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: August 9, 2022
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

August 9, 2022 at 1:00 p.m.

1.	22-21205-B-13 RDG-1	XAVIER ATES Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 7-11-22 [22]

CONTINUED TO 8/23/22 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 8/17/22.

Final Ruling

No appearance at the August 9, 2022, hearing is required. The court will issue an order.

2. 22-20924-B-13 MEAGAN MONAGHAN
DWE-1 Pro Se
Thru #3

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE CORPORATION
6-1-22 [24]

CONTINUED TO 8/23/22 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 8/17/22.

Final Ruling

No appearance at the August 9, 2022, hearing is required. The court will issue an order.

3. 22-20924-B-13 MEAGAN MONAGHAN
RDG-1 Pro Se

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
6-1-22 [16]

CONTINUED TO 8/23/22 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 8/17/22.

Final Ruling

No appearance at the August 9, 2022, hearing is required. The court will issue an order.

4. 19-25927-B-13 TOBIAS GOMEZ
RK-5 Richard Kwun

CONTINUED MOTION TO APPROVE LOAN MODIFICATION
7-2-22 [172]

Final Ruling

This matter was continued from July 19, 2022, to allow any party in interst to file a response by 5:00 p.m. on Friday, July 22, 2022. Nothing was filed. Therefore, the court's ruling conditionally granting the motion to approve loan modification shall become the court's final decision. The continued hearing on August 9, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.

5. 22-21531-B-13 MIZHGHAN ALAM
ASW-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-22 [11]

WELLS FARGO BANK, 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). 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.

Wells Fargo Bank, National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 16777 English Country Trail, Lathrop, California (the "Property"). Movant has provided the Declaration of Kayo Manson-Tompkins to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property acquiring title at a pre-petition foreclosure sale on April 24, 2019. Exh. 1, dkt. 15. An unlawful detainer was filed in state court on September 6, 2019, and the court rendered a judgment on November 13, 2019, awarding immediate possession of the Property.

Additionally, Movant seeks relief under § 362(d)(4). An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in state court on September 6, 2019, with a Notice to Quit served on May 30, 2019.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Exh. 1, dkt. 15. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Finally, the court will grant relief under § 362(d)(4). To obtain relief under § 362(d)(4), movant must show and the court must affirmatively find the following three elements: (1) the Debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the

scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others; the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id. See Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020).

Section 362(d)(4) "does not require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all." *Duncan & Forbes*, 368 B.R. at 32. "The language of § 362(d)(4) is likewise devoid of any requirement of a finding of bad faith by the Debtor." *In re Dorsey*, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012).

The Debtor's filing was part of a scheme to delay, hinder, and defraud creditors that involved multiple bankruptcy filings affecting the Property. This is the sixth (6) case affecting the Property. Prior bankruptcy cases are:

1. Case no. 20-20162 filed by Atall Sherzad on 1/13/20; dismissed on 2/11/20 for failure to timely file documents.
2. Case no. 20-21090 filed by Atall Sherzad on 2/27/20; dismissed on 3/16/60 for failure to timely file documents.
3. Case no. 21-21276 filed by Atall Sherzad on 4/08/21; dismissed on 4/26/21 for failure to timely file documents.
4. Case no. 22-20281 filed by Atall Sherzad on 2/08/22; dismissed on 2/28/22 for failure to timely file documents.
5. Case no. 22-20893 filed by Atall Sherzad on 4/11/22; dismissed on 4/29/22 for failure to timely file documents.

Although the past bankruptcy cases were not filed by the Debtor, this is not a requirement. The court infers a scheme to delay, hinder, and defraud creditors is present given the multiple unsuccessful prior bankruptcy filings that affect this Property.

This order shall be binding in any other case purporting to affect the Property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

The 14-day stay of enforcement under Rule 4001(a)(3) is not 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.

6. 20-22646-B-13 ROSEMARY JACKSON
PGM-1 Peter G. Macaluso

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
7-11-22 [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 substitute Perry R. Steward to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Perry R. Steward gives notice of the death of debtor Rosemary Jackson ("Debtor") and requests to act as representative of Debtor for all purposes within this Chapter 13 proceeding. Mr. Steward is the son of the deceased Debtor.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 (Fed. R. Bankr. P. 1016);
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications (11 U.S.C. § 1328).

