

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Modesto, California

December 22, 2008 at 2:00 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER; HOWEVER THE MCGRATH CHAPTER 7 MATTERS ARE LISTED AT THE END OF THE CALENDAR AS ITEMS 57 THROUGH 67.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 22. 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 20, 2009 AT 2:00 P.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 6, 2009, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 13, 2009. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 23 THROUGH 67. 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 JANUARY 5, 2009, AT 2:30 P.M.

December 22, 2008 at 2:00 p.m.

Matters called beginning at 2:00 p.m.

1. 08-92506-A-13G JULIAN GOMEZ HEARING - DEBTOR'S MOTION TO
ALLOW DEBTOR TO FILE CHAPTER 13
BANKRUPTCY WITH AN EXTENSION OF
TIME FOR COMPLIANCE WITH CREDIT
COUNSELING REQUIREMENT
11-20-08 [7]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The petition was accompanied by a motion indicating that exigent circumstances prevented the debtor from receiving credit counseling before filing the petition. The case was filed on November 20 and the motion indicates that there was no time to receive the counseling prior to the November 21 foreclosure of the debtor's home.

11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a briefing from an approved non-profit budget and credit counseling agency before the petition is filed. Interim Rules 1007(b)(3) and (c) require the debtor to file the credit counseling certification on the petition date.

With respect to the extension under 11 U.S.C. § 109(h)(3), the debtor must submit a certification to the court: (i) describing exigent circumstances meriting a waiver of the credit counseling requirements; (ii) stating that she requested credit counseling services, but she was unable to obtain a briefing during the five-day period beginning on the date on which she made the request; and (iii) that is satisfactory to the court. In this case, the debtor has described no exigency requiring that a petition be filed before a briefing was received.

The motion for an extension pursuant to section 109(h)(3) will be denied. In California, a nonjudicial foreclosure is at least a 110 day process. The debtor has not explained why he waited until the end of that process to seek credit counseling.

2. 08-92109-A-13G CHARLE/ODELIA VA'A HEARING - OBJECTION TO
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE
11-24-08 [15]

- 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 includes a provision that, if the case is dismissed, the trustee shall pay to the debtor's counsel any funds on hand to the extent counsel is owed approved but unpaid fees and costs. This provision conflicts with Nash v. Kester (In re Nash), 765 F.2d 1410, 1413-14 (9th Cir. 1985), and with 11 U.S.C. § 349(b) (3).

In Nash the Ninth Circuit concluded that dismissal of a chapter 13 case vacates the confirmation of a plan. Thus, to the extent the plan authorizes the payment of an administrative expense, that authorization is effectively revoked upon dismissal. Therefore, the trustee is required to return payments from the debtor still in his possession at the time of dismissal to the debtor because section 349(b) (3) provides that such property of the estate "revests . . . in the entity in which such property was vested immediately before the commencement of the case. . . ." According to Nash, this is the debtor and, if the trustee fails to refund undisbursed payments to the debtor, the trustee is liable to the debtor for the unauthorized disbursement.

3. 08-92514-A-13G LUIS REVIRA AND MARIA CHAVEZ HEARING - DEBTORS' MOTION TO ALLOW DEBTOR TO FILE CHAPTER 13 BANKRUPTCY WITH AN EXTENSION OF TIME FOR COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT 11-21-08 [7]

Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling; The motion will be denied.

This case was filed on November 21. Prior to the filing, a creditor foreclosed on the debtor's home. The debtor filed this case in the belief that the debtor had five days from the November 17 foreclosure to cancel it. And, because there was only one of those five days remaining, the debtor filed the petition without receiving credit counseling. This motion argues that these circumstances are exigent circumstances that prevented the debtor from receiving credit counseling before filing the petition.

11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a briefing from an approved non-profit budget and credit counseling agency before the petition is filed. Interim Rules 1007(b) (3) and (c) require the debtor to file the credit counseling certification on the petition date.

With respect to the extension under 11 U.S.C. § 109(h) (3), the debtor must submit a certification to the court: (i) describing exigent circumstances meriting a waiver of the credit counseling requirements; (ii) stating that she requested credit counseling services, but she was unable to obtain a briefing during the five-day period beginning on the date on which she made the request; and (iii) that is satisfactory to the court. In this case, the debtor has described no exigency requiring that a petition be filed before a briefing was received.

