

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Chief Bankruptcy Judge  
Sacramento, California

September 2, 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 32. 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 33 THROUGH 52. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON SEPTEMBER 29, 2008, AT 9:30 A.M.

September 2, 2008 at 9:00 a.m.

**Matters to be Argued**

1. 08-23101-A-13G LEWIS/MEARSHELLE BROWN HEARING - MOTION TO  
JCK #2 CONFIRM FIRST AMENDED CHAPTER 13  
PLAN  
7-18-08 [23]

- 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 \$2,634. The plan does not comply with 11 U.S.C. § 1325(a)(6).

2. 08-24608-A-13G WEDA SHAH HEARING - OBJECTION TO  
WGM #1 CONFIRMATION OF DEBTOR'S CHAPTER  
13 PLAN BY WASHINGTON MUTUAL BANK  
7-25-08 [59]

- Telephone Appearance  
 Trustee Agrees with Ruling

**Tentative Ruling:** The objection of Washington Mutual will be overruled. The plan makes no provision for its secured claim.

This objection proceeds on the false premise that a plan must provide for a secured claim. 11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

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

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

When a plan does not provide for a secured claim, the claim holder's recourse is to seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief

from the automatic stay. See 11 U.S.C. § 362(d)(1).

3. 08-24608-A-13G WEDA SHAH HEARING - MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
WASHINGTON MUTUAL, VS. 8-7-08 [68]

- 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 fails to provide for the movant's claim. The absence of a plan that provides for the movant's secured claim makes two things clear: the movant's claim will not be paid and the 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 due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

4. 08-26221-A-13G JONI LABASH HEARING - MOTION TO  
JKU #1 CONFIRM AMENDED CHAPTER 13 PLAN  
8-15-08 [33]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the debtor has not proven that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). In order to pay the promised dividends to holders of Class 2 and 5 claims, the debtor will make a one-time lump sum payment to the trustee. The plan, however, does not specify the amount of that payment and, whatever its amount, there is no evidence that the debtor has the ability to make it.

Second, the plan provides that the secured claim of the IRS will receive a "pro



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 and the objection will be overruled.

The debtor seeks to value the debtor's residence at a fair market value of \$280,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Countrywide. The first deed of trust secures a loan with a balance of approximately \$360,000 as of the petition date. Therefore, HSBC's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

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

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

will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(i).

The only serious opposition to the motion deals, not with value, but a concern that the deed of trust remain of record until the plan is completed. As indicated above, the respondent's lien remains of record pending completion of the as required by section 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 \$280,000. 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).

7. 08-28129-A-13G ROGER GOMEZ HEARING - MOTION TO  
RG #1 DISMISS BY DEBTOR  
7-23-08 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

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

This case has not previously been converted. The debtor now seeks the dismissal of the case. He has the unilateral right to do so. See 11 U.S.C. § 1307(b).

8. 08-28134-A-13G SHAWN GARNER HEARING - OBJECTION TO  
PPR #1 PLAN AND CONFIRMATION THEREOF BY  
FIRST FRANKLIN FINANCIAL CORP.  
7-23-08 [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 plan provides for payment of the objecting creditor's claim as a Class 1 secured claim. That is, it provides for the maintenance of the ongoing installments and the cure of the pre-petition arrearage. However, the plan assumes the arrearage is \$20,000 whereas the creditor has claimed \$34,850.11. The difference is so significant that the monthly dividend to be paid on account of the arrearage cannot possibly satisfy it over the plan's duration while paying all other dividends and expenses. Therefore, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

9. 08-28134-A-13G SHAWN GARNER PPR #2 HEARING - OBJECTION TO PLAN AND CONFIRMATION THEREOF BY FIRST FRANKLIN FINANCIAL CORP. 7-23-08 [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. While the plan classifies the objecting creditor's claim as a Class 2 secured claim, it provides for no dividend on account of it. Hence, the claim will not be paid. Therefore, the plan does not satisfy 11 U.S.C. § 1325(a)(5)(B). Further, the attempt to pay nothing on account of a claim secured only by the debtor's home is an impermissible modification of the claim in violation of 11 U.S.C. § 1322(b)(2).

