UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 24, 2014 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 15. 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 21, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 7, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 14, 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 16 THROUGH 16. 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 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 31, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-20502-A-13 NORMAN HORNOS — OBJECTION TO CONFIRMATION OF PLAN
PPR-1 — 3-6-14 [17]
BANK OF AMERICA, N.A. VS.

- ☐ 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 overruled.

The objecting creditor's secured claim is provided for in Class 4. This means the debtor believes the claim was not in default when the case was filed and the plan does not propose to modify the claim. Instead, the debtor will continue making the regular monthly contract installment payment directly to the creditor.

The creditor asserts, however, that the claim was in default when the case was filed. But, it has provided no evidence of such default and it has not even alleged the amount of the default. Nor has it filed a proof of claim. In the absence of such evidence, the court cannot conclude that the plan fails to provide for payment of the claim in full as required by 11 U.S.C. § 1325(a)(5)(B).

Assuming, for sake of argument, that a pre-petition arrearage is owed, confirmation of this plan does not mean the debtor will not be required to pay the arrearage, during or after this bankruptcy case. The plan provides:

2.04. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

2. 14-20503-A-13 PETER/LINE FLEMING — OBJECTION TO CONFIRMATION OF PLAN OR MOTION TO DISMISS CASE
JPJ-1 — 3-6-14 [20]

- ☐ 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.

On the condition the plan is modified as described below, the objection will be overruled and the motion to dismiss the case will be denied.

The objections based on the failure to make a plan payment and to prevail on a valuation motion will be overruled. Plan payments are current and the valuation motion was granted.

Provided the plan payment is increased by $350 for the benefit of Class 7 creditors, the objection based on 11 U.S.C. § 1325(b) will be overruled. This reflects the repayment of the 401k loan 48 months after the commencement of the case and the availability of that loan repayment amount for unsecured creditors.

3. 14-20504-A-13 CANDIUS BURGESS — OBJECTION TO CONFIRMATION OF PLAN
RAS-1
CADLEROCK JOINT VENTURE II, L.P. VS. — 2-21-14 [16]

- ☐ 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 overruled.

The objecting creditor's claim is based on a student loan and it has been reduced to judgment. The court entering the judgment declared it nondischargeable under 11 U.S.C. § 523(a)(8). Nonetheless, in this case, this claim is a nonpriority, unsecured claim. It is entitled no less than what such creditors would receive in a chapter 7 liquidate in addition to a pro rata share of the debtor's projected disposable income over the next five years. See 11 U.S.C. § 1325(a)(4), (b).

The plan proposed by the debtor will pay nonpriority, unsecured creditors nothing. The evidence establishes that these creditors would receive nothing in a chapter 7 liquidation. The plan complies with section 1325(a)(4).

Whether or not the debtor will have projected disposable income is calculated, at least in the first instance, on Form 22. Here, it shows that the debtor has no projected disposable income. Therefore, because there is no evidence that the court should depart from Form 22 because the debtor's financial circumstances have changed materially, the plan also satisfies section 1325(b). The objection assumes surplus monthly net income on Schedules I and J represents projected disposable income. It is not.

To the extent the objecting creditor objects on the ground that the plan proposes to discharge its nondischargeable claim, the objection will be overruled for the simple reason there is nothing in the plan providing for a discharge of the claim in the face of section 523(a)(8) and 11 U.S.C. § 1328(a)(2).

To the extent that the creditor complains that the plan does not provide for interest at the rate of 10% on its claim, the objection will be overruled. The

plan provides for nothing on account of the claim. It is impossible to pay 10% on account of nothing. To the extent the creditor seeks to accrue interest on a nondischargeable claim, the creditor may taken some comfort in applicable case law providing that post-petition interest on a nondischargeable student loan is also nondischargeable. See Great Lakes Higher Educ. Corp. v. Pardee (In re Pardee), 218 B.R. 916, 925 (B.A.P. 9th Cir.1998), *affirmed*, 193 F.3d 1083 (9th Cir. 1999). See also Bruning v. United States, 376 U.S. 358 (1964); Ward v. Board of Equalization of Cal. (In re Artisan Woodworkers), 204 F.3d 888 (9th Cir. 2000).

To the extent the creditor is demanding payment of that interest in this case, its demand is rejected. It may accrue but 11 U.S.C. § 1322(b)(2) does not permit its payment unless all allowed claims will be paid in full. As noted above, the plan does not propose to pay unsecured claims in full.

