

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

Honorable Fredrick E. Clement  
Modesto Federal Courthouse  
1200 I Street, Suite 4  
Modesto, California

**PRE-HEARING DISPOSITIONS**

**DAY:** TUESDAY  
**DATE:** AUGUST 27, 2019  
**CALENDAR:** 11:00 A.M. CHAPTERS 13 AND 12

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. [18-90801](#)-A-13     **IN RE: RUBEN/KARINA FLORES**  
[RDG-4](#)

OBJECTION TO CLAIM OF CITIBANK, N.A., CLAIM NUMBER 13-1  
7-19-2019    [\[90\]](#)

NIMA VOKSHORI

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no 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). 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. 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.

The trustee'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. 13-1 will be disallowed.

2. [18-90901](#)-A-13     **IN RE: GARY/COLEEN EDWARDS**  
[JAD-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
5-20-2019    [\[59\]](#)

JESSICA DORN

### **No Ruling**

3. [19-90503](#)-A-13     **IN RE: JUAN NAJERA**  
[TOG-2](#)

MOTION TO CONFIRM PLAN  
7-23-2019    [\[29\]](#)

THOMAS GILLIS  
RESPONSIVE PLEADING

### **No Ruling**

4. [19-90307](#)-A-13     **IN RE: JAY WHITAKER**  
[AHN-2](#)

MOTION TO CONFIRM PLAN  
7-16-2019    [\[67\]](#)

DAVID BOONE  
RESPONSIVE PLEADING

**No Ruling**

5. [18-90710](#)-A-13     **IN RE: JENNIFER PFEIFFER**  
[RDG-1](#)

MOTION TO DISMISS CASE  
8-8-2019    [\[25\]](#)

DAVID JOHNSTON

**No Ruling**

6. [19-90010](#)-A-13     **IN RE: SHALEAH WALKER**  
[RDG-2](#)

MOTION TO DISMISS CASE  
8-12-2019    [\[54\]](#)

BRIAN HADDIX

**No Ruling**

7. [19-90411](#)-A-13     **IN RE: MICHAEL/DEANNA BAKER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-5-2019    [\[35\]](#)

BRIAN HADDIX  
8/5/19 FINAL INSTALLMENT PAID \$150

**Final Ruling**

The installment having been paid, the order to show cause is discharged. The case will remain pending.

8. [19-90612](#)-A-13     **IN RE: LACHHMAN SINGH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-7-2019    [[22](#)]

BRIAN HADDIX

**Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

9. [19-90612](#)-A-13     **IN RE: LACHHMAN SINGH**  
[RDG-1](#)

MOTION TO DISMISS CASE  
8-12-2019    [[24](#)]

BRIAN HADDIX

**No Ruling**

10. [18-90714](#)-A-13     **IN RE: JARED MEEK AND LAUREN LONGWELL**  
[BSH-8](#)

MOTION TO CONFIRM PLAN  
7-16-2019    [[105](#)]

BRIAN HADDIX  
RESPONSIVE PLEADING

**No Ruling**

11. [18-90416](#)-A-13     **IN RE: JENNI/NICHOLAS DENT**  
[RDG-5](#)

MOTION TO DISMISS CASE  
8-13-2019    [[87](#)]

MARTHA PASSALAQUA

**No Ruling**

12. [19-90421](#)-A-13     **IN RE: NARCISSA THOMAS**  
[GLF-3](#)

MOTION TO CONFIRM PLAN  
7-23-2019    [\[62\]](#)

JESSICA GALLETTA  
WITHDRAWN BY M.P.

**Final Ruling**

The motion was withdrawn, the matter is dropped as moot.

13. [19-90421](#)-A-13     **IN RE: NARCISSA THOMAS**  
[RDG-5](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-12-2019    [\[57\]](#)

JESSICA GALLETTA

**Final Ruling**

**Objection:** Objection to Claim of Exemptions

**Disposition:** Overruled as moot

**Order:** Civil minute order

The trustee objects to the debtor's section 703.140(b)(2) exemptions in four vehicles, as the exemptions exceed the \$7,000 ceiling of the statute.

But, since the trustee brought the objection, the debtor filed another Amended Schedule C, amending the exemption questioned by the objection. ECF No. 79. As such, the objection will be overruled as moot.

**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 trustee's exemption objection has been presented to the court. Having considered the objection,

IT IS ORDERED that the objection is overruled as moot.

14. [19-90123](#)-A-13     **IN RE: ALBERT/SHANNON PEREZ**  
[JAD-1](#)

MOTION TO CONFIRM PLAN  
6-26-2019    [\[29\]](#)

JESSICA DORN

**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.

15. [19-90123](#)-A-13     **IN RE: ALBERT/SHANNON PEREZ**  
[RDG-3](#)

MOTION TO DISMISS CASE  
8-12-2019    [\[49\]](#)

JESSICA DORN

**Final Ruling**

This motion has been voluntarily dismissed by the movant. ECF No. 55.

