13 Trustee filed this Objection to the debtor's \$175,000 homestead exemption claimed pursuant to California Civil Code § 704.730 on the basis that the trustee does not know if the debtor qualifies.

That provision allows a homestead exemption of \$175,000 for (A) persons 65 or older; (B) a person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment; and (C) a person 55 years of age or older with a gross annual income of not more than \$25,000 or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than \$35,000 and the sale is an involuntary sale.

Here, it is known the debtor is 59 years old. Unknown is whether the debtor qualifies based on some physical or mental disability, or based on income.

The trustee notes in the Objection that he has requested evidence from the debtor, including a 2019 tax return and anything demonstrating disability, but that nothing has been provided to date.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Objection to Claimed Exemptions filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is XXXXXX

9. [19-27064](#)-C-13 BENJAMIN GUYTON AND OBJECTION TO CLAIM OF FRANCHISE
[RDG](#)-2 SHIRLEY LEGARDA-GUYTON TAX BOARD, CLAIM NUMBER 12
Scott Shumaker 10-8-20 [[70](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 54 days' notice was provided. Dckt. 72.

The Objection to Proof of Claim is XXXXXX

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 12, filed on behalf of the California Franchise Tax Board was filed late and should be disallowed.

The deadline for filing proofs of claim for governmental units in this case is May 11, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 12. The Proof of Claim subject to this Objection was filed September 2, 2020.

On November 25, 2020, the debtor filed a Response noting that Proof of Claim, No. 12, was filed by the debtor on behalf of the FTB, and requesting a continuance to allow written objection or a briefing schedule. Dkt. 73.

At the hearing, xxxxxxxxxxxxxxxx

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 12 of California Franchise Tax Board is XXXXXX

10. [20-20964](#)-C-13 KEVIN/MELODY STROING
[RDG](#)-2 Mikalah Liviakis

OBJECTION TO CLAIM OF CAMERON
PARK PLAZA L.P., CLAIM NUMBER
23
10-8-20 [[33](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 54 days' notice was provided. Dckt. 35.

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

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 23, filed by Cameron Park Plaza L.P. was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is May 1, 2020. Notice of Bankruptcy Filing and Deadlines, Dckt. 18. The Proof of Claim subject to this Objection was filed May 5, 2020.

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

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 23 of Cameron Park Plaza L.P. is sustained, and the claim is disallowed in its entirety.

11. [20-24865](#)-C-13 YURIY ZHELEZOGLO
[MS-1](#) Mark Shmorgon

MOTION TO VALUE COLLATERAL OF
CARMAX AUTO FINANCE
10-21-20 [[10](#)]

DEBTOR DISMISSED: 11/8/20

Thru #12

Final Ruling: No appearance at the December 1, 2020 hearing is required.

The case having previously been dismissed, the Motion is dismissed
as moot.

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

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

The Motion having been presented to the court, the
case having been previously dismissed, and upon review of
the pleadings, evidence, arguments of counsel, and good
cause appearing,

IT IS ORDERED that the Motion is dismissed as moot,
the case having been dismissed.

12. [20-24865](#)-C-13 YURIY ZHELEZOGLO
[MS-2](#) Mark Shmorgon

MOTION TO VALUE COLLATERAL OF
CARMAX AUTO FINANCE
10-21-20 [[14](#)]

DEBTOR DISMISSED: 11/8/20

Final Ruling: No appearance at the December 1, 2020 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

13. [20-23688](#)-C-13 LAURA/DONALD ENGLAND
[RDG](#)-1 Gary Fraley

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-15-20 [[19](#)]

Final Ruling: No appearance at the December 1, 2020 hearing is required.

The Objection is overruled.

On November 23, 2020, the Movant filed a withdrawal. Dkt. 111. Federal Rule of Civil Procedure 41(a)(2), incorporated by Federal Rules of Bankruptcy Procedure 9014 and 7041, allows dismissal after a responsive pleading has been filed on terms the court considers proper.

The court finds withdrawal is warranted here. Therefore, the Objection is overruled and the debtor's Chapter 13 plan filed on July 29, 2020 (Dkt. 2) is confirmed.

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

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

The objection filed by the Chapter 13 trustee having been presented to the court, the movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and the debtor's Chapter 13 plan filed on July 29, 2020 (Dkt. 2) is confirmed.