

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

April 28, 2015 at 2:00 P.M.

1. [14-30019](#)-C-13 TERRY PEYTON MOTION TO CONFIRM PLAN
 CAH-1 Anthony Hughes 3-11-15 [[28](#)]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the Motion to May 5, 2015 at 2:00 p.m.

The Chapter 13 Trustee objects to confirmation on the basis that:

1. The debtor is \$750 delinquent in plan payments to date with the next scheduled payment of \$250 due on April 25, 2015. The Debtor has made only one payment to date.
2. The debtor lists Citimortgage in Class 1 as the debtor has scheduled arrears in the amount of \$27,332.31. The Additional Provisions of the

plan provide that the debtor is in the process of selling his real property, commonly known as 10147 Equestrian Dr., Elk Grove, California, by month nine and anticipates to pay 100% to all creditors, listed in his plan, through the sale. The debtor proposes that "on-going mortgage payments to Class 1 Creditor Citimortgage Inc. will be paid by the Chapter 13 Trustee in months 10-60 in the amount of \$2,071 per month. This substantial delay in ongoing payments appears to violate 11 U.S.C. §§ 1322(b)(2) and 1322(b)(5) by not maintaining payments and thus prevent confirmation under 11 U.S.C. § 1325(a)(1). Further, the debtor has failed to file a motion for the court to approve the sale of the property and failed to give the Trustee or the court sufficient details to allow for oversight of the sale process.

3. According to the Trustee's calculations, the plan will be complete in 98 months if the sale of real property does not happen. The plan proposes to pay \$250 for nine months; \$2,700 for three months; then \$2,980 for 48 months with a 100% dividend to unsecured creditors. The total paid into the plan \$153,390.
4. The debtor is under the median income. The debtor's monthly projected disposable income listed on Schedule J reflects \$2,734. The debtor has failed to indicate how the plan payments will increase to \$2,980 in month 13 and why the debtor is not paying all disposable income in the plan for months one through nine.

The docket reflects that the court entered an order shortening time on a Motion to Sell Property filed by the debtor to be heard May 5, 2015 at 2:00 pm. The court also notes this Motion to Confirm depends upon the Motion to Sell Property. The court's decision is to continue the instant motion to confirm to May 5, 2015 at 2:00 p.m. to be heard concurrently with the motion to sell.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is continued to May 5, 2015 at 2:00 p.m.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 19, 2015. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The Trustee recently received information from an attorney for the California Department of Corrections and Rehabilitation advising that the Debtor has a lawsuit pending against the California Department of Corrections and Rehabilitation that was filed on May 29, 2014 and not disclosed on the Debtor's Schedules or SOFA.
2. The plan fails the liquidation analysis given that the debtor has not disclosed the above-mentioned lawsuit and proposes a 0% dividend to unsecured creditors.

Debtors' Opposition

To address the Trustee's concerns, the debtors have amended Schedules B, C, Summary of Schedules, and the SOFA.

Discussion

The debtors have addressed the Trustee's concern with regard to the unsecured asset, however, the Trustee's concern regarding the liquidation analysis is not yet resolved.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2015. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The plan increases plan payments from \$350 to \$465 after the Trustee sought to dismiss th plan as it would take 60 months to complete.
2. There is a discrepancy in the debtor's listed income found in Schedule I and the SOFA. The Trustee opposes confirmation of the modified plan unless the debtor furnishes sufficient evidence to prove their income, such as a copy of their 2014 tax return, last paystub of the 2014 year, or more substantial declaration explaining the discrepancy.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

4. 14-30059-C-13 MONICA BURTON
DPC-1 Michael Lee

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
11-20-14 [26]

Also #10

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 20, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation on the following basis:

1. Debtor seeks to value the secured claim of Green Tree Servicing, LLC. The motion to value the claim was heard and denied at the hearing on November 18, 2014. Unless Debtor files and receives approval for a new motion, she cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

Debtor filed a new Motion to Value the secured claim of Green Tree Servicing, LLC, that was heard on January 27, 2015. As a result of this Motion, the court continued the hearing on the Objection to January 27, 2015.

At the hearing on January 27, 2015, the court denied the motion to

value for inadequate identification of creditor and; therefore, inadequate service.

The Trustee agreed to continue the hearing to April 28, 2015 to afford the Debtor the opportunity to prosecute the necessary motion to value.

The docket reflects that the Debtor has provided documentary evidence that Green Tree Servicing, LLC rightfully holds the second deed of trust on the collateral to be valued. Dckt. 65. The court is prepared to grant the Motion to Value. Accordingly, the Trustee's only objection to confirmation is resolved.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on October 8, 2014 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.

