

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

July 27, 2009 at 9:00 a.m.

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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 25. 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 AUGUST 24, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 10, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 17, 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 26 THROUGH 57. 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 AUGUST 10, 2009, AT 9:30 A.M.

July 27, 2009 at 9:00 a.m.

**Matters called beginning at 9:00 a.m.**

1. 09-32404-A-13G THANHHA ALIAGA HEARING - MOTION FOR  
DMG #1 RELIEF FROM AUTOMATIC STAY  
CITIFINANCIAL AUTO CORP., VS. 7-6-09 [24]

- 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) 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 subject property has a value of \$12,200 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$28,035. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors.

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.

2. 08-35505-A-13G KRISTINA BAZAN HEARING - OBJECTION TO  
FW #2 CLAIM OF ROUNDUP FUNDING LLC  
6-24-09 [42]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(c)(1), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(c)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

The objection will be overruled.

The claim is secured by several items of jewelry. All but one piece of jewelry has been lost by the debtor. Nonetheless, because one piece remains in the possession of the debtor, the claim is secured to the extent of the value of that piece. See 11 U.S.C. § 506(a). The proper course is to value that collateral and not to object to the claim as secured. Also, the objection indicates the debtor wishes to surrender the remaining piece of jewelry. This would satisfy the secured claim. See 11 U.S.C. § 1325(a)(5)(C). However, this must be accomplished by the confirmation of a plan providing for such surrender rather than a claim objection.

3. 09-29110-A-13G MARC/DEBORAH MYERS  
DN #1

HEARING - MOTION TO  
VALUE COLLATERAL OF REAL TIME  
RESOLUTIONS, INC.  
7-13-09 [17]

- 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 \$233,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by American Home Mortgage. The first deed of trust secures a loan with a balance of approximately \$311,000 as of the petition date. Therefore, Real Time Solutions' 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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$233,000. 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 (5<sup>th</sup> Cir. 1980).

4. 09-32210-A-13G ROSALINE JULIO

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
6-24-09 [6]

- 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).

5. 09-31415-A-13G CHARI OGOGO HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
7-10-09 [17]
- Telephone Appearance  
 Trustee Agrees with Ruling

**Tentative Ruling:** The order to show cause will be discharged as moot.

While the debtor has failed to pay an installment filing fee as ordered by the court, the case has been pending for more than 45 days without the debtor filing all documents required by 11 U.S.C. § 521(a)(1).

When schedules and statements are not filed by the 45<sup>th</sup> day of a case, the case is automatically dismissed on the 46<sup>th</sup> day. See 11 U.S.C. § 521(i)(1). In this case, the 45<sup>th</sup> day was July 20. The schedules and statements were not filed on or before the 45<sup>th</sup> day. Thus, on July 21, the petition was automatically dismissed.

Despite discharging the order to show cause, the court will confirm the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

6. 08-21820-A-13G FRANK/NANCY MARTINS CONT. HEARING - MOTION TO  
JCK #1 MODIFY CONFIRMED CHAPTER 13 PLAN  
5-18-09 [32]
- Telephone Appearance  
 Trustee Agrees with Ruling

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

First, the debtor has the burden of proving the plan's compliance with 11 U.S.C. §§ 1322(a) and 1325(a). This requires some evidence but no admissible evidence accompanies this motion.

Second, the plan fails to provide for payment in full of the secured claim of Homeq Servicing as required by 11 U.S.C. § 1325(a)(5)(B).

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$4,569 is less than the \$5,226 in dividends and expenses the trustee must pay out each month.

7. 09-25920-A-13G WALTER/LISA CARLSON CONT. HEARING - MOTION TO  
SDM #1 CONFIRM 3RD AMENDED CHAPTER 13  
PLAN  
5-26-09 [32]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied. Because the feasibility of the plan rests on the ability to value collateral of HSBC and Wells Fargo, and because neither motion can be granted at this time, the plan cannot be confirmed consistent with 11 U.S.C. § 1325(a)(6).

