

**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: March 15, 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

March 15, 2022 at 1:00 p.m.

1. [21-22400](#)-B-13 MICHAEL/CAROL DAVIS MOTION TO MODIFY PLAN
[MRL](#)-1 Mikalah R. Liviakis 2-1-22 [[37](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

March 15, 2022 at 1:00 p.m.

2. 21-23801-B-13 ROBERT MOLINA OBJECTION TO DEBTOR'S CLAIM OF
 KSR-2 Nicholas Wajda EXEMPTIONS
 Thru #4 2-2-22 [[41](#)]

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). Opposition was filed by the Debtor.

Debtor Robert Molina ("Debtor") has claimed an exemption in a 401(k) Voya account. Creditor Christina Molina ("Creditor") objects to the Debtor's claim of exemption. Debtor filed a response. Creditor filed a reply.

The court has reviewed the objection, response, reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). The objection is appropriate for disposition without oral argument which will not assist in the resolution of the objection. See Local Bankr. R. 1001-1(f), 9014-1(h). Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

The exemption is claimed under C.C.C.P. § 703.140(b)(10)(E) which, in relevant part, exempts "[a] payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor[.]"

The Ninth Circuit recently confirmed that California law imposes the burden of proof on the exemption claimant which means a debtor claiming a state-created exemption bears the burden of proving entitlement to the exemption claimed. *Anderson v. Nolan*, 2022 WL 327927 at *2 (9th Cir. Feb. 3, 2022); *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 337 (9th Cir. BAP 2016); see also *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015). The Debtor has not carried his burden.

The Debtor asserts that the Voya account is necessary for his support because he has no other retirement account. Dkt. 61 at 2:11-12. The court finds that single statement insufficient. At a very minimum, the statement fails to address many of the factors considered under *Moffat v. Habberbush (In re Moffat)*, 119 B.R. 201 (9th Cir. BAP 1990), *aff'd*, 959 F.2d 740 (9th Cir. 1992), which the Debtor asserts apply. See Dkt. 60 at 5:5-18. For example, the statement ignores (which means there is no evidence of) the Debtor's (1) present and anticipated living expenses and income, (2) health, (3) ability to work and earn a living, (4) training, job skills, and education, (4) ability to save for retirement, and (5) other special needs. *Id.* at 206.

Based on the foregoing, Creditor's objection to the Debtor's claim of exemption is ORDERED SUSTAINED.

The court will issue an order.

3. 21-23801-B-13 ROBERT MOLINA OBJECTION TO CLAIM OF CHRISTINA
 WLG-1 Nicholas Wajda MOLINA, CLAIM NUMBER 6
 2-12-22 [[50](#)]

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. Local Bankr. R. 3007-1(b)(2). Nevertheless, the court sets the following briefing schedule:

- (1) Creditor may file and serve an opposition or response by March 29, 2022;
- (2) Debtor may file and serve a reply by April 5, 2022; and
- (3) The hearing on objection is continued to April 19, 2022, at 1:00 p.m.

No appearance at the hearing on March 15, 2022, at 1:00 p.m. is required.

4. 21-23801-B-13 ROBERT MOLINA MOTION TO AVOID LIEN OF
WLG-2 Nicholas Wajda CHRISTINA MOLINA
2-12-22 [[55](#)]

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. No appearance at the hearing is required.

The court's decision is to continue the motion to April 19, 2022 at 1:00 p.m. to be heard in conjunction with the claim objection referenced in Item #3, WLG-1. No appearance is required for this matter on March 15, 2022, at 1:00 p.m.

As noted above, the motion is not opposed and the evidentiary record is now closed. See Local Bankr. R. 9014-1(f)(1)(C). Opposition or other response may be filed only by leave of court upon a showing of cause why an opposition or other response was not timely filed. Leave may be requested by an ex parte application filed by March 22, 2022. Any party filing an ex parte application shall also upload a corresponding order with space for the court's decision.

5. [21-23220](#)-B-13 HARDEEP SINGH
[RDG](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
2-8-22 [[32](#)]

Final Ruling

This matter was continued from March 1, 2022, to allow the debtor to file, set, and serve an amended plan by March 15, 2022. Debtor filed a timely response and a first amended plan with a scheduled confirmation hearing date of April 19, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 39 and the continued hearing on March 15, 2022, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

6. [22-20120](#)-B-13 JUAN/MARIA SALAS
[PGM](#)-2 Peter G. Macaluso
Thru #7

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
2-14-22 [[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 value the secured claim of Wells Fargo Bank, N.A. at \$8,000.00.

Debtor moves to value the secured claim of Wells Fargo Bank, N.A. ("Creditor"). Debtor is the owner of a 2015 Toyota Sienna ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,000.00 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on December 30, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,648.83. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$8,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will issue an order.

7. [22-20120](#)-B-13 JUAN/MARIA SALAS
[PGM](#)-3 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
GREAT WESTERN TRUST
2-14-22 [[30](#)]

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 value the secured claim of Great Western Trust at \$0.00.

Debtors move to value the secured claim of Great Western Trust ("Creditor") pursuant to

11 U.S.C. § 506(a). Debtors are the owner of the subject real property commonly known as 5304 Sweet Pea Lane, Stockton, California, 95212 ("Property"). Debtors seek to value the Property at a fair market value of \$500,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$508,947.00. Creditor's second deed of trust secures a claim with a balance of approximately \$113,456.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

8. [20-24652](#)-B-13 LILLIE BRACY
[BLG](#)-3 Chad M. Johnson

MOTION TO MODIFY PLAN
2-4-22 [[55](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

9. [21-23493](#)-B-13 EMILIE/KENNETH BURTON MOTION TO CONFIRM PLAN
[RS-1](#) Richard L. Sturdevant 2-8-22 [[33](#)]

Final Ruling

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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