

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: FRIDAY

DATE: JANUARY 4, 2019

CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

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. 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 14 days of the final hearing on the matter.

1. [18-14403](#)-A-13 **IN RE: RODOLFO TORRES AND MARIA DE CAZARES**
[TOG-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
11-20-2018 [[10](#)]

RODOLFO TORRES/MV
THOMAS GILLIS

No Ruling

2. [18-14905](#)-A-13 **IN RE: TRACEY PRITCHETT**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
12-18-2018 [[13](#)]

TRACEY PRITCHETT/MV
TIMOTHY SPRINGER

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Denied

Order: Civil minute order

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "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

or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

Here, the debtor's previous chapter 1 case, No. 18-10054, was dismissed because she was delinquent \$6,642.00 of payments due under the terms of the confirmed plan. Clark decl. ¶ 12, October 25, 2018, ECF # 82. As a consequence, the presumption of lack of good faith arises.

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). The evidence offered in support of the motion does not rise to the level of clear and convincing evidence. The debtor declares, "My situation has changed because my payment is lower so I will more easily be able to afford it on my fixed income." Pritchett decl. ¶ 10, December 18, 2018, ECF # 15. For context, the plan payment in the previous case was \$3,321; in this case it is \$2,900. The court cannot say that the debtor has demonstrated by clear and convincing evidence that the present filing is in good faith. The motion will be denied.

3. [18-12908](#)-A-13 **IN RE: CODY/CELESTE BERG**
[WLG-1](#)

MOTION TO CONFIRM PLAN
11-26-2018 [\[56\]](#)

CODY BERG/MV
NICHOLAS WAJDA
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

If the holder of an allowed secured claim or the trustee objects, a debtor must unsecured creditors in full or must pay the "projected disposable income" to those creditor over the "applicable commitment period." 11 U.S.C. § 1325(b)(1).

Here, the proposed plan pays unsecured creditors 0.00%. First Amended Plan § 3.14, November 26, 2018, ECF # 60. Projected disposable income over the life of the plan is \$66,170.40 (\$1,102.84

per month, Amended Form B122C-2, Line 45, x 60 months). The plan does not comply with § 1325(b) and confirmation will be denied.

75-DAY ORDER

A chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

4. [17-14529](#)-A-13 **IN RE: BRIAN FOLLAND**
[DRJ-6](#)

MOTION TO CONFIRM PLAN
11-23-2018 [[143](#)]

BRIAN FOLLAND/MV
DAVID JENKINS

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B).

None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

5. [15-11245](#)-A-13 **IN RE: WILLIAM O'BRIEN AND JILL
ALVARADO-O'BRIEN**
[MLS-1](#)

MOTION TO USE 401(K) FUNDS TO CURE CHAPTER 13 DELINQUENCY
11-28-2018 [[79](#)]

WILLIAM O'BRIEN/MV
MARK SIEGEL

No Ruling

6. [18-14558](#)-A-13 **IN RE: MARIA MAGALLAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-14-2018 [[18](#)]

SCOTT LYONS

Tentative Ruling

If the installment payment of \$79 due December 10, 2018, has not been paid by the time of the hearing, the case may be dismissed without further notice or hearing.

7. [16-11061](#)-A-13 **IN RE: JOSHUA/JULIE WEEDMAN**
[MAZ-5](#)

OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM
NUMBER 20
11-16-2018 [\[57\]](#)

JOSHUA WEEDMAN/MV
MARK ZIMMERMAN

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. *See id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. *See id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. *See id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that “[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules.” Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor’s assets, even if the debt was listed in the debtor’s bankruptcy schedules. *See In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor’s proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an

exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. The deadline was August 8, 2016; the claim was filed September 18, 2018. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So, the claim will be disallowed.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Joshua Weedman and Julie Weedman's objection to claim has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. Claim no. 20 will be disallowed.

8. [16-11061](#)-A-13 **IN RE: JOSHUA/JULIE WEEDMAN**
[MAZ-6](#)

OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM
NUMBER 21
11-16-2018 [[61](#)]

JOSHUA WEEDMAN/MV
MARK ZIMMERMAN

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. See *id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. See *id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. See *id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. See *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. The deadline was August 8, 2016; the claim was filed September 18, 2018. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Joshua Weedman and Julie Weedman's objection to claim has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the

matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. Claim no. 21 will be disallowed.

