**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**March 10, 2014 at 1:30 p.m.**

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**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 11 (#11 is a chapter 7 motion). 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 APRIL 7, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 24, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 31, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.**

**THERE WILL BE NO HEARING ON THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 12 THROUGH 22. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT WILL 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 MARCH 17, 2014, AT 2:30 P.M.**

***Matters to be Called for Argument***

1. 14-20208-A-13 DEAN/ELLEN VANGILDER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-19-14 [27]

- ☐ 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 and the motion to dismiss the case will be conditionally denied.

The plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors $26,388.39 but Form 22 shows that the debtor will have $36,058.80 over the next five years.

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.

2. 14-20139-A-13 HECTOR/CARMEN ROMO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-20-14 [32]

- ☐ 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 and the motion to dismiss the case will be conditionally denied.

First, the plan misclassifies the secured claim of Chase as a Class 2B claim. Because the debtor proposes to strip off this secured claim from its collateral, it is properly included in Class 2C.

Second, even without any adjustments to the debtor's calculation of projected disposable income, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors $3,703.73 but Form 22 shows that the debtor will have $28,554.60 over the next five years.

Third, the lack of compliance with section 1325(b) becomes more pronounced when the following deductions taken on Form 22 are disallowed:

- the debtor has taken a $517 deduction for the cost of acquiring a vehicle. The debtor is not entitled to the deduction because the debtor has no expense associated with acquiring the vehicle. See Ransom v. MBNA Am. Bank (In re Ransom), 131 S.Ct. 716 (2011).

- the debtor has taken a $156.25 deduction for education expenses of minor children without demonstrating that these expenses are actually incurred by the debtor.

- the debtor has taken a $61 deduction for food and clothing above and beyond what the IRS standards permit without demonstrating both that the expenses are actually incurred and that they are reasonably necessary.

With these deductions eliminated, the debtor must pay no less than $72,609.60 to Class 7 unsecured creditors. Because the plan will pay these creditors nothing, it does not comply with 11 U.S.C. § 1325(b).

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. 14-20145-A-13 HARRY/PATRICIA WRIGLEY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-20-14 [18]

- ☐ 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 and the motion to dismiss the case will be conditionally denied.

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,778 is less than the $1,814.62 in dividends and expenses the plan requires the trustee to pay each month.

Second, to pay the dividends required by the plan and the rate proposed by it will take 78 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, the plan contains contradictory provisions for the treatment of the claim of Security Network. The plan provides both for the surrender of the creditor's collateral, and for its retention by assuming an executory contract for the lease of that collateral. The treatment may be one or the other but not both.

Fourth, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal.

Fifth, the plan fails to provide at section 2.07 for a dividend to be on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

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.

4. 13-32554-A-13 AUDREY LYTLE — MOTION TO WITHDRAW AS ATTORNEY
CAH-5 — 2-24-14 [79]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied without prejudice.

First, the plan has not been confirmed and there are pending objections. Withdrawal at this time without new counsel available to undertake all tasks necessary to the plan's confirmation would be unduly prejudicial to the debtor.

Second, Local Bankruptcy Rule 2002-1© provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the second and third addresses listed above.

5. 13-35558-A-13 WILLIAM/MICHELLE COYA
ADR-1
VS. GM FINANCIAL

MOTION TO
VALUE COLLATERAL
1-3-14 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2006 Chevrolet HHR that secures GM Financial's Class 2 claim. Initially, the motion was based on the debtor's opinion of value, $3,952.

After a preliminary hearing on February 3, the debtor was given leave to file additional evidence. That evidence consists of an appraisal by an expert witness. That witness believes the vehicle as a retail replacement value of $4,303.

GM countered that the value of the vehicle is $7,525 based on a retail evaluation by a commonly used market guide. GM did not come forward with additional evidence in response to the debtor's appraisal.

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

The debtor's appraiser has inspected the vehicle and valued it in accordance with this standard.

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by a commonly used market guide, is $7,525. However, this valuation presumes the condition of the vehicle is such that it could be sold.

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

Accordingly, the valuation motion will be granted and the vehicle valued at $4,303.

6. 14-20262-A-13 ANDRES/DEANNE SUAREZ

ORDER TO
SHOW CAUSE
2-18-14 [16]

- ☐ 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 $70 due on January 13 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

7. 14-20262-A-13 ANDRES/DEANNE SUAREZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-20-14 [18]

- ☐ 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 and the motion to dismiss the case will be conditionally denied.

the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,495 is less than the $1,532.26 in dividends and expenses the plan requires the trustee to pay each month.

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.

8. 13-35774-A-13 CORY MADISON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-19-14 [17]

- ☐ 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 and the motion to dismiss the case will be conditionally denied.

First, because the plan under-estimates the priority claims of the IRS and the FTB by approximately $64,000 in the aggregate, and because these priority

claims must be paid in full as required by 11 U.S.C. § 1322(a)(2), it will take 237 months to pay claims. This exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, assuming the priority tax claims are as stated by the debtor, approximately $24,500, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors $4,091.04 but Form 22 shows that the debtor will have $63,459 over the next five years.

