

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Modesto, California

January 20, 2009 at 2:00 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 49. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2), OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON FEBRUARY 17, 2009 AT 2:00 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 3, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 10, 2009. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 50 THROUGH 80. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON FEBRUARY 2, 2009, AT 2:30 P.M.

January 26, 2009 at 2:00 p.m.

Matters called beginning at 2:00 p.m.

1. 08-92407-A-13G DONOVAN/KATHRYN LASTRA HEARING - OBJECTION TO
SW #1 CONFIRMATION OF PLAN AND COL-
LATERAL VALUATION MOTION BY GMAC
1-6-09 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and the related valuation motion was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The debtor seeks to value the objecting creditor's collateral, an auto, based on the private party valuation given by the Kelley Blue Book. That value, for a 2005 Chevrolet Tahoe with 50,000 miles, is \$11,900. Based on this value, the plan offers to pay a secured claim of \$11,900 at the rate of \$217.31 a month with interest at a rate of 4%.

The objection to the valuation motion will be sustained in part.

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by the Kelley Blue Book, is \$14,300. This valuation, however, presumes the condition of the vehicle is excellent. See <http://www.kbb.com> (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation").

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value. First, the creditor's retail value assumes that the vehicle is in excellent condition. This is not based on any facts, at least facts proven to the court. 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." That is, what would a retailer charge for the vehicle as it is?

Nor has the debtor proven to the court's satisfaction the replacement value of the vehicle. The motion contains very little specific information about the vehicle other than its model, year, and mileage.

While neither party has persuaded the court as to the replacement value of the

of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

4. 08-91818-A-13G CHRISTOPHER BONORA
HAC #3

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE IRS
12-18-08 [150]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

5. 08-91818-A-13G CHRISTOPHER BONORA
HAC #4

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF CHARLES
JORGENSEN
12-18-08 [154]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

6. 08-91818-A-13G CHRISTOPHER BONORA
HAC #5

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE IRS
12-18-08 [158]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value

of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

8. 08-91818-A-13G CHRISTOPHER BONORA
HAC #7

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE IRS
12-18-08 [166]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

9. 08-91818-A-13G CHRISTOPHER BONORA
HAC #8

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF CHARLES
JORGENSEN
12-18-08 [170]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

10. 08-91818-A-13G CHRISTOPHER BONORA
HAC #9

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE
STANISLAUS COUNTY TAX COLLECTOR
12-18-08 [174]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

11. 08-91818-A-13G CHRISTOPHER BONORA
HAC #10

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE DIRECTOR
OF INDUSTRIAL RELATIONS AS
ADMINISTRATOR OF THE UNINSURED
EMPLOYERS FUND
12-18-08 [178]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there

remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

12. 08-91818-A-13G CHRISTOPHER BONORA
HAC #11

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF FINANCIAL
PACIFIC LEASING, LLC
12-18-08 [182]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

13. 08-91818-A-13G CHRISTOPHER BONORA
HAC #12

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE
STANISLAUS COUNTY TAX COLLECTOR
12-18-08 [186]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

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The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

14. 08-91818-A-13G CHRISTOPHER BONORA
HAC #13

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE IRS
12-18-08 [190]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value

of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

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The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

15. 08-91818-A-13G CHRISTOPHER BONORA
HAC #14

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE
STANISLAUS COUNTY TAX COLLECTOR
12-18-08 [194]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

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The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

16. 08-91818-A-13G CHRISTOPHER BONORA
HAC #15

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE IRS
12-18-08 [198]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

17. 08-91818-A-13G CHRISTOPHER BONORA
HAC #16

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF FINANCIAL
PACIFIC LEASING, LLC
12-18-08 [202]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

18. 08-91818-A-13G CHRISTOPHER BONORA
HAC #17

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE IRS
12-18-08 [206]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value

of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

20. 08-91818-A-13G CHRISTOPHER BONORA
HAC #19

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE
STANISLAUS COUNTY TAX COLLECTOR
12-18-08 [214]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

21. 08-91818-A-13G CHRISTOPHER BONORA
HAC #20

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE
STANISLAUS COUNTY TAX COLLECTOR
12-18-08 [218]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

22. 08-91818-A-13G CHRISTOPHER BONORA
HAC #21

HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE
STANISLAUS COUNTY TAX COLLECTOR
12-18-08 [222]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value real property in Stanislaus County and the debtor's personal property in order to determine which of many creditor's holding liens against that property are actually secured after application of 11 U.S.C. § 506(a) to their claims.

