

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 25, 2016 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 14. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO 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 29, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 16, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 22, 2016. 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 15 THROUGH 24 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 FEBRUARY 1, 2016, AT 2:30 P.M.

January 25, 2016 at 1:30 p.m.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Wells Fargo Bank in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Second, the mortgage claim of Wells Fargo Home Mortgage is misclassified in Class 1. Class 1 is reserved for long term claims that are in default. While the default will be cured, consistent with 11 U.S.C. § 1322(b)(2), (b)(5), the claim will not otherwise be modified by the plan. Here, the plan indicates on its face that the claim will be modified by changing the ongoing mortgage payment. This is a modification of a claim that disqualifies it for Class 1 inclusion. Furthermore, because the claim is a home mortgage claim, 11 U.S.C. § 1322(b)(2) prohibits its modification absent the consent of the lender. There is no proof that the lender has consented to the modification.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

3. 15-27755-A-13 ABU ALAMIN MOTION TO
MLF-2 CONFIRM PLAN
12-9-15 [59]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the debtor has failed to make \$4,456.54 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).

Second, no evidence has been filed in support of the motion. Consequently, there is no proof that any of the requirements of 11 U.S.C. §§ 1322(a) and 1325(a) are satisfied by the proposed plan.

Third, the plan materially understates the arrears on the Class 1 mortgage claim which are more than \$5,000 higher than stated in the plan. At the higher amount either the Class 1 claim will not be paid in full as required by 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B), or the plan will take more than 5 years

to be completed in violation of 11 U.S.C. § 1322(d).

The trustee's objection that the plan has been proposed in "bad faith" because Schedules I and J suggest the debtor could pay more each month will be overruled. Nothing requires that a debtor contribute all monthly net income to the plan. All that is required, if demanded by the trustee, is that all projected disposable income as reported on Form 22 be paid to holders of unsecured claims. See 11 U.S.C. § 1325(b). There is no argument or proof that the plan fails to satisfy section 1325(b) by paying all projected disposable income to unsecured creditors.

4. 15-27755-A-13 ABU ALAMIN COUNTER MOTION TO
MLF-2 DISMISS CASE
1-11-16 [72]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The counter motion will be conditionally denied.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

5. 15-20273-A-13 CONCETTA MANZANO MOTION TO
JPJ-1 DISMISS CASE
12-7-15 [36]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$11,590.01 as required by the confirmed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

6. 15-28574-A-13 JOHN DYNOWSKI MOTION TO
JPJ-1 COMPEL AND REQUEST FOR DOCUMENTS
12-18-15 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: None. Appearance by attorney Leslie Richards required.

7. 15-29386-A-13 VALERIY RAZUMOV

ORDER TO
SHOW CAUSE
1-5-16 [27]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$79 installment when due on December 31. While the delinquent installment was paid on January 7, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

8. 15-28890-A-13 ANGELA SLAUGHTER
CA-3
VS. CITIMORTGAGE, INC.

MOTION TO
VALUE COLLATERAL
1-11-16 [24]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$475,632 as of the date the petition was filed. It is encumbered by a first deed of trust held by PNC Bank. The first deed of trust secures a loan with a balance of approximately \$581,168.59 as of the petition date. Therefore, CitiMortgage'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 will be 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 \$475,632. 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).

9. 15-28890-A-13 ANGELA SLAUGHTER
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
12-30-15 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. 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 in part and the motion to dismiss the case will be conditionally denied.

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.

The objection concerning the valuation of the collateral for the CitiMortgage claim will be overruled. That motion has been filed and granted.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

10. 15-29696-A-13 ANDRE LOPEZ AND JENNIFER
SJS-1 CAVALIER-LOPEZ
VS. INTERNAL REVENUE SERVICE

MOTION TO
VALUE COLLATERAL
1-11-16 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

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

the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property, which consists of all property listed on Scheduled B, had a value of \$18,492.10 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, \$18,492.10 of the respondent's claim is an allowed secured claim. When the respondent is paid \$18,492.10 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.

11. 15-28900-A-13 RONNA FLAIG HEARING RE:
CONFIRMATION OF PLAN
11-16-15 [5]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: None. While the clerk of court gave notice of the confirmation hearing, the clerk failed to give notice of the deadline for filing and serving a written objection to the confirmation of the plan as required by local bankruptcy rule 3015-1(c)(4). Consequently, objections may not have been filed. This hearing will be limited to determining whether any party in interest wishes to object. If no one objects to confirmation, the court will confirm the plan. If a party wishes to object, the court will set deadlines to file a written objection, file a response to the objection, a reply to the response, and a final hearing date.

The trustee's premature objection and counter motion will be dismissed without prejudice.