To the extent the creditor is complaining that proposing a plan that does not pay its claim, in whole or in part, is bad faith in violation of 11 U.S.C. § 1325(a)(3), the objection will be overruled. This objection appears to have two prongs.

First, Schedule J shows that the debtor has monthly net income of $635 and it is being contributed to the plan. At any rate, as noted above, what a debtor is required to pay unsecured creditors is dictated by section 1325(a)(4) and section 1325(b). This plan complies with both.

Second, the creditor complains that the debtor is providing for payment of claims secured by two luxury automobiles through the plan and it is these claims that are consuming the debtor's monthly net income.

To the extent the creditor objects that this plan is proposed in bad faith because the debtor is paying nothing to unsecured creditors while paying claims secured by "luxury" autos, the objection will be overruled. See 11 U.S.C. § 1325(a)(3). The calculation of "disposable income" under the BAPCPA requires debtors to subtract their payments to secured creditors from their current monthly income. Given the very detailed means test that Congress adopted in BAPCPA, the bankruptcy court cannot limit the permitted deductions under "the guise of interpreting 'good faith.'" See In re Welsh, 711 F.3d 1120, 1135 (9th Cir. 2013).

And, the plan proposes to surrender one of the vehicles. The debtor is retaining one, which was purchased used, and the debtor is using the chapter 13 to reduce the interest rate payable on the claim. Because the car was purchased less than 910 days prior to the filing of the case, the debtor cannot "strip down" the claim to the value of the car.

Finally, the objection to the plan's duration will be overruled. The debtor is not proposing to cure the objecting creditor's claim over an unreasonable period of time. It is not paying it at all. It makes no sense to claim about the length of a cure when there is no cure. The creditor's actual complaint is that the plan does not pay its claim and as stated above this does not violate the requirements of chapter 13. Also, because the debtor is an over-median-income debtor, she must propose a five year plan. See Danielson v. Flores (In re Flores), 2013 WL 4566428 (Aug. 29, 2013).

4. 13-35625-A-13 MICHAEL REED
CA-1
VS. GOLDEN VALLEY MORTGAGE AND REALTY SERVICES/TRI VALLEY INVESTMENT FUND, L.L.C.

MOTION TO VALUE COLLATERAL
2-10-14 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. There is a conflict in the evidence concerning value. The parties shall produce their experts witnesses for an evidentiary hearing on March 31 at 2:30 p.m.

5. 14-20626-A-13 OLUSOLA/ADEPEJU GEORGE
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN OR MOTION TO DISMISS CASE
3-6-14 [20]

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

Second, 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.

Third, the debtor has failed to accurately complete Form 22. The debtor has taken the following impermissible deductions from current monthly income:

- the debtor has historically over-withheld monthly for annual income taxes. This has permitted the debtor to claim a large refund but it also has artificially current monthly income by an average of approximately $1,180 a

month.

- the debtor has deducted $517, the allowed IRS standard for acquiring a vehicle, and also deducted a payment of $265 on an auto loan. The latter must be deducted from the former.

- the debtor has taken a $340 deduction for education expenses of children without demonstrating that these expenses are actually incurred by the debtor. Further, three of the four children are over the age of 18. Therefore, the maximum deduction is $156.25

- the debtor has taken a $600 deduction for health care expenses without demonstrating both that the expenses are actually incurred and that they are reasonably necessary. Further, this amount exceeds the $400 budgeted on Schedule J. The trustee objects to the difference without documentation of the additional $200.

With these deductions eliminated, the debtor must pay between $52,665 (with no adjustment to the income tax deduction) and $116,296 (with an adjustment to the monthly income tax deduction of $1,180) and to Class 7 unsecured creditors. Because the plan will pay these creditors $7,792, 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.

6. 14-22227-A-13 VERA DAVYDENKO — MOTION FOR RELIEF FROM AUTOMATIC STAY
HSM-1 — 3-10-14 [11]
LISA MOLLISON VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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 subject property has a value of $700,000 and it is encumbered by claims totaling approximately $1,298,022. There is no equity in it.

