

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

January 12, 2023 at 10:30 a.m.

1. <u>22-90103-E-7</u> <u>SSH-2</u>	CHRISTOPHER MENDEZ Simran Hundal	MOTION TO REDEEM 12-7-22 <u>[21]</u>
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Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on December 9, 2022. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Redeem has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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.

Though notice was provided Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to insure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

The Motion to Redeem is granted.

Christopher Mendez (“Debtor”) seeks to redeem 2010 Chevy Malibu LTZ (“Property”) from the claim of Credit Acceptance Corp (“Creditor”) pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor’s exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder “the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption.” 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Christopher Mendez. Debtor seeks to value the Property at a replacement value of \$100.00 as of the petition filing date. Although Debtor’s original Schedule A/B values the vehicle at \$4,421.00, Dckt. 1, Debtor filed an Amended Schedule A/B on December 7, 2022, Dckt. 24, valuing the vehicle at \$100.00. Debtor states the low value is due to issues with the transmission and steering wheel, causing it to not run. Declaration, Dckt. 23.

As the owner, Debtor’s opinion of value is evidence of the Property’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 lien perfected on the Property secures Creditor’s claim with a balance of approximately \$5,655.00. Therefore, Creditor’s claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor’s secured claim to be in the amount of \$100.00.

Debtor has not claimed an exemption in the Property. Amended Schedule C, Dckt. 24

~~Debtor is permitted to redeem the Property by paying Creditor \$100.00 at the time of redemption, which payment is in full satisfaction of the secured claim.~~

~~The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.~~

~~The court shall issue an order in 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 Redeem filed by Christopher Mendez (“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 is granted, and Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2010 Chevy Malibu LTZ (“Property”) by paying Credit Acceptance Corp., the creditor holding the claim secured by the Property, the total amount of \$100.00, in full at the time of redemption, which must be paid on or before February 17, 2023.~~