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

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**April 14, 2014 at 1:30 p.m.**

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

**THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 13. 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 MAY 12, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 28, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 5, 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 14 THROUGH 19. 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 APRIL 21, 2014, AT 2:30 P.M.**

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

1. 14-22808-A-13 MARY GILL — MOTION TO EXTEND AUTOMATIC STAY
MRL-1 — 3-25-14 [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 was dismissed on March 13, 2014 because the debtor to maintain her plan payments. Hence, the debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

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

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

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

Here, it appears that the debtor was unable to maintain her plan payments in the first case due a decrease in her spouse's business income. His income is projected to a restored to the point that slightly higher monthly plan payments can be made by the debtor feasibly. This is a sufficient change in circumstances rebut the presumption of bad faith.

2. 13-20315-A-13 DOLORES FERNANDEZ — MOTION TO MODIFY PLAN
PGM-2 — 3-6-14 [40]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the objection will be overruled on the condition that the plan is further modified to provide for the surrender of the class 1 secured claim should its holder elect not to agree to a modification of its rights. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

3. 13-35625-A-13 MICHAEL REED — MOTION FOR RELIEF FROM AUTOMATIC STAY
JDM-1 — 3-28-14 [41]
TRAVIS CREDIT UNION 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 pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. The plan classifies the movant's claim as a Class 4 secured claim. It requires the debtor to make direct installment payments to the movant according to the terms of the underlying contract. The claim is not impaired in any respect by the plan.

The motion establishes that when the plan was filed, the debtor had failed to make two monthly pre-petition installments to movant, and has failed to make three post-petition installment payments. Even though the plan has not been confirmed, it requires the debtor to make preconfirmation payments to the movant. See Plan section 2.11.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

4. 14-21352-A-13 GIANNE/RUBY-ROSE APURADO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-25-14 [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.

First, the plan will not be feasible in the first 12 months as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,300 is less than the $2,643 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan fails to state the arrears on the class 1 secured claim of Seterus. Therefore, it cannot be demonstrated that the plan will pay that arrearage in full as required by 11 U.S.C. § 1325(a)(5)(B).

Third, 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.

Fourth, the debtor has failed to make $2,300 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).

Fifth, 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 nothing but Form 22 shows that the debtor will have $40,369.80 over the next five years.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

5. 14-21565-A-13 DAVID/TERESA GRANADOS — MOTION TO VALUE COLLATERAL
TOG-1 — 3-12-14 [15]
VS. JPMORGAN CHASE BANK, N.A.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** None.

The respondent creditor's request for a continuance so that it might have the subject property appraised will be granted. The continued hearing date as well as the briefing schedule will be set at the hearing.

6. 09-38868-A-13 FRANCISCO/JENNIFER NEGRETE — MOTION TO MODIFY PLAN
EJS-5 — 3-10-14 [73]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the objection will be overruled on the conditions (1) the $30 plan payment default is cured prior to April 7, (2) the order confirming the plan recites that the plan payment will be $650 from March 2014 through August 2014, and (3) the order confirming the plan recites the interest rate on the Class 2 claim of VW will remain at 8%. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

7. 13-34069-A-13 KAREN MCCORD — MOTION TO CONFIRM PLAN
RAC-3 — 12-20-13 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor is single and reports net monthly income of $10,511.41 which is derived from employment and rents on two rental properties. The debtor supports a disabled adult grandson and helps support two other grandchildren, the parents of whom are unemployed. The adult grandson pays to the debtor his SSI benefit of $840.

The debtor's budget includes expenses for food, clothing, health care, and transportation that are approximately $647 higher than she reported six months earlier to the objecting creditor in connection with an application to modify a home loan. The creditor asserts that the additional expenses are either not actual expenses or are unnecessary. To the extent they are actual expenses and are incurred in connection with the care of the brother and grandchildren, the creditor argues that the debtor should not be permitted to deduct these expenses in the calculation of projected disposable income payable to unsecured creditors because the debtor is under no legal obligation to support the grandchildren and the brother. See 11 U.S.C. § 1325(b).