UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 11, 2018 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

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1. 17-22104-D-7 JOSHUA/ROBIN MEGILL — MOTION FOR TURNOVER OF PROPERTY
MPD-1 — 3-12-18 [20]

2. 18-20418-D-7 LARRY/PAULA HUNLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 3-14-18 [16]
THE BANK OF NEW YORK MELLON
VS.

Final ruling:

This matter is resolved without oral argument. This is The Bank of New York Mellon's motion for relief from automatic stay. The court's records indicate that

no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

3.	18-20325-D-7 GTB-1	JACK MCGUIRE AND CHRISTY MANLEY	MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS 3-6-18 [17]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

4.	17-20731-D-11 DB-16	CS360 TOWERS, LLC	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RONALD ELVIDGE, ALERICA CORPORATION AND IRBS CORPORATION 3-13-18 [357]

5.	17-28344-D-7 APN-1 WELLS FARGO BANK, N.A. VS.	VERNON GILBERT	MOTION FOR RELIEF FROM AUTOMATIC STAY 3-14-18 [21]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

6. 14-25148-D-11 HENRY TOSTA — AMENDED OBJECTION TO CLAIM OF
GMW-10 — WESTERN DESIGN SERVICES, CLAIM NUMBER 32

Tentative ruling: — 2-16-18 [845]

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the claim of Western Dairy Design Assoc. Inc., referred to by the debtor as Western Design Services (the "claimant"), Claim No. 32 on the court's claims register, in the amount of $28,390.45. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's counsel signed off on the order approving it as to form before it was submitted to the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is evidenced by a filed proof of claim, which constitutes prima facie evidence of the validity and amount of the claim.[4] The burden of production of evidence with the objection was on the debtor.[5]

The court's ruling should not be viewed as hyper-technical. This claim is on account of post-confirmation professional services. The proof of claim was filed over a year ago and the invoices attached to it indicate the services were performed mostly in 2016 and were invoiced in September of 2016 and February of 2017. The debtor could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the payment provisions of the confirmed plan [6] and whatever payment agreement it had with the debtor, and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[7] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

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1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

2 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-1(a), (b), (d)(1), (d)(3)(D), and (f).

3 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (c).

4 See Fed. R. Bankr. P. 3001(f).

5 See LBR 3007-1(a).

6 The plan permitted the debtor to employ and pay professionals post-confirmation without notice, hearing, or court order and required him to pay undisputed amounts ["the Debtors shall pay"] and to file an application to determine the reasonableness of disputed amounts.

7 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

7. 14-25148-D-11 HENRY TOSTA
GMW-11

AMENDED MOTION TO DISTRIBUTION OF ESTATE FUNDS TO BANK OF AMERICA
2-16-18 [847]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the distribution of estate funds to Bank of America (the "claimant"), listed on the plan administrator's claims list as being owed $40,114. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's counsel signed off on the order approving it as to form before it was submitted to the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is not evidenced by a filed proof of claim but by the debtor's listing of the claim (actually, as two claims totaling $40,114) on his Schedule F. He scheduled the claim as liquidated, noncontingent, and undisputed; thus, as the only evidence in the record as of the date this objection was filed was that the claim was valid, the burden of production of evidence with the objection was on the debtor.[4]

The court's ruling should not be viewed as hyper-technical. This claim is a pre-petition claim scheduled by the debtor as a noncontingent, liquidated, and undisputed claim on his original Schedule F, filed almost four years ago (and also listed as such on an amended Schedule F filed a month later). Not only did the debtor not object to the claim during the two years between the date he filed his schedules and the date undisputed claims were required to be paid, he failed to challenge it during the next year and a half. The debtor could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the payment provisions of the confirmed plan and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[5] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

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1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

2 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-1(a), (b), (d)(1), (d)(3)(D), and (f).

3 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (c).

4 See LBR 9014-1(d)(3)(D) [requiring every motion or other request for relief to be accompanied by evidence]; LBR 9014-1(a) [rule as applying to all contested matters, including motions, applications, and objections].

