

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

**Thursday, December 08, 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, 11/10/16

Also #2

EH\_\_

Docket 97

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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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**Thursday, December 08, 2016**

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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, 11/10/16

Also #1

EH\_\_

Docket 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 Chapter 13**

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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CONT... **Juan J. Gonzalez and Elia Rosa Gonzalez**  
the filing of the petition:

Chapter 13

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 (9<sup>th</sup> Cir. 1990); *In re Edelman*, 237 B.R. 146, 152 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. B.A.P. 1999); *see also In re Holm*, 931 F.2d 620, 622 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

<b>Party Information</b>
--------------------------

**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

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**6:11-31782 Dina Guadalupe Garay**

**Chapter 13**

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

From: 10/20/16

Also #4

EH\_\_

Docket 47

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dina Guadalupe Garay

Represented By  
Aalok Sikand  
Vito Torchia - DISBARRED -

**Trustee(s):**

Amrane (RS) Cohen (TR)

Pro Se

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**6:11-31782 Dina Guadalupe Garay**

**Chapter 13**

**#4.00** CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 10/20/16

Also #3

EH\_\_

Docket 48

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Dina Guadalupe Garay

Represented By  
Aalok Sikand  
Vito Torchia - DISBARRED -

**Movant(s):**

Dina Guadalupe Garay

Represented By  
Aalok Sikand  
Aalok Sikand  
Vito Torchia - DISBARRED -  
Vito Torchia - DISBARRED -

**Trustee(s):**

Amrane (RS) Cohen (TR)

Pro Se

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**6:11-38326 Marc William Ito and Helen Deborah Ito**

**Chapter 13**

**#5.00** 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, 11/10/16

EH\_\_

Docket 60

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 1/12/17 AT 12:30 PM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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

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**6:12-20719 Richard Anderson Higgins**

**Chapter 13**

**#6.00** Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Also #7

EH\_\_

Docket 77

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Richard Anderson Higgins

Represented By  
James P Doan

**Movant(s):**

Richard Anderson Higgins

Represented By  
James P Doan

**Trustee(s):**

Amrane (RS) Cohen (TR)

Represented By  
Amrane (RS) Cohen (TR)

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**6:12-20719 Richard Anderson Higgins**

**Chapter 13**

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

From: 8/25/16, 10/20/16, 11/10/16

Also #6

EH\_\_

Docket 64

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Anderson Higgins

Represented By  
James P Doan

**Trustee(s):**

Amrane (RS) Cohen (TR)

Represented By  
Amrane (RS) Cohen (TR)

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**6:12-23627 Michael L Anderson**

**Chapter 13**

**#8.00** Motion to Reconsider chapter 13 Trustee's Motion to Dismiss and vacate Dismissal pursuant to FRCP Rule 60(b) Incorporated by FRBP 9024

EH\_\_

Docket 119

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael L Anderson

Represented By  
Javier H Castillo

**Movant(s):**

Michael L Anderson

Represented By  
Javier H Castillo

**Trustee(s):**

Amrane (RS) Cohen (TR)

Represented By  
Amrane (RS) Cohen (TR)

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

**Chapter 13**

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

From: 11/10/16

EH\_\_

Docket 69

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**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

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**6:11-14935 Geoffrey Durelle Scott**

**Chapter 13**

**#10.00** CONT Trustee's Motion to Dismiss Case

From: 10/20/16

EH\_\_

Docket 65

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Geoffrey Durelle Scott

Represented By  
Ivan M Lopez Ventura

**Trustee(s):**

Amrane (RS) Cohen (TR)

Represented By  
Amrane (RS) Cohen (TR)

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**6:11-29514 Suzanne Lorarine Birt**

**Chapter 13**

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

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

EH\_\_

Docket 95

**\*\*\* VACATED \*\*\* REASON: WITHDRAWAL OF MOTION FILED  
11/17/16**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Suzanne Lorarine Birt

Represented By  
Michael C Maddux

**Trustee(s):**

Amrane (RS) Cohen (TR)

Pro Se

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**6:11-47545 Ricardo Manansala and Nobleza Manansala**

**Chapter 13**

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

EH\_\_

Docket 63

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ricardo Manansala

Represented By  
Anthony Wilaras

**Joint Debtor(s):**

Nobleza Manansala

Represented By  
Anthony Wilaras

**Trustee(s):**

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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**6:12-35801 David W. Votaw and Frances L. Votaw**