The motion for an extension pursuant to section 109(h) (3) will be denied. First, there is no 5-day period provided under California law to cancel or avoid a nonjudicial foreclosure. Second, in California, a nonjudicial

foreclosure is at least a 110 day process. The debtor has not explained why the debtor waited until the end of that process, actually, after it was concluded, before seeking credit counseling.

4. 08-91818-A-13G CHRISTOPHER BONORA HEARING - CONFIRMATION OF
DEBTOR'S FIRST AMENDED CHAPTER 13
PLAN
11-14-08 [91]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the motion was not accompanied by any evidence. Because the debtor has the burden of proving that the plan complies with 11 U.S.C. §§ 1322(a) & 1325(a), the absence of evidence is fatal to confirmation. Meyer v. Hill (In re Hill), 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001).

Second, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$3,719.31. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Third, the plan's feasibility and compliance with 11 U.S.C. § 1325(a)(5) cannot be ascertained because the court has not valued the collateral of numerous creditor's holding liens on property of the debtor. The court previously dismissed those motions for notice and other defects.

Fourth, the plan impermissibly fixes the trustee's compensation in violation of 28 U.S.C. § 586(e)(1)(B).

Fifth, the plan does not provide for payment in full of the priority claim of the IRS as required by 11 U.S.C. § 1322(a)(2). While the plan mentions that after the plan is completed the debtor will enter into an offer and compromise with the IRS, this does not satisfy section 1322(a)(2). It requires payment in full during the case and through the plan.

Sixth, the motion provides for the sale of Litton's collateral but does not condition the sale upon payment in full of its claim. This does not comply with 11 U.S.C. § 1325(a)(5).

Litton's objection to the plan's failure to specify a date by which its collateral must be sold will be overruled. Nothing in section 1322(b) or section 1325(a)(5) requires such a provision. Further, the plan's duration is 6 months. Because all claims must be paid before the plan can be completed and the debtor discharged, and because Litton's claim will be paid through the plan, it can be inferred that any sale will take place within six months.

However, there is no evidence before the court that the debtor can feasibly sell the property. The debtor has not demonstrated the feasibility mandated by 11 U.S.C. § 1325(a)(6).

5. 08-91818-A-13G CHRISTOPHER BONORA
HAC #1

CONT. HEARING - AMENDED MOTION TO
VALUE COLLATERAL OF THE IRS
10-17-08 [27]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative 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, 2500 Tulare Street, Suite 4401, Fresno, CA 93721-1318 when the case is pending in the Modesto or Fresno Divisions of the bankruptcy court; 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 United States Attorney's office in Sacramento rather than Fresno was served with the motion. Hence, service is deficient.

Additionally, the debtor has filed 21 motions to value collateral but has omitted a docket control number on each motion even though such is required by Local Bankruptcy Rule 9014-1(c). This has occurred because the debtor has utilized the form motion that the court permits to be attached to a chapter 13. In this instance, however, the motion is not attached to the plan. Rather, it was filed and served as a stand-alone document. Consequently, the motion not only has no docket control number, it has no case number or case caption. Without the docket control number, case number, and caption on the motion, and because multiple motions have been filed on many of the respondents, the court is unable to ascertain with certainty which motion pertains to each of the 21 notices of hearing and certificates of hearing. Further, if a respondent filed opposition to a motion, it would not likely include a docket control number because it is not included on the motion. Without a docket control number, the court could easily overlook that opposition. Thus, because the court cannot be certain which motion was served on each respondent creditor, and because the respondents were not given the requisite information to file a meaningful response, each motion will be dismissed without prejudice.

6. 08-92128-A-13G LEAH FRANKLIN
RDG #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
11-25-08 [15]

- 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).

7. 07-91133-A-13G DARRELL/AMY ALEXANDER HEARING - MOTION TO
FW #3 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11-6-08 [43]
- 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 \$1,615. The plan does not comply with 11 U.S.C. § 1325(a)(6).

