UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 22, 2018 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 9. 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 LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], 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 FEBRUARY 20, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 6, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 13, 2018. 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 ITEMS 10 THROUGH 18 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE 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 29, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-25600-A-13 REBECCA ROBINSON — MOTION TO CONFIRM PLAN 12-11-17 [31]
PGM-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, to pay the dividends required by the plan at the rate proposed by it will take 73 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor provides for their receipt of all projected disposable income. Whether or not section 1325(b) has been complied with by a debtor is determined, in the first instance, by examining Form 122C. It calculates a debtor's projected disposable income. The debtor's Form 122C suggests the debtor is complying with section 1325(b), the debtor has made mistakes when completing Form 122C-2.

Line 17 lists monthly payroll deductions as 1,756.68 but the debtor's pay advises indicate they are only $791.43. Hence, the debtor's deduction on from monthly net income is $965.19 too high.

Line 35 requires the debtor to list 1/60 of priority claims. The deduction used by the debtor is based on a tax claim of $1,001 even though the IRS has filed a proof of claim of 7,727.38. The monthly deduction based on the amount claimed should be $128.79 and not the $16.69 deducted at Line 35.

Line 36 deducts nothing for the administrative costs of chapter 13. From the average plan payment, the trustee will retain 5.8% as compensation. Therefore, $21.23 should be deducted on this line.

With these changes to Form 122C-2, the debtor will have projected disposable income of $123.61, not -$708.25. $123.61 must be paid to unsecured creditors. Because the plan does not provide for any dividend to unsecured creditors. Therefore, it does not comply with 11 U.S.C. § 1325(b).

2. 17-25967-A-13 SUSAN WEISS — MOTION TO CONFIRM PLAN 12-11-17 [29]
LBG-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor failed to utilize the court's current mandatory form plan as required by Local Bankruptcy Rule 3015-1(a) (effective on and after May 1, 2012, in all cases regardless when filed).

Second, Local Bankruptcy Rule 3015-1(b)(6) provides: "*Documents Required by Trustee*. The debtor shall provide to the trustee, not later than the fourteen

(14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist,* or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Third, the debtor has failed to make $925 of the payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Fourth, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,225 is less than the $1,287 in dividends and expenses the plan requires the trustee to pay in months 1 through 7 of the plan. In month 8 of the plan, the payment remains the same but dividends and expenses the plan requires the trustee to pay $1,437.50.

Fifth, to pay the dividends required by the plan at the rate proposed by it will take 68 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

3. 17-27876-A-13 MARTIN OLIVAS — ORDER TO SHOW CAUSE 1-5-18 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on January 2 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

4. 17-26081-A-13 JESUS/NORMA QUINTERO — MOTION TO CONFIRM PLAN 12-11-17 [43]
PGM-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender, Select Portfolio/Deutsche Bank has agreed to a home loan modification. There is no proof of an agreement Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

Second, the debtor has failed to make $2,000 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that

the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

5. 17-24490-A-13 UST-1 — RAYMOND/ELIZABETH CAMPBELL — MOTION FOR REVIEW OF FEES 10-25-17 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

Counsel for the debtor prepared for the debtor's signature materially false statements and schedules.

First, on Form 122C, the debtor's monthly net income was based on the assertion that the debtor had no pre-petition income in the six months prior to bankruptcy. The debtor signed Form 122C under penalty of perjury.

The failure to disclose any pre-petition income in the prior six months prompted the trustee to object to confirmation. If Form 122C was correct the plan was not feasible and if it was incorrect, the attempt to confirm a plan while making materially false financial statements amounted to bad faith. As a result, the plan was not confirmed.

This nondisclosure also got the attention of the UST and it triggered an audit. The audit concluded that Form 122C was not accurate and also determined that the debtor had failed to disclose over $6,700 in a bank account.

The schedules and statement were later amended to disclose the correct current monthly income of $12,400 and the amount in the bank.

