

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 4, 2009 at 9:00 a.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 27. 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 JUNE 1, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 18, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 26, 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 28 THROUGH 52. 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 18, 2009, AT 9:30 A.M.

May 4, 2009 at 9:00 a.m.

Matters called beginning at 9:00 a.m.

1. 09-23207-A-13G AMOR SANTIAGO HEARING - OBJECTION TO
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE
4-13-09 [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 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).

2. 08-31810-A-13G FOSTER/TERESA BROOKS CONT. HEARING - MOTION TO
SBS #1 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
2-24-09 [121]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection of Scott Brooks will be overruled and the motion to confirm the amended plan will be granted. The trustee has voluntarily dismissed his objection to confirmation.

The initial plan proposed by the debtors was denied confirmation largely because it did not comply with 11 U.S.C. § 1325(a)(4). That is, it promised no dividend to holders of nonpriority, unsecured claims even though the debtors were parties to litigation against Scott Brooks that had some settlement value and might have the potential to pay all creditors in full if the debtors prevail. The schedules did not initially list the lawsuit as an asset even though the debtors believed the litigation had substantial value and was not exempt, or at least entirely exempt.

Since confirmation was denied, there have been several significant developments.

First, the lawsuit has now been scheduled. It is listed on Schedule B as having a value of \$750,000. No part of the lawsuit is claimed as exempt.

Second, the debtors' explanation for their failure to list the suit in their

original schedules is that their attorney omitted it from the schedules despite being apprised of the litigation. That attorney has now been replaced. Further, the court accepts that the failure to initially list the lawsuit in the schedules was an oversight and not an effort at concealment. See Debtors' Declaration, filed March 30, 2009, ¶ 11.

Third, the court has modified the automatic stay to permit the debtors and Scott Brooks to return to state court in order to conclude the litigation in that forum.

Fourth, an amended plan has been proposed that requires 6 monthly payments of \$2,490, 54 monthly payments of \$2,517, and a lump sum payment of \$137,000 (or, if greater, the amount necessary to pay all creditors in full). The lump sum payment will be obtained from the litigation sometime during the next 60 months. Class 7 nonpriority unsecured creditors will be paid in full. Although not clear from the plan, in their response to the objection, the debtors concede that section 1325(a)(4) requires that they pay interest on Class 7 claims. They will pay the federal judgment rate. If the plan is confirmed, this provision must be expressly included in the confirmation order.

However, the dividend payable on Class 7 claims will come almost entirely from the lump sum payment. The monthly plan payment will be largely consumed by the ongoing Class 1 mortgage payment, the dividends payable on account of Class 1 secured arrearage claims and Class 2 secured claims, trustee's fees, and the debtors' attorney's fees.

Scott Brooks objects to confirmation. To the extent the objection raises the merits of the underlying litigation, this court will not make any findings or conclusions. It has deferred to the state court. Nor will this court make any determination that the debtors are likely to prevail in the litigation. If they do not, or if they do but do not obtain enough to pay all creditors in full within 60 months, this bankruptcy case will be dismissed and they will not receive a chapter 13 discharge unless they obtain the necessary funds from some other source.

There are just two relevant issues to confirmation - the feasibility of the plan and compliance with section 1325(a)(4).

As to feasibility, the plan's feasibility does not hinge on the likelihood of success in the litigation. If unsuccessful, they will not receive a discharge because they are nonetheless obligated to pay creditors in full. Rather, the plan's feasibility hinges on the debtors' financial ability to move forward with that litigation. They do not have the ability to finance the litigation but Mrs. Brooks' mother has been giving the debtors the funds necessary to finance the litigation. Her declaration makes clear that she has been doing so since November 2006, that her assistance is a gift, and that she will continue to provide this assistance.

And, as already noted, the plan promises to pay unsecured claims in full with interest. The plan complies with 11 U.S.C. § 1325(a)(4).

To the extent the court was concerned that the debtors were not proposing the plan in good faith, the court's concerns have been addressed. The schedules are now complete and an explanation given for their initial shortcomings.

Scott Brooks' strategy in this court seems fairly transparent: convince the court that the debtors' litigation has a poor chance of success, get the case

converted to chapter 7 then convince a chapter 7 trustee to accept a fairly nominal settlement like the one recently offered to the debtors.

Accurate evaluation of the litigation in this court is not possible. It involves business transactions between family members over an extended period of time. There are accusations of forgery and criminal wrongdoing. The best method of liquidating the claim is to allow it to go forward in state court.