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.

9. 14-20086-A-13 DANETTE PALLADINO — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 2-20-14 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure 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.

the debtor admitted at the meeting of creditors that the debtor failed to file an income tax returns for 2009 and 2010. The returns are delinquent.

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

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors. The debtor has not met the deadline.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has not moved for dismissal. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act

provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

10. 14-20197-A-13 MARIA FLORES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-20-14 [24]

- ☐ 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 and the case will be dismissed.

First, the debtor concealed the debtor's prior to bankruptcy cases filed in 2010 and 2013.

Second, Local Bankruptcy Rule 3015-1(b)(6) provides: "*Documents Required by Trustee*. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist,* or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Third, the debtor is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

11. 12-22496-A-7 WENDY SHAPIRO — MOTION TO AVOID JUDICIAL LIEN
WGS-7 — 2-25-14 [271]
VS. LOANCITY.COM

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied.

The debtor is asking the court to avoid the liens of Loancity and CitiMortgage, as impairing her exemption in a real property, pursuant to 11 U.S.C. § 522(f)

and (h).

The only real property mentioned in the motion is that on Greenwood Court in Roseville, California.

While the motion has been served on Seterus and Federal National Mortgage Association, and the caption of the motion references Seterus, Inc. and Federal National Mortgage Association, the body of the motion makes no reference to these creditors. Accordingly, this ruling has no effect on these parties.

The requirements for lien avoidance under 11 U.S.C. § 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). A creditor who has not timely objected to a claim of exemption may nevertheless challenge the validity of the exemption when defending a lien avoidance motion under section 522(f). Morgan at 152.

11 U.S.C. § 522(h) provides that:

"The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724 (a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer."

The motion will be denied as it has numerous deficiencies.

First, the debtor served and filed this motion on February 25, only 13 days prior to the March 3 hearing on the motion. This violates Local Bankruptcy Rule 9014-1(f)(1)-(3), which requires at least 14 days' notice of the hearing on a motion in the absence of an order shortening time. Local Bankruptcy Rule 9014-1(f)(2), (3). The court has granted no order shortening the time for service of the motion. Local Bankruptcy Rule 9014-1(f)(3). Dockets 271, 272, 274.

Second, while Loancity's agent for service of process - Rick Soukoulis - was served with the motion, he was served at an incorrect address. The zip code where he was served is 95213, whereas his zip code listed with the California Secretary of State is 95123. Docket 274.

Third, the motion is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

While the proof of service for the motion states that a declaration is "to be given at hearing or prior," the debtor was required to submit evidence with the

motion and not sometime after filing the motion. Local Bankruptcy Rule 9014-1(d)(6).

Fourth, the debtor refers to a lien held by CitiMortgage on the subject property. Her latest amendment to Schedule D (Docket 269) lists Citibank as holding a lien against the subject property. Citibank is listed on that Schedule D as holding a mortgage in the amount of $99,541.24 against the property on Greenwood Court. Schedule D makes no mention of CitiMortgage holding a claim secured by the property.

Given this, the motion should have been served on Citibank. The motion was not served on Citibank. See Fed. R. Bankr. P. 7004(h).

Fifth, as the debtor is seeking to avoid liens on real property, the only liens that may be avoided are judicial liens. See 11 U.S.C. § 522(f)(1)(B). But, the court has no evidence that the liens the debtor is seeking to avoid are judicial liens. There is no evidence of judgments entered against the debtor in favor of Loancity and/or CitiMortgage/Citibank and there is no evidence of abstracts of judgment recorded against the subject property.

More, according to the debtor's own Schedule D, the liens held by Loancity and CitiMortgage/Citibank are consensual, meaning that the debtor voluntarily borrowed money from those creditors and granted them security interest in the property for their claims. The debtor's Schedule D references a "HELOC mtg" with respect to the claim held by Citibank and references a "loan refi" and "DOT" with respect to the claim held by Loancity. Docket 269.

To the extent the debtor is disputing the validity of the secured status of the claims held by Loancity and CitiMortgage/Citibank, the court comes to no conclusions. Determining the extent, validity or priority of a claim requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2).

Sixth, the debtor's request to have the liens avoided pursuant to 11 U.S.C. § 522(h) will be denied as well, given that avoidance under section 522(h) can take place only "if - such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724 (a) of this title or recoverable by the trustee under section 553 of this title."

The debtor has not identified the specific transfers she is seeking to avoid under section 522(h) and the court will not speculate as to which transfers she is seeking to avoid.

Seventh, assuming the specific transfers to be avoided are the grant of mortgages or deeds of trust to the respondents, the debtor's contention that she can avoid the transfers under 11 U.S.C. § 544 is without merit.

11 U.S.C. § 544(a) refers to the trustee's strong arm powers and it provides that:

"The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by —

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a

creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists."

The powers under (a)(1) and (a)(2) apply only to credit extended "at the time of the commencement of the case" and the powers under (a)(3) apply only when a bona fide purchaser purchases real property from the debtor.