8. 08-92233-A-13G KENNETH/DINA LAWRENCE HEARING - MOTION FOR
DSG #1 RELIEF FROM AUTOMATIC STAY
LUANN DURAN, VS. 11-21-08 [14]
- Telephone Appearance
 Trustee Agrees with Ruling

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

The movant is the owner of record occupied by the debtor. The debtor claims to be the equitable owner by virtue of promises made to the debtor by a decedent who allegedly promised to give the property to the debtor on her death. This is disputed by the movant and so the movant seeks relief from the automatic stay to obtain possession of the property. The debtor counters that the procedure chosen by the movant to remove the debtor from the property is not appropriate.

Because there is a bona fide dispute concerning the ownership of the property, because that dispute will not be resolved merely by confirming a chapter 13 plan, and because resolution of the dispute implicates state law, including California's real property and inheritance law, not bankruptcy law, there is cause to modify the stay to resolve the dispute in state court. To the extent the debtor complains about the procedure used, those complaints should be addressed to the state court.

The parties shall bear their own fees and costs.

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived.

9. 08-91934-A-13G FREDERICK/MARINA RODRIGUEZ HEARING - MOTION TO
FW #1 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
11-6-08 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor has failed to state income tax returns for 2004 and 2005.

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

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

In this case, the meeting of creditors was held and concluded on July 23, 2007. And, while it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee must hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is impossible for the debtor to comply with section 1308.

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

It is unnecessary to reach the merits of the other objections.

10. 08-90536-A-13G SIVORN SUON HEARING - MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
11-5-08 [24]

- 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 \$3,240. The plan does not comply with 11 U.S.C. § 1325(a)(6).

11. 08-90147-A-13G WESLEY/BECKIE LINN HEARING - MOTION TO
FW #2 MODIFY DEBTORS' CONFIRMED CHAPTER
13 PLAN
10-23-08 [38]

- 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 \$1,760. The plan does not comply with 11 U.S.C. § 1325(a)(6).

12. 07-91152-A-13G REGINA SATARIANO HEARING - MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED CHAPTER
13 PLAN
10-30-08 [29]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$800. The plan does not comply with 11 U.S.C. § 1325(a)(6).

The court overrules the objection complaining about the plan's failure to provide for a secured claim held by Commercial Trade Bureau. Nothing in chapter 13 requires that a plan 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 options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C)). However, these three

possibilities are relevant only if the plan provides for the secured claim.

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

13. 08-91758-A-13G ROBERT OTTE HEARING - MOTION TO
DJB #1 CONFIRM AMENDED PLAN
11-5-08 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,310.15. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Second, even if the debtor has made all plan payments, the plan is not feasible for a second reason. The \$1,200 monthly plan payment to be made for 43 months is less than the \$1,381 in dividends and expenses the trustee must pay out each month.

14. 08-92165-A-13G MICHELE GREENE HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY
PERFORMANCE MORTGAGE CERTIFICATE
FUND, LLC AND PERFORMANCE
MORTGAGE INVESTORS FUND, LLC
12-3-08 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

The plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3).

First, the debtor filed an earlier chapter 13 case on July 17, 2008, Case No. 08-91444. It was dismissed October 31, 2008 on the motion of the debtor

because she failed to appear at the meeting of creditors as required by 11 U.S.C. § 343 and because the debtor was not eligible for chapter 13 relief because her schedules indicated that she had secured debt in excess of the \$1,010,650 permitted for chapter 13 debtors by 11 U.S.C. § 109(e).

Second, before dismissing the prior case, the court gave the debtor time to move for the conversion of that case to chapter 11. The debtor requested that opportunity. Instead of filing the appropriate motion, she filed a second chapter 13 case, the one now before the court. Once again, her schedules show that she has secured debt well in excess of the chapter 13 limit.

The foregoing demonstrates that the debtor is filing chapter 13 repetitively even though she now knows she is not eligible for chapter 13 relief. The court infers that this petition has been filed solely to acquire the automatic stay in order to delay secured creditors, like the objecting creditor, and without any intention or ability to reorganize under chapter 13. This is bad faith.