8. 09-25920-A-13G WALTER/LISA CARLSON CONT. HEARING - OBJECTION TO  
WGM #1 CONFIRMATION OF PLAN BY HSBC  
MORTGAGE SERVICES  
6-26-09 [55]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained. Because the feasibility of the plan and its compliance with 11 U.S.C. § 1325(a)(5)(B) rests on the ability to value the collateral of HSBC, and because that motion cannot be granted at this time, the plan cannot be confirmed consistent with 11 U.S.C. § 1325(a)(5)(B) & (a)(6) at this time.

Counsel for the objecting creditor shall show cause why sanctions should not be ordered given the failure to include the docket control number of the debtor's motion on the objection. See Local Bankruptcy Rule 9014-1(c)(1). When objecting to a motion set for hearing, opposition to the motion is not to be set for hearing independently from the motion.

9. 09-25920-A-13G WALTER/LISA CARLSON HEARING - MOTION TO  
SDM #4 TO VALUE COLLATERAL OF BENEFICIAL  
HSBC  
6-24-09 [51]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** None. The respondent has requested time to procure an appraisal of the property that is the subject of the motion. The court will give it this opportunity. At the hearing the court will set a briefing schedule for the filing of opposition and a reply to it.

10. 09-23121-A-13G ROBERT JULIEN HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
AURORA LOAN SERVICES, LLC, VS. 7-1-09 [48]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a

written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

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

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

11. 09-29222-A-13G JOSEPH/ELSA OFAMEN HEARING - OBJECTION TO  
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE  
7-2-09 [17]

- 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 debtor operates a business but carries no general liability insurance. While no showing has been made that any applicable law or contract requires such insurance, it means that any mishap normally covered by such insurance, such as a slip-and-fall accident on the debtor's business premises, must be handled from cash flow. The schedules show no ability to handle any such mishap. The plan is not feasible. See 11 U.S.C. § 1325(a)(6).

12. 09-25023-A-13G JOHNNY/MONICA RUIZ  
TPH #1

CONT. HEARING - MOTION TO  
CONFIRM FIRST AMENDED CHAPTER 13  
PLAN  
6-4-09 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The trustee requested a copy of the debtor's 2008 income tax return but the debtor failed to furnish him with a complete copy. This failure is breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To fail to cooperate with the trustee and provide him with relevant financial information while attempting to confirm a plan is bad faith. See 11 U.S.C. § 1325(a)(3).

13. 09-25023-A-13G JOHNNY/MONICA RUIZ  
TPH #3

HEARING - MOTION TO  
VALUE COLLATERAL OF SAFE C.U.  
6-8-09 [34]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied.

According to the supporting declaration, the subject vehicle has a fair market value of \$3,425 "based on [the] Kelley Blue Book valuation." However, a copy of the relevant information from that market guide is not attached to the declaration. The offered evidence is hearsay. Further, it is unclear from the declaration which valuation basis from the Kelley Blue Book the debtor is relying upon - retail value, private party value, or trade in value.

14. 09-29229-A-13G ELAINE WHITE  
MBB #1

HEARING - OBJECTIONS TO  
CONFIRMATION OF PLAN BY BAC HOME  
LOANS SERVICING, LP  
6-25-09 [13]

- 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 proposes to cure a pre-petition default on the movant's secured claim while maintaining contract installment payments during the case. However, the plan assumes that the prepetition arrearage is approximately \$14,000; the

objecting creditor maintains that it is owed over \$31,000. At the dividend rate promised in the plan, the arrearage claimed will not be paid in full as required by 11 U.S.C. § 1325(a) (5) (B).