The real property has a value of \$129,000. The personal property has a value of \$1,100.

The IRS holds the only lien on the personal property.

The first priority lien on the real property is held by the Stanislaus County Tax Collector for real property taxes. According to his proof of claim, the county is owed \$3,854.61. The debtor asserts that Litton's claim secured by a deed of trust securing a claim of \$98,887.62 is in first priority position. However, the real property taxes on the subject property are senior in priority to consensual liens.

After deducting the real property taxes and the amount owed to Litton, there remains \$26,257.77 of equity to secure other junior lienholders with claims encumbering the real property.

The IRS holds several liens for unpaid taxes. According to its amended proof of claim, the first two of its liens, both recorded on October 25, 2002, secure unpaid taxes, interest, and penalties of \$26,594.32. These liens consume all of the remaining equity in the real property as well as \$336.55 of the \$1,100 in personal property. This leaves \$763.45 of equity in the personal property.

The IRS also holds the next priority lien, this one in the face amount of \$10,488. However, after application of section 506(a), this lien must be stripped down to \$336.55. The balance, as well as all other liens, are unsecured claims.

23. 08-92224-A-13G EVODIO/SILVIA ESPARZA
EDH #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN BY HSBC BANK, N.A.
12-17-08 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained in part.

The plan provides for the objecting creditor's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. In this instance, however, the objection establishes that the objecting creditor's claim was in default on the date the petition was filed. There was a \$3,756.55 pre-petition arrearage. By placing the claim in Class 4, the debtor has failed to provide for a cure of this arrearage in violation of 11 U.S.C. § 1325(a)(5)(B).

24. 08-90530-A-13G KRISTOPHER/SALLY SMITH HEARING - DEBTORS' MOTION FOR
JCK #3 SALE OF DEBTORS HOME SURRENDERED
IN THE CHAPTER 13 PLAN
12-24-08 [43]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The motion to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full, or in such lesser amount as they may agree, and in a manner consistent with the plan.

25. 07-91432-A-13G LUIS PINTO/MARIA SANTANA HEARING - MOTION TO
FW #4 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11-12-08 [48]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$2,105. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Second, the plan provides for a secured claim that has been granted relief from the automatic stay to foreclose upon its collateral. This is an unnecessary expense.

26. 08-90935-A-13G CHARLES/MARION CLARK HEARING - MOTION FOR
DMG #1 RELIEF FROM AUTOMATIC STAY
CITIFINANCIAL AUTO CORP., VS. 12-17-08 [22]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$215,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

28. 08-92638-A-13G CHARLES YOUNG HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-17-08 [8]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The 15-day period has expired without any of these documents being filed. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

29. 08-90439-A-13G DARWIN HOWARD HEARING - MOTION TO
DCJ #4 CONFIRM MODIFIED CHAPTER 13 PLAN
12-12-08 [67]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

The debtor's unsecured debts exceed the limit imposed by 11 U.S.C. § 109(e). After including the under-collateralized portion of the secured claim of Bill Evans, there is an additional \$414,979 in unsecured debt. When added to the scheduled unsecured debt on Schedule F, there is \$428,643 in unsecured debt, more than the \$336,900 permitted by section 109(e).

