

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

December 8, 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 14. 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 JANUARY 5, 2009 AT 9:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 22, 2008, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 29, 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 15 THROUGH 38. 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 DECEMBER 22, 2008, AT 9:30 A.M.

December 8, 2008 at 9:00 a.m.

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

1. 08-29104-A-13G LOWELL/MARGIEANN SARMIENTO HEARING - MOTION FOR  
MBJ #1 RELIEF FROM AUTOMATIC STAY  
REDWOOD CREDIT UNION, VS. 11-4-08 [54]

- Telephone Appearance
- Trustee Agrees with Ruling

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

To the extent the motion is based on the failure of the debtor to pay pre-confirmation adequate payments to the movant, the motion will be denied because the court has not ordered such payments nor does 11 U.S.C. § 1326(a)(1)(C) require them because the motion concedes that the obligation owed to the movant is not a purchase money obligation.

Nonetheless, there is cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that provides for payment of this claim but the court sustained the movant's objection to confirmation at a hearing on September 29 (the movant, however, as not yet lodged an order sustaining its objection). Since the September 29 hearing, the debtor has taken no steps to propose a modified plan. Hence, it appears that the debtor has given up any pretense of moving forward in this case. This means that the debtor is using the movant's collateral without compensation and without the prospect of the payment of its claim. Its claim exceeds the value of the collateral.

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

2. 08-35322-A-13G CESAR ESTRADA HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
11-21-08 [18]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor filed amended schedules in order to add additional creditors. This triggered a \$26 filing fee pursuant to 28 U.S.C. § 1930(b). It was not paid when the schedules were filed nor has it been paid since the issuance of the order to show cause. This is cause for dismissal.

3. 08-34423-A-13G JAMAEL DUDLEY

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
11-20-08 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The order to show cause will be discharged as moot because the case was previously automatically dismissed.

The petition was filed on October 7. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on October 22. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45<sup>th</sup> day of a case, the case is automatically dismissed on the 46<sup>th</sup> day. See 11 U.S.C. § 521(i)(1). In this case, the 45<sup>th</sup> day was November 21. The schedules and statements were not filed on or before the 45<sup>th</sup> day. Thus, on November 22, the petition was automatically dismissed.

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

4. 08-33824-A-13G RAMIRO/ANA BORUNDA  
SL #1

HEARING - MOTION TO  
CONFIRM CHAPTER 13 PLAN  
10-24-08 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The monthly plan payment of \$4,700 is less than the total dividends and expenses the trustee is required by the plan to pay out each month. To make these payments, the plan payment must increase to \$2,739.68. Therefore, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

5. 08-35131-A-13G GREGORIO GONZALEZ, JR.

HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
11-10-08 [11]

- 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 \$70 due on November 3 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

6. 08-36036-A-13G PATRICK/LUCILLIA RYNEARSON HEARING - MOTION FOR  
MBJ #1 RELIEF FROM AUTOMATIC STAY  
CENTRAL STATE CREDIT UNION, VS. 11-20-08 [11]

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

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

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

7. 08-33541-A-13G FRANCISCO/JILL MARTINEZ HEARING - OBJECTION TO  
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE  
11-17-08 [18]

- Telephone Appearance
- Trustee Agrees with Ruling

**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).

- 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 debtor seeks to value the debtor's residence at a fair market value of \$360,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by GMAC Mortgage. The first deed of trust secures a loan with a balance of approximately \$412,475 as of the petition date. Therefore, Chase Home 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 Barte, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> Cir. 2000).

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

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

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P.

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$360,000. 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).

9. 08-30347-A-13G KIMPO TEANG CONT. HEARING - MOTION FOR  
JMS #1 RELIEF FROM AUTOMATIC STAY ETC  
CHASE HOME FINANCE, LLC, VS. 10-16-08 [22]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The movant's claim is secured by a junior deed of trust encumbering the debtor's home. According to the motion, the home has a value of \$360,000 while the senior lien held by GMAC Mortgage secures a claim in excess of \$412,000.