15. 08-92165-A-13G MICHELE GREENE HEARING - OBJECTION TO
RDG #2 CONFIRMATION OF PLAN BY TRUSTEE
12-2-08 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

First, the plan specifies no dividend, whether it might be 0%, 100%, of something in between these two extremes. Without this omitted information, evaluating the debtor's ability to perform the plan is not possible. Hence, the debtor cannot carry the burden of proving feasibility as required by 11 U.S.C. § 1325(a) (6).

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

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

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

Fourth, the plan does not provide for payment in full of the scheduled priority claim of Sallie Mae as required by 11 U.S.C. § 1322(a)(2).

Fifth, even without a dividend specified for general unsecured creditors, the plan requires the trustee to pay out to creditors \$11,898 each month but the plan payment by the debtor to the trustee is a mere \$552. Obviously such a plan is not feasible.

The court overrules the objection complaining about the plan's failure to provide for a secured claim held by Old Republic. Nothing in chapter 13 requires that a plan 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 options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C)). However, these three possibilities are relevant only if the plan provides for the secured claim.

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

16. 08-92466-A-13G TAMMY WESTBROOK AND TERRY BOSTIC HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 11-26-08 [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. R. 1007 and Local Bankruptcy Rule 1007-1(b), which provides: "With every petition for relief under the Bankruptcy Code presented for filing, there shall be submitted concurrently a Master Address List which includes the name, address, and zip code of all of the debtor's known creditors. To accommodate modern technology, the Master Address List shall be prepared in strict compliance with instructions of the Clerk in a format approved by the Court."

Because of this failure, creditors are unaware of the case because the court and the trustee cannot mail notice of the case to them. This has needlessly delayed the confirmation of a plan to the prejudice of creditors and is cause for dismissal of the petition. See 11 U.S.C. § 1307(c)(1).

17. 04-93873-A-13G ROBERT/MICHELLE CROWNOVER HEARING - MOTION FOR
JSZ #1 RELIEF FROM AUTOMATIC STAY
MIDFIRST BANK, VS. 11-12-08 [49]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor proposed and confirmed a plan that provided for the movant's claim in Class 1. Class 1 is reserved for long term secured claims that are not modified by the plan. Instead, the plan provides for a cure of a pre-petition arrearage while the ongoing contract installment is maintained. Both the cure payment and the regular installment are paid by the trustee to the creditor. The typical Class 1 claim is a home mortgage. The claim in this instance is a home mortgage.

The motion is premised on the assertion that the movant has not received four monthly post-petition installment payments from the trustee. This is not correct. As stated by the debtor and corroborated by the trustee, the debtor has made timely plan payments and the trustee in turn has made timely payments pursuant to the plan to the movant.

The court notes that there is minor discrepancy, approximately \$15, between what the plan and the motion indicates is the correct monthly installment. However, the payment amount provided in the plan appears to be the amount required by the loan document. There is no indication in the record before the court that the movant gave any notice prior to the filing of the motion that the payment amount had changed for any reason.

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. 9th Cir. 1983).

Unless the movant was not given notice of the plan (and the movant makes no such assertion), the movant may not argue that the debtor's confirmed plan fails to adequately protect its security interest. See Sun Howard Co. v. Howard (In re Howard), 972 F.2d 639 (5th Cir. 1992). This is because a debtor wishing to retain a creditor's collateral must propose a plan that provides for the secured creditor's retention of its lien and the payment of the present value of its secured claim. See 11 U.S.C. § 1325(a)(5)(B). Such treatment

adequately protects the creditor's interest in its collateral. See e.g., In re Barnes, 125 B.R. 484 (Bankr. E.D. Mich. 1991).

Confirmation of the debtor's plan, then, necessarily entailed a determination that it adequately protected the movant's security interest. The movant 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.

And, no breach of the plan has been established in this case. To the contrary, the debtor has maintained steady plan payments to the trustee for several years, and the trustee has faithfully paid the movant. There is no cause to terminate the automatic stay.