15. 08-34530-A-13G GEORGE/MAURICA TAYLOR  
DSS #4

HEARING - MOTION TO  
VALUE COLLATERAL OF J.P. MORGAN  
CHASE BANK, CHASE HOME FINANCE  
7-1-09 [99]

- 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 \$276,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Seawest Federal Credit Union. The first deed of trust secures a loan with a balance of approximately \$461,320 as of the petition date. Therefore, J.P. Morgan Chase Bank's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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



claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

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

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

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

However, because the debtor is not eligible for chapter 13 relief, the court cannot confirm the plan. 11 U.S.C. § 109(e) requires that chapter 13 debtors have no more than \$336,900. According to the debtor's schedules, the debtor's unsecured debt exceeds \$339,000. Because this is over the limit set by section 109(e), no plan can be confirmed. See 11 U.S.C. § 1325(a)(1).

17. 08-35033-A-13G MATTHEW/SANDREA THOMAS HEARING - MOTION TO  
FW #2 MODIFY CONFIRMED CHAPTER 13 PLAN  
6-5-09 [37]

- 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 \$645. The plan does not comply with 11 U.S.C. § 1325(a)(6).

18. 09-30733-A-13G OZZIE CASTRO HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
7-1-09 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The order to show cause will be discharged as moot.

While the debtor has failed to pay an installment filing fee as ordered by the court, the case has been pending for more than 45 days without the debtor

filing all documents required by 11 U.S.C. § 521(a)(1).

When schedules and statements are not filed by the 45<sup>th</sup> day of a case, the case is automatically dismissed on the 46<sup>th</sup> day. See 11 U.S.C. § 521(i)(1). In this case, the 45<sup>th</sup> day was July 12. The schedules and statements were not filed on or before the 45<sup>th</sup> day. Thus, on July 13, the petition was automatically dismissed.

Despite discharging the order to show cause, the court will confirm the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

19. 09-31836-A-13G JOSE CORTEZ HEARING - MOTION FOR  
MDE #1 RELIEF FROM AUTOMATIC STAY  
THE BANK OF NEW YORK, ETC., VS. 7-9-09 [16]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be dismissed as moot.

The petition was filed on June 10. When schedules and statements are not filed by the 45<sup>th</sup> day of a case, the case is automatically dismissed on the 46<sup>th</sup> day. See 11 U.S.C. § 521(i)(1). In this case, the 45<sup>th</sup> day was July 25. The schedules and statements were not filed on or before the 45<sup>th</sup> day. Thus, on July 26, the petition was automatically dismissed. As a result, the automatic stay expired on July 26. See 11 U.S.C. § 362(c)(1) & (c)(2).

Despite dismissing the motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2).

20. 09-29863-A-13G ROBERT/WENDY KING HEARING - MOTION FOR  
SW #1 RELIEF FROM AUTOMATIC STAY  
GMAC, VS. 7-7-09 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the credit or, 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 and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that will surrender the vehicle to the movant in satisfaction of its secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's claim will not be paid and the vehicle securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

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

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

21. 09-28768-A-13G DONALD/LINDA SCIARAPPO HEARING - OBJECTION TO  
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE  
7-1-9 [18]

- 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.

According to the statement of current monthly income (Form 22C), the debtor has monthly projected disposable income of \$1,144.66. Over a 60-month applicable commitment period, this would permit the debtor to pay a 77% dividend to holders of Class 7 unsecured claims. The plan proposes only a 45% dividend. Thus, the plan does not comply with 11 U.S.C. § 1325(b) as interpreted by In re Kagenveama, 2008 WL 2485570 (9<sup>th</sup> Cir. June 23, 2008).

22. 09-20071-A-13G RAYMOND LEE  
DN #2

HEARING - MOTION TO  
CONFIRM AMENDED PLAN  
6-12-09 [51]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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.

The plan must 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. Unlike the original plan, the modified plan promises to fund a lump sum payment from a refinance of the subject property within 2 years. However, there is no convincing evidence that the debtor will be able to accomplish the required refinance. The debtor has failed to establish the feasibility of the plan. See 11 U.S.C. § 1325(a)(6).

23. 09-31171-A-13G ANTHONY MOSS

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
7-8-09 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The order to show cause will be discharged as moot.

