

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Chief Bankruptcy Judge  
Sacramento, California

August 18, 2008 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 27. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2), OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON SEPTEMBER 29, 2008 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 15, 2008, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 22, 2008. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 28 THROUGH 69. 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 SEPTEMBER 2, 2008, AT 9:30 A.M.

August 18, 2008 at 9:00 a.m.

**Matters to be Argued**

1. 08-29009-A-13G MARIA RAMOS HEARING - ORDER RE: REQUEST  
DISMISSAL OF CHAPTER 13 CASE  
7-18-08 [11]
- Telephone Appearance  
 Trustee Agrees with Ruling

**Tentative Ruling:** It appearing that the debtor did not file this case, it will be dismissed at the request of Ms. Ramos.

2. 06-23414-A-13G ROBERT/CHARMAINE WHITE HEARING - MOTION TO  
FW #6 INCUR DEBT  
8-1-08 [74]
- Telephone Appearance  
 Trustee Agrees with Ruling

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

The motion will be granted.

The motion to borrow money in order to purchase a home will be granted on the condition that the loan proceeds are used solely to pay the purchase price and transactional costs. Because the monthly loan payment will approximate the rent now being paid by the debtors, repaying the loan is unlikely to jeopardize the debtors' performance of their plan. The trustee shall approve the form of the order.

3. 08-26918-A-13G JUSTODIO GARIBAY HEARING - OBJECTION TO  
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE  
7-23-08 [28]
- Telephone Appearance  
 Trustee Agrees with Ruling

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

The objection will be sustained.

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

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

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

Fourth, a review of the proposed plan reveals that Litton Loan holds a secured, long term claim secured by the debtor's home. There are pre-petition arrears on this claim that must be cured through the plan. Given that claims secured only by the debtor's home cannot be modified, the debtor is limited to maintaining ongoing installment payments and curing the arrearage. See 11 U.S.C. § 1322(b)(2) & (b)(5) and 1325(a)(5)(B).

Such a claim is a Class 1 secured claim under the classification scheme used by the court's mandatory standard plan. General Order 05-03 provides at paragraph 3(a): *"The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1 Claim Checklist and Authorization to Release Information required by subparagraph 5(c)(2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."*

At paragraph 5(c)(2), the General Order provides: *"To assist the Trustee in making post-petition contract installment payments to Class 1 claim holders, the debtor shall complete the Class 1 Checklist and Authorization to Release Information, Exhibit 5, and deliver it to the Trustee within 15 calendar days of filing the petition. This document shall not be filed with the court."*

The debtor in this case has not given the trustee a checklist for the Class 1 secured claim held by Litton Loan. Without this form, the trustee has not been authorized to make ongoing mortgage payments to Litton Loan, does not know where to send those payments, and is unable to contact Litton Loan to verify

the account information. This means that the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

Fifth, the plan misclassifies the secured claim of Litton Loan in both Class 1 and Class 4. These classes are mutually exclusive. Because there is an arrearage on the claim, the claim belongs in Class 1.

Sixth, the plan also is not feasible because the \$773.78 monthly plan payment is less than all dividends the trustee must pay. Just the ongoing mortgage payment to Litton Loan is \$2,682.50. Obviously, the plan payment will be unable to fund this dividend and all other dividends.

And, even if the plan payment were enough to fund all dividends, according to Schedules I and J, the debtor has insufficient net monthly income to fund a plan payment of \$773.78.

4. 08-27323-A-13G JUAN JAIME AND HEARING - OBJECTION TO  
RDG #1 STEPHANIE ALEGRIA CONFIRMATION OF PLAN BY TRUSTEE  
7-25-08 [21]
- Telephone Appearance
  - Trustee Agrees with Ruling

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

The objection will be sustained.

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

5. 08-26831-A-13G VICTOR/ROSA NEAVEZ HEARING - OBJECTION TO  
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE  
7-22-08 [21]
- Telephone Appearance
  - Trustee Agrees with Ruling

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

court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

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

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

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

Fourth, a review of the proposed plan reveals that Washington Mutual holds a secured, long term claim secured by the debtor's home. There are pre-petition arrears on this claim that must be cured through the plan. Given that claims secured only by the debtor's home cannot be modified, the debtor is limited to maintaining ongoing installment payments and curing the arrearage. See 11 U.S.C. § 1322(b)(2) & (b)(5) and 1325(a)(5)(B).

Such a claim is a Class 1 secured claim under the classification scheme used by the court's mandatory standard plan. General Order 05-03 provides at paragraph 3(a): *"The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1 Claim Checklist and Authorization to Release Information required by subparagraph 5(c)(2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."*

At paragraph 5(c)(2), the General Order provides: *"To assist the Trustee in making post-petition contract installment payments to Class 1 claim holders, the debtor shall complete the Class 1 Checklist and Authorization to Release Information, Exhibit 5, and deliver it to the Trustee within 15 calendar days of filing the petition. This document shall not be filed with the court."*

The debtor in this case has not given the trustee a checklist for the Class 1

secured claim held by Washington Mutual. Without this form, the trustee has not been authorized to make ongoing mortgage payments to Washington Mutual, does not know where to send those payments, and is unable to contact Washington Mutual to verify the account information. This means that the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

Fifth, the plan also is not feasible because the \$3,131.89 monthly plan payment is less than the \$3,712.98 in dividends the trustee must pay.