The loan documentation contains an attorney's fee provision. However, because the movant has not prevailed and did not have cause to file the motion at the time it was filed, all fees and costs incurred by the movant in connection with this motion are disallowed for all purposes and in all contexts. Further, because California law makes attorney's fees reciprocal even in the absence of an express contract provision, see Cal. Civil Code § 1717, the fees and costs of the debtor and trustee will be assessed against the movant. They are the prevailing parties and are entitled to those fees and costs. See Travelers Cas. and Sur. Co. v. P.G.&E, 127 S.Ct. 1199 (2007); In re Hoopai, 369 B.R. 506 (B.A.P. 9th Cir. 2007).

18. 04-93974-A-13G CARLOS/GUADALUPE MONTES HEARING - MOTION TO
FW #13 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11-6-08 [178]

- 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 \$1,500. The plan does not comply with 11 U.S.C. § 1325(a) (6).

19. 08-92179-A-13G MARTIN/EDNA OVERSTREET HEARING - OBJECTION TO
RTD #1 CONFIRMATION OF THE CHAPTER
13 PLAN BY THE GOLDEN 1 C.U.
12-3-08 [24]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: None.

Unless the debtor wishes to concede the objection that the plan does not comply with 11 U.S.C. § 1325(b), the court will set a briefing schedule. It will first require the movant to file an opening brief that provides authority for each adjustment it has made to Form 22C. In light of In re Kagenveama, 2008 WL 2485570 (9th Cir. June 23, 2008), requiring a somewhat mechanical application of section 1325(b), it would appear that many of the adjustments requested by

the creditor are not warranted. The court wants authority for each adjustment requested. The debtor will then be given an opportunity to respond.

20. 08-92089-A-13G EMIL/EVELYN GAMBLE HEARING - OBJECTION TO
RDG #1 CONFIRMATION OF PLAN BY TRUSTEE
11-24-08 [23]

- 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 is not eligible for chapter 13 relief. 11 U.S.C. § 109(e) sets a limit on unsecured debt in chapter 13 cases of \$336,900. Both the general unsecured debt, priority unsecured debt, and the under-collateralized portion of the secured debt are counted toward this statutory debt limit. See Matter of Day, 747 F.2d 405 (7th Cir. 1984); Miller v. U.S., 907 F.2d 80 (8th Cir. 1990); Brown & Co. Securities Corp. v. Balbus (In re Balbus), 933 F.2d 246 (4th Cir. 1991); In re Soderlund, 236 B.R. 271 (B.A.P. 9th Cir. 1999); United States v. Edmonston, (In re Edmonston), 99 B.R. 995 (E.D. Cal. 1989).

According to the proposed plan and the schedules, the debtor has priority tax debt of \$31,218, nonpriority debt of \$345,196.51, and \$250,817.09 in under-collateralized secured claims. This is a total unsecured debt of at least \$627,231.60, which exceeds the statutory limit.

21. 08-90791-A-13G KEITH/RENEE DOOLEY HEARING - DEBTORS' MOTION TO
DCJ #3 CONFIRM MODIFIED CHAPTER 13 PLAN
11-13-08 [78]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor has failed to provide the trustee with requested documentation of his business income. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4) and to attempt to confirm a plan while doing so amounts to bad faith. See 11 U.S.C. § 1325(a)(3).

22. 07-90792-A-13G MICHAEL/SANDRA CAIN
FW #3

HEARING - MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11-10-08 [57]

- 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 \$500. The plan does not comply with 11 U.S.C. § 1325(a)(6).

THE FINAL RULINGS BEGIN HERE

23. 06-90604-A-13G JEFFREY AUSTIN HEARING - MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
11-18-08 [34]

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

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

24. 08-92105-A-13G RICHARD/JENNIFER SILVEIRA HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF CHASE HOME
FINANCE
10-24-08 [14]

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

The debtor seeks to value the debtor's residence at a fair market value of \$278,000 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 \$313,996 as of the petition date. Therefore, Chase Home Finance's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

Because the claim is completely under-secured, no interest need be paid on the

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$278,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

25. 08-92106-A-13G TIMOTHY/BONITA HEARST HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF DITECH.COM
10-24-08 [14]

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

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

The debtor seeks to value the debtor's residence at a fair market value of \$150,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ditech. The first deed of trust secures a loan with a balance of approximately \$240,119.01 as of the petition date. Therefore, Ditech'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 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

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

the summons and the complaint), and Local Bankruptcy Rule 9014-1(d) (4) & (e) (requiring service of all motion documents on any party "directly affected by the requested relief."). Accordingly, service is defective.