The debtor has filed a valuation motion concerning the home. It too states that the home has a value of \$360,000 and that it is encumbered by a senior lien totaling in excess of \$412,000. Therefore, by application of 11 U.S.C. § 506(a), 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), the debtor may strip off the movant's lien (subject to the debtor's completion of the plan) and pay the movant nothing on account of the claim secured by it.

10. 08-30456-A-13G FREDDIE/JAIME BINGLEY HEARING - MOTION TO  
BSJ #3 VALUE COLLATERAL OF CITIMORTGAGE  
10-8-08 [35]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied because nowhere in the motion is there evidence of the value of the subject property. Telling the court that the property is worth less than the senior lien is conclusory and fails to state an opinion as to the value of the property.

11. 08-35658-A-13G NAKISHA GARCIA HEARING - ORDER TO SHOW  
CAUSE RE DISMISSAL OF CASE OR  
IMPOSITION OF SANCTIONS  
11-5-08 [8]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor did not file a Statement of Social Security Number, either with the petition or within 15 days of its filing, as required by Fed. R. Bankr. P. 1007(f). As a result, when creditors were served with notice of the commencement of the case, the court was unable to advise them of the debtor's social security number. Thus, the quality of notice has been substantially reduced and perhaps nullified. See Ellett v. Goldberg (In re Ellett), 317 B.R. 134 (Bankr. E.D. Cal. 2004), *affirmed* 328 B.R. 205 (E.D. Cal. 2005), *affirmed* 506 F.3d 774 (9<sup>th</sup> Cir. 2007). The failure to file the Statement of Social Security Number is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

12. 04-34562-A-13G KENNETH/JANINE DAVIS HEARING - MOTION FOR  
MDE #1 RELIEF FROM AUTOMATIC STAY  
LITTON LOAN SERVICING, VS. 10-31-08 [68]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The movant is secured by a deed of trust encumbering the debtor's real property. The plan requires that the post-petition note installments be paid directly to the movant by the debtor. The motion asserts that the debtor failed to pay one monthly post-petition installments to the movant. However, the opposition establishes that this installment was paid timely by the debtor. No reply disputing the cure has been filed by the movant.

In order to establish cause pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay, it must be shown that the debtor has failed to abide by the terms of the confirmed plan. That is, the debtor must have defaulted under the terms of the plan to the detriment of the movant. See Anaheim Sav. & Loan Ass'n v. Evans, 30 B.R. 530, 531 (B.A.P. 9<sup>th</sup> Cir. 1983).

Confirmation of the debtor's plan necessarily entailed a determination that it adequately protected the movant's security interest. It is bound by that determination and it may not collaterally attack the confirmation order by

bringing a motion for relief from the automatic stay arguing that the plan does not protect its security interests. See 11 U.S.C. § 1327(a). The sole basis for granting relief must be a breach of the plan. The breach alleged does not exist. There is no cause to terminate the stay.

13. 08-29088-A-13G GREGORY BAUMGARTEN CONT. HEARING - MOTION TO  
CLH #3 CONFIRM FIRST AMENDED PLAN  
9-26-08 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a 100% dividend, plus interest, in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only a 33.57% dividend to unsecured creditors.

Second, the plan provides for JP Morgan Chase Bank's claim in Class 1. The plan proposes to cure the pre-petition arrearage of \$15,000 at the rate of \$250 a month. This cure will take place over the entire 60-month duration. However, the objecting creditor's arrearage is actually \$18,788.47. Because its claim is larger than estimated by the plan, the \$250 a month cure amount will not cure the default over the 60-month plan duration. Therefore, the plan either will run longer than the maximum duration permitted by 11 U.S.C. § 1322(d) or the objecting creditor's claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

The objection that the debtor failed to commence making plan payments will be overruled. There is no evidence that the debtor has failed to commence making plan payments to the trustee (who in turn will make the payments to the objecting creditor).

14. 07-30391-A-13G DAVID/DONNA CHISAMORE HEARING - MOTION FOR  
SW #1 RELIEF FROM AUTOMATIC STAY  
GMAC, VS. 11-21-08 [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 repossess and to obtain possession of its personal property security,

and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a modified plan that will surrender the vehicle to the movant in satisfaction of its secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's secured claim will no longer be paid and the vehicle securing its claim is no longer 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.

