

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, March 17, 2021
Place: Department B – Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [20-10017](#)-B-13 **IN RE: MARISSA GONZALES**
[PBB-2](#)

MOTION TO MODIFY PLAN
2-4-2021 [\[38\]](#)

MARISSA GONZALES/MV
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

2. [20-13727](#)-B-13 **IN RE: ADOLFO/AURELIA HERNANDEZ**
[SL-1](#)

MOTION TO CONFIRM PLAN
2-9-2021 [\[31\]](#)

AURELIA HERNANDEZ/MV
SCOTT LYONS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(c)(1) requires motions, exhibits, and other specified pleadings to be filed as separate documents. Here, the motion, plan, and a blank proof of claim form were combined into one document and not filed separately. Doc. #31.

3. [17-12940](#)-B-13 **IN RE: NICHOLAS/MARGARET GREEN**
[JDR-8](#)

MOTION TO MODIFY PLAN
2-10-2021 [\[133\]](#)

MARGARET GREEN/MV
JEFFREY ROWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was filed on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled.

Margaret Louise Green ("Debtor") seeks to confirm her Second Modified Plan. Doc. #133. Debtor wishes to extend the duration of her plan to 84 months under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act because she is experiencing material financial hardship due to COVID-19. *Id.*

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed because the plan does not provide for submission of all of Debtor's future earnings to the Trustee as is necessary to execute the plan and the plan uses outdated form EDC 3-080 effective May 1, 2012, rather than the most recent November 9, 2018 revision. Doc. #146. Trustee also contends that the plan is short by \$21.42 per month effective month 43. *Id.*

Debtor replied conceding that the outdated form was an error counsel failed to catch, but that both objections can be addressed in the order confirming plan. Doc. #148. Debtor agrees to increase the plan

payment to \$2,799.49 starting in month 43 and proposes to replace the distribution provision of section 4.02 consistent with Form EDC 3-080 (Rev. 11/09/18). Specifically, Debtor proposes insertion of the following language:

The following provisions replaces the distribution provision of 4.02:

(a) At a minimum, each monthly plan payment must be sufficient to pay in full: (i) Trustee's fees; (ii) post-petition monthly payments due on Class 1 claims; (iii) the monthly dividend specified in section **2.07** for administrative expenses; and (iv) the monthly dividends payable on account of Class 1 arrearage claims, Class 2 claims, and executory contract and unexpired lease arrearage claims.

(b) If the amount paid by Debtor is insufficient to pay all of the minimum dividends required by section (a), Trustee shall pay, to the extent possible, such fees, payments, expenses, and claims in the order specified in section (a)(i) through (iv). If the amount paid by Debtor is insufficient to pay all dividends due on account of fees, payments, expenses, and claims within a subpart of section (a), no dividend shall be paid on account of any of the fees, payments, expenses, and claims within such subpart except as permitted by section **2.08(b)(1)**.

(c) Each month, if funds remain after payment of all monthly dividends due on account of the fees, payments, expenses, and claims specified in section (a)(i) through (iv), the remainder shall be paid pro rata, first to holders of Class 1 arrearage claims, Class 2 claims, and executory contract and unexpired lease arrearage claims; second to Class 5 priority claims; third to Class 6 unsecured claims; and fourth to Class 7 unsecured claims.

(d) Over the plan's duration, distributions must equal the total dividends required by sections **2.05, 2.07, 2.08, 2.09, 2.13, 2.14, 2.15**, and 3.01. The case may be dismissed if Debtor's plan payments are or will be insufficient to pay these dividends.

Id., at 2-3 (emphasis in original). Debtor believes that these additions do not discriminate against noticed creditors and should allow for confirmation in the plan. *Id.*

Debtor notes that the Second Modified Plan relies on the 24-month extension provision of the CARES Act, which is sunseting on March 27, 2021. 116 P.L. 136, 134 Stat. 281, §§ 1113(a)(1)(C), (b)(2). As this is the final hearing before the 24-month extension will expire, Debtor insists that it is imperative that this plan be confirmed at this hearing.