5 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

8. 14-25148-D-11 HENRY TOSTA
GMW-12

AMENDED OBJECTION TO CLAIM OF WESTERN DESIGN SERVICES, CLAIM NUMBER 31
2-16-18 [849]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the claim of Western Dairy Design Assoc. Inc., referred to by the debtor as Western Design Services (the "claimant"), Claim No. 31 on the court's claims register, in the amount of $17,141.82. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's counsel signed off on the order approving it as to form before it was submitted to the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is evidenced by a filed proof of claim, which constitutes prima facie evidence of the validity and amount of the claim.[4] The burden of production of evidence with the objection was on the debtor.[5]

The court's ruling should not be viewed as hyper-technical. This claim is on account of post-confirmation professional services. The proof of claim was filed almost two years ago and the invoices attached to it indicate the services were performed in the first four months of 2016 and were invoiced in April of that year. The debtor could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the payment provisions of the confirmed plan [6] and whatever payment agreement it had with the debtor, and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[7] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

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1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

2 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-1(a), (b), (d)(1), (d)(3)(D), and (f).

3 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (c).

4 See Fed. R. Bankr. P. 3001(f).

5 See LBR 3007-1(a).

6 The plan permitted the debtor to employ and pay professionals post-confirmation without notice, hearing, or court order and required him to pay undisputed amounts ["the Debtors shall pay"] and to file an application to determine the reasonableness of disputed amounts.

7 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

9. 14-25148-D-11 HENRY TOSTA
GMW-13

AMENDED OBJECTION TO CLAIM OF ECHEVERRIA BROS. DAIRY, CLAIM NUMBER 26
2-16-18 [837]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the claim of Echeverria Brothers Dairy (the "claimant"), Claim No. 26-5 on the court's claims register. On April 5, 2018, the debtor filed a notice purporting to withdraw the objection. However, on March 27, 2018, the claimant had filed opposition to the objection. Therefore, the debtor did not have the right to unilaterally withdraw the objection. Fed. R. Civ. Proc. 41(a)(1)(A) and (a)(2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). The court assumes from the purported notice of withdrawal that the debtor does not wish to challenge the claimant's opposition. Therefore, the court will overrule the objection or allow the debtor to withdraw it, but will hear from the claimant as to any terms it may want imposed on the overruling or withdrawal of the objection. The court will hear the matter.

10. 14-25148-D-11 HENRY TOSTA
GMW-14

AMENDED OBJECTION TO CLAIM OF MOVIN HAY, INC., CLAIM NUMBER 28
2-16-18 [835]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the claim of Movin' Hay, Inc. (the "claimant"), Claim No. 28 on the court's claims register, in the amount of $43,389.75. The claimant has filed opposition. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no

later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's counsel signed off on the order approving it as to form before it was submitted to the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is evidenced by a filed proof of claim, which constitutes prima facie evidence of the validity and amount of the claim.[4] The burden of production of evidence with the objection was on the debtor.[5]

The court's ruling should not be viewed as hyper-technical. Although the debtor's confirmed plan did not fix a deadline for the debtor to object to claims, it did require him to pay allowed general unsecured claims in full, with interest, within one year from the effective date of the plan, or by July 28, 2016, unless they were disputed. Not only did the debtor not object to the claim during the year and a half between the date it was filed and the date undisputed claims were required to be paid, he failed to challenge it during the next year and a half. The debtor could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the payment provisions of the confirmed plan and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[6] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

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1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

2 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-1(a), (b), (d)(1), (d)(3)(D), and (f).

3 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (c).

4 See Fed. R. Bankr. P. 3001(f).

5 See LBR 3007-1(a).

6 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

11. 14-25148-D-11 HENRY TOSTA
GMW-16

AMENDED MOTION TO DISTRIBUTION OF ESTATE FUNDS TO CHASE BANK
2-16-18 [855]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the distribution of estate funds to Chase Bank (the "claimant"), listed on the plan administrator's claims list as being owed $12,331. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's

counsel signed off on the order approving it as to form before it was submitted to the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is not evidenced by a filed proof of claim but by the debtor's listing of the claim on his Schedule F. He scheduled the claim as liquidated, noncontingent, and undisputed; thus, as the only evidence in the record as of the date this objection was filed was that the claim was valid, the burden of production of evidence with the objection was on the debtor.[4]

The court's ruling should not be viewed as hyper-technical. This claim is a pre-petition claim scheduled by the debtor as a noncontingent, liquidated, and undisputed claim on his original Schedule F, filed almost four years ago (and also listed as such on an amended Schedule F filed a month later). Not only did the debtor not object to the claim during the two years between the date he filed his schedules and the date undisputed claims were required to be paid, he failed to challenge it during the next year and a half. The debtor could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the payment provisions of the confirmed plan and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[5] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

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1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

2 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-

1(a), (b), (d)(1), (d)(3)(D), and (f).

