Dated: October 01, 2015
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re: CAROL McCORD BERRY	**)**	**Case No. 13-12374**
	)	
Debtor.	**)**	**Chapter 13**

MEMORANDUM OPINION RE: MOTION TO SET ASIDE AND VACATE ORDER OF DISCHARGE AS TO INSOUTH BANK

At issue in this proceeding is InSouth Bank's ("Creditor") Motion to Set Aside and Vacate Order of Discharge. Creditor contends that the Court should set aside Carol McCord Berry's ("Debtor") discharge alleging she committed fraud by improperly listing debts in her Chapter 13 plan or petition. Debtor listed five obligations to Creditor in her petition. Creditor, in turn, filed proofs of claim for only three of the listed obligations. The debts for which Creditor filed proofs of claim were paid in full either by disbursements from the Chapter 13 Trustee or through proceeds from the sale of collateral. Creditor failed to file proofs of claim for two of the scheduled debts and now asserts excusable neglect based on the alleged fraud and misrepresentations of Debtor. On July 21, 2015, Creditor filed its Motion to Set Aside and Vacate Order of Discharge as to itself only.

The Court conducted a hearing regarding Creditor's motion on September 16, 2015, pursuant to 11 U.S.C. § 1328(e).

I. JURISDICTION

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A),(O). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

II. FACTS

Debtor filed a voluntary Chapter 13 Petition on September 6, 2013. In her petition, Debtor listed several debts including five obligations owed to Creditor. Pursuant to an Amended Schedule D Debtor filed September 18, 2013, Creditor's debts were listed as follows:

Account No.	**Amount**	**Encumbered Property**
Loan XXXXX3471	$29,504.55	15 Acres of Farm Land on E Park St. Alamo, TN
Loan XXXXX3465	$30,918.27	177 Conalco Dr. Jackson, TN
Loan XXXXX3467	$70,616.64	717 E. Park St. Alamo, TN
Loan XXXXX3468	$160,158.68	Deed of Trust 165 Conalco Dr. Jackson, TN
Loan XXXXX3469[1]	$384,151.41	First Mortgage (Marked as a Contingent Debt) 165 Conalco Dr. Jackson, TN 905 and 915 First St. Union City, TN

[1] The Promissory Notes for Loans 3468 and 3469 were executed by Superior Enterprises, Inc. and subsequently guarantied by Debtor in her personal capacity. As collateral for the loans, Debtor pledged the real property associated with each of the loans in her personal capacity for the property at 165 Conalco Dr. and in her capacity as President of Superior Enterprises, Inc. for the property located at 905 and 915 First St. Union City, TN. Debtor's guaranty of Loan 3469 would be a second mortgage on the property at 165 Conalco Dr. rather than a first mortgage, but this does not change the outcome of the instant matter.

Creditor filed three proofs of claim in Debtor's Chapter 13 case. The Chapter 13 Trustee paid each of these claims through disbursements or through proceeds from the sale of collateral. Creditor filed Claim No. 3-1 on October 10, 2013, for Loan XXXXX3465. This claim reflected a total balance of $31,116.49, which was fully secured by property located at 177 Conalco Drive Jackson, Tennessee. Creditor filed Claim No. 4-1 on October 10, 2013, for Loan XXXXX3467. This claim reflected a total balance of $70,790.27, which was fully secured by property located at 717 East Park St. Alamo, Tennessee. Creditor amended Claim No. 4-1 on June 25, 2014, to reflect a balance of zero. The amended claim indicated it had been paid in full outside the plan. Creditor filed Claim No. 5-1 on October 16, 2013, for Loan XXXXX3471. This claim reflected a total balance of $29,635.05 secured by property described as 15 acres of farm land located on East Park Street in Alamo, Tennessee. At issue in the instant Motion are Loan XXXXX3468 ("Loan 3468") and Loan XXXXX3469 ("Loan 3469"). Creditor did not file a proof of claim for either of these loans in Debtor's Chapter 13 case.