29. 08-92124-A-13G VINCENT/SUSAN SCHEAFFER HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF BANK OF
AMERICA
10-23-08 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The debtor seeks to value the debtor's residence at a fair market value of \$225,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bank of America. The first deed of trust secures a loan with a balance of approximately \$300,000 as of the petition date. Therefore, Bank of America'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 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$225,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

30. 08-91930-A-13G MARIO/MARIA ORDAZ HEARING - DEBTORS' MOTION TO
DCJ #1 CONFIRM CHAPTER 13 PLAN
11-3-08 [18]

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

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

31. 08-92130-A-13G NEIL CAROTA HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF DITECH.COM
10-24-08 [12]

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

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

The debtor seeks to value the debtor's residence at a fair market value of \$177,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ditech. The first deed of trust secures a loan with a balance of approximately \$203,227 as of the petition date. Therefore, Ditech'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 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$177,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

32. 08-92131-A-13G ANGEL/SANDRA MACAWILE HEARING - MOTION TO
FW #1 VALUE COLLATERAL COUNTRYWIDE
10-24-08 [10]

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

The debtor seeks to value the debtor's residence at a fair market value of \$290,000 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 \$416,900 as of the petition date. Therefore, Countrywide'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 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of

claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$290,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

33. 07-91432-A-13G LUIS PINTO AND HEARING - MOTION FOR
JSZ #1 MARIA SANTANA RELIEF FROM AUTOMATIC STAY
AMERICAN HOME MTG. SVCING., INC., VS. 11-24-08 [58]

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

The notice of hearing informs potential respondents that written opposition must be filed and served within 14 days prior to the hearing if they wish to oppose the motion. Because less than 28 days of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

37. 08-92137-A-13G CHRISTOPHER/BRENDA BROUNS HEARING - MOTION TO
FW #1 VALUE COLLATERAL OF AMERICAN
GENERAL
10-24-08 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The 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 \$2,000 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 (9th Cir. 2004). Therefore, \$2,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$2,000 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.

38. 08-92137-A-13G CHRISTOPHER/BRENDA BROUNS HEARING - OBJECTION TO
WGM #1 CONFIRMATION OF CHAPTER 13 PLAN BY
SAXON MORTGAGE
12-4-08 [21]

Final Ruling: The objection will be dismissed because the court previously confirmed the plan to which the creditor objects. It was confirmed on December 10. While the objection predates the confirmation date, the objection was untimely. In the notice of the commencement of case served on all creditors, they were advised to file objections no later than December 3. This objection was filed on December 4.

39. 08-90938-A-13G DIANNA REYNOLDS
DCJ #1

HEARING - MOTION TO
CONFIRM CHAPTER 13 PLAN
11-13-08 [48]

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

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

40. 08-92140-A-13G MICHAEL/SANDRA HANDY
FW #1

HEARING - MOTION TO
VALUE COLLATERAL OF BANK OF
AMERICA
10-23-08 [10]

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

The debtor seeks to value the debtor's residence at a fair market value of \$245,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bank of America. The first deed of trust secures a loan with a balance of approximately \$278,711 as of the petition date. Therefore, Bank of America'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 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$245,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

41. 07-90442-A-13G DAVID ALLINGTON HEARING - MOTION TO
PGM #2 USE CREDIT
11-5-08 [29]

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; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

According to the proof of service, the IRS was served only at the Philadelphia address. Service is defective.