3. 09-25313-A-13G ROBERTO BONILLA HEARING - AMENDED ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
4-6-09 [9]

- 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. R. 1007 and Local Bankruptcy Rule 1007-1(b), which provides: *"With every petition for relief under the Bankruptcy Code presented for filing, there shall be submitted concurrently a Master Address List which includes the name, address, and zip code of all of the debtor's known creditors. To accommodate modern technology, the Master Address List shall be prepared in strict compliance with instructions of the Clerk in a format approved by the Court."*

Because of this failure, creditors are unaware of the case because the court and the trustee cannot mail notice of the case to them. This has needlessly delayed the confirmation of a plan to the prejudice of creditors and is cause for dismissal of the petition. See 11 U.S.C. § 1307(c)(1).

4. 09-24618-A-13G TERESITA CABANILLA HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
HRH #1 4-13-09 [13]
FIRST FEDERAL BANK OF CALIF., VS.

- 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)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. The subject real property has a value of \$255,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$506,198.81.

There is no equity and there is no evidence that the subject real property is necessary to a reorganization.

The movant requests additional relief.

11 U.S.C. § 362(d)(4) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay - (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either - (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property."

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised upon "changed circumstances or for other good cause shown. . . ."

The movant here is entitled to relief under section 362(d)(4). That is, this petition was "part of a scheme to delay, hinder, and defraud creditors. . . ." This scheme involved the filing of "multiple bankruptcy filings affecting such real property."

The debtor here has filed two cases in this court. A prior case was dismissed when the debtor failed to propose a plan and file schedules and statements. The current case remains pending but in it the debtor has failed to timely propose a plan and file schedules.

Further, these cases were preceded by the debtor's conveyance of a 50% interest in the property without the movant's consent and while its secured claim was delinquent. The transferee then filed a bankruptcy petition in the Central District of California. That case was dismissed.

The court concludes that the multiple petitions were part of a scheme to hinder, delay, and defraud the movant because in each of the prior cases the petitions invoked the automatic stay preventing the movant from foreclosing on its real property collateral, each debtor failed to propose a plan and make plan payments, the debtor failed to make mortgage payments to the movant during the duration of all of these cases, and each debtor failed to appear in the proper prosecution of each case resulting in its dismissal.

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.

5. 05-37323-A-13G KENNETH/DIANE LEA HEARING - MOTION TO
JCK #5 INCUR FURTHER INDEBTEDNESS FOR
PURCHASE OF REAL PROPERTY
4-14-09 [39]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted. The loan is being taken out to purchase a residence. The monthly cost of the loan is only marginally higher than the current rental payment for the property. Given that the debtor has been in this case since 2005 and is current under the terms of the confirmed plan, the court concludes that the new loan will not jeopardize completion of the plan.

6. 08-33824-A-13G RAMIRO/ANA BORUNDA HEARING - MOTION FOR
JWC #1 RELIEF FROM AUTOMATIC STAY
TRANSPORT FUNDING, LLC, VS. 4-14-09 [43]

- 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 repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The plan provides for payment in full of the movant's secured claim as a Class 2 secured claim. Class 2 secured claims are paid in full through the plan and without maintenance of post-petition contract installments. The debtor has failed to make plan payments to the trustee since January 2009. This is a

material breach of the plan that has delayed payment of the movant's claim while the debtor continues to use and depreciate the movant's collateral. 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 due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

7. 09-24032-A-13G DAVID ELDRIDGE HEARING - MOTION FOR
TJS #1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A., VS. 4-9-09 [15]

- 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). The motion asserts that the movant has received no payments on its claim or adequate protection payments. A review of the docket reveals that the petition was filed on March 9 but the debtor failed to file a plan within the next 15 days as required by Fed. R. Bankr. P. 3015(b). A plan was belatedly filed on April 24, 46 days after the case was filed. Given the failure of the debtor to timely propose a plan and to commence adequate protection payments pursuant to 11 U.S.C. § 1326(a)(1)(C) and the adequate protection order entered by the court in this case, there is cause to terminate the 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 due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

8. 09-22635-A-13G ROGER/KATHLEEN MCLEOD
MDE #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN BY
BENEFICIAL CA, INC.
4-13-09 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

The plan provides for the objecting creditor's claim in Class 1. That is, it provides for the maintenance of contract installment payments and the cure of a pre-petition arrearage. However, the debtor has slightly understated the arrearage (\$710 vs. \$1,312.86). As a result, the dividend will not pay the arrearage in full as required by 11 U.S.C. § 1325(a)(5)(B). Obviously, if there are no other objections, curing this defect will be relatively easy.

