UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 9, 2015 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 6. 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 ON MARCH 9, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 22, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 2, 2015. 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 7 THROUGH 14 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 17, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-31800-A-13 DONNA PALMER — MOTION TO VALUE COLLATERAL
NBC-1 — 1-9-15 [15]
VS. WELLS FARGO BANK, N.A.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection will be overruled.

Before the case was filed, the debtor purchased a car that the respondent financed. The car was purchased for personal use. The debtor now seeks to value the car at $7,500 and thereby limit the respondent's purchase money secured claim to $7,500 even though it is owed more than $10,800. The respondent objects contending that the "hanging paragraph" following 11 U.S.C. § 1325(a)(9) prohibits "stripping down" a secured claim by valuing the vehicle pursuant to 11 U.S.C. § 506(a). The hanging paragraph states that "section 506 shall not apply to a claim described in [section 1325(a)(5)] if the creditor has a purchase money security interest," the secured debt was incurred within 910 days of the filing of the petition, and the collateral is a motor vehicle acquired for the personal use of the debtor.

However, in this case, the respondent financed the purchase of a vehicle on July 24, 2011. This bankruptcy case was filed on December 3, 2014. This 1228 days after the purchase of the vehicle. Hence, the hanging paragraph does not apply. The debtor is not precluded from stripping down the claim.

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 had a value of $7,500 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $7,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $7,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

2. 15-20003-A-13 ANDREA LARA — MOTION TO VALUE COLLATERAL
MRL-2 — 1-20-15 [19]
VS. BANK OF AMERICA, N.A.

- ☐ 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 $300,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Pennymac Loan Services. The first deed of trust secures a loan with a balance of approximately $491,030.60 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 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 $300,000. 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).

3. 14-28205-A-13 ANNE LUCQ — MOTION TO CONFIRM PLAN 12-24-14 [59]
SPB-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection will be overruled on the condition that the plan is modified in the confirmation order to specify that the plan payment in months 1 through 4 is $180 and thereafter will be $1,718. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

4. 14-31960-A-13 KIMBERLY THURMON — ORDER TO SHOW CAUSE 1-13-15 [20]

- ☐ 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 9 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

5. 14-32561-A-13 JONATHAN GARCIA — MOTION TO VALUE COLLATERAL 1-26-15 [20]
RJ-1
VS. SANTANDER CONSUMER USA INC.

- ☐ 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 had a value of $4,500 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $4,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $4,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

6. 14-30268-A-13 NEERAJ/KALYANI KUMAR — ORDER TO SHOW CAUSE 1-20-15 [70]

- ☐ 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 $77 installment when due on January 14. While the delinquent installment was paid on January 21, 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.

THE FINAL RULINGS BEGIN HERE

7. 14-23400-A-13 JPJ-2 MARIO VALADEZ AND TERRI MALDONADO
VS. CAVALRY INVESTMENTS, L.L.C.
OBJECTION TO CLAIM
12-2-14 [38]

Final Ruling: This objection to the proof of claim of Cavalry Investments, L.L.C., 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.

According to the documentation attached to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the claim, the last payment was received on April 10, 1998, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

8. 14-28904-A-13 HN-2 JAMES HINSON
MOTION TO CONFIRM PLAN
12-17-14 [65]

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 on the condition that the plan is modified in the confirmation order to require approval and payment of the debtor's attorney's fees pursuant to Local Bankruptcy Rule 2016-1(c). As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

9. 14-29914-A-13 WW-1 DEATRICE EVERETT
VS. COUNTRYWIDE BANK, BANK OF AMERICA
MOTION TO VALUE COLLATERAL
1-9-15 [37]

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 $180,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage. The first deed of trust secures a loan with a balance of approximately $231,454 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 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 $180,000. 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).

10. 14-24159-A-13 BETTY SULLIVAN-MCVEY — OBJECTION TO CLAIM
ULC-2
VS. LVNV FUNDING, LLC — 12-17-14 [31]

Final Ruling: The objection will be dismissed as moot. The claim was withdrawn on January 14, 2015.