Further, there is no evidence that the property is necessary to this reorganization. In fact, not only has the debtor not filed any schedules and statements within the time required by the bankruptcy rules, no plan has been

proposed.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

7. 10-51430-A-13 AARON HASTINGS — OBJECTION TO TRUSTEE'S MOTION TO DISMISS CASE 2-5-14 [271]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. The parties shall confer prior to the hearing to attempt to reconcile the dispute concerning the amount necessary to pay the dividends required by the plan as opposed to the remaining plan payments to be made under the terms of the confirmed plan. This matter will be heard at the end of the calendar.

8. 10-51430-A-13 AARON HASTINGS — MOTION TO SET ASIDE DISMISSAL OF CASE 2-28-14 [279]
AEH-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. The parties shall confer prior to the hearing to attempt to reconcile the dispute concerning the amount necessary to pay the dividends required by the plan as opposed to the remaining plan payments to be made under the terms of the confirmed plan. This matter will be heard at the end of the calendar.

9. 10-53134-A-13 LYUBOV GERGI — MOTION TO VALUE COLLATERAL 3-5-14 [43]
CA-2
VS. CHASE HOME FINANCE, L.L.C.

- ☐ 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 $130,000 as of the date the petition was filed. It is encumbered by a first

deed of trust held by One West Bank, FSB IndyMac Federal Bank. The first deed of trust secures a loan with a balance of approximately $136,000 as of the petition date. Therefore, Chase Home Finance, LLC'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 $130,000. 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. 13-31135-A-13 JOSIE TORRES
PPR-1

MOTION FOR ALLOWANCE OF LATE FILING OF CLAIM
3-6-14 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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 denied.

11 U.S.C. § 502(b)(9) requires that a creditor file a proof of claim if the creditor wishes to participate in distributions pursuant to a chapter 13 plan. The failure to file a timely proof of claim is a ground for disallowance.

The confirmed plan, which was served on the creditors contained the following provision: "**2.01.** With the exception of the payments required by sections 2.02, 2.03, 2.11, and 3.01, a claim will not be paid pursuant to this plan unless a timely proof of claim is filed by or on behalf of a creditor, including a secured creditor."

Fed. R. Bankr. P. 3002(c) prescribes the time limit for filing a proof of claim. A creditor must file one not later than 90 days after the date first set for the section 341(a) meeting. This was December 26, 2013. The creditor claims to have failed to file a proof of claim one day beyond this deadline.

In fact, no proof of claim has been filed.

But even if one were filed on December 27, the motion would be denied.

The bar date for claims set by Fed. R. Bankr. P. 3002(c) cannot be extended to permit the creditors to file a belated proof of claim. First, Rule 3002(c) contains six exceptions to the requirement that a timely proof of claim be filed. None of those exceptions are applicable here. Second, Fed. R. Bankr. P. 9006(b)(3) specifically precludes enlargement of the time for creditors to file proofs of claim except to the extent provided in Rule 3002(c). Rule 3002(c) provides no basis for an extension in this case.

The applicability of Rule 3002(c) and not Fed. R. Bankr. P. 3003(c)(3) to this

case, and the wording of Rule 9006(b)(3) prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditors. Pioneer involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 13 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the deadline even when excusable neglect is present.

11. 14-20540-A-13 JOHN/CYNTHIA MARTIN — OBJECTION TO CONFIRMATION OF PLAN OR MOTION TO DISMISS CASE
JPJ-1 — 3-6-14 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

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

Second, the 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 $89,709 but Form 22 shows that the debtor will have $95,084 over the next five years.

The feasibility based on the debtor's -$400 in business income will be

overruled. The debtor has filed a detailed statement of that income and the related expenses, and the debtor's employment income more than compensates for this minor loss.

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.

12. 13-32945-A-13 CARISSA BUCHMEIER — MOTION TO WITHDRAW AS ATTORNEY
CAH-1 — 3-7-14 [33]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. Appearances required. The court wants some indication as to the nature of the conflict between attorney and client.

13. 13-34049-A-13 CHRISTINE HAYMAN — MOTION TO SET ASIDE
12-23-13 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The hearing on this motion was continued from January 27, when the court set a further briefing schedule. Docket 44.

Creditor Lorraine Reich seeks reconsideration of the court's ruling on a valuation motion that concerns the collateral for her claims. She also seeks leave to file a late objection to the confirmation of the plan.

Ms. Reich holds two claims, both in junior position, secured by two deeds of trust on the debtor's residence. Although the court has not entered an order on the debtor's valuation motion, it has issued a December 16, 2013 ruling that determines the motion must be granted. This means that Ms. Reich's claims will be treated as unsecured claims because the senior lien secures more than the property is worth. Docket 25.

