

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Modesto, California

September 2, 2008 at 2:00 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 16. 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 2:00 P.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 17 THROUGH 39. 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 29, 2008, AT 2:30 P.M.

September 2, 2008 at 2:00 p.m.

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 \$185,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

2. 08-90719-A-13G EFRAIN/LAURA RAMIREZ HEARING - MOTION TO
TOG #1 CONFIRM AMENDED CHAPTER 13 PLAN
8-11-08 [40]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$4,905. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Second, the debtor has failed to schedule a litigation claim in the schedules. It has not been exempted. Therefore, whatever the value of the asset, and because unsecured creditors are not being paid in full, the failure to include this asset in the liquidation analysis of 11 U.S.C. § 1325(a)(4) means that the debtor cannot possibly prove that unsecured creditors will receive what they would be paid in a chapter 7 liquidation.

Third, because the debtor has not filed and correctly served a motion to value the collateral of Citi Financial, the plan does not provide for payment in full

of that claims as required by 11 U.S.C. § 1325(a)(5)(B).

3. 06-90229-A-13G PETE NUNES AND SON DAIRY HEARING - MOTION FOR
EBS #1 ORDER APPROVING SETTLEMENT AND
COMPROMISE ETC
8-15-08 [158] O.S.T.

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The debtor seeks approval of a settlement agreement between the debtor and Downey Brand LLP. The settlement resolves claims brought against Downey Brand in a state court action for fraud by dairy farmers against Downey Brand and other defendants, involving investment solicitations by the defendants for an entity known as Valley Gold and also involving unpaid milk delivered by the dairy farmers, including the debtor, to Valley Gold. Although the debtor did not invest in Valley Gold, the debtor was part of the Central Valley Dairymen cooperative, an entity which directed the dairy farmers to deliver milk to Valley Gold. The proposed settlement agreement, which includes Debtors Pete Nunes Sr. and Pete Nunes & Son Dairy, is one of two settlement agreements entered into by Downey Brand. The other settlement agreement is between Downey Brand and all non-debtor plaintiffs.

Under the terms of the proposed settlement agreement, the parties will only exchange mutual releases of claims, including litigation costs. The debtor agreed to the settlement in part because it had not invested in Valley Gold, which plays into the debtor's cost-benefit analysis of the litigation. Also, the debtor does not have the funds to continue prosecution of the claim(s) against Downey. Finally, the proposed settlement does not affect the state court judgment against the remaining defendants in the state action.

11 U.S.C. § 1203 provides that "[s]ubject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation."

On a motion by a chapter 12 debtor, then, and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the debtor did not invest in Valley Gold and given the costs, risks, and delay of further litigation, the court concludes that the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the

debtor, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

4. 06-90230-A-12 PETE NUNES, SR.
EBS #1

HEARING - MOTION FOR
ORDER APPROVING SETTLEMENT AND
COMPROMISE ETC
8-15-08 [135] O.S.T.

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The debtor seeks approval of a settlement agreement between the debtor and Downey Brand LLP. The settlement resolves claims brought against Downey Brand in a state court action for fraud by dairy farmers against Downey Brand and other defendants, involving investment solicitations by the defendants for an entity known as Valley Gold and also involving unpaid milk delivered by the dairy farmers, including the debtor, to Valley Gold. Although the debtor did not invest in Valley Gold, the debtor was part of the Central Valley Dairymen cooperative, an entity which directed the dairy farmers to deliver milk to Valley Gold. The proposed settlement agreement, which includes Debtors Pete Nunes Sr. and Pete Nunes & Son Dairy, is one of two settlement agreements entered into by Downey Brand. The other settlement agreement is between Downey Brand and all non-debtor plaintiffs.

Under the terms of the proposed settlement agreement, the parties will only exchange mutual releases of claims, including litigation costs. The debtor agreed to the settlement in part because it had not invested in Valley Gold, which plays into the debtor's cost-benefit analysis of the litigation. Also, the debtor does not have the funds to continue prosecution of the claim(s) against Downey. Finally, the proposed settlement does not affect the state court judgment against the remaining defendants in the state action.

11 U.S.C. § 1203 provides that "[s]ubject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation."

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The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the debtor did not invest in Valley Gold and given the costs, risks, and delay of further litigation, the court concludes that the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the debtor, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

5. 06-90232-A-12 PETE NUNES, JR.
EBS #1

HEARING - MOTION FOR
ORDER APPROVING SETTLEMENT AND
COMPROMISE ETC
8-15-08 [87] O.S.T.