While the debtor has failed to pay an installment filing fee as ordered by the court, the case has been pending for more than 45 days without the debtor filing all documents required by 11 U.S.C. § 521(a)(1).

when schedules and statements are not filed by the 45<sup>th</sup> day of a case, the case is automatically dismissed on the 46<sup>th</sup> day. See 11 U.S.C. § 521(i)(1). In this case, the 45<sup>th</sup> day was July 17. The schedules and statements were not filed on or before the 45<sup>th</sup> day. Thus, on July 18, the petition was automatically dismissed.

Despite discharging the order to show cause, the court will confirm the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

24. 09-24689-A-13G ANTHONY/SHANNON MASSA  
MBB #1

CONT. HEARING - OBJECTIONS TO  
CONFIRMATION OF PLAN BY  
COUNTRYWIDE HOME LOANS SERVICING  
6-19-09 [31]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled for the reasons stated in the ruling on the debtor's motion to confirm the plan.

At the hearing, counsel for the objecting creditor shall show cause why sanctions should not be ordered given the failure to include the docket control number of the debtor's motion to confirm the plan on the objection. See Local Bankruptcy Rule 9014-1(c)(1). When objecting to a motion set for hearing, opposition to the motion is not to be set for hearing independently from the motion.

25. 09-24689-A-13G ANTHONY/SHANNON MASSA  
DN #3

CONT. HEARING - MOTION TO  
CONFIRM PLAN  
6-3-09 [27]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the objection will be overruled.

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

The objection maintains that the plan fails to provide for the cure of pre-petition arrears as required by 11 U.S.C. §§ 1322(b)(2) & 1325(a)(5)(B). However, prior to the filing of the petition, the objecting creditor and the debtors agreed to a loan modification that provided for the cure of the arrearage. The plan provides for the maintenance of mortgage payments on the loan as modified and therefore satisfies 11 U.S.C. § 1322(b)(2) and 1325(a)(5)(B).

**FINAL RULINGS BEGIN HERE**

26. 09-32404-A-13G THANHHA ALIAGA HEARING - MOTION FOR  
ADR #1 RELIEF FROM AUTOMATIC STAY  
LENDERS FINANCIAL GROUP, LLC, VS. 6-19-09 [9]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1). The movant purchased the subject property at a nonjudicial foreclosure sale prior to the filing of the petition. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. The debtor, then, has no apparent right to reorganize the foreclosed debt.

Because the movant has not established that it holds an over-collateralized secured 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.

27. 09-24411-A-13G JOHN/JUDY FUCHS HEARING - MOTION TO  
JCK #4 VALUE COLLATERAL OF LASALLE BANK  
MIDWEST N.A./BANK OF AMERICA  
6-18-09 [25]

**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 (9<sup>th</sup> Cir. 1995). While the respondent creditor has filed a response, it does not object to the valuation. 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 (9<sup>th</sup> 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 \$139,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by CitiMortgage. The first deed of trust secures a loan with a balance of approximately \$199,236 as of the petition date. Therefore, Lasalle Bank Midwest/Bank of America's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$139,000. 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

28. 09-24412-A-13G KENNETH/BARBARA ALLEN HEARING - MOTION TO  
JCK #1 MODIFY CONFIRMED CHAPTER 13 PLAN  
6-23-09 [21]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

29. 09-24117-A-13G THOMAS/YVETTE RIOS HEARING - MOTION TO  
FW #3 VALUE COLLATERAL OF INDYMAC BANK  
6-26-09 [30]

**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 (9<sup>th</sup> Cir. 1995). While the respondent creditor has filed a response, it does not object to the valuation. 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 (9<sup>th</sup> 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 \$305,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by IndyMac Bank. The first deed of trust secures a loan with a balance of approximately \$505,883 as of the petition date. Therefore, IndyMac Bank's other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Barte, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$305,000. 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 (5<sup>th</sup> Cir. 1980).

30. 09-25920-A-13G WALTER/LISA CARLSON HEARING - MOTION TO  
SDM #3 VALUE COLLATERAL OF WELLS FARGO  
6-22-09 [47]

**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. According to the certificate of service, this motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9<sup>th</sup> 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)). Service, then, is deficient.