As the court noted at the January 27, 2014 ruling on Ms. Reich's plan confirmation objection:

"This objection is untimely. It was filed well after the deadline set pursuant to Local Bankruptcy Rule 3015-1(c)(4). This rule requires that objections be filed and served no later than 7 days after the meeting of creditors. The meeting was on December 5 and the objection was filed on January 6. Nonetheless, if there is good cause to reconsider a related valuation motion and to grant a retroactive extension of time to file an objection, the court will set a briefing schedule."

Docket 45.

The court first turns to whether there are grounds for reconsidering its ruling

on the valuation motion and for allowing Ms. Reich to file late objections to the debtor's valuation and plan confirmation motions.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances." Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

Fed. R. Bankr. P. 9006(b)(1) provides: "Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) *on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect*."

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the debtor; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

Preliminarily, this motion was brought timely. It was filed on December 23, 2013, only seven days after the court ruled on the debtor's valuation motion.

But, Ms. Reich has not convinced the court that it should reconsider its ruling on the valuation motion. There is no cause to excuse her failure to file a timely response to the debtor's motion to value the collateral for her claims.

This case was filed on October 31, 2013 and the debtor's plan was filed on the same date. On November 14, 2013, the debtor filed a motion to value and strip off Ms. Reich's claims. Docket 14. That motion was served on Ms. Reich properly on November 13, 2013, at: "Lorraine Reich Atty at Law 254 Colfax Ave Grass Valley CA 95945." Docket 18. This is the same address identified on the instant motion filed by Ms. Reich. Docket 27.

First, while Ms. Reich does not dispute receiving and reading at some

unspecified point in time the valuation motion, she argues that there was lack of due process or sufficient notice. The court disagrees.

Ms. Reich argues that although she received the motion, its form violated the "'Revised Guidelines for the Preparation of Documents' for the U.S. Bankruptcy Court Eastern District in the following particulars: Pursuant to (1) Legibility (a) all documents are to be prepared on 'one side of sheet only.' Debtors form of motion was two sheets reduced to single sheets of paper. Pursuant to (1) Legibility (b) printing on the document 'shall be no smaller than 12 point type set no more than an average of 10 characters per inch.' Debtors form of notice was printed with very small, possibly .8 type, and certainly more than 10 characters per inch. Pursuant to (1) Legibility (e) the language in the body of documents 'shall be double spaced.' Debtor's said Notice of Debtors' Motion to Value Collateral Motion was single spaced."

The court rejects Ms. Reich's invocation of the Revised Guidelines for the Preparation of Documents. The Guidelines apply only to the format of motions and other original documents filed with the court. The first paragraph of the Guidelines provides:

"These guidelines supplement the general requirements of form set forth in Local Bankruptcy Rule (LBR) 9004-1(a) and apply whether the document is submitted for filing in electronic or paper form."

REVISED GUIDELINES FOR THE PREPARATION OF DOCUMENTS at 1, U.S. Bank. Ct. East. Dist. of Cal. (Revised January 17, 2014), http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-901.pdf (Emphasis added).

The Guidelines then are intended to govern only the form of pleadings "for filing" with the court. They do not govern the form of documents that are served.

The Guidelines narrative refers three times to the documents to which the Guidelines apply as documents that "must be filed" or "be presented to the Court." The Guidelines also require that the title of every document identifies "the filing party," implying that the Guidelines are concerned only with the format of papers filed with the court.

The final paragraph of the Guidelines makes it clear that the Guidelines pertain only to the filing of documents with the court. That paragraph states: "The Clerk's Office will conform and return one copy of a document to the filing party, if a copy is provided. The copy will be returned by mail only when a self-addressed, stamped envelope of sufficient size is provided." In other words, the Guidelines govern only what is submitted to the court; they do not apply to the form of documents that are served.

The reason for this is simple. Documents are converted to electronic format by the clerk. The Guidelines insure that the electronic version of the documents will be viewable on a computer.

Thus, to the extent the valuation motion served on Ms. Reich did not comply with the Guidelines, this is not cause for allowing her to file a late opposition to that motion.

Ms. Reich further complains that the motion was not "sealed" as required by the Bankruptcy Rules and as represented by the proof of service for the valuation motion because the "motion documents were simply folded and bound together by a

single staple." Docket 18.