16. [19-90225](#)-A-13     **IN RE: RAMON/CELINA JARA**  
[TOG-1](#)

MOTION TO CONFIRM PLAN  
7-12-2019    [[38](#)]

THOMAS GILLIS  
RESPONSIVE PLEADING

**No Ruling**

17. [19-90530](#)-A-13     **IN RE: FRED/LATANYA FORD**  
[JHW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDIT ACCEPTANCE  
CORPORATION  
7-31-2019    [[19](#)]

SHANE REICH  
JENNIFER WANG/ATTY. FOR MV.

**No Ruling**

18. [19-90530](#)-A-13     **IN RE: FRED/LATANYA FORD**  
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER  
7-29-2019    [[16](#)]

SHANE REICH

**No Ruling**

19. [19-90533](#)-A-13     **IN RE: MARITESS PRADO**  
[RDG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER  
7-29-2019    [[13](#)]

FLOR DE MARIA TATAJE

**No Ruling**



20. [19-90534](#)-A-13     **IN RE: RUSSELL/JULIE FLEMING**  
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE  
CORPORATION  
7-29-2019    [[17](#)]

MARK NELSON  
DANE EXNOWSKI/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

21. [19-90339](#)-A-13     **IN RE: LINDA EMERSON**  
[PBG-2](#)

MOTION TO CONFIRM PLAN  
7-23-2019    [[27](#)]

PATRICK GREENWELL  
RESPONSIVE PLEADING

**No Ruling**

22. [19-90340](#)-A-13     **IN RE: ROBERT/DENNELL CALLAGHER**  
[MSN-2](#)

MOTION TO CONFIRM PLAN  
6-27-2019    [[28](#)]

MARK NELSON  
RESPONSIVE PLEADING

**No Ruling**

23. [19-90141](#)-A-13     **IN RE: JOHN VIEIRA**  
[RDG-3](#)

MOTION TO DISMISS CASE  
8-12-2019    [[45](#)]

RANDALL WALTON

**No Ruling**

24. [19-90546](#)-A-13     **IN RE: JEFFREY/CLARA PAPPAS**  
[RDG-1](#)

MOTION TO DISMISS CASE  
8-13-2019    [\[32\]](#)

HANK WALTH

#### **Final Ruling**

The motion was withdrawn, the matter is dropped as moot.

25. [16-91047](#)-A-13     **IN RE: EVA CARRAZCO**  
[RDG-1](#)

MOTION TO DISMISS CASE  
8-8-2019    [\[36\]](#)

TAMIE CUMMINS  
RESPONSIVE PLEADING

#### **No Ruling**

26. [19-90656](#)-A-13     **IN RE: JUAN LOPEZ AND OTILIA PICENO**  
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS  
7-23-2019    [\[9\]](#)

THOMAS GILLIS

#### **Final Ruling**

**Motion:** Value Collateral [Real Property; Principal Residence]

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

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 9014-1(f)(1)(B). None has been filed. The default of the respondent 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).

#### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In*

*re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at QZ.

The court values the collateral at \$300,955. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

#### **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 value real property collateral 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 motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 1934 Robin Drive Ceres, California has a value of \$300,955. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

27. [18-90457](#)-A-13     **IN RE: MAHESH GANDHI**  
[RDG-3](#)

MOTION TO DISMISS CASE  
8-13-2019    [\[82\]](#)

DAVID JOHNSTON

**No Ruling**

28. [17-90760](#)-A-13     **IN RE: JEFFREY WENGEL**  
[RDG-1](#)

MOTION TO DISMISS CASE  
8-8-2019    [\[29\]](#)

JESSICA DORN  
RESPONSIVE PLEADING

**No Ruling**

29. [19-90660](#)-A-13     **IN RE: VERONICA ORTEGA**  
[RDG-1](#)

MOTION TO DISMISS CASE  
8-12-2019    [\[14\]](#)

RICHARD KWUN

**Final Ruling**

This motion has been voluntarily dismissed by the movant.    ECF No. 18.

30. [18-90564](#)-A-13     **IN RE: TIM CORONADO**  
[JBA-3](#)

MOTION TO CONFIRM PLAN  
7-22-2019    [\[79\]](#)

JOSEPH ANGELO  
RESPONSIVE PLEADING

**No Ruling**

31. [18-90869](#)-A-13     **IN RE: RAUDEL/SARA PEREZ**  
[RDG-1](#)

OBJECTION TO CLAIM OF RUSSELL D. GREER, CLAIM NUMBER 24-1  
7-19-2019    [\[26\]](#)

JESSICA DORN

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no 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). 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. 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.

The trustee'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. 24-1 will be disallowed.

32. [19-90175](#)-A-13     **IN RE: RICARDO PEREZ**  
[TOG-1](#)

MOTION TO CONFIRM PLAN  
7-15-2019    [\[33\]](#)

THOMAS GILLIS

## 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.

33. [18-90876](#)-A-13     **IN RE: LEONARDO/MELISSA JOSEF**  
[RDG-2](#)

OBJECTION TO CLAIM OF ONEMAIN, CLAIM NUMBER 9  
7-19-2019    [\[79\]](#)

STEVEN ALPERT

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no 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). 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. 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.

