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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 FRESNO DIVISION

8 In re) Case No. 11-12668-B-13
9 Alvina Eileen Fischer,) DC No. AF-1
10 Debtor.)
_____)

11 **MEMORANDUM DECISION REGARDING DEBTOR’S OBJECTION**
12 **TO EVERHOME MORTGAGE COMPANY’S NOTICE OF**
13 **MORTGAGE PAYMENT CHANGE**

14 This disposition is not appropriate for publication. Although it may be cited for
15 whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no
16 precedential value. See 9th Cir. BAP Rule 8013-1.

17 Debtor, Alvina Eileen Fischer appeared *in propria persona*.

18 Kristen Gates, Esq., appeared on behalf of the chapter 13 trustee, Michael H. Meyer,
19 Esq.

20 Before the court is an objection (the “Objection”) filed by the debtor, Alvina
21 Eileen Fisher (the “Debtor”) to a Notice of Mortgage Payment Change filed by
22 Everhome Mortgage Company (“Everhome”). For the reasons set forth below, the
23 Debtor’s Objection will be sustained in part.

24 This memorandum contains the court’s findings of fact and conclusions of
25 law required by Federal Rule of Civil Procedure 52(a), made applicable to this
26 contested matter by Federal Rule of Bankruptcy Procedure 7052. The bankruptcy
27 court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C.
28 § 1325¹ and General Orders 182 and 330 of the U.S. District Court for the Eastern

¹Unless otherwise indicated, all bankruptcy, chapter, code section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated *after* October 17, 2005, the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,

1 District of California. This is a core proceeding as defined in 28 U.S.C.
2 §157(b)(2)(A).

3 **Background.**

4 This bankruptcy was filed under chapter 13 on March 8, 2011. On August 1,
5 2011, Everhome filed a proof of claim for the mortgage against the Debtor's
6 residence in the amount of \$156,710.62. Based on documents attached to the proof
7 of claim, it appears that the Debtor's mortgage originated with Mission Hills
8 Mortgage Corporation ("Mission Hills") on March 1, 2001. At that time, the Debtor
9 borrowed \$145,000 secured by a deed of trust against her residence. Section 3 of
10 the deed of trust, entitled "Funds for Escrow Items," required the Debtor to pay
11 Mission Hills, in addition to the regular principal and interest, sufficient funds to
12 cover, *inter alia*, the property taxes and insurance (the "Escrow Account"). The
13 mortgage was assigned to Everhome on July 31, 2008.

14 Everhome's proof of claim stated that there was an arrearage at the
15 commencement of the case in the amount of \$36,335.22, including numerous late
16 charges and "inspection fees." The monthly mortgage payment was stated to be
17 \$1,786.19, which included an "escrow" payment of \$747.39. The Debtor's
18 modified chapter 13 plan (the "Plan") was confirmed at a hearing on June 9, 2011.²
19 The Plan provides that the arrearages will be paid through the Plan. However, the
20 Debtor will make her post-petition mortgage payments to Everhome in the amount
21 of \$1,038.80 per month, outside of the Plan.

22 On April 9, 2012, "Everbank" filed a Notice of Mortgage Payment Change
23 ("Payment Change Notice") pursuant to FRBP 3002.1(b). The Payment Change
24 Notice stated that the "escrow" portion of the mortgage payment was being reduced
25 from \$747.39 to \$269.05 without any change to the principal and interest portion of
26 the mortgage payment.

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28 Apr. 20, 2005, 119 Stat. 23.

²The court did not receive and enter a proposed confirmation order until June 15, 2012.

1 On May 9, 2012, the Debtor filed and served the Objection in which she
2 disputed, *inter alia*, to the requirement to pay any money for the “escrow.” The
3 Debtor contends that she has paid her own property taxes and insurance and that the
4 Escrow Account is not necessary. Everhome did not respond to the Objection or
5 appear at the hearing . The Debtor also objects to Everhome’s accounting and
6 application of the funds that she had previously paid into the Escrow Account, but
7 resolution of that dispute will require an adversary proceeding and is beyond the
8 scope of this Objection. The court deems the Objection to be a timely motion
9 pursuant to FRBP 3002.1(e) to determine whether further payment to the Escrow
10 Account is required by the mortgage agreement.³

11 In support of her Objection, the Debtor produced a copy of a letter from
12 Mission Hills dated June 3, 2002, prior to Everhome’s acquisition of the mortgage,
13 advising the Debtor that her “impound account” has been removed and that her
14 mortgage payment of principal and interest only would be \$1,038.80. The Debtor
15 stated in a declaration that she has been paying the property taxes. She also
16 produced evidence to show that her residence is currently insured by AAA of
17 Northern California with Everhome named as the mortgagee. Based on the
18 evidence and statements offered in support of the Objection, and Everhome’s lack
19 of response thereto, the court is persuaded that the disputed escrow payment is not
20 required by the underlying mortgage agreement and applicable non-bankruptcy law
21 to cure a default or to maintain payments on the mortgage.

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25 ³Rule 3002.1(e) provides a mechanism for resolving disputes over any charge to an
escrow payment. It states:

26 (e) Determination of Fees, Expenses, or Charges. On motion of the debtor or trustee filed
27 within one year after service of a notice under subdivision (c) of this rule, the court shall,
28 after notice and hearing, determine whether payment of any claimed fee, expense, or
charge is required by the underlying agreement and applicable nonbankruptcy law to cure
a default or maintain payments in accordance with § 1322(b)(5) of the Code.

1 **Conclusion.**

2 Based on the foregoing, the Debtor's objection will be sustained to the extent
3 she seeks a declaration that the escrow or impound component of her original
4 mortgage agreement is no longer required.

5 Dated: June 26, 2012

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7 /s/ W. Richard Lee
8 W. Richard Lee
9 United States Bankruptcy Judge
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