

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: June 20, 2023

CALENDAR: 1:00 P.M. CHAPTER 13

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 and no appearance is necessary. 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 seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 20, 2023 at 1:00 p.m.

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1. [22-22302](#)-B-13 ROBERT AVERY OBJECTION TO CLAIM OF PINNACLE
[MS-1](#) Mark Shmorgon CREDIT SERVICES, LLC, CLAIM
NUMBER 1
4-19-23 [[19](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 1 of Pinnacle Credit Services, LLC and disallow the claim in its entirety.

Debtor requests that the court disallow the claim of Pinnacle Credit Services, LLC ("Creditor"), Claim No. 1. The claim is asserted to be in the amount of \$707.44. The Debtor asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337.

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the account was charged off on October 9, 2006, which is more than four years prior to the filing of this case. Hence, when the case was filed on September 12, 2022, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337, and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

June 20, 2023 at 11:00 a.m.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to incur debt.

Debtors seek permission to increase the court-approved loan balance of \$13,800.00 to \$25,000.00 to cover the new scope of work needed to repair the foundation to their home located at 2014 Le Mans Place, Stockton, California. The Debtors had filed a previous motion to incur debt in the amount of \$13,800.00, which the court granted on April 19, 2023.

As the Debtors reported in the first motion, their backyard flooded as a result of severe rainstorms in December 2022 that caused the rear part of the house foundation to sink a few inches due to the soggy ground underneath. Debtors thereafter filed a claim with Federal Emergency Management Agency that works in conjunction with the U.S. Small Business Administration to facilitate repair work on damaged homes. The SBA approved an initial loan of \$13,800.00 to rehabilitate or repair the foundation on their primary residence.

After commencing work on the foundation, Debtors learned that the damage was more severe than they had originally realized. A new scope of work was needed to repair the damage and the Debtors obtained two proposal bids ranging in \$45,316.56 to \$46,779.90. The Debtors were eventually able to negotiate the cost of work down to \$26,829.90. They then applied for a modification of the SBA loan. On April 7, 2023, the Debtors received SBA's approval for the increased amount of \$25,000.00.

Debtors contend that they cannot afford to repair the foundation of their home without this FEMA loan, and believe that failure to complete the needed repairs could continue to cause the home to sink, requiring even greater cost of repair in the future if not dealt with now.

Under the modified terms of the loan, an installment payment of \$174.00 will begin 12 months from the date of initial disbursement of the loan. This is an increase of \$59.00 per month in payment from the prior loan approved by the court. The interest rate of 2.313% per annum will begin to accrue 12 months from the initial disbursement date. SBA requires a court order authorizing Debtors to incur the unsecured financing before it will provide Debtors with financing while they are in an active Chapter 13 case.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and

the terms being reasonable, the motion is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

3. [18-24845](#)-B-13 VICTOR HERRADA CONTINUED MOTION TO MODIFY PLAN
[PGM](#)-5 Peter G. Macaluso 3-6-23 [[122](#)]

Final Ruling

This matter was continued for 60 days to allow the processing of Debtor's application under the California Relief Program. Nothing has been filed as to the status of the application.

The Debtor shall file a supplemental declaration as to the status of its application by Wednesday, June 21, 2023, at 5:00 p.m. and the Trustee shall file a supplemental response by Friday, June 23, 2023, at 5:00 p.m.

The motion to modify plan will be **continued to June 27, 2023, at 1:00 p.m.**

The court will issue an order.

4. [23-20748](#)-B-13 RONALD/YUVETTA PERRIN
[KGR](#)-1 G. Michael Williams

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-19-23 [[54](#)]

THE GOLDEN 1 CREDIT UNION
VS.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for relief from stay.

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Ford F150 Supercrew Cab King Ranch Pickup (the "Vehicle"). The moving party has provided the Declaration of Sophia Ali to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ali Declaration states that there are three post-petition payments in default totaling \$1,532.73.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$28,726.65, as stated in the Ali Declaration, while the value of the Vehicle is determined to be \$9,000.00, as stated in Schedules A/B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5. [23-21257](#)-B-13 EMILIE BURTON
[AP-1](#) Richard L. Sturdevant

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-23-23 [[18](#)]

WILMINGTON TRUST, NATIONAL
ASSOCIATION VS.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to deny the motion for relief from automatic stay.

