UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 28, 2016 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 23. 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 MAY 2, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 18, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 25, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 24 THROUGH 39 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON APRIL 4, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-21203-A-13 RAYMOND/CHRISTINE BELCHER — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 — 3-14-16 [9]

- ☐ 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 debtors have now filed three chapter 13 cases. The first, 11-29448, was filed on April 15, 2011 and was dismissed on October 1, 2012. It was dismissed because the debtors failed to make all plan payments required by their confirmed plan.

The second case, 13-20501, was filed on January 15, 2013 and was dismissed on December 2, 2015 because the debtors failed to make all plan payments required by their confirmed plan.

The current case was filed on February 29, 2016. Because one of the two prior cases was dismissed within one year of the filing of the current case, 11 U.S.C. § 362(c)(3)(A) applicable. It provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

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

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

Here, it appears that the debtor was unable to maintain plan payments in the two prior cases. Comparing their financial situation in the most recent prior

case suggests very little has changed concerning their ability to successfully reorganize. In Case No. 13-20501, the debtors reported monthly household income of $8,116.86, total expenses of $3,552.86, leaving them with $4,564 a month to finance a plan.

In this case, the debtors now have less monthly household income, $7,900.26, more monthly expenses, $3,884, and less monthly net income with which to fund a plan, $4,016.

Given this record, the court is unable to conclude that this case is likely to succeed any more than the prior two cases.

2. 15-28604-A-13 ANN-MARIE SCOTT — MOTION TO CONFIRM PLAN
RS-2 — 2-15-16 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection will be overruled on the condition that the orders granting this motion and an earlier motion to value the collateral of Beneficial California are lodged within 14 days. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

3. 16-20207-A-13 ANTHONY BASURTO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-7-16 [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 granted and the case will be dismissed.

First, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the

duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, statements, and the proposed plan. Each of these documents is largely blank. This is a breach of the duty imposed by 11 U.S.C. §§ 521(a)(1) and 1321 to truthfully list all required financial information in the bankruptcy documents and to propose a plan. To attempt to confirm an incomplete plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Fifth, the debtor has failed to commence making plan payments and has not paid approximately $100 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

4. 16-20407-A-13 NICOLE JACKSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-9-16 [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.

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 $5,728.11 to unsecured creditors.

While this is consistent with Form 22, as Schedule I makes clear, the debtor's monthly income has increased significantly since the case was filed. Before

the case was filed, the debtor's current monthly income was $7,500. However, Hamilton v. Lanning, 130 S.Ct 2464 (2010) permits the trustee to rebut the presumption that the amount of projected disposable income is as stated in Form 22. As reported on Schedules I and J, the debtor's household income is now $10,322.14. Using current income rather than the average for six pre-petition months, the debtor's monthly projected disposable income increases significantly. It will be enough to pay $85,930.80 to nonpriority unsecured creditors. Because the plan will these creditors only $5,728.11, the plan 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.

5. 15-29408-A-13 ROCKY/CYNTHIA WAGNER — MOTION TO CONFIRM PLAN
DBJ-2 — 2-8-16 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

The debtor's home consists of two parcels, one on which the home structure sits and a second contiguous larger parcel on which the well for the home is located. Both parcels were purchased together and they are not separated by a fence. No farming or other commercial enterprise is conducted on the well parcel although horses belonging to friends of the debtor are boarded on that parcel.

The debtor encumbered both parcels with two loans, one held by McCord, the senior lien and the other held by Simmons, the junior lien.

As to the McCord secured claim, the plan proposes to pay it in Class 4. By the terms of the plan, Class 4 is reserved for secured claims that are not in default, will not mature during the duration of the plan, and will not be modified by the plan. The McCord claim matures in approximately 4 years, before the last payment will fall due under the terms of the proposed 5-year plan. Under the terms of the McCord claim and the proposed plan, the debtor will pay accruing interest and approximately $100 of principal each month. When the claim matures in 4 years, $119,000 in principal is due.