3 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (c).

4 See LBR 9014-1(d)(3)(D) [requiring every motion or other request for relief to be accompanied by evidence]; LBR 9014-1(a) [rule as applying to all contested matters, including motions, applications, and objections].

5 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

12. 14-25148-D-11 HENRY TOSTA — AMENDED MOTION TO DISTRIBUTION OF ESTATE FUNDS TO CITI BANK
GMW-17 — 2-16-18 [853]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the distribution of estate funds to Citi Bank (the "claimant"), listed on the plan administrator's claims list as being owed $19,975. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's

counsel signed off on the order approving it as to form before it was submitted to the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is not evidenced by a filed proof of claim but by the debtor's listing of the claim on his Schedule F. He scheduled the claim as liquidated, noncontingent, and undisputed; thus, as the only evidence in the record as of the date this objection was filed was that the claim was valid, the burden of production of evidence with the objection was on the debtor.[4]

The court's ruling should not be viewed as hyper-technical. This claim is a pre-petition claim scheduled by the debtor as a noncontingent, liquidated, and undisputed claim on his original Schedule F, filed almost four years ago (and also listed as such on an amended Schedule F filed a month later). Not only did the debtor not object to the claim during the two years between the date he filed his schedules and the date undisputed claims were required to be paid, he failed to challenge it during the next year and a half. The debtor could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the payment provisions of the confirmed plan and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[5] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

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1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

2 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-

1(a), (b), (d)(1), (d)(3)(D), and (f).

3 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (c).

4 See LBR 9014-1(d)(3)(D) [requiring every motion or other request for relief to be accompanied by evidence]; LBR 9014-1(a) [rule as applying to all contested matters, including motions, applications, and objections].

5 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

13. 14-25148-D-11 HENRY TOSTA — AMENDED MOTION TO DISTRIBUTION
GMW-18 — OF ESTATE FUNDS TO HOME DEPOT
2-16-18 [851]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the distribution of estate funds to Home Depot (the "claimant"), listed on the plan administrator's claims list as being owed $10,872.45. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's counsel signed off on the order approving it as to form before it was submitted to

the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is not evidenced by a filed proof of claim but by the debtor's listing of the claim on his Schedule F. He scheduled the claim as liquidated, noncontingent, and undisputed; thus, as the only evidence in the record as of the date this objection was filed was that the claim was valid, the burden of production of evidence with the objection was on the debtor.[4]

The court's ruling should not be viewed as hyper-technical. This claim is a pre-petition claim scheduled by the debtor as a noncontingent, liquidated, and undisputed claim on his original Schedule F, filed almost four years ago (and also listed as such on an amended Schedule F filed a month later). Not only did the debtor not object to the claim during the two years between the date he filed his schedules and the date undisputed claims were required to be paid, he failed to challenge it during the next year and a half. The debtor could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the payment provisions of the confirmed plan and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[5] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

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1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

2 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-1(a), (b), (d)(1), (d)(3)(D), and (f).

3 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (c).

4 See LBR 9014-1(d)(3)(D) [requiring every motion or other request for relief to be accompanied by evidence]; LBR 9014-1(a) [rule as applying to all contested matters, including motions, applications, and objections].

5 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

14. 14-25148-D-11 HENRY TOSTA
GMW-19

OBJECTION TO CLAIM OF CREDIT ADJUSTMENT BUREAU, ASSIGNEE OF FOSTER FARMS, CLAIM NUMBER 24
2-16-18 [857]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the claim of Credit Adjustment Bureau, assignee of Foster Farms (the "claimant"), Claim No. 24 on the court's claims register. On April 5, 2018, the debtor filed a notice purporting to withdraw the objection. However, on March 16, 2018, the claimant had filed opposition to the objection. Therefore, the debtor did not have the right to unilaterally withdraw the objection. Fed. R. Civ. Proc. 41(a)(1)(A) and (a)(2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). The court assumes from the purported notice of withdrawal that the debtor does not wish to challenge the claimant's opposition. Therefore, the court will overrule the objection or allow the debtor to withdraw it, but will hear from the claimant as to any terms it may want imposed on the overruling or withdrawal of the objection. The court will hear the matter.

