

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Modesto, California

April 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 22. 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 MAY 18, 2009 AT 2:00 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 4, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 11, 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 23 THROUGH 67. 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 MAY 4, 2009, AT 1:30 P.M.

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

MATTERS TO BE CALLED BEGINNING AT 2:00 P.M.

1. 09-90609-A-13G ROBERT WATROUS HEARING - ORDER TO SHOW
SHOW CAUSE RE DISMISSAL OF CASE
OR IMPOSITION OF SANCTIONS
3-19-08 [7]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has expired and the notice of the commencement of this bankruptcy case was served on April 1. Because no master address list has been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for filing complaints, objecting to exemptions, objecting to the proposed plan, and filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. Accordingly, the petition will be dismissed.

Also, 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).

2. 07-91018-A-13G GERRY/ALICE ACOSTA HEARING - MOTION TO
JCK #6 MODIFY CONFIRMED CHAPTER 13 PLAN
3-10-09 [84]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted on condition that the plan is further modified to pay a dividend of 65.2% to Class 7 claims and the monthly plan payment is increased to accommodate such dividend and to pay in full all administrative claims. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

3. 08-92127-A-13G J.B./SHEILA MORRIS HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO HOME MTG., INC., VS. 3-17-09 [21]

- 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 conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. The plan

classifies the movant's claim in Class 1 and requires that the post-petition note installments be paid by the trustee to the movant. Because the debtor has failed to make all plan payments, the trustee was unable to make at least one monthly post-petition monthly mortgage payments to the movant as required by the plan. This default is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

4. 08-92828-A-13G KATHY GRANDSTAFF TOG #1 HEARING - MOTION TO CONFIRM FIRST AMENDED CHAPTER 13 PLAN 2-12-09 [23]
- Telephone Appearance
 - Trustee Agrees with Ruling

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

First, the plan fails to specify its duration. Without this term, it cannot be ascertained whether the plan is feasible and will pay the dividends required by 11 U.S.C. §§ 1322(a)(2), 1325(a)(4) & (a)(5).

Second, the plan fails to provide for payment of the debtor's attorney's fees. These fees are an administrative claim and the failure to pay them in full means the plan does not comply with 11 U.S.C. § 1322(a)(2).

5. 09-90230-A-13G JOYCE PARHAM EDH #1 CONT. HEARING - OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY 3-16-09 [20]
- 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 plan misclassifies the secured claim of Deutsche Bank in Class 4. Class 4 is reserved for long-term secured claims that are not modified by the plan and that were not in default on the petition date. According to its proof of claim, the debtor had failed to pay it \$6,327.02 prior to the petition date.

Therefore, because the claim is in default, it is a Class 1 claim and must be paid through the trustee. See Cohen vs. Lopez (In re Lopez), ___ F.3d ___, 2008 WL 5382337 (9th Cir. 2008), affirming and adopting 372 B.R. 40 (B.A.P. 9th Cir. 2007).

Whether or not the objecting creditor agrees with this ruling, it shall appear on the order to show cause.

6. 08-91934-A-13G FREDERICK/MARINA RODRIGUEZ HEARING - MOTION TO
FW #2 CONFIRM SECOND AMENDED CHAPTER 13
PLAN
2-24-09 [42]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtors have not filed state income tax returns for 2006 and 2007. Both returns are delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was held and concluded on October 29, 2008. And, while it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee must hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is impossible for the debtor to comply with section 1308.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, no one has moved for dismissal. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtors.

To the extent the objection argues that the plan cannot be confirmed because it does not provide for the FTB's secured claim, the objection will be overruled.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately

fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C)). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

7. 08-90144-A-13G STEVEN/PATRICIA CONTRERAS HEARING - MOTION TO
FW #2 MODIFY CONFIRMED CHAPTER 13 PLAN
3-4-09 [30]
- 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 \$3,787. The plan does not comply with 11 U.S.C. § 1325(a)(6).

