UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 1, 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 32. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO 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 MARCH 7, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 22, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 29, 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 33 THROUGH 42 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 8, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 15-29617-A-13 LEE RUSSELL — NOTICE OF INTENT TO DISMISS CASE 12-17-15 [9]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed and the objection raised by the creditor will be overruled.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 14 days after the filing of the petition. The 14-day period has expired without any of these documents being filed. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

The creditor asks the court that the case not be dismissed so that it may move for relief from the automatic stay.

To the extent it wishes relief from the automatic stay created by the filing of this case, because dismissal of the case causes the automatic stay to expire, it will be unnecessary to seek such relief. It is automatic.

To the extent dismissal does not moot a request for relief from the automatic, dismissal does not deprive the court of jurisdiction to entertain a motion concerning the stay.

To the extent the creditor wishes to file a motion is based on 11 U.S.C. § 109(g), and assuming the creditor can establish either that the debtor dismissed a prior case after the creditor moved for relief from automatic stay, and/or that the debtor willfully failed to abide by orders in a prior case or failed to appear in its proper prosecution, such a motion would result in the dismissal of this case. Section 109(g) provides that a debtor is not eligible for bankruptcy relief in these circumstances. Section 109(g) does not provide a basis for any relief from the automatic stay.

To the extent the creditor wishes the court to bar the debtor from refiling another petition, such relief requires prosecution of an adversary proceeding and such has not been filed.

However, given the prior petitions as described in the creditor's papers, given the dismissal of those petitions and the debtor's habitual failure to file required schedules, statements and plans (as has been done in this case), the court concludes that the dismissal should be with prejudice notwithstanding 11 U.S.C. § 349(a) because the debtor has engaged in protracted course of filing petitions but not prosecuting them. This has resulted in the invocation of the automatic stay even though the debtor has not pursued a fresh start in good faith.

2. 10-43624-A-13 REGINA LENO
SDB-3

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT
12-31-15 [66]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

Fed. R. Bankr. P. 3002.1(f) provides that the trustee shall, within 30 days after the completion of all plan payments, file and serve on a mortgage holder and the debtor a notice stating that the debtor has paid in full all amounts required to cure any default on the mortgage claim.

Fed. R. Bankr. P. 3002.1(g) then permits the mortgage creditor to file and serve a statement indicating whether it agrees that the default has been cured and whether the debtor is otherwise current on all payments. If there remains a default, the statement must itemize what remains to be paid.

The debtor or trustee then have 21 days after service of the mortgage creditor's statement to file a motion seeking a determination of whether a default has been cured. See Fed. R. Bankr. P. 3002.1(h).

If the creditor fails to file and serve the statement, after notice and a hearing, the court may preclude the mortgage holder from asserting the information that should have been in the statement in any adversary proceeding or contested matter. The court may also award other appropriate relief including attorney's fees.

The creditor here did not file a statement and the debtor's motion does not indicate that the creditor has done anything inconsistent with the debtor's position that the debtor cured the mortgage defaults.

There is nothing in Rule 3002.1 that permits the court to "confirm" the trustee's notice of a cure. Rather, if the notice is given and the creditor does not contest it, the creditor may be precluded from asserting otherwise in a later proceeding. See 11 U.S.C. § 3002.1(i). In this case, the creditor has not asserted otherwise.

3. 10-43624-A-13 REGINA LENO
SDB-4

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT
12-31-15 [71]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

Fed. R. Bankr. P. 3002.1(f) provides that the trustee shall, within 30 days after the completion of all plan payments, file and serve on a mortgage holder and the debtor a notice stating that the debtor has paid in full all amounts required to cure any default on the mortgage claim.

Fed. R. Bankr. P. 3002.1(g) then permits the mortgage creditor to file and serve a statement indicating whether it agrees that the default has been cured

and whether the debtor is otherwise current on all payments. If there remains a default, the statement must itemize what remains to be paid.

The debtor or trustee then have 21 days after service of the mortgage creditor's statement to file a motion seeking a determination of whether a default has been cured. See Fed. R. Bankr. P. 3002.1(h).

If the creditor fails to file and serve the statement, after notice and a hearing, the court may preclude the mortgage holder from asserting the information that should have been in the statement in any adversary proceeding or contested matter. The court may also award other appropriate relief including attorney's fees.

The creditor here did not file a statement and the debtor's motion does not indicate that the creditor has done anything inconsistent with the debtor's position that the debtor cured the mortgage defaults.