But, she does not identify which rule requires that motion must be "sealed" and does not even explain what "sealed" means. Docket 33 at 2-3. She also does not explain how the motion served on her should have been sealed. The court will not speculate about what Ms. Reich means by this argument.

The court also fails to understand why folding and stapling the valuation motion deprived Ms. Reich of due process.

Ms. Reich received adequate notice of the valuation motion.

The notice of hearing (or of motion, as titled) for the valuation motion (Docket 15) was served on Ms. Reich on November 13, 2013. Docket 18. That notice states: "If you do not want the court to issue an order valuing the collateral of the second and third deeds of trust held by Lorraine Reich, and if you want the court to consider your views on the motion, then on or before fourteen days prior to the hearing scheduled above, you or your attorney must file with the court a written response or answer explaining your position and appear at the hearing on said motion." Docket 15.

The notice also states that "the hearing [is] scheduled to be held on Decmber [*sic*] 16, 2013 at 1:30 p.m. in Department A, Courtroom 28, United States Bankruptcy Court, 501 I Street, Seventh Floor, Sacramento, California.

"If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief."

Docket 15.

The foregoing language complies with Local Bankruptcy Rule 9014-1(f)(1), pursuant to which the valuation motion was filed. Ms. Reich then had clear explanation about what would happen in the event she failed to file a timely response to the motion.

Ms. Reich does not assert that the valuation motion was served late, at an incorrect address, was incomplete or illegible, or was received too late for her to file timely opposition.

Conversely, Ms. Reich admits to receiving the valuation motion but reading it "carefully" only after the deadline for responses had passed. "It was not until [she] returned to [her] office following the accident where [she] broke [her] wrist that [she] discovered and carefully read the small printed motion papers sent by debtor's attorney . . . [she] was able to talk with Attorney Barry Spitzer who said [she] was too late to do anything." Docket 32 at 8.

This does not rise to the level of inadequate notice or a failure to accord her due process. Ms. Reich's characterization of the form of the valuation motion as "unusual" does not take away from the fact that she timely received the valuation motion, including notice of the deadline to object to the motion.

Ms. Reich received sufficient due process, in both time and form, of the valuation motion.

Second, the court rejects Ms. Reich's characterization of the form of the valuation motion as "unusual".

She complains of the service of the motion "[b]ecause of the unusual form and because she had never been served in such manner during 30 + years of legal practice." Docket 33 at 3. "The said motion documents were simply folded and bound together by a single staple." Docket 33 at 3.

While Ms. Reich uses her legal experience of over 30 years to bolster her claim that the form of the motion was "unusual", her legal experience has not been in bankruptcy court. Ms. Reich is a family law practitioner. What may be "unusual" for her is quite usual for many bankruptcy practitioners, as many such practitioners serve motions and other documents in this form and manner.

Fed. R. Bankr. P. 7004 provides that service may be made by first class mail. Motions in bankruptcy are regularly served in condensed format - smaller font characters, with the papers folded and stapled - given the numerous creditors and times law and motion matters must be served in the course of a bankruptcy proceeding. There was nothing unusual as to the form in which the motion was served on Ms. Reich.

More, Ms. Reich does not assert that she was not able to read or understand the motion because of the "unusual form" in which she received them.

Third, Ms. Reich cites extenuating circumstances for her discovering the deadline for objecting to the valuation motion late. Such circumstances included, according to her, a power outage, "breaking her wrist, the death of former domestic [partner], and significant construction occurring at her business office." Docket 33 at 3.

The record does not indicate that Ms. Reich failed to timely object to the valuation motion and to the confirmation of the plan because of her office construction, her breaking her wrist, the passing of her former domestic partner, or a power outage.

Rather, she failed to request extension or file an objection because she was not aware of the deadline and did not become aware of it until after the deadline had expired. She did not read the motion, or read it carefully, until it was too late for her to file a timely response. Ms. Reich admits to this. "By the time [Ms. Reich] discovered the gravity and seriousness of debtor's motion the time lines for response were passed." Docket 33 at 3.

Hence, the construction, the broken wrist, the passing of her former domestic partner, and the power outage did not lead to her default on the valuation motion. It was her failure to read her mail thoroughly and timely.