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Perry R. Steward for Rosemary Jackson as successor-in-interest, and to waive the § 1328 and financial management requirements for Rosemary Jackson. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will issue an order.

7. 22-21557-B-13 MARINA GALINDO — MOTION FOR RELIEF FROM AUTOMATIC STAY
DB-1 Gabriel E. Liberman — 7-12-22 [24]

STOCKTON MORTGAGE, INC. VS.

Final Ruling

Before the court is a *Motion for Order Granting Relief From Stay* filed by secured creditor Stockton Mortgage, Inc. ("SMI"). Debtor Marina Galindo ("Debtor") filed an opposition. SMI filed a reply. For the reasons explained below, the motion will be denied without prejudice to being re-filed at a later date.

The court has reviewed the motion, opposition, reply and all related documents. The court has also reviewed and takes judicial notice of the dockets in this case and in the Debtor's prior chapter 13 cases. See Fed. R. Evid. 201(c)(1). The court has determined that 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 decided on the papers.[1]

Background

The Debtor resides at 2189 East 8th St., Stockton, California ("Stockton Residence"). *See* dkt. 24 at 1:26-28. SMI holds a first deed of trust on the Stockton Residence. *Id.*

The Stockton Residence secures a loan to the Debtor that matured on January 1, 2010.[2] The loan is apparently in default. *Id.* at 1:28. SMI "requests the court grant it relief from the automatic stay, in so far as is necessary, to allow [it] to complete foreclosure on the [Stockton Residence]." Dkt. 24 at 8:2-3.

The Debtor filed this chapter 13 case on June 23, 2022, in an apparent effort to save her home from SMI's foreclosure. *See* dkts. 12; 36 at 2:3-8. This is the second bankruptcy case the Debtor filed after a prior bankruptcy case was dismissed within the preceding one-year period. More specifically, the Debtor's prior chapter 13 case was filed on May 16, 2022, and dismissed on June 15, 2022, for failure to timely file documents. *See* case no. 22-21232.

On June 29, 2022, the Debtor moved under 11 U.S.C. § 362(c)(3) to extend the automatic stay of 11 U.S.C. § 362(a) beyond thirty days after the petition date of this case. *See* dkt. 10. The Debtor asserted that the presumption this case was not filed in good faith did not arise because the failure to timely file documents in - and thence the dismissal of - her prior chapter 13 case was the result of her prior attorney's negligence. *See* dkts. 10 at 2:3-8, 3:7-11; 12 at 3:7-10; and 13 at 2:6-12. SMI asserted otherwise in its opposition to the Debtor's motion. *See, generally*, dkts. 16, 20.

In an order filed on July 20, 2022, the court agreed with SMI and denied the Debtor's motion to extend the automatic stay. *See d*kts. 30, 31. The court also informed the parties that it will decide the extent to which the automatic stay terminated under § 362(c)(3), *i.e.*, in its entirety or as to the debtor only and not property of the estate, following additional briefing and a hearing set on October 11, 2022. *Id.*

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[1] The parties consent to disposition of the motion on the written record. *See* dkt. 39 at 2:19-21.

[2] The loan was dealt with in a 2015 chapter 13 case, case no. 15-20823. *See* dkt. 24 at 2:1-28. The current issue arose after the Debtor completed plan payments in the 2015 case on October 20, 2020, and received a discharge on March 3, 2021. *See id.* at 2:1-3:26.

Discussion

SMI effectively has all the relief it requests. The automatic stay is terminated. When the Debtor's motion to extend the automatic stay was denied, the automatic stay terminated by operation of law under § 362(c)(3) thirty days after the petition date. There is also authority on which SMI could rely if it elected to foreclose on the Stockton Residence. *See Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011).

But if SMI elects to foreclose on the Stockton Residence it does so at its own peril. As the parties are aware, the court intends to reconsider its reliance on *Reswick* in light of *In re Madsen*, 639 B.R. 761 (Bankr. E.D. Cal. 2022), *In re Dao*, 616 B.R. 103 (Bankr. E.D. Cal. 2020), *In re Rinard*, 451 B.R. 12 (Bankr. C.D. Cal. 2011), and *In re Ramsey*, 2021 WL 1499319 (Bankr. D. Nev. Feb. 17, 2021). *See d*kts. 30, 31.