9. 09-22635-A-13G ROGER/KATHLEEN MCLEOD
FW #1

HEARING - MOTION TO
VALUE COLLATERAL OF WELLS FARGO
AUTO FINANCE, INC.
4-1-09 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2005 Ford Expedition that secures Wells Fargo's Class 2 claim. While the debtor has opined that the vehicle has a value of \$14,665 based on the vehicle's model, year, and 100,000 miles no specific information is given in the motion regarding equipment, accessories, and overall condition.

Wells Fargo counters that the value of the vehicle is \$16,045 based on a retail evaluation by the Kelley Blue Book.

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

Any opinion of value by the owner must be expressed without giving a reason for

the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by the Kelley Blue Book, is \$16,045. This valuation, however, presumes the condition of the vehicle is excellent. See <http://www.kbb.com> (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation").

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

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

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

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

And, because the valuation motion has not been granted, at this point, the debtor is unable to "strip down" Wells Fargo's secured claim to \$14,665, the plan cannot be confirmed because it either violates 11 U.S.C. § 1325(a)(5)(B) because it will not pay Wells Fargo's secured claim in full, or, it will pay what Wells Fargo has demanded, the plan payments to be made by the trustee will not be sufficient to pay all dividends required by the plan. In the event of the latter, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

Counsel for the objecting creditor filed separate objections to the valuation motion and to the confirmation of the plan. This ruling addresses both objections filed by the objecting creditor.

10. 09-22635-A-13G ROGER/KATHLEEN MCLEOD
APN #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN
BY WELLS FARGO FINANCIAL
4-15-09 [24]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained to the extent indicated in the ruling on FW-1. That ruling is incorporated by reference.

11. 09-23145-A-13G STEPHEN/DEBORAH RAMIREZ
PFF #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN
AND OPPOSITION TO MOTION TO VALUE
COLLATERAL OF JPMORGAN CHASE BANK,
N.A.
4-15-09 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained in part.

To the extent the objection relates to the valuation motion that accompanies the plan, the objection will be overruled because it includes no evidence rebutting the debtor's valuation.

The debtor seeks to value the debtor's residence at a fair market value of \$199,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Washington Mutual/JPMorgan Chase Bank. The first deed of trust secures a loan with a balance of approximately \$320,118 as of the petition date. Therefore, Washington Mutual/JPMorgan Chase 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 creditor'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 creditor'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 creditor'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 creditor'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 creditor'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 creditor 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 creditor'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 creditor 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 creditor'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).

The objection, therefore, must be 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 \$199,000. 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).

Finally, because it has no secured claim, the failure to provide for the payment of a secured claim is not a violation of 11 U.S.C. § 1322(b)(2) or 11 U.S.C. § 1325(a)(5)(B).

The creditor argues, to the extent it is an unsecured creditor, that the plan violates 11 U.S.C. § 1325(b) because the debtor is not committing all projected disposable income to the payment of unsecured claims.

A review of Form 22C reveals that the debtor is projecting monthly disposable income of \$838.45. According to the plan, nonpriority unsecured claims total \$267,144.63. These claims will receive no less than a 12% dividend, or approximately \$32,057.36. Over the 60 month duration of the plan, if the unsecured creditors received \$838.45 they would receive a total of \$50,307. See In re Kagenveama, 2008 WL 2485570 (9th Cir. June 23, 2008). Hence, the creditor is correct - the plan does not pay all projected disposable income to unsecured creditors as required by section 1325(b).

12. 04-31846-A-13G RUSSELL STEWART HEARING - MOTION TO
FW #3 MODIFY CONFIRMED CHAPTER 13 PLAN
3-30-09 [84]
- 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) because the debtor failed to make plan payments totaling \$3,390.

13. 09-22448-A-13G MARY LAURY HEARING - OBJECTION TO
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE
4-8-09 [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 sustained.

First, the debtor has utilized an outdated version of the court's standard plan. The debtor has used the pre-BAPCPA plan. General Order 05-03 requires use of the post-BAPCPA plan.

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 plan filed is largely incomprehensible and incomplete. Its basic problem is that it makes no provision for the payment of claims. It is a plan in name only.

14. 09-25751-A-13G DANIEL/NINA CROOKS
JEG #1

HEARING - MOTION TO
VALUE COLLATERAL OF COUNTRYWIDE
4-15-09 [11]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$250,000 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 \$416,000 as of the petition date. Therefore, Countrywide'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 \$250,000. 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).