Typically, the outdated Form EDC 3-080 would be grounds for denial without prejudice and Debtor would be required to file a new plan.

But given that Debtor is under CARES Act time constraints, this matter will be called as scheduled to inquire whether any parties in interest oppose Debtor's proposed order confirming plan modifications.

4. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**
[MHM-6](#)

MOTION TO DISMISS CASE
2-10-2021 [[120](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to April 21, 2021, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to April 21, 2021, at 9:30 a.m., to be heard with the debtors' motion to confirm third modified plan.

5. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MHG-11](#)

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES,
AND CHARGES
2-15-2021 [[273](#)]

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Procedural objections overruled; substantive
objections continued to March 31, 2021 at
9:30 a.m.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The court will issue
an order.

This objection was filed on 30 days' notice under Local Rule of Practice 3007(b)(1), 9014-1(f)(2), Federal Rules of Bankruptcy Procedure 3002.1 and 3007, and will proceed as scheduled.¹ Unless

¹ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; "Civil Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

opposition is presented at the hearing, the court will enter the respondents' defaults. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Greggory Ryan Kirkpatrick ("Debtor") objects to Perla Perez and Christopher Scott Callison's (collectively "Creditors") Notice of Post-petition Mortgage Fees, Expenses, and Charges filed September 5, 2020 in the amount of \$5,264.75 for attorney fees and \$12.14 for expenses incurred between April 1, 2020 through June 30, 2020. Doc. #273. Opposition was not required and may be presented at the hearing, but Creditors filed a response with production of documents on March 8, 2021. Doc. #283. Since this response was not filed with a Docket Control Number ("DCN") it is unclear whether it was intended to be in response to this objection. There is another related objection in matter #6 below. MHG-12. There are also two related objections that were previously deemed contested matters set for a scheduling conference on March 31, 2021 at 9:30 a.m., with a status report due from Debtor's counsel on March 24, 2021. See Docs. #269; #270.

This matter may be CONTINUED to March 31, 2021 at 9:30 a.m.

Creditors filed Proof of Claim No. 8 on July 14, 2017 and amended it on September 6, 2017. Claim #8-2. The amended claim was subject to contentious litigation wherein Creditors' Claim #8-2 was allowed in the amount of \$160,875.11. Doc. #202. The arrearage claim included attorney's fees because the court found them recoverable under the controlling documents. Due to Creditors' discovery derelictions, the court denied allowance of pre-petition fees as part of Creditors' claimed arrearage.

In the parties' related adversary proceeding (from which this court has largely abstained), Creditors filed this Notice of Post-petition Mortgage Fees, Expenses, and Charges under Rule 3002.1 on September 5, 2020 for \$5,276.89 total. Doc. #276, Ex. 2.

Debtor objects for procedural and substantive reasons. Doc. #273. The procedural reasons are:

- (1) Creditors did not comply with Rule 3002.1(c) because they did not serve an amended proof of claim and file the notice as a supplement to their amended proof of claim in the claims register within 180 days after the date on which fees, expenses, or charges were incurred;
- (2) Creditors did not comply with Rule 3002.1(d) because they did not file and amend Claim #8-2 and attach the requisite notice as an amendment to their previously filed claim.

Debtor also objects substantively as to the reasonableness of Creditor's fees of \$5,276.89 as: (1) required by the underlying agreement and applicable to non-bankruptcy law to cure a default or maintain payments under § 1322(b)(5); and (2) not reasonable attorney's fees and expenses under § 506. *Id.*

As stated in our previous ruling on Debtor's other objections, Debtor is correct that Creditors failed to properly file the notice as required, but this is not fatal to the notice. Rule 3002.1(d) requires preparation of the supplement on the official bankruptcy form, which the Creditors did here, and file it as "a supplement to [Creditors'] proof of claim." Creditors did not do the later.