Wilmington Trust, National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 9760 North Alpine Road, Stockton, California (the "Property"). Movant has provided the Declaration of Kyle Gunderlock to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

Movant's papers indicate that the Debtor is delinquent 22 pre-petition payments. Due to the default under the Note, a notice of default was recorded on April 15, 2021, and a notice of sale was published on July 29, 2021 and March 16, 2023. Movant asserts that the Debtor has filed multiple bankruptcies that impact its ability to foreclose on the house.

Debtor filed an opposition acknowledging that this is the Debtor's third bankruptcy filing since 2021. The first was dismissed for failure to timely file documents (case no. 21-23118) and the second case was dismissed for failure to make plan payments (case no. 21-23493). Debtor states that she completed 17 months' payments but thereafter defaulted due to her home being flooded twice, once in October 2022 and a second time in January 2023. Debtor had to use funds repair her home, which resulted in the missed plan payments. Debtor contends that she has filed the instant case to save her home, has every intention to make plan payments, and will file a new plan to reflect the correct amount of arrears owed to Movant. Debtor further argues that there is sufficient equity in the Property to warrant a denial of the motion for relief from stay.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$262,243.92 as stated in Movant's papers. The value of the Property is determined to be \$699,000.00 as stated in Schedules A/B and D filed by Debtor and Movant's papers.

Discussion

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Creditor has not met this burden.

The value of the Property is \$699,000.00 as stated in Schedules A/B and D filed by Debtor and Movant's papers. Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah).

Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at \$699,000.00

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$262,243.92. Based on the Property's \$699,000.00 value, that leaves equity of \$410,981.00, which in turn creates an equity cushion of 62.48%. Creditor is therefore adequately protected, even in the absence of postpetition payments.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

6. [23-20365](#)-B-13 TERRY CASE MOTION TO AVOID LIEN OF
[TBK](#)-1 Taras Kurta CITIBANK, N.A.
Thru #9 5-1-23 [[25](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to deny without prejudice the motion to avoid lien of Citibank, N.A.

This is a request for an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against the Debtor's property commonly known as 1955 Harvest Landing, Court, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,908.88. An abstract of judgment was recorded with San Joaquin County on February 14, 2020, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$620,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$503,274.00 on Schedule C.¹ All other liens recorded against the Property total \$114,005.31.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is equity to support the judicial lien in the amount of \$2,720.69. Therefore, the fixing of this judicial lien does not impair the Debtor's exemption of the real property. Its fixing will not be avoided under 11 U.S.C. § 349(b)(1)(B).

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

7. [23-20365](#)-B-13 TERRY CASE OBJECTION TO CLAIM OF BRIAN
[TBK](#)-2 Taras Kurta CASE, CLAIM NUMBER 6
5-1-23 [[28](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 6 of Brian Case.

¹Debtor states in her motion that she claimed a \$600,000.00 California homestead exemption. A review of Schedule C filed February 3, 2023, indicates otherwise. No amended Schedule C appears on the court's docket.

The Chapter 13 Debtor requests that the court disallow the claim of Brian Case ("Creditor"), Claim No. 6. The claim is asserted to be priority in the amount of \$20,000.00 under 11 U.S.C. § 507(a)(7). The Debtor asserts that no supporting documentation has been provided by the Creditor to indicate that such a payment falls within the language of 11 U.S.C. § 507(a)(7) as deposits of money in connection with the purchase, lease, or rental of property, or the purchase of services. Instead, the partial evidence provided by the Creditor suggests that the \$20,000.00 claimed by Creditor is an "equalization payment" that is sometimes due from one former spouse to the other in order to equalize an otherwise unequal division of property and/or debts between them. Moreover, the Debtor is unable to properly analyze Creditor's claim because Creditor has not provided a complete copy of the divorce documents that allegedly form the basis of Creditor's claim.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtor has satisfied her burden of overcoming the presumptive validity of the claim. Based on the evidence before the court, the Creditor's claim is disallowed. The objection to the proof of claim is sustained.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

8. [23-20365](#)-B-13 TERRY CASE MOTION TO CONFIRM PLAN
[TBK-3](#) Taras Kurta 5-1-23 [[31](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the first amended plan.