- 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 has failed to cooperate with the trustee and provide him with relevant financial information. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). The attempt to confirm a plan while withholding financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

First, the debtor has not provided either payment advices or profit and loss statements for the debtor's business. It is the revenue from this business upon which the feasibility of the proposed plan rests. See 11 U.S.C. § 1325(a)(6).

Second, the debtor has not provided the trustee with a copy of a lease for the business premises. The lease gives the debtor an option to buy. If the option price is below market, the option has value that could influence the best-interests-of-creditors test of 11 U.S.C. § 1325(a)(4).

Finally, the debtor has deducted business expenses on line 3 of Form 22C. This artificially depresses the debtor's current monthly income and potentially makes the debtor a below median income debtor when in fact his income is above median. This has an impact on the length of a plan. See 11 U.S.C. § 1325(b).

This issue was presented to the BAP in Drummond vs. Wiegand (In re Wiegand), 386 B.R. 238 (B.A.P. 9th Cir. 2008).

The Wiegands filed a chapter 13 petition. Mr. Wiegand operated a trucking business and so, on Official Form 22C, he reported his business income in order to calculate his current monthly income and projected disposable income. As the official form invited him to do, he reported his net business income as \$1,382 on line 3c, after deducting ordinary and necessary business expenses of \$5,175 (line 3b) from his gross business income of \$6,192 (line 3a). As a result of using net business income rather than gross business income in the calculation of current monthly income, the Wiegands had current monthly income below the state median for a comparably sized household. This meant that the Wiegand's applicable commitment period was three rather than five years. Consistent with this, the Wiegands proposed a 36-month plan.

The trustee objected to confirmation, arguing that the plan violated section 1325(b)(1) because the deduction of business expenses when calculating current

monthly income rather than as a deduction from it to calculate projected disposable income made section 1325(b)(2)(B) superfluous. And, if gross monthly business income were used to calculate current monthly income, the Wiegands' current monthly income would exceed the state median. As a result, they would be required to devote 60 months, not 36 months, of projected disposable income to the payment of unsecured claims.

The bankruptcy court overruled the trustee's objection and the trustee appealed to the BAP.

Current monthly income under 11 U.S.C. § 101(10A) is defined as "the average monthly income from all sources that the debtor receives . . . without regard to whether such income is taxable income, derived during the 6-month period" before the dates referenced in section 101(10A)(A)(i)&(ii).

Section 1325(b)(2) provides that "'disposable income' means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended - . . . (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business."

The BAP in Wiegand noted that the definition of current monthly income in section 101(10A) does not reference any deductions, either for personal maintenance or for the operation of a business. On the other hand, section 1325(b)(2) unambiguously refers to deductions, including business expense deductions for a debtor engaged in business. These deductions are to be taken, not to determine the amount of a debtor's current monthly income, but as a deduction from current monthly income to arrive at a debtor's projected disposable income. Hence, Form 22C is inconsistent with section 1325(b)(2)(B) because it permits business expenses to be deducted to calculate current monthly income.

16. 07-27158-A-13G ANTONIO/MARIA PEREZ HEARING - MOTION FOR
WGM #2 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, NA, VS. 4-10-09 [53]

- 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 motion will be dismissed as moot.

The court confirmed a plan on November 19, 2007. That plan provides for the movant's claim in Class 4. Class 4 secured claims are not long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 3.15:

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

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

The movant shall bear its own fees and costs because this motion was unnecessary.

17. 09-23558-A-13G AKRAM ALDAFARI HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-6-09 [17]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$95 due on April 1 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c) (2).

18. 09-25161-A-13G MARY SIMPKINS HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-1-09 [9]

- 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. R. 1007 and Local Bankruptcy Rule 1007-1(b), which provides: "With every petition for relief under the Bankruptcy Code presented for filing, there shall be submitted concurrently a Master Address List which includes the name, address, and zip code of all of the debtor's known creditors. To accommodate modern technology, the Master Address List shall be prepared in strict compliance with instructions of the Clerk in a format approved by the Court."

Because of this failure, creditors are unaware of the case because the court and the trustee cannot mail notice of the case to them. This has needlessly delayed the confirmation of a plan to the prejudice of creditors and is cause for dismissal of the petition. See 11 U.S.C. § 1307(c) (1).

19. 09-22165-A-13G MARIE VALDEZ
DMM #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN BY
WACHOVIA MORTGAGE, FSB
4-8-09 [26]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained to the extent explained in the ruling in the similar objection by the trustee. The court incorporates by reference its ruling on RDG-2.