8. 08-92848-A-13G RAYMOND/BROOK BAKER HEARING - MOTION TO
DCJ #1 CONFIRM CHAPTER 13 PLAN
2-23-09 [20]
- Telephone Appearance
 - Trustee Agrees with Ruling

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

First, the plan misclassifies the secured claim of Wells Fargo Home Mortgage in Class 4. Class 4 is reserved for long-term secured claims that are not modified by the plan and that were not in default on the petition date. According to Wells Fargo's proof of claim, the debtor had failed to pay it

\$5,255.50 prior to the petition date. Therefore, because the claim is in default, it is a Class 1 claim and must be paid through the trustee. See Cohen vs. Lopez (In re Lopez), ___ F.3d ___, 2008 WL 5382337 (9th Cir. 2008), affirming and adopting 372 B.R. 40 (B.A.P. 9th Cir. 2007).

Second, 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.

Third, 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.

Fourth, the debtor has failed to cooperate with the trustee by providing him with relevant financial information from two corporations in which the debtor either has an interest or from which the debtor receives money. The plan's feasibility may depend on these corporations. The failure to provide this information is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding such information from the trustee is bad faith.

9. 09-90150-A-13G WILLIAM/VERNA ESPINO HEARING - OBJECTION TO
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE
3-25-09 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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).

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The objection will be sustained. The last date for a governmental entity to file a timely proof of claim was December 28, 2005. The proof of claim was filed on March 17, 2006. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim will be 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).

The creditor has asked leave to allow its proof of claim as timely even though not filed by the deadline set by Fed. R. Bankr. P. 3002(c). That deadline, however, cannot be extended. First, Rule 3002(c) contains five exceptions to the requirement that a timely proof of claim be filed. One of those exceptions is applicable here. Because the claimant is a governmental entity, it received additional time to file its claim. The bar date referenced above. Second, Fed. R. Bankr. P. 9006(b)(3) specifically precludes enlargement of the time for creditors to file proofs of claim except to the extent provided in Rule 3002(c). The court concludes that Rule 3002(c) provides no basis for an extension in this case.

The applicability of Rule 3002(c) and not Fed. R. Bankr. P. 3003(c)(3) to this case, and the wording of Rule 9006(b)(3) prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditors. Pioneer involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 13 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the deadline even when excusable neglect is present.

Notwithstanding their plain and unequivocal language, however, the Bankruptcy Rules may not be applied in a way that deprives a party of its constitutional rights. See Reliable Elec. Co., Inc. v. Olson Constr. Co., 726 F.2d 620, 623 (10th Cir. 1984); In re Rogowski, 115 B.R. 409, 412-14 (Bankr. D. Conn. 1990). The Fifth Amendment provides that "[n]o person . . . shall . . . be deprived of . . . property, without due process of law. . . ." In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), the Supreme Court held that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

The claimant here asserts that it did not receive notice of the filing of the petition or the deadline for filing proofs of claim in time to file a timely proof of claim. It maintains that it would be unfair if it is precluded from filing a claim and participating in the case.

The analysis here turns on whether the claimant will be deprived of a property right if it is not allowed to file a proof of claim despite the expiration of the deadline to file a proof of claim. The creditor's argument that it will be deprived of due process is premised upon the assumption, however, that if it is not allowed to file a late claim, its obligation will be discharged. This premise is incorrect.

As to the debtor's discharge of their personal liability to creditors, 11 U.S.C. § 1328(a) provides in relevant part: "As soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title. . . ."

The debtor had a duty to accurately schedule or list all debts, In re Barnett, 42 B.R. 254, 256 (Bankr. S.D. N.Y. 1984), and to follow court orders. If the debtor failed to schedule the creditor or to list its correct mailing address, and as a result the creditor did not receive notice of the bar date in time to file a proof of claim, the debtor's plan does not provide for the creditor's claim. In re Harris, 64 B.R. 717, 719 (Bankr. D. Conn. 1986) ("Distributions under Chapter 13 plans are made only to creditors with allowed claims."); In re Van Hierden, 87 B.R. 563, 564 (Bankr. E.D. Wis. 1988). It would require a tortured reading of 11 U.S.C. § 1328(a) to find that where a creditor is deprived of the opportunity to hold an allowed claim by a debtor's negligence, its claim is provided for by a plan. Southtrust Bank of Ala. v. Gamble (In re Gamble), 85 B.R. 150, 152 (Bankr. N.D. Ala. 1988); In re Cash, 51 B.R. 927, 929 (Bankr. N.D. Ala. 1985) ("[I]t would be a strained construction to view the plan as providing for a debt owed to a creditor, when the debtor omits the debt and creditor from the Chapter 13 Statement.").