42. 08-92142-A-13G ROBERT/ERICA ANDERSON
FW #1

HEARING - MOTION TO
VALUE COLLATERAL OF RIVER CITY
BANK
10-24-08 [12]

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

The debtor seeks to value the debtor's residence at a fair market value of \$220,000 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 \$242,000 as of the petition date. Therefore, River City 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 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$220,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

43. 08-92443-A-13G CONNIE BOTELHO HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
11-21-08 [8]

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

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

44. 08-92245-A-13G BRIAN/TINA MAISON HEARING - MOTION TO
CJY #1 VALUE COLLATERAL OF WELLS FARGO
BANK, N.A.
11-20-08 [16]

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

(9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The 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 Wells Fargo Bank. The first deed of trust secures a loan with a balance of approximately \$245,877.40 as of the petition date. Therefore, Wells Fargo Bank's other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

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

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

In the meantime, the court is merely valuing the respondent's collateral. Rule

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$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 (5th Cir. 1980).

45. 08-92245-A-13G BRIAN/TINA MAISON HEARING - MOTION TO
CJY #2 VALUE COLLATERAL OF LEVITZ-HRS USA
11-20-08 [21]

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

The 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 (9th 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.

46. 08-90059-A-13G HECTOR MACIAS HEARING - OBJECTION TO
FW #2 CLAIM OF OCWEN
11-5-08 [33]

Final Ruling: This objection to the proof of claim of Ocwen 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 (9th 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 (9th 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 disallowed as secured but allowed as nonpriority unsecured.

The debtor lost the security for this claim in a pre-petition foreclosure. Hence, even if the creditor's claim is still encumbering that property, it is not encumbering property owned by the debtor and it is, at best, an unsecured claim in this case.

47. 08-90066-A-13G EDWARD/LAURIE BORELLI HEARING - MOTION TO
JCK #3 MODIFY DEBTORS' CONFIRMED CHAPTER
13 PLAN
11-18-08 [35]

Final Ruling: The movant has voluntarily dismissed the motion.

48. 08-91666-A-13G RICHARD/SUZANNE DIAZ HEARING - MOTION TO
FW #4 CONFIRM FIRST AMENDED CHAPTER 13
PLAN
11-10-08 [49]

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

The motion will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

49. 08-91666-A-13G RICHARD/SUZANNE DIAZ HEARING - MOTION TO
FW #5 VALUE COLLATERAL OF MATCO TOOLS
11-10-08 [53]

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

The 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 \$4,500 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 (9th Cir. 2004). Therefore, \$4,500 of the respondent's claim is an allowed secured claim. When the respondent is paid \$4,500 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.

50. 05-91767-A-13G DAVID/DEANNA NUNES HEARING - MOTION TO
JCK #3 MODIFY DEBTORS' CONFIRMED CHAPTER
13 PLAN
11-18-08 [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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

51. 07-90373-A-13G ISRAEL/MILAGRO CERMENO HEARING - MOTION TO
JCK #5 MODIFY DEBTORS' CONFIRMED CHAPTER
13 PLAN
11-18-08 [53]

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

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

52. 08-91879-A-13G ANTOINETTE HOOKER
ADR #1

HEARING - MOTION TO
CONFIRM AMENDED CHAPTER 13 PLAN
11-7-08 [20]

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

The motion will be granted. There are no timely objections to the amended plan. 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.

53. 08-92384-A-13G JOSE FUENTES
DEUTSCHE BANK NAT'L TRUST CO., ET AL., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-20-08 [9]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the moving party has failed to establish that the motion was served on all necessary parties in interest.

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

This motion was filed without a docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to profit from possible confusion caused by this breach of the court's local rules.

54. 08-90791-A-13G KEITH/RENEE DOOLEY
DCJ #4

HEARING - DEBTORS' MOTION TO
VALUE COLLATERAL OF HSBC BANK
NEVADA, N.A. (BEST BUY CO., INC.)
11-17-08 [85]

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

The 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 \$600 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 (9th Cir. 2004). Therefore, \$600 of the respondent's claim is an allowed secured claim. When the respondent is paid \$600 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.

55. 08-90791-A-13G KEITH/RENEE DOOLEY
DCJ #5

HEARING - DEBTORS' MOTION TO
VALUE COLLATERAL OF WELLS FARGO
FINANCIAL CA, INC.
11-17-08 [89]

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

The 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 \$2,000 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 (9th Cir. 2004). Therefore, \$2,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$2,000 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.