Sixth, the plan does not comply with 11 U.S.C. § 1325(a)(4). In a chapter 7 liquidation Class 7, the debtor's unsecured creditors would be paid in full. This means that in this chapter 13 case, the unsecured creditors must receive the present value of a 100% dividend as of the effective date of the plan. The plan's effective date is the petition date. The plan does not provide for payment of a 100% dividend on the petition date or even on the confirmation date. Instead, unsecured creditors will be paid in full only after all secured, priority, and administrative claims are paid in full. 11 U.S.C. § 1325(a)(4) provides that unsecured creditors must receive "the value, as of the effective date of the plan, property ... not less than the amount that would be paid on such date if the estate ... were liquidated under chapter 7...." To satisfy section 1325(a)(4), interest must be paid on the dividend. The debtor must pay 100% of Class 7 unsecured claims plus interest at the federal judgment rate. In re Bequelin, 220 B.R. 94 (B.A.P. 9<sup>th</sup> Cir. 1998).

In other words, in a chapter 7 case in which the estate was solvent, 11 U.S.C. § 726(a)(5) would require the payment of interest to holders of unsecured claims. Therefore, if the debtor in such a case files under chapter 13, section 1325(a)(4) will require that unsecured creditors receive, as of the effective date, what they would be paid in a chapter 7 case. If they would receive 100% in a chapter 7 case, paying 100% over several years is not the equivalent of receiving 100% in cash on the effective date of the plan. To make it the equivalent, interest must be added.

6. 08-22532-A-13G LESLIE SHAW HEARING - MOTION TO  
PGM #2 CONFIRM DEBTOR'S FIRST  
AMENDED PLAN  
7-10-08 [58]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$6,100. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment is less than the \$6,111.77 in dividends the trustee must pay.

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2001 Mercedes Benz that secures American General's Class 2 claim.

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

The debtor asserts the value is \$13,805 based on a private party valuation by the Kelley Blue Book. This type of valuation, however, does not establish the vehicle's replacement value. According to Kelley Blue Book, a private party value "is what a buyer can expect to pay when buying a used car from a private party." That is, it is not "the price a retail merchant would charge for [the vehicle] considering [its] age and condition...."

The debtor, then, has not carried the burden of establishing the retail value of the vehicle.

American General counters that the value of the vehicle is \$21,815 based on a retail valuation by the Kelley Blue Book and an inspection of the vehicle by an employee of American General who has no demonstrated expertise in the valuation of vehicles. The only admissible fact established in his declaration is that the vehicle is in "good" condition. Unfortunately, this fact means that the court will not value the vehicle at \$21,815 even though it is a retail valuation.

According to the Kelley Blue Book, retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation". However, the declaration does not indicate the vehicle is in excellent condition.

11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." That is, what would a retailer charge for the vehicle as it is? This question cannot be answered from the creditor's evidence.

Because the debtor has the burden of proof, and because the debtor has not carried that burden for the reason stated above, the court denies the motion. The court comes to no conclusion regarding the replacement value, that is, the retail value of the car in its current condition.

8. 08-26435-A-13G VIKKI DANELSON  
EJS #1

HEARING - MOTION TO  
CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
7-9-08 [31]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,104. The plan does not comply with 11 U.S.C. § 1325(a)(6).

There is another feasibility issue. The plan requires a final payment in an unspecified amount to be derived from a sale of the debtor's residence. There is no evidence that a sale is likely or, even if likely, that sufficient funds can be derived from a sale to fund the payment.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a 68.20% dividend in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

9. 08-27639-A-13G MICHAEL/KAREN CAYTON  
PD #1

HEARING - OBJECTION TO  
CONFIRMATION OF CHAPTER 13 PLAN  
BY GMAC MORTGAGE, LLC.  
7-30-08 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

The plan provides for the objecting creditor's secured claim in Class 4. Class 4 is reserved for long-term secured claims that were not in default when the petition was filed and that are not modified by the plan. Instead of receiving ongoing contractual payments from the trustee, the debtor, or some other obligor, maintains those payments directly to the secured creditor.

However, the objection establishes that there was a pre-petition arrearage on the secured creditor's claim. The plan makes no provision for the cure of the arrearage. Hence, the plan does not comply with 11 U.S.C. § 1325(a)(5)(B) which requires that a secured claim be paid in full.

10. 08-27639-A-13G MICHAEL/KAREN CAYTON  
PD #2

HEARING - OBJECTION TO  
CONFIRMATION OF CHAPTER 13  
PLAN BY GMAC MORTGAGE, LLC.  
7-30-08 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

The plan provides for the objecting creditor's secured claim in Class 4. Class 4 is reserved for long-term secured claims that were not in default when the petition was filed and that are not modified by the plan. Instead of receiving ongoing contractual payments from the trustee, the debtor, or some other obligor, maintains those payments directly to the secured creditor.

However, the objection establishes that there was a pre-petition arrearage on the secured creditor's claim. The plan makes no provision for the cure of the arrearage. Hence, the plan does not comply with 11 U.S.C. § 1325(a)(5)(B) which requires that a secured claim be paid in full.