To discharge a debtor's personal liability for a claim in a chapter 13 case, the plan must provide for that claim. To provide for the claim, the creditor must be given notice so that it has the opportunity to participate in the chapter 13 case and the plan must provide for the creditor's claim. If this did not occur in this case, the claim will not be discharged. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9th Cir. 2007).

11. 08-92653-A-13G ORLANDER LACY HEARING - MOTION TO
TAW #4 CONFIRM SECOND AMENDED CHAPTER 13
PLAN
3-6-09 [33]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan significantly understates the pre-petition arrearage owed on the Class

1 claim of Wachovia. That arrearage is \$25,648.33 rather than the \$10,719 assumed by the plan. The amount of the discrepancy will prevent the plan from paying this claim in full and all other dividends promised by the plan during its proposed duration. Thus, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6); this problem does not mean, however, that the plan has been proposed in bad faith.

12. 08-92658-A-13G SHEILA WALL
TPH #3

HEARING - MOTION TO
VALUE COLLATERAL OF JENNY BICK
3-4-09 [29]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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 Wells Fargo. The first deed of trust secures a loan with a balance of approximately \$351,332 as of the petition date. Based on these numbers, Jenny Bick's claim secured by a junior deed of trust is completely under-collateralized. If this is so, no portion of her claim can be allowed as a secured claim. See 11 U.S.C. § 506(a).

However, based on the appraisal filed by Ms. Bick, the court concludes that the property has a value of \$414,000. At this higher value, there is equity to secure her claim. Whether that equity amounts to \$1 or an amount equal to her claim, the presence of equity triggers the anti-modification clause of 11 U.S.C. § 1322(b)(2) as interpreted by the Supreme Court in Nobelman v. American Savings Bank, 508 U.S. 324 (1993). As a result, the debtor may not take advantage of In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997) and strip off Ms. Bicks' claim from the subject property.

13. 08-92758-A-13G DAVID/RENEE LAWRENCE
TPH #1

HEARING - MOTION TO
CONFIRM SECOND AMENDED CHAPTER 13
PLAN
2-17-09 [19]

- 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 required by 11 U.S.C. § 1325(a)(6) for two reasons. First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$766.66. The plan does not comply with 11 U.S.C. § 1325(a)(6). Second, the plan's duration is 60 months and proposes to pay the Class 2 secured claim of Rancho Santa Fe at the rate of \$183.33 per month with 7% interest. On these terms, it will take 74 months to pay the secured claim in full as required by 11 U.S.C. § 1325(a)(5)(B).

14. 08-91164-A-13G TERRY/JACQUELINE HOPKINS HEARING - MOTION TO
FW #2 MODIFY CONFIRMED CHAPTER 13 PLAN
3-3-09 [35]

- 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 \$3,810. The plan does not comply with 11 U.S.C. § 1325(a)(6).

15. 09-90175-A-13G JAMES/BARBARA COOK HEARING - OBJECTION TO
DEF #1 CONFIRMATION OF PLAN BY NENA
KRUGER
3-25-09 [29]

- 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 overruled without prejudice because the debtor has not moved to confirm a plan. When the case was filed, the debtor did not file a plan prior to the trustee's service of the Notice of the Commencement of the Case. As a result, the trustee did not serve the plan and the court did not set a deadline to object to a plan nor did it set a confirmation hearing. While the debtor later filed a plan, it has not been served by the debtor together with a motion to confirm. As a result, there is no need to object to the plan because the service required by Fed. R. Bankr. R. 2002(b) has not been given by the debtor.

16. 09-90478-A-13G MARTHA LARRY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-2-09 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The order to show cause will be discharged because it is now moot.

The petition was filed on February 26. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on March 13. See Fed. R. Bankr. P. 1007(c).

19. 09-90289-A-13G MARK/DEBORAH DUNCAN
WGM #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN BY
INDYMAC FEDERAL BANK, FSB
3-24-09 [15]

- 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.

While the plan provides for the maintenance of ongoing mortgage payments, it fails to provide for the payment of the pre-petition arrearage owed to the objecting creditor. As a result, the plan does not comply with 11 U.S.C. § 1325(a)(5)(B).