56. 08-90194-A-13G ERIC/KAREN JONES
TPH #2

HEARING - MOTION TO
VALUE COLLATERAL OF DITECH
11-21-08 [108]

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

The debtor seeks to value the debtor's residence at a fair market value of \$215,914.40 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ditech. The first deed of trust secures a loan with a balance of approximately \$301,821.85 as of the petition date. Therefore, Ditech'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 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Barte, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. According to the debtor, the residence has a fair market value of \$215,914.40. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

57. 08-90894-A-13G GUSTAVO SERVIN HEARING - MOTION TO
TOG #3 CONFIRM SECOND AMENDED CHAPTER
13 PLAN OF DEBTOR
10-30-08 [58]

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

The motion will be granted. There are no timely objections to the amended plan. 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.

58. 08-90894-A-13G GUSTAVO SERVIN HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MTG. ELECTR. REGIS. SYS., INC., VS. 11-17-08 [63]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The

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

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

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

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

59. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #1 CLAIM OF GAS ELECTRIC APPLIANCE
SERVICE CO.
11-18-08 [92]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 20. The notice of the hearing on the objection indicated that the hearing would take place on December 22 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 32 days' notice of the hearing and 18 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may give 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party

gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

60. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #2 CLAIM OF KRVR THE RIVER
11-18-08 [94]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 20. The notice of the hearing on the objection indicated that the hearing would take place on December 22 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 32 days' notice of the hearing and 18 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may give 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

61. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #3 CLAIM OF HENRY WINE GROUP
11-18-08 [96]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 20. The notice of the hearing on the objection indicated that the hearing would take place on December 22 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 32 days' notice of the hearing and 18 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may give 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local

rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

62. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #4 CLAIM OF SWISHER
11-18-08 [98]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 20. The notice of the hearing on the objection indicated that the hearing would take place on December 22 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 32 days' notice of the hearing and 18 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may give 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

63. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #5 CLAIM OF COUNTY BANK
11-18-08 [100]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 20. The notice of the hearing on the objection indicated that the hearing would take place on December 22 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 32 days' notice of the hearing and 18 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the

hearing. Otherwise, the objecting party may given 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

64. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #6 CLAIM OF STANISLAUS COUNTY TAX
COLLECTOR
11-18-08 [102]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 20. The notice of the hearing on the objection indicated that the hearing would take place on December 22 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 32 days' notice of the hearing and 18 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may given 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

65. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #7 CLAIM OF STATE BOARD OF
EQUALIZATION
11-18-08 [104]

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

66. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #8 CLAIM OF ESTATE OF LA VERNA RICE
11-18-08 [106]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 20. The notice of the hearing on the objection indicated that the hearing would take place on December 22 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 32 days' notice of the hearing and 18 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may give 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.

67. 05-90165-A-7 SUSAN MCGRATH HEARING - TRUSTEE'S OBJECTION TO
RF #9 CLAIM OF SHIRLEY AND ART PARGAMENT
11-18-08 [108]

Final Ruling: The objection will be dismissed without prejudice.

This objection was served on the claimant on November 20. The notice of the hearing on the objection indicated that the hearing would take place on December 22 and that a written response was necessary if the claimant wished to contest the objection. That written response had to be filed and served no later than 14 days prior to the hearing. Hence, the claimant received 32 days' notice of the hearing and 18 days' notice of the deadline for a written response to the objection.

This notice did not comply with Local Bankruptcy Rule 3007-1 or Fed. R. Bankr. R. 3007. Local Bankruptcy Rule 3007-1(c)(1) requires that 44 days of notice be given of a hearing on a claim objection if the objecting party wishes to compel the claimant to file a written response to the objection 14 days prior to the hearing. Otherwise, the objecting party may give 30 days' notice of the hearing on the objection but the claimant is not required to file a written response. This local rule is consistent with Fed. R. Bankr. R. 3007 which requires at least 30 days notice of a hearing on an objection. Because the national rule does not require a written response to the objection, the local rule adds 14 days to the 30-day notice period if the objecting party wishes to compel a written response.

The local rule leaves it up to the objecting party which of these two procedures it wishes to utilize. In this case, however, the objecting party gave less than 44 days of notice and so the claimant was not required to file a written response. Because the notice stated otherwise, notice is defective.