In Debtor's professional capacity, she was President of Superior Enterprises, Inc. ("Superior"). On the same date Debtor filed her individual Chapter 13 case, Superior filed a Chapter 11 petition, case number 13-12373. Superior's petition was filed September 6, 2013, and listed Creditor as holding a secured claim through a first mortgage on property located at 905 and 915 First St. Union City, Tennessee. The petition indicated the total balance on the secured claim was $528,938.07. Superior's case was dismissed April 20, 2015.

At the time Debtor filed her Chapter 13 petition, she simultaneously filed a proposed Chapter 13 plan. Debtor's proposed plan indicated Creditor was a secured creditor for property at 165 Conalco Dr. and would be paid outside the plan. Debtor also listed several other debts in her plan including additional secured and long-term debts held by Creditor. However, only the debts associated with property located at 165 Conalco Dr. Jackson, Tennessee, and 905 & 915 First St. Union City, Tennessee, have been called into issue by Creditor in the instant matter. Debtor filed an amended plan on February 3, 2014, in which she indicated that the debts for the properties related to Loans 3468 and 3469 were to be "paid outside through Chapter 11 Superior Enterprises, Inc."

(Debtor's Amended Plan, ECF No. 89). Debtor's Chapter 13 plan was confirmed June 9, 2014, and the confirmed plan states the debts for Loans 3468 and 3469 were to be "paid by other resources."[2]

Debtor paid $74,192.57 into her case from the date of filing through March 26, 2014, according to the Trustee's Final Report. The Chapter 13 Trustee disbursed $44,572.46 to Creditors. The Chapter 13 Trustee paid in full all claims filed in Debtor's case using funds paid into the estate and proceeds received from the sale of collateral. As a result, this Court granted Debtor a Chapter 13 discharge on August 11, 2014. The failure of Creditor to file proofs of claim for Loans 3468 and 3469 resulted in Debtor's personal liability on those notes being discharged pursuant to 11 U.S.C. § 1328(a).

This Court entered an order October 9, 2014, approving the Chapter 13 Trustee's Final Report and Account, discharging the Chapter 13 Trustee, and closing the case. Creditor moved to re-open the case July 1, 2015, and this Court re-opened the case July 6, 2015. Creditor filed the instant Motion July 21, 2015, seeking to set aside Debtor's Chapter 13 discharge. In moving to set aside Debtor's discharge, Creditor relied on 11 U.S.C. § 1328(e), Federal Rule of Bankruptcy Procedure 9024, and Federal Rule of Civil Procedure 60 alleging fraud, mistake, misrepresentation, and excusable neglect.

III. ANALYSIS

Creditor cites fraud, mistake, misrepresentation, and excusable neglect as grounds to set aside and vacate Debtor's discharge. The Bankruptcy Code allows a Court to set aside a discharge "on request of a party in interest before one year after a discharge" has been entered. 11 U.S.C. § 1328(e). Pursuant to § 1328(e), in order to revoke or set aside a discharge, the Court must find that "(1) such discharge was obtained

[2] The instant case is a bit of an anomaly in that Debtor completed her plan payments on March 26, 2014, prior to confirmation of any such plan. Debtor's plan was confirmed in Court May 22, 2014, and an Order of Confirmation was entered June 9, 2014. The confirmed plan paid 100% to unsecured creditors and the record reflects Debtor had ample assets available to liquidate and pay the plan in full prior to confirmation. All sales of proceeds were authorized by this Court which resulted in completion of plan payments prior to confirmation.

by the debtor through fraud; and (2) the requesting party did not know of such fraud until after such discharge was granted." *Id.* Creditor argues that the Court should also look beyond § 1328(e) and set aside Debtor's discharge pursuant to Federal Rule of Civil Procedure 60(b). Federal Rule of Bankruptcy Procedure 9024 applies Federal Rule of Civil Procedure 60 in cases under the Bankruptcy Code subject to three limitations not applicable here. Fed. R. Bankr. P. 9024. Civil Rule 60 allows a court to "relieve a party . . . from a final judgment, order, or proceeding" for six different grounds for relief including mistake, excusable neglect, fraud, and "any other reason that justifies relief." Fed. R. Civ. P. 60. "[C]ompeting against [Civil] Rule 60(b) is a public policy favoring finality of judgments and the termination of litigation." *In re Jarvis*, 405 B.R. 611, 614 (Bankr. N.D. Ohio 2009) (citing *Waifersong, Ltd., Inc. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992)). Therefore, before a court sets aside a discharge, the court "should conclude that the need for relief outweighs this competing public policy interest." *Jarvis*, 405 B.R. at 614.