The court is not persuaded that the extenuating circumstances enumerated by Ms. Reich prevented her from reading her legal mail thoroughly and timely. They are not cause, excusable neglect or other basis under Rule 60(b), warranting leave to file a late objection to the valuation motion or reconsideration of the court's ruling on that motion.

As to Ms. Reich breaking her right wrist, she says that it happened the day after Thanksgiving 2013, *i.e.*, November 22, 2013. She complains that this has resulted in her being unable to type because of the pain.

However, the valuation motion was served on Ms. Reich on November 13, 2013, at least seven days prior to when most people would have stopped working to enjoy the Thanksgiving holiday. Thanksgiving was Thursday, November 21, 2013.

This means that Ms. Reich should have received the valuation motion at least by

the Monday before Thanksgiving, November 18, 2013. Ms. Reich then had received the valuation motion at least five days before breaking her wrist. Also, she broke her wrist 10 days before the response to the valuation motion was due, December 2, 2013. The hearing set for the motion was on December 16 and opposition was due 14 days prior that hearing. Local Bankruptcy Rule 9014-1(f)(1); Docket 15.

Consequently, despite breaking her wrist on November 22, 2013, Ms. Reich had sufficient time to read her mail, including the valuation motion, and do something to avert her default.

Ms. Reich could have called the debtor's counsel to request an extension and/or filed a request for an extension with the court, but Ms. Reich did neither.

As to the passing of Ms. Reich's former domestic partner, the analysis is similar. He passed away on October 29, 2013, over one month before a response to the valuation motion was due. Although the court is sympathetic that Ms. Reich lost someone so close to her, his passing also fails to explain her failure to read her mail thoroughly and timely.

As to the construction, it was outside and not inside her office, and it did not prevent her from working and reading her mail. At an unspecified time "earlier in the year" 2013, she found out that there was a broken sewer line just outside her office building. Docket 32 at 7. The "construction of her office" included "parts of her front yard, sidewalk and Street." Docket 33 at 5. She says she was searching for a contractor to do the work in September and October 2013. The work was performed from November 6 through November 18, 2013. Docket 32 at 7.

Moreover, there are no allegations that the construction prevented Ms. Reich from practicing law, including attending court hearings, making telephone calls to clients and counsel, filing other papers in court, keeping appointments, etc.

And, even if the construction had been interfering with Ms. Reich's legal practice, it was completed on or about November 18, right about the time when Ms. Reich would have received and should have read the valuation motion.

As to the power outage, it happened on November 20, 2013 and it lasted only "for several hours that day and night." Docket 32 at 7. She initially thought it was an electrical problem that required an electrician, prompting her to hire one. This apparently resulted in the electrician "absorb[ing]" some unspecified time from her. Docket 59 at 7.

While the above shows that Ms. Reich may have been quite busy in November 2013, it does not explain her failure to read her legal mail. The court is not convinced that the circumstances described by Ms. Reich warrant relief under Rule 60(b), reconsidering or setting aside the court's ruling on the valuation motion and allowing her to file late objection to that motion. There was no mistake, inadvertence, surprise or excusable neglect.

Overall, Ms. Reich has offered no excusable reason for her neglect. And, it must be emphasized that the Ms. Reich is an attorney with a litigation practice. She understands the need to file timely opposition and the need to request extensions when that is not possible. At a minimum, Ms. Reich knew a former client with whom she had a fee dispute and who still owed her a significant sum of money, had filed bankruptcy. Why this did not prompt her to scrutinize her mail promptly and to protect her interests in a time manner is a

mystery not satisfactorily explained. And, it is a mystery that cannot be described as excusable.

The court is persuaded that there was neglect by Ms. Reich in not filing a timely response to the valuation motion. But, the court is not convinced that such neglect was excusable, warranting Rule 60(b) relief.

Given that Ms. Reich had received sufficient notice and had reasonable opportunity to file a timely response, the court is not convinced that Ms. Reich acted in good faith. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224-25 (9th Cir. 1999). (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

Fourth, Ms. Reich invokes Rule 60(b)(3), which allows the court "to set aside or reconsider an order or a judgment for . . . fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party."

"Judgments obtained through fraud, misrepresentation or other misconduct should be vacated, by use of Rule 60(b) of the Federal Rules of Civil Procedure. That rule is remedial and should be liberally construed. Where perjury has played some part in influencing the court or jury to render a judgment, the effect of the perjury will not be weighed on a motion to set aside the judgment."