11 U.S.C. § 544(b) allows a trustee to avoid a transfer voidable under applicable state law by a creditor holding an unsecured claim. The debtor has not mentioned which applicable state law allows her to avoid the her pre-petition mortgages. The court is unaware of any such law.

Whether the debtor is proceeding under section 544(a) or (b), because a mortgage is voluntary, that is, is created with the consent of the borrower, if the borrower later files a chapter 7 case, the borrower may not exercise the trustee's strong arm powers under section 544. In order for a chapter 7 debtor to wield the powers granted by section 544, the debtor must show that the transfer is avoidable under section 544, the trustee has declined to avoid the transfer, and the transfer was not a voluntary transfer. See 11 U.S.C. § 522(g)(1)(A) & (h). Schedule D indicates that the interests of the respondents were voluntary transfers.

Eighth, even assuming proper service of the motion and the debtor's ability and standing to utilize section 544, such relief requires an adversary proceeding.

The motion will be denied.

***FINAL RULINGS BEGIN HERE***

12. 10-39100-A-13 SERGEV NEMOLYAEV AND IRINA SHULGINA — MOTION TO MODIFY PLAN 1-30-14 [137]
PGM-7

**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.

13. 13-33309-A-13 ERROL/THEANA BARKER — MOTION TO VALUE COLLATERAL 2-10-14 [24]
PGM-1
VS. ONEMAIN FINANCIAL, INC.

**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 $200,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Midfirst Bank. The first deed of trust secures a loan with a balance of approximately $328,784 as of the petition date. Therefore, Onemain Financial, Inc'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 $200,000. 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).

14. 13-33309-A-13 ERROL/THEANA BARKER — MOTION TO AVOID JUDICIAL LIEN
PGM-2
VS. MONTE BELLO APARTMENTS, ET AL., — 2-10-14 [29]

**Final Ruling:** This motion to avoid a judicial lien will be dismissed without prejudice.

The debtor moves to avoid a lien on real property used as the debtor's residence. A judgment was entered against the debtor in favor of Montbello Apartments in the approximate amount of $2,377.15.

The property has a value of $200,000. The property is subject to a mortgage in favor of Midfirst Bank which secures a claim of $328,784.

While the motion asserts that the debtor has claimed the property exempt pursuant to Cal. Civ. Proc. Code § 703.140(b), a review of Schedule C reveals that no exemption has been claimed. The formula in section 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." If the debtor has not claimed an exemption, he may not claim an impairment of such an exemption. Accordingly, the motion will be denied without prejudice to again making this motion should an exemption be claimed.

15. 14-20237-A-13 KEVIN KAUFFMAN AND MICHELLE CASTILLO
JPJ-1
OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
2-20-14 [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.

While the objection correctly notes that the proposed plan is not signed by counsel for the debtor, this failure was remedied by the filing of an amended plan (if the amended plan has not been separately filed, it shall be prior to its confirmation). Accordingly, the objection will be overruled and the counter motion to dismiss the case will be denied.

16. 14-20746-A-13 MATTHEW GAGNE
MET-1
VS. ONEMAIN FINANCIAL
MOTION TO VALUE COLLATERAL
2-10-14 [8]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) 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 $6,500 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, $6,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $6,500 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.

17. 08-39354-A-13 RODRIGO JARA
LC-5
VS. UNITED GUARANTY RESIDENTIAL INSURANCE COMPANY OF NORTH CAROLINA

MOTION TO VALUE COLLATERAL
2-4-14 [68]

**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 $230,000 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 $241,039 as of the petition date. Therefore, United Guaranty Residential Insurance Co. of North Carolina'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 $230,000. 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).

18. 11-35662-A-13 THS-7 — PETER/JILL LASSEN — MOTION TO MODIFY PLAN 1-30-14 [115]

**Final Ruling:** The movant has voluntarily dismissed the motion.

19. 13-33375-A-13 — BALVIR SINGH AND NIRMAL KAUR — ORDER TO SHOW CAUSE 2-18-14 [43]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $71 installment when due on February 13. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

20. 13-34794-A-13 CAH-1 — MICHAEL NOUBANI — MOTION TO CONFIRM PLAN 1-27-14 [21]

**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. 13-34296-A-13 CHRISTY NAVARRO
MAC-1
VS. CARRINGTON MORTGAGE, SELECT PORTFOLIO SERVICING

MOTION TO VALUE COLLATERAL
2-3-14 [35]

**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 $270,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Carrington Mortgage. The first deed of trust secures a loan with a balance of approximately $288,201.23 as of the petition date. Therefore, Select Portfolio Servicing'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 $270,000. 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).

22. 13-34296-A-13 CHRISTY NAVARRO — MOTION TO CONFIRM PLAN
MAC-2 — 2-3-14 [39]

**Final Ruling:** The motion will be dismissed without prejudice.

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 only 35 days of notice of the hearing. Therefore, parties in interest received only 21 days notice of the deadline for filing and serving written opposition to the motion. Notice was insufficient.