

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 10, 2016

Hearing Room 303

12:30 PM

6:11-23262 Juan J. Gonzalez and Elia Rosa Gonzalez

Chapter 13

#1.00 CONT Trustee's Motion to Dismiss Case failure to complete the plan within its terms

From: 9/8/16, 10/20/16

Also #2

EH__

Docket No: 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan J. Gonzalez

Represented By
Gary M Erickson

Joint Debtor(s):

Elia Rosa Gonzalez

Represented By
Gary M Erickson

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

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6:11-23262 Juan J. Gonzalez and Elia Rosa Gonzalez

Chapter 13

#2.00 CONT Objection to Claim #12 by CitiMortgage Inc in the amount of \$226,497.91

From: 8/25/16, 10/20/16

Also #1

EH__

Docket No: 102

Tentative Ruling:

11/10/16

BACKGROUND

On April 22, 2011, Juan and Elia Gonzalez ("Debtors") filed a Chapter 13 voluntary petition. On June 3, 2011, Debtors filed a motion to avoid junior lien with Citi Mortgage ("the Motion"). On August 9, 2011, Debtor's Chapter 13 plan was confirmed. On August 25, 2011, the Motion was denied. August 31, 2011, was the deadline for filing claims. On September 2, 2011, the Motion was refiled and on September 29, 2011, the Motion was granted. No order granting the motion was lodged. On October 18, 2012, Amrane Cohen ("Trustee") filed a motion for sanctions/disgorgement and costs for failure to lodge order on motion to value/avoid a lien. On October 22, 2012, Debtors filed their opposition to Trustee's motion. On October 31, 2012, an order was entered granting the Motion. On June 13, 2013, Citi Mortgage, Inc. ("Creditor") filed a proof of claim. On July 8, 2016, Debtors filed an objection to Creditor's claim. On August 25, 2016, the hearing was continued to fix proof of service. On September 30, 2016, Debtors filed a supplement brief. On October 20, 2016, the hearing was continued to November 10, 2016.

DISCUSSION

On October 5, 2006, Debtors entered into a Note and Deed of Trust with

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CONT... Juan J. Gonzalez and Elia Rosa Gonzalez

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Citicorp Trust Bank with a principal of \$117,401.38 and annual interest of 11.76597%. The Deed of Trust granted Citicorp Trust Bank a security interest in the property located at 4594 N. Orange Ave., San Bernardino, CA 92407. At the time the proof of claim was filed, the amount owing was \$226,497.91.

On October 31, 2012, the Court entered an order granting Debtor's motion to avoid the lien of Creditor. Two relevant provisions of the order are:

- (1) This avoidance of the respondent's junior lien is effective upon receipt of a chapter 13 discharge in this case.
- (2) The claim of the junior lienholder is to be treated as an unsecured claim and is to be paid through the plan pro rata with all other unsecured claims.

Debtors now argue that because Creditor failed to file a proof of claim by the claims bar date, Creditor does not hold a valid proof of claim. No response has been made by Creditor.

ANALYSIS

Fed. R. Bankr. P. 3002(c)(3) identifies the time requirements for the filing of a proof of claim. To wit:

(c) In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

Fed. R. Bankr. P. 3002 (2008). The Advisory Committee Notes specifically contemplate the inequity which may arise if a lien avoidance motion is granted after

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the filing of the petition:

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Although the claim of a secured creditor may have arisen before the petition, a judgment avoiding the security interest may not have been entered until after the time for filing claims has expired. Under Rule 3002(c)(3) the creditor who did not file a secured claim may nevertheless file an unsecured claim within the time prescribed. A judgment does not become final for the purpose of starting the 30 day period provided for by paragraph (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. *In re Tapp*, 61 F. Supp. 594 (W.D. Ky. 1945).