5. [15-20763](#)-C-13 EUSEBIO RAMIREZ AND ROCIO CONTINUED OBJECTION TO
DPC-1 RUIZ CONFIRMATION OF PLAN BY DAVID
Thomas Gillis P. CUSICK
3-11-15 [[24](#)]

Also #6

Final Ruling: No appearance at the April 28, 2015 hearing is required.

The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 11, 2015. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to overrule the Objection.

Background

Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Plan relies on the debtors' motion to value the collateral of Bank of America set for hearing on March 24, 2015.

In their opposition to the Trustee's objection, Debtors state that their

motion to value collateral hearing has been continued to April 28, 2015. Debtor requested that this matter also be continued to April 28, 2015.

At the hearing on April 14, 2015, the court continued the matter to April 28, 2015.

Discussion

The court is prepared to grant the motion to value the collateral of Bank of America, N.A. Accordingly, the Trustee's only outstanding objection to confirmation is resolved.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtors' Chapter 13 Plan filed on January 31, 2015 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.

6. [15-20763](#)-C-13 EUSEBIO RAMIREZ AND ROCIO CONTINUED MOTION TO VALUE
TOG-1 RUIZ COLLATERAL OF BANK OF AMERICA,
Thomas Gillis N.A.
2-20-15 [[14](#)]

Final Ruling: No appearance at the April 28, 2015 hearing is required.

The Motion to Value has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 20, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtors are the owners of the subject real property commonly known as 282 Cahil Circle, Colusa, California. The Debtors seeks to value the property at a fair market value of \$110,314.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately

\$137,300. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$78,350. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OBJECTION

Bank of America, N.A., Creditor, objects to Debtors' Motion to Value, estimating the value of the subject property to be closer to \$184,591.00. Creditor objects to (1) Debtor's valuation of the property, asserting that they have provided no basis for their valuation, and (2) Debtors have not submitted any evidence to show the validity and extent of the senior lien.

DISCUSSION

Creditor Bank of America, N.A. expresses great distress at Debtors' "self-serving" valuation, stating that Debtors provide no basis for their valuation, and that "reliance on Debtors' own belief, without providing any foundation for such belief, is improper." Creditor's Opposition, pg. 4 (Dckt. 22). The court reminds Creditor, however, that as the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). A court's reliance on such owner valuation is not, as they assert "improper," but the law of the Ninth Circuit.

Moreover, Creditor opposes Debtors' assessment of the senior lien on their property, providing that Debtors fail to prove the validity, priority, and extent of any senior lien by way of admissible and unauthenticated evidence. Creditor Bank of America, N.A. seems to overlook that Debtors have submitted a declaration containing information as to their obligation to the senior lien on the property, written under penalty of perjury. Such declaration is admissible evidence before this court.

Creditor Bank of America, N.A., however, contends that the fair market value of the property is closer to \$184,591 based on "the preliminary analysis of comparable neighboring properties," without providing any basis for their own valuation by way of declaration or admissible appraisal.

At the hearing on March 24, 2015, the court provided Creditor with a thirty (30) day continuance to April 28 at 2:00 p.m. within which to obtain a verified appraisal. Such appraisal was to be submitted to the court on or before April 23, 2015 (thirty days from the date of this hearing), if Creditor would like the court to consider it.

As of April 23, 2015, the docket reflects that Creditor has failed to file an appraisal. Due to Creditor's failure to fully prosecute its opposition, the court will find in favor of Debtors and grant the motion.

The court shall issue a minute order substantially in the following form holding that:

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by

Debtors, having been presented to the court,
and upon review of the pleadings, evidence,
arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion pursuant to
11 U.S.C. § 506(a) is granted and the claim of
Bank of America, N.A. secured by a second deed
of trust recorded against the real property
commonly known as 282 Cahil Circle, Colusa,
California, is determined to be a secured
claim in the amount of \$0.00, and the balance
of the claim is a general unsecured claim to
be paid through the confirmed bankruptcy plan.
The value of the Property is \$110,314.00 and
is encumbered by senior liens securing claims
which exceed the value of the Property.

7. [15-21269](#)-C-13 BOUNTHEU THIENPHETH
KK-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY CENTRAL MORTGAGE
COMPANY
3-31-15 [[37](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 31, 2015. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to sustain the Objection.