12. 15-28904-A-13 TREVOR WALLACE HEARING RE:
CONFIRMATION OF PLAN
11-16-15 [5]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: None. While the clerk of court gave notice of the confirmation hearing, the clerk failed to give notice of the deadline for filing and serving a written objection to the confirmation of the plan as required by local bankruptcy rule 3015-1(c)(4). Consequently, objections may not have been filed. This hearing will be limited to determining whether any party in interest wishes to object. If no one objects to confirmation, the court will confirm the plan. If a party wishes to object, the court will set deadlines to file a written objection, file a response to the objection, a reply to the response, and a final hearing date.

The trustee's premature objection and counter motion will be dismissed without

prejudice.

13. 15-28905-A-13 RUTH MANLEY

HEARING RE:
CONFIRMATION OF PLAN
11-16-15 [5]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: None. While the clerk of court gave notice of the confirmation hearing, the clerk failed to give notice of the deadline for filing and serving a written objection to the confirmation of the plan as required by local bankruptcy rule 3015-1(c)(4). Consequently, objections may not have been filed. This hearing will be limited to determining whether any party in interest wishes to object. If no one objects to confirmation, the court will confirm the plan. If a party wishes to object, the court will set deadlines to file a written objection, file a response to the objection, a reply to the response, and a final hearing date.

14. 15-28809-A-13 LAURA HERNANDEZ

HEARING RE:
CONFIRMATION OF PLAN
11-12-15 [7]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: None. While the clerk of court gave notice of the confirmation hearing, the clerk failed to give notice of the deadline for filing and serving a written objection to the confirmation of the plan as required by local bankruptcy rule 3015-1(c)(4). Consequently, objections may not have been filed. This hearing will be limited to determining whether any party in interest wishes to object. If no one objects to confirmation, the court will confirm the plan. If a party wishes to object, the court will set deadlines to file a written objection, file a response to the objection, a reply to the response, and a final hearing date.

THE FINAL RULINGS BEGIN HERE

15. 14-31200-A-13 SHERI ARNOLD MOTION TO
TLA-9 MODIFY PLAN
12-16-15 [87]

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 Rules 3015-1(d)(2) and 9014-1(f)(1) 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 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 modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

16. 15-28900-A-13 RONNA FLAIG OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
1-4-16 [22]

Final Ruling: This objection and counter motion are premature and will be dismissed without prejudice unless the court sets a final confirmation hearing. The court did not order the filing of written objections to confirmation in this case prior to the confirmation hearing.

17. 15-27901-A-13 LARRY THOMAS MOTION TO
NSV-3 CONFIRM PLAN
12-7-15 [57]

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on January 13.

18. 15-28904-A-13 TREVOR WALLACE OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
1-4-16 [18]

Final Ruling: This objection and counter motion are premature and will be dismissed without prejudice unless the court sets a final confirmation hearing. The court did not order the filing of written objections to confirmation in this case prior to the confirmation hearing.

19. 15-28808-A-13 BRIAN/CARMEN CARROLL MOTION TO
PGM-1 VALUE COLLATERAL
VS. BANK OF AMERICA, N.A. 12-23-15 [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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$184,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ditch Financial. The first deed of trust secures a loan with a balance of approximately \$208,820 as of the petition date. Therefore, Bank of America'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 will be 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 \$184,000. 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).

20. 15-27210-A-13 MARTIN/MARIA DEL CARMEN MOTION TO
PGM-2 ORTEGA CONFIRM PLAN
12-14-15 [40]

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.

21. 14-21764-A-13 RICHARD/LORRIE MOTION TO
SDH-1 DOMENICHINI MODIFY PLAN
12-11-15 [31]

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 Rules 3015-1(d)(2) and 9014-1(f)(1) 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 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 modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

22. 15-28873-A-13 JEFFREY/RHONDA STOKES OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
12-30-15 [19]

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

The objection concerning the valuation of the collateral for the Citizen One Bank claim will be overruled. That valuation motion has been filed and granted. Consequently, there is no cause to dismiss the case and the counter motion will be denied.

23. 15-28793-A-13 REGINALD JEFFERSON OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN
12-30-15 [19]

Final Ruling: The objection is moot because the case was dismissed on January 11.

24. 15-29696-A-13 ANDRE LOPEZ AND JENNIFER ORDER TO
CAVALIER-LOPEZ SHOW CAUSE
1-4-16 [18]

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

The debtor did not pay the petition filing fee of \$310, as required by Fed. R. Bankr. P. 1006(a), when the petition was filed. Nor did the debtor request permission to pay the fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The failure to pay the filing fee or to arrange for its payment in installments is cause for dismissal. See 11 U.S.C. § 1307(c)(2). However, after the issuance of the order to show cause, the delinquent fee was paid in full. No prejudice was caused by the late payment.