20. 08-92590-A-13G BOBBY/ANGELA CLEMENTS
PD #1
CHASE HOME FINANCE, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-1-09 [63]

- 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 granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. The debtor has proposed a plan that will surrender the subject property to the movant in satisfaction of its secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's claim will not be paid and the real property securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

21. 09-90090-A-13G DOUGLAS/SANDRA ANDERSEN HEARING - OBJECTION TO
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE
3-10-09 [18]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The trustee demanded that the debtor produce a copy of the debtor's 2008 tax returns in order to corroborate the amount of the refund scheduled and exempted by the debtor. The debtor failed to produce the tax returns. By failing to provide these documents to the trustee, the debtor has breached the duties to cooperate with the trustee and to provide him with financial records as required by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while breaching these duties is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3).

22. 09-90294-A-13G ERIC/GINA NIES HEARING - OBJECTION TO
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE
4-1-09 [38]

- 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 debtors are not eligible for chapter 13 relief. According to Schedule F, the debtors have unsecured claims of \$239,302.11. According to Schedule D, they have a completely undersecured second deed of trust on their home of \$119,370, and two undersecured vehicle loans. The unsecured portions of the latter are \$15,969 and \$4,287, respectively. Both the general unsecured debt and the under-collateralized portion of the secured debt are counted toward the statutory debt limit of \$336,900. See Matter of Day, 747 F.2d 405 (7th Cir. 1984); Miller v. U.S., 907 F.2d 80 (8th Cir. 1990); Brown & Co. Securities Corp. v. Balbus (In re Balbus), 933 F.2d 246 (4th Cir. 1991); In re Soderlund, 236 B.R. 271 (B.A.P. 9th Cir. 1999); United States v. Edmonston, (In re Edmonston), 99 B.R. 995 (E.D. Cal. 1989). This exceeds the debt limits mandated by 11 U.S.C. § 109(e). Thus, the unsecured debt in this case is \$378,928.11. The debtors are not eligible for chapter 13 relief.

There is no need to reach the trustee's other objections.

FINAL RULINGS BEGIN HERE

23. 08-91004-A-13G JERRY DAVIS HEARING - MOTION TO
RLB #6 VALUE COLLATERAL OF WACHOVIA
DEALER SERVICES
3-19-08 [81]

Final Ruling: The motion will be dismissed without prejudice.

A motion is a contested matter and it must be served like a summons and a complaint. See Fed. R. Bankr. P. 9014 incorporating by reference Fed. R. Bankr. P. 7004. Service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. The motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9th Cir. 2004) (service in accordance with Fed. R. Bankr. P. 2002(b) does not satisfy the service requirements of Fed. R. Bankr. P. 7004(b)).

24. 09-90008-A-13G THOMAS/GABRIELE WARREN HEARING - MOTION TO
TPH #1 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
2-26-09 [16]

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.

25. 07-91110-A-13G KEITH/MELISSA MORRIS HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
3-4-09 [85]

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.

26. 08-90216-A-13G FLORENTINO/LUCRECIA RODRIGO HEARING - MOTION TO
FW #2 MODIFY CONFIRMED CHAPTER 13 PLAN
3-16-09 [46]

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.

27. 08-92521-A-13G DAWN SIMPSON HEARING - MOTION TO
RLB #3 VALUE COLLATERAL OF EMC MTG. CORP.
3-19-09 [26]

Final Ruling: The motion will be dismissed without prejudice.

While a separate certificate of service was filed with the motion, it indicates that the motion to confirm a chapter 13 plan and that plan were served on the creditors and the trustee, rather than a valuation motion. Thus, there is no proof that the valuation motion has been served.

28. 08-91934-A-13G FREDERICK/MARINA RODRIGUEZ HEARING - MOTION TO
FW #3 VALUE COLLATERAL OF REGIONAL
ACCEPTANCE CORP.
2-24-09 [46]

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 \$6,780 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, \$6,780 of the respondent's claim is an allowed secured claim. When the respondent is paid \$6,780 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.

29. 08-90838-A-13G DAVID/GAIL BROOM HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
3-12-09 [53]

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.