10. 08-29235-A-13G JOSEPH/JOSEPHINE NEMIE HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 8-12-08 [19]
- Telephone Appearance
  - Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$68 due on August 8 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

11. 08-29237-A-13G ROSEMARY BROOKS

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-15-08 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$68 due on August 8 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

12. 08-20738-A-13G WILLIAM/TRISHA TIMOSH  
WGM #1  
AMERICAN HOME MORTGAGE SVC., INC., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-14-08 [58]

- 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 identifies the entity holding the movant's claim as Option One Mortgage.

The plan classifies this claim in Class 2 but provides that nothing be paid on account of the claim. This is due to the fact that the plan was originally accompanied by a valuation motion that asserted that the movant's collateral had no value after deducting the amount owed to the senior lienholder. Had the valuation motion been granted, the court would deny the motion. This is because the application of 11 U.S.C. § 506, as interpreted 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), would result in the movant having no secured claim.

However, the debtor voluntarily dismissed the valuation motion. This means as a practical matter, the plan makes no provision for the payment of the movant's claim. Thus, two things are clear: the movant's claim will not be paid and the 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 due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

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

HEARING - MOTION TO  
VALUE COLLATERAL OF GREENPOINT  
MORTGAGE  
8-14-08 [33]

- 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 \$428,000 as of the date the petition was filed. It is encumbered by a first deed of trust also held by GMAC Mortgage. The first deed of trust secures a loan with a balance of approximately \$456,609 as of the petition date. Therefore, Greenpoint Mortgage's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (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 \$428,000. 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).

14. 08-27639-A-13G MICHAEL/KAREN CAYTON CONT. HEARING - OBJECTION TO  
PD #2 CONFIRMATION OF CHAPTER 13 PLAN  
BY GMAC MORTGAGE, LLC.  
7-30-08 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

**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.

15. 08-27639-A-13G MICHAEL/KAREN CAYTON HEARING - MOTION TO  
DN #2 VALUE COLLATERAL OF OCWEN HOME  
LOAN  
8-14-08 [37]
- 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) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject real property (which is not the debtor's residence). In the debtor's opinion, the subject property had a value of \$200,000 as of the date the petition was filed and the effective date of the plan but is subject to senior liens totaling approximately \$191,000. Hence, to the respondent, the home has a net value of \$9,000. 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, \$9,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$9,000 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.

16. 08-29744-A-13G JOHN/LATASHA FOBBS HEARING - MOTION FOR  
EGS #1 RELIEF FROM AUTOMATIC STAY  
CA HOUSING FINANCE AGENCY, VS. 8-11-08 [13]
- 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, on July 17 at 12:15 p.m. The petition was filed on July 17 at 11:06 p.m.

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 and retain possession. 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).

There is a complication. While the foreclosure occurred before the petition was filed, the trustee's deed was not recorded until July 25, after the petition was filed. Arguably, this post-petition act is void because it was 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.

Therefore, because the foreclosure occurred before the petition was filed and was duly perfected, the debtor has no right to reorganize the movant's debt. 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.

17. 08-26556-A-13G MATTHEW/SHELLEY PUENTES HEARING - MOTION TO  
DN #1 VALUE COLLATERAL OF GMAC MTG.  
CORP.  
8-15-08 [35]

- 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 \$285,000 as of the date the petition was filed. It is encumbered by a first deed of trust also held by Countrywide. The first deed of trust secures a loan with a balance of approximately \$385,000 as of the petition date. Therefore, GMAC Mortgage's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (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 \$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 (5<sup>th</sup> Cir. 1980).

18. 08-29858-A-13G ARTHUR/EVANN MATEDNE HEARING - MOTION FOR  
SW #1 RELIEF FROM AUTOMATIC STAY  
GMAC, VS. 8-6-08 [8]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle it leased to the debtor, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The plan proposes to reject the vehicle lease with the movant and provides for direct payment of the lease by the debtor. While the plan is not yet confirmed and the rejected not yet approved, two things are clear: the debtor does not intend to make lease payments and the leased vehicle is not necessary to the debtor's financial reorganization. This is cause to terminate the automatic stay.