11. 08-25749-A-13G RENITA CULP  
PLG #1

CONT. HEARING - MOTION FOR  
ORDERS DETERMINING VALUE OF  
REAL PROPERTY, EXTENT OF SECURED  
CLAIMS AND EXTINGUISHING THE LIEN  
OF COUNTRYWIDE HOME LOANS, INC.  
6-18-08 [17]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted in part. The court will value the claim of Countrywide as requested but it will not "extinguish" its second deed of trust as requested by the debtor. As explained below, that lien remains effective until the plan is completed.

The debtor seeks to value the debtor's residence at a fair market value of \$145,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Countrywide Home Loans. The first deed of trust secures a loan with a balance of approximately \$309,814.42 as of the petition date. Therefore, Countrywide's second 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. According to the debtor, the residence has a fair market value of \$145,000. 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).

12. 08-28255-A-13G FILOMENO CHAVEZ  
DCV #1  
U.S. BANK NAT'L ASSN., ET AL., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY ETC  
7-30-08 [26]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1).

The movant completed a nonjudicial foreclosure sale before the petition was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4<sup>th</sup> 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. If the foreclosure sale was not in accord with state law this can be asserted as a defense to an unlawful detainer proceeding in state court. The purchaser's right to possession after a foreclosure sale is based on the fact that the property has been "duly sold" by foreclosure proceedings. Cal. Civ. Pro. Code § 1161a. Therefore, it is necessary that the purchaser at the foreclosure prove that each of the statutory procedures was been complied with as a condition for seeking possession of the property. See Miller & Starr, California Real Estate 2d, §§ 18.140 and 18.144 (1989).

The automatic stay is not a free preliminary injunction. It is a respite from creditor action while the debtor attempts to reorganize. Here, the debtor has no apparent right to reorganize the movant's debt because of the foreclosure unless that foreclosure was improper. Whether or not it was improper can be decided in state court, either in connection with an unlawful detainer or in an independent action.

There is a complication. While the foreclosure occurred on June 12, before the petition was filed on June 20, the trustee's deed was not recorded until July 9, after the petition was filed. Also, a notice to quit the premises was served on the debtor on June 24, four days after the petition was filed. Arguably, these post-petitions are void because they were done after the automatic stay was in place. Acts done in violation of the automatic stay are void. In re Schwartz, 954 F.2d 569, 571 (9<sup>th</sup> Cir. 1992).

Prior to January 1, 1994, the Ninth Circuit's decision in In re Walker, 861 F.2d 597 (9<sup>th</sup> Cir. 1988), might call into question whether the foreclosure effectively ended the debtor's rights in the property because the trustee's deed was not recorded prior to the filing of the petition. Under Walker, recordation of the trustee's deed was necessary to perfect the transfer. If a bankruptcy was commenced before recordation of the deed, the sale was avoidable pursuant to 11 U.S.C. § 549(a).

Since Walker was decided, California amended Civil Code section 2924h(c). This amendment clarifies California law and provides that a nonjudicial foreclosure sale is perfected upon recordation of the trustee's deed. Further, if the deed is recorded within 15 days of the sale, the date of perfection relates back to 8:00 a.m. of the day the sale was actually conducted.

May a lender record a trustee's deed if a bankruptcy petition intervenes between the sale and the 15-day deadline? The court concludes that the lender can record the trustee's deed despite the intervention of the bankruptcy provided it is recorded within the 15 days. 11 U.S.C. § 362(b)(3) recognizes an exception to the automatic stay which permits an act to perfect an interest in property to the extent the trustee's/debtor in possession's rights and powers are subject to such perfection under 11 U.S.C. § 546(b). Section 546(b) provides that the rights and powers of a trustee/debtor under 11 U.S.C. §§ 544, 545 and 549 "are subject to any generally applicable law that permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of such perfection." 11 U.S.C. § 546(b).

This is exactly what is accomplished by Civil Code section 2924h(c). It permits perfection of the foreclosure sale bidder's ownership interest in the property which is effective against the rights of anyone acquiring an interest in the property between the date of the trustee's sale and recordation of the trustee's deed. Therefore, section 362(b)(3) permitted recordation of the trustee's deed despite the intervention of a bankruptcy petition.

However, even taking account of the fact that the 15-day period in this case fell on July 5, a Saturday, this extended the period to record the deed to Monday, July 7. See Cal. Civil Code § 2924h(c). It was not recorded until Wednesday, July 9. This was outside of the 15-day grace period. Therefore, the sale was not perfected when the petition was filed, the post-petition recordation, as well as the acts to obtain possession, were void acts because done in violation of the automatic stay, and the sale is subject to avoidance.

Notwithstanding the conclusion that the movant violated the automatic stay, the automatic stay may sometimes be annulled so as to validate the void conduct or actions. 11 U.S.C. § 362(d). Also see, In re Schwartz, 954 F.2d at 572); Algeran, Inc. v. Advance Ross Corp., 759 F.2d 1421, 1425 (9<sup>th</sup> Cir. 1985); Jewett v. Shabahangi (In re Jewett), 146 B.R. 250, 252 (B.A.P. 9<sup>th</sup> Cir. 1992).

The motion argues the stay should be annulled. Courts have focused on two factors in determining whether cause exists for retroactive annulment: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor. Nat'l Env'tl. Waste Corp. v. City of Riverside (In re Nat'l Env'tl. Waste Corp.), 129 F.3d 1052, 1055 (9<sup>th</sup> Cir. 1997).