30. 07-91348-A-13G ROBERT/ANNA FYFFE HEARING - OBJECTION TO
SAC #5 CLAIM OF PRA RECEIVABLES
MANAGEMENT LLC/LVNV FUNDING LLC
12-2-08 [128]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The objection states that the debtor did not borrow money from PRA or from its assignor, LVNV. This may be true but it does not mean that there is no claim against the debtor because the claim was originally filed by LVNV/Resurgent Capital Services. That original proof of claim appended documentation of the assignment of a claim from Citibank. The debtor has not denied borrowing money from Citibank. Schedule F identifies Citibank as a creditor.

31. 08-92553-A-13G MANUEL/CARMEN INFANTE HEARING - MOTION TO
TPH #1 VALUE COLLATERAL OF CHASE
MANHATTAN BANK
12-22-08 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

While the debtor has provided an admissible owner's opinion that the subject real property has a value of \$300,000 and evidence that is encumbered by a senior lien also held by Chase Manhattan Bank, there is no evidence as to the amount of the senior lien. Hence, the court cannot ascertain from the motion whether there is any equity in the property to secure the junior lien held by Chase Manhattan Bank.

32. 05-90858-A-13G MICHAEL/CANDY DIZNEY HEARING - DEBTORS' MOTION TO
DCJ #5 CONFIRM MODIFIED CHAPTER 13 PLAN
12-12-08 [147]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

The plan fails to provide for the pre-petition arrearage owed on a secured claim held by Beneficial. The plan does not comply with 11 U.S.C. § 1325(a) (5) (B).

Also, in order to pay all dividends, the plan duration must stretch to 42 months rather than 37 months. Otherwise, the plan is not feasible as required by 11 U.S.C. § 1325(a) (6).

33. 08-92359-A-13G CHRISTOPHER/ANGELA MAYFIELD HEARING - OBJECTION TO
WJS #1 PLAN BY OAK VALLEY COMMUNITY BANK
12-19-08 [22]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

The debtor's unsecured debts exceed the limit imposed by 11 U.S.C. § 109(e). After including the under-collateralized portion of secured claims as reported

on Schedule D, there is an additional \$102,904 in unsecured debt. When added to the scheduled unsecured debt on Schedule F, there is \$409,517.75 in unsecured debt, more than the \$336,900 permitted by section 109(e).

34. 08-92359-A-13G CHRISTOPHER/ANGELA MAYFIELD HEARING - OBJECTION TO
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE
12-22-08 [26]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

The debtor's unsecured debts exceed the limit imposed by 11 U.S.C. § 109(e). After including the under-collateralized portion of secured claims as reported on Schedule D, there is an additional \$102,904 in unsecured debt. When added to the scheduled unsecured debt on Schedule F, there is \$409,517.75 in unsecured debt, more than the \$336,900 permitted by section 109(e).

35. 08-90360-A-13G NARMELIN OVRAHIM HEARING - MOTION TO
FW #1 MODIFY CONFIRMED CHAPTER 13 PLAN
12-9-08 [26]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$5,900. The plan does not comply with 11 U.S.C. § 1325(a)(6).

36. 08-92360-A-13G JACKIE/PATRICIA MAUGERI HEARING - OBJECTION TO
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE
12-24-08 [24]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The plan provides for a secured claim in Class 4. Class 4 is reserved for secured claims not modified by the plan, and not in default when the case was filed. The debtor maintains the regular contract installment payments to the creditor.

The court's standard plan provides at section 3.15: "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is then pending under chapter 13."

The debtor proposes to eliminate the provision providing for the modification of the automatic stay. The debtor may alter the provisions of the standard plan. However, the court will require the debtor to produce evidence at an evidentiary hearing that the plan is feasible as required by 11 U.S.C. § 1325(a)(6) whenever the debtor proposes a material alteration to the standard plan. This is because the standard plan was designed to permit a debtor to confirm it with a minimum of difficulty in the absence of any objection. Because this means that, in the absence of an objection, the debtor is not required to prove compliance with 11 U.S.C. §§ 1322(a) and 1325(a), the plan provided certain protections and remedies to secured creditors in the event of a plan breach. Modification of the stay to permit foreclosure/repossession by secured creditors with Class 4 claims is one of those remedies. If that remedy is to be eliminated, the court will require proof from the debtor that all requirements of section 1322(a) and 1325(a) have been satisfied, particularly the requirement that the plan be feasible.