Because the movant has not established that it holds an over-secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

19. 08-21862-A-13G RANDY/LAURIE JAHODA HEARING - MOTION TO  
FW #3 CONFIRM SECOND AMENDED  
CHAPTER 13 PLAN  
7-8-08 [45]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) for two reasons. First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$2,826. The plan does not comply with 11 U.S.C. § 1325(a)(6). Second, beginning in the fourth month of the plan, the monthly plan payment of \$2,826 will be insufficient to pay the monthly dividends of \$2,897.

20. 08-28464-A-13G DONATO ESPINOSA HEARING - MOTION TO  
DE #2 DISMISS BY DEBTOR  
8-18-08 [32]

- Telephone Appearance
- Trustee Agrees with Ruling

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

This case has not previously been converted. The debtor now seeks the dismissal of the case. He has the unilateral right to do so. See 11 U.S.C. § 1307(b).

21. 08-30073-A-13G OSCAR GARCIA

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-1-08 [8]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor failed to file a master address list with the petition as required by Fed. R. Bankr. P. 1007(a)(1) and Local Bankruptcy Rule 1007-1. The deadline for filing the list has expired and the notice of the commencement of this bankruptcy case was served on August 22. Because no master address list has been filed, the notice was not served on all creditors. As a result, they were not notified that the case had been filed nor did they receive notice of the various deadlines for filing complaints, objecting to exemptions, objecting to the proposed plan, and filing proofs of claims. To permit the case to remain pending would be unfair to all creditors. Accordingly, the petition will be dismissed.

22. 08-27974-A-13G DAVID/ANN CONSTANCE  
FW #1

CONT. HEARING - MOTION TO  
VALUE COLLATERAL HELD BY  
WELLS FARGO BANK  
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 \$190,000 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 \$248,225.24 as of the petition date. Therefore, Wells Fargo Bank's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (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 \$190,000. 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).

23. 08-28883-A-13G ROBERT/MARY LEUENBERGER  
DN #1

HEARING - MOTION TO  
VALUE COLLATERAL OF VALLEY FIRST  
CREDIT UNION  
8-19-08 [15]

- 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 \$5,200 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9<sup>th</sup> Cir. 2004). Therefore, \$5,200 of the respondent's claim is an allowed secured claim. When the respondent is paid \$5,200 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

24. 08-28883-A-13G ROBERT/MARY LEUENBERGER  
DN #2

HEARING - MOTION TO  
VALUE COLLATERAL OF VALLEY FIRST  
CREDIT UNION  
8-19-08 [19]

- 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 \$6,725 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, \$6,725 of the respondent's claim is an allowed secured claim. When the respondent is paid \$6,725 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.

25. 07-28084-A-13G MICHAEL/TERRY NORTON HEARING - OBJECTION TO  
FW #3 CLAIM OF LOUIS PARK HOA  
7-17-08 [82]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled.

The debtor asserts that the creditor's secured claim should be disallowed because the real property collateral for the claim was surrendered to the creditor three months prior to the filing of the petition.

However, there is no evidence with the objection establishing such surrender and the creditor has filed evidence that no such foreclosure has been consummated.

If there is a problem that problem lies with the plan rather than the proof of claim. The plan fails to provide for the secured claim.

26. 07-28084-A-13G MICHAEL/TERRY NORTON HEARING - OBJECTION TO  
FW #5 CLAIM OF SUNPOINTE CONDOMINIUM  
HOMEOWNERS ASSOCIATION  
7-17-08 [79]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled.

The debtor asserts that the creditor's secured claim should be disallowed because the real property collateral for the claim was "surrender[ed] through debtors' chapter 13 bankruptcy."

This is a non sequitur. If the debtor wishes to satisfy a secured claim, the debtor has three choices: make a deal with the creditor, pay the present value of the claim, or surrender the collateral for the claim. If a claim is disallowed, the debtor need do none of these things. Put differently, to receive one of these three treatments, the secured creditor must have an allowed claim. If the court disallowed its claim, it would be entitled to nothing, and anything previously paid or surrendered to the creditor on account of its claim would have to be returned.

