

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: September 25, 2018

CALENDAR: 1:00 P.M. CHAPTER 13

**PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION
PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 25, 2018 at 1:00 p.m.

1.	18-22107 -B-13	WALLEN YEP	MOTION TO DISMISS CASE
	JPJ -2	Jonathan D. Matthews	9-7-18 [70]

No Ruling

2. [18-23608](#)-B-7 RAJESH KAPOOR
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE TO
PAY FEES
8-15-18 [[89](#)]

CASE CONVERTED: 08/30/2018

Final Ruling

The Order to Show Cause was issued based on Debtor's failure to pay an installment ordered while this case was pending as a Chapter 13 case and prior to the conversion of this case from Chapter 13 to Chapter 7. The Order to Show Cause is discharged without prejudice as moot.

3. [18-24315](#)-B-13 FALLON SIMS
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-14-18 [[15](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending, but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on August 9, 2018. While the delinquent installment was paid in the amount of \$100.00 on August 16, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. In addition, the court notes that a new Order to Show Cause was issued on September 13, 2018, for failure to pay the fee due September 10, 2018. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if the September 10, 2018 installment is not cured by the hearing date of October 30, 2018, or if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

4. [18-24222](#)-B-13 ATTILA MESKO
Timothy J. Walsh

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-9-18 [[14](#)]

See Also #18

Tentative Ruling

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due August 6, 2018. It appears that Debtor attempted to pay through a personal check, which was rejected on August 10, 2018. Dkt. 15. In addition, an additional \$77.00 came due on September 4, 2018, and an order to show cause was issued on September 10, 2018. The court's docket reflects that the defaults have not been cured.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

5. [18-22724](#)-B-13 ANGELO NOLASCO AND DEBRA MOTION TO DISMISS CASE
[JPJ](#)-3 RODRIQUEZ-NOLASCO 8-16-18 [[38](#)]
Peter G. Macaluso

No Ruling

6. [18-24927](#)-B-13 ILYA MARKEVICH
Pro Se

MOTION TO DISMISS CASE
8-31-18 [[24](#)]

No Ruling

7. [18-23928](#)-B-13 REX MORRISON
[JPJ](#)-2 L. Rodkey

MOTION TO DISMISS CASE
8-8-18 [[22](#)]

No Ruling

8. [18-23937](#)-B-13 LEE WUERZBURGER
[JPJ](#)-2 Seth L. Hanson

MOTION TO DISMISS CASE
8-8-18 [[15](#)]

No Ruling

9. [18-23646](#)-B-13 JENNIFER DOW
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-16-18 [[27](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on August 13, 2018. While the delinquent installment was paid on August 17, 2018, and Debtor has paid the September 10, 2018 installment, the fact remains that the court was required to issue an order to show cause to compel the August 13, 2018 payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

10. [14-28547](#)-B-13 CATHERINE SOO
[JPJ](#)-3 Scott J. Sagaria

MOTION TO DISMISS CASE
9-6-18 [[25](#)]

No Ruling

11. [18-24759](#)-B-13 RICHARD CAMILLIERI
Susan J. Turner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-4-18 [[15](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on August 29, 2018. While the delinquent installment was paid on September 6, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

12. [18-24377](#)-B-13 PETE GARCIA ORDER TO SHOW CAUSE - FAILURE
Thru #13 Peter G. Macaluso TO PAY FEES
8-17-18 [[21](#)]

Final Ruling

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due August 3, 2018. The court's docket reflects that the default was cured on August 31, 2018. The payment constituted the final installment.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

13. [18-24377](#)-B-13 PETE GARCIA CONTINUED OBJECTION TO
[JPJ](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
8-23-18 [[26](#)]

No Ruling

14. [18-23289](#)-B-13 MICHAEL FONTES MOTION TO DISMISS CASE
[JPJ](#)-2 Bruce Charles Dwiggins 9-7-18 [[42](#)]

Final Ruling

The Chapter 13 Trustee having filed a Notice of Withdrawal of Trustee's Motion to Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

The motion is ordered dismissed without prejudice for reasons stated in the ruling appended to the minutes.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

Tentative Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by Debtor. The court will address the merits of the objection at the hearing.

The court's decision is to overrule the objection to Claim No. 6 of Citibank N.A., not in its individual capacity, but solely as trustee of NRZ Pass-Through Trust VI, as serviced by Fay Servicing, LLC.

Debtor's Objection to Proof of Claim No. 6

Martha M. Ramirez, the debtor and objecting party in interest ("Debtor"), filed an objection to Proof of Claim No. 6 on July 25, 2018. Dkt. 104. Debtor requested that the court determine the amount of the claim of Citibank N.A., not in its individual capacity, but solely as trustee of NRZ Pass-Through Trust VI, as serviced by Fay Servicing, LLC ("Creditor"), Claim No. 6. Debtor appears to argue that Proof of Claim No. 6 is defective based on insufficient documentation, which does not support the balance of \$182,345.27. Dkt. 104, Sections II(1) and (3). The claim is asserted to be secured by a Deed of Trust in the amount of \$182,345.27. Debtor asserted that Creditor failed to provide sufficient documentation to support its claim, and that the documents attached to Proof of Claim No. 6 only substantiate a claim of \$85,331.32 as follows:

Type	Date	Amount	Source
Initial Funds Advanced	August 5, 1994	\$8,349.50	POC 6, p. 8
Escrow Deficiency for Funds Advanced	August 18, 2016	\$577.00	POC 6, p. 5
Escrow Deficiency for Funds Advanced	October 17, 2016	\$29,884.08	POC 6, p. 5
Escrow Deficiency for Funds Advanced	December 20, 2016	\$46,520.82	POC 6, p. 5

Debtor also asserted that her husband, Santiago Ramirez, "paid the owner of the property, Jerry F. Losey and Helen M. Losey, funds sufficient to obtain the Grant Deed recorded in the County of Sutter #2002-0010958, on June 3, 2002. See Declaration of Martha Ramirez attached." Dkt. 104, Section II(2). No such declaration appears to be filed, and Debtor only refers to the documents attached to Proof of Claim No. 6 in support of her argument. Dkt. 106.

Creditor's Response

Creditor responded on August 24, 2018, and requested the court continue the hearing for 60 days to allow it to review its records and respond. Dkt. 108.

Debtor's Reply

Debtor filed a reply on September 4, 2018, and consented to a 14-day continuance. Dkt. 110.

Hearing September 11, 2018

At the hearing, the court continued the matter to September 25, 2018, by the consent of the parties. Dkt. 112.

Creditor's Response

Creditor filed a response on September 11, 2018. Dkt. 113. First, Creditor argued that a properly executed proof of claim is prima facie evidence of the validity of the claim, and that an objecting party must provide evidence to the contrary to present a triable issue of fact. Dkt. 113, p. 2. Creditor argued that "simply arguing the figures are incorrect is insufficient." *Id.* (citations omitted). Second, Creditor argues that the newly submitted Declaration of Kelly Buchanan, with attached Exhibit 2, further validates the payment history presented in Proof of Claim No. 6. *Id.*, p. 3; Dkts. 114, 115. Creditor did not provide a statement on whether it consents to the resolution of disputed material facts. LBR 3007-1(b)(1)(A) (citing to FED. R. CIV. P. 43(a) and FED. R. BANKR. P. 9017).

Debtor's Reply

Debtor filed a reply on September 18, 2018. Dkt. 117. Debtor primarily focused on two arguments. First, Debtor argued that Kelly Buchanan, the declarant for Creditor's records, cannot have personal knowledge of the books and records of Beneficial California Inc., the original lender in 1994. Dkt. 117, p. 4. Second, Debtor argued that Exhibit 2, attached to Creditor's reply on September 11, 2018, consists of three ledgers that assert three different balances due on July 12, 2013, namely \$0.00, \$105,601.41, or \$105,221.90. *Id.*, p. 5.

Debtor requested that the court continue the hearing to allow Creditor to produce a copy of an audit report, dated April 12, 2014, and other documents to substantiate Creditor's amount of \$182,345.27. Dkt. 117, p. 7. Debtor properly filed a separate list of disputed facts as required by Local Bankruptcy Rule 3007-1(b)(1)(B). Dkt. 118.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." LBR 3007-1(a).

Here, Debtor failed to provide sufficient probative evidence to overcome the prima facie validity of the amount of Creditor's Proof of Claim. The amount asserted by Creditor of \$182,345.27 is substantiated as follows:

<u>Type</u>	<u>Amount</u>	<u>Source</u>
Principal Balance From First Default on May 4, 2013	\$108,181.41	POC 6, p. 5
Payments Applied to Balance	-\$3,440.00 (Four pre-petition payments of \$860.00 on May 9, 2017, June 13, 2017, June 13, 2017, and July 31, 2017)	POC 6, p. 6

Escrow Deficiency for Funds Advanced	\$577.00 on August 18, 2016 \$29,884.08 on October 17, 2016 \$46,520.82 on December 20, 2016	POC 6, p. 5
Pre-petition Fees/Costs of Creditor	\$621.96	POC 6, pp. 4, 6
Total	182,345.27	

Based on the evidentiary record before the court, and Debtor's failure to include additional evidence with her initial claim objection or her subsequent replies, Debtor failed to carry her burden of presenting substantial factual basis to overcome the prima facie validity of the amount of Creditor's claim. Therefore, the Debtor's objection to Claim No. 6 is overruled without prejudice.

COUNSEL FOR THE CREDITOR TO LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

16. [18-24892](#)-B-13 KISA BROWN
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-7-18 [[18](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on September 4, 2018. While the delinquent installment was paid on September 10, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

17. [18-24097](#)-B-13 PETER CASILLAS
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-5-18 [[42](#)]

Tentative Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$76.00 installment when due on August 31, 2018. While the delinquent installment was paid on September 21, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

18. [18-24222](#)-B-13 ATTILA MESKO
[JPJ](#)-1 Timothy J. Walsh

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
JAN P. JOHNSON AND/OR MOTION TO
DISMISS CASE
8-14-18 [[17](#)]

No Ruling

19. [15-22643](#)-B-13 LUIS/MELISSA VEGA
[KWS](#)-1 Kyle Schumacher

CONTINUED MOTION TO INCUR DEBT
8-14-18 [[26](#)]

No Ruling