In the case at bar, Creditor's motion is not based on a clerical mistake or omission. Instead, Creditor asserts that Debtor improperly listed debts and obligations in her petition and plan. Creditor specifically relies on Civil Rule 60(b)(1),(3),(6) in the following allegations:

> 1. The personal guaranty for each loan signed by the debtor were contingent debts that did not become due until Superior defaulted on the loans. Superior did not default until its bankruptcy case was dismissed on May 6, 2015.
>
> 2. The claims were improperly listed through the debtor's petition and plan. If they had been properly listed, the claims would have sent the debtor over the threshold of § 109(e) making her ineligible for Chapter 13 bankruptcy.
>
> 3. The debtor improperly listed loan number 3468 through her Chapter 13 petition and plan as she is the sole owner of the real property located on Conalco Drive and the claim should have been paid through the Debtor's plan as a secured mortgage claim or the debtor should have been required to surrender her interest in the real property.

(Creditor's Mem. in Supp. of Mot. to Set Aside Discharge 4, ECF No. 153).

Creditor first argues that the personal guaranties signed by Debtor with regards to Loans 3468 and 3469 remained contingent debts that "could not have been discharged by the order of discharge in the Chapter 13." (Creditor's Mem. of Law in Supp. of Mot. to Set Aside Discharge 6, ECF No. 153). Creditor cites no authority for this proposition. Instead, Creditor argues that if this Court determines the debts were not contingent and properly included in Debtor's plan, then it "was a mistake and excusable neglect on the part of the Creditor to not file the proper proof of claims and other pleadings which may have been required at the time to deal with the two loans within [Debtor's] Chapter 13 Plan." *Id.*

Although the term "contingent" is not defined in the Bankruptcy Code, courts have concluded that contingent claims are those in which a debtor will be required to pay only upon the occurrence of a future event triggering the debtor's liability. *See, e.g.*, *In re Parks,* 281 B.R. 899, 901-02 (Bankr. E.D. Mich. 2002) (citing *Fostvedt v. Dow (In re Fostvedt),* 823 F.2d 305, 306 (9th Cir. 1987)). A claim does not arise post-petition simply because the time for payment is triggered by an event that happens after the filing of the petition. *In re Fretter*, Inc., 2000 WL 1780256, at *3 (Bankr. N.D. Ohio Sept. 29, 2000). As a result, "it is possible that a right to payment that is not yet enforceable at the time of filing of the petition under non-bankruptcy law, may be defined as a claim within Section 101(5)(A) of the Bankruptcy Code." *Id.* (quoting *Federated Dept. Stores, Inc. v. Wongco,* 236 B.R. 583, 589 (Bankr. S.D.N.Y. 1999)).

The contingency status of a debt does not bar such debt from being discharged in a bankruptcy proceeding. In rejecting the argument that a guaranty is not dischargeable in a bankruptcy case, the Bankruptcy Court for the Southern District of Ohio reasoned as follows:

> That contingent claims are dischargeable in bankruptcy makes sense for reasons well-stated by the court in *Baldwin-United* noting that the combined effect of a broad definition of claim and a process for estimating certain remote claims is to:
>
> > . . . bring all claims of whatever nature into the bankruptcy estate, and to give all claimants the same opportunity to share in any distribution from the estate. No longer will some creditors enjoy a windfall or effectively be denied any recovery based upon the provability or allowability of their claims and

> the financial status of the debtor after bankruptcy. Equally important, Congress has [ensured] that the debtor will receive a complete discharge of his debts and a real fresh start, without the threat of lingering claims "riding through" the bankruptcy.
>
> *In re Baldwin-United Corp.*, 55 B.R. 885, 898 (Bankr. S.D. Ohio 1985). In other words, broad definition of claim allows a bankruptcy court to deal fairly and comprehensively with all creditors in the case and, without which, a debtor's ability to reorganize would be seriously threatened by the survival of lingering remote claims and potential litigation rooted in the debtor's prepetition conduct.

