

**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 6, 2022

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 6, 2022 at 1:00 p.m.

1.	<u>18-90801</u> -B-13 RUBEN/KARINA FLORES <u>NSV</u> -3 Nima S. Vokshori	MOTION TO ENTER INTO VOLUNTARY PAYMENT DEFERRAL AGREEMENT 11-4-22 [<u>101</u>]
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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 permit the voluntary payment deferral agreement.

Debtors seek court approval to enter into a voluntary payment deferral agreement with Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4. Debtors and Creditor entered into the agreement on October 12, 2021, which defers four payments per the terms of the executed voluntary payment deferral agreement. The agreement is provided as an exhibit to the motion.

The motion is supported by the Declaration of Ruben Flores and Karina Flores. The Declaration affirms Debtors' desire to defer four unpaid principle and interest payments.

This post-petition payment deferral is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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

The court will issue an order.

December 6, 2022 at 1:00 p.m.

2. [22-90202](#)-B-13 JESUS/VERNA LISA SERNA MOTION TO CONFIRM PLAN
[SSH](#)-2 Simran Singh Hundal 10-14-22 [[40](#)]

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 has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has 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 will therefore be decided on the papers.

The court's decision is to grant the motion to extend automatic stay.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on November 10, 2022, for failure to make plan payments (case no. 20-90134, dkt. 70). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors assert that the previous plan failed because Debtor sustained an injury that interrupted his income and ultimately decided to retire from work. Joint Debtor was off of work for medical reasons for much of 2022. Debtors state that their situation has changed because Debtor now receives a fixed income of social security income and a pension, and Joint Debtor's medical issues have now subsided and she has returned to work.

The Debtors have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

4. [22-90328](#)-B-13 NICASIO MALDONADO OBJECTION TO CONFIRMATION OF
[KMB](#)-1 Pro Se PLAN BY PLANET HOME LENDING,
Thru #5 LLC
11-14-22 [[24](#)]

CONTINUED TO 1/10/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 12/28/22.

Final Ruling

No appearance at the December 6, 2022, hearing is required. The court will issue an
order.

5. [22-90328](#)-B-13 NICASIO MALDONADO OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Pro Se PLAN BY RUSSELL D. GREER
11-15-22 [[31](#)]

CONTINUED TO 1/10/23 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 12/28/22.

Final Ruling

No appearance at the December 6, 2022, hearing is required. The court will issue an
order.

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, parties in interest were not required to file a written response or opposition.

The court has 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 will therefore be decided on the papers.

The court's decision is to **conditionally sustain the objection to Claim No. 4-1 of Employment Development Department and continue the matter to December 13, 2022 at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of Employment Development Department ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of \$8,847.94. The Trustee 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 government unit was March 15, 2022. The Creditor's claim was filed on August 4, 2022.

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 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 conditionally sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, December 9, 2022, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on December 13, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on December 13, 2022, at 1:00 p.m.

7. [22-90346](#)-B-13 CODY DESMOND
[RDG](#)-1 Arete Kostopoulos

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-16-22 [[19](#)]

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 the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers

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

First, the Debtor's plan is not proposed in good faith under 11 U.S.C. §1325(a)(3) because the schedules fail to list Debtor's non-filing spouse's income. It cannot be determined whether the plan is feasible or if all disposable income is paid into the plan.

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Payments to secured creditors plus Trustee's compensation and expense total \$2,193.66 per month. Debtor's plan pays only \$1,653.00 per month.

Fourth, Debtor's pay advices include a deduction for a 401(k) loan repayment in amount of \$35.71 monthly. Debtor has testified that he is still paying per month but the deduction was not included on Debtor's amended Schedule I.

Fifth, the Debtor's plan fails the liquidation test of 11 U.S.C. § 1325(a)(4). Based on Debtor's non-exempt assets available, Debtor's plan must pay 5.03% to general unsecured creditors. Debtor's plan provides for 0% dividend to general unsecured creditors and therefore fails the liquidation test.

Sixth, the Debtor has failed to file a credit counseling certificate evidencing that he obtained the credit counseling mandated by 11 U.S.C. § 109(h). Without a credit counseling certificate, it cannot be determined if Debtor is eligible to be a debtor under Title 11 of the United States Code.

Seventh, Debtor's Amended Disclosure of Compensation of Attorney for Debtor and plan indicate fees for services of \$4,000.00 of which \$672.00 was paid pre-petition and \$3,328.00 is due through the plan. However, Debtor's Rights and Responsibilities indicates fees of \$1,687.00 paid pre-petition. The plan cannot be administered with these inconsistencies and is therefore not feasible. 11 U.S.C. § 1325(a)(6).

The plan filed October 5, 2022, 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. [22-90350](#)-B-13 LARRY FOSTER CONTINUED REQUEST FOR JUDICIAL
[22-9005](#) NOTICE
FOSTER V. FCI LENDER SERVICES 10-19-22 [[16](#)]
LLC ET AL

ADVERSARY PROCEEDING
DISMISSED: 11/22/2022
Thru #10

Final Ruling

The December 6, 2022, hearing is vacated. The court entered an order on November 22, 2022, denying as moot the request for judicial notice. Dkt. 34.