If, upon reconsideration, the court continues to follow *Reswick*, no further relief on SMI's motion is necessary or possible. The automatic stay will have terminated in its entirety rendering SMI's motion moot. And because the automatic stay will have already terminated in its entirety, by granting relief on SMI's motion the court will have abused its discretion by terminating an already terminated automatic stay. *See e.g., Khabushani v. Anderson (In re Khabushani)*, 2021 WL 2562113 at *2 (9th Cir. BAP June 22, 2021) (citing *Lakhany v. Khan (In re Lakhany)*, 538 B.R. 555, 561 (9th Cir. BAP 2015); *Ruvacalba v. Munoz (In re Munoz)*, 287 B.R. 546, 551 (9th Cir. BAP 2002)).

That SMI may wisely choose to not foreclose on the Stockton Residence until the court has an opportunity to reconsider *Reswick* does not change the result. In fact, when viewed in this context, SMI's motion is premature insofar as it is either a request for an advisory opinion or a so-called "comfort order" prior to reconsideration. The former are constitutionally prohibited. *See Coalition for a Healthy California v. F.C.C.*, 87 F.3d 383, 386 (9th Cir. 1996). And this court does not issue the latter. *See e.g., In re NIR West Coast, Inc., dba Northern California Roofing*, 2021 WL 27407 at *2 (Bankr. E.D. Cal. Jan. 4, 2021); *In re Chatha*, case no. 2017-25335, dkt. 229.

Even if the court were to reach the merits, the motion would still be denied without prejudice.

SMI concedes that it moves for relief only under 11 U.S.C. § 362(d)(2). *See* dkt. 39 at 4:8-14; *see also* dkt. 28. In that analysis, SMI bears the burden of proof on the issue of the Debtor's equity in the Stockton Residence. *See* 11 U.S.C. § 362(g)(1). That includes the value of the property and the claims against it. *In re Applin*, 108 B.R. 253, 257 (Bankr. E.D. Cal. 1989).

The court assumes for purposes of this motion that by SMI's reliance on the Schedules, SMI has established that the value of the Stockton Residence is $380,000.00. *See id.* ("Representations by a debtor in the schedules as to such matters as the value of property, when offered against a debtor, are eligible for treatment as admissions by a party-opponent."). Even so, SMI has not established the claims against the Stockton Residence.

SMI asserts that as of February 1, 2022, it is owed $368,906.39 on its note and deed of trust. *See d*kt. 39 at 3:1-3 (citing dkt. 26, Ex. D). Again citing to the Schedules, SMI asserts that the Stockton Residence is also encumbered by a $19,500.00 county tax lien. *See id.* at 3:6-7 (citing dkt. 1, Sch. D). So according to SMI, liens on the Stockton Residence total $388,406.39 ($368,906.39 + 19,500.00) which means, at a $380,000.00 valuation, there is no equity in the Stockton Residence.

But the analysis does not end there.

The Debtor does not dispute the county tax lien (inasmuch as she scheduled it and signed the Schedules under penalty of perjury). She does, however, dispute the amount owed to SMI on the note and deed of trust. According to a declaration the Debtor filed earlier in the case, SMI's payoff amount "erroneously include[s] arrears that were paid off and resolved in the 2015 Case." Dkt. 12 at 2:22-23. According to a stipulation

between SMI and the Debtor in the 2015 case, the Debtor paid $16,900 in arrears. *See* case no. 15-20823, dkt. 41 at 2:25-26. And according to SMI, "[t]he Debtor . . . completed her plan payments . . . and received a discharge [in the 2015 chapter 13 case." Dkt. 16 at 2:27-28. So according to the Debtor, as of February 1, 2022, SMI is only owed $352,006.39 ($368,906.39 - $16,900) on its note and deed of trust. Adding the $19,500.00 county tax lien to the Debtor's version of the payoff amount of $352,006.39 brings the total of liens on the Stockton Residence to $371,506.39 ($352,006.39 + $19,500.00). And under that scenario, at a $380,000.00 valuation, there is equity in the Stockton Residence.

The point here is that there is a factual dispute on an element on which SMI bears the burden of proof. The existence of that factual dispute necessarily means that SMI has not established that the Debtor lacks equity in the Stockton Residence. And it also means that SMI has not satisfied its burden under § 362(g)(1). Relief under § 362(d)(2) is therefore not warranted.