11. 11-41074-A-13 PAUL/CAROL SPIKER — MOTION TO VALUE COLLATERAL
SDB-4
VS. JPMORGAN CHASE BANK, N.A. — 1-9-15 [60]

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 $260,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by JPMorgan Chase Bank. The first deed of trust secures a loan with a balance of approximately $340,775 as of the petition date. Therefore, JPMorgan Chase 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 $260,000. 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).

12. 13-35475-A-13 JOSE JIMENEZ AND MARIA GONZALEZ
DNL-10
MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
1-7-15 [206]

Final Ruling: This compensation 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 debtor, 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.

The motion seeks an award of compensation for the former chapter 7 trustee. If allowed, this compensation would be an administrative expense. See 11 U.S.C. §§ 503(b)(2) & 507(a)(1).

The proposed chapter 13 plan, if consummated, will pay out approximately $58,050 to creditors and other parties in interest other than the debtor. This is net of the compensation likely payable to the chapter 13 trustee for his compensation.

Several bankruptcy courts have considered whether a chapter 7 trustee may be compensated when the case has been converted or dismissed before he or she has distributed any funds to creditors. See e.g., In re Berry, 166 B.R. 932 (Bankr. D. Ore. 1994); In re Stabler, 75 B.R. 135 (Bankr. M.D. Fla. 1987); In re Woodworth, 70 B.R. 361 (Bankr. N.D. N.Y. 1987). While 11 U.S.C. § 330(a) permits the bankruptcy court to allow a trustee reasonable compensation, 11 U.S.C. § 326(a) limits any compensation:

"*(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title to the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, and 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000 upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.*"

The literal application of section 326(a) poses an apparent difficulty for any chapter 7 trustee who is displaced by dismissal or conversion. If the chapter 7 trustee has not disbursed or turned over money to parties in interest other than the debtor, section 326(a) seemingly allows no compensation beyond the minimum fee specified in section 330(b).

In cases where the chapter 7 trustee has marshaled assets or performed other substantial services, some bankruptcy courts depart from the apparent literal application of section 326(a) and award compensation based upon a quantum meriut theory. See In re Berry, 166 B.R. at 934-35; In re Flying S Land & Cattle Co., 23 B.R. 56, 58 (Bankr. C.D. Cal. 1982); In re Rennison, 13 B.R. 951, 953 (Bankr. W.D. Ky. 1981). According to these courts, the limitations imposed by section 326(a) upon trustee compensation are confined to those cases where administration by the chapter 7 trustee is not stymied by conversion or dismissal. In re Yale Mining Corp., 59 B.R. 302 (Bankr. W.D. Va. 1986).

However, these courts do not completely discard section 326(a). These courts attempt to estimate how much the trustee would have received if the chapter 7 case had gone to its full term and award some portion of the percentage fee that would have been allowed under section 326(a).

One case addressing this issue takes a different tack. See In re Hages, 252 B.R. 789 (Bankr. N.D. Cal. 2000). Like the trustee in this case, the trustee in Hages made no distributions nor took possession of money or assets. Nonetheless, the bankruptcy court awarded compensation to the chapter 7 trustee. The bankruptcy court held:

"*This court agrees with the UST that distributions made through the chapter 13 plan should be imputed to the chapter 7 trustee, for purposes of calculating the chapter 7 trustee's maximum fees. However, this court uses somewhat different reasoning than Rodriquez, [240 B.R. 912 (Bankr. D. Colo 1999),] and disagrees with its holding that the maximum can only be calculated piecemeal, as each plan payment is distributed. The Rodriquez court treated all trustees in any given case as a single 'composite' trustee, thereby imputing distributions by the chapter 13 trustee to the chapter 7 trustee for purposes of section 326(a). This analysis led the Rodriquez court to combine trustees' fees in applying the section 326(a) cap, limiting the chapter 7 trustee to whatever is left over after the anticipated total fees payable to the chapter 13 trustee. As discussed below, this court interprets the statute to permit payment of the chapter 7 trustee without having to treat both trustees as a single trustee.*"

. . .