The trustee'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. 9-1 will be disallowed.

34. [19-90376](#)-A-13     **IN RE: KATHERINE MARTIN**  
[RDG-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-17-2019    [[17](#)]

DAVID JOHNSTON

## **No Ruling**

35. [19-90077](#)-A-13     **IN RE: ANGEL MEDRANO**  
[RDG-4](#)

MOTION TO DISMISS CASE  
8-13-2019    [[68](#)]

MICHAEL AVANESIAN

## **No Ruling**



36. [12-92478](#)-A-13     **IN RE: DANIEL/SUSAN AGUNDEZ**  
[JAD-2](#)

MOTION TO AVOID LIEN OF DISCOVER BANK  
8-7-2019    [\[65\]](#)

CHRISTIAN YOUNGER  
DEBTORS DISCHARGED: 6/25/19

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

**Judicial Lien:** \$8,777.02  
**All Other Liens (Non-avoidable):** \$335,520.30  
**Exemption:** \$75,000  
**Value of Property:** \$400,000

This motion will be denied without prejudice because the notice of hearing for the motion requires written opposition at least 14 days prior to the August 27 hearing, even though the motion was filed and served under LBR 9014-1(f)(2) only 20 days prior to the hearing, on August 7. ECF Nos. 65, 66, 70. This gives the respondent only six days to prepare, file, and serve a response to the motion, violating LBR 9014-1(f)(1), which requires at least 28 days' notice of the hearing when written oppositions are required 14 days prior to the hearing.

### **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.

Having considered the motion,

IT IS ORDERED that the motion is denied without prejudice.

37. [12-92478](#)-A-13     **IN RE: DANIEL/SUSAN AGUNDEZ**  
[JAD-3](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.  
8-7-2019    [\[71\]](#)

CHRISTIAN YOUNGER  
DEBTORS DISCHARGED: 6/25/19

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

**Judicial Lien:** \$7,565.43  
**All Other Liens (Non-avoidable):** \$335,520.30  
**Exemption:** \$75,000  
**Value of Property:** \$400,000

This motion will be denied without prejudice because the notice of hearing for the motion requires written opposition at least 14 days prior to the August 27 hearing, even though the motion was filed and served under LBR 9014-1(f)(2) only 20 days prior to the hearing, on August 7. ECF Nos. 71, 72, 76.

### **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.

Having considered the motion,

IT IS ORDERED that the motion is denied without prejudice.

38. [19-90178](#)-A-13     **IN RE: ALLEN MOTA**  
[RDG-1](#)

OBJECTION TO CLAIM OF AUTOZONE, INC., CLAIM NUMBER 3  
7-19-2019    [\[18\]](#)

JESSICA DORN

### **Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(2); no 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). 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. 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.

The trustee'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. 3-1 will be disallowed.

39. [19-90378](#)-A-13     **IN RE: GREGORY THOMPSON**  
[PLG-2](#)

MOTION TO CONFIRM PLAN  
7-8-2019    [\[37\]](#)

RABIN POURNAZARIAN

## 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.

40. [19-90378](#)-A-13     **IN RE: GREGORY THOMPSON**  
[RDG-3](#)

CONTINUED MOTION TO DISMISS CASE  
7-9-2019    [[46](#)]

RABIN POURNAZARIAN  
RESPONSIVE PLEADING

**No Ruling**

41. [19-90578](#)-A-13     **IN RE: THOMAS/CECILIA MCCAULEY**  
[RDG-1](#)

MOTION TO DISMISS CASE  
8-13-2019    [[34](#)]

BRIAN HADDIX

**No Ruling**

42. [19-90285](#)-A-13     **IN RE: BOUNYAKONE TANAKHONE**  
[RDG-2](#)

MOTION TO DISMISS CASE  
8-13-2019    [[20](#)]

PATRICK GREENWELL

**No Ruling**

43. [17-90388](#)-A-13     **IN RE: JOSE/ROLEA ROY**  
[MLP-2](#)

MOTION TO MODIFY PLAN  
7-16-2019    [[41](#)]

MARTHA PASSALAUQUA  
RESPONSIVE PLEADING

**No Ruling**

44. [19-90088](#)-A-13     **IN RE: STEVEN/ROCHELLE MODARESI**  
[PBG-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
6-17-2019    [[45](#)]

PATRICK GREENWELL  
RESPONSIVE PLEADING

**No Ruling**

45. [19-90193](#)-A-13     **IN RE: JOSE/CLAUDIA ACEVES**  
[DCW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-25-2019    [[40](#)]

KATHLEEN CRIST  
DENNIS WINTERS/ATTY. FOR MV.  
CORNERSTONE FINANCIAL SERVICES VS.; RESPONSIVE PLEADING

**No Ruling**

46. [19-90599](#)-A-13     **IN RE: LINDA EXPOSE**  
[RDG-1](#)

MOTION TO DISMISS CASE  
8-13-2019    [[17](#)]

**No Ruling**