The court will therefore set an evidentiary hearing.

37. 08-91961-A-13G DAVID/ESTHER JIMENEZ HEARING - MOTION TO
FW #3 CONFIRM CHAPTER 13 PLAN
12-5-08 [31]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$200. The plan does not comply with 11 U.S.C. § 1325(a)(6).

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The debtor has filed a valuation motion addressing the value of a 2006 Ford Fusion that secures one of Americredit's Class 2 claim. While the debtor has opined that the vehicle has a value of \$15,275 based on the vehicle's model year, 60,000 miles, and its equipment and accessories, there is no evidence as to the vehicle's general condition.

Americredit counters that the value of the vehicle is \$16,250 based on a retail evaluation by the Kelley Blue Book.

To the extent the objection urges the court to reject the debtor's opinion of value because the debtor's opinion is not admissible, the court instead rejects the objection. As the owner of the vehicle, the debtor is entitled to express an opinion as to the vehicle's value. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Any opinion of value by the owner must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by the Kelley Blue Book, is \$16,250. This valuation, however, presumes the condition of the vehicle is excellent. See <http://www.kbb.com> (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation").

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The debtor's motion does not address the retail valuation of the vehicle.

The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value. First, the creditor's retail value assumes that the vehicle is in excellent condition. This is not based on any facts, at least facts proven to the court. 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." That is, what would a retailer charge for the vehicle as it is?

Nor has the debtor proven to the court's satisfaction the replacement value of the vehicle. The motion contains very little specific information about the vehicle other than its model, year, mileage, and equipment.

While neither party has persuaded the court as to the replacement value of the vehicle under section 506(a)(2), it is the debtor who has the burden of proof. Accordingly, the valuation motion must be denied.

39. 07-91464-A-13G ANGELINA POLHEMUS HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
11-21-08 [64]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$3,904. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Also, the plan cannot feasibly fund the increased post-petition note installment of \$2,820.14 due on Downey's Class 1 secured claim as well as all other dividends and expenses. This is because the plan under-estimates the amount of the installment at \$1,813.35.

40. 08-92465-A-13G BEATRICE SOLORIO HEARING - OBJECTION TO
MBL #1 CONFIRMATION OF CHAPTER 13 PLAN
BY MIDFIRST BANK
12-23-08 [21]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

The objecting creditor holds a security interest in the debtor's real property.

There is a pre-petition arrearage on its claim. While the plan provides for a cure of an arrearage, the plan understates its amount. As a result, the offered dividend will not pay the secured claim in full over the plan's duration as required by 11 U.S.C. § 1325(a)(5)(B).

The request for the objecting creditor's fees and costs is disallowed because there is no evidence with the objection that it holds an over-secured claim. See 11 U.S.C. § 506(a).

41. 08-92465-A-13G BEATRICE SOLORIO HEARING - OBJECTION TO
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE
1-5-09 [26]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

First, the debtor failed to schedule approximately \$55,000 in support arrears owed to her. With this asset included, 11 U.S.C. § 1325(a)(4) requires a 26.5% dividend to Class 7 claims. The plan proposes no dividend to these creditors.

Second, the plan does not satisfy 11 U.S.C. § 1325(b) because the debtor is retaining a rental real property that is worth less than the claim encumbering it and for which she receives rent that is less than the ongoing debt payment. This expense and asset are unnecessary to the support and maintenance of the debtor.

Third, the plan payment of \$2,353 is less than monthly payments the trustee must make to creditors. These payments exceed \$3,410. The plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

Finally, the concealment of a significant asset, the support arrears, the retention of an over-encumbered asset that is unnecessary to the debtor's support, and the proposal to pay nothing to unsecured creditors, indicate that the debtor has not proposed this plan in good faith as required by 11 U.S.C. § 1325(a)(3).

