

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

December 14, 2021 at 1:00 p.m.

1. [20-90218](#)-B-13 JAMES BLANCO OBJECTION TO CLAIM OF INTERNAL
[JAD](#)-2 Jessica A. Dorn REVENUE SERVICE, CLAIM NUMBER 3
Thru #2 10-22-21 [[36](#)]

Final Ruling

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

The court's decision is to **continue the hearing to February 1, 2022 at 1:00 p.m.**, to permit proper services in accordance with the local rules and the Roster of Governmental Agencies.

Local Bankr. R. 2002-1(c)(2) requires notice in contested matters relating to the Internal Revenue Service to be sent to the "United States Attorney as specified in LBR 2002-1(a)[.]" For cases assigned to the Modesto Division, Local Bankr. Rule 2002-1(a)(2) requires service as follows:

United States Attorney
(For [insert name of agency])
2500 Tulare Stree, Suite 4401
Fresno, CA 93721

The Roster of Governmental Agencies includes a similar service requirement:

If Filed in the Modesto or Fresno Division to:
United States Attorney
(For Internal Revenue Service)
2500 Tulare St Ste 4401
Fresno, CA 93721

The Certificate of Service does not reflect that the United States Attorney was served at the address required by the local rule and the roster. See dkt. 40.

Rather than deny the motion for defective service, in the interests of judicial economy, the court will exercise its discretion to continue the hearing on the objection to February 1, 2022, at 1:00 p.m. so that the Debtor may serve the United States Attorney as required. The Debtor shall serve the United States Attorney so that the objection may be heard consistent with Local Bankr. R. 3007-1(b)(1).

The objection is ORDERED CONTINUED to February 1, 2022 at 1:00 p.m. for reasons stated in the minutes.

The court will issue an order.

December 14, 2021 at 1:00 p.m.

2. [20-90218](#)-B-13 JAMES BLANCO
[RDG](#)-1 Jessica A. Dorn

CONTINUED AMENDED MOTION TO
DISMISS CASE
10-14-21 [[34](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee and a response was filed by the Debtor.

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 continue the hearing on the amended motion to dismiss case to February 1, 2022, at 1:00 p.m. for the reasons stated in the minutes at JAD-2, associated dkt. 36.

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

The court will issue an order.

3. [21-90434](#)-B-13 EDWARD BRUNNER AND MOTION TO VALUE COLLATERAL OF
[EJV](#)-1 KATHERINA COGGINS WELLS FARGO BANK
Thru #5 Eric J. Gravel 11-11-21 [[23](#)]

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, dba Wells Fargo Auto at \$7,033.00.

Debtors move to value the secured claim of Wells Fargo Bank, dba Wells Fargo Auto ("Creditor"). Debtors are the owner of a 2013 Hyundai Genesis ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$7,033.00 as of the petition filing date. As the owners, Debtors' 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 2-1 filed by Wells Fargo Bank N.A., d/b/a Wells Fargo Auto is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on August 30, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$12,670.11. 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 \$7,033.00. 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.

4. [21-90434](#)-B-13 EDWARD BRUNNER AND MOTION TO VALUE COLLATERAL OF
[EJV](#)-2 KATHERINA COGGINS ALLY FINANCIAL
Eric J. Gravel 11-12-21 [[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). Opposition was filed.

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

The court's decision is to deny the motion to value without prejudice.

Debtors move to value the secured claim of Ally Financial ("Creditor"). Debtors are the owners of a 2013 Dodge Challenger SXT Coupe 2D("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$4,638.30 as of the petition filing date. As the owners, Debtors' 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).

Opposition

Creditor has filed an opposition asserting that the Vehicle has a replacement value of \$10,178.00. However, this valuation is actually the private party value taken from Kelley Bluebook. See *dk. 44, ex. 3*.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 4-1 filed by Ally Financial is the claim which may be the subject of the present motion.

Discussion

The court finds issue with Creditor's valuation. Creditor's valuation is a "private party" value. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a). Therefore, Creditor's valuation is given no weight.

The court also finds issue with the Debtors' valuation. The court can accept a debtor's lay opinion of the value of his or her property and, in the absence of evidence to the contrary, may even accept a debtor's opinion of value as conclusive. *In re Enewally*, 368 F.3d 1165, 1173 (9th Cir. 2004). Here, however, the Debtors have not adequately explained the basis of their opinion of value.

Given the vast difference in asserted values, the parties are urged to obtain and submit an appraisal. Alternatively, the court will set this matter for an evidentiary hearing and appoint its own appraiser, Fed. R. Evid. 706(a), with costs apportioned to the party whose value is determined to be the less reasonable. Fed. R. Evid. 706(c).

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

The court will issue an order.

5. 21-90434 -B-13 EDWARD BRUNNER AND RDG-1 KATHERINA COGGINS Eric J. Gravel	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-29-21 [19]
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Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also 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 sustain the objection and deny confirmation of the plan.

First, the Chapter 13 Trustee objects to confirmation on grounds that the Disclosure of Compensation of Attorney for Debtor, line 6, excludes representation on judicial lien avoidances and relief from stay actions. These services should not be excluded because they are included in the "no look fee." Debtors resolved this issue by filing an amended Disclosure of Attorney Compensation on November 16, 2021.

Second, feasibility of the plan depends on the granting of motions to value collateral of Wells Fargo Bank, EJV-1, and Ally Financial EJV-2. Only one of those motions, EJV-1, is granted.

Third, the court cannot determine whether the Debtors are paying all their projected disposable income to unsecured creditors in accordance with 11 U.S.C. § 1325(b). Although the Debtors filed amended Official Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, on November 17, 2021, the form still does not include Mr. Brunner's pension, which commenced in February 2021 per Debtors' testimony at the meeting of creditors.

Due to the unresolved second and third issues stated above, the plan filed September 14, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

6. [18-90566](#)-B-13 PAULA TLASCALA
[MSN](#)-1 Mark S. Nelson

MOTION TO MODIFY PLAN
11-2-21 [[22](#)]

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 Debtor has 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 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.

7. [21-90472](#)-B-13 CARL GONSALVES
[RDG](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D GREER
11-18-21 [[22](#)]

CONTINUED TO 1/11/22 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF
CREDITORS SCHEDULED FOR 1/05/22.

Final Ruling

No appearance at the December 14, 2022, hearing is required. The court will issue an
order.

8. [19-90292](#)-B-13 JACK/KAREN MEYERS
[PLG](#)-2 Steven A. Alpert

MOTION TO MODIFY PLAN
11-4-21 [[36](#)]

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.