The plan must make provision for payment in full of the McCord claim because the debtor is retaining the collateral for the claim. See 11 U.S.C. § 1325(a)(5)(B). The Bankruptcy Code permits a debtor to maintain contract installment payments under the terms of a loan only when the loan matures after the completion of the plan. See 11 U.S.C. § 1322(b)(5). Thus, this claim is more appropriately classified in Class 2.

But whether the claim is in Class 2 or 4, the plan must make provision of the payment of $119,000 to McCord. It does not and so it does not comply with section 1325(a)(5)(B).

The treatment of the secured claim of Simmons also cannot be permitted consistent with 11 U.S.C. § 1322(b)(2) which prevents modification of loans secured only by the debtor's residence. Instead, the debtor is limited to curing any default while maintaining note payments to the creditor (the Simmons claim will mature after the last payment under the plan). See 11 U.S.C. § 1322(b)(3) & (5).

The plan proposes to value the home at $140,000 and, after deducting senior McCord claim of $119,000, reduce Simmons' $70,000 to a $21,000 secured claim and a $49,000 unsecured claim. This is accomplished by valuing the home pursuant to 11 U.S.C. § 506(a) and "stripping" the claim down to the net value of the property.

However, in Nobelman v. American Savings Bank, 508 U.S. 324 (1993), the Supreme Court concluded that section 506(a) could not be used to bifurcate a home loan into its secured and under-secured components because 11 U.S.C. § 1322(b)(2) forbade modification of home loans. It is only when a junior home loan is completely out of the money that a home loan can stripped off the property and deemed an unsecured claim. See In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The fact that the debtor's home includes two parcels does not prevent the application of the anti-modification provision in section 1322(b)(2). Both parcels are used together as the debtor's home. The court would not prevent the debtor from claiming a homestead exemption in both parcels because both are used as integral parts of the debtor's residence. And, in this context, the debtor cannot pretend one parcel is not part of the residence simply because the home structure does not sit on it.

Finally, the debtor has failed to make $389 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

6. 15-29408-A-13 ROCKY/CYNTHIA WAGNER — MOTION TO VALUE COLLATERAL
DBJ-3
VS. GEORGE SIMMONS — 2-25-16 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

The motion seeks to value a residence in order to strip down a junior secured claim into a secured component equal to the value of the property less the senior McCord claim, and into an unsecured component equal to the gross claim amount less the portion allowed as a secured claim). However, as noted in the ruling on the debtor's motion to confirm a plan, no purpose would be served by valuing the residence because 11 U.S.C. § 1322(b)(2) prevents the debtor from bifurcating the Simmons claim into its secured and unsecured components.

7. 16-20433-A-13 LEWIS/SHEILA WALKER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-7-16 [12]

- ☐ 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.

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 and denial of confirmation.

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. 14-31743-A-13 MICHAEL LINN-KIDWELL — MOTION TO CONVERT OR DISMISS CASE
JPJ-2 — 2-26-16 [36]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

The debtor has failed to pay to the trustee approximately $9,600 as required by the proposed plan. As noted in the motion, this is not the first time the debtor has failed to make timely plan payments. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal or conversion, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1). Given the substantial nonexempt equity in assets, conversion rather than dismissal would be in their best interests.

9. 16-20449-A-13 PREM CHANDRA — ORDER TO SHOW CAUSE 3-10-16 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor filed amended schedules in order to add additional creditors. This triggered a $30 filing fee pursuant to 28 U.S.C. § 1930(b). It was not paid when the amended schedules were filed nor has it been paid since the issuance of the order to show cause. The court also notes that the debtor failed to appear at the meeting of creditors on March 17. This is cause for dismissal.

10. 16-20556-A-13 JOSEPH/LISA TARANGO — OBJECTION TO CONFIRMATION OF PLAN 3-10-16 [21]
EGS-1
BAYVIEW LOAN SERVICING, L.L.C. 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 sustained in part but the request for dismissal is denied. Such a request must be noticed to all parties in interest.