In re Huffy Corp., 424 B.R. 295, 301 (Bankr. S.D. Ohio 2010).

Based upon the reasoning set forth in *In re Huffy Corp.*, Creditor's argument regarding nondischargeability of contingent debts is meritless. Regardless of the status of contingency of her debts, Debtor properly received a Chapter 13 discharge. Creditor cited no authority for its assertion to the contrary and a cursory review of case law would have alerted Creditor to the dischargeability of contingent claims in bankruptcy proceedings.

As a safety net, Creditor defends its actions, or lack thereof, by arguing excusable neglect in not filing proofs of claims for Loans 3468 and 3469. Since this Court has determined Debtor's obligations were properly discharged, the issue becomes whether Creditor is saved by excusable neglect under Civil Rule 60(b)(1). The Supreme Court has previously weighed in on the parameters of neglect considered excusable under Civil Rule 60(b). The Court noted that Congress has not provided "guideposts for determining what sorts of neglect will be considered 'excusable,'" but concluded that "the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). The Court further explained that these considerations include "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.*

After taking these factors into consideration and reviewing the record as a whole, it is this Court's opinion that Creditor's neglect is not excusable. Creditor had ample

opportunity to file proofs of claim for the two debts in question and actually filed claims against the other three debts listed in Debtor's Schedules. By filing claims against three debts and omitting the remaining two, this Court believes Creditor made a conscious decision not to file claims against Loans 3468 and 3469. This Court does not begin to conjecture as to the reasoning behind this decision, but now holds that Creditor's failure to file proofs of claim in this case does not rise to the level of excusable neglect.

Creditor's next argument concerns the debt limits contained in 11 U.S.C. § 109. Creditor asserts that Debtor improperly listed debts on her petition and that if she had listed them properly, she would have been ineligible for Chapter 13 relief. An individual's debt limits to qualify for Chapter 13 relief are governed by 11 U.S.C. § 109(e). The Sixth Circuit has historically found that debt limits under § 109 are not jurisdictional in nature and therefore can be waived because these limits establish eligibility requirements for debtors. *Glance v. Carroll (In re Glance),* 487 F.3d 317, 321 (6th Cir.2007) (stating that the eligibility requirements of § 109(e) create a gateway into the bankruptcy process, not an ongoing limitation on the jurisdiction of the bankruptcy courts"); *Simon v. Amir (In re Amir)* 436 B.R. 1, 21 (B.A.P. 6th Cir. 2010) ("Several circuit appellate courts have . . . addressed the issue of whether eligibility under . . . 11 U.S.C. § 109 is jurisdictional. These decisions have all found that eligibility under § 109 is not jurisdictional in nature."). It then follows that any issues with these eligibility requirements should be raised pre-confirmation or within a reasonable time thereafter. *See Cline v. Welch (In re Welch)*, 1998 WL 773999, at *2 (6th Cir. Oct. 11, 1998) (raising a res judicata argument by looking to § 1327(a) as barring the relitigation of any issue which was decided or which *could have been decided* at confirmation") (emphasis in original); *In re Sullivan*, 245 B.R. 416, 418 (N.D. Fla. 1999) (giving a nod toward the ancient doctrine of laches in reasoning that the question of eligibility may be waived if and when a creditor waits an unreasonable length of time to raise the issue before the court).