There is no dispute the filing of the notice was timely. The notice seeks fees incurred for the periods between April 1, 2020 and June 30, 2020. The notice was filed on September 5, 2020, which is before the 180-day deadline on September 28, 2020. Debtor's objection was also timely filed February 15, 2021, within one-year of the notice as required by Rule 3002.1(e).

Rule 3002.1 is a "procedural mechanism" implementing § 1322(b)(5) so debtors can emerge at the end of a Chapter 13 Plan with a fresh start. *In re Rivera*, 599 B.R. 335, 342 (Bankr. D. Ariz. 2019). To inform the debtor, the "Supplement" required under the rule should be filed in the claims register, not the court docket. *In re Sheppard*, 10-133959-KRH, 2012 WL 1344112, at *4 (Bankr. E.D. Va. April 18, 2012).

That said, if there is an objection to the notice—as here—where are pleadings related to the objection filed? In the court docket. The objection implements the rules dealing with contested matters. Rules 3007, 9013, 9014. Thus, the filing of the "Supplement" in the wrong place in this circumstance results in no prejudice to the parties.

It does, though, impact the administration of the case and the Chapter 13 Trustee who must disburse according to filed and allowed claims. Creditors here shall file the notices as "Supplements" to their existing amended proof of claim as directed by the official bankruptcy form. They should attach copies of the original timely filed notices (with the time and date of original filing stamp) to a cover page referencing both this case and the claim number. They should be filed in the claims register. These objections can simultaneously proceed.

Even if the Creditors' failures here are enough to disregard the notices, the court finds the notices are sufficient in this case under the informal proof of claim doctrine. The Ninth Circuit has long recognized and applied that doctrine. *In Re Sambo's Restaurants*, 754 F. 2d 811, 815-817 (9th Cir. 1985); *Pacific Resource Credit Union v. Fish, et al (In re Fish)*, 456 B.R. 413, 417 (B.A.P. 9th Cir. 2011). The notices here are written, filed within the time deadlines of Rule 3002.1, filed on behalf of Creditors, and bring to the court's attention the amount of the claim asserted. Debtor here provides no authority holding that filing the notice in the improper place if the other requirements of an informal proof of claim are present, is by itself grounds to sustain objections to the notice. The court finds in this case improper filing location is not fatal.

Finally, though further amendment of the Creditor' amended claim may eventually be required for the Trustee to disburse based on the

claim, the purpose of the notice is procedural and informational. Debtor has objected to the notice. The notices are not yet part of the amended claim because there is a pending objection. Surely, Debtor would not want to be saddled with the idle act of objecting to a notice of additional charges and an amended proof of claim simultaneously? That makes no sense.

The procedural objections will be OVERRULED. We turn now to the substantive objections.

Creditors previously contended that the loan agreement provided for "[a]ll costs, expenses and expenditures including, without limitation, the complete legal costs incurred by enforcing this Agreement as a result of any default by the Borrower, will be added to the principle then outstanding and will [sic] immediately be paid by the Borrower." Debtor asserts that the fees are not required by the underlying agreement and applicable non-bankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code. Doc. #273, ¶ 9.

The quoted provision of the loan agreement lists two conditions for legal costs to be added to the principal: default by the borrower and enforcing the agreement. Debtor does not dispute the satisfaction of both conditions. The agreement was in default pre-petition. Debtor filed an adversary proceeding in Superior Court and later in this court challenging the foreclosure and the obligations of Creditors under related business sale agreements. What is unclear is how much, if any, fees should be charged "to the loan." Further evidence is necessary.

Paragraphs 32-34 of the deed of trust purportedly securing Debtor's obligation to Creditors, provides legal fees if expended by Creditors to protect the security are "payable" by Debtor. Doc. #276, Ex. 1. When they would be "payable" is unspecified.