20. 09-22165-A-13G MARIE VALDEZ
RDG #2

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
4-8-09 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

Wachovia holds a long-term home mortgage claim secured only by the debtor's home. There are no pre-petition arrearages on the claim.

The plan classifies the claim as a Class 1 secured claim. The plan provides that such claims are not modified by the plan. These claims have pre-petition arrearages and the plan provides for the payment of the ongoing monthly note installment as well as an additional monthly dividend to cure the pre-petition arrearage.

However, in this instance, the additional provisions of the plan provide that the ongoing monthly payment will be reduced. This is not permissible.

First, 11 U.S.C. § 1322(b)(2) prohibits the prospective modification of a claim secured only by the debtor's home.

Second, even if it were permissible to modify the claim, it would be necessary to pay the entire claim, both arrearage and unmatured principal, in full through the plan. In other words, a modification of the claim would make it a Class 2 claim.

Were this a chapter 12 case, and assuming the claim were not secured only by the debtor's home, such a plan would be confirmable. 11 U.S.C. § 1222(b)(9) specifically permits a chapter 12 plan to modify a secured claim and make it long term debt. That is, it need not be paid in full during the duration of the plan. Section 1222(b)(9) provides that a chapter 13 "plan may - . . . provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c)." Section 1222(c) otherwise would require that a chapter 12 plan pay all claims within three to five years.

Chapter 13 has nothing comparable to section 1222(b)(9). Consequently, the only debt that can be permitted to remain long term debt is debt that will not mature until after the completion of the plan and that is not modified by the chapter 13 plan. As long as the plan is only curing an arrearage, a long term debt may continue to mature beyond the length of the plan. See 11 U.S.C. § 1322(b)(3) & (5). However, if a long term debt is modified prospectively, such as by changing its interest rate or the installment payment, the entire claim must be paid during the chapter 13 case. See 11 U.S.C. §§ 1322(d) and 1325(a)(5).

This very point was recently decided by the Ninth Circuit in Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). It held: "'a chapter 13 debtor may not invoke both a modification of a secured creditor's claim under § 1322(b)(2) and the right to 'cure and maintain' over the life of the original loan as authorized under 1322(b)(5)." See In re Scott, 121 B.R. 605, 608-09 (Bankr. E.D. Okla. 1990) (explaining that it is not permissible to modify a secured claim under § 1322(b)(2) while extending payments beyond the plan's term pursuant to § 1322(b)(5)); see also In re Hussain, 250 B.R. 502, 507 (Bankr. D.N.J. 2000)."

Thus, in the absence of a pre-petition arrearage, and because this is a claim secured only by the debtor's home, this claim should be classified in Class 4. Class 4 is reserved for secured claims that will mature after the completion of the plan, that are not in default, and that are not modified by the plan.

The court understands that the debtor has a challenge to the validity of the mortgage claim. Nonetheless, the debtor cannot treat the confirmation of a plan and the automatic stay as a substitute for a preliminary injunctive relief. The court will confirm a plan only if it complies with the Bankruptcy Code. If the debtor is unable to feasibly propose and perform such a plan, the debtor must avail herself of the adversary process.

21. 09-20071-A-13G RAYMOND LEE HEARING - MOTION TO
DN #1 CONFIRM PLAN
3-13-09 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

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

Private Capital Fund's claim is secured by commercial real property owned by the debtor. This claim will mature prior to the completion of the plan.

To the extent the objection maintains that the debtor cannot modify its claim by reducing the interest rate and/or the monthly installment amount, the objection will be overruled. There is no prohibition on such a modification. See 11 U.S.C. § 1322(b)(2). The plan need only provide for payment in full of this claim. See 11 U.S.C. § 1325(a)(5)(B). Therein lies the problem. The monthly payments proposed in the plan will not pay the claim in full over the plan's duration. Hence, payment in full requires a lump sum payment in addition to the monthly payments. This is not proposed in the plan.

22. 09-22083-A-13G TIFFANY POE HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN BY
WMC MORTGAGE CORP.
3-12-09 [22]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained. As indicated in the rulings on MDE-1 and the order to show cause issued April 9, this case is the latest of seven chapter 13 petitions filed by the debtor. The debtor filed this case in violation of an injunction. Even without the injunction, no plan would be confirmed because the debtor failed to appear at the meeting of creditors. Given this history, it is clear that this case and the proposed plan have been filed in bad faith. The debtor is filing repetitive petitions merely to acquire the automatic stay and without any intention or ability to prosecute the case and perform the plan.