Allowing a creditor to raise § 109 issues long after confirmation increases the potential for a lack of finality in a multitude of cases. *See Adams v. Zarnel (In re Zarnel)*, 619 F.3d 156, 169 (2d Cir. 2010) ("[C]onsideration of [§ 109] limitations after other decisions on the merits have taken place would be wasteful and unfair; because

bankruptcy is a swift-moving process involving multiple parties, 'creditors and other parties in interest have a considerable interest in being able to rely on the existence of a case, the bankruptcy court's jurisdiction, and the validity of actions taken in the case' in order to facilitate asset-preserving transactions.") (quoting *In re Ross*, 338 B.R. 134, 140 (Bankr. N.D. Ga. 2006)); *In re Harris*, 2012 WL 3732808, at *1 (Bankr. E.D.N.C. Aug. 28, 2012) ("If the court found that the § 109(e) debt limit was jurisdictional . . . then this issue could be raised at any time by any party. Nothing would stop the chapter 13 trustee, or a creditor for that matter, from raising the issue four years after confirmation when a debtor is only a few payments from completion of payments and discharge.").

The Sixth Circuit has also previously recognized this potential for lack of finality in bankruptcy proceedings and the tax on judicial efficiency by allowing parties unlimited time to raise issues alleging § 109 eligibility requirements.

> When a creditor appeals a Chapter 13 discharge, we believe that the language of § 1327 and the need for finality in the multilateral bankruptcy context similarly bar the introduction of issues that could have been raised at confirmation. Utilizing the more relaxed common law issue preclusion standard, by comparison, would allow certain creditors to raise claims against the bankruptcy estate collaterally that could and should have been raised in the confirmation process, but were not actually litigated or decided at that stage. Such a result would be contrary to the design and intent of the Bankruptcy Code.

In re Welch, 1998 WL 773999, at *3. This Court therefore finds the Creditor waived any argument related to the § 109 debt limits by not raising them prior to confirmation. This Court declines to address issues that could have been raised prior to confirmation or within a reasonable time thereafter.

Creditor filed an amended memorandum of law on September 9, 2015, in which it asserts that Debtor's obligations were noncontingent, liquidated unsecured debts and this classification would make Debtor ineligible for Chapter 13 relief. While this assertion is contrary to at least one argument asserted in Creditor's original memorandum of law, this Court has nonetheless reviewed the amended memorandum and finds that this argument does not change the ultimate decision of this Court. There was a time to raise issues regarding debt limits under § 109 and that time has passed.

Creditor's next specific argument is that Debtor improperly listed Loans 3468 and 3469 as she is the sole owner of the real property located on Conalco Drive. Creditor asserts these debts should have been paid through Debtor's plan as a secured mortgage claim or that Debtor should have been required to surrender her interest in this property. Creditor argues that this improper listing was "a fraud committed by the Debtor" supporting revocation of Debtor's discharge. (Creditor's Mem. of Law in Supp. of Mot. to Set Aside Discharge 7, ECF No. 153).

The Sixth Circuit defines fraud as "the knowing misrepresentation of a material fact, or concealment of the same when there is a duty to disclose, done to induce another to act to his or her detriment." *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 456 (6th Cir. 2008). This Court agrees with Debtor's attack on Creditor's allegations of fraud by pointing out that Creditor fails to cite any 'fraudulent conduct' by Debtor other than her alleged miscategorization of unsecured versus secured debts. *See* Debtor's Resp. to Creditor's Mot. to Set Aside and Vacate Order of Discharge 9, ECF No. 156. (citing case law to support the plain language of § 1328(e)). Creditor's argument is cyclical in that the alleged fraud points to the improper listing of debts which would violate the debt limits contained in 11 U.S.C. § 109(e). *Id.*

The fact of the matter is that Debtor listed all obligations owed in her Petition and amended Schedule D. Debtor listed these debts as secured claims and Creditor had ample opportunity to file proofs of claim for these debts and/or object to confirmation of Debtor's plan. Creditor chose only to file three proofs of claim and did not file any objections in the case at all. Confirmation is a very serious event. It "binds creditors and debtors to perform the obligations set out in the confirmed plan, and the court routinely relies on the res judicata effect of an order of confirmation to preclude issues from being raised later." *In re Harris*, 2012 WL 3732808 at *1. As such, this Court is again of the opinion that Creditor had ample time and opportunity to raise issues pre-confirmation and the failure to do so now bars them from re-litigating issues that could have been previously raised.

To the extent Creditor asserts further allegations not specifically addressed above, Creditor seeks relief under Civil Rule 60(b)'s savings clause. *See* Fed. R. Civ. P. 60(b)(6)

(allowing a court to set aside a final judgment or proceeding for "any other reason that justifies relief").