Separate from the issue of recoverability of attorney's fees is whether the fees sought must be paid to either cure the default or maintain payments under § 1322(b)(5). Rule 3002.1(e); *In re Fomosa*, 582 B.R. 423, 435-36 (Bankr. E.D. Mich. 2018) (finding the loan agreement there required the lender's demand before fees were payable; the absence of the demand meant the fees need not be paid under the Plan to cure the default or maintain payments). The loan agreement here does state that appropriate fees are to be paid immediately by the Borrower. But it also says it will be added to the principal. That likely means added to the principal if the charges are not "immediately" paid by the borrower. But Creditors do not assert that they are payable now or later. Creditors' position is now vague.

Debtor claims the information provided by Creditors supporting the charge is inadequate. It is now. Though Creditors complied with Rule 3002.1(c) itemizing the components of the charges on the official form, the basis for the charges is non-existent. Since this objection begins a contested matter, the discovery rules now apply. Rule 9014.

expenses incurred between July 1, 2020 through August 31, 2020. Doc. #278. Opposition was not required and may be presented at the hearing, but Creditors filed a response with production of documents on March 8, 2021. Doc. #283. Since this response was not filed with a Docket Control Number ("DCN") it is unclear whether it was intended to be in response to this objection. There is another related objection in matter #5 above. MHG-11. There are also two related objections that were previously deemed contested matters set for a scheduling conference on March 31, 2021 at 9:30 a.m., with a status report due from Debtor's counsel on March 24, 2021. See Docs. #269; #270.

This matter may be CONTINUED to March 31, 2021 at 9:30 a.m.

Creditors filed Proof of Claim No. 8 on July 14, 2017 and amended it on September 6, 2017. Claim #8-2. The amended claim was subject to contentious litigation wherein Creditors' Claim #8-2 was allowed in the amount of \$160,875.11. Doc. #202. The arrearage claim included attorney's fees because the court found them recoverable under the controlling documents. Due to Creditors' discovery derelictions, the court denied allowance of pre-petition fees as part of Creditors' claimed arrearage.

In the parties' related adversary proceeding (from which this court has largely abstained), Creditors filed this Notice of Post-petition Mortgage Fees, Expenses, and Charges under Rule 3002.1 on September 25, 2020 for \$4,274.25 total. Doc. #281, Ex. 2.

Debtor objects for procedural and substantive reasons. Doc. #278. The procedural reasons are:

- (1) Creditors did not comply with Rule 3002.1(c) because they did not serve an amended proof of claim and file the notice as a supplement to their amended proof of claim in the claims register within 180 days after the date on which fees, expenses, or charges were incurred;
- (2) Creditors did not comply with Rule 3002.1(d) because they did not file and amend Claim #8-2 and attach the requisite notice as an amendment to their previously filed claim.

Debtor also objects substantively as to the reasonableness of Creditor's fees of \$4,274.25 as: (1) required by the underlying agreement and applicable to non-bankruptcy law to cure a default or maintain payments under § 1322(b)(5); and (2) not reasonable attorney's fees and expenses under § 506. *Id.*

As stated in our previous ruling on Debtor's other objections, Debtor is correct that Creditors failed to properly file the notice as required, but this is not fatal to the notice. Rule 3002.1(d) requires preparation of the supplement on the official bankruptcy form, which the Creditors did here, and file it as "a supplement to [Creditors'] proof of claim." Creditors did not do the later.

There is no dispute the filing of the notice was timely. The notice seeks fees incurred for the periods between July 1, 2020 through

August 31, 2020. The notice was filed on September 25, 2020, which is before the 180-day deadline on December 28, 2020. Debtor's objection was also timely filed February 15, 2021, within one-year of the notice as required by Rule 3002.1(e).

Rule 3002.1 is a "procedural mechanism" implementing § 1322(b)(5) so debtors can emerge at the end of a Chapter 13 Plan with a fresh start. *In re Rivera*, 599 B.R. 335, 342 (Bankr. D. Ariz. 2019). To inform the debtor, the "Supplement" required under the rule should be filed in the claims register, not the court docket. *In re Sheppard*, 10-133959-KRH, 2012 WL 1344112, at *4 (Bankr. E.D. Va. April 18, 2012).