Additionally, the court notes that the confirmed plan makes no provision for the surrender of this creditor's collateral.

27. 08-27884-A-13G ANTHONY McBRIDE  
WGM #1

CONT. HEARING - OBJECTION TO  
CONFIRMATION OF THE DEBTOR'S PLAN  
BY CENTRAL MTG. CO.  
7-2-08 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled.

The objecting creditor complains that the plan understates the pre-petition arrearage owed to it. While the plan does understate the arrearage claimed, the plan provides:

"3.01. A timely proof of claim must be filed by or on behalf of a creditor, including a secured creditor, before a claim may be paid pursuant to this plan."

"3.04. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim. If a claim is provided for by this plan and a proof of claim is filed, dividends shall be paid based upon the proof of claim unless the granting of a valuation or a lien avoidance motion, or the sustaining of a claim objection, affects the amount or classification of the claim."

Thus, in the absence of a further court order, the plan requires payment in full of whatever a secured creditor demands in its proof of claim.

28. 08-27884-A-13G ANTHONY McBRIDE  
RDG #3

HEARING - OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
8-4-08 [38]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The 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).

29. 08-27791-A-13G SANTIAGO/MARIA VALENCIA  
FW #1

HEARING - MOTION TO  
CONFIRM FIRST AMENDED CHAPTER 13  
PLAN  
7-15-08 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the debtor has failed to provide the trustee with the tax return or transcript required by 11 U.S.C. § 521(e)(2)(A)(i).

Section 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 court may decline to dismiss the case only if the debtor demonstrates that the failure to provide a copy of the return was due to circumstances beyond the control of the debtor. See Interim Rule 4002(b)(3) & (4) [permitting the debtor to provide a written statement that the return or other documentation does not exist]. The debtor has not provided any statement or evidence that the return is not available or that it is unavailable for reasons beyond the debtor's control.

The failure to provide the return to the trustee justifies dismissal and denial of confirmation. This failure also supports a conclusion that the debtor is attempting to confirm a plan in bad faith because the debtor has failed to make mandatory financial disclosures that are relevant to the confirmation of the plan. The return is relevant to the feasibility of the plan and whether the debtor is contributing all disposable income to her plan. Also, the amount of the debtor's income has an impact on the duration of the plan. See 11 U.S.C. §§ 1322(d) and 1325(b). Finally, the failure to provide the return means that the plan does not comply with 11 U.S.C. § 1325(a)(1).

30. 08-27794-A-13G ALFRED/VALERIE DRUMMOND  
MDE #1  
DEUTSCHE BANK NAT'L TRUST CO., VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-13-08 [27]

- 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, on May 3, 2007. The petition was filed on June 11, 2008.

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 and retain possession. 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).

Therefore, because the foreclosure occurred before the petition was filed, the debtor has no right to reorganize the movant's debt. This is cause to terminate the automatic stay. There is additional cause. This is the third case filed since the foreclosure occurred. The debtor is using serial bankruptcy cases to hinder, delay, and defraud the movant.

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.

31. 07-25995-A-13G SHIRLEY BALLESTEROS HEARING - MOTION TO  
FW #5 MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
7-24-08 [48]

- 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 \$417. The plan does not comply with 11 U.S.C. § 1325(a)(6).

32. 08-30796-A-13G VINCENT FIRME HEARING - MOTION FOR  
BSJ #1 CONTINUATION OF AUTOMATIC STAY  
8-13-08 [8]

- 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 denied.

11 U.S.C. § 362(c)(3)(A) provides that if an individual was a debtor in a prior case under chapter 7, 11, or 13, if the prior petition was dismissed, and if the prior petition was pending within one year of the new petition, the automatic stay with respect to a debt, property securing such debt, or any lease terminates as to the debtor, but not the estate, on the 30<sup>th</sup> day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

The debtor here filed an earlier chapter 13 petition that was pending and dismissed with the last year. The motion asserts that the prior case was dismissed because the debtor failed to timely file all schedules and statements. However, a review of the docket for case no. 08-23697 shows that the debtor failed to make plan payments and the case was dismissed for that reason alone.

In connection with the present case, all statements, schedules and a proposed plan were filed timely.