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The debtor seeks approval of a settlement agreement between the debtor and Downey Brand LLP. The settlement resolves claims brought against Downey Brand in a state court action for fraud by dairy farmers against Downey Brand and other defendants, involving investment solicitations by the defendants for an entity known as Valley Gold and also involving unpaid milk delivered by the dairy farmers, including the debtor, to Valley Gold. Although the debtor did not invest in Valley Gold, the debtor was part of the Central Valley Dairymen cooperative, an entity which directed the dairy farmers to deliver milk to Valley Gold. The proposed settlement agreement, which includes Debtors Pete Nunes Sr. and Pete Nunes & Son Dairy, is one of two settlement agreements entered into by Downey Brand. The other settlement agreement is between Downey Brand and all non-debtor plaintiffs.

Under the terms of the proposed settlement agreement, the parties will only exchange mutual releases of claims, including litigation costs. The debtor agreed to the settlement in part because it had not invested in Valley Gold, which plays into the debtor's cost-benefit analysis of the litigation. Also, the debtor does not have the funds to continue prosecution of the claim(s) against Downey. Finally, the proposed settlement does not affect the state court judgment against the remaining defendants in the state action.

11 U.S.C. § 1203 provides that "[s]ubject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation."

On a motion by a chapter 12 debtor, then, and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the debtor did not invest in Valley Gold and given the costs, risks, and delay of further litigation, the court concludes

that the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the debtor, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

the court recognizes that this motion may be unnecessary because the debtor in this bankruptcy case is not a party to the settlement agreement and/or the underlying state court litigation against Downey Brand. He is, however, a partner in partnership that is a party to the settlement agreement. Therefore, in an abundance of caution the court will approve the settlement.

6. 08-90830-A-13G WILLIAM NICHOLS HEARING - DEBTOR'S MOTION TO
DCJ #2 CONFIRM CHAPTER 13 PLAN
7-25-08 [30]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor is not eligible for chapter 13 relief. The IRS holds an unsecured claim greater than \$500,000. 11 U.S.C. § 109(e) requires that chapter 13 debtors have unsecured claims not exceeding \$336,900. And, while the schedules indicate that the amount of the IRS's claim is "unknown," this is disingenuous. The income taxes are for years 1993 through 1999. The debtor and his counsel know what the IRS is demanding because it has been demanding it for several years, there is tax court decision regarding the claim, and the IRS has demanded these taxes in four earlier bankruptcy cases, three by this debtor and one by his spouse. The court concludes that listing the debt as unknown was in bad faith.

There is no need to reach the other objections.

7. 08-91242-A-13G RICARDO/GABRIELA SALVADOR HEARING - MOTION TO
FW #3 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
7-15-08 [24]

- 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 income tax return for 2007. This 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 August 13, 2008. And, while it is possible for the deadline to file the delinquent return to be extended, to receive an extension the trustee 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 return 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.

8. 05-90955-A-13G RICKY/CHARLOTTE ROVERA HEARING - MOTION TO
FW #3 INCUR DEBT
8-18-08 [28]

- 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 to borrow money and to secure the loan with the debtor's real property is granted on the condition that the loan proceeds are used to pay all liens of record in full, whether or not the lien holder has filed a proof of claim, and in a manner consistent with the plan. The trustee shall approve the form of the order.

Absent either payment in full (i.e., a 100% dividend) of all filed proofs of claim, the expiration of the term of the confirmed plan, or the approval of a modified plan that permits the plan to be completed without payment in full, the plan shall not be deemed completed by payment of the loan proceeds to the trustee. This is because the debtor's plan requires that the debtor pay a monthly payment for the stated term even if the dividend promised to general unsecured creditors is exceeded. Until the plan term has run its length, or until the unsecured creditors get 100% of their claims, or unless a modified

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 \$212,800. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

10. 08-91067-A-13G VICTORIA PROKES HEARING - AMENDED MOTION TO VALUE COLLATERAL OF GMAC MORTGAGE, LLC
7-21-08 [18]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed without prejudice because it is supported by no evidence. While it makes reference to a supporting declaration, no declaration was filed.

11. 08-91474-A-13G RAYMOND/CHERYL LABES HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
JMW #1 HSBC BANK USA, N.A., VS. 8-8-08 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The debtors have filed seven bankruptcy petitions. The most recent case was filed on July 22, 2008. During the year prior to July 22, 2008, four of the debtors' seven cases, all under chapter 13, were filed and dismissed.

When an individual debtor has filed 2 or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect. See 11 U.S.C. § 362(c)(4). Section 362(j) requires the court to issue an order confirming that the automatic stay has terminated pursuant to section 362(c). See 11 U.S.C. § 362(c)(4)(A).

Hence, the court confirms the absence of an automatic stay in this case.

The movant requests additional relief. Its claim is secured by a deed of trust encumbering the debtor's home.