That said, if there is an objection to the notice—as here—where are pleadings related to the objection filed? In the court docket. The objection implements the rules dealing with contested matters. Rules 3007, 9013, 9014. Thus, the filing of the "Supplement" in the wrong place in this circumstance results in no prejudice to the parties.

It does, though, impact the administration of the case and the Chapter 13 Trustee who must disburse according to filed and allowed claims. Creditors here shall file the notices as "Supplements" to their existing amended proof of claim as directed by the official bankruptcy form. They should attach copies of the original timely filed notices (with the time and date of original filing stamp) to a cover page referencing both this case and the claim number. They should be filed in the claims register. These objections can simultaneously proceed.

Even if the Creditors' failures here are enough to disregard the notices, the court finds the notices are sufficient in this case under the informal proof of claim doctrine. The Ninth Circuit has long recognized and applied that doctrine. *In Re Sambo's Restaurants*, 754 F. 2d 811, 815-817 (9th Cir. 1985); *Pacific Resource Credit Union v. Fish, et al (In re Fish)*, 456 B.R. 413, 417 (B.A.P. 9th Cir. 2011). The notices here are written, filed within the time deadlines of Rule 3002.1, filed on behalf of Creditors, and bring to the court's attention the amount of the claim asserted. Debtor here provides no authority holding that filing the notice in the improper place if the other requirements of an informal proof of claim are present, is by itself grounds to sustain objections to the notice. The court finds in this case improper filing location is not fatal.

Finally, though further amendment of the Creditor's amended claim may eventually be required for the Trustee to disburse based on the claim, the purpose of the notice is procedural and informational. Debtor has objected to the notice. The notices are not yet part of the amended claim because there is a pending objection. Surely, Debtor would not want to be saddled with the idle act of objecting to a notice of additional charges and an amended proof of claim simultaneously? That makes no sense.

The procedural objections will be OVERRULED. We turn now to the substantive objections.

Creditors previously contended that the loan agreement provided for "[a]ll costs, expenses and expenditures including, without limitation, the complete legal costs incurred by enforcing this Agreement as a result of any default by the Borrower, will be added to the principle then outstanding and win [sic] immediately be paid by the Borrower." Debtor asserts that the fees are not required by the underlying agreement and applicable non-bankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code. Doc. #278, ¶ 9.

The quoted provision of the loan agreement lists two conditions for legal costs to be added to the principal: default by the borrower and enforcing the agreement. Debtor does not dispute the satisfaction of both conditions. The agreement was in default pre-petition. Debtor filed an adversary proceeding in Superior Court and later in this court challenging the foreclosure and the obligations of Creditors under related business sale agreements. What is unclear is how much, if any, fees should be charged "to the loan." Further evidence is necessary.

Paragraphs 32-34 of the deed of trust purportedly securing Debtor's obligation to Creditors, provides legal fees if expended by Creditors to protect the security are "payable" by Debtor. Doc. #281, Ex. 1. When they would be "payable" is unspecified.

Separate from the issue of recoverability of attorney's fees is whether the fees sought must be paid to either cure the default or maintain payments under § 1322(b)(5). Rule 3002.1(e); *In re Fomosa*, 582 B.R. 423, 435-36 (Bankr. E.D. Mich. 2018) [finding the loan agreement there required the lender's demand before fees were payable; the absence of the demand meant the fees need not be paid under the Plan to cure the default or maintain payments]. The loan agreement here does state that appropriate fees are to be paid immediately by the Borrower. But it also says it will be added to the principal. That likely means added to the principal if the charges are not "immediately" paid by the borrower. But Creditors do not assert that they are payable now or later. Creditors' position is now vague.