15. 14-25148-D-11 HENRY TOSTA
GMW-7

AMENDED MOTION OBJECTING TO FUNDS CLAIMED BY FRED KELLY GRANT
2-16-18 [839]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to payment from estate funds of the claim of Fred Kelly Grant (the "claimant") in the amount of $200,000. The claimant has filed a response. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also

required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's counsel signed off on the order approving it as to form before it was submitted to the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is on account of post-confirmation legal services provided by the claimant. The confirmed plan, of which the debtor and his family trust were the proponents, required the debtor to file an application to determine the reasonableness of any post-confirmation professional fees in dispute. The burden of production of evidence with the objection was on the debtor.[4]

The court's ruling should not be viewed as hyper-technical. As indicated, this claim is on account of post-confirmation legal services. The debtor alleged in support of this objection, among other things, he had not seen a detailed time and charges statement. However, the time sheets filed by the claimant with his response indicate his services were performed mostly in 2016 and were concluded a year ago. The debtor had more than enough time to conduct discovery if the claimant would not provide time sheets voluntarily, and could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the

payment provisions of the confirmed plan [5] and whatever payment agreement he had with the debtor, and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[6] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

---

1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

2 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-1(a), (b), (d)(1), (d)(3)(D), and (f).

3 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (C).

4 See LBR 9014-1(d)(3)(D) [requiring every motion or other request for relief to be accompanied by evidence]; LBR 9014-1(a) [rule as applying to all contested matters, including motions, applications, and objections].

5 The plan permitted the debtor to employ and pay professionals post-confirmation without notice, hearing, or court order and required him to pay undisputed amounts ["the Debtors shall pay"] and to file an application to determine the reasonableness of disputed amounts.

6 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

16. 14-25148-D-11 HENRY TOSTA — AMENDED OBJECTION TO CLAIM OF MODESTO DAIRY SUPPLY, CLAIM NUMBER 5
GMW-8 — 2-16-18 [841]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the claim of Modesto Dairy Supply (the "claimant"), Claim No. 5 on the court's claims register, in the amount of $8,430.30. The objection will be overruled because it was filed after the deadline fixed by court order, and the court concludes the debtor should be held to that deadline.

On January 10, 2018, the plan administrator filed a motion to pay claims not actively disputed by the debtor. The motion stated the plan administrator had enough cash to pay all unpaid claims in full, as called for by the debtor's confirmed plan. The motion also detailed the plan administrator's unsuccessful

efforts – for close to ten months at that point – to get the debtor to file objections to claims proposed to be paid but which the debtor had indicated he disputed. The motion was set for hearing on January 31. On January 30, the debtor filed 12 objections to claims,[1] including the claimant's claim. He did not file accompanying notices of hearing or supporting evidence, as required by the federal and local rules.[2] Further, he did not serve the objections on anyone, as also required.[3] On January 31, the clerk's office issued memos advising the debtor's counsel to file a notice of hearing for each objection if he wanted it set for hearing.

The debtor's counsel appeared at the January 31 hearing and stated he had no objection to the plan administrator's motion. He asked the court to set February 12 as the deadline for filing objections to claims. The court granted the plan administrator's motion and the debtor's counsel's request for that particular deadline. Thus, on February 2, the court issued an order providing that all claims listed on the exhibit attached to the order, which included the claim of the claimant here, "are approved if no claim objection is duly and timely filed and served" by February 12. The order also stated that to the extent the debtor was going to object to any of the claims on the exhibit, a "formal" objection would need to be filed and served on both the party-in-interest and the plan administrator no later than February 12, and that, except as to claims "duly and timely" objected to, the plan administrator was authorized to pay all claims listed on the exhibit 20 days after entry of the order. As he had requested at the hearing, the debtor's counsel signed off on the order approving it as to form before it was submitted to the court.

Yet the debtor failed to file anything by February 12. It was not until February 16 that the debtor filed amended objections, identical except for the hearing date to those filed on January 31, and also filed a notice of hearing for each amended objection. He did not file any evidence in support of the amended objections and did not serve the amended objections or the notices of hearing on anyone. On February 26, ten days after he had filed the amended objections and notices of hearing and 14 days after the deadline, the debtor filed supporting declarations and served them, with the amended objections and notices of hearing. He served them on the respective claimants but did not serve the plan administrator. The objection will be overruled because the debtor failed to duly and timely file and serve a formal objection by February 12, as required by the February 2, 2018 order.