Fed. R. Bankr. P. 3002 advisory committee's notes (2008); *see also In re Little*, 74 B.R. 625 (Bankr. N.D.N.Y. 1987) (Judge Gerling). Here, it is indisputable that Creditor did not file a proof of claim within 30 days of the expiration of the time for appeal.

An unsecured claim arose in favor of Citi Mortgage on the date the order was entered. While the order delayed the avoiding of the lien until the receipt of discharge, the order did not delay the time at which an unsecured claim arose. Therefore, the claim of Citi Mortgage was filed late. The Court does not have discretion to enlarge the time period during which a proof of claim may be filed. *See e.g., In re Hayes*, 327 B.R. 453, 458 (Bankr. C.D. Cal. 2005) (Judge Carroll) ("By virtue of Rule 9006(b)(3), a bankruptcy court does not have discretion to enlarge the time periods fixed by Rule 3002(c) nor permit an untimely claim when none of Rule 3002(c)'s five exceptions is applicable."); *see also In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990); *In re Edelman*, 237 B.R. 146, 152 (9th Cir. B.A.P. 1999).

In limited circumstances, the Court can allow an informal proof of claim to serve as a proof of claim. The cases are well established that the requirements for an informal proof of claim are: "(1) presentment of a writing; (2) within the time for the filing of claims; (3) by or on behalf of the creditor; (4) bringing to the attention of the court; (5) the nature and amount of a claim asserted against the estate." *See, e.g., In re Edelman*, 237 B.R. 146, 152 (9th Cir. B.A.P. 1999); *see also In re Holm*, 931 F.2d 620, 622 (9th Cir. 1991) ("For a document to constitute an informal proof of claim, it must state an explicit demand showing the nature and amount of the claim against the estate, and evidence an intent to hold the debtor liable."); *In re Fish*, 456 B.R. 413, 417 (9th Cir. B.A.P. 2011). Here, Creditor did not file anything within the court before the deadline for filing a claim, with the exception of a notice of appearance, and there has been no evidence presented to the Court that any other document exists which could establish an informal proof of claim.

Last, although properly served per the proof of claim address, claimant has

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failed to oppose, which the Court deems as consent to the relief requested per Local
Bankruptcy Rule 3007(b)(3)(B).

TENTATIVE RULING

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within seven days.

Party Information

Debtor(s):

Juan J. Gonzalez

Represented By
Gary M Erickson

Joint Debtor(s):

Elia Rosa Gonzalez

Represented By
Gary M Erickson

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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6:11-38326 Marc William Ito and Helen Deborah Ito

Chapter 13

#3.00 CONT Order To Show Cause Re Motion For Contempt Against Seterus, Inc. as servicer for secured creditor Federal National Mortgage Association, for violation of 11 USC Section 524(i); and for sanctions expenses and attorney fees pursuant to Fed. R. Bankr.. P. 3002.1

From: 9/7/16

EH__

Docket No: 60

***** VACATED *** REASON: CONTINUED TO 12/8/16 AT 12:30 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marc William Ito

Represented By
Julie Philippi

Joint Debtor(s):

Helen Deborah Ito

Represented By
Julie Philippi

Movant(s):

Helen Deborah Ito

Represented By
Julie Philippi
Julie Philippi

Marc William Ito

Represented By
Julie Philippi
Julie Philippi

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:31 PM

6:11-14414 Carl E. Jenkins and Dianne Pickett-Jenkins

Chapter 13

#4.00 Trustee's Motion to Dismiss Case failure to complete the plan within its terms

EH__

Docket No: 69

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carl E. Jenkins

Represented By
Todd B Becker

Joint Debtor(s):

Dianne Pickett-Jenkins

Represented By
Todd B Becker

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 10, 2016

Hearing Room 303

12:31 PM

6:12-16380 Zerry B Holefield

Chapter 13

#5.00 Trustee's Motion to Dismiss Case failure to make plan payments

EH__

Docket No: 96

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zerry B Holefield

Represented By
Dale Parham - INACTIVE -
Michael Smith

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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Thursday, November 10, 2016