Creditor's objections to Debtor's opposition based on the local rules are overruled. Creditor obviously received the opposition and replied to it, and has thereby suffered no prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE subject to being re-filed, if necessary, as stated hereinabove.

The court will issue an order.

8. 22-21362-B-13 RK-1 — CLAUDIA CASTRO, Richard Kwun — MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP LLC, 7-8-22 [13]

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 **continue the matter and set an evidentiary hearing for September 19, 2022, at 10:00 a.m.**

Debtor moves to value the secured claim of Wheels Financial Group LLC, dba 1-800LoanMart ("Creditor"). Debtor is the owner of a 2013 Chevrolet Traverse 4-door SUV ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,300.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor has filed an opposition disputing the value of the Vehicle. Creditor also has provided a copy of the Kelley Blue Book not to establish a value but to help show that there is a disputed factual issue. Creditor requests that it be provided additional time to appraise the Vehicle.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 5-1 filed by Wheels Financial Group LLC, dba 1-800LoanMart is the claim which may be the subject of the present motion.

Discussion

Both the Debtor and Creditor have provided differing valuations for the Vehicle. Creditor offers as evidence a Kelley Blue Book printout, but this is a third-party industry source and is based on hearsay. Fed R. Evid. 801-803; *see also In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]"). Nonetheless, Creditor states that the copy of the Kelley Blue Book is not to establish valuation but to help show that there is a disputed material factual issue and requests additional time for expert appraisal.

It appears that disputed material factual issues remain to be resolved, therefore a later evidentiary hearing will be set. The motion will be continued. Debtor shall provide Creditor will access to the Vehicle for appraisal.

IT IS ORDERED as follows: An evidentiary hearing will be held on September 19, 2022, at 10:00 a.m. before the Honorable Christopher Jaime, Courtroom No. 32.

1. Debtor is to submit additional evidence of value, witness direct testimony declarations, and other evidence to the Creditor and the court (delivered to the courtroom deputy for Department B, not filed) by September 5, 2022.

2. Creditor is to submit additional evidence of value, witness direct testimony declarations, and other evidence to the Debtor and the court (delivered to the courtroom deputy for Department B, not filed) by September 12, 2022.

3. Debtor will mark and separate with tabs its documents 1, 2, and following. Creditor

will mark and separate with tabs its documents A, B, and following.

4. The parties shall deliver by email objections to evidence (declarations and exhibits) to the Department B law clerk and courtroom deputy by 12:00 p.m. on September 15, 2022. Objections not made are waived. A witness may not testify without a direct testimony declaration.

5. The evidentiary hearing shall be conducted at 10:00 a.m. on September 19, 2022.

The court will issue an order.

9. 21-21966-B-13 TLC-1 EDSON/GENELYN DELSOCORA
Tamie L. Cummins

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
6-8-22 [49]

Final Ruling

The objection has been set for hearing on the 28-days notice required by 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 objection. *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 sustain in part and overrule in part the objection.

Debtors Edson Delsocora and Genelyn Delsocora ("Debtors") object to the claim of post-petition attorney's fees filed by M&T Bank ("M&T") in the amount of $962.80. This amount consists of $550.00 to prepare the proof of claim, $400.00 to review Debtors' plan, $6.00 for costs to mail Request for Notice, and $6.80 for costs to mail Proof of Claim. Debtors state that M&T did not provide any explanation of the time spent by counsel related to the proof of claim and review of Debtors' plan, did not provide any invoices or hourly rate, and that the fees are excessive.

M&T filed a response stating that the Debtors' argument is without merit and that the fees charged are appropriate. M&T states that Fed. R. Bankr. P. 3002.1 is a notice provision and does not require the detail that Debtors assert must be provided. This is further bolstered by Official Form 410S2, which was completed by M&T, and provides space for expenses to be listed and does not require any attachments.