9. [22-90350](#)-B-13 LARRY FOSTER MOTION TO DISMISS ADVERSARY
[22-9005](#) PROCEEDING/NOTICE OF REMOVAL
FOSTER V. FCI LENDER SERVICES 10-27-22 [[18](#)]
LLC ET AL

ADVERSARY PROCEEDING
DISMISSED: 11/22/2022

Final Ruling

The December 6, 2022, hearing is vacated. The court entered an order on November 22, 2022, granting the motion to dismiss adversary proceeding. Dkt. 32.

10. [22-90350](#)-B-13 LARRY FOSTER MOTION FOR RELIEF FROM
[DS-1](#) AUTOMATIC STAY
WILMINGTON SAVINGS FUND 11-7-22 [[28](#)]
SOCIETY, FSB VS.

Final Ruling

The December 6, 2022, hearing is vacated. The court entered an order on November 22, 2022, denying as moot the motion for relief from automatic stay. Dkt. 43.

11. [22-90172](#)-B-13 ALBERT/SHANNON PEREZ
[LBF](#)-2 Lauren Franzella

MOTION TO CONFIRM PLAN
10-18-22 [[41](#)]

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.

12. [22-90174](#)-B-13 JUSTIN CARLOTTI
[EJV](#)-2 Eric J. Gravel

MOTION TO CONFIRM PLAN
10-14-22 [[39](#)]

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 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 will therefore be decided on the papers.

The court's decision is to not confirm the first amended plan.

Based on Debtor's declaration detailing the medical conditions and expenses for his family, the distribution to Debtor's general unsecured creditors should yield \$70,260.00. This sum would yield a 100% distribution to general unsecured claims. However, Debtor's plan currently proposes 15% distribution to general unsecured creditors. Therefore, the plan fails the projected disposable income test of 11 U.S.C. § 1325(b).

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.

13. [22-90378](#)-B-13 ROBERT HARDING OBJECTION TO CONFIRMATION OF
[ETW](#)-1 Charles L. Hastings PLAN BY TIMOTHY G. HANAGAN
10-31-22 [[9](#)]

CONTINUED TO 12/20/22 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 12/14/22.

Final Ruling

No appearance at the December 6, 2022, hearing is required. The court will issue an
order.

14. [19-90983](#)-B-13 KIRK TROMBLEY
[MSN](#)-3 Mark S. Nelson

MOTION TO MODIFY PLAN
10-28-22 [[79](#)]

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.

15. [22-90289](#)-B-13 CORY BRITTON
[RDG](#)-2 Peter G. Macaluso

OBJECTION TO HOMESTEAD
EXEMPTION
10-17-22 [[23](#)]

WITHDRAWN BY MP

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE 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 in part the objection to Claim No. 6-1 of Mocse Credit Union and the claim is disallowed without prejudice.

Daniel Ferro ("Debtor") requests that the court disallow the claim of Deutsche Bank National Trust Company ("Creditor"), Claim No. 1. The claim is asserted to be unsecured in the amount of \$5,361.87. Debtor asserts that the claim should be disallowed on grounds that it does not provide the last payment date or last transaction date on a Visa. Although an attachment is submitted with the proof of claim, it does not provide adequate supporting information.

Discussion

The starting place is Rule 3001(f), which states that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). This rule creates an evidentiary presumption of validity for a properly filed proof of claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (9th Cir. BAP 2000).

When a proof of claim is properly filed and presumptively valid, the party objecting to the proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of the proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (9th Cir. BAP 2006). Under that standard, the Debtor's objection (particularly in the absence of any supporting declaration) would be overruled because "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." LBR 3007-1(a).

However, in situations in which a proof of claim is not properly filed, it is not entitled to a presumption of validity and the burden of proof is on creditor. *In re Santiago*, 404 B.R. 464, 570 (Bankr. S.D. Fla. 2009). In those instances, a Chapter 13 debtor need only object to the proof of claim on a basis provided § 502(b) and, upon the debtor's proper objection, the burden of proof rests with the creditor to establish validity of its claim. *In re Mazzyzk*, 521 B.R. 726, 732 (Bankr. D.S.C. 2014); *In re Porter*, 374 B.R. 471, 483 (Bankr. D. Conn. 2007).

In this case, Creditor's proof of claim is not a properly filed proof of claim. It is not a properly filed proof of claim because it fails to provide adequate information, such as the last payment date or last transaction date on the Visa.

Stripped of its presumptive validity, the court construes the Debtor's objection to Creditor's proof of claim as one under § 502(b)(1), i.e., that the claim is unenforceable against the Debtor, and therefore a valid objection. And because Creditor's proof of claim is inadequate, the court cannot conclude that the Creditor has carried its burden of proving the validity of its claim.

Therefore, for the foregoing reasons, the Debtor's objection is sustained and Creditor's claim is disallowed. However, disallowance of Creditor's claim is without

prejudice to the filing of an amended proof of claim and a motion for reconsideration of the disallowance based on the amended proof of claim within fourteen (14) days of the date on which an order disallowing Creditor's claim is entered. See 11 U.S.C. § 502(j); Fed. R. Bankr. P. 3008.

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

The court will issue an order.

17. [22-90223](#)-B-13 ALEO PONTILLO
[RDG](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
11-9-22 [[23](#)]

Final Ruling

This matter was continued from November 29, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 2, 2022. Debtor filed a timely response and a first amended plan with a scheduled confirmation hearing date of January 17, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 28 and the continued hearing on December 6, 2022, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.