When the trustee's deed was recorded and when the notice to quit was served, the movant was unaware of the petition.

The debtor's conduct in this court suggests bad faith and an inability to reorganize.

First, this is the second case filed by the debtor. The debtor filed a chapter 7 petition (Case No. 08-24397) on April 7, 2008. It was dismissed on May 13, 2008 because the debtor failed to file a master address list, thereby depriving the court of the ability to give notice of the earlier case to all creditors.



provides that the interest rate payable on a tax claim or an administrative tax expense is determined by applicable nonbankruptcy law.

The interest due on delinquent California real property taxes is set by statute. For each installment of real property taxes not timely paid, a 10% penalty is assessed. See Cal. Rev. & Tax. Code §§ 2617, 2618, 2705. In addition, a "redemption" penalty of 1 ½% per month is added to the tax bill. See Cal. Rev. & Tax. Code § 4103(a). For purposes of a claim in a bankruptcy case, Cal. Rev. & Tax. Code § 4103(b) provides that "the assessment of penalties ... constitutes the assessment of interest." Clearly, no interest does not comply with applicable nonbankruptcy law.

Fifth, the interest rate proposed to be paid on Toyota Financial's Class 2 secured claim is a mere .06% (that is, not 6%, but less than 1%). This is not a market rate of interest. The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9<sup>th</sup> Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9<sup>th</sup> Cir. 1987).

The prime rate is 5%. See [www.federalreserve.gov/releases/h15/update/](http://www.federalreserve.gov/releases/h15/update/). A proposed rate that is less than 1% on undersecured car loan is patently noncompliant with Till.

Sixth, 11 U.S.C. § 1326(a)(4) requires the debtor to give proof of insurance covering personal property subject to a lease or that is security for a purchase money debt within 60 days of the filing of the petition. The debtor must present reasonable evidence of the maintenance of any required insurance as long as the debtor retains possession of personal property.

The debtor has not discharged this duty as to the vehicle securing Toyota Financial's claim.

In addition to collision and comprehensive coverages to protect the secured creditor, California law requires the debtor to maintain liability insurance on her vehicle.

The debtor is operating her vehicle in violation of state law.

Not only is the debtor violating the Bankruptcy Code and California law, but she is breaching the terms of her proposed plan which provides at section 6.02(b): "Debtor shall maintain insurance as required by any law or contract and Debtor shall provide evidence of that insurance as required by section 1326(a)(4)."

To the extent Toyota objects to the debtor's statement that the vehicle securing its claim is worth \$12,000, the objection will be overruled because the plan includes no valuation and the plan concedes that the claim is subject to the "hanging paragraph" following 11 U.S.C. § 1325(a)(9).

14. 08-22158-A-13G JEAN/SONIA LAPEYRI HEARING - DEBTORS' MOTION TO  
HWW #2 CONFIRM AMENDED CHAPTER 13 PLAN  
7-10-08 [25]

- 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 \$240. The plan does not comply with 11 U.S.C. § 1325(a)(6).

15. 08-28465-A-13G MARIA JUAREZ HEARING - OBJECTION TO  
SJJ #2 PLAN BY U.S. BANK NAT'L ASSN.  
7-15-08 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

The objecting creditor completed a nonjudicial foreclosure sale before the petition was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor (i.e., the debtor) has no right of redemption. Moeller v. Lien, 25 Cal. App.4<sup>th</sup> 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure and attempt to reorganize the debt. That debt was satisfied before the petition was filed by the foreclosure.

16. 08-27271-A-13G ROSEMARY LOVISA CONT. HEARING - MOTION TO  
FW #1 VALUE COLLATERAL OF WASHINGTON  
MUTUAL  
6-9-08 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor seeks to value the debtor's residence at a fair market value of \$160,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Washington Mutual. The first deed of trust secures a loan with a balance of approximately \$340,910.57 as of the petition date. Therefore, Washington Mutual'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. According to the debtor, the residence has a fair

market value of \$160,000. 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).

17. 08-21879-A-13G JUGJEEV/MINERVA MANGAT HEARING - OBJECTION TO  
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE  
7-25-08 [114]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

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

18. 08-21879-A-13G JUGJEEV/MINERVA MANGAT HEARING - OBJECTION TO  
CONFIRMATION OF CHAPTER 13 PLAN  
BY DEUTSCHE BANK TRUST CO.  
7-30-08 [117]

- 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 dismissed for the simple reason the court has sustained the trustee's objection to confirmation. Unless and until the debtor appears at a meeting of creditors, no plan will be confirmed. Hence, it is unnecessary to consider the specifics of this objection or the plan.

19. 08-25879-A-13G JON/CARLA TOMPKINS

HEARING - MOTION TO  
CONFIRM AMENDED CHAPTER 13 PLAN  
7-9-08 [36]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$5,890. The plan does not comply with 11 U.S.C. § 1325(a)(6).

20. 08-25879-A-13G JON/CARLA TOMPKINS  
DGN #1

CONT. HEARING - OBJECTION TO  
DEBTOR'S MOTION TO VALUE  
COLLATERAL AND TO PROPOSED CHAPTER  
13 PLAN BY FORD MOTOR CREDIT CO.  
6-25-08 [32]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained in part.