M&T further explains that its counsel does not bill by the hour but rather uses flat fees with rates that are within the Fannie Mae Allowable Bankruptcy Fees Guidelines. Maximum fee reimbursement under the Fannie Mae fee schedule is (1) $950.00 for Proof Claim Preparation & Plan Review and (2) $250.00 for Proof of Claim – Form 410A Loan Payment History, which is a total of $1,200.00 M&T states that its charge was $400.00 for plan review and $550.00 for proof of claim B410 preparation, for a total of $950.00 without costs. This is $250.00 less than the Fannie Mae fee schedule. M&T notes that the Fannie Mae fee schedule is not binding on this court, but it is indicative of reasonable fees charged nationally for the same work including in states where the cost of living is lower than California. M&T argues that just as how debtors' attorneys may opt to charge a $4,000.00 flat fee to file a bankruptcy case, so too should creditors' counsel be allowed a flat fee that submits to the reasonably set and consumer friendly Fannie Mae fee schedule.

Despite utilizing flat fees, M&T's counsel has kept contemporaneous billing of the hours spent on this matter as required by its law firm. If billed at an hourly rate, the fees without costs would be $815.00. Although less than the flat fee charge, this result is not uncommon and, if this billing were not set under the Fannie Mae fee structure, the firm would charge its going hourly rates for the case.

Debtors filed a reply maintaining that the fees charged are excessive given that the paralegal's and attorney's work overlapped and that they reviewed the same matter on different or multiple days.

Discussion

This objection is a contested matter to the claim being asserted by M&T. Federal Rule of Bankruptcy Procedure 3002.1(e) provides that, on motion of the debtor or trustee, the court shall, 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. This contested matter is a core matter arising under Title 11, including 11 U.S.C. § 502. 28 U.S.C. § 157(b)(2)(A), (B), and (O).

Debtor objects to the following charges billed by M&T under the loan documents: (1) $400.00 for review of the Debtor's chapter 13 plan; and (2) $550.00 for preparation of the proof of claim filed in the case. Although they exceed what M&T would have charged if it billed hourly, M&T nevertheless asserts the charges are reasonable because they fall within the scope of Fannie Mae Servicing Guidelines. The court disagrees with M&T on both counts.[1]

At least one court has held that a $400.00 charge for reviewing a chapter 13 plan and a $500.00 charge for preparing a proof of claim are excessive and unreasonable. *See e.g., In re Ochab*, 586 B.R. 803, 809-10 (Bankr. M.D. Ala. 2018). And another has found the Fannie Mae Servicing Guidelines to be wholly irrelevant to the determination of the reasonableness of attorney's fees for a particular lender in a particular bankruptcy case. *See e.g., In re Ezell*, 2022 WL 72345 (Bankr. M.D. Fla. Jan. 7, 2022) ("Although these [Fannie Mae Servicing G]uidelines may help lawyers negotiate fees with their lender clients, the guidelines are irrelevant in determining what constitutes reasonable attorneys' fees a particular lender may charge a specific bankruptcy debtor in an actual case."). This court finds both decisions persuasive and agrees with both courts. The court will therefore analyze the M&T's charges under a lodestar analysis.

M&T claims to have spent a total of 2 hours to review the Debtor's chapter 13 plan. Of the 2 hours, .3 hours is attorney time billed at $425.00 per hour ($127.50) and 1.7 hours is paralegal time billed at $175.00 per hour ($297.50) for a total charge based on billed hours of $425.00.

M&T also claims to have spent a total of 1.8 hours preparing its proof of claim. Of the 1.8 hours, .3 hours was attorney time billed at $425.00 per hour ($127.50) and 1.5 hours was paralegal time billed at $175.00 per hour ($262.50) for a total charge based on billed hours of $390.00.

As an initial matter, the hourly rates of M&T's attorney and paralegal are not reasonable - at least for a chapter 13 case filed in the Eastern District of California. Both rates exceed hourly rates generally charged by consumer bankruptcy attorneys who routinely appear before this court in chapter 13 cases. Those rates typically average $350.00 per hour for bankruptcy attorneys and $150.00 per hour for paralegals.

The time spent on the tasks is also unreasonable.

The chapter 13 plan is a mandatory form used in the Eastern District of California. It is seven pages with standardized fill-in-the-blank classifications for claims, such as M&T's mortgage claim. Having appeared in hundreds - if not thousands - of chapter 13 cases filed in this district, the court has no doubt that M&T and its attorneys are intimately familiar with the mandatory form chapter 13 plan. When viewed in this context, 2 hours to review the Debtor's chapter 13 plan is inherently unreasonable. Accordingly, the court will allow M&T a fee for its review of the Debtor's chapter 13 plan; however, the court will exercise its discretion to reduce the amount allowed. The court will allow M&T **$150.00** for its review of the Debtor's chapter 13 plan. This represents .3 hours of attorney time at $350.00 per hour ($105.00) and .3 hours of paralegal time at $150.00 per hour ($45.00). Over one-half of an hour for an attorney and a paralegal to review this court's standard form chapter 13 plan that M&T and its attorneys have seen on numerous occasions is more than generous.