23. 09-22083-A-13G TIFFANY POE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-9-09 [45]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

This case was filed in violation of the injunction issued in Adv. Pro. No. 08-2679.

Also, the debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$136.50 due on April 6 was not paid. This is cause for dismissal. See 11

U.S.C. § 1307(c) (2).

24. 09-22083-A-13G TIFFANY POE
RDG #2

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
4-8-09 [42]

- 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. As indicated in the rulings on MDE-1 and the order to show cause issued April 9, this case is the latest of seven chapter 13 petitions filed by the debtor. The debtor filed this case in violation of an injunction. Even without the injunction, no plan would be confirmed because the debtor failed to appear at the meeting of creditors. Given this history, it is clear that this case and the proposed plan have been filed in bad faith. The debtor is filing repetitive petitions merely to acquire the automatic stay and without any intention or ability to prosecute the case and perform the plan.

25. 07-29991-A-13G ANGELA NOVOA
JCK #4

HEARING - MOTION TO
MODIFY CONFIRMED CHAPTER 13 PLAN
3-24-09 [59]

- 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 \$600. The plan does not comply with 11 U.S.C. § 1325(a) (6).

26. 08-33991-A-13G HAROLD/LISA REYNOLDS
JCK #4

HEARING - MOTION TO
CONFIRM FIRST AMENDED CHAPTER 13
PLAN
3-18-09 [48]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the motion is accompanied by no evidence. Without evidence, the debtor has not proven that the plan complies with 11 U.S.C. § 1329.

Second, the debtor is retaining the collateral of Les Schwab Tires, Safe Credit Union, and Dell Financial Services but the plan makes no provision for these secured claims that complies with 11 U.S.C. § 1325(a)(5)(A) or (B).

Third, the plan does not provide for payment in full of the priority claim of the IRS as required by 11 U.S.C. § 1322(a)(2).

Fourth, the plan proposes to surrender the collateral of Lee Financial Services even though the previously confirmed plan provided for payment in full of its secured claim. In order to change the treatment to surrender, the plan must do several things. It must provide for the principal already paid to Lee Financial Services. It also must value the vehicle to determine its present value. This valuation must be established in order to prove that the value, plus the principal already paid, equals the secured claim as of the date of the petition. That is, the creditor's secured claim was determined on the petition date (see 11 U.S.C. § 502(b)), and so the plan must provide the present value of that amount, whether payment is in cash or return of collateral. The plan fails to provide for the principal already paid nor does it establish the value of the collateral.

27. 05-37192-A-13G CRESCENCIO MEDINA
JCK #3

HEARING - OBJECTION TO
CLAIM OF WFS FINANCIAL
3-18-09 [35]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

After the petition was filed, and after confirmation of a plan that provided for the payment of the claimant's secured claim, the vehicle securing the claim was destroyed in an accident. The debtor's insurer paid \$5,400.84 to the claimant. The debtor now complains that the claimant has not amended its proof of claim to indicate the remaining amount owed is now unsecured. This objection is without merit for two reasons.

First, to the extent the claim is greater than the principal paid to the claimant under the terms of the plan plus the insurance proceeds, the claimant still has a secured claim. The amount of that claim was ascertained at the beginning of the case. See 11 U.S.C. § 502(b) (providing that claims are allowed "as of the date of the filing of the petition").

Second, to the extent the debtor wants the claim disallowed by an amount equal to the insurance proceeds, the objection is without merit. Claims that are disallowed are not entitled to payment from any source. Because this claim was (and should have been) paid, the problem is with the plan, not the proof of claim. The plan must be amended to reflect that the secured claim was paid, at least in part, differently than as provided for in the plan. See 11 U.S.C. § 1329(a)(3) (permitting the modification of a plan "to the extent necessary to take account of any payment . . . other than under the plan").

FINAL RULINGS BEGIN HERE

28. 08-34804-A-13G CALVIN/RENEE KEE HEARING - MOTION TO
FW #3 APPROVE LOAN MODIFICATION
3-23-09 [43]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the United States Trustee, the 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 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.

Essentially, this motion seeks approval for the modification of a home loan. That modification is not inconsistent with the confirmed plan. This motion is necessary in order to clarify that the loan modification will survive if this case is not completed by the debtor. It is no different than a new loan approved by the court in this respect. Therefore, it is approved pursuant to 11 U.S.C. § 364.