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2005 Ford Expedition that secures Ford Motor Credit's Class 2 claim. In the debtor's opinion, the vehicle has a value of \$16,050 based on the vehicle's model year, equipment, condition, and 63,000 miles.

The declaration by Watheq Abdelhaq offered by the debtor gives no opinion of value. He states that the saleability of similar vehicles is difficult in the current market. While undoubtedly true, this does not help the court value the vehicle.

Ford counters that the value of the vehicle is higher based on retail evaluations by the NADA Guide and the Kelley Blue Book as well as the inspection and opinion of value by an expert that takes into account the condition of the vehicle. However, his opinion is based on the above market reports which he has adjusted to reflect the condition of the vehicle and then averaged. Included in his average are both adjusted retail and wholesale valuations.

This methodology is flawed. First, 11 U.S.C. § 506(a)(2) requires the court to determine replacement value by determining "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." Hence, the inclusion of wholesale values in the average is not appropriate. The court is required to use the retail value after adjusting it for condition.

Second, averaging together different retail values reported in valuation guides is inappropriate. In Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997), the Supreme Court expressly rejected valuations that were based averages and "split-the-difference" approaches. Id. at 159-160.

Therefore, the court adopts one of the values determined by the creditor's

expert but not the average of all of his valuations. The court adopts the \$18,491.25 value based on comparable sales and offers for sale, less the \$1,531.12 cost to put the vehicle in saleable condition. This is a replacement value of \$16,960.13.

And, provided the plan is amended to pay a claim in the amount of \$16,960.13, the court will overrule the objection that the plan fails to pay the secured claim in full as required by 11 U.S.C. § 1325(a)(5)(B).

21. 08-26479-A-13G NATALIO GOMEZ HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
HOME LOAN SERVICES, INC., VS. 7-25-08 [43]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1). The movant completed a nonjudicial foreclosure sale before the petition was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4<sup>th</sup> 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. If the foreclosure sale was not in accord with state law this can be asserted as a defense to an unlawful detainer proceeding in state court. The purchaser's right to possession after a foreclosure sale is based on the fact that the property has been "duly sold" by foreclosure proceedings. Cal. Civ. Pro. Code § 1161a. Therefore, it is necessary that the purchaser at the foreclosure prove that each of the statutory procedures was been complied with as a condition for seeking possession of the property. See Miller & Starr, California Real Estate 2d, §§ 18.140 and 18.144 (1989).

The automatic stay is not a free preliminary injunction. It is a respite from creditor action while the debtor attempts to reorganize. Here, the debtor has no apparent right to reorganize the movant's debt because of the foreclosure unless that foreclosure was improper. Whether or not it was improper can be decided in state court, either in connection with an unlawful detainer or in an independent action.

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.

22. 08-26879-A-13G ALEJANDRO/BELINDA MONTOYA  
WGM #1  
WASHINGTON MUTUAL BANK, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-1-08 [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 denied.

The motion asserts that there is cause pursuant to 11 U.S.C. § 362(d)(1) to terminate the automatic stay. This cause is the alleged failure to make two post-petition note installments to the movant as required by the plan.

The proposed plan provides for the movant's claim in Class 1. Class 1 secured claims are long-term secured claims that were in default on the date the petition was filed. They are not modified by the plan; instead, the plan provides for the maintenance of post-petition installment payments as well as the cure of the pre-petition arrearage. This treatment is consistent with 11 U.S.C. § 1322(b)(5) and does not violate the anti-modification provision of 11 U.S.C. § 1322(b)(2) applicable to home loans.

The motion asserts that the debtor has breached the plan by failing to make two monthly post-petition payments. However, the plan requires the debtor to pay the trustee and then the trustee, not the debtor, makes the ongoing mortgage payments to the movant. There is no evidence with the motion that the movant conferred with the trustee to confirm that the debtor failed to pay the trustee causing the trustee's inability to pay the movant.

The trustee's response to the motion confirms that the debtor has made all plan payments to him. The case was filed on May 27. Therefore, under the terms of the plan, the first plan payment was due to the trustee on June 25. The trustee disbursed that payment during the first week of July, sending to the movant the ongoing mortgage payment due for June. Because this was not within the grace period, the movant will receive a late charge. This, however, is not a material default that warrants termination of the stay.

The next plan payment is due on August 25. The trustee will disburse that payment during the first week of September and the movant will receive its August installment payment shortly thereafter. While it will be distributed in September but is for the August installment, because it will be received during the grace period for the September installment, no further late charge is assessable.

This is because under California law, a late charge cannot be assessed when an

installment is tendered and received by the mortgage creditor during the grace period, even if the installment is credited to the installment due for an earlier period. Cal. Civil Code § 2954.4(b) provides:

*"A late charge may not be imposed on any installment which is paid or tendered in full on or before its due date, or within 10 days thereafter, even though an earlier installment or installments, or any late charge thereon, may not have been paid in full when due. For the purpose of determining whether late charges may be imposed, any payment tendered by the borrower shall be applied by the lender to the most recent installment due."*

In other words, if a borrower fails to make one monthly installment but thereafter makes ten monthly installments timely, the lender can assess one late charge, not eleven, even though the principal and interest paid is being applied to an obligation due in the prior month.