The fact that the automatic stay has expired pursuant to 11 U.S.C. § 362(c)(3) is irrelevant to confirmation. Once a plan is confirmed, the creditor and the debtor are bound to comply with that plan. See 11 U.S.C. § 1327(a). Hence, if the plan provides for the maintenance of payments and the cure of the arrears, the creditor is precluded from enforcing its claim against its collateral.

The plan provides for the objecting creditor's claim in Class 1. This means that the plan will cure the pre-petition arrearage while maintaining the monthly contract installment. The plan explicitly provides that the claim is not modified in any way. This treatment satisfies the requirements of 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B). The fact that the plan may erroneously understate the amount of the contract installment payment by $15.02 is not important because the installment demanded by the creditor, not the amount stated in the plan, will be paid. See Chapter 13 Plan at § 2.04.

However, the discrepancy between the arrears demanded by the creditor and estimated in the plan is so large that the dividend amount to be paid to the creditor will not retire the amount of the arrears. Therefore, the plan does not comply with 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B).

11. 16-20556-A-13 JOSEPH/LISA TARANGO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-7-16 [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 in part and the motion to dismiss the case will be conditionally denied.

The objection concerning the valuation of the collateral of Chase will be overruled. The valuation motion was granted at a hearing on March 21.

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 nothing to unsecured creditors.

While this is consistent with Form 22, as Schedule I makes clear, the debtor's monthly income has increased significantly since the case was filed. Before the case was filed, the debtor's current monthly income was $2,418.39. However, Hamilton v. Lanning, 130 S.Ct 2464 (2010) permits the trustee to rebut the presumption that the amount of projected disposable income is as stated in Form 22. As reported on Schedules I and J, the debtor's household income is now $7,366.67.

The problem is even more significant than this indicates because the debtor has not accurately completed Form 22. The debtor has taken an impermissible deduction from current monthly income for a $293.58 voluntary pension contribution. This is disposable income; the debtor may not make those contributions and deduct them from the debtor's current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

As a result, the debtor has monthly projected disposable income of $1,462.26. If paid to unsecured creditors, they would share a total of $87,735.60 over the life of the plan. Because the plan will pay nothing to these creditors, 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.

12. 16-20058-A-13 RICHARD ANG
MAC-1
VS. DITECH AND BANK OF AMERICA, N.A.

MOTION TO VALUE COLLATERAL
3-11-16 [26]

- ☐ 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 $90,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ditech. The first deed of trust secures a loan with a balance of approximately $120,000 as of the petition date. Therefore, Bank of America's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a

contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $90,000. 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).

13. 16-20461-A-13 ARLENE THIGPEN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-7-16 [14]

- ☐ 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 failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also

is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, the debtor has failed to commence making plan payments and has not paid approximately $3,875 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

14. 16-20265-A-13 VICTOR HALTOM — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-7-16 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained and the case will be dismissed.

The debtor is an attorney represented by an experienced bankruptcy attorney.

The debtor is not eligible for chapter 13 relief. According to Schedule D, the debtor has noncontingent, liquidated secured debt of $1,165,847. This total does not include all of the Caliber claim of $766,943. It reduces the claim from $766,943 to $746,457 to account for the scheduled value of the real property securing the claim, $746,457. This results in Caliber having a bifurcated claim of $746,457 secured, and $20,486 unsecured.

After this deduction, the debtor's secured debt is $1,165,847, which exceeds the $1,149,525 maximum permitted by 11 U.S.C. § 109(e).

The debtor attempts to sidestep this result by arguing that the value of the property securing the Caliber claim is $700,000, not $746,457. However, eligibility for chapter 13 relief under section 109(e) is based on the original schedules as filed by the debtor. See In re Scovis, 249 F.3d 975, 983 (9th Cir. 2001). In Scovis, the Ninth Circuit held: "[T]he bankruptcy court should normally look to the petition to determine *the amount of debt* owed, checking only to see that the schedules were made in good faith." Id. at 982 (emphasis added).