The bare objection filed January 30, with no notice of hearing, no supporting evidence, and no proof of service, does not qualify as a "duly" filed "formal" objection. Implicit in the words "duly" and "formal" is that the objection would comply with the federal and local rules governing claim objections, including those requiring notice and service. And even if the court were to construe the amended objection and notice of hearing filed February 16, four days late, as the result of excusable neglect (which it does not), those documents do not suffice because the debtor filed no supporting evidence with them. This particular claim is evidenced by a filed proof of claim, which constitutes prima facie evidence of the validity and amount of the claim.[4] The burden of production of evidence <u>with the objection</u> was on the debtor.[5]

The court's ruling should not be viewed as hyper-technical. Although the debtor's confirmed plan did not fix a deadline for the debtor to object to claims, it did require him to pay allowed general unsecured claims in full, with interest, within one year from the effective date of the plan, or by July 28, 2016, unless

they were disputed. Not only did the debtor not object to the claim during the two years between the date it was filed and the date undisputed claims were required to be paid, he failed to challenge it during the next year and a half. The debtor could easily have objected to this claim much earlier. Instead, he dragged his feet, thereby allowing the claimant to rely on the payment provisions of the confirmed plan and compelling the plan administrator to file a motion to pay claims in order to force the issue. The court will not reward that delay and the debtor's further waiting until the absolute 11th hour to file his objections.[6] For these reasons, the court will not overlook the debtor's failure to comply with the February 2, 2018 order.

For the reasons stated, the objection will be overruled. The court will hear the matter.

---

1 For filed proofs of claim, the objections were entitled objections to claim. In instances where no proof of claim was filed, such as claims scheduled by the debtor as noncontingent, liquidated, and undisputed, and claims arising post-confirmation, the objections were entitled objections to distribution of estate funds or objections to funds claims.

8 See Fed. R. Bankr. P. 3001(f) and 3007(a)(1); LBR 3007-1(a) and (b); LBR 9014-1(a), (b), (d)(1), (d)(3)(D), and (f).

9 See Fed. R. Bankr. P. 3007(a)(1) and (a)(2); LBR 3007-1(b) and (C).

10 See Fed. R. Bankr. P. 3001(f).

11 See LBR 3007-1(a).

12 The court notes that delay has been a recurring pattern with the debtor's counsel in this case: the court has warned him before that timelines must be adhered to. And the debtor's recalcitrance earlier in the case prompted a motion by his former counsel, as a creditor, to enforce the confirmed plan, on which the debtor had defaulted. The court therefore questions the debtor's good faith generally in administering the plan.

17.	14-25148-D-11 GMW-9	HENRY TOSTA	AMENDED OBJECTION TO CLAIM OF THOMAS TERPSTRA, CLAIM NUMBER 17 2-16-18 [843]

Tentative ruling:

This is the objection of debtor Henry J. Tosta, Jr. (the "debtor") to the claim of Thomas H. Terpstra (the "claimant"), Claim No. 17 on the court's claims register. On April 5, 2018, the debtor filed a notice purporting to withdraw the objection. However, on March 28, 2018, the claimant had filed opposition to the objection. Therefore, the debtor did not have the right to unilaterally withdraw the objection. Fed. R. Civ. Proc. 41(a)(1)(A) and (a)(2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). The court assumes from the purported notice of withdrawal that the debtor does not wish to challenge the claimant's opposition. Therefore, the court will overrule the objection or allow the debtor to withdraw it, but will hear from the claimant as to any terms it may want imposed on the overruling or withdrawal of the objection. The court will hear the matter.

18. 18-21148-D-7 PHILLIP/BONNIE VALDEZ — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-14-18 [14]

Tentative ruling:

Although the court docket indicates that the filing fee was paid in full on March 19, 2018, Counsel is required to appear at the hearing.

19. 18-21160-D-7 SUSAN KYLE — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-14-18 [14]

Tentative ruling:

Although the court docket indicates that the filing fee was paid in full on March 19, 2018, Counsel is required to appear at the hearing.

20. 18-20863-D-7 TOMMY DAVIS
APN-1
SANTANDER CONSUMER USA INC.
VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY
3-9-18 [15]

Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

21. 14-20064-D-7 GLENN GREGO
BHS-7 — MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES ATTORNEY(S)
3-6-18 [723]

Tentative ruling:

This is the trustee's attorney's motion for a first and final allowance of compensation for services performed in this case and reimbursement of expenses. The debtor has filed "comments" that, while not a "per se challenge" to the motion, request the motion be deferred. The trustee has filed a response to the debtor's comments. For the following reasons, the motion will be granted.