There is nothing in Rule 3002.1 that permits the court to "confirm" the trustee's notice of a cure. Rather, if the notice is given and the creditor does not contest it, the creditor may be precluded from asserting otherwise in a later proceeding. See 11 U.S.C. § 3002.1(i). In this case, the creditor has not asserted otherwise.

4. 14-32026-A-13 COLLEEN DAVIS — MOTION FOR HARDSHIP DISCHARGE 12-29-15 [22]
SJS-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

11 U.S.C. § 1328(b) permits a discharge "at any time after confirmation of the plan" if three cumulative conditions are met: 1) the debtor's failure to complete payments under the plan is due to circumstances "for which the debtor should not justly be held accountable"; 2) the debtor has satisfied the best interests of creditors test of 11 U.S.C. § 1325(a)(4); and 3) modification of the plan is not practicable.

Here, the record indicates that the debtor suffers from significant health issues and is unable to work. She subsists on social security. Here health and financial situation are unlikely to change and the debtor cannot justly be held accountable for these issues. Prior plan payments have resulted in a dividend to unsecured creditors greater than would be received in a chapter 7 case.

Nonetheless, the record is not complete.

First, a certification of completion of a course on personal financial management has not been filed. See 11 U.S.C. § 1328(g)(1).

Second, there is no certification that 11 U.S.C. § 522(q)(1) is not applicable.

Third, there is no certification that the debtor has not received an earlier discharge that prevents a discharge in this case. See 11 U.S.C. § 1328(f).

5. 13-36035-A-13 IGOR IVANOV AND MARYNA IVANOVA — ORDER TO SHOW CAUSE 1-11-16 [33]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: On March 12, 2014, Carrington Mortgage Services, L.L.C., filed a proof of claim. On December 28, 2015, it filed a transfer of this claim to Bank of America. However, neither transferor nor transferee paid the $25 transfer fee required by 28 U.S.C. § 1930(b). Therefore, the transfer and assignment of the claim will be disallowed and not recognized by the court until the fee is paid.

6. 14-20237-A-13 MMN-2 KEVIN KAUFFMAN AND MICHELLE CASTILLO — MOTION TO MODIFY PLAN 12-24-15 [53]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

In the previously confirmed plans, the debtor's home mortgage was provided for in Class 1. This meant that the trustee paid the debtor's monthly mortgage payment and paid an additional dividend to retire the mortgage arrears. The proposed plan makes no provision for the claim including the payments already made to the mortgage holder pursuant to the confirmed plan.

To the extent the mortgage creditor objects to the treatment (or lack thereof) of its claim going forward, the objection will be overruled.

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 denial of

confirmation. Instead, the claim holder 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 claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

However, the plan must provide for the payments already made to the mortgage creditor by the trustee. That is, it must continue to be provided for in Class 1 in order to account for all payments and dividends already paid to the creditor by the trustee. This objection will be sustained.

7. 16-20041-A-13 DELLA CHADWICK — MOTION TO EXTEND AUTOMATIC STAY
TLA-1 — 1-12-16 [12]

- ☐ 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.

This is the second chapter 13 case filed by the debtor. The debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under

chapters 11 or 13, there must be some substantial change."

Here, it appears that the debtor was unable to prosecute her first case because she was without counsel. She apparently realized this almost immediately after the filing the case. She voluntarily dismissed it within 7 days of it being filed. No creditor was required to take any action as a result of the first case. In this case all schedules, statements and a plan have been filed and it appears it is moving toward confirmation of a plan. This is a sufficient change in circumstances rebut the presumption of bad faith.

8. 15-25258-A-13 KIMBERLY GALLEGOS — MOTION TO VALUE COLLATERAL
MRL-1
VS. CITIMORTGAGE, INC. — 1-15-16 [43]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $190,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Chase Mortgage. The first deed of trust secures a loan with a balance of approximately $259,084 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 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 $190,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

9. 15-29111-A-13 ERWIN/MARY ANN SANTOS — HEARING RE: CONFIRMATION OF PLAN 12-2-15 [12]

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.

10. 15-29111-A-13 ERWIN/MARY ANN SANTOS
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
1-13-16 [17]

Tentative Ruling: None. This objection and counter motion are premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

11. 15-29320-A-13 ANITA CLIFFORD

HEARING RE: CONFIRMATION OF PLAN
11-30-15 [5]

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.

12. 15-29348-A-13 ALEKSANDER/VERA TKACHENKO

HEARING RE: CONFIRMATION OF PLAN
11-30-15 [5]

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.