Debtor claims the information provided by Creditors supporting the charge is inadequate. It is now. Though Creditors complied with Rule 3002.1(c) itemizing the components of the charges on the official form, the basis for the charges is non-existent. Since this objection begins a contested matter, the discovery rules now apply. Rule 9014.

It is premature to discuss any "actions" the court must take now under Rule 3002.1(i). Creditors have not failed to notify Debtor and have provided some information. It is ultimately going to be Creditors' burden to convince the court the fees claimed are allowable and necessary to either cure the default or maintain payments under the loan. See, *In re Brumley*, 570 B.R. 287, 289-90 (Bankr. W.D. Mich. 2017).

The procedural objections will be OVERRULED. Creditors must file the notices in the claims register as directed. The court notes that

Creditors have not yet filed previous notices in the claims register as specified at the prior hearing. The substantive objections to the notice of fees, expenses, and charges will be determined in a later evidentiary hearing.

7. [20-10383](#)-B-13 **IN RE: LEO/TERESA COMETTO**
[RSW-2](#)

MOTION TO SELL
2-23-2021 [\[30\]](#)

TERESA COMETTO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Leo Cometto and Teresa Vivian Cometto ("Debtors") ask the court for authorization to sell a parcel of residential real property commonly known as 3812 De Ette Avenue, Bakersfield, CA 93313 ("Property") to Chris Berrelleza ("Buyer"). Doc. #30. The holder of Property's first deed of trust, Freedom Mortgage Corporation ("Creditor"), filed non-opposition contingent upon it receiving sale proceeds sufficient to satisfy its lien in full. Doc. #34. Creditor reiterates that it does not consent to the sale of Property free and clear of its interests under § 363(f).

In the absence of further opposition, the court is inclined to GRANT the motion.

11 U.S.C. § 363(b)(1) allows a trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, the debtor has the authority to sell property of the estate under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the [debtor]'s judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he [debtor]'s business judgment is to be given great judicial deference.'" *Id.* (citing *In re Psychometric Systems, Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)).

Here, Debtor wishes to sell Property to Buyer for \$275,000.00. Doc. #30. Property is encumbered by a deed of trust in favor of Creditor in the amount of approximately \$208,299.11. Doc. #1, Schedule D, ¶ 2.2. Creditor filed Proof of Claim No. 11 on March 23, 2020 in the amount of \$206,161.50. See Claim #11-1.

Schedule D also states Property is collateral for a purchase money security interest in favor of Solar Mosaic, Inc. ("SMI") in the amount of \$35,974.00. Schedule D, ¶ 2.5. SMI filed Proof of Claim No. 13 on April 7, 2020 in the amount of \$36,819.12. Claim #13-1. But per SMI's loan agreement, this lien extends *only* to the solar equipment and not the residence. The loan agreement states:

Our security interest in the [solar panels and equipment] takes priority over any mortgage on the Residence, whether such mortgage is granted before or after the date of this Agreement. It is possible that a lender making a loan secured by the Residence, including but not limited to a mortgage refinancing of an existing mortgage, will deem the Solar Equipment to be part of the Residence and will object to our interest in the Solar Equipment taking priority over its interest in the Residence. Upon request, we will confirm to any mortgage lender that **our lien is limited to the Solar Equipment and does not extend to any part of the Residence**. Alternatively, upon request, we may agree to lift our county fixture filing, if any on the Solar Equipment for a limited period for a cost of \$250 or more depending on costs incurred and provided we will be able to refile upon closing of the mortgage refinancing.

Claim #13-1, at 12. Thus, it appears SMI lien is only secured by the solar panels, not by the actual residence. However, this calls into question whether the solar panels will be included in the sale price. If so, SMI would be entitled to payoff of its lien as part of the sales proceeds. Ms. Cometto's declaration states that the solar panels will be included with the sale and will be paid through escrow. Doc. #32, ¶ 2.