The court is very familiar with how this case has transpired and with the debtor's repeated, determined efforts to derail the trustee's administration of the estate. Based on that knowledge and the record in the case, the court finds that the fees and costs requested are reasonable compensation for actual, necessary, and

beneficial services under Bankruptcy Code § 330(a) and that there is no basis on which to defer the motion.

The debtor's comments are essentially two-fold. First, citing a provision in a settlement agreement the court approved two years ago among the trustee, the debtor, the Oscar Grego Living Trust, and Pacific Western Bank, the debtor states he "intends to respect [the agreement] even though the Trustee has apparently decided to ignore it." Debtor's Comments, DN 730, at 2:2-3. The particular provision cited required the trustee to "refrain from any distributions of estate property until all objections by Debtor to disputed claims have been addressed and adjudicated," including the IRS claim. Declaration of W. Ramey, DN 732 ("Decl."), Ex. A, ¶ 16. Thus, the debtor's attorney testifies:

> [T]here is no distribution to be made of the estate money until the Debtors objections are all adjudicated and final. To my knowledge and belief at this moment there is still pending action on the Debtors IRS objection yet to be determined by the IRS. [¶] Finally, if the Chapter 7 Trustee wanted to conclude the estate he could easily decline to honor the disputed IRS claim which is undermined in any event by amended Tax Returns which have been filed by the Debtor in which include the year 2009.

Decl. at 2:14-24.

The court disagrees. First, a bankruptcy trustee is not free to decline to honor a claim disputed by the debtor absent a court order disallowing the claim. And a trustee is under no obligation to object to a claim solely on the debtor's say-so. Second, the debtor has filed two objections to the IRS's claim: in both, he relied in part on the alleged amended tax returns. Both objections were overruled except that the secured portion of the claim was disallowed as a claim against the estate. The debtor has taken no further action with respect to the claim in the 18 months since the second objection was overruled. It was not the court's contemplation, and likely not the trustee's either, that the cited provision in the settlement agreement meant the trustee would have to wait indefinitely to distribute the funds of the estate until the IRS withdraws or amends its claim or until the debtor files another objection. Further, interpreting the agreement in the manner urged by the debtor would conflict with the trustee's first duty listed in the settlement agreement: "[The trustee] shall proceed without delay to conclude the Chapter 7 Estate." Decl., Ex. A, ¶ 1.[1]

Second, the debtor contends the trustee has not complied with the provision in the settlement agreement requiring him to provide an accounting of all rents and monies received from real properties that had been held in the name of the Oscar Grego Living Trust and to identify all expenditures made by him in connection with those properties. The debtor's attorney testifies:

> I have a one-page "accounting" from [the trustee] which I do not believe qualifies as an accounting since it hasn't been verified and it lacks the formalities of an accounting; and it doesn't appear to account for the thousands of dollars in rents collected temporarily by [the trustee] from properties, Title to which is held by the Oscar Grego Living Trust which by my calculation would approach $100,000.

Decl. at 2:8-14. This "testimony" amounts to nothing more than conclusions and speculation and is countered in any event by the trustee's testimony that he

provided an accounting to the trustee of the Oscar Grego Living Trust in April of 2016 and has received no complaint about the accounting from that trustee.

For the reasons stated, the court intends to grant the motion. The court will hear the matter.

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1 The court notes the debtor's counsel's testimony that there is an ongoing action yet to be determined by the IRS is inadmissible as being without personal knowledge. The trustee's responsive testimony that an IRS case specialist has informed him there is no ongoing appeal as to the debtor's 2009 tax return is inadmissible hearsay. The court believes the better approach to the problem is an analysis of the settlement agreement language, but in any event, the debtor has failed to raise by way of admissible evidence an argument that there is a pending IRS proceeding that must be resolved before the trustee may make distributions.

22. 18-21172-D-7 JOEY SILVA — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 3-14-18 [13]

Tentative ruling:

Although the court docket indicates that the filing fee was paid in full on March 19, 2018, Counsel is required to appear at the hearing.