42. 08-92169-A-13G ART/TERESA SISNEROZ HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
CARRINGTON MORTGAGE SVCS., INC., VS. 12-22-08 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given

by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f) (2). Consequently, the other creditors, the debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be dismissed as moot.

A plan was confirmed in this case on December 10, 2008. That plan provided for the movant's claim as a Class 3 secured claim. This means that the plan provided for the surrender of the movant's collateral in order to satisfy its secured claim. It also provides at section 3.14:

"Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 3 secured claim to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and nonjudicial remedies against its collateral."

Thus, the stay has already been terminated and the motion is moot. To the extent the plan's description of the movant's identity or of the surrendered collateral is not accurate or as comprehensive as in the movant's security documentation, the order may recite that the collateral identified in the motion has been, or will be, surrendered to the movant pursuant to the terms of a confirmed plan and, as a result, the automatic stay was previously terminated.

The movant shall bear its own fees and costs.

43. 08-91770-A-13G GINA CHATTO HEARING - MOTION TO
JCK #2 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
12-2-08 [40]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

First, the plan is not feasible as required by 11 U.S.C. § 1325(a) (6). Schedules I and J show \$595 in available income to fund a plan. Yet, the plan requires monthly payments of \$714 beginning in the fifth month.

Second, Form 22C indicates the debtor's monthly projected disposable income of \$1,037.90. Over the plan's duration, this would be sufficient to pay a 40% dividend to Class 7 unsecured creditors. The plan provides only a 14% dividend. The plan does not comply with section 1325(b).

Third, the debtor has breached the duties imposed by 11 U.S.C. § 521(a) (3) & (a) (4) by providing financial records to the trustee that corroborate the deduction for taxes taken on Form 22C. To attempt to confirm a plan while

withholding financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a) (3).

44. 08-92488-A-13G NANCY CROY
RDG #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
1-7-09 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

First, in violation of General Order 05-05 and an order entered in this case on the date of filing, the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition.

Second, 11 U.S.C. § 521(e) (2) (B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e) (2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

45. 08-92394-A-13G DAVID AVERY
RDG #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
1-7-09 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

The debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3).

46. 07-91298-A-13G GEORGE/BERNINA TOLLISON HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
12-5-08 [50]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$50. The plan does not comply with 11 U.S.C. § 1325(a)(6).

47. 08-91698-A-13G DWAYNE/SHERYLL JOHNSON HEARING - MOTION TO
RLB #2 VALUE COLLATERAL OF AMERICREDIT
12-19-08 [51]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied because its assertion of the value of the vehicle is supported by no admissible evidence. That is, there is no declaration describing the car, its equipment, condition, and mileage, and the reference to the market guide is hearsay inasmuch as the guide itself is not in the record by the debtor. Further, the evidence produced by the creditor indicates that the market guide's value is considerably higher than is asserted by the debtor.

48. 08-92398-A-13G JUSTIN/SUSAN ALLEN HEARING - OPPOSITION TO
JFP #1 MOTION TO VALUE COLLATERAL OF
OF DAIMLERCHRYSLER FINANCIAL
SERVICES AMERICAS LLC
12-23-08 [17]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and the related valuation motion was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained in part.

The debtor has filed a valuation motion addressing the value of a 2005 Dodge pickup truck that secures one of DaimlerChrysler's Class 2 claims. While the debtor has opined that the vehicle has a value of \$11,345 based on the vehicle's model year, and 26,022 miles, there is no evidence as to the vehicles general condition or of the vehicle's equipment and accessories other than the fact that it has an extended cab, four-wheel drive, and a short bed. The debtor also asserts that \$11,345 is the private party valuation given by the Kelley Blue Book.

The creditor counters that the value of the vehicle is \$15,775 based on a retail evaluation by NADA.