**Chapter 13**

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

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

EH \_\_

Docket 88

**\*\*\* VACATED \*\*\* REASON: WITHDRAWAL FILED 12/5/16**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

David W. Votaw

Represented By  
Susan Jill Wolf

**Joint Debtor(s):**

Frances L. Votaw

Represented By  
Susan Jill Wolf

**Trustee(s):**

Amrane (RS) Cohen (TR)

Represented By  
Amrane (RS) Cohen (TR)

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**6:12-36522 Jacqueline Anna Palmer**

**Chapter 13**

**#14.00** Verified Motion for Order Dismissing Chapter 13 Proceeding

EH\_\_

Docket 61

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jacqueline Anna Palmer

Represented By  
Steven A Alpert

**Trustee(s):**

Amrane (RS) Cohen (TR)

Represented By  
Amrane (RS) Cohen (TR)

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**6:12-38356 Phillip Carl Noble and Juana J Noble**

**Chapter 12**

**#15.00** Motion to Dismiss Chapter 12 Case Due to Delinquent Plan Payments pursuant to sect 1208(c)(6) and L.B.R. 9013-1(0)(1)

EH\_\_

Docket 116

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Phillip Carl Noble

Represented By  
Julie Philippi

**Joint Debtor(s):**

Juana J Noble

Represented By  
Julie Philippi

**Movant(s):**

Wesley H Avery (TR)

Represented By  
Wesley H Avery (TR)

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Wesley H Avery (TR)

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12:32 PM

**6:16-15614 Donald Lloyd Maki**

**Chapter 13**

**#16.00** CONT Confirmation of Chapter 13 Plan

From: 7/28/16, 9/8/16, 10/6/16, 10/20/16

EH \_\_

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Donald Lloyd Maki

Represented By  
John F Brady

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court  
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6:16-17736 Willie Elvin Chambers and Marlene Shirley Chambers

Chapter 13

#17.00 Application for Compensation for Supplemental Fees for Barry E Borowitz,  
Debtor's Attorney, Period: 8/29/2016 to 10/3/2016, Fee: \$900.00

EH\_\_

Docket 27

**Tentative Ruling:**

**12/08/2016**

**DISCUSSION**

Applicant seeks \$900 in fees for filing of a Motion and Amended Motion to Impose Stay, as well as for two court appearances in connection with the Motions on 9/20 and 9/28. The Chapter 13 Trustee recommends that Applicant receive \$750, which is the standard no look fee for a Motion to Extend or Impose Stay (with no opposition). The Trustee further asserts that the Applicant has failed to submit its request with evidence to establish the value of the services rendered.

The Court agrees with the Trustee. Specifically, the Applicant has not provided billing records or any evidence to support the assertion that the specific Motion to Impose constituted work outside of the "normal and customary" standard. The Court further notes, that the need for an amended motion and a continuance was at least, in part, due to errors committed by Applicant in the first instance. Additionally, having failed to provide any reply to the Trustee, the Court is inclined to agree with the Trustee that \$750 is appropriate.

**TENTATIVE RULING**

APPEARANCES REQUIRED.

**Party Information**

**Debtor(s):**

Willie Elvin Chambers

Represented By

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**CONT... Willie Elvin Chambers and Marlene Shirley Chambers**  
Heather J Canning  
Barry E Borowitz

**Chapter 13**

**Joint Debtor(s):**

Marlene Shirley Chambers

Represented By  
Heather J Canning  
Barry E Borowitz

**Movant(s):**

Marlene Shirley Chambers

Represented By  
Heather J Canning  
Heather J Canning  
Barry E Borowitz  
Barry E Borowitz

Willie Elvin Chambers

Represented By  
Heather J Canning  
Barry E Borowitz

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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6:16-18596 Wayne Richard Morrison

Chapter 13

#18.00 Motion by United States Trustee to Dismiss Chapter 13 Case with a Re-Filing Bar

Also #19

EH\_\_

Docket 12

**Tentative Ruling:**

**12/08/2016**

**BACKGROUND**

On September 26, 2016 ("Petition Date"), Wayne Richard Morrison (the "Debtor") filed his petition for chapter 13 relief.

On November 3, 2016, the Office of the United States Trustee ("UST") filed a Motion to Dismiss Chapter 13 Case with a Re-Filing Bar (the "Motion"). No opposition has been filed.