[1] There is a concept in less materialistic Eastern religious thought that power and privilege and wealth corrupt the soul. The Western rural expression of that idea is "pigs get fat; hogs get slaughtered." M&T's Notice of Postpetition Mortgage Fees, Expenses, and Charges invokes this concept.

Same with regard to the proof of claim. A total of 1.8 hours to prepare a proof of claim is not reasonable. The proof of claim form is a three-page standardized official fill-in-the blank form. It includes an attachment of loan documents and information readily available to M&T and its attorneys. It does not take almost two hours to complete by any creditor or attorney. So again, although the court will allow M&T a fee for this task, the court will exercise its discretion to reduce the amount allowed. The court will allow M&T **$210.00** for its preparation of the proof of claim. This represents .3 hours of attorney time at $350.00 per hour ($105.00) and .7 hours of paralegal time at $150.00 per hour ($105.00).

Expenses are allowed at 100% in the amount of $12.80.

The court's ruling is consistent with California law and the applicable deed of trust. As M&T points out, the former provides for the recovery of attorney's fees pursuant to the parties' agreement and the latter limits the recovery of attorney's fees to an amount that is "reasonable." *See* dkt. 56 at 5:19-6:15.[2]

Based on the evidence before the court, the objection to the notice of postpetition fees and expenses is sustained in part and overruled in part. M&T is allowed fees in the total amount of $360.00 and expenses in the amount of $12.80.

The objection is ORDERED SUSTAINED IN PART AND OVERRULED IN PART for reasons stated in the minutes.

The court will issue an order.

[2]This, of course, raises the question as to whether the Debtor may also recover attorney's fees from M&T based on this ruling. *See e.g., Cal. Civ. Code* § 1717. The objection does not request attorney's fees so the court does not reach the issue, at least in the context of the objection. Nothing prevents the Debtor from requesting attorney's fees based on this ruling if there is a meritorious and good faith basis to do so.

10. 22-21274-B-13 PATERNO LIM — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-1 Eric L. Seyvertsen — 7-12-22 [19]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed May 20, 2022, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

11.	22-21087-B-13 RDG-2	MIGUEL ANGEL AGUIRRE AND NORA ANGEL Ryan C. Wood	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 6-27-22 [18]

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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). 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 and reduce the homestead exemption to $497,500.00.

California Code of Civil Procedure § 704.730 was recently amended and provides:

> (a) The amount of the homestead exemption is the greater of the following:
>
> > (1) The county wide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars ($600,000.00).
> >
> > (2) Three hundred thousand dollars ($300,000.00).

The Debtors filed this case on April 29, 2022. To determine the median sale price, the applicable calendar year pursuant to the statute is 2021. The property is located in San Joaquin County. The court takes judicial notice that a yearly median sales price is unavailable but monthly median home sale prices are from the California Association of Realtors' website www.car.org. Sales prices listed from lowest to highest for 2021 were: $425000, $425000, $436300, $436300, $457750, $457750, $490000, $490000, $490000, $490000, $495000, $495000, $500000, $500000, $500000, $500000, $506000, $506000, $514480, $514480, $515000, $515000, $515000, $515000. The median, located by the two numbers that fall in the middle and averaged, is $497500. Therefore, the median sale price for Debtor's property is $497,500.00.

The Trustee's objection is sustained and the claimed exemption is reduced to $497,500.00.

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

The court will issue an order.

12. 22-21290-B-13 RODRIGO PRADO
RDG-1 Charles L. Hastings

OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
7-11-22 [15]

DEBTOR DISMISSED: 7/11/22

Final Ruling

The case was dismissed on July 12, 2022. Therefore, the objection to confirmation is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

13. 19-27991-B-13 TLC-1 PAUL/DESIRE WHATLEY Tamie L. Cummins — OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 8 6-6-22 [31]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, 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 sustain the objection to Claim No. 8 of Quantum3 Group LLC as agent for Aqua Finance, deem the claim as unsecured, and continue the matter to August 16, 2022, at 1:00 p.m.