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

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

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

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

The court concludes that the multiple petitions were part of a scheme to hinder, delay, and defraud the movant because in each of the prior cases the petitions invoked the automatic stay preventing the movant from foreclosing on its real property collateral, the debtor failed to make any plan payments, the debtor failed to make any mortgage payments to the movant during the entire duration of all of these cases, and the debtor failed to appear in the proper prosecution of each case resulting in its dismissal. The foregoing is clear from the docket of each case filed and from the evidence accompanying the trustee's motion that resulted in the dismissal of the prior cases.

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.

12. 07-91078-A-13G WILLIAM/MARGARET HOLT HEARING - MOTION TO
FW #3 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
7-29-08 [44]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a 13% dividend in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only a 4.75% dividend to unsecured creditors.

13. 08-91180-A-13G ROBERT/LUISA SALINAS CONT. HEARING - MOTION TO
FW #1 VALUE COLLATERAL HELD BY HFC
6-24-08 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$345,000 as of the date the petition was filed. It is encumbered by a first deed of trust also held by Homeq Servicing. The first deed of trust secures a loan with a balance of approximately \$386,180.40 as of the petition date. Therefore, HFC's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

(B.A.P. 1st Cir. 2000).

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$345,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor admitted at the meeting of creditors that the debtor failed to income tax returns for 2006 and 2007. Both returns are delinquent.

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

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

In this case, the meeting of creditors was held and concluded on July 30, 2008. And, while it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee 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.

Also, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$11,600. The plan does not comply with 11 U.S.C. § 1325(a)(6).

15. 08-91189-A-13G PATRICK/SUSAN ADAMS
MDP #1

HEARING - OPPOSITION TO
CONFIRMATION OF PLAN BY
CATERPILLAR FINANCIAL SVCS. CORP.
8-6-08 [18]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because the court will not confirm any plan until the debtors file their delinquent tax returns and, assuming the returns are eventually filed, because the debtors will then be required to file a motion to confirm a plan, it is unnecessary to address the merits of this objection. It can be interposed to any future motion to confirm a plan. The objection will be dismissed without prejudice.

16. 08-90894-A-13G GUSTAVO SERVIN
TOG #1

HEARING - MOTION TO
CONFIRM DEBTOR'S AMENDED
CHAPTER 13 PLAN
8-11-08 [38]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, only 22 days notice of the hearing was given. Fed. R. Bankr. P. 2002(a) requires a minimum of 25 days of notice.

Second, the plan is not feasible because for 18 months the monthly plan payment will be \$2,219 but the plan requires the trustee to pay out \$2,244 in dividends and expense payments each month. The plan does not comply with 11 U.S.C. § 1325(a)(6).

FINAL RULINGS BEGIN HERE

17. 08-91200-A-13G JOSEPH/MICHELLE BARRETTA HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF WELLS FARGO
BANK, N.A.
7-29-08 [18]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$285,000 as of the date the petition was filed. It is encumbered by a first deed of trust also held by Wachovia Mortgage. The first deed of trust secures a loan with a balance of approximately \$287,922 as of the petition date. Therefore, Wells Fargo 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 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Barte, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$285,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

18. 08-90816-A-13G ROBERT MOORE HEARING - DEBTOR'S MOTION TO
JCK #1 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
7-16-08 [29]

Final Ruling: This motion to confirm a modified plan proposed prior to confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

19. 07-91326-A-13G JOSE FELIX AND HEARING - MOTION TO
FW #4 ROSALINDA MUNOZ CONFIRM SECOND AMENDED
CHAPTER 13 PLAN
7-18-08 [74]

Final Ruling: This motion to confirm a modified plan proposed prior to confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

20. 08-90926-A-13G ALFREDO/ZOILA LOPEZ HEARING - MOTION TO
FW #2 CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
7-21-08 [22]

Final Ruling: This motion to confirm a modified plan proposed prior to confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

21. 08-91332-A-13G RICHARD/TONI ZUK HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF WASHINGTON
MUTUAL HOME EQUITY LINE
7-14-08 [13]

Final Ruling: The court continues the hearing to September 29, 2008 at 2:00 p.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 September 2, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion.

22. 08-91335-A-13G STEVE/CHRISTINA WHITESIDE HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF HSBC MTG.
CORP.
7-29-08 [18]

Final Ruling: The court continues the hearing to September 29, 2008 at 2:00 p.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 September 2, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion.

23. 08-90638-A-13G JUAN/JAME DEVARONA HEARING - MOTION TO
PLG #1 VALUE COLLATERAL OF EMC MTG,
CORP., AND GREEN TREE SERVICING
8-5-08 [47]

Final Ruling: The court continues the hearing to September 29, 2008 at 2:00 p.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 September 2, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion.