Therefore, because the plan provides for both the cure of the pre-petition installment (the payment of these dividends must wait for plan confirmation as required by 11 U.S.C. § 1326(a)(2)) and the maintenance of ongoing mortgage installments, and because the plan is not in default, there is no cause to terminate the automatic stay.

The movant shall bear its own fees and costs.

23. 08-27482-A-13G SOLITO/MARILOU REYES HEARING - OBJECTION TO  
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE  
7-28-08 [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.

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

Second, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of

BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Third, even though the debtors have monthly projected income, the plan fails to provide for the payment of this income to unsecured creditors in violation of 11 U.S.C. § 1325(b).

The amount deducted on Form 22C for taxes, \$5,126.80, significantly exceeds the amount budgeted on Schedules I and J, \$2,417.35. There is no logical reason for these two numbers to be different. If the correct amount is the lower of the two, this will inflate projected disposable income by \$2,709.45 and it must be paid to unsecured creditors. If the debtors' monthly taxes are actually \$5,126.80, then their monthly expenses are likely to be \$2,709.45 more than budgeted. If such is the case, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

Finally, the plan's feasibility also depends in part on stripping down GMAC's Class 2 secured claim to the value of its collateral. Yet, the debtors have not moved to value this collateral. See 11 U.S.C. § 506.

24. 08-26584-A-13G ANGELA BASS  
FW #1

CONT. HEARING - MOTION TO  
CONFIRM FIRST AMENDED CHAPTER 13  
PLAN  
6-23-08 [16]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor admitted at the meeting of creditors that the debtor failed to file her income tax return for 2007. The return is delinquent.

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

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

In this case, the meeting of creditors was held and concluded on July 2. And, while it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee must hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is impossible for the debtor to comply with section 1308.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has not moved for dismissal. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

25. 08-27290-A-13G LAURA SERRONE HEARING - OBJECTION TO  
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE  
7-28-08 [16]
- Telephone Appearance
  - Trustee Agrees with Ruling

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

The objection will be sustained.

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

Also, the debtor failed to use the form plan mandated by General Order 05-03, ¶ 2(a).

26. 08-27791-A-13G SANTIAGO/MARIA VALENCIA HEARING - MOTION FOR  
KAT #1 RELIEF FROM AUTOMATIC STAY  
MTG. ELECTR. REGIS. SYS., INC., VS. 7-22-08 [25]
- 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

27. 08-24098-A-13 JANE CARTER HEARING - MOTION TO  
DN #2 VALUE COLLATERAL OF COUNTY  
FINANCIAL  
8-1-08 [23]

- 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 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 \$5,520 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, \$5,520 of the respondent's claim is an allowed secured claim. When the respondent is paid \$5,520 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.

**FINAL RULINGS BEGIN HERE**

28. 08-27402-A-13G JOE/SHIRLEY AVALOS HEARING - MOTION TO  
MJH #2 CONFIRM AMENDED PLAN  
7-18-08 [15]

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

First, a review of the certificate of service reveals that the motion and proposed plan were not served on the United States Trustee as required by Fed. R. Bankr. P. 2002(b) & (k), 3015(b), 9034, as well as the United States Trustee Guidelines for Region 17, § 1.1. Hence, service is defective.

Second, the body of the notice of the hearing states that the hearing will take place in the Modesto Division of this court. Because this case's intra-district venue is in the Sacramento Division, the hearing must take place in Sacramento. Hence, notice of the hearing is defective.

29. 08-26403-A-13G STANLEY/OLIVIA EDWARDS HEARING - MOTION TO  
JCK #1 CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
7-9-08 [14]

**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.

30. 08-29104-A-13G LOWELL/MARGIEANN SARMIENTO HEARING - MOTION TO  
PLG #1 VALUE COLLATERAL OF GMAC  
7-14-08 [8]

**Final Ruling:** The court continues the hearing to September 29, 2008 at 9:00 a.m. so that the hearing will coincide with the hearing on any objections to the confirmation of the plan. Opposition to this motion shall be filed and served no later than September 15. No later than August 19, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion.

31. 08-22508-A-13G NASIR/LORRAINE KHAN HEARING - MOTION TO  
SAC #1 CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
7-7-08 [31]

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



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. According to the debtor, the residence has a fair market value of \$645,000. 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).

34. 08-22508-A-13G NASIR/LORRAINE KHAN HEARING - MOTION TO  
SAC #4 VALUE COLLATERAL OF BANK OF  
AMERICA  
7-7-08 [40]

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

A valuation 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 this motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. The motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 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)). Hence, service is defective.

35. 08-24608-A-13G WEDA SHAH HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
GMAC MORTGAGE, LLC, VS. 7-15-08 [53]

**Final Ruling:** The motion will be dismissed without prejudice. A review of the certificate of service reveals that the persons served are purportedly identified on an appended list. There is no appended list. Hence, there is no proof that any party in interest was served and/or served correctly. Service is defective.