Debtors Paul Whatley and Desire Whatley ("Debtors") request that the court disallow the claim of Quantum3 Group LLC as agent for Aqua Finance ("Creditor"), Claim No. 8, to the extent that it is not secured and should be deemed unsecured.

The basis of the claim relates to the construction of an in-ground pool. In 2016, Debtors and contractor 5 Star Pool Plaster Incorporated entered into an agreement for the construction of an in-ground pool and the contractor held a security interest in the pool. The contractor assigned its interest to Aqua Finance, Inc., who thereafter sold the loan to Connexus Credit Union ("CCU"). On December 20, 2019, CCU filed a Uniform Commercial Code Financing Statement with the San Joaquin County Recorders Office and listed the collateral as a "fixture." On December 31, 2019, Debtors filed for chapter 13 bankruptcy. CCU timely filed proof of claim no. 8, listing the pool as secured.

Debtors object to the claim as being secured. They assert that the in-ground pool is not a fixture. Whereas a security interest in a fixture need only be perfected by the filing of a statement with the county recorders office, a security interest in an in-ground pool must be recorded as a mortgage. Since CCU failed to record a mortgage, its security interest in the in-ground pool is unsecured.

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).

Debtors assert that CCU's claim is unsecured because it failed to record a mortgage. Debtors contend that CCU's statement filed with the San Joaquin County Recorder's Office listing the in-ground swimming pool as a "fixture" does not make its claim secured. Debtor's rely on the persuasive authority of *In re Ojeda*, 2020 Bankr. LEXIS 2558 (Bankr. M.D. Fla. 2020). The bankruptcy court there looked to the Florida Uniform Commercial Code and determined that the in-ground swimming pool was not moveable and thus not a "good." Because the swimming pool was not a good, it did not become a "fixture."

In this case, the California Commercial Code § 9102(a)(44) states that "goods" are all

things that are movable. Section 9102(a)(41) states that "fixtures" are goods that have become so related to real property that an interest in them arises under real property law. Additionally, the California Commercial Code § 9334(a) states that "[a] security interest does not exist under this division in ordinary building materials incorporated into an improvement on land." The language in the California Commercial Code is near identical to that in the Florida Uniform Commercial Code. Upon completion of the in-ground swimming pool in this case, the pool was no longer movable, cannot be characterized as a "good" or "fixture," and CCU's statement filed with the San Joaquin County Recorder's Office was insufficient to make its interest secured.

The court finds that the Debtors satisfied their burden of overcoming the presumptive validity of the claim. Based on the evidence before the court, the CCU's claim is deemed unsecured. The objection to the proof of claim is sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, August 12, 2022, to file and serve an opposition or other response to the objection. *See* Local Bankr. R. 3007-1(b)(2). 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 objection will be deemed sustained 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 August 16, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on August 16, 2022, at 1:00 p.m.

14. 20-21794-B-13 GREGORY/JANEE MOORE — MOTION TO INCUR DEBT
TBK-4 Taras Kurta — 6-10-22 [68]
Thru #15

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 the motion to incur debt without prejudice.

The motion requests an order allowing debtors Gregory Moore and Janee Moore ("Debtors") to incur debt for the purchase of a replacement vehicle for reasons set forth in Debtors' declaration.

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 Debtor's motion fails to satisfy the requirements of Rule 4001(c). Even at the bare minimum, the motion fails to state with particularity both the grounds upon which the relief is requested and the relief itself. Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007, 9014. Indeed, the motion is a mere two sentences. The motion will be denied without prejudice.

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

The court will issue an order.

15. 20-21794-B-13 GREGORY/JANEE MOORE — MOTION TO MODIFY PLAN
TBK-5 Taras Kurta — 6-10-22 [72]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 permit the requested modification and not confirm the modified plan.

First, Debtors' plan fails to provide for post-petition arrears totaling $1,925.22 to Class 1 Creditor, Nationstar Mortgage LLC, representing the month of May 2022. Without providing for these post-petition arrears, it cannot be determined whether the plan is feasible.

Second, Debtors' plan proposes to reclassify Class 2 creditor, Logix Federal Credit Union for a 2014 Dodge Journey, as a Class 3 surrender. This creditor has already received disbursements from the Trustee.

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

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

The court will issue an order.