To the extent the objection urges the court to reject the debtor's opinion of value because the debtor's opinion is not admissible, the court instead rejects the objection. As the owner of the vehicle, the debtor is entitled to express an opinion as to the vehicle's value. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Any opinion of value by the owner must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by the Kelley Blue Book, is \$15,775. This valuation, however, presumes the condition of the vehicle is excellent.

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The debtor's motion does not address the retail valuation of the vehicle.

The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value. The creditor's retail value assumes that the vehicle is in excellent condition. This is not based on any facts, at least facts proven to the court. 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." That is, what would a retailer charge for the vehicle as it is?

Nor has the debtor proven to the court's satisfaction the replacement value of the vehicle. The motion contains very little specific information about the vehicle other than its model, year, and mileage.

While neither party has persuaded the court as to the replacement value of the vehicle under section 506(a)(2), it is the debtor who has the burden of proof. Accordingly, the valuation motion must be denied.

And, because the valuation motion has not been granted, at this point, the debtor is unable to "strip down" the objecting creditor's secured claim to \$11,345 the plan cannot be confirmed because it either violates 11 U.S.C. § 1325(a)(5)(B) because it will not pay this secured claim in full, or, it will pay what the creditor has demanded, the plan payments to be made by the trustee will not be sufficient to pay all dividends required by the plan. In the event of the latter, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

49. 08-92398-A-13G JUSTIN/SUSAN ALLEN
RDG #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
1-7-09 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure authorized by General Order 05-03, ¶ 3(c), the debtor was not required to file a written response. If the debtor appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

First, section 521(a)(3) & (a)(4) requires the debtor to cooperate with the trustee and to provide him with financial records when he requests them. The debtor has breached these duties by failing to produce documentation for business income. To attempt to confirm a plan while withholding financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Third, because the debtor has under-estimated the ongoing note installment to be maintained on the Class 1 secured claim of GMAC Mortgage, the plan is under-

funded by approximately \$500. The plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

FINAL RULINGS BEGIN HERE

50. 04-90601-A-13G SAUL/KAREN CANNON HEARING - AMENDED MOTION TO
JCK #2 MODIFY DEBTORS' CONFIRMED CHAPTER
13 PLAN
12-12-08 [57]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

51. 08-91004-A-13G JERRY DAVIS HEARING - MOTION TO
RLB #2 CONFIRM CHAPTER 13 PLAN
12-4-08 [59]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶¶ 3(a)(2) & 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

52. 07-91310-A-13G CHRIS PASENCIA HEARING - MOTION TO
FW #4 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
12-12-08 [41]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

53. 08-90317-A-13G JOYCE PARK HEARING - MOTION TO
FW #1 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12-4-08 [19]

Final Ruling: The movant has voluntarily dismissed the motion.

54. 07-90442-A-13G DAVID ALLINGTON HEARING - MOTION TO
PGM #3 USE CREDIT
12-19-08 [41]

Final Ruling: The court continues the hearing to February 2, 2009 at 2:00 p.m. The continuance will permit the motion to coincide with a motion to confirm a modified plan.

55. 08-90542-A-13G KIRK HAMILTON HEARING - OBJECTION TO
FW #1 CLAIM OF APRIA HEALTHCARE, INC.
12-8-08 [23]

Final Ruling: This objection to the proof of claim of Apria Healthcare has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was August 12, 2008. The proof of claim was filed on August 15, 2008. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

56. 08-90642-A-13G MICHAEL NEKY AND HEARING - OBJECTION TO
FW #1 GINA PALLOTTA CLAIM OF TERESA ADAMS MENDES
12-4-08 [25]

Final Ruling: This objection to the proof of claim of Teresa Adams Mendes has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral

argument.

The objection will be sustained and the claim is allowed as a general unsecured claim. The claim is based on the pre-petition loan to the debtor. Such claims are not entitled to priority status. 11 U.S.C. § 507.