29. 08-34804-A-13G CALVIN/RENEE KEE HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
3-23-09 [48]

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. 08-21507-A-13G JOAN RODRIGUEZ HEARING - MOTION TO
FW #4 MODIFY CONFIRMED CHAPTER 13 PLAN
3-23-09 [56]

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. 08-25716-A-13G RANJIT/MANINDER GILL HEARING - MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA MORTGAGE, FSB, VS. 4-6-09 [55]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be dismissed as moot.

The court confirmed a plan on August 20, 2008. That plan provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 3.15:

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

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

The movant shall bear its own fees and costs because this motion was unnecessary.

32. 08-30027-A-13G DAVINDER BAJWA HEARING - MOTION TO
FW #2 MODIFY CONFIRMED CHAPTER 13 PLAN
3-26-09 [36]

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.

33. 08-37732-A-13G GLENN/KIMBERLY ALVAREZ HEARING - MOTION TO
VALUE COLLATERAL OF AMERICAN HONDA
FINANCIAL
3-17-09 [83]

Final Ruling: The motion will be dismissed without prejudice.

First, the certificate of service is unsigned. Hence, there is no proper proof that the motion was served.

Second, even if the certificate was signed, it indicates the motion was not served correctly. 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)).

34. 08-37732-A-13G GLENN/KIMBERLY ALVAREZ HEARING - MOTION TO
VALUE COLLATERAL OF WACHOVIA
DEALER SERVICES
3-17-09 [86]

Final Ruling: The motion will be dismissed without prejudice.

First, the certificate of service is unsigned. Hence, there is no proper proof that the motion was served.

Second, even if the certificate was signed, it indicates the motion was not served correctly. 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)).

35. 08-37732-A-13G GLENN/KIMBERLY ALVAREZ CONT. HEARING - OBJECTION TO
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE
3-10-09 [75]

Final Ruling: The objection pertains to the original plan filed by the debtor. That plan was supplanted by an amended plan. Even if the objection is relevant to the amended plan, that plan will not be confirmed for reasons given in the ruling on MEC-1.

36. 08-37732-A-13G GLENN/KIMBERLY ALVAREZ HEARING - MOTION
MEC #1 CONFIRM AMENDED CHAPTER 13 PLAN
3-17-09 [78]

Final Ruling: The motion will be dismissed without prejudice.

First, the certificate of service is unsigned. Hence, there is no proper proof that the motion was served.

Second, 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, 501 I Street, Suite 10-100, Sacramento, CA 95814; 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 IRS was served only at the address in Philadelphia.

37. 08-39238-A-13G BENJAMIN/CECILIA GONZALEZ HEARING - MOTION TO
TAW #3 VALUE COLLATERAL OF COUNTRYWIDE
HOME LOANS SERVICING, L.P.
4-14-09 [30]

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)).

38. 05-33447-A-13G SAMUEL/ANDERSON BROWN HEARING - MOTION TO
JCK #3 MODIFY CONFIRMED CHAPTER 13 PLAN
3-24-09 [30]

Final Ruling: The debtor has voluntarily dismissed the motion.

39. 09-24459-A-13G WILLIAM TANNER HEARING - MOTION TO
PLG #1 VALUE COLLATERAL OF AURORA LOAN
SERVICES
4-2-09 [8]

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 \$240,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by First Bank Mortgage. The first deed of trust secures a loan with a balance of approximately \$300,000 as of the petition date. Therefore, Aurora Loan Services' 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 \$240,000. 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).

40. 09-26159-A-13G HUMBERTO VELAZQUEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-10-09 [6]

Final Ruling: The order to show cause will be discharged and the case will remain pending.

The debtor did not file a Statement of Social Security Number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). The trustee takes the debtor's social security number from this statement and includes it on the notice of the commencement of the case that is served on all creditors. Creditors frequently need the social security number to identify the debtor. Thus, the quality of notice may be substantially reduced and perhaps nullified by the absence of the social security number. 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). As a result, the failure to file the Statement of Social Security Number may be cause for dismissal. See 11 U.S.C. § 1307(c)(1). However, in this case, the debtor belatedly filed the statement. This will be in time for the trustee to include the social security number on the notice of the commencement of the case. Thus, the late filing caused no prejudice to creditors.

41. 09-26159-A-13G HUMBERTO VELAZQUEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
4-10-09 [7]

Final Ruling: The order to show cause will be discharged and the case will remain pending.

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 debtor later filed the list. Despite being filed late, it was received by the court in time to be used when serving the notice of the commencement of this bankruptcy case. As a result, creditors will be notified that the case has been filed and they will receive notice of the various deadlines for filing complaints, objecting to exemptions, objecting to the proposed plan, and filing proofs of claims. Because no prejudice was caused by the late filing of the list, the case shall remain pending.