9. [16-11061](#)-A-13 IN RE: JOSHUA/JULIE WEEDMAN
[MAZ-7](#)

OBJECTION TO CLAIM OF NAVY FEDERAL CREDIT UNION, CLAIM
NUMBER 22
11-16-2018 [[65](#)]

JOSHUA WEEDMAN/MV
MARK ZIMMERMAN

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. *See id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. *See id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. *See id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. See *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. The deadline was August 8, 2016; the claim was filed September 18, 2018. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Joshua Weedman and Julie Weedman's objection to claim has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. Claim no. 22 will be disallowed.

10. [15-12666](#)-A-13 **IN RE: JEFFREY MOOSOLIAN**
[MHM-2](#)

MOTION TO DISMISS CASE
11-27-2018 [\[84\]](#)

MICHAEL MEYER/MV
PETER FEAR
RESPONSIVE PLEADING

Final Ruling

The motion withdrawn, the matter is dropped as moot.

11. [18-13971](#)-A-13 **IN RE: SYLVIA AVILA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-4-2018 [\[24\]](#)

MARK ZIMMERMAN
DISMISSED 12/14/18

Final Ruling

The case dismissed, the order to show cause is moot and is discharged.

12. [18-10772](#)-A-13 **IN RE: EDUARDO FELIX**
[JRL-1](#)

MOTION TO MODIFY PLAN
11-30-2018 [\[26\]](#)

EDUARDO FELIX/MV
JERRY LOWE

Final Ruling

Motion: Modify Confirmed Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Denied as moot

Order: Civil minute order

THE MODIFIED PLAN HAS BEEN SUPERSEDED

Chapter 13 debtors may modify a confirmed plan before completion of payments under the plan. 11 U.S.C. § 1329(a). This motion requests approval of a modified plan under § 1329(a). But the requested modified plan has been superseded by another modified plan. Because another modified plan has superseded the modified plan to be confirmed by this motion, the court will deny the motion as moot.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion to modify the plan is denied as moot.

13. [18-14083](#)-A-13 **IN RE: SAMUEL/JULIE ROMBAOA**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
11-19-2018 [[14](#)]

DAVID JENKINS

No Ruling

14. [18-14083](#)-A-13 **IN RE: SAMUEL/JULIE ROMBAOA**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-29-2018 [[17](#)]

MICHAEL MEYER/MV
DAVID JENKINS

Final Ruling

Amended Schedule C filed, the matter is dropped as moot.

15. [18-14299](#)-A-13 **IN RE: GAVINO/OLGA CANO**
[MSK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY IMPAC MORTGAGE CORP.
12-11-2018 [[23](#)]

IMPAC MORTGAGE CORP./MV
SCOTT LYONS
ERIN MCCARTNEY/ATTY. FOR MV.

Tentative Ruling

This matter will be called simultaneously with item # 19.

16. [18-13055](#)-A-12 **IN RE: MIKE WEBER**
[DRJ-3](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
11-23-2018 [[22](#)]

MIKE WEBER/MV
DAVID JENKINS
RESPONSIVE PLEADING

No Ruling

17. [14-10218](#)-A-13 **IN RE: JESUS CASTELLANO AND ANGIE VEGA**
[JDW-8](#)

MOTION TO VACATE DISMISSAL OF CASE
12-19-2018 [[86](#)]

JESUS CASTELLANO/MV
JOEL WINTER

No Ruling

18. [18-14892](#)-A-13 **IN RE: NICHOLAS ANGELICA**
[PK-2](#)

MOTION TO EXTEND AUTOMATIC STAY
12-20-2018 [[16](#)]

NICHOLAS ANGELICA/MV
PATRICK KAVANAGH

No Ruling

19. [18-14299](#)-A-13 **IN RE: GAVINO/OLGA CANO**
[MSK-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
12-20-2018 [[30](#)]

LAKEVIEW LOAN SERVICING,
LLC/MV
SCOTT LYONS
MARK KRAUSE/ATTY. FOR MV.
ORIGINAL OBJECTION ITEM #15 ON 1/4 AT 9 AM

No Ruling