23. 17-26175-D-7 DNL-3 MIKA SUVIVUO — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. LUKE HENDRIX, TRUSTEES ATTORNEY(S) 3-13-18 [31]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

24. 17-20984-D-7 SCB-12 DAVID/JENNIFER VON SAVOYE — MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S) 3-8-18 [124]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

25. 15-29890-D-7 DMC-3 — GRAIL SEMICONDUCTOR — MOTION FOR COMPENSATION FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL(S) 3-14-18 [981]

26. 15-29890-D-7 DNL-35 — GRAIL SEMICONDUCTOR — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RONALD HOFER 3-14-18 [942]

27. 15-29890-D-7 DNL-36 — GRAIL SEMICONDUCTOR — MOTION TO USE ESTATE FUNDS 3-14-18 [947]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to use estate funds to pay for JAMS mediation is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

28. 15-29890-D-7 DNL-37 — GRAIL SEMICONDUCTOR — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S) 3-14-18 [951]

29. 15-29890-D-7 DNL-38 — GRAIL SEMICONDUCTOR — MOTION FOR COMPENSATION BY THE LAW OFFICE OF TANNER DE WITT SOLICITORS FOR SUNNY HATHIRAMANI, SPECIAL COUNSEL(S) 3-14-18 [957]

Tentative ruling:

This is a third interim application for compensation by the trustee's special counsel, whereas the proof of service evidences service of the second interim application, notice of hearing on second interim application, etc. If the moving party has filed a corrected proof of service by the time of the hearing, the court will consider the matter.

30. 15-29890-D-7 DNL-39 — GRAIL SEMICONDUCTOR — MOTION FOR COMPENSATION BY THE LAW OFFICE OF GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO FOR JESS RAYMUND M. LOPEZ, SPECIAL COUNSEL(S) 3-14-18 [963]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

31. 15-29890-D-7 DNL-40 — GRAIL SEMICONDUCTOR — MOTION FOR COMPENSATION BY THE LAW OFFICE OF EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP FOR JAMES LEADER, SPECIAL COUNSEL(S) 3-14-18 [969]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

32. 15-29890-D-7 DNL-41 — GRAIL SEMICONDUCTOR — MOTION FOR COMPENSATION FOR BACHECKI, CROM & CO., LLP, ACCOUNTANT(S) 3-14-18 [975]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

33. 18-20896-D-7 YURA VASILASCU
TRF-1
DEUTSCH BANK NATIONAL TRUST COMPANY VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-27-18 [16]

DEBTOR DISMISSED: 03/20/2018

34. 15-27697-D-7 ROMEO/SONIA GAPASIN
SSA-5

CONTINUED MOTION FOR ENTRY OF JUDGMENT RE: MOTION TO APPROVE SETTLEMENT OF CLAIMS AND COMPROMISE MOTION BETWEEN TRUSTEE AND SONIA'S CARE HOME, INC.
2-21-18 [72]

Tentative ruling:

This is the trustee's motion for entry of judgment against Sonia's Care Home, Inc. At the initial hearing, the trustee's counsel informed the court the parties had reached a settlement of the motion for entry of judgment which, in effect, amounted to a revision to the original settlement the court had previously approved. The court continued the hearing and required the trustee to serve notice of the revised settlement on creditors. On March 20, 2018, the trustee filed an amended notice of hearing that adequately sets forth the terms of the original settlement, the fact of the defendant's breach, and the terms of the revised settlement. However, the trustee served the amended notice only on the debtors, their attorney, the United States Trustee, and the creditors who have requested special notice in this case. She did not serve the many other creditors in the case, as required by Fed. R. Bankr. P. 2002(a)(3).

Thus, the court intends to continue the hearing one last time and require the trustee to file and serve a notice similar to the amended notice and to serve it on all creditors. The court will hear the matter.

35. 17-25028-D-7 NHUC MCCORMACK
HSM-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP FOR AARON A. AVERY, TRUSTEE'S ATTORNEY(S)
3-21-18 [31]

36. 17-25028-D-7 NHUC MCCORMACK
HSM-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ROBERT MCCORMACK
3-21-18 [27]

37. 15-24747-D-7 RAYMOND POQUETTE
BHS-5

AMENDED MOTION TO SELL, AMENDED MOTION FOR COMPENSATION FOR JEFF WILSON, BROKER(S)
3-23-18 [126]

Tentative ruling:

This is the trustee's "amended" motion for authority to sell certain real property in Grass Valley, California. The trustee's original motion was filed on February 28, 2018 and set for hearing on March 28, 2018. The trustee filed a similar motion in the chapter 7 case of the debtor's former spouse, Paula Poquette, Case No. 17-20261-B-7. The trustee's "amended" sale motion in the Paula Poquette case is set for hearing on April 10, 2018. The trustee has now resigned as the trustee in the Paula Poquette case and a new trustee has been appointed. She supports the sale. As the cases are related, the Paula Poquette case will be reassigned to this department.