"Rule 60(b)(6) applies 'in exceptional or extraordinary circumstances which are not addressed in the first five numbered clauses of the Rule' since 'almost every conceivable ground for relief is covered under the other subsections of Rule 60(b).'" *In re Ivens Props.*, 2014 WL 667659, at *2 (Bankr. E.D. Tenn. Feb. 20, 2014) (quoting *In re Reiman*, 431 B.R. 901, 910 (Bankr. E.D. Mich. 2010)). "Consequently, courts must apply Rule 60(b)(6) relief only in 'unusual and extreme situations where principles of equity *mandate* relief.'" *Blue Diamond Coal Co. v. Trs. of the UMWA Combined Benefit Fund*, 249 F.3d 519, 524 (6th Cir. 2001) (quoting *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990)) (emphasis in original). This Court is further persuaded by a decision from the Bankruptcy Court for the Western District of Arkansas and adopts its reasoning in applying this savings clause. "[A]n action for fraud on the court pursuant to Rule 60(b)'s savings clause is 'unavailable to a party whose situation is due to his own fault, neglect, or carelessness.'" *Shaffer v. City Nat'l Bank (In re NWFX, Inc.)* 384 B.R. 214, 220 (Bankr. W.D. Ark. 2008) (quoting *Winfield Assocs., Inc. v. Stonecipher*, 429 F. 2d 1087, 1090 (10th Cir. 1970) (also stating that relief based on fraud on the court is not available "if the complaining party 'has, or by exercising proper diligence would have had, an adequate remedy at law, or by proceedings in the original action...to open, vacate, modify or otherwise obtain relief against, the judgment.'") (citation omitted)).

Creditor had the opportunity to file proofs of claim for all five scheduled debts in Debtor's Petition. Rather than doing so, Creditor made the choice to file claims for only three of the five debts and not to pursue the remaining two debts through the Chapter 13 proceedings. By failing to file proofs of claim for the two additional scheduled debts, Creditor found itself in the present situation as a result of its own actions. Had Creditor filed the additional claims, things might have turned out differently. It is not before this Court to determine what may have happened differently. This Court concludes that Creditor is not entitled to relief under § 1328(e) or Civil Rule 60(b) because such relief is "unavailable to a party whose situation is due to his own fault, neglect, or carelessness." *Id.*

IV. Conclusion

For the reasons stated herein, this Court concludes the Creditor is not entitled to the relief requested in its Motion to Set Aside and Vacate Order of Discharge. Creditor has failed to establish sufficient evidence to warrant the relief requested and the Motion to Set Aside and Vacate Order of Discharge will be DENIED.

The Court will enter a separate order in accordance herewith.

Mailing list:

Rob Vandiver, Attorney for Debtor
Roger Stone, Attorney for Creditor
Tim Ivy, Chapter 13 Trustee
InSouth Bank, 5299 Poplar Avenue, Memphis, TN 38119
Principal Address: InSouth Bank, 111 S Washington St, Brownsville, TN 38013
Registered Agent: BMN Corp. Services, 511 Union St Suite 1600, Nashville, TN 37219

Dated: October 01, 2015
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re: CAROL McCORD BERRY	**)**	**Case No. 13-12374**
	)	
Debtor.	**)**	**Chapter 13**

ORDER DENYING MOTION TO SET ASIDE AND VACATE ORDER OF DISCHARGE AS TO INSOUTH BANK

For the reasons set forth in the Court's Memorandum Opinion entered in accordance herewith, the Creditor's Amended Motion to Set Aside and Vacate Order of Discharge as to InSouth Bank (ECF No. 163) is **DENIED**.

IT IS SO ORDERED.

Mailing list:

Rob Vandiver, Attorney for Debtor
Roger Stone, Attorney for Creditor
Tim Ivy, Chapter 13 Trustee
InSouth Bank, 5299 Poplar Avenue, Memphis, TN 38119
Principal Address: InSouth Bank, 111 S Washington St, Brownsville, TN 38013
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