13. 15-29348-A-13 ALEKSANDER/VERA TKACHENKO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
1-13-16 [15]

Tentative Ruling: None. This objection and counter motion are premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

14. 15-29449-A-13 TIAJUANNA TOLES

HEARING RE: CONFIRMATION OF PLAN
12-3-15 [5]

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.

15. 15-29449-A-13 TIAJUANNA TOLES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-13-16 [12]

Tentative Ruling: None. This objection and counter motion are premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

16. 15-28950-A-13 DANIELLE SPENCER — HEARING RE: CONFIRMATION OF PLAN
11-18-15 [5]

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.

17. 15-28950-A-13 DANIELLE SPENCER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-13-16 [12]

Tentative Ruling: None. This objection and counter motion are premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

18. 15-29262-A-13 IBRAHEYMA ALHARK — HEARING RE: CONFIRMATION OF PLAN
12-14-15 [9]

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.

19. 15-28963-A-13 AARON/LASHAUN TURNER — HEARING RE: CONFIRMATION OF PLAN 11-18-15 [5]

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.

20. 15-28963-A-13 AARON/LASHAUN TURNER — OBJECTION TO CONFIRMATION OF PLAN 1-15-16 [21]
JCW-1
PNC BANK, N.A. VS.

Tentative Ruling: None. This objection is premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

21. 15-28963-A-13 AARON/LASHAUN TURNER — OBJECTION TO CONFIRMATION OF PLAN 1-13-16 [17]
JPJ-1

Tentative Ruling: None. This objection is premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

22. 15-29465-A-13 MALCOLM/TINA MCMARION — HEARING RE: CONFIRMATION OF PLAN 12-4-15 [7]

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.

23. 15-29465-A-13 MALCOLM/TINA MCMARION
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
1-13-16 [18]

Tentative Ruling: None. This objection and counter motion are premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

24. 15-29484-A-13 MARY LACANDOLA

HEARING RE: CONFIRMATION OF PLAN
12-7-15 [5]

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.

25. 15-29191-A-13 LEONARD/CHRISTINA BEISSWINGERT

HEARING RE: CONFIRMATION OF PLAN
11-25-15 [5]

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.

26. 15-29191-A-13 LEONARD/CHRISTINA BEISSWINGERT
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
1-13-16 [14]

Tentative Ruling: None. This objection is premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

27. 15-28993-A-13 KHALID ALRAWASHDEH

HEARING RE: CONFIRMATION OF PLAN
11-19-15 [5]

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.

28. 15-28993-A-13 KHALID ALRAWASHDEH — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-13-16 [13]

Tentative Ruling: None. This objection and counter motion are premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

29. 15-29196-A-13 CHARLES BARNARD — HEARING RE: CONFIRMATION OF PLAN
12-17-15 [12]

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.

30. 15-29196-A-13 CHARLES BARNARD — OBJECTION TO CONFIRMATION OF PLAN
AP-1 — 1-14-16 [29]
BANK OF AMERICA, N.A. VS.

Tentative Ruling: None. This objection is premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

31. 15-29196-A-13 CHARLES BARNARD — OBJECTION TO CONFIRMATION OF PLAN
JHW-1 — 1-5-16 [20]
MERCEDES-BENZ FIN'L SVCS. USA, L.L.C. VS.

Tentative Ruling: None. This objection is premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

32. 15-29196-A-13 CHARLES BARNARD
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
1-13-16 [25]

Tentative Ruling: None. This objection and counter motion are premature because the clerk failed to set a deadline for filing of written objections to confirmation and to give notice of that deadline. If the objecting party wishes to pursue the objection and/or if there are other objections raised at this preliminary hearing, a briefing schedule will be assigned and a final confirmation hearing set.

FINAL RULINGS BEGIN HERE

33. 15-29128-A-13 WENDY KO — HEARING RE: CONFIRMATION OF PLAN 12-8-15 [12]

Final Ruling: The objection will be dismissed as moot. The case was dismissed on January 11, 2016.

34. 15-28832-A-13 PEDRO GARCIDUENAS — MOTION TO VALUE COLLATERAL 12-30-15 [13]
PGM-1
VS. WELLS FARGO BANK, N.A.

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 $170,000 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 $270,000 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, 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 $170,000. 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).

35. 14-29148-A-13 PAVEL/NATALYA FOKSHA — ORDER TO SHOW CAUSE 1-13-16 [104]

Final Ruling: The order to show cause will be discharged as moot. The creditor filed a motion for relief from the automatic stay without the required $176 filing fee. As a result the motion was dismissed.