**DISCUSSION**

As set forth by the Ninth Circuit in *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999), bad faith, as cause for the dismissal of a Chapter 13 petition with prejudice, involves the application of the "totality of the circumstances" test. *In re Eisen*, 14 F.3d 469, 470 (9th Cir.1994). The Ninth Circuit has instructed courts deciding whether to dismiss a Chapter 13 petition to consider the following factors:

- (1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner," *id.* (citing *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982));
- (2) "the debtor's history of filings and dismissals," *id.* (citing *In re Nash*, 765 F.2d 1410, 1415 (9th Cir.1985));
- (3) whether "the debtor only intended to defeat state court litigation," *id.* (citing *In re Chinichian*, 784 F.2d 1440, 1445–46 (9th Cir.1986)); and

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**CONT... Wayne Richard Morrison**

**Chapter 13**

(4) whether egregious behavior is present, *In re Tomlin*, 105 F.3d 933, 937 (4th Cir.1997); *In re Bradley*, 38 B.R. 425, 432 (Bankr.C.D.Cal.1984).

A finding of bad faith does not require fraudulent intent by the debtor.

[N]either malice nor actual fraud is required to find a lack of good faith. The bankruptcy judge is not required to have evidence of debtor ill will directed at creditors, or that debtor was affirmatively attempting to violate the law-malfeasance is not a prerequisite to bad faith.

*In re Powers*, 135 B.R. 980, 994 (Bankr.C.D.Cal.1991) (relying on *In re Waldron*, 785 F.2d 936, 941 (11th Cir.1986)).

Here, the UST points to a history of serial filings which it argues reveals that the Debtor is attempting to frustrate creditors. The UST further points to the filing of skeletal petitions and subsequent dismissals as evidence that the Debtor's filings are abusive of the bankruptcy system. In total, the Debtor has had eight prior bankruptcy filings since 2012. All of these cases was dismissed for failure by the Debtor to file information. In his current and ninth case, the balance of the Debtor's schedules were due on October 11, 2016. The Docket reflects that these schedules were never filed. Additionally, the Debtor's current petition lists several creditors – Select Portfolio Servicing, Wells Fargo/Wachovia, Cal-Western Reconveyance, U.S. Bank Home Mortgage, and Wells Fargo Home Mortgage, which appear to be lenders on the Debtor's principal residence. Attached to the Petition is a note from the Debtor indicating that he was unable to obtain credit counseling prior to the foreclosure sale date. Based on the foregoing record, and the Motion filed by the UST, the Court finds that the Debtor's history of filings and dismissals evidence that the case was not filed in good faith and that instead the Debtor appears to be using the bankruptcy system to delay or hinder his creditors without actually seeking to propose a chapter 13 plan of repayment.

Finally, the Court finds that given the Debtor's history of deficient filings (three of which occurred in 2016) and his record of noncompliance with the duties of a debtor, a two-year bar under the Court's § 105 and § 349 authority is appropriate.

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CONT... Wayne Richard Morrison

Chapter 13

**TENTATIVE RULING**

Based on the foregoing, including the Debtor's failure to file opposition which this Court deems as consent to the granting of the Motion under LBR 9013-1(h), the Court is inclined to GRANT the Motion in its entirety.

APPEARANCES REQUIRED.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wayne Richard Morrison Pro Se

**Movant(s):**

United States Trustee (RS) Represented By  
Abram Feuerstein esq

**Trustee(s):**

Rod (MH) Danielson (TR) Pro Se

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**6:16-18596 Wayne Richard Morrison**

**Chapter 13**

**#19.00** CONT Confirmation of Chapter 13 Plan

From: 11/3/16

Also #18

EH\_\_

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Wayne Richard Morrison Pro Se

**Trustee(s):**

Rod (MH) Danielson (TR) Pro Se

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

Thursday, December 08, 2016

Hearing Room 303

12:32 PM

6:16-18688 Vivian C. San Jose

Chapter 13

#20.00 Motion by United States Trustee To Dismiss Chapter 13 Case With A Re-Filing Bar

Also #21

EH\_\_

Docket 21

**\*\*\* VACATED \*\*\* REASON: VOLUNTARY DISMISSAL OF MOTION  
FILED 12/2/16**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Vivian C. San Jose

Represented By  
Rodolfo T Bunagan

**Movant(s):**

United States Trustee (RS)