Hearing Room 303

12:31 PM

6:12-20719 Richard Anderson Higgins

Chapter 13

#6.00 CONT Trustee's Motion to Dismiss Case failure to make plan payments

From: 8/25/16, 10/20/16

EH__

Docket No: 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Anderson Higgins

Represented By
James P Doan

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Thursday, November 10, 2016

Hearing Room 303

12:32 PM

6:16-14838 Kevin Gerald Matty

Chapter 13

#7.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevin Gerald Matty

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:16-17017 Frank Tan

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Tan

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Thursday, November 10, 2016

Hearing Room 303

12:32 PM

6:16-17526 Emeterio Rodriguez and Leticia Rodriguez

Chapter 13

#9.00 CONT Confirmation of Chapter 13 Plan

From: 10/6/16

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Emeterio Rodriguez

Represented By
Anthony Obehi Egbase
Crystle J Lindsey

Joint Debtor(s):

Leticia Rodriguez

Represented By
Anthony Obehi Egbase
Crystle J Lindsey

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, November 10, 2016

Hearing Room 303

12:32 PM

6:16-17736 Willie Elvin Chambers and Marlene Shirley Chambers

Chapter 13

#10.00 CONT Confirmation of Chapter 13 Plan

From: 10/6/16

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Willie Elvin Chambers

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Marlene Shirley Chambers

Represented By
Heather J Canning
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:16-17855 Arthur Leo Gent and Wanda Sue Gent

Chapter 13

#11.00 CONT Confirmation of Chapter 13 Plan

From: 10/6/16

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arthur Leo Gent

Represented By
April E Roberts

Joint Debtor(s):

Wanda Sue Gent

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:32 PM

6:16-18382 Frank Joseph Castodio

Chapter 13

#12.00 CONT Confirmation of Chapter 13 Plan

From: 11/3/16

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Joseph Castodio

Represented By
Claudia L Phillips

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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Thursday, November 10, 2016

Hearing Room 303

12:32 PM

6:16-18750 Donald Craig Kinnsch and Lynda Dyanne Kinnsch

Chapter 7

#13.00 CONT Confirmation of Chapter 13 Plan

From: 11/3/16

EH__

Docket No: 0

*** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7 ON
11/7/16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Craig Kinnsch

Represented By
Stephen H Darrow

Joint Debtor(s):

Lynda Dyanne Kinnsch

Represented By
Stephen H Darrow

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

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6:16-18820 Chase D Chung

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chase D Chung

Represented By
Daniel C Sever

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:16-18883 Bartholemew James Ratner and Pamela J Armijo-Ratner Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

*** VACATED *** REASON: CASE DISMISSED 10/24/16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bartholemew James Ratner

Represented By
H Christopher Coburn

Joint Debtor(s):

Pamela J Armijo-Ratner

Represented By
H Christopher Coburn

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18906 Ethel N Odimegwu

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ethel N Odimegwu

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 10, 2016

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6:16-18918 Martha Alvarado Ramirez

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martha Alvarado Ramirez

Represented By
Claudia L Phillips

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

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6:16-18930 Carolina Ambrosio Dominguez

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

*** VACATED *** REASON: CASE DISMISSED 10/24/16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carolina Ambrosio Dominguez Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
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6:16-18933 Rebecca Reed

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rebecca Reed

Represented By
Amanda G Billyard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 10, 2016

Hearing Room 303

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6:16-18934 Aaron M. Flake and Jeanie M. Flake

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aaron M. Flake

Represented By
Amanda G Billyard

Joint Debtor(s):

Jeanie M. Flake

Represented By
Amanda G Billyard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, November 10, 2016

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12:32 PM

6:16-18970 Pedro Canchola and Esther Valle Canchola

Chapter 13

#21.00 Motion to Avoid Junior Lien with Wells Fargo Bank, N.A.