The motion also asserts that the debtor's financial situation has improved materially due to a raise in pay. However, a comparison of the Schedule I filed in each case reveals that the debtor's household income is identical. And, after adjusting for the debtor's mortgage payment (which is not listed as an expense on Schedule J in the most recent expense because the plan requires the trustee to make that payment), the Schedule J in each case is identical. They show monthly net income of \$624.46 and a mortgage payment of \$2,591.18.

Section 362(c)(3)(B) permits any party in interest to file a motion for continuation of the automatic stay. The court has authority to extend the stay as to any or all creditors after notice and a hearing. This means all creditors are likely entitled to notice of the motion and hearing. See In re Collins, 334 B.R. 655 (Bankr. D. Minn. 2005); In re Charles, 332 B.R. 538 (Bankr. S.D. Tex. 2005). Notice is adequate here.

The hearing must be completed before the expiration of the initial 30 days of the case. The court has heard this motion during the 30-day window.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. See In re Montoya, 2005 WL 3160532 (Bankr. D. Utah 2005) (using "traditional" factors for evaluating debtor's good faith in context of motion under section 362(c)(3)(C)).

Under section 362(c)(3)(C), there is a presumption, rebuttable only with "clear and convincing evidence," that the new case was "filed not in good faith." The presumption is applicable as to all creditors if any other following circumstances are present: (1) more than one previous case under chapter 7, 11, and/or 13 was pending against the individual within the preceding 1-year period; (2) a previous case under chapters 7, 11, 13 in which the individual was a debtor was dismissed within the 1-year period because the debtor failed to file or amend, without substantial excuse, the petition or other documents as required by title 11 or the court, or failed to provide adequate protection

as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (3) there has not been a substantial change in the financial or personal affairs of the debtor since the next most previous case, under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded - (a) if a case under chapter 7, with a discharge, or (b) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed.

Because the debtor's financial situation has not changed at all, the presumption has been triggered. And, the court concludes that the debtor has not rebutted, with clear and convincing evidence, the presumption that the present case has not been filed in good faith. It is not enough to say that in the most recent case the debtor has filed all documents and believes this case will result in a confirmed plan.

**FINAL RULINGS BEGIN HERE**

33. 08-29009-A-13G MARIA RAMOS HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-7-08 [17]

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

34. 07-26213-A-13G ROXANA NAJERA HEARING - MOTION TO  
FW #2 MODIFY DEBTOR'S CONFIRMED CHAPTER  
13 PLAN  
7-28-08 [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.

35. 04-33322-A-13G CAMERON/JENNIFER LUBICK HEARING - DEBTORS' MOTION FOR  
CLH #5 ORDER CONVERTING CHAPTER 13 CASE  
TO CHAPTER 7  
7-23-08 [146]

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

Because a chapter 13 debtor is given the unilateral right to convert a chapter 13 case to one under chapter 7 at anytime, no hearing is necessary and the motion will be granted. See 11 U.S.C. § 1307(a).

36. 05-29835-A-13G STUART/KELLY WILSON HEARING - MOTION TO  
WLW #100 MODIFY SECOND MODIFIED CHAPTER 13  
PLAN  
7-29-08 [76]

**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.

37. 08-28136-A-13G STEVEN/TINA NORVELL  
DN #1

CONT. HEARING - MOTION TO  
VALUE COLLATERAL OF COUNTRYWIDE  
HOME LOANS  
6-27-08 [9]

**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 \$310,000 as of the date the petition was filed. It is encumbered by a first deed of trust also held by GMAC Mortgage. The first deed of trust secures a loan with a balance of approximately \$440,000 as of the petition date. Therefore, Countrywide's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9<sup>th</sup> Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That



40. 08-28863-A-13G STEPHEN/MARY SULLIVAN  
FW #1

HEARING - MOTION TO  
VALUE COLLATERAL OF HOMECOMINGS  
FINANCIAL  
7-17-08 [11]

**Final Ruling:** The court continues the hearing to October 14, 2008 at 9:00 a.m. so that the hearing will coincide with the hearing on confirmation of the amended plan. Opposition to this motion shall be filed and served no later than September 30. 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.