"[I]t would appear that, in respect to fraud and misrepresentation at least, the 'clear and convincing evidence' criteria is applicable."

"Such a motion for relief is directed to the sound discretion of the trial court, and particularly to the discretion of the trial judge who 'presided in the litigation in which the judgment (now alleged as fraudulent) was entered.'"

"Discretion is peculiarly and properly left in the trial court in matters of this kind. Not only must there be clear and convincing evidence of fraud, but it must be such a [*sic*] prevented the losing party from fully and fairly presenting his case or defense."

Atchinson, Toreka and Santa Fe Railway Co. V. Barrett, 246 F.2d 846, 849 (9th Cir. 1957) (citations omitted).

"[T]o justify setting aside a decree for fraud whether extrinsic or intrinsic, it must appear that the fraud charged really prevented the party complaining from making a full and fair defense. If it does not so appear, then proof of the ultimate fact, to wit, that the decree was obtained by fraud fails."

Toledo Scale Co. V. Computing Scale Co., 261 U.S. 399, 421 (1923).

In other words, the fraud required by Rule 60(b) must have prevented Ms. Reich from timely responding to the valuation motion.

Ms. Reich argues that the debtor committed fraud by failing to list assets in the bankruptcy schedules and misrepresenting the value of scheduled assets, including personal property items, as well as the subject real property.

However, even assuming Ms. Reich is correct and the debtor has committed the alleged fraud, Ms. Reich does not explain how such fraud prevented her from "making a full and fair defense" to the valuation motion. It was not fraud on the part of the debtor that prevented Ms. Reich from filing a timely response

to the valuation motion. It was her admitted failure to read the valuation motion carefully and timely that prevented and caused her not to file a timely response to the motion.

"It was not until I returned to my office following the accident where I broke my wrist that I discovered and carefully read the small printed motion papers sent by debtor's attorney . . . I was able to talk with Attorney Barry Spitzer who said I was too late to do anything." Docket 32 at 8.

Hence, the fraud alleged by Ms. Reich is inconsequential to the court's decision of whether to reconsider its ruling on the valuation motion and allow her to file a late objection. While these assertions of fraud may be relevant in the context of other motions or proceedings, they are not material in this motion.

Fifth, Ms. Reich also seeks leave to file a late objection to the debtor's plan confirmation.

As the court is denying Ms. Reich's request under Rule 60(b) for reconsideration of the ruling on the valuation motion and allowing her to file a late objection to that motion, the court will deny leave to file a late objection to plan confirmation. Docket 45.

Once again, as noted in the court's January 27 ruling on Ms. Reich's plan confirmation objection:

"This objection is untimely. It was filed well after the deadline set pursuant to Local Bankruptcy Rule 3015-1(c)(4). This rule requires that objections be filed and served no later than 7 days after the meeting of creditors. The meeting was on December 5 and the objection was filed on January 6. Nonetheless, if there is good cause to reconsider a related valuation motion and to grant a retroactive extension of time to file an objection, the court will set a briefing schedule."

Ms. Reich was served with the proposed plan by the court with notice that the deadline to file objections to its confirmation was December 12, 2013. This service and notice was accomplished when the plan and the notice of the commencement of the case (which included notice of the deadline for objections and the confirmation hearing) were served by the clerk on November 7, 2013. See Docket 9, 11, and 12. Yet, despite this proper notice, Ms. Reich failed to file a timely objection to confirmation or obtain an extension of time to do so.

It bears mention that the plan indicates that Ms. Reich's $20,000 in claims will be treated in Class 2C. That is, her secured claims would be paid nothing because the real property securing them had no value above and beyond the amount owed to a senior lien holder. Thus, even before the valuation motion was served, she receive notice that her claims would be stripped by the application of 11 U.S.C. § 506(a) once the debtor filed and served a valuation motion.

The motion will be denied in its entirety.

Sixth, the court rejects Ms. Reich's contention that she was not timely served with the opposition to her motion. She complains that even though the opposition was due February 18 and the debtor mailed them to her on February 18, Ms. Reich did not receive them until February 20.

In short, Ms. Reich contends that service was required by the date the documents were filed. This is not the case. See Fed. R. Bankr. P. 7004(b)(1), 9013, 9014. Service sufficient under the Bankruptcy Rules takes place when documents are mailed. While Ms. Reich is correct that February 18 was the deadline for the debtor to file her response to this motion, and service of the opposition was required to be made no later than February 18, the debtor both filed and mailed the opposition on February 18. Dockets 44 & 56. This was timely service.