Also #22

EH__

Docket No: 20

Tentative Ruling:

11/10/16

Given Debtor's declaration that the fair market value of the property is less than the amount of debt secured by the first trust deed, the Court is inclined to GRANT the motion. In Sections 3(d)(2), (4), and (5) of Debtor's motion, Debtor has checked both "completion of the chapter 13 plan" and "receipt of the a chapter discharge" as the date upon which avoidance is effective. The Court order will reflect that the lien is avoided upon "receipt of a chapter 13 discharge options." In addition, lienholder has failed to oppose, which the Court deems consent to the requested relief.

APPEARANCES WAIVED. If oral or written opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within seven days.

Party Information

Debtor(s):

Pedro Canchola

Represented By
Leonard Pena

Joint Debtor(s):

Esther Valle Canchola

Represented By
Leonard Pena

Movant(s):

Esther Valle Canchola

Represented By
Leonard Pena

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CONT... Pedro Canchola and Esther Valle Canchola

Chapter 13

Pedro Canchola

Represented By
Leonard Pena

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18970 Pedro Canchola and Esther Valle Canchola

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Also #21

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pedro Canchola

Represented By
Leonard Pena

Joint Debtor(s):

Esther Valle Canchola

Represented By
Leonard Pena

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Riverside
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Thursday, November 10, 2016

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12:32 PM

6:16-18990 John D Castro and Jennifer Manda Castro

Chapter 13

#23.00 Motion to Avoid Junior Lien with Deutsche Bank

Also #24

EH__

Docket No: 18

Tentative Ruling:

11/10/16

Debtor has provided competent evidence to establish that the fair market value of the home is less than the value owing on the first deed of trust. In addition, lienholder has failed to oppose, which the Court deems consent to the requested relief. Therefore, the Court is inclined to GRANT the motion.

APPEARANCES WAIVED. If oral or written opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within seven days.

Party Information

Debtor(s):

John D Castro Jr

Represented By
Chris A Mullen

Joint Debtor(s):

Jennifer Manda Castro

Represented By
Chris A Mullen

Movant(s):

Jennifer Manda Castro

Represented By
Chris A Mullen

John D Castro Jr

Represented By
Chris A Mullen

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CONT... John D Castro and Jennifer Manda Castro

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 10, 2016

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6:16-18990 John D Castro and Jennifer Manda Castro

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

Also #23

EH__

Docket No: 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John D Castro Jr

Represented By
Chris A Mullen

Joint Debtor(s):

Jennifer Manda Castro

Represented By
Chris A Mullen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, November 10, 2016

Hearing Room 303

12:32 PM

6:16-13718 Priscilla Yvonne Bavadi

Chapter 13

#24.10 Motion to vacate dismissal

EH__

Docket No: 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Priscilla Yvonne Bavadi

Represented By
William Radcliffe

Movant(s):

Priscilla Yvonne Bavadi

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 10, 2016

Hearing Room 303

12:33 PM

6:15-17111 Christine Mourad Hanna

Chapter 7

#25.00 CONT Trustee's Motion to Dismiss Case

From: 9/29/16, 10/6/16, 11/3/16

EH__

Docket No: 73

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED
11/8/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christine Mourad Hanna

Represented By
Dana Travis

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 10, 2016

Hearing Room 303

12:33 PM

6:15-19024 Kenneth Paul Fross and Cheri Lynn Fross

Chapter 13

#26.00 CONT Trustee's Motion to Dismiss Case

From: 11/3/16

EH__

Docket No: 55

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF MOTION
FILED 11/10/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Paul Fross

Represented By
April E Roberts

Joint Debtor(s):

Cheri Lynn Fross

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 10, 2016

Hearing Room 303

12:33 PM

6:16-13548 Georgina Centeno

Chapter 13

#27.00 CONT Trustee's Motion to Dismiss Case

From: 10/6/16

EH__

Docket No: 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Georgina Centeno

Represented By
Benjamin R Heston

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se