Represented By  
Abram Feuerstein esq

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-18688 Vivian C. San Jose**

**Chapter 13**

**#21.00** Application for An Order to Show Cause Why Rodolfo T. Bunagan Should Not Be Referred to the Disciplinary Panel for the United States Bankruptcy Court for the Central District of California

Also #20

EH\_\_

Docket 22

**\*\*\* VACATED \*\*\* REASON: ORDER ENTERED 12/6/2016**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Vivian C. San Jose

Represented By  
Rodolfo T Bunagan

**Movant(s):**

United States Trustee (RS)

Represented By  
Abram Feuerstein esq

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-18906 Ethel N Odimegwu**

**Chapter 13**

**#22.00** CONT Confirmation of Chapter 13 Plan

From: 11/10/16

EH\_\_

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Ethel N Odimegwu

Represented By  
Michael Smith

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

Thursday, December 08, 2016

Hearing Room 303

12:32 PM

6:16-19161 Elizabeth Breton Aguilar

Chapter 13

#23.00 Motion by United States Trustee to Dismiss Chapter 13 Case with a Re-Filing Bar

Also #23.1

EH\_\_

Docket 8

**Tentative Ruling:**

**12/08/2016**

**BACKGROUND**

On October 17, 2016 ("Petition Date"), Elizabeth Breton Aguilar (the "Debtor") filed her petition for chapter 13 relief.

On November 9, 2016, the Office of the United States Trustee ("UST") filed a Motion to Dismiss Chapter 13 Case with a Re-Filing Bar (the "Motion"). No opposition has been filed.

**DISCUSSION**

As set forth by the Ninth Circuit in *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999), bad faith, as cause for the dismissal of a Chapter 13 petition with prejudice, involves the application of the "totality of the circumstances" test. *In re Eisen*, 14 F.3d 469, 470 (9th Cir.1994). The Ninth Circuit has instructed courts deciding whether to dismiss a Chapter 13 petition to consider the following factors:

- (1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner," *id.* (citing *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982));
- (2) "the debtor's history of filings and dismissals," *id.* (citing *In re Nash*, 765 F.2d 1410, 1415 (9th Cir.1985));
- (3) whether "the debtor only intended to defeat state court litigation," *id.* (citing *In re Chinichian*, 784 F.2d 1440, 1445–46 (9th Cir.1986)); and

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**CONT... Elizabeth Breton Aguilar**

**Chapter 13**

- (4) whether egregious behavior is present, *In re Tomlin*, 105 F.3d 933, 937 (4th Cir.1997); *In re Bradley*, 38 B.R. 425, 432 (Bankr.C.D.Cal.1984).

A finding of bad faith does not require fraudulent intent by the debtor.

[N]either malice nor actual fraud is required to find a lack of good faith. The bankruptcy judge is not required to have evidence of debtor ill will directed at creditors, or that debtor was affirmatively attempting to violate the law-malfeasance is not a prerequisite to bad faith.

*In re Powers*, 135 B.R. 980, 994 (Bankr.C.D.Cal.1991) (relying on *In re Waldron*, 785 F.2d 936, 941 (11th Cir.1986)).

Here, the UST points to a history of serial filings which it argues reveals that the Debtor is attempting to frustrate creditors. The UST further points to the filing of skeletal petitions and subsequent dismissals as evidence that the Debtor's filings are abusive of the bankruptcy system. In total, the Debtor has had 6 prior bankruptcy filings since 2009. Of these filings, one resulted in a chapter 7 discharge in 2011. The remaining 5 (two in 2009, one in 2014, and two in 2016), were all dismissed for failure by the Debtor to file information. In her current and seventh case, the balance of the Debtor's schedules were due on October 31, 2016. The Docket reflects that these schedules were never filed. Additionally, the Debtor's initial petition lists only one creditor – Select Portfolio Servicing. Based on the foregoing record, and the Motion filed by the UST, the Court finds that the Debtor's history of filings and dismissals evidence that the case was not filed in good faith and that instead the Debtor appears to be using the bankruptcy system to delay or hinder her creditors without actually seeking to propose a chapter 13 plan of repayment.

Finally, the Court finds that given the Debtor's history of deficient filings (three of which occurred in 2016) and her record of noncompliance with the duties of a debtor, a two-year bar under the Court's § 105 and § 349 authority is appropriate.