57. 08-92443-A-13G CONNIE BOTELHO

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
12-18-08 [25]

Final Ruling: The order to show cause will be discharged and the case will remain pending. The court permitted the debtor to pay the filing fee in installments. A \$68 installment was not paid when due and an order to show cause was issued. Then the delinquent installment was paid on December 22. No prejudice resulted from the late payment.

58. 04-91044-A-13G PHILLIP/KANDIS SCHMIDT
CWC #8

HEARING - OBJECTION TO
CLAIM OF FIRESIDE THRIFT CO.
12-10-08 [117]

Final Ruling: This objection to the proof of claim of Fireside Thrift has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed to the extent it demands payment of a pre-petition arrearage. On the date the petition was filed, payments under the terms of the contract were current and thereafter the debtor paid the installments as they came due.

59. 08-91957-A-13G GARY/TERRI STONE
JCK #2

HEARING - AMENDED MOTION TO
CONFIRM FIRST AMENDED CHAPTER 13
PLAN
12-9-08 [33]

Final Ruling: This motion to confirm a modified plan proposed prior to confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

60. 08-90559-A-13G DONALD MCANALLY
FW #2

HEARING - MOTION TO
MODIFY CONFIRMED CHAPTER 13 PLAN
12-8-08 [50]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

61. 08-92359-A-13G CHRISTOPHER/ANGELA MAYFIELD
FW #2

HEARING - MOTION TO
VALUE COLLATERAL OF GREENPOINT
MORTGAGE FUNDING, INC.
11-20-08 [12]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The debtor seeks to value the debtor's residence at a fair market value of \$507,500 as of the date the petition was filed. It is encumbered by a first deed of trust held by Washington Mutual. The first deed of trust secures a loan with a balance of approximately \$511,522 as of the petition date. Therefore, Greenpoint Mortgage's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$507,500. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

62. 08-90360-A-13G NARMELIN OVRAHIM
FW #2

HEARING - OBJECTION TO
CLAIM OF WASHINGTON MUTUAL BANK
12-12-08 [30]

Final Ruling: This objection to the proof of claim of Washington Mutual Bank has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592

(9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection is sustained. The creditor has filed two different proofs of claim for the same debt. The first was filed on March 21, 2008. The second proof of claim was filed on April 14, 2008. The later proof of claim does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim, it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim is allowed.

63. 08-92360-A-13G JACKIE/PATRICIA MAUGERI HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF MOCSE C.U.
11-20-08 [10]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) is granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of \$13,875 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$13,875 of the respondent's claim is an allowed secured claim. When the respondent is paid \$13,875, and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

64. 08-92360-A-13G JACKIE/PATRICIA MAUGERI HEARING - MOTION TO
FW #2 VALUE COLLATERAL OF MOCSE C.U.
11-20-08 [14]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) is granted. The motion is accompanied by the debtor's declaration. The debtor

is the owner of the subject property. In the debtor's opinion, the subject property had a value of \$15,645 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$15,645 of the respondent's claim is an allowed secured claim. When the respondent is paid \$15,645, and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

65. 08-90361-A-13G ALAN/LUZANNE SHAPLEY HEARING - MOTION TO
FW #3 MODIFY CONFIRMED CHAPTER 13 PLAN
12-9-08 [34]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

66. 08-91961-A-13G DAVID/ESTHER JIMENEZ HEARING - MOTION TO
FW #2 VALUE COLLATERAL OF GREENPOINT
MORTGAGE
12-5-08 [27]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The debtor seeks to value the debtor's residence at a fair market value of \$141,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Countrywide. The first deed of trust secures a loan with a balance of approximately \$219,965 as of the petition date. Therefore, Greenpoint Mortgage's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is

secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$141,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The debtor seeks to value the debtor's residence at a fair market value of \$150,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by CitiMortgage. The first deed of trust secures a loan with a balance of approximately \$227,868.79 as of the petition date. Therefore, Ditech's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent,

validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$150,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

68. 08-92363-A-13G JEFFREY/LYNETTE DRABIN HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF CHASE
11-19-08 [11]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The debtor seeks to value the debtor's residence at a fair market value of \$300,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Chase. The first deed of trust secures a loan with a balance of approximately \$375,000 as of the petition date. Therefore, Chase's other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$300,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

69. 08-92363-A-13G JEFFREY/LYNETTE DRABIN
PPR #1

HEARING - OBJECTION TO
PROPOSED CHAPTER 13 PLAN
AND CONFIRMATION BY AMERICAN
HONDA FINANCE CORPORATION
12-4-08 [26]

Final Ruling: The parties have resolved this matter by stipulation.