Quite frankly, it is difficult to understand, and the court does not believe, that it is unfair to conclude that a debtor who is an attorney, and is represented by a bankruptcy attorney, does not understand the significance of signing schedules under penalty of perjury. The schedules will be relied on by the court to determine eligibility and the debtor is not eligible for chapter 13 relief.

Even if the court were inclined to determine eligibility based on evidence not in the schedules, such as the opinion of value from Coldwell Banker, it would not reach a different conclusion because the evidence offered is inadmissible. The Coldwell Banker opinion is unauthenticated and is inadmissible hearsay.

Further, the reliance on an opinion from Zillow.com also is inadmissible. It is hearsay. See Fed. R. Evid. 801. While Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the values reported by this Internet site meets this criteria. The court doubts that such a foundation

could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are not compilations made admissible by Fed. R. Evid. 803(17). Id.

Also, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

15. 16-20673-A-13 JPJ-1 — GLENN GILKERSON AND THEALISE WAGER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 3-7-16 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, 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).

Second, 11 U.S.C. § 1322(a)(2) requires that priority tax claims be paid in full. The plan proposes to pay tax claims in part and then pay the remainder after the completion of the plan. This does not comply with section 1322(a)(2) at least in the absence of an agreement from the governmental entity owed the taxes. There is no evidence of such an agreement.

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.

16. 16-20375-A-13 MICHAEL/MARIE YVETTE DEGUZMAN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-7-16 [15]

- ☐ 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.

The debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

17. 16-20375-A-13 MICHAEL/MARIE YVETTE DEGUZMAN
WFM-1
BANK OF AMERICA, N.A. VS.

OBJECTION TO CONFIRMATION OF PLAN
3-10-16 [18]

- ☐ 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 in part.

The plan provides for the objecting creditor's claim in Class 1. This means that the plan will cure the pre-petition arrearage while maintaining the monthly contract installment. The plan explicitly provides that the claim is not modified in any way. This treatment satisfies the requirements of 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B). The fact that the plan may erroneously understate the amount of the contract installment payment by $15.02 is not important because the installment demanded by the creditor, not the amount stated in the plan, will be paid. See Chapter 13 Plan at § 2.04.

However, the dividend amount to be paid to the creditor will not retire the amount of the arrears as claimed by it. Therefore, the plan does not comply with 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B).

Further, the arrearage dividend starts at $100 a month and then increases to $532.07. This violates 11 U.S.C. § 1325(a)(5)(B)(iii)(I). This problem may be avoided by providing no dividend during the period administrative claims are paid and then providing an equal installment until the arrearage claim is paid.

18. 16-20477-A-13 ROBIN DIMICELI — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 3-9-16 [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 sustained.

First, because the plan fails to specify how debtor's counsel's fees will be approved, either pursuant to Local Bankruptcy Rule 2016-1 or by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, but nonetheless requires the trustee to pay counsel a monthly dividend on account of such fees, in effect the plan requires payment of fees even though the court has not approved them. This violates sections 329 and 330.

Second, 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).

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $10,000 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $3,794.14 to unsecured creditors.

19. 16-20477-A-13 ROBIN DIMICELI — OBJECTION TO CONFIRMATION OF PLAN
AP-1 — 3-10-16 [19]
ROUNDPOINT MORTGAGE SERVICING CORP. 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 objection asserts that because the plan does not provide for the objecting

creditor's secured claim, it may not be confirmed.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

20. 16-20577-A-13 JPJ-1 — AL PANGELINAN AND ROBERTA RUCH — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 3-7-16 [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 in part and the motion to dismiss the case will be conditionally denied.

The objection concerning the value of the collateral held by Franklin Financial Corporation has been resolved. That motion was granted. This objection, then, is moot.

However, 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.

21. 16-21385-A-13 WILFREDO/FE ONA — MOTION TO EXTEND AUTOMATIC STAY
SDB-1 — 3-8-16 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case, Case No. 10-46452, was dismissed within one year of the most recent petition.