**TENTATIVE RULING**

Based on the foregoing, including the Debtor's failure to file opposition which this

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**CONT... Elizabeth Breton Aguilar**

**Chapter 13**

Court deems as consent to the granting of the Motion under LBR 9013-1(h), the Court is inclined to GRANT the Motion in its entirety.

APPEARANCES REQUIRED.

<b>Party Information</b>
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**Debtor(s):**

Elizabeth Breton Aguilar	Pro Se
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**Movant(s):**

United States Trustee (RS)	Represented By Abram Feuerstein esq
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**Trustee(s):**

Rod (MH) Danielson (TR)	Pro Se
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**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Houle, Presiding  
Courtroom 303 Calendar**

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19161 Elizabeth Breton Aguilar**

**Chapter 13**

**#23.10** CONT Confirmation of Chapter 13 Plan

From: 12/1/16

Also #23

EH\_\_

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Elizabeth Breton Aguilar Pro Se

**Trustee(s):**

Rod (MH) Danielson (TR) Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19656 Jerome D. Williams**

**Chapter 13**

**#24.00** Confirmation of Chapter 13 Plan

EH\_\_

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Jerome D. Williams

Represented By  
Christopher J Langley

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19668 Christina M Starr**

**Chapter 13**

**#25.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Christina M Starr

Represented By  
Aaron Lloyd

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19771 Jonathan L Viegas**

**Chapter 13**

**#26.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 0

**\*\*\* VACATED \*\*\* REASON: CASE DISMISSED 11/21/16**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Jonathan L Viegas

Pro Se

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19772 Miguel Martinez**

**Chapter 13**

**#27.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 0

**\*\*\* VACATED \*\*\* REASON: CASE DISMISSED 11/21/16**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Miguel Martinez

Pro Se

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19783 Melanie Lourdes Davis**

**Chapter 13**

**#28.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Melanie Lourdes Davis

Represented By  
Gary S Saunders

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19809 Sandra Ann Silva**

**Chapter 13**

**#29.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 0

**\*\*\* VACATED \*\*\* REASON: CASE DISMISSED 12/6/16**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Sandra Ann Silva

Represented By  
Gordon L Dayton

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19824 Keith Nigel Tennison**

**Chapter 13**

**#30.00** Confirmation of Chapter 13 Plan

EH\_\_

Docket 0

**\*\*\* VACATED \*\*\* REASON: CASE DISMISSED 11/21/16**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Keith Nigel Tennison

Pro Se

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19848 David Paul Zamarripa and Ruth Zamarripa**

**Chapter 13**

**#31.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 0

**\*\*\* VACATED \*\*\* REASON: CASE DISMISSED 11/8/16**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

David Paul Zamarripa

Represented By  
Javier H Castillo

**Joint Debtor(s):**

Ruth Zamarripa

Represented By  
Javier H Castillo

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:32 PM

**6:16-19869 Sonia Galicia**

**Chapter 13**

**#32.00** Confirmation of Chapter 13 Plan

EH\_\_

Docket 0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Sonia Galicia

Represented By  
Paul Y Lee

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:33 PM

**6:14-23150 Vivian Munson**

**Chapter 13**

**#33.00** Trustee's Motion to Dismiss Case

EH\_\_

Docket 137

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Vivian Munson

Represented By  
Amanda G Billyard  
Andy C Warshaw

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

**Thursday, December 08, 2016**

**Hearing Room 303**

12:33 PM

**6:16-10423 Ihtsham Nabi**

**Chapter 13**

**#34.00** CONT Trustee's Motion to Dismiss Case

From: 12/1/16

EH\_\_

Docket 51

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Ihtsham Nabi

Represented By  
Yoon O Ham

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se

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

Thursday, December 08, 2016

Hearing Room 303

12:33 PM

**6:15-14680 Jose Jesus Reveles and Joanna Reveles**

**Chapter 13**

**#35.00** CONT Trustee's Motion to Dismiss Case

From: 12/1/16

EH\_\_

Docket 33

**\*\*\* VACATED \*\*\* REASON: VOLUNTARY DISMISSAL OF MOTION  
FILED 12/6/16**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Jose Jesus Reveles

Represented By  
Donald M Medeiros

**Joint Debtor(s):**

Joanna Reveles

Represented By  
Donald M Medeiros

**Trustee(s):**

Rod (MH) Danielson (TR)

Pro Se