Feasibility depends on the granting of a motion to avoid lien of Citibank, N.A. and sustaining objections to claims of Brian Case and Matrix Financial Services Corp. The motion to avoid lien of Citibank, N.A. was denied without prejudice. See TBK-1.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

9. [23-20365](#)-B-13 TERRY CASE
[TBK-4](#) Taras Kurta
OBJECTION TO CLAIM OF MATRIX
FINANCIAL SERVICES CORP., CLAIM
NUMBER 7
5-5-23 [[35](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 7 of Financial Services Corp.

The Chapter 13 Debtor requests that the court disallow the claim of Financial Services Corp. ("Creditor"), Claim No. 7. The claim is asserted to be secured in the amount of \$114,004.31. The Debtor objects to Creditor's asserted pre-petition arrearage of \$322.79. It is unclear where Creditor obtained this number, which is identical to Creditor's "Projected escrow shortage" and Creditor's "Bankruptcy Claim" amount. See claim no. 7-1, pp. 4-5. Additionally, Creditor's proof of claim reflects a positive balance of \$2,469.42 of escrow funds.

Debtor asserts that the Creditor is falsely attempting to portray an actual escrow shortage when in fact it is only a projected escrow shortage set to occur post-petition in March 2023. Debtor states that the sole basis for Creditor's claim is the post-petition "Bankruptcy Claim," which is a projected - and not actual - escrow shortage.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtor has satisfied her burden of overcoming the presumptive validity of the claim. Based on the evidence before the court, the Creditor's claim is disallowed. The objection to the proof of claim is sustained.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

10. [22-22683](#)-B-13 MONIQUE ZE CONTINUED MOTION TO CONFIRM
RS-[1](#) Richard L. Sturdevant PLAN
2-7-23 [[51](#)]

Final Ruling

The case having been dismissed on June 8, 2023, the continued motion to confirm plan is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

11. [12-28694](#)-B-13 MIKE DOWNIE AND CHERI
[22-2096](#) TILLET-DOWNIE CAE-1
DOWNIE ET AL V. PNC BANK ET AL
Thru #12

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-23-22 [[1](#)]

CONTINUED TO 8/22/23 AT 1:00 P.M.

Final Ruling

No appearance at the June 20, 2023, hearing is required. The court will issue an order.

12. [12-28694](#)-B-13 MIKE DOWNIE AND CHERI
[22-2096](#) TILLET-DOWNIE PGM-1
DOWNIE ET AL V. PNC BANK ET AL

MOTION FOR ENTRY OF DEFAULT
JUDGMENT AND/OR MOTION FOR
COMPENSATION FOR PETER G.
MACALUSO, PLAINTIFFS
ATTORNEY(S)
5-23-23 [[44](#)]

Final Ruling

Before the court is a *Motion for Entry of Default Judgment for Quiet Title [sic] and for Attorney's Fees and Costs* filed by Plaintiffs Mike and Cheri Downie. Dkt. 44. Plaintiffs are also discharged debtors in the parent Chapter 13 case.

The motion is appropriate insofar as Defendants' defaults were entered on March 10, 2023. Dkt. 25. The defaults permit the court to accept as true the well-pled allegations in the complaint. *Angulo v Southstar III, LLC (In re Angulo)*, 2010 WL 6452895, *5 (9th Cir. BAP Oct. 11, 2010) (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)).

The motion is not opposed. However, the absence of an opposition does not necessarily mean the motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). The court has therefore reviewed the motion and its supporting documents. The court has also reviewed and takes judicial notice of the dockets in this adversary proceeding and in the parent Chapter 13 case. See Fed. R. Evid. 201(c)(1). Oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h).

The motion will be granted in part and denied in part.

The motion is GRANTED only to the extent that the second deed of trust on the Plaintiffs' residence located at 323 Zola Ave, Roseville, California 95678, valued at \$0.00, is determined and declared to be void and of no legal effect whatsoever following Plaintiffs' September 5, 2017, Chapter 13 discharge in the parent bankruptcy case. To the extent judgment voiding the second deed of trust on the Plaintiffs' residence does not fully adjudicate all claims alleged in the complaint, the court determines there is no just reason to delay the entry of judgment voiding the second deed of trust. See Fed. R. Civ. P. 54(b); Fed. R. Bankr. P. 7054.

The motion is DENIED WITHOUT PREJUDICE as to the request to quiet title. California law prohibits the entry of a judgment quieting title by default. *Paterra v. Hansen*, 64 Cal. App. 5th 507, 532-33 (Cal. App. 1st Dist. 2021) (citing cases and discussing appropriate quiet title procedure in the default context).