**FINAL RULINGS BEGIN HERE**

15. 08-23100-A-13G HOWARD ANDERSON HEARING - MOTION TO  
JCK #2 CONFIRM THE DEBTOR'S CHAPTER 13  
PLAN  
10-17-08 [37]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶¶ 3(a)(2) & 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

16. 07-27101-A-13G TEDDY/NANCY BEIER HEARING - MOTION TO  
DN #2 MODIFY PLAN  
10-29-08 [49]

**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.

17. 04-32003-A-13G MARSHALL/MARY ROSE HEARING - MOTION TO  
ADS #4 MODIFY CHAPTER 13 PLAN  
AFTER CONFIRMATION  
10-21-08 [82]

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

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 21126, Philadelphia, PA 19114; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814 [if the case is pending in the Sacramento Division] or United States Attorney, for the IRS, 2500 Tulare Street, Suite 4401, Fresno, CA 93721-1318 [if the case is pending in the Modesto or Fresno Divisions]; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box

683, Franklin Station, Washington, D.C. 20044.

A review of the certificate of service reveals that the motion was not served at the third of these addresses. Service, then, is deficient.

18. 08-21512-A-13G CESAR TAFOYA AND HEARING - OBJECTION TO  
FW #2 DIANA PEREZ CLAIM OF RAHUL L. PATEL, MD  
10-21-08 [48]

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

The objection will be sustained, disallowing the claim as a secured claim but allowing it as a nonpriority claim. The proof of claim represents an unpaid bill for pre-petition medical services provided to the debtor. There is nothing in, or appended to, the proof of claim indicating that the claim is secured by any property of the debtor. Therefore, it is disallowed as a secured claim.

19. 08-34720-A-13G REUBEN/DENISE CALVETTI HEARING - MOTION TO  
CLH #1 VALUE COLLATERAL OF U.S. BANK  
11-04-08 [11]

**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 debtor seeks to value the debtor's residence at a fair market value of \$200,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Mor Equity. The first deed of trust secures a loan with a balance of approximately \$278,000 as of the petition date. Therefore, U.S. 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 \$200,000. 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).

20. 08-32729-A-13G RANDALL/LORI STEPHAN  
SAC #1

HEARING - MOTION TO  
VALUE COLLATERAL OF NUVELL  
10-31-08 [35]

**Final Ruling:** The parties have continued the hearing to December 22, 2008 at

December 8, 2008 at 9:00 a.m.

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9:00 a.m.

21. 08-32729-A-13G RANDALL/LORI STEPHAN HEARING - MOTION TO  
SAC #2 VALUE COLLATERAL OF AMERICAN  
GENERAL  
10-31-08 [30]

**Final Ruling:** The court continues the hearing to December 22, 2008 at 9:00 a.m. so that the motion will be considered with another valuation motion. Both motions must be granted in order for the plan to be feasible. Therefore, both valuation motions and the motion to confirm the plan will be considered at the same time.

22. 08-32729-A-13G RANDALL/LORI STEPHAN HEARING - MOTION TO  
SAC #3 CONFIRM CHAPTER 13 PLAN  
10-31-08 [26]

**Final Ruling:** The court continues the hearing to December 22, 2008 at 9:00 a.m. so that the motion will be considered with two valuation motions. Both valuation motions must be granted in order for the plan to be feasible. Therefore, both valuation motions and the motion to confirm the plan will be considered at the same time.

23. 08-22444-A-13G DIONICIO/KARINA PEREZ CONT. HEARING - MOTION TO  
JCK #4 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
10-14-08 [85]

**Final Ruling:** The movant has voluntarily dismissed the motion.

24. 08-24247-A-13G KENNETH/KATHY PAULSON HEARING - MOTION TO  
FW #1 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
10-23-08 [32]

**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.

25. 08-24247-A-13G KENNETH/KATHY PAULSON HEARING - OBJECTION TO  
FW #2 CLAIM OF SPIRIT OF AMERICA/  
NATIONAL BANK/LANE BRYANT  
10-23-08 [37]

**Final Ruling:** This objection to the proof of claim of Spirit of America, etc.,

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

The objection will be sustained. The last date to file a timely proof of claim was August 12, 2008. The proof of claim was filed on August 22, 2008. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