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The debtor seeks to value the debtor's residence at a fair market value of \$300,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Chase. The first deed of trust secures a loan with a balance of approximately \$375,000 as of the petition date. Therefore, Greentree's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent,

validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$300,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

71. 08-92363-A-13G JEFFREY/LYNETTE DRABIN HEARING - MOTION TO
FW #3 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
12-8-08 [31]

Final Ruling: This motion to confirm a modified plan proposed prior to confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

72. 08-90066-A-13G EDWARD/LAURIE BORELLI HEARING - AMENDED MOTION TO
JCK #4 MODIFY CONFIRMED CHAPTER 13 PLAN
12-23-08 [51]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

73. 08-90671-A-13G CHRISTY ADDOR HEARING - MOTION TO
CJY #2 CONFIRM FIRST MODIFIED CHAPTER 13
PLAN
12-1-08 [33]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

74. 06-90773-A-13G WILLIAM/CAROLINE JOHNSON HEARING - MOTION TO
FW #3 MODIFY CONFIRMED CHAPTER 13 PLAN
12-11-08 [64]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

75. 08-90573-A-13G DONALD/JOYCE MESSIER HEARING - MOTION TO
FW #3 MODIFY CONFIRMED CHAPTER 13 PLAN
12-8-08 [33]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by

Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

76. 08-92273-A-13G VINCENT/LINDA ALTADONNA HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF BANK OF
AMERICA
11-18-08 [14]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The debtor seeks to value the debtor's residence at a fair market value of \$120,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Valley First Credit Union. The first deed of trust secures a loan with a balance of approximately \$126,000 as of the petition date. Therefore, Bank of America's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate

valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$120,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

77.	08-92089-A-13G EMIL/EVELYN GAMBLE CWC #2	HEARING - MOTION TO CONVERT CHAPTER 13 CASE TO A CASE UNDER CHAPTER 11 12-16-08 [28]
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Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the creditors 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the creditors are entered and the matter will be resolved without oral argument.

The motion will be granted.

The evidence indicates that the debtor is eligible to file a chapter 11 petition. See 11 U.S.C. § 109(e). There is no indication that conversion is requested for an improper purpose or is otherwise in bad faith. Therefore, upon payment of the appropriate filing fee, the case shall be converted to one under chapter 11.

78. 08-90194-A-13G ERIC/KAREN JONES
TPH #4

HEARING - MOTION TO
VALUE COLLATERAL OF DITECH
12-10-08 [118]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The debtor seeks to value the debtor's residence at a fair market value of \$219,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ditech. The first deed of trust secures a loan with a balance of approximately \$301,821.85 as of the petition date. Therefore, Ditech's other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a

contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$219,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

79. 08-91698-A-13G DWAYNE/SHERYLL JOHNSON HEARING - MOTION TO
RLB #3 VALUE COLLATERAL OF LITTON LOAN
SERVICES
12-19-08 [54]

Final Ruling: The motion will be dismissed without prejudice.

First, the certificate of service does not include the referenced mailing list. Hence, there is no proof that the motion was served on anyone.

Second, the motion is accompanied by no evidence establishing the value of the subject property and the amount of the senior lien.

80. 08-92098-A-13G JOEL PITTO HEARING - MOTION TO
DEF #1 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
12-4-08 [25]

Final Ruling: This motion to confirm a modified plan proposed prior to confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 sustaining of the objection. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.