42. 07-28061-A-13G ARTEMIO/CARMEN ROSARIO
FW #3

HEARING - MOTION TO
MODIFY CONFIRMED CHAPTER 13 PLAN
3-19-09 [39]

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. 09-23364-A-13G MARK/CYNTHIA HENSLEE
ADS #1

HEARING - MOTION TO
VALUE COLLATERAL OF CHASE
MANHATTAN MORTGAGE
3-20-09 [8]

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 \$275,000 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 \$293,847 as of the petition date. Therefore, Chase Manhattan 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 \$275,000. 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).

44. 07-28067-A-13G GEORGE/GERALDINE REBEIRO HEARING - MOTION TO
FW #5 MODIFY CONFIRMED CHAPTER 13 PLAN
3-30-09 [72]

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.

45. 08-29667-A-13G OCTAVIO/LAURA GUTIERREZ HEARING - MOTION TO
FW #3 MODIFY CONFIRMED PLAN
3-20-09 [51]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

46. 08-29667-A-13G OCTAVIO/LAURA GUTIERREZ HEARING - OBJECTION TO
FW #4 CLAIM OF COUNTRYWIDE HOME LOANS
3-20-09 [47]

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 45 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.

47. 08-26272-A-13G CIPRIANO/FLORENCIA DEGUZMAN HEARING - OBJECTION TO
DN #4 CLAIM OF WASHINGTON MUTUAL BANK
3-12-09 [72]

Final Ruling: This objection to the proof of claim of Washington Mutual Bank has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the pre-petition arrearage portion of the claim will be disallowed. The claim includes a demand for the May 2008 installment payment. The debtor made that payment.

48. 05-21578-A-13G ROSE MIRANDA HEARING - MOTION TO
PGM #3 MODIFY CHAPTER 13 PLAN AFTER
CONFIRMATION
3-10-09 [66]

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.

49. 09-20381-A-13G JOSEPH CLARK, SR. HEARING - MOTION TO
TAW #3 CONFIRM 1ST AMENDED CHAPTER 13
PLAN
3-23-09 [20]

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. 09-22083-A-13G TIFFANY POE
MDE #1
LITTON LOAN SERVICING, LP, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-6-09 [35]

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)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. The subject real property has a value of \$650,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$772,848.32. There is no equity and there is no evidence that the subject real property is necessary to a reorganization.

The movant requests additional relief.

11 U.S.C. § 362(d)(4) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay - (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either - (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property."

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised upon "changed circumstances or for other good cause shown. . . ."

The movant here is entitled to relief under section 362(d)(4). That is, this petition was "part of a scheme to delay, hinder, and defraud creditors. . . ."

This scheme involved the filing of "multiple bankruptcy filings affecting such real property."

The debtor here has filed seven petitions in this court. The first was filed on June 5, 2007. A prior six cases were all dismissed without the debtor confirming and performing the plans. The debtor's history of filing but failing to diligently prosecute chapter 13 petitions in this court is summarized in an adversary proceeding, Adv. No. 08-2679, filed by the U.S. Trustee seeking an injunction preventing the debtor from filing further cases. The debtor failed to respond to that complaint and her default was entered. In effect she has admitted her sorry history in this court and her misuse of bankruptcy to hinder, delay, and defraud the movant. The court enjoined the debtor from filing further cases, but this case was filed anyway.

The court concludes that the multiple petitions were part of a scheme to hinder, delay, and defraud the movant because in each of the prior cases the petitions invoked the automatic stay preventing the movant from foreclosing on its real property collateral, the debtor failed to propose a plan and make plan payments, the debtor to make mortgage payments to the movant during the duration of all of these cases, and the debtor failed to appear in the proper prosecution of each case resulting in its dismissal.

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.

51. 05-37192-A-13G CRESCENCIO MEDINA HEARING - MOTION TO
JCK #4 MODIFY CONFIRMED CHAPTER 13 PLAN
3-24-09 [41]

Final Ruling: The debtor has voluntarily dismissed the motion.

52. 08-29494-A-13G GROVER/CARIDA JOHNSON HEARING - OBJECTION TO
EJS #2 CLAIM OF WELLS FARGO FIN'L N.A.
3-16-09 [48]

Final Ruling: This objection to the proof of claim of Wells Fargo Financial has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim allowed as a nonpriority, unsecured claim. The claimant financed the debtor's dental work. No property was purchased that could serve as collateral for the claim nor was other property provided as security for the claim.