The motion is DENIED WITHOUT PREJUDICE as to the request for an attorney's fees and costs. Plaintiffs may file and serve a separate motion for attorney's fees and costs no later than fourteen (14) days after a judgment voiding the second deed of trust on the residence is entered. The motion shall state the grounds for - and cite legal

authority in support of - the request. The motion shall also be served on Defendants and set for hearing under Local Bankr. R. 9014-1(f)(1).

The motion is ORDERED GRANTED IN PART AND DENIED IN PART for reasons stated in the minutes.

The Debtors will lodge an order consistent with these minutes.

13. [22-22398](#)-B-13 GREGORIO DASALLA
[CRG](#)-8 Carl R. Gustafson

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LINCOLN LAW, LLP
FOR CARL R. GUSTAFSON, DEBTORS
ATTORNEY(S)
5-18-23 [[123](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant in part and deny in part the motion for compensation.

Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, Carl R. Gustafson ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, of which \$851.00 was received prior to the filing of the petition.¹ Applicant now seeks additional compensation of \$15,649.00, minus the initial retainer of \$851.00, in fees and expenses of \$242.24.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 127.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that a significant amount of work would be required to confirm a plan and that an appeal would be made. Immediately after Debtor's appeal was filed, the Chapter 13 Trustee reached out to the Debtor revisit issues regarding plan confirmability. Thereafter, the court issued an indicative ruling that reversed its decision about the direct payment of the car but not about the pace of bankruptcy payments. The Debtor continued negotiating with the Trustee to come up with an appropriate substantive result and the correct procedure to reverse the confirmation order. The order was revised and the Debtor had his first plan retroactively confirmed.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. Some of the services provided by Applicant were substantial and unanticipated. However, other services were not and merely typical of a Chapter 13 case. Specifically, Applicant's and his paralegal's work described as "Preparation of filing of case," "Preparation for 341 Meeting,"

¹By its order of May 5, 2023, the court confirmed the Debtor's Chapter 13 plan filed on September 22, 2022. See dkts. 120. Section 3.05 of the confirmed September 22, 2022, Chapter 13 plan provides for payment of the \$4,000.00 "no-look" fee under Local Bankr. R. 2016-1(c). See dkt. 3.

"Necessary case representation," "Preparation of Order Confirming Plan," "Resolve Trustee's Objection to Confirmation," and "Fee Application" is sufficiently covered by the no-look fee of Local Bankruptcy Rule 2016-1.

Therefore, Applicant will be awarded additional fees for substantial and unanticipated work described as "Claims audit and objections," "Motion to Confirm First Amended Plan," "Motion to Confirm Second Amended Plan," "Appeal," and "Settlement with Trustee." This totals \$10,668.00.

Movant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Legal services under LBR 2016-1	\$ 4,000.00
Additional Fees	\$10,668.00
Additional Costs and Expenses	\$ 242.24
Less retainer	\$ 851.00

The motion is ORDERED GRANTED IN PART AND DENIED IN PART for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to incur debt and continue the hearing to June 27, 2023 at 1:00 p.m.**

The motion seeks permission to purchase real property at the total purchase price of \$525,000.00 at 6.75% interest. The monthly payments will be \$4,135.00. The Debtor has been approved for the mortgage loan through PennyMac Loan Services, LLC. Debtor's current Chapter 13 plan payments are \$799.00 per month with 100% distribution to general unsecured creditors. An estimated closing cost of \$16,069.00 will be needed. Debtor will use the bonus she received on March 3, 2023, in the net amount of \$14,228.74 and her 401(k) through Leggett & Platt that has a balance of \$10,313.84 to make this payment.

Amended Schedules I and J filed April 17, 2023, show that the Debtor can afford the mortgage payment, which is a slight increase from her current rental expense of \$3,890.00.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, June 23, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on June 27, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on June 27, 2023, at 1:00 p.m.

15. [23-20161](#)-B-13 MACARIO LOPEZ CONTINUED OBJECTION TO
[RDG](#)-1 Michael T. Reid CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-22-23 [[35](#)]

CONTINUED TO 7/18/23 at 1:00 P.M., SACRAMENTO COURTROOM, TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 7/12/23.

Final Ruling

No appearance at the June 20, 2023, hearing is required. The court will issue an
order.