Debtors' original and amended Schedules A/B list Property with a value of \$240,532.00 and note that the Property has solar panels attached. Docs. #1, #25, Schedule A/B, ¶ 1.1. Debtor exempted Property under California Civil Procedure Code ("C.C.P.") § 704.730 in the amount of \$100,000.00. Doc. #25, Schedule C.

There is little information about broker commissions and costs of sale, but Debtors state that they are "sharing the closing costs and realtors' commissions with the buyer." Doc. #32, ¶ 3. For that reason, the table below estimates a 3% commission, and any costs of sale are halved. Creditor and SMI's liens reflect the higher amounts listed between Schedule D and respective proofs of claim.

The proposed sale can be illustrated as follows:

Proposed sale price of Property		\$275,000.00
Freedom Mortgage Deed of Trust	-	\$208,299.11
Solar Mosaic PMSI Lien	-	\$36,819.12
Broker fees (est. 3% of sale price)	-	\$16,500.00
Costs of sale (split with Buyer)	-	?
Remaining equity	<	\$13,381.77
Debtors' homestead exemption	-	\$100,000.00
Remaining unpaid homestead exemption	=	(\$86,618.23)

Although it appears that no equity will remain for the benefit of the estate, the sale of Property is in its best interests because it will pay off the first mortgage and second priority purchase money security interest lien. Moreover, the plan provides for 100% distribution to unsecured creditors. The sale appears to be supported by a valid business judgment and proposed in good faith. Debtors' judgment appears to be reasonable and will be given deference.

However, sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Very little is known about Buyer. The motion (Doc. #30) and declaration (Doc. #32) identify Buyer as Chris Berrelleza. It is unclear whether Buyer is an insider with respect to Debtors. Nothing in the record indicates that Buyer is an insider. Buyer does not appear to be a creditor of Debtors because he is not included on the master address list. Doc. #6. The court will inquire at the hearing whether Buyer is an insider and therefore subject to heightened scrutiny.

If Debtor provides satisfactory clarification, then this motion will be GRANTED, and the sale will proceed subject to higher and better bids. If opposition is presented at the hearing, the court will consider the opposition, consider whether further hearing is proper, and continue if a further hearing is necessary.

Any order approving the sale will need to be signed by the Trustee. Further, the order will require the Trustee be given and approve a seller's final closing statement before the sale is completed.

Any party wishing to overbid must be present at the time of the hearing. No warranties or representations are included with the Property; it will be sold "as-is."

8. [19-12096](#)-B-13 **IN RE: JUAN ALAMILLA AND PATRICIA DELGADILLO**
[RMP-1](#) **ALAMILLA**

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION REQUEST FOR COMFORT ORDER
1-12-2021 [\[26\]](#)

GREAT AJAX OPERATING
PARTNERSHIP L.P./MV
SCOTT LYONS/ATTY. FOR DBT.
RENEE PARKER/ATTY. FOR MV.
HEARING VACATED PER ECF ORDER #44

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Resolved by stipulation.

NO ORDER REQUIRED.

This matter was previously continued to allow the parties to meet and confer regarding the adequate protection order. Doc. #39. The parties stipulated to adequate protection payments on February 26, 2021 (Doc. #43), which was approved on March 2, 2021. Doc. #44. As part of the order approving the stipulation, the continued hearing set for March 17, 2021 was vacated. *Id.* Therefore, the matter will be dropped from calendar.

11:00 AM

1. [19-14170](#)-B-7 **IN RE: JOHNNY GONZALES**
[21-1002](#)

STATUS CONFERENCE RE: NOTICE OF REMOVAL
1-15-2021 [\[1\]](#)

GONZALES V. FEAR

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This adversary proceeding was dismissed with leave to amend on February 25, 2021. Doc. #20. Johnny Gonzales had until March 11, 2021 to amend the complaint or the case would be dismissed with prejudice. As of March 15, 2021, no amended complaint has been filed and therefore the case is dismissed with prejudice. Accordingly, this status conference will be dropped from calendar.