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

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

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

under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

Here, it appears that the debtor was unable to maintain her plan payments in the first case due to a job loss. The debtor is now re-employed. This is a sufficient change in circumstances rebut the presumption of bad faith.

22. 16-20590-A-13 DANIEL/MEGHAN MILLER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-7-16 [14]

- ☐ 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 debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor omitted the codebtor's income from Schedule I and failed to list their year to date income of the Statement of Financial Affairs. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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.

23. 15-29196-A-13 CHARLES BARNARD — MOTION TO VALUE COLLATERAL
EWV-87 — 2-12-16 [43]
VS. MERCEDES-BENZ FIN'L SVCS USA, L.L.C.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The debtor's value is rejected and the creditor's value is adopted by the court.

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2010 Mercedes Benz E350 that secures Mercedes-Benz Financial Services' Class 2 claim. While the debtor has opined that the vehicle has a value of $14,988, this is based only on the

debtor's opinion and the Kelley Blue Book's private party value. The debtor's record notes that vehicle is in good condition but has paint damage on a bumper.

The creditor counters that the value of the vehicle is $19,950 based on a retail evaluation by the NADA Guides.

To the extent the objection urges the court to reject the debtor's opinion of value because the debtor's opinion is not admissible, the court instead rejects the objection. As the owner of the vehicle, the debtor is entitled to express an opinion as to the vehicle's value. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Any opinion of value by the owner must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

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).

For this reason, the court will not consider the private party value urged by the debtor.

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 $19,450. Such valuations usually presume the condition of the vehicle is excellent. However, in this instance, the creditor's value includes a $500 deduction for the cost to repaint the bumper.

The debtor has not proven to the court's satisfaction the replacement value of the vehicle. On the other hand, the creditor's value is based on a retail valuation that takes into account the condition of the vehicle.

The court determines the value to be $19,450.

THE FINAL RULINGS BEGIN HERE

24. 15-25105-A-13 FLORA NANCA — MOTION TO APPROVE LOAN MODIFICATION
PGM-3 — 2-29-16 [70]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) 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 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 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 debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

25. 15-25708-A-13 CHARLES/FRANCES SALERNO — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
GW-1 — 2-26-16 [21]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion seeks approval of $5,160 in fees and $310 in costs incurred primarily for services related to the filing of the case and the confirmation of a plan. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Counsel received a $2,310 retainer before the case was filed and the retainer has been supplemented by a further $503.70 derived from payments by the trustee pursuant to the confirmed plan. Therefore, the balance not paid by the retainer is $2,656.30. Any retainer remaining on hand may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan.

26. 12-31122-A-13 WILLIE JOHNSON AND MARY KNIGHT-JOHNSON — MOTION TO MODIFY PLAN
PGM-6 — 2-19-16 [103]

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.

27. 15-23228-A-13 EDORENO/MARY GONZALES — OBJECTION TO CLAIM
JPJ-2
VS. CAVALRY SPV I, L.L.C. — 1-26-16 [39]

Final Ruling: This objection to the proof of claim of Cavalry SPV I, 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on December 29, 2008. Therefore, using this date as the date of breach, when the case was filed on April 20, 2015, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

28. 15-23228-A-13 EDORENO/MARY GONZALES — OBJECTION TO CLAIM
JPJ-3
VS. CAVALRY SPV II, L.L.C. — 1-26-16 [43]

Final Ruling: This objection to the proof of claim of Cavalry SPV I, 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This

statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on December 11, 2008. Therefore, using this date as the date of breach, when the case was filed on April 20, 2015, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

29. 15-23228-A-13 EDORENO/MARY GONZALES — OBJECTION TO CLAIM
JPJ-4
CAVALRY SPV I, L.L.C. — 1-26-16 [47]

Final Ruling: This objection to the proof of claim of Cavalry SPV I, 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on February 20, 2009. Therefore, using this date as the date of breach, when the case was filed on August 7, 2015, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