36. 08-27213-A-13G MIGUEL/ADELINA GONZALES HEARING - MOTION FOR  
MET #1 RELIEF FROM AUTOMATIC STAY  
AMERICAN HONDA FINANCE CORP., VS. 7-21-08 [16]

**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 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.

37. 08-25716-A-13G RANJIT/MANINDER GILL  
PGM #1

HEARING - MOTION TO  
VALUE COLLATERAL OF NATIONAL CITY  
BANK  
6-27-08 [20]

**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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$490,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wachovia. The first deed of trust secures a loan with a balance of approximately \$572,000 as of the petition date. Therefore, National City Bank's second 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



the objecting creditor set for hearing on September 2 at 9:00 a.m. If that motion is granted, the secured claim of the objecting creditor will be \$0 and its objection to confirmation likely lacks merit. Therefore, the court continues the hearing on the objection to confirmation to the same date as the hearing on the valuation motion.

40. 07-27629-A-13G VICTOR/DELFINA FLORES HEARING - OBJECTION TO  
FW #4 CLAIM OF HY CITE FINANCE  
7-3-08 [47]

**Final Ruling:** The objection will be dismissed without prejudice. A review of the certificate of service shows that the address used for service does not match the claimant's address as indicated on its proof of claim. Hence, service is deficient. See 11 U.S.C. § 2002(g)(1).

41. 07-21030-A-13G LEO/LISA MARTIN HEARING - DEBTORS' MOTION TO  
CJY #3 CONFIRM SECOND MODIFIED CHAPTER 13  
PLAN  
6-30-08 [38]

**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.

42. 04-31331-A-13G TERANCE/VANEESA HARRIS HEARING - OBJECTION TO  
FW #5 CLAIM OF THE SAN JOAQUIN DA FAMILY  
SUPPORT DIV.  
7-3-08 [75]

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

The objection will be sustained. The last date for a governmental entity to file a timely proof of claim was September 9, 2003. The proof of claim was filed on December 10, 2003. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re

Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

43. 08-27548-A-13G KEVIN/SHARON BORGES SW #1 HEARING - OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO VALUE COLLATERAL BY WACHOVIA DEALER SERVICES, INC. 7-17-08 [14]

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

44. 08-25749-A-13G RENITA CULP PLG #2 HEARING - DEBTOR'S MOTION FOR CONFIRMATION OF FIRST MODIFIED CHAPTER 13 PLAN 7-3-08 [30]

**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. 08-25749-A-13G RENITA CULP PLG #3 HEARING - MOTION TO VALUE COLLATERAL OF AQUA FINANCE 7-3-08 [26]

**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 \$495.80 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, \$495.80 of

the respondent's claim is an allowed secured claim. When the respondent is paid \$495.80 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.

46. 08-29249-A-13G KIMBERLY AICHINGER HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
7-23-08 [6]

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

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The debtor later filed the list. Despite being filed late, it was received by the court in time to be used when serving the notice of the commencement of this bankruptcy case. As a result, creditors were notified in a timely fashion that the case had been filed and they received notice of the various deadlines for filing complaints, objecting to exemptions, objecting to the proposed plan, and filing proofs of claims. Because no prejudice was caused by the late filing of the list, the case shall remain pending.

47. 08-29249-A-13G KIMBERLY AICHINGER HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
7-23-08 [7]

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

The debtor did not file a Statement of Social Security Number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). The trustee takes the debtor's social security number from this statement and includes it on the notice of the commencement of the case that is served on all creditors. Creditors frequently need the social security number to identify the debtor. Thus, the quality of notice may be substantially reduced and perhaps nullified by the absence of the social security number. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9<sup>th</sup> Cir. 2007). As a result, the failure to file the Statement of Social Security Number may be cause for dismissal. See 11 U.S.C. § 1307(c)(1). However, in this case, the debtor belatedly filed the statement on July 23. This was in time for the trustee to include the social security number on the notice of the commencement of the case. Thus, the late filing caused no prejudice to creditors.

48. 08-21051-A-13G ROBERT CONNOR HEARING - MOTION TO  
ADS #1 CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
7-11-08 [51]

**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.

49. 08-21051-A-13G ROBERT CONNOR HEARING - MOTION FOR  
MBB #2 RELIEF FROM AUTOMATIC STAY  
COUNTRYWIDE HOME LOANS, INC., VS. 7-21-08 [58]

**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.

50. 08-28253-A-13G RICARDO/SANTA ANA BATRES HEARING - MOTION TO  
RB #1 CONVERT TO CHAPTER 7  
7-21-08 [14]

**Final Ruling:** Because a chapter 13 debtor has the unqualified right to convert a chapter 13 case to one under chapter 7, a hearing is unnecessary and the motion will be granted. See 11 U.S.C. § 1307(a).

51. 08-26556-A-13G MATTHEW/SHELLEY PUENTES  
DN #2

HEARING - MOTION TO  
CONFIRM PLAN  
7-8-08 [26]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶¶ 3(a)(2) & 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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.

52. 08-27056-A-13G RUDY/SHERRY JIMENEZ  
DN #1

CONT. HEARING - MOTION TO  
VALUE COLLATERAL OF WASHINGTON  
MUTUAL  
6-27-08 [15]

**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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$351,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Washington Mutual. The first deed of trust secures a loan with a balance of approximately \$388,500 as of the petition date. Therefore, Washington Mutual'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. According to the debtor, the residence has a fair market value of \$351,000. 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. 08-27056-A-13G RUDY/SHERRY JIMENEZ  
DN #2

HEARING - MOTION TO  
VALUE COLLATERAL OF PREMIER  
COMMUNITY CREDIT UNION  
7-18-08 [24]

**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



remain pending.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The debtor later filed the list. Despite being filed late, it was received by the court in time to be used when serving the notice of the commencement of this bankruptcy case. As a result, creditors were notified in a timely fashion that the case had been filed and they received notice of the various deadlines for filing complaints, objecting to exemptions, objecting to the proposed plan, and filing proofs of claims. Because no prejudice was caused by the late filing of the list, the case shall remain pending.