31. 04-32121-A-13G ANN MCKINNEY HEARING - MOTION TO  
JCK #1 MODIFY CONFIRMED CHAPTER 13 PLAN  
6-16-09 [25]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

32. 09-21921-A-13G PAULINO/YVONNE MORENO HEARING - MOTION FOR  
CLH #4 CONFIRMATION OF CHAPTER 13 PLAN  
6-15-09 [63]

**Final Ruling:** The motion will be dismissed without prejudice.

A review of the certificate of service reveals no list of persons served with the motion. Because there is no proof that anyone was served with the motion, the court concludes that service and notice are defective.

33. 05-36624-A-13G ERIC/TAMIKO PRUETT HEARING - MOTION TO  
JCK #4 MODIFY CONFIRMED CHAPTER 13 PLAN  
6-16-09 [44]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

34. 09-24625-A-13G MATTHEW/TRACY LARSON  
SDM #2

HEARING - MOTION TO  
VALUE COLLATERAL OF COUNTRYWIDE  
6-24-09 [35]

**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 (9<sup>th</sup> Cir. 1995). While the respondent creditor has filed a response, it does not object to the valuation. 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$325,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Countrywide. The first deed of trust secures a loan with a balance of approximately \$338,098 as of the petition date. Therefore, American General Finance'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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$325,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5<sup>th</sup> Cir. 1980).

35. 07-27629-A-13G VICTOR/DELFINA FLORES  
FW #7

HEARING - MOTION TO  
MODIFY CONFIRMED CHAPTER 13 PLAN  
6-24-09 [71]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

36. 09-24831-A-13G SOMKHIT/KARREN KHAM-AVONE HEARING - MOTION TO  
JB #2 VALUE COLLATERAL OF SPECIALIZED  
LOAN SERVICING  
5-27-09 [27]

**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. According to the certificate of service, this motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9<sup>th</sup> 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)). Service, then, is deficient.

Also, the notice of the hearing indicates that the hearing will be in courtroom 23. The correct courtroom number is 28.

37. 08-39238-A-13G BENJAMIN/CECILIA GONZALEZ HEARING - MOTION FOR  
BRL #1 RELIEF FROM AUTOMATIC STAY ETC  
BISMARCK MORTGAGE CO., LLC, VS. 6-29-09 [52]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 is granted in part 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. All other relief is denied. The subject real property has a value of \$433,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$569,885. There is no equity and there is no evidence that the subject real property is necessary to an effective reorganization.

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

38. 09-29441-A-13G PETER/BETTY HALL HEARING - MOTION TO  
ADS #1 VALUE COLLATERAL OF WASHINGTON  
MUTUAL BANK  
6-24-09 [12]

**Final Ruling:** The motion will be dismissed without prejudice.

A review of the certificate of service reveals that Washington Mutual was not served with the motion. Service and notice are defective.

39. 09-25842-A-13G KULDIP/KAMAL RAGBOTRA HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
JP MORGAN CHASE BANK, N.A., VS. 6-29-09 [40]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

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

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

40. 09-26344-A-13G RAUL/MARIE TREVINO HEARING - TRUSTEE'S OBJECTION TO  
RDG #2 CLAIM OF EXEMPTIONS  
6-23-09 [32]

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

41. 08-35945-A-13G NANCY BARBER HEARING - MOTION TO  
GMW #3 CONFIRM AMENDED CHAPTER 13 PLAN  
6-11-09 [45]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

42. 09-27746-A-13G TANIKA ZUNIGA HEARING - MOTION TO  
FW #3 CONFIRM FIRST AMENDED CHAPTER 13  
PLAN  
6-18-09 [25]

**Final Ruling:** This motion to confirm a modified plan proposed prior to confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

43. 09-31049-A-13G ESAU RODRIGUEZ HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
7-7-09 [17]

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

The court granted the debtor permission to pay the installment filing fee in installments. The debtor failed to pay an installment when due. However, on July 10, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