36. 15-27061-A-13 GILDARVO VIGIL — MOTION TO CONFIRM PLAN 1-4-16 [35]
JPJ-1

Final Ruling: The motion will be dismissed without prejudice.

Taken at face value, the certificate of service indicates that this hearing was set on 39 days of notice.

Local Bankruptcy Rule 3015-1(c)(3) and (b)(1) require that when the debtor files and serves a motion to confirm a chapter 13 plan, the motion to confirm it must be set for hearing on 42 days of notice to all creditors, the chapter

13 trustee, and the U.S. Trustee. If any of these parties in interest wish to object to the confirmation of the plan, they must file and serve a written objection at least 14 days prior to the hearing. See Local Bankruptcy Rules 3015-1(b)(1) and 9014-1(f)(1)(B). The debtor's notice of the hearing on the motion to confirm the plan must advise all parties in interest of the deadline for filing written objections. See Local Bankruptcy Rule 9014-1(d)(3).

This procedure complies with Fed. R. Bankr. P. 2002(b), which requires a minimum of 28 days of notice of the deadline for objections to confirmation as well as the hearing on confirmation of the plan. Because Rule 9014-1(f)(1)(B) requires that written opposition be filed 14 days prior to the hearing but Fed. R. Bankr. R. 2002(b) requires 28 days of notice of the deadline for filing opposition, the debtor must give 42 days of notice of the hearing.

Here, the debtor gave, at most, 39 days of notice of the hearing. Therefore, parties in interest received only 25 days notice of the deadline for filing and serving written opposition to the motion. Notice was insufficient.

37. 15-27971-A-13 SNM-3 — JESSICA KNAPP AND KAREN TRAHAN — MOTION TO CONFIRM PLAN 12-11-15 [26]

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 motion will be granted and the objection will be overruled. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329. The objection concerns the value of the property securing the IRS's claim. However, the trustee has amended its claim to reduce its secured claim to the mount provided for in the plan. This issue is moot.

38. 15-27971-A-13 SNM-3 — JESSICA KNAPP AND KAREN TRAHAN — COUNTER MOTION TO DISMISS CASE 1-15-16 [38]

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 motion will be denied. As explained in the ruling on the motion to confirm the plan, there is no basis to deny confirmation. As a result, there is no cause for dismissal.

39. 10-53172-A-13 BHT-1 PORTFOLIO SERVICES, INC. VS. — JOHN/LORETTA DEERING — MOTION FOR RELIEF FROM AUTOMATIC STAY 12-22-15 [105]

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 repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has confirmed a plan that does not provide for the movant's claim. That claim is in contractual default. Hence, it is clear that the movant's claim will not be paid pursuant to the plan and it is not otherwise being paid. 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 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

40. 10-46976-A-13 JAMES SYDNOR AND LAUREN HUNT
CJY-3
MOTION TO SUBSTITUTE
1-4-16 [59]

Final Ruling: This motion 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 United States Trustee, the 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 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 to the extent stated below.

Debtor Sydnor died after this case was filed. Despite his death, debtor Hunt was able to continue and complete plan payments. The surviving debtor filed a certificate of completion of a course on personal financial management and attested that the deceased debtor also completed the course. See 11 U.S.C. §§ 110, 111, 1328(g)(1) and Fed. R. Bankr. P. 1007(c). The surviving debtor has attested that neither debtor received a disqualifying discharge in an earlier case, had no domestic support obligations, and owes no debts of the type described in 11 U.S.C. § 522(q) while claiming exemptions that exceed $146,450 in certain property. Therefore, while Mr. Syndor's death prevents him from filing the certificates required by Fed. R. Bankr. P. 1007(c) and Local Bankruptcy Rule 5009-1, his entitlement to a discharge is proven by the motion. The clerk shall enter a discharge when both debtors are otherwise entitled to a discharge.

41. 15-29386-A-7 VALERIY RAZUMOV
HEARING RE: CONFIRMATION OF PLAN
12-13-15 [19]

Final Ruling: The objection will be dismissed as moot. The case was converted to one under chapter 7 on January 16.

42. 14-25798-A-13 ARTURO CASTILLO AND SANDRA BARRON — MOTION TO MODIFY PLAN 12-28-15 [21]
BLG-1

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 motion will be granted on condition that the confirmation order clarify that through November 2015, the debtor has paid a total of $18,018 and that monthly payments will continue for the entire plan duration at the rate of $1,001 a month. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.