24. 08-91144-A-13G MARK/JUDITH HALEY CONT. HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF WELLS FARGO
BANK, N.A.
6-13-08 [8]

Final Ruling: The motion will be dismissed without prejudice.

This motion was originally set for hearing on July 21. In connection with that hearing, the court ruled:

"The court continues the hearing to September 2, 2008 at 2:00 p.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 August 19 (the same date that objections to confirmation are due). No later than July 24, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion."

A review of the docket reveals no proof of service indicating that counsel for the debtor gave notice of the continued hearing. Accordingly, notice is insufficient.

Second, the court notes that even though the court ordered a continued hearing on September 2, counsel for the debtor earlier lodged an order granting the motion which the court entered in error. That order will be vacated.

25. 08-91144-A-13G MARK/JUDITH HALEY CONT. HEARING - MOTION TO
FW #2 VALUE COLLATERAL OF WELLS FARGO
FINANCIAL NATIONAL BANK
6-13-08 [12]

Final Ruling: The motion will be dismissed without prejudice.

This motion was originally set for hearing on July 21. In connection with that

hearing, the court ruled:

"The court continues the hearing to September 2, 2008 at 2:00 p.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 August 19 (the same date that objections to confirmation are due). No later than July 24, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion."

A review of the docket reveals no proof of service indicating that counsel for the debtor gave notice of the continued hearing. Accordingly, notice is insufficient.

26. 08-91344-A-13G FRANK/HELEN SILVA HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF WELLS FARGO
AUTO FINANCE INC.
7-29-08 [16]

Final Ruling: The court continues the hearing to September 29, 2008 at 2:00 p.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 September 2, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion.

27. 07-90545-A-13G INGER DUMONT HEARING - MOTION TO
FW #2 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
7-29-08 [26]

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

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

28. 08-91347-A-13G TONY WARDA AND HEARING - MOTION TO
DN #1 ABIDA ZAIA VALUE COLLATERAL OF GMAC MORTGAGE
CORPORATION
8-19-08 [19]

Final Ruling: The court continues the hearing to September 29, 2008 at 2:00 p.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 September 2, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion.

29. 08-90951-A-13G MARIANNE MAGATHEN HEARING - DEBTOR'S MOTION TO
DCJ #1 CONFIRM MODIFIED CHAPTER 13 PLAN
7-24-08 [31]

Final Ruling: This motion to confirm a modified plan proposed prior to confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

30. 08-90952-A-13G MICHAEL/JANETTE TODD HEARING - OBJECTION TO
WGM #1 CONFIRMATION OF DEBTORS' CHAPTER
13 PLAN
7-21-08 [23]

Final Ruling: The objection will be dismissed as moot. The case was converted to chapter 7 on August 20.

31. 07-90065-A-13G CARLOS RANGEL HEARING - MOTION TO
FW #5 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
7-22-08 [86]

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

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

32. 08-90865-A-13G ROBERT/KAREN MEDINA HEARING - DEBTORS'S MOTION TO
DCJ #1 CONFIRM CHAPTER 13 PLAN
7-25-08 [36]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶¶ 3(a)(2) & 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the

U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

33. 07-91067-A-13G BEVERLY LOGAN HEARING - MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
7-22-08 [22]

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

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

34. 08-91370-A-13G MYRA/ARNOLD RODRIGUEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-11-08 [16]

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

35. 08-91073-A-13G CHRISTOPHER/ELIZABETH HEARING - MOTION TO
FW #1 RODRIGUEZ VALUE COLLATERAL OF IRS
7-31-08 [27]

Final Ruling: The court continues the hearing to September 29, 2008 at 2:00 p.m. so that the hearing will coincide with the hearing on the motion to confirm the amended plan. Opposition to this motion shall be filed and served no later than September 15. No later than September 2, counsel for the debtor shall give notice to the respondent of this continuance and of the revised deadline for a response to the motion.

36. 07-91275-A-13G DAVID/TIFFANY SWINDLE HEARING - OBJECTION TO
RLB #3 CLAIM OF CITIFINANCIAL AUTO LTD.
8-5-08 [65]

Final Ruling: The objection will be dismissed without prejudice because the

hearing on the objection has been set on 28 days of notice to claimant. The claimant is entitled to a minimum of 30 days of notice. See Fed. R. Bankr. P. 3007; Local Bankruptcy Rule 3007-1.

37. 07-90580-A-13G JUAN/MARIA SENISEROS HEARING - MOTION TO
FW #3 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
7-25-08 [34]

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

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

38. 07-91292-A-13G NAIDA WINGO HEARING - MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
7-25-08 [42]

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

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

39. 07-91298-A-13G GEORGE/BERNINA TOLLISON HEARING - MOTION TO
FW #3 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
7-22-08 [41]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(b), and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is

considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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