44. 09-27358-A-13G RICHARD/LINDA SERNA HEARING - MOTION TO  
JCK #3 CONFIRM FIRST AMENDED CHAPTER 13  
PLAN  
6-18-09 [17]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

45. 09-28658-A-13G VERONICA CENTENO  
FW #1

HEARING - MOTION TO  
VALUE COLLATERAL OF GREENTREE  
BANKRUPTCY DEPT.  
6-25-09 [14]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). While the respondent creditor has filed a response, it does not object to the valuation. 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 (9<sup>th</sup> 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 \$99,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by CitiMortgage. The first deed of trust secures a loan with a balance of approximately \$128,000 as of the petition date. Therefore, Greentree Bankruptcy Dept.'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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Barte, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$99,000. 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 (5<sup>th</sup> Cir. 1980).

46. 09-29559-A-13G WILLIAM/PATRICIA DELONG HEARING - MOTION TO  
FW #1 VALUE COLLATERAL OF HOME LOAN  
SERVICES  
6-25-09 [17]

**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 (9<sup>th</sup> Cir. 1995). While the respondent creditor has filed a response, it does not object to the valuation. 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 (9<sup>th</sup> 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 \$194,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Home Loan Services. The first deed of trust secures a loan with a balance of approximately \$235,829 as of the petition date. Therefore, Home Loan Services'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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$194,000. 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 (5<sup>th</sup> Cir. 1980).

47. 09-28662-A-13G CHRISTOPHER KOSTA

HEARING - OBJECTION TO  
MOTION TO VALUE COLLATERAL OF  
FIRST TENNESSEE BANK  
7-2-09 [17]

**Final Ruling:** The objection will be dismissed without prejudice.

First, an objection placed on the calendar by the objecting party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to the objection are linked on the docket. This linkage insures that the court, as well as any party reviewing the docket, will be aware of everything filed in connection with the objection.

This objection has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the objection that have not been brought to the attention of the court. The court will not permit the objecting creditor to profit from possible confusion caused by this breach of the court's local rules.

Second, there are two certificates of service. One shows that only the objection and not the supporting documentation for the objection were served only on the debtor's attorney. Everything filed must be served on the debtor, the debtor's attorney, and the trustee.

The second certificate of service shows service on the debtor's attorney and the trustee, but not the debtor. This certificate also is deficient because it does not indicate what was served.

Third, the hearing is noticed for the room in which meetings of creditors are held, not the courtroom.

Fourth, the notice of the hearing indicates that the objection will be heard by the "Hon. Robert Matsui." Judge McManus is the judge assigned to this case. The Hon. Robert Matsui is a deceased congressman for whom the federal courthouse is named.

Finally, the objection is not timely.

As required by General Order 05-03, ¶ 3(a)-(c), the chapter 13 trustee served the proposed chapter 13 plan and related valuation motion with the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines. That notice indicated that objections to confirmation of the plan and motion had to be

filed and served no later than July 1 and set for hearing at the confirmation hearing on July 27.

A review of the proof of service for the notice and the plan reveals that the trustee served the objecting creditor with the notice as well as the plan and motion on May 29, 2009.

The objecting creditor filed and served its objection to the proposed plan and related valuation motion on July 2. This was not timely. General Order 05-03, ¶ 3(c) provides in relevant part: "Absent a timely objection and a properly noticed hearing on it, the court may confirm the chapter 13 plan and grant the motions without a hearing." The court concludes that the objection is untimely.

48. 09-28669-A-13G SANDRA GRAF  
FW #1

HEARING - MOTION TO  
VALUE COLLATERAL OF BANK OF  
STOCKTON  
6-25-09 [16]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). While the respondent creditor has filed a response, it does not object to the valuation. 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 (9<sup>th</sup> 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 \$150,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by CitiMortgage. The first deed of trust secures a loan with a balance of approximately \$158,062 as of the petition date. Therefore, Bank of Stockton'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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$150,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5<sup>th</sup> Cir. 1980).