26. 08-27548-A-13G KEVIN/SHARON BORGES HEARING - OBJECTION TO  
PGM #1 CLAIM OF MICHELLE COURTNEY-MATSON  
10-6-08 [27]

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

The objection will be sustained and the claim is allowed as a general unsecured claim. The claim is based on the pre-petition judgment for unpaid rent under a real estate lease. Such claims are not entitled to priority status. 11 U.S.C. § 507. While the proof of claim asserts priority pursuant to section 507(a)(7) this section deals with deposits paid toward the rental of property from someone who later files a bankruptcy petition. Here, the claimant is the lessor, not the lessee.

27. 08-27548-A-13G KEVIN/SHARON BORGES HEARING - MOTION TO  
PGM #2 CONFIRM DEBTORS' FIRST AMENDED  
PLAN  
10-21-08 [33]

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

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 21126, Philadelphia, PA 19114; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814 [if the case is pending in the Sacramento Division] or United States Attorney, for the IRS, 2500 Tulare Street, Suite 4401, Fresno, CA 93721-1318 [if the case is pending in the Modesto or Fresno Divisions]; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

A review of the certificate of service reveals that the motion was not served at the second and third addresses. Service, then, is deficient.

28. 08-30456-A-13G FREDDIE/JAIME BINGLEY HEARING - MOTION TO  
BSJ #2 CONFIRM DEBTORS' 2<sup>ND</sup> AMENDED  
CHAPTER 13 PLAN  
10-8-08 [36]

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

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 21126, Philadelphia, PA 19114; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814 [if the case is pending in the Sacramento Division] or United States Attorney, for the IRS, 2500 Tulare Street, Suite 4401, Fresno, CA 93721-1318 [if the case is pending in the Modesto or Fresno Divisions]; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

A review of the schedules and the proofs of claim reveals that the IRS holds a claim in this case. The certificate of service, however, does not reflect service of the plan and the motion on the IRS at any of the above addresses. Service, then, is deficient.

29. 08-32356-A-13G JERRY INMAN HEARING - DEBTOR'S MOTION TO  
HWW #2 CONFIRM AMENDED CHAPTER 13 PLAN  
10-30-08 [19]

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

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

30. 08-32356-A-13G JERRY INMAN HEARING - MOTION TO  
HWW #3 VALUE COLLATERAL OF GMAC MORTGAGE  
11-10-08 [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 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 held by GMAC Mortgage. The first deed of trust secures a loan with a balance of approximately \$343,562.75 as of the petition date. Therefore, GMAC Mortgage's other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

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

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

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such



unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

34. 08-31283-A-13G JEAN O'BRION HEARING - MOTION TO  
HWW #1 CONFIRM CHAPTER 13 PLAN  
10-30-08 [29]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶¶ 3(a)(2) & 8(a), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

35. 08-35289-A-13G LEAH BERNSTEIN HEARING - MOTION TO  
CLH #2 VALUE COLLATERAL OF WACHOVIA MTG.  
10-28-08 [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 debtor seeks to value the debtor's residence at a fair market value of \$135,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wachovia Mortgage. The first deed of trust secures a loan with a balance of approximately \$148,000 as of the petition date. Therefore, Wachovia Mortgage's other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$135,000. 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).

36. 08-35289-A-13G LEAH BERNSTEIN  
CLH #3

HEARING - MOTION TO  
VALUE COLLATERAL OF GMAC FINANCING  
10-28-08 [13]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to

the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) is granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of \$16,500 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9<sup>th</sup> Cir. 2004). Therefore, \$16,500 of the respondent's claim is an allowed secured claim. When the respondent is paid \$16,500 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.

37. 07-30391-A-13G DAVID/DONNA CHISAMORE HEARING - MOTION TO  
FW #2 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
10-28-08 [52]

**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.

38. 07-30391-A-13G DAVID/DONNA CHISAMORE HEARING - OBJECTION TO  
FW #3 CLAIM OF CB MERCHANT  
10-24-08 [49]

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

The objection will be sustained. The last date to file a timely proof of claim was April 15, 2008. The proof of claim was filed on May 23, 2008. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).