However, the debtor's proof of service for her opposition to this motion contains an error that should be corrected. Docket 56. The proof of service states that the opposition was served on Ms. Reich on January 18, 2014. This is an obvious error because the February 18 deadline for the opposition was not established until January 27. Docket 44. The court assumes the date of service was February 18. If this assumption is incorrect counsel for the debtor shall inform the court at the hearing. If correct, counsel shall file an amended proof of service no later than March 26, 2014.

14. 13-34049-A-13 CHRISTINE HAYMAN — OBJECTION TO CONFIRMATION OF PLAN
LORRAINE A. REICH VS. — 1-6-14 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be dismissed as untimely. The court adopts and incorporates by reference its ruling of the objecting creditor's motion to file a late objection to a related valuation motion.

15. 14-20467-A-13 LEONARD TUMATH AND ALBERT LARA-TUMATH — OBJECTION TO CONFIRMATION OF PLAN OR MOTION TO DISMISS CASE
JPJ-1 — 3-6-14 [16]

- ☐ 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.

Because secured and priority claims are materially higher than assumed by the debtor, paying the dividends required by the plan at the rate proposed by it, will take 91 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

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.

FINAL RULINGS BEGIN HERE

16. 13-24612-A-13 JOHN WAGNER AND DAWNA FONGER-WAGNER — OBJECTION TO CLAIM
JPJ-2
VS. SALLIE MAE
2-6-14 [23]

Final Ruling: This objection to the proof of claim of Sallie Mae has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was September 30, 2013 (assuming the claimant is a governmental entity, an assumption that favors the claimant). The proof of claim was filed on January 14, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

17. 13-27814-A-13 THOMAS/MARY VASQUEZ — OBJECTION TO CLAIM
JPJ-2
VS. CITIBANK, N.A.
2-6-14 [39]

Final Ruling: This objection to the proof of claim of Citibank has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was October 9, 2013. The proof of claim was filed on October 14, 2013. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

18. 14-21215-A-13 WILLIAM/CHERIE WALDEAR — MOTION TO VALUE COLLATERAL
DEF-1
VS. PNC BANK, N.A.
2-21-14 [11]

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 $160,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by PNC Bank, N.A. The first deed of trust secures a loan with a balance of approximately $211,289.96 as of the petition date. Therefore, PNC Bank, N.A.'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 $160,000. 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).

19. 13-33621-A-13 ALLEN MEDINA — MOTION TO CONFIRM PLAN
RAS-2 — 2-6-14 [35]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the moving party has failed to establish that the motion was served on all necessary parties in interest.

20. 09-34932-A-13 DONALD/JEANNINE WHITTEN — OBJECTION TO CLAIM
JPJ-1 — 2-6-14 [43]
VS. VANDA, L.L.C.

Final Ruling: This objection to the proof of claim of Vanda, 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.

The objection will be sustained. The last date to file a timely proof of claim was November 25, 2009. The proof of claim was filed on December 2, 2009. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

21. 11-49432-A-13 CLEVELAND BELLARD
SDB-2

MOTION TO MODIFY PLAN
2-10-14 [47]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

22. 13-35655-A-13 ROBERT/LOUISE FORD
SDB-2

MOTION TO CONFIRM PLAN
2-4-14 [22]

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.

23. 13-35655-A-13 ROBERT/LOUISE FORD
SDB-1

COUNTER MOTION TO DISMISS CASE
2-4-14 [30]

Final Ruling: The counter motion will be denied and the case will remain pending. The counter motion was filed in connection with the debtor's original plan which has been superceded by a modified plan to which there was no objection. There is no cause for dismissal.

24. 13-27063-A-13 MARK/ROXANE JOHNSON
SDB-2

MOTION TO MODIFY PLAN
2-7-14 [39]

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.

25. 09-41776-A-13 DENSON/STEPHANIE SALES — MOTION TO MODIFY PLAN 2-6-14 [70]
SOL-4

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

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for future plan payments at the rate of $1,000, and to delete section 60.03 of the Additional Provisions. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

26. 10-32594-A-13 PORFIRIO/DOLORES DIAZ — MOTION TO MODIFY PLAN 2-13-14 [43]
LKM-1

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.