However, the failure to carefully and accurately disclose income and assets resulted in a material delay in the confirmation of the plan, approximately four months, put the case at risk of dismissal, and subjected the debtor to an audit.

Counsel for the debtor admits the errors in the documents were his oversight. While the court is convinced that the nondisclosures were inadvertent, the errors, particularly listing no current monthly income, should have been immediately obvious and corrected before Form 122C was filed. The bank account nondisclosure also should have been obvious if counsel reviewed the bank statements. If he did not review the statements, he should have.

Because the errors are not excusable and because they materially delayed the prosecution of this case to detriment of the debtor and the creditors, the court will reduce counsel's fees to $2,000 from $4,000 which shall be paid at the rate of $350 a month through the plan.

6. 17-26591-A-13 PGM-2 — MARGARET ROBINSON — MOTION TO CONFIRM PLAN 12-8-17 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay $1,660 to unsecured creditors over a 60-month duration.

While this is consistent with Form 122C, the debtor's current monthly income on the form omits a bonus in excess of $19,000 received in March of each year. Because current monthly income is based on a debtor's income in the six month period prior to bankruptcy, the debtor was able to omit the bonus from Form 122C. However, Hamilton v. Lanning, 130 S.Ct 2464 (2010) permits the trustee to rebut the presumption that the amount of projected disposable income is as stated in Form 122C. Including the bonus in the debtor's current monthly income will increase it from $9,559 to $11,489.

Further, the debtor has deducted a monthly voluntary retirement contribution of $647.18 from current monthly income on Form 122C-2. This is disposable income; the debtor may not make those contributions and deduct them from current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

As a result, by increasing the debtor's current monthly income and eliminating the deduction for a voluntary retirement contribution, the debtor will have projected disposable income of $94,951.20 Because the plan will pay only $1,660 to these creditors, it does not comply with 11 U.S.C. § 1325(b).

7. 17-25999-A-13 RAJENDER SARIN — MOTION TO VALUE COLLATERAL 12-11-17 [45]
LBG-1
VS. HARLEY-DAVIDSON CREDIT CORP.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2014 Harley-Davidson motorcycle that secures Harley-Davidson Credit Corp.'s Class 2 claim. While the debtor has opined that the vehicle has a value of $12,000, no specific information is given in the motion regarding the vehicles condition, mileage, equipment, and accessories.

Harley-Davidson counters that the value of the vehicle is $18,180 based on a retail evaluation by a commonly used market guide.

To the extent the objection urges the court to reject the debtor's opinion of value because the debtor's opinion is not admissible, the court instead rejects the objection. As the owner of the vehicle, the debtor is entitled to express an opinion as to the vehicle's value. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Any opinion of value by the owner must be expressed without giving a reason for the valuation. See Barry Russell, BANKRUPTCY EVIDENCE MANUAL § 701:2 (West 2013-2014 ed.). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the

particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Id.

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by a market guide is $18,180. This valuation is not based on a specific information regarding the vehicle other than its make and year.

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

The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value. The creditor's retail value is not based on the specific condition of this vehicle. 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." That is, what would a retailer charge for the vehicle as it is?

Nor has the debtor proven to the court's satisfaction the replacement value of the vehicle. The motion contains no specific information about the vehicle.

While neither party has persuaded the court as to the replacement value of the vehicle under section 506(a)(2), it is the debtor who has the burden of proof. Accordingly, the valuation motion must be denied.

8. 17-25999-A-13 RAJENDER SARIN — MOTION TO VALUE COLLATERAL 12-11-17 [49]
LBG-2
VS. REAL TIME RESOLUTIONS, INC.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

In connection with the debtor's effort to confirm a plan, the debtor filed a motion to value his home. The motion is supported by the debtor's declaration which establishes his ownership of the property and that the property is encumbered by two deeds of trust. The senior lien is held by Seterus. However, the evidence with the motion values to state the amount owed on such senior secured claim.

The respondent, Real Time Resolutions, holds a junior secured claim and is owed approximately $45,055.25.