57. 07-28067-A-13G GEORGE/GERALDINE REBEIRO HEARING - OBJECTION TO  
FW #2 CLAIM OF WORLD FINANCIAL NETWORK  
NATIONAL BANK  
7-2-08 [29]

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

The objection will be sustained. The last date to file a timely proof of claim was February 19, 2008. The proof of claim was filed on February 26, 2008. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

58. 08-24867-A-13G ROBERT/ELISA MUNOZ HEARING - MOTION TO  
MAA #1 VALUE COLLATERAL OF INDYMAC BANK  
7-22-08 [33]

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

A valuation 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 this motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. The motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 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)). Hence, service is defective.

59. 07-27868-A-13G SHARON KEICK  
FW #1

HEARING - MOTION TO  
MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
7-3-08 [30]

**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.

60. 08-28670-A-13G PAMELA EASTER

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
7-31-08 [16]

**Final Ruling:** The order to show cause will be discharged as moot. The case was previously dismissed on August 14.

61. 08-27974-A-13G DAVID/ANN CONSTANCE  
FW #1

HEARING - MOTION TO  
VALUE COLLATERAL OF WELLS FARGO  
BANK  
6-24-08 [9]

**Final Ruling:** The court continues the hearing to September 2, 2008 at 9:00 a.m. so that the hearing will coincide with the hearing on any objections to the confirmation of the plan. Because there is insufficient time to give reasonable notice of a deadline for written opposition 14 days prior to the hearing, the September 2 hearing will be a preliminary hearing and the respondent is not required to file written opposition. Instead, the respondent may appear at the hearing and voice its opposition. If potentially meritorious, the court will continue the hearing on this motion and on any objection to confirmation. No later than August 19, counsel for the debtor shall give notice to the respondent of this continuance.

62. 07-26577-A-13G RODNEY/KATHLEEN FACCINI  
MBB #1  
MTG. ELECTR. REGIS. SYS., INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
7-11-08 [26]

**Final Ruling:** The motion will be dismissed without prejudice. A review of the certificate of service reveals that the debtors were not served at their new address. They filed a notice of change of address on May 21, 2008, nearly two months before this motion was filed.

63. 08-27778-A-13G MANUEL/IRENE ALVAREZ  
FW #2

HEARING - MOTION TO  
VALUE COLLATERAL OF COUNTRYWIDE  
HOME LOANS  
7-11-08 [28]

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

A valuation 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 this motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of a person identified as an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. The motion was simply sent to the corporation or to a department or person at the corporation but without the required designation as an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process. 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)). Hence, service is defective.

64. 08-27778-A-13G MANUEL/IRENE ALVAREZ  
FW #3

HEARING - MOTION TO  
CONFIRM CHAPTER 13 PLAN  
6-30-08 [13]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶¶ 3(a)(2) & 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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.

65. 08-24579-A-13G JAMES/MELISSA SANTO  
PGM #2

HEARING - MOTION TO  
VALUE COLLATERAL OF BANK OF  
STOCKTON  
7-7-08 [22]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 \$8,000 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, \$8,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$8,000 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.

66. 08-28483-A-13G ROSE LAW HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
7-30-08 [26]

**Final Ruling:** The order to show cause will be discharged because it is moot. The case was previously dismissed on August 14.

67. 08-27884-A-13G ANTHONY McBRIDE HEARING - OBJECTION TO  
WGM #1 CONFIRMATION OF CHAPTER 13 PLAN BY  
CENTRAL MORTGAGE COMPANY  
7-2-08 [14]

**Final Ruling:** The court continues the hearing to September 2, 2008 at 9:00 a.m. Counsel for the objecting creditor shall give notice of the continued hearing.

As required by General Order 03-03, ¶ 3(a)-(c), the chapter 13 trustee caused the proposed chapter 13 plan to be served on all creditors with the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines. That notice indicated that objections to confirmation of the plan had to be filed and served no later than August 6, 2008 and set for hearing at the confirmation hearing on September 2, 2008 at 9:00 a.m.

A review of the proof of service for the notice and the plan reveals that the trustee arranged this service on the objecting creditor with both the notice and the plan on July 9.

The objecting creditor timely filed and served its objection to the proposed plan. However, instead of setting it for hearing at the confirmation hearing on September 2, the creditor set the objection for hearing on August 18. This is prior to the date and time the court scheduled for confirmation. The hearing on the objection, therefore, will be continued to September 2.

68. 05-29090-A-13G DANIEL/KELLY SPINGOLA HEARING - MOTION TO  
JCK #5 MODIFY DEBTORS' CONFIRMED PLAN  
7-15-08 [70]

**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.

69. 08-24098-A-13G JANEER CARTER  
DN #1

HEARING - MOTION TO  
CONFIRM PLAN  
6-24-08 [17]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶¶ 3(a)(2) & 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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.