Central Mortgage Company ("Creditor") opposes confirmation of the plan on the basis that the plan does not provide for the pre-petition arrearages owed to Creditor. The plan's failure to provide for pre-petition arrearages, Creditor argues, modifies violates 11 U.S.C. § 1322(b)(5)'s anti-modification provision.

Creditor is the holder of a claim secured only by a security interest in real property commonly known as 1419 Kansan street, Fairfield, California, which is the debtor's principal residence. The total amount due and owing under the Promissory Note is approximately \$237,322.64 and the pre-petition arrearage amount owed is approximately \$28,424.49.

Creditor further argues that the debtor's Schedules I and J indicate

that the debtor has a disposable income of \$0.00, thus the debtor is not able to propose a feasible plan that will cure the arrearage to Creditor.

As Creditor's objections highlight, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Central Mortgage Company having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

8. [15-22277](#)-C-13 RUDOLPH/MARY TAMAYO
SDH-1 Scott Hughes

MOTION TO VALUE COLLATERAL OF
HOMECOMINGS FINANCIAL, LLC
3-23-15 [[9](#)]

Final Ruling: No appearance at the April 28, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 23, 2015. Twenty-eight days' notice is required.

The Motion to Value has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Homecomings Financial, LLC, "Creditor," is granted.

The motion is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 2405 Rush Creek Place, Vallejo, California. Debtors seek to value the property at a fair market value of \$500,000 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$653,000. Homecomings Financial, LLC's second deed of trust secures a loan with a balance of approximately \$92,401.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Homecomings Financial, LLC's secured by a second deed of trust recorded against the real property commonly known as 2405 Rush Creek Place, Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$500,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Tentative Ruling: The Objection to Exemptions 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 Debtor 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) (ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f) (1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 18, 2015. Twenty-eight days' notice is required. That requirement was met.

The Objection to Exemptions 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 Debtor 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) (ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.

The Debtor has conceded that the Objection is meritorious and no longer opposes the Objection.

Summary of Motion

The Trustee objects to the Debtor's use of the California exemptions for a "Food Truck" pursuant to C.C.P. § 704.010 in the amount of \$2,898.00 and C.C.P. § 704.060 in the amount of \$4,850.00.

The Trustee is concerned with the lack of information relating to the description of the "Food Truck." Specifically, the Debtor has not provided sufficient details such as the year, make and model of the truck, and equipment on the truck enabling it to be a "Food Truck." Further, the Debtor is not operating a business and is full time employed, and has been for eight years, with Kaiser Foundation Hospitals. Under C.C.P. § 704.060(a) (1), the Debtor must be actually using the asset in the exercise of the business

by which the judgment debtor earns a livelihood.

Debtor's Opposition

The Debtor contends that, in response to questioning at the meeting of creditors, she provided details about the characteristics of the truck testifying to its year, model, equipment, and purchase price.

Next, the Debtor contends that even if a vehicle is not "exempt per se as a tool of the trade, it may still qualify as exempt property if it is a commercial vehicle." *In re Rawn*, 199 B.R. 733, 736 (E.D. Cal. 1996).

****The Debtor subsequently filed a statement of non-opposition to the Trustee's objection and a voluntarily withdrawal the opposition to the objection. Dckt. 53.***

Trustee's Reply

The Trustee contends that (1) the concern regarding the description and valuation of the vehicle remains outstanding, and (2) the Debtor must be actually using the asset in the exercise of the business by which the judgment debtor earns a livelihood to claim it as exempt under C.C.P. § 704.060(a)(1).

Discussion

In light of the Trustee's above-summarized concerns in addition to the Debtor's statement of non-opposition and voluntary withdrawal of opposition to the objection, the Trustee's objection is sustained and the claimed exemptions are disallowed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the claimed exemptions are disallowed in their entirety.

10. [14-30059](#)-C-13 MONICA BURTON
MDL-4 Michael Lee

MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING, LLC
O.S.T.
4-21-15 [[60](#)]

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Green Tree Servicing LLC, and counsel for Green Tree Servicing LLC, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. Fourteen days' notice is required. The court approved an order to shorten time on the Motion to Value. Dckt. 67.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Value secured claim of Green Tree Servicing, LLC, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 11 Mencia Court, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$259,477.00 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$465,052.00. Green Tree Servicing, LLC's second deed of trust secures a loan with a balance of approximately \$4,00.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-

collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Green Tree Servicing, LLC secured by a second deed of trust recorded against the real property commonly known as 11 Mencia Court, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$259,477.00 and is encumbered by senior liens securing claims which exceed the value of the Property.