The debtor opines in his declaration that the subject property has a value of $200,000. Based on this value and the (unknown) amount owed to Seterus, the respondent's junior lien is "out of the money" and the application of 11 U.S.C. § 506(a), as interpreted by the Ninth Circuit in In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997), means that

its lien can be "stripped off" the debtor's home and his claim can be treated as an unsecured claim in this case.

The respondent asserts that the debtor's evidence is based on an evaluation obtained from the Internet site, Zillow. However, a review of the moving papers reveals no reference to Zillow. The debtor, after indicating in a conclusory fashion that his home is in poor condition, states that in his opinion his home has a fair market value of $200,000.

But, the proposed plan indicates that the value is based on Zillow. Hence, it appears that the debtor is repeating the Zillow valuation as his own valuation.

The respondent asserts that the home has a value of $290,000. This is based on a "broker's price opinion." However, the broker giving the opinion has not authenticated it with a declaration.

Valuation evidence based on reports from "zillow.com" and other similar Internet based sources are not admissible. It is hearsay. See Fed. R. Evid. 801. And, while Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the values reported by these Internet sites meet this criteria.

The court doubts that such a foundation could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a participatory site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are not compilations made admissible by Fed. R. Evid. 803(17). Id.

Nor is the debtor's opinion in this case admissible. The debtor is not an expert entitled to render an opinion of value under Fed. R. Evid. 702 as an expert witness. As an owner of the property, the debtor may merely give an opinion based on his personal familiarity with the property, but he is not allowed to testify concerning his research and what others have told him concerning the value of comparable properties. See Barry Russell, BANKRUPTCY EVIDENCE MANUAL § 701:2 (West 2013-2014 ed.). Hence, the debtor cannot give an opinion of value based on anything other than the fact that he owns the property. See Fed. R. Evid. 701(c) (prohibiting lay witnesses from testifying in the form of an opinion based on "scientific, technical, or other specialized knowledge"). From the statements in the plan and from what the debtor states in his declaration concerning the condition of the property, the court concludes that he either is repeating what others have told him or he attempting to give an expert opinion based on a conclusory, opinion concerning the condition of his home without laying a foundation of his expertise.

Finally, the respondent's evidence is also inadmissible because it has not been authenticated by the broker's declaration. Fed. R. Evid. 802.

While neither party has persuaded the court as to the fair market value of the home, it is the debtor who has the burden of proof. Accordingly, the valuation motion must be denied.

9. 17-25999-A-13 RAJENDER SARIN
LBG-3

MOTION TO CONFIRM PLAN
12-8-17 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Because the valuation motions have not been granted, at this point, the debtor is unable to "strip off" Real Time Resolutions' secured claim nor "strip down" Harley-Davidson's secured claim. Therefore, the plan cannot be confirmed because it either violates 11 U.S.C. § 1325(a)(5)(B). It will not pay these secured claims in full.

FINAL RULINGS BEGIN HERE

10. 17-24316-A-13 KARI HUTCHINS — OBJECTION TO CLAIM
PLC-2
VS. CATHERINE BODINE — 12-4-17 [41]

Final Ruling: This objection to the proof of claim of Catherine Bodine 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 allowed as a nonpriority unsecured claim.

The claim arising out of a marital dissolution agreement and judgment which are appended to the claimant's proof of claim. The agreement and judgment required the claimant to withdraw $110,000 from a 401k and pay it to the debtor as child support. However, the debtor was obligated to reimburse the claimant the income taxes occasioned by the withdrawal from the retirement fund up to a maximum amount of $37,730. When the debtor failed to reimburse the claimant these taxes a further order was obtained from state court. That order confirmed that the debtor was indebted to the claimant in the amount of $15,382 and the claimant was awarded a further $1,000 in attorney's fees because she was required to resort to the court to collect the tax reimbursement.

The above makes clear that it was the claimant who owed child support to the debtor. The amount the debtor owes to the claimant is not for child support.

Nor is the claim one based on spousal support. According to the marital dissolution agreement and judgment, both parties waived spousal support.