"*When a debtor converts a case from chapter 7 to chapter 13 it is often, if not usually, because the chapter 7 trustee has either uncovered assets that otherwise would not be available to creditors or taken some action adverse to the debtor, such as objecting to the debtor's discharge. [The chapter 7 trustee's] work in this case revealed potential equity in the debtor's home above the claimed homestead exemption, which apparently motivated the debtor to convert to chapter 13. Whether or not the chapter 7 trustee actually turns over cash to the chapter 13 trustee, the chapter 7 trustee turns over an estate that must generate distributions to creditors under a chapter 13 plan that are equal to or greater than they will receive in Chapter 7. 11 U.S.C. § 1325(a)(4). Given these realities, it is entirely appropriate to impute the moneys that will be distributed by the chapter 13 trustee to the chapter 7 trustee for purposes of computing the maximum fee the chapter 7 trustee can charge, and allowing interim fees up to that maximum.*"

. . .

"*. . .[T]his court holds that a chapter 7 trustee's maximum fees in a case converted to Chapter 13 should be based on distributions to be made by the chapter 13 trustee under the chapter 13 plan. As discussed below, this does not necessarily mean that every chapter 7 trustee will have an administrative claim on par with other expenses of administration, nor that the maximum percentage of such claim should be paid with every distribution. What it does mean is that chapter 7 trustees can receive no more than 25% of total distribution to be made by the chapter 13 trustee under the chapter 13 plan for the first $5,000 of distributions, and then no more than the other percentages set forth in section 326(a).*"

The court in Hages also concluded that the compensation payable to the former chapter 7 trustee is not impacted by the compensation payable to the chapter 13 trustee. In other words, the requirement of 11 U.S.C. § 326(c) that multiple trustees be compensated at the same rate as a single trustee, is applicable only as to chapter 7 trustees. It does not apply when a chapter 7 trustee is

displaced by a chapter 13 trustee. The Hages court held: "*[I]t is not necessary to hold that conversion from chapter 7 to chapter 13 creates a new bankruptcy case. Rather, section 326(c) applies only where more than one person serves as trustee in the 'case under chapter 7' (or chapter 11, 12 or 13). That is not the present situation, so section 326(c) is inapplicable.*"

This court agrees with the reasoning of Hages. In this case, it is clear from the record that the chapter 7 trustee's efforts would have culminated in a substantial dividend to unsecured creditors. They will still receive that dividend, albeit in the context of a chapter 13 case.

The plan proposes to pay as much as $58,050 to creditors excluding the chapter 13 trustee. The maximum compensation for a chapter 7 trustee permitted by section 326(a) on this amount would be $6,152.50 (25% of $5,000.00, 10% of $45,000 and 5% of $8,050).

11 U.S.C. § 326(a) does not grant the chapter 7 trustee a right to the maximum compensation. It is a cap on his or her compensation. Within that cap, the trustee is entitled only to reasonable compensation. 11 U.S.C. § 326(a) & 330(a)(1)(A); see Matter of Rauch, 110 B.R. 467, 472-73 (Bankr. E.D. Cal. 1990). In Hages, the trustee was not awarded the maximum compensation but was limited to a lodestar award that was beneath the section 326(a) cap.

In this case, the former trustee spent 18.3 hours of time pursing assets for which he requests $5,490 ($300 an hour). Given that the requested compensation is less than the amount permitted by section 326(a), and given that creditors will be paid in full, the court finds the fees requested are reasonable and it awards the lesser amount if $5,490.

13.	13-35475-A-13 DNL-9	JOSE JIMENEZ AND MARIA GONZALEZ	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 1-7-15 [201]

Final Ruling: This compensation 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 debtor, 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. The fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the former chapter 7 trustee.

14.	14-23786-A-13 JSO-2 VS. SYNCHRONY BANK	CHRISTOPHER/MICHELLE AZEVEDO	OBJECTION TO CLAIM 1-8-15 [31]

Final Ruling: The objection will be dismissed without prejudice.

The notice of hearing informs the claimant that written opposition must be

filed and served 14 days prior to the hearing if the claimant wishes to oppose the objection to the proof of claim. Because less than 44 days of notice of the hearing was given, Local Bankruptcy Rule 3007-1(b)(2) specifies that written opposition is unnecessary. Instead, the claimant may appear at the hearing and orally contest the objection. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing the claimant that written opposition was required and was a condition to contesting the objection, the objecting party may have deterred the claimant from appearing. Therefore, notice was materially deficient.