49. 09-20071-A-13G RAYMOND LEE CONT. HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
PRIVATE CAPITAL FUND, LLC, VS. 6-4-09 [46]

**Final Ruling:** This matter was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2). The respondent was not required to file written opposition prior to the preliminary hearing. At the preliminary hearing, however, the respondent informed the court that there was opposition to the motion. The court then set a briefing schedule and required the respondent to file and serve written opposition on or before July 13. Nothing was filed. Therefore, the respondent's default is entered and, 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 (9<sup>th</sup> Cir. 2006).

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. The plan classifies the movant's claim in Class 1 and requires that the post-petition note installments be paid to the movant. Despite this provision, at least five monthly post-petition monthly mortgage payments have not been paid to the movant as required by the plan. This default is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9<sup>th</sup> Cir. 1985).

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

50. 09-23776-A-13G SAPATU/ANTONINA ALA HEARING - MOTION TO  
SDM #2 VALUE COLLATERAL OF SPECIALIZED  
LOAN SERVICING  
6-24-09 [40]

**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. According to the certificate of service, this motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9<sup>th</sup> 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)). Service, then, is deficient.

51. 09-21778-A-13G EDUARDO/CAROLINE ASUNCION HEARING - MOTION FOR  
JFP #1 RELIEF FROM AUTOMATIC STAY  
DCFS USA LLC, VS. 6-19-09 [64]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

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

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

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

52. 09-28679-A-13G JAMES/STEPHANIE HIESTAND HEARING - MOTION TO  
FW #1 VALUE COLLATERAL OF NATION POINT  
LOANS SERVICES  
6-25-09 [19]

**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 (9<sup>th</sup> Cir. 1995). While the respondent creditor has filed a response, it does not object to the valuation. 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 (9<sup>th</sup> 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 \$237,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nation Point Loan Service. The first deed of trust secures a loan with a balance of approximately \$261,624 as of the petition date. Therefore, Nation Point Loan Service'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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$237,000. 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 (5<sup>th</sup> Cir. 1980).

53. 07-28084-A-13G MICHAEL/TERRY NORTON  
FW #7

HEARING - MOTION TO  
MODIFY CONFIRMED CHAPTER 13 PLAN  
6-22-09 [115]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

54. 08-34385-A-13G ELOY/PAULA BACA HEARING - MOTION TO  
FW #2 MODIFY CONFIRMED CHAPTER 13 PLAN  
6-23-09 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

55. 09-23485-A-13G SHERRIE YANG HEARING - MOTION FOR  
MDE #1 RELIEF FROM AUTOMATIC STAY  
CITIMORTGAGE, INC., VS. 6-29-09 [53]

**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.

A plan was confirmed in this case on June 11, 2009. That plan provided for the movant's claim as a Class 3 secured claim. This means that the plan provided for the surrender of the movant's collateral in order to satisfy its secured claim. It also provides at section 3.14:

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

Thus, the stay has already been terminated and the motion is moot. To the extent the plan's description of the surrendered collateral is not as comprehensive as in the creditor's security documentation, the order may recite that the collateral identified in the motion has been surrendered and the stay previously terminated.

Because this motion was unnecessary, all fees and costs associated with this motion shall be borne by the movant.

56. 08-35289-A-13G LEAH BERNSTEIN HEARING - MOTION FOR  
MDE #1 RELIEF FROM AUTOMATIC STAY  
CITIMORTGAGE, INC., VS. 6-29-09 [53]

**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 February 18, 2009. That plan, by virtue of an amendment appearing in the confirmation order, 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.

Because this motion was unnecessary, all fees and costs associated with this motion shall be borne by the movant.

57. 09-29593-A-13G WAYNE/LA VAUGHN FRADES  
FW #1

HEARING - MOTION TO  
VALUE COLLATERAL OF FIRESIDE AUTO  
FINANCE  
6-25-09 [13]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) is granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of \$16,160 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9<sup>th</sup> Cir. 2004). Therefore, \$16,160 of the respondent's claim is an allowed secured claim. When the respondent is paid \$16,160, and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.