41. 07-28067-A-13G GEORGE/GERALDINE REBEIRO  
FW #3

HEARING - MOTION TO  
VALUE COLLATERAL OF CHASE BANK,  
USA, N.A. CIRCUIT CITY PRIVATE  
LABEL  
7-21-08 [38]

**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 \$900 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9<sup>th</sup> Cir. 2004). Therefore, \$900 of the respondent's claim is an allowed secured claim. When the respondent is paid \$900 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

42. 07-28067-A-13G GEORGE/GERALDINE REBEIRO  
FW #4

HEARING - MOTION TO  
VALUE COLLATERAL OF AMERICAN  
GENERAL FINANCE  
7-21-08 [42]

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

43. 08-28568-A-13G DEBBIE DOWDELL HEARING - MOTION TO  
FW #1 VALUE COLLATERAL OF CHASE  
7-17-08 [9]

**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 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.

44. 08-29268-A-13G JUAN PEREZ HEARING - OBJECTION TO  
EDH #1 CONFIRMATION OF CHAPTER 13 PLAN BY  
HSBC BANK USA, NA  
7-28-08 [10]

**Final Ruling:** The court continues the hearing to September 29, 2008 at 9:00 a.m. Counsel for the objecting creditor shall give notice of the continued hearing.

As required by General Order 05-03, ¶ 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 September 3, 2008 and set for hearing at the confirmation hearing on September 29, 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.

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 29, the creditor set the objection for hearing on September 2. This is prior to the date and time the court scheduled for confirmation. The hearing on the objection, therefore, will be continued to September 29 at 9:00 a.m.

45. 08-28971-A-13G LORI MADRID HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
8-6-08 [17]

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

The court granted the debtor permission to pay the installment filing fee in installments. The debtor failed to pay the \$68 installment when due on August 1. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

46. 08-28977-A-13G WILFREDO/MARICEL ASUNCION HEARING - MOTION TO  
FW #1 VALUE COLLATERAL OF BANK OF  
AMERICA  
7-14-08 [9]

**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 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.

47. 08-27880-A-13G ERIC DESPIGANOVICZ HEARING - OBJECTION TO  
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE  
8-4-08 [13]

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

48. 08-27880-A-13G ERIC DESPIGANOVICZ HEARING - TRUSTEE'S OBJECTION TO  
RDG #2 DEBTOR'S CLAIM OF EXEMPTION  
8-4-08 [16]

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

49. 05-37288-A-13G LEE MOORE-BRANCH HEARING - DEBTOR'S MOTION TO  
JCK #4 MODIFY CONFIRMED CHAPTER 13 PLAN  
7-21-08 [60]

**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.

50. 08-29091-A-13G LA TERRA BROWN  
CLH #1

HEARING - MOTION TO  
VALUE COLLATERAL OF WACHOVIA  
MORTGAGE CORPORATION  
7-22-08 [9]

**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 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.

51. 08-22392-A-13G HERNANDO/ALICE CONWI  
CLH #2

HEARING - DEBTORS' MOTION TO  
VALUE COLLATERAL OF WASHINGTON  
MUTUAL  
7-24-08 [23]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 \$370,000 as of the date the petition was filed. It is encumbered by a first deed of trust also held by Countrywide. The first deed of trust secures a loan with a balance of approximately \$552,000 as of the petition date. Therefore, Washington Mutual's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9<sup>th</sup> Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate

valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$370,000. 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).

52.	08-24995-A-7    PEARL MCGINTY 08-2413 SHANON BENTLEY, VS. PEARL MCGINTY	HEARING - ORDER TO SHOW CAUSE WHY ADVERSARY PROCEEDING SHOULD NOT BE DISMISSED FOR FAILURE TO TENDER THE FILING FEE 8-5-08    [8]
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**Final Ruling:** The order to show cause will be discharged and the adversary proceedings will remain pending.

When the proceeding was filed, it was not accompanied by the \$250 filing fee required by 28 U.S.C. § 1930. Instead, the plaintiff sought a waiver of the filing fee. Because the court is not authorized to waive this fee, the requested waiver was denied. After the denial, the plaintiff tendered the fee.