30. 10-46344-A-13 HENRY/FLORENCE KALEMERA — MOTION TO AVOID JUDICIAL LIEN
RHM-14
VS. CHASE BANK USA, N.A. — 2-18-16 [192]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $97,000 as of the date of the petition. The unavoidable liens total $279,179.55. The debtor has an available exemption of $22,075. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its

fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

31. 16-20750-A-13 MARCOS EVANGELISTA — MOTION TO VALUE COLLATERAL
MRL-1
VS. CITIBANK, N.A. — 2-23-16 [12]

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 the Navy Federal Credit Union. The first deed of trust secures a loan with a balance of approximately $311,957 as of the petition date. Therefore, Citibank'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).

32. 15-21053-A-13 MATTHEW/MAYRA SPINKS — MOTION TO SELL
PGM-3 — 2-25-16 [53]

Final Ruling: This motion to sell property has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) 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 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 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 to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

33. 15-27061-A-13 GILDARVO VIGIL — MOTION TO CONFIRM PLAN
JPJ-1 — 2-9-16 [50]

Final Ruling: The motion will be dismissed without prejudice.

The motion was not noticed for hearing correctly. Local Bankruptcy Rule 3015-1(c)(3) and (d)(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.

There are two problems with the notice of the hearing in this case.

First, the debtor gave only 28 days of notice of the hearing. Therefore, parties in interest received only 14 days notice of the deadline for filing and serving written opposition to the motion. Twenty-eight days of notice of both the hearing and any deadline for written opposition must be given in order to comply with Fed. R. Bankr. P. 2002(b). Because Local Bankruptcy Rule 9014-1(f)(1) requires written opposition be filed 14 days prior to the hearing, 42 days' notice of the hearing must be given in order to give 28 days' notice of the deadline for written opposition. The amount of notice was insufficient.

Second, the notice of the hearing incorrectly informed parties in interest they could appear at the hearing and raise any objections orally. This does not comply with Local Bankruptcy Rules 3015-1(c)(3) and (d)(1) and 9014-1(f)(1)(B). Opposition must be filed 14 days prior to the hearing.

34. 15-28963-A-13 AARON/LASHAUN TURNER — MOTION TO CONFIRM PLAN 2-11-16 [32]
TJW-1

Final Ruling: The motion will be dismissed without prejudice.

First, there is a problem with the service of this motion. Local Bankruptcy Rule 2002-1(c) 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, according to the certificate of service, the motion was not served at the second and third addresses listed above.

Second, the motion was not noticed for hearing correctly. 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 the requisite days of notice of the hearing but failed to inform parties in interest in the notice of the hearing that written opposition had to be filed 14 days prior to the hearing. In fact, the notice informed them that they could appear at the hearing and raise any objections orally. This does not comply with Local Bankruptcy Rules 3015-1 and 9014-1(f)(1)(B). Therefore, notice was insufficient.

35. 10-46568-A-13 JAMES/TERRY BALDWIN — MOTION TO REOPEN CASE
LLL-18 — 2-22-16 [291]

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.

Although set for hearing, Local Bankruptcy Rule 5010-1(a) provides that no hearing shall be set on motions to reopen a case. Instead, unless ordered otherwise, such motions will be considered on an ex parte basis. This is permitted because merely reopening a case gives no affirmative relief to the debtor or anyone else.

According to the motion, the debtor wishes to reopen the case in order to comply with Local Bankruptcy Rule 5009-1 and to receive a chapter 13 discharge.

The debtor's ex parte motion to reopen this chapter 13 case will be granted pursuant to 11 U.S.C. § 350(b), Fed. R. Bankr. P. 5010, and Local Bankruptcy Rule 5010-1(c). The fee for reopening the case, if not already paid, shall be paid within 14 days of the hearing. If not paid, the case shall remain closed. The debtor also shall comply with Local Bankruptcy Rule 5009-1, if the debtor has not already done so, within 14 days of the date of the hearing. If this is not done, the case will be closed again without the issuance of a discharge.