Regardless to how the trustee refers to the document filed March 23, 2018, this is not an "amended" motion, it is a new motion. The original motion was set for hearing on March 28, 2018 and the trustee's counsel advised the court he had filed an amended motion and amended notice of hearing; thus, the court continued the hearing to this date. The so called amended motion, along with an amended notice of hearing, amended declaration, and supplemental exhibits, were filed and served on March 23, 2018 and the amended motion was set for hearing on this date.

The amended documents all include the same docket control number as the original, BHS-5. However, as the court has noted above, this is not an amended motion at all. First, there is no provision in the federal or local rules for an amended motion. The federal rule governing amended and supplemental pleadings, Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15, is not among the adversary proceeding rules that apply to contested matters (see Fed. R. Bankr. P. 9014(c)) and the local rule governing motion practice, LBR 9014-1, does not provide for amended motions.[1]

Second and more importantly, the "amended" motion is far too different from the original one to be considered an amended motion. The original motion proposed a sale at $400,000 and it said nothing about the debtor's and his ex-spouse's $175,000 homestead exemption claims. Thus, the original motion projected each estate would net $95,500. The "amended" motion proposes a sale price of $385,000 and discloses that both debtors have claimed a $175,000 homestead exemption. Thus, the projected net sale proceeds are $34,412 for each estate. These changes – especially the drastic drop in the projected net proceeds – required a new motion, not an "amended" one. And they are changes that required the moving party to give at least 21 days' notice of the hearing (Fed. R. Bankr. P. 2002(a)(2)), whereas he gave only 19 days'

notice. On an aside, the court can make no sense of the calculations given to derive at the $34,412 and, although it is unclear, appears that the new motion attempts to determine the respective debtors' homestead rights and exemptions.

The trustee's "amended" notice of hearing is also defective in that it purports to require that written opposition be filed at least 14 days prior to the hearing date, whereas the moving party served the amended notice only 19 days prior to the hearing date.

The trustee will need to address a number of key issues in any new motion. He analyzes the sale as if the property is property of the two estates – the debtor's and Paula Poquette's – 50/50, whereas this case was filed in 2015 and Paula Poquette's case was filed in 2017. By the time this case was filed, the Superior Court in the parties' marital dissolution proceeding had issued a judgment determining that the debtor in this case had a $67,000 separate property interest in the property "and all other equity in this property is a community asset subject to division." The debtor in this case was residing in the property when he filed this case; thus, it appears the entire interest in the property, including the community property interest of Paula Poquette, became property of the estate in this case (see § 541(a)(2)) and there was no interest left to become property of the estate in Paula Poquette's case. By order filed March 21, 2016, this court lifted the automatic stay to allow the two debtors to proceed with the debtor's appeal from the state court judgment. The court has not been made aware of the status or outcome of the appeal, which could affect this court's determination as to which estate or estates the property belongs to. Further, it strongly appears this sale motion entails a compromise between the two estates under Rule 9019 and would require the requisite factual record and analysis. These are matters the trustee should illuminate in any new motion.

Finally, the trustee refers to Jeff Wilson as "the Court-approved Real Estate Broker," proposing to pay him a commission of 5.5% of the sales price. However, the court can find no application or order authorizing his employment in this case.

For the reasons stated, the court intends to deny the amended motion. The court will hear the matter.

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1 Although motions are sometimes referred to by attorneys as pleadings, they are not pleadings. See Fed. R. Civ. P. 7(a), incorporated by Fed. R. Bankr. P. 7007 [listing the only pleadings allowed]. And, as indicated, although both the federal rules and the local rules provide for amended pleadings (Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15; LBR 7015-1), neither provide for amended motions.

38. 15-25380-D-7 DMW-2 — ELIZABETH MEZA — MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S) 3-17-18 [91]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

39. 15-29890-D-7 SLC-4 — GRAIL SEMICONDUCTOR — MOTION FOR ADMINISTRATIVE EXPENSES 3-16-18 [988]

40. 17-26997-D-7 LT-2 — MANUEL/MARISOL LARA — CONTINUED MOTION TO COMPEL ABANDONMENT 2-27-18 [31]

41. 18-21297-D-7 — WILLIAM FILER — MOTION TO VACATE DISMISSAL OF CASE 3-27-18 [18]

DEBTOR DISMISSED: 03/26/2018