11. 14-27018-A-13 EDISON/CAROLYN ROSE — MOTION TO MODIFY PLAN
BHS-2
12-8-17 [36]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for prior payments of $130,864 with an additional monthly payment of $3,682 in month 41. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

12. 17-26025-A-13 PATRICIA SHIELDS
MEV-2

MOTION TO CONFIRM PLAN
12-7-17 [35]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), 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 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 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(a) & (b), 1323(c), 1325(a), and 1329.

13. 17-28246-A-13 FUAAD/ABEER IBRAHIM
MJD-1
VS. PATELCO CREDIT UNION

MOTION TO VALUE COLLATERAL
12-22-17 [8]

Final Ruling: The motion will be dismissed without prejudice.

According to the certificate of service, this motion was served on Travis Credit Union, not the respondent, Patelco Credit Union. Accordingly, because the respondent was not served, the motion will be dismissed.

14. 17-28246-A-13 FUAAD/ABEER IBRAHIM
MJD-2
VS. TED/CINDY COLCLAZIER

MOTION TO VALUE COLLATERAL
12-22-17 [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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $600,000 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 $ 643,929 of the petition date. Therefore, Ted & Cindy Colclazier'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, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $600,000. 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).

15. 15-27860-A-13 DEVONNE WILLIAMS
TAG-2

MOTION TO EMPLOY
12-21-17 [40]

Final Ruling: This motion to employ special counsel has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the creditors, the United States Trustee, 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 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 chapter 13 debtor seeks approval to employ legal counsel to represent her in a personal injury case. The employment will be on a contingency fee basis.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a contingent fee basis."

While the applicant here is not the trustee but the debtor, because this is a chapter 13 case, the debtor remains in possession of her assets and retains the right to prosecute the claim. Therefore, as to the debtor, the motion will be granted. The court concludes that the terms of employment and compensation are reasonable. Special counsel is disinterested persons within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate.

Accordingly, the motion will be granted with the proviso that any settlement must be approved by the court and before any compensation is paid it must be approved by the court. See Fed. R. Bankr. P. 9019 and 11 U.S.C. §§ 328(a) & 330(a).

16. 13-26465-A-13 DARREN COCREHAM
PGM-5

MOTION TO MODIFY PLAN
12-14-17 [126]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified in the confirmation order to require an additional monthly payment in December 2017 of $300. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

17. 17-24490-A-13 LBG-2 — RAYMOND/ELIZABETH CAMPBELL — MOTION TO CONFIRM PLAN 11-20-17 [61]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), 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 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 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 with the proviso that the provision for the payment of $4,000 in attorney's fees will be reduced in accordance with the court's disposition of the United States Trustee's motion seeking a review of debtor's counsel's fees. Also, to the extent the fees are reduced, the $700 monthly payment on account of such fees will be reduced proportionately. For example, if the court reduces such fees from $4,000 to $2,000, the fees will be paid at the rate of $350 a month, not $700. With this proviso, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

18. 17-21193-A-13 APN-1 WELLS FARGO BANK, N.A. VS. — WILLIAM BERNAL AND CELIA HAWKINS BERNAL — MOTION FOR RELIEF FROM AUTOMATIC STAY 12-21-17 [80]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be dismissed as moot although the order may clarify that the plan provides for the movant's claim in Class 3.

A plan was confirmed in this case on November 26, 2017. That plan provided for the movant's claim as a Class 3 secured claim. This means that the plan provided for the surrender of the movant's collateral in order to satisfy its secured claim. It also provides at section 3.11(a):

"Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral. . . ."

However, the identification of the claim in Class 3 does not refer to Wells Fargo Bank; it refers to Hyundai. The debtor's response admits the plan's identification of the creditor is incorrect and that the movant is the Class 3 creditor.

Thus, the stay has already been terminated and the motion is moot. To the extent the plan's description of the movant's identity is not accurate, the order may recite that the movant is the Class 3 creditor and that the automatic stay was previously terminated.