Upon compliance with the requirements of Local Bankruptcy Rule 5009-1, the clerk will enter the debtor's chapter 13 discharge at such time as the debtor is otherwise eligible for a discharge.

36. 16-20577-A-13 AL PANGELINAN AND ROBERTA RUCH — MOTION TO VALUE COLLATERAL
CAH-1 — 2-26-16 [11]
VS. 1ST FRANKLIN FINANCIAL CORP.

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 $305,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Specialized Loan Servicing. The first deed of trust secures a loan with a balance of approximately $319,493 as of the petition date. Therefore, 1st Franklin Financial Corp.'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 $305,000. 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).

37. 16-20588-A-13 DEREK/DONNA HUNTER — OBJECTION TO CONFIRMATION OF PLAN
MDE-1
TOYOTA MOTOR CREDIT CORP. VS. — 2-25-16 [13]

Final Ruling: The objection will be dismissed without prejudice.

A review of the docket reveals that the debtor filed a timely chapter 13 plan and that the trustee caused that plan to be served on all parties in interest, including the objecting creditor, with the notice of the commencement of the case. Parties in interest were informed that the deadline to object to the confirmation of the plan was March 10 and that they would be considered at a hearing on March 28.

In the event of an objection was filed, the objecting party must comply with Local Bankruptcy Rule 3015-1(c)(4) which provides:

"Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). The objection shall be set for hearing on the confirmation hearing date and time designated in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines. The objection shall comply with LBR 9014-1(a)-(e), (f)(2), and (g)-(l), including the requirement for a Docket Control Number on all documents relating to the objection. The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary. Absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing."

This objection was not noticed for hearing consist with Local Bankruptcy Rule 3015-1(c)(4) because the notice of the hearing was pursuant to Local Bankruptcy Rule 9014-1(f)(1) rather than Local Bankruptcy Rule 9014-1(f)(2). Under (f)(1), the debtor is required to file a written response to the objection 14 days prior to the hearing; under (f)(2), no written response is required.

Thus, the objecting creditor inappropriately required the debtor to respond in writing even though the court's procedure requires no written response.

38. 15-28798-A-13 DARREN/SANDRA STOWES — MOTION TO CONFIRM PLAN
TJW-1 — 2-29-16 [34]

Final Ruling: The motion will be dismissed without prejudice.

The motion was not noticed for hearing correctly. Local Bankruptcy Rule 3015-1(c)(3) and (d)(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.

There are two problems with the notice of the hearing in this case.

First, the debtor gave only 28 days of notice of the hearing. Therefore, parties in interest received only 14 days notice of the deadline for filing and serving written opposition to the motion. Twenty-eight days of notice of both the hearing and any deadline for written opposition must be given in order to comply with Fed. R. Bankr. P. 2002(b). Because Local Bankruptcy Rule 9014-1(f)(1) requires written opposition be filed 14 days prior to the hearing, 42 days' notice of the hearing must be given in order to give 28 days' notice of the deadline for written opposition. The amount of notice was insufficient.

Second, the notice of the hearing apparently attempted to sidestep this problem by informing respondents that no written opposition was required. Instead, they could raise objections orally at the hearing. However, Local Bankruptcy Rule 3015-1(c)(3) and (d)(1) requires notice pursuant to Local Bankruptcy Rule 9014-1(f)(1) which requires written opposition 14 days prior to the hearing.

39. 15-28798-A-13 DARREN/SANDRA STOWES — OBJECTION TO CONFIRMATION OF PLAN
PPR-1
WELLS FARGO BANK, N.A. VS. — 3-7-16 [39]

Final Ruling: The objection will be dismissed. If this is an objection to confirmation of the modified plan, the objection should have been filed as opposition to the motion to confirm that plan. Because it was not and instead filed as an independent objection, it appears it was filed in connection with the original plan.

Whichever plan the creditor is attempting to object to, the objection is moot. The original plan was denied confirmation at a hearing on January 11 and the modified plan was dismissed because the confirmation motion was not noticed

correctly.