

**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 8, 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 8, 2020 at 1:00 p.m.**

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1. [20-25200](#)-B-13 DAVIE HUMPHREY MOTION TO EXTEND AUTOMATIC STAY  
[MEV](#)-1 Marc Voisenat 11-18-20 [8]

**Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Due to court closures related to COVID-19, 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 grant the motion to extend automatic stay.

Debtor seeks 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 Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on July 29, 2020, due to failure to make plan payments (case no. 18-25917, dkt. 119, 120). 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 there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). 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 Debtor states that his previous case failed due to his loss of financial contributions from his daughter, who lost her job due to COVID-19. The Debtor is 83 years old and not employed. Debtor's circumstances have changed in this case because his daughter is now back at work full-time and can make monthly financial contributions to her father to help fund his plan. Both the Debtor and his daughter have filed declarations to support this motion.

**December 8, 2020 at 1:00 p.m.**

The Debtor has 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.

### 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 Ally Bank and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of Ally Bank ("Creditor"), Claim No. 12-1. The claim is asserted to be secured in the amount of \$18,985.30. 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 non-government unit was May 26, 2020. The Creditor's claim was filed May 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 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. [19-22518](#)-B-13 YVETTE ATLAS  
[JCK](#)-2 Kathleen H. Crist

MOTION TO MODIFY PLAN  
10-21-20 [[30](#)]

### **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.

4. [19-24520](#)-B-13 GABRIEL/MARIA CECILIA MOTION TO SELL  
[JCK](#)-2 TAURO 11-10-20 [[42](#)]  
Kathleen H. Crist

### **Final Ruling**

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). A limited opposition was filed by the Chapter 13 Trustee. Due to court closures related to COVID-19, 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 grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 9337 Snow Creek Circle, Stockton, California ("Property").

Proposed purchaser Andrew Gemigniani has agreed to purchase the Property. The sale price is approximately \$410,000. Debtors state that the proceeds of the sale shall be used to pay off their plan at 100%, or \$194,000, and the surplus will be given to the Debtors.

The Chapter 13 Trustee has filed a limited objection requesting that any order granting include the Trustee's form language. The Trustee also separately requests that the plan pay 100% to general unsecured creditors plus interest at the federal judgment rate of 1.97%.

The Debtors filed a reply agreeing to the Trustee's requests.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate.

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

Debtors' attorney shall prepare an order that includes the Trustee's form language and which shall be approved by the Trustee.

5.     [20-20322](#)-B-13     JEREMY/MELISSA MARTIN     MOTION TO MODIFY PLAN  
          [JCK](#)-2             Kathleen H. Crist             10-27-20 [[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 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.

6. [19-21327](#)-B-13 JAVIER/JAMIE SILVA  
[JCK](#)-4 Kathleen H. Crist

MOTION TO MODIFY PLAN  
10-21-20 [[70](#)]

WITHDRAWN BY M.P.

### **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 deem this matter withdrawn and the Trustee's objections moot.

The motion is ORDERED DISMISSED 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. 12-1 of North Mill Equipment Finance LLC and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of North Mill Equipment Finance LLC ("Creditor"), Claim No. 12-1. The claim is asserted to be secured in the amount of \$183,327.38. 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 non-government unit was March 25, 2020. The Creditor's claim was filed June 18, 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. 22-1 of Suburban Propane and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of Suburban Propane ("Creditor"), Claim No. 22-1. The claim is asserted to be in the amount of \$3,200.58. 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 non-government unit was September 10, 2020. The Creditor's claim was filed September 25, 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 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 deny without prejudice the motion to value collateral.

Debtors' motion to value the secured claim of Honda Finance Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2016 Honda Accord ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$14,842.00 as of the petition filing date. As the owners, Debtors' 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).

### **Proof of Claim Filed**

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

### **Discussion**

The court finds issue with the Debtors' valuation. The declaration states that the valuation of the Vehicle is based on a Kelley Blue Book printout but this is a third-party industry source and, therefore, Debtors' opinion of value is 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[.]").

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 Debtors have not persuaded the court regarding their 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.

10. [20-20763](#)-B-13 DAVID/WILLIETTE THOMAS MOTION TO MODIFY PLAN  
[JCK-1](#) Kathleen H. Crist 11-3-20 [[41](#)]

**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.

**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 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 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.

12. [20-21287](#)-B-13 SALVADOR/RHINA CHAPARRO OBJECTION TO CLAIM OF GOLDEN  
[RDG-1](#) Gary Ray Fraley VALLEY FCU, CLAIM NUMBER 2  
**Thru #13** 10-1-20 [[40](#)]

### **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. 2-1 of Golden Valley FCU and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of Golden Valley FCU ("Creditor"), Claim No. 2-1. The claim is asserted to be in the amount of \$675.36. 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 non-government unit was May 13, 2020. The Creditor's claim was filed June 10, 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.

13. [20-21287](#)-B-13 SALVADOR/RHINA CHAPARRO      OBJECTION TO CLAIM OF GOLDEN  
[RDG-2](#) Gary Ray Fraley      VALLEY FCU, CLAIM NUMBER 3  
10-1-20 [[43](#)]

### **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. 3-1 of Golden Valley FCU and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of Golden Valley FCU ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of \$1,988.61. 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 non-government unit was May 13, 2020. The Creditor's claim was filed June 10, 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 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.

15. [19-27594](#)-B-13 DONALD/SANDRA BOSSE  
[JCK](#)-4 Kathleen H. Crist

MOTION TO MODIFY PLAN  
10-21-20 [[62](#)]

### **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.

16. [20-21594](#)-B-13 RUSSELL/GLORIA HUTSELL MOTION TO CONFIRM PLAN  
[SLE](#)-2 Steele Lanphier 10-26-20 [[65](#)]

### **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 second amended plan.

First, Debtors' plan proposes an impermissible modification of the first mortgage on Debtors' principal residence, which is not permitted under 11 U.S.C. §1322(b)(2).

Second, Debtors' plan lists a claim owed to Shellpoint Mortgage in Class 1 with pre-petition arrears of \$7,146.83, but fails to provide for a monthly dividend payable to those arrears. Debtors' plan is not feasible under 11 U.S.C. §1325(a)(6).

Third, Debtors' plan payment after month 7 is not sufficient to cover the total of monthly dividends and Trustee's fees. Debtors' plan is not feasible under 11 U.S.C. §1325(a)(6).

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.

**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.