30. 08-91538-A-13G JOHNNY/ANNIE CARRIZALES HEARING - MOTION TO
FW #3 MODIFY CONFIRMED CHAPTER 13 PLAN
3-16-09 [43]

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.

31. 09-90039-A-13G JOSE/TESA GUTIERREZ HEARING - MOTION TO
FW #2 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
2-12-09 [19]

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.

32. 09-90143-A-13G JERMAINE/NINA PURDY
FW #1

HEARING - MOTION TO
VALUE COLLATERAL OF VAN RU
INTERNATIONAL/WELLS FARGO BANK
3-2-09 [23]

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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$290,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Bank. The first deed of trust secures a loan with a balance of approximately \$419,931 as of the petition date. Therefore, Wells Fargo Bank'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, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$290,000. 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).

33. 08-91144-A-13G MARK/JUDITH HALEY HEARING - MOTION TO
FW #5 MODIFY CONFIRMED CHAPTER 13 PLAN
3-17-09 [55]

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.

34. 04-93846-A-13G LEON/KAREN BEHRENS HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
3-6-09 [40]

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.

35. 09-90046-A-13G MANJINDER/JASWINDER DHILLON HEARING - MOTION TO
GH #1 VALUE COLLATERAL OF BANK OF
AMERICA
2-27-09 [18]

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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$278,520 as of the date the petition was filed. It is encumbered by a first deed of trust held by GMAC Mortgage. The first deed of trust secures a loan with a balance of approximately \$355,726 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, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$278,520. 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).

36. 08-90147-A-13G WESLEY/BECKIE LINN
FW #5

HEARING - MOTION TO
MODIFY CONFIRMED CHAPTER 13 PLAN
3-2-09 [84]

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.

37. 07-90948-A-13G WILLIAM/GINA GUNKEL
FW #3

HEARING - MOTION TO
MODIFY CONFIRMED CHAPTER 13 PLAN
3-3-09 [55]

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.

38. 09-90048-A-13G JOSEPH/TERESA RAMOS
TPH #1

HEARING - MOTION TO
CONFIRM FIRST AMENDED CHAPTER 13
PLAN
2-27-09 [23]

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.

The debtor seeks to value the debtor's residence at a fair market value of \$100,000 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 \$238,526.71 as of the petition date. Therefore, Wells Fargo Bank'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, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$100,000. 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).

42. 08-90357-A-13G BENJAMIN/RACHEL SANTANA HEARING - MOTION TO
FW #3 MODIFY CONFIRMED CHAPTER 13 PLAN
3-16-09 [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.

43. 09-90257-A-13G ROSEMARIE CHANDARLIS HEARING - OBJECTION TO
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE
4-1-09 [19]

Final Ruling: The objecting party has voluntarily dismissed the objection.

44. 08-92658-A-13G SHEILA WALL HEARING - MOTION TO
TPH #2 VALUE COLLATERAL OF AMERICAN
GENERAL FINANCE
3-4-09 [32]

Final Ruling: The motion will be dismissed without prejudice.

A motion is a contested matter and it must be served like a summons and a complaint. See Fed. R. Bankr. P. 9014 incorporating by reference Fed. R. Bankr. P. 7004. Service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. The motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9th Cir. 2004) (service in accordance with Fed. R. Bankr. P. 2002(b) does not satisfy the service requirements of Fed. R. Bankr. P. 7004(b)).

45. 08-92658-A-13G SHEILA WALL HEARING - MOTION TO
TPH #4 CONFIRM SECOND AMENDED CHAPTER 13
PLAN
3-4-09 [24]

Final Ruling: The motion will be dismissed without prejudice.

The certificate of service is unsigned. Hence, there is no proof that the motion was served on all respondents.

46. 08-92658-A-13G SHEILA WALL HEARING - MOTION TO
TPH #5 CONFIRM THIRD AMENDED CHAPTER 13
PLAN
3-16-09 [41]

Final Ruling: The motion will be dismissed without prejudice.

First, the certificate of service does not indicate that this motion was served.

Second, the certificate of service indicates that the hearing will be before Judge Lee in Fresno. This case is before Judge McManus in Modesto. Given the conflicting information regarding the location of the hearing, notice of the hearing is not adequate.

47. 08-92758-A-13G DAVID/RENEE LAWRENCE HEARING - MOTION TO
TPH #2 VALUE COLLATERAL OF RANCHO SANTA
FE
2-17-09 [24]

Final Ruling: The motion will be dismissed without prejudice.

A motion is a contested matter and it must be served like a summons and a complaint. See Fed. R. Bankr. P. 9014 incorporating by reference Fed. R. Bankr. P. 7004. Service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. The motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9th Cir. 2004) (service in accordance with Fed. R. Bankr. P. 2002(b) does not satisfy the service requirements of Fed. R. Bankr. P. 7004(b)).

Also, the proposed plan indicates that the Class 2 secured claim held by the respondent is a purchase money security interest that is not subject to 11 U.S.C. § 506(a). That is, it is subject to the hanging paragraph that follows 11 U.S.C. § 1325(a)(9). That paragraph forbids using section 506(a) from "stripping down" certain secured claims to the value of their collateral. Given the admissions in the plan, it would appear that this claim cannot be stripped down. At this point, however, resolution of this issue is unnecessary.

48. 08-92659-A-13G MARIO/CONNIE RUELAS
FW #2

HEARING - MOTION TO
VALUE COLLATERAL OF AMERICAN
GENERAL
3-12-09 [42]

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 \$3,360 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, \$3,360 of the respondent's claim is an allowed secured claim. When the respondent is paid \$3,360 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.

49. 08-92659-A-13G MARIO/CONNIE RUELAS
FW #3

HEARING - MOTION TO
CONFIRM FIRST AMENDED CHAPTER 13
PLAN
3-12-09 [36]

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.

50. 08-92360-A-13G JACKIE/PATRICIA MAUGERI
PD #1
JPMORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-23-09 [41]

Final Ruling: This motion for relief from the automatic stay has been set for

hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. The debtor has proposed and confirmed a plan that makes no provision for the movant's secured claim. Consequently, it is clear that the movant's claim will not be paid and the real property securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived.

51. 06-90163-A-13G MICHAEL/CHRISTINE BLAIR HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
3-6-09 [80]

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 21126, Philadelphia, PA 19114; (2) United States Attorney, for the IRS, 2500 Tulare Street, Suite 4401, Fresno, CA 93721-1318; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the motion was served only at the Philadelphia address.

52. 09-90164-A-13G MOISES/MARIA AGUILAR HEARING - MOTION TO
CJY #1 VALUE COLLATERAL OF GMAC MORTGAGE
2-24-09 [22]

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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$325,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Aurora Loan Services. The first deed of trust secures a loan with a balance of approximately \$487,900 as of the petition date. Therefore, GMAC 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, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$325,000. 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).

53. 09-90164-A-13G MOISES/MARIA AGUILAR HEARING - MOTION TO
CJY #2 VALUE COLLATERAL OF GREENTREE MTG.
2-24-09 [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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$325,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Aurora Loan Services. The first deed of trust secures a loan with a balance of approximately \$487,900 as of the petition date. Therefore, Greentree 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, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$325,000. 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).

54. 09-90164-A-13G MOISES/MARIA AGUILAR HEARING - MOTION TO
CJY #3 VALUE COLLATERAL OF ROOM
SOURCE/WELLS FARGO
2-24-09 [32]

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 \$1,200 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, \$1,200 of the respondent's claim is an allowed secured claim. When the respondent is paid \$1,200 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.

55. 09-90164-A-13G MOISES/MARIA AGUILAR HEARING - MOTION TO
CJY #4 VALUE COLLATERAL OF AMERICAN
GENERAL FINANCE
2-24-09 [36]

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 \$900 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, \$900 of the respondent's claim is an allowed secured claim. When the respondent is paid \$900 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.

56. 09-90264-A-13G AJIT SANDHU HEARING - OBJECTION TO
MBB #1 CONFIRMATION OF CHAPTER 13 PLAN BY
COUNTRYWIDE HOME LOANS
3-17-09 [26]

Final Ruling: The court continues the hearing on the objection so that it may be considered with an objection to the debtor's exemptions set for hearing on May 4, 2009 at 2:00 p.m. The objection to the exemption impacts the confirmability of the plan.

57. 09-90264-A-13G AJIT SANDHU HEARING - OBJECTION TO
RDG #3 CONFIRMATION OF PLAN BY TRUSTEE
4-1-09 [38]

Final Ruling: The court continues the hearing on the objection so that it may be considered with an objection to the debtor's exemptions set for hearing on May 4, 2009 at 2:00 p.m. The objection to the exemption impacts the confirmability of the plan.

58. 09-90168-A-13G KURT/ROWENA OLSEN HEARING - MOTION FOR
APN #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO FINANCIAL, VS. 3-20-09 [24]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that will

surrender the vehicle to the movant in satisfaction of its secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's claim will not be paid and the vehicle securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

59. 08-91471-A-13G MARIA RODRIGUEZ HEARING - OBJECTION TO
FW #1 CLAIM OF BANK OF AMERICA, N.A.
3-3-09 [20]

Final Ruling: This objection to the proof of claim of Bank of America 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 December 2, 2008. The proof of claim was filed on December 5, 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).

60. 08-91571-A-13G CARMEN BENYAMIN HEARING - OBJECTION TO
FW #3 CLAIM OF WELLS FARGO FINANCIAL
NATIONAL BANK
3-12-09 [39]

Final Ruling: This objection to the proof of claim of Wells Fargo Financial National 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 will be sustained. The last date to file a timely proof of claim was December 16, 2008. The proof of claim was filed on March 6, 2009. 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).

61. 08-91473-A-13G RICARDO RODRIGUEZ HEARING - OBJECTION TO
FW #1 CLAIM OF BANK OF AMERICA, N.A.
3-3-09 [20]

Final Ruling: This objection to the proof of claim of Bank of America 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 December 2, 2008. The proof of claim was filed on December 8, 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).

62. 08-91576-A-13G RANDOLPH/CAROLYN MILLIGAN HEARING - MOTION TO
FW #1 MODIFY CONFIRMED CHAPTER 13 PLAN
3-16-09 [32]

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.

63. 08-91379-A-13G LINDA KEMPPAINEN HEARING - OBJECTION TO
FW #2 CLAIM OF TARGET NATIONAL BANK
3-5-09 [28]

Final Ruling: The objection will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the claimant. Instead, the notice advised the claimant to oppose the objection by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for an objection set for hearing on less than 44 days of notice. See Local Bankruptcy Rule 3007-1(c)(2). However, because 46 days' notice of the hearing was given in this

instance, Local Bankruptcy Rule 3007-1(c)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Thus, the claimant was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the objector gives 44 days or more of notice of the hearing, it does not have the option of pretending the objection has been set for hearing on less than 44 days of notice and dispensing with the court's requirement that written opposition be filed.

64. 09-90180-A-13G MARIO/ADRIANA ACOSTA
FW #1

HEARING - MOTION TO
VALUE COLLATERAL OF VALLEY FIRST
CREDIT UNION
2-24-09 [16]

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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$224,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Countrywide Home Loans. The first deed of trust secures a loan with a balance of approximately \$263,600 as of the petition date. Therefore, Valley First Credit Union'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 anytime 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, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$224,000. 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).

65. 08-91588-A-13G EDWARD/CAROLYN PAYNE HEARING - MOTION TO
FW #2 MODIFY CONFIRMED CHAPTER 13 PLAN
3-6-09 [29]

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. 07-90692-A-13G TIMOTHY/NANETTE SCHMIDT HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
3-16-09 [65]

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.

67. 07-90892-A-13G NICOLETTA RATTO HEARING - MOTION TO
JCK #5 MODIFY CONFIRMED CHAPTER 13 PLAN
3-11-09 [92]

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.

68. 09-90596-A-13G SANDRA CARRANZA HEARING - MOTION TO
DRW #1 VALUE COLLATERAL OF BENEFICIAL
CALIFORNIA, INC.
3-9-09 [9]

Final Ruling: The motion will be dismissed without prejudice.

A motion is a contested matter and it must be served like a summons and a complaint. See Fed. R. Bankr. P. 9014 incorporating by reference Fed. R. Bankr. P. 7004. Service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. The motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9th Cir. 2004) (service in accordance with Fed. R. Bankr. P.

2002(b) does not satisfy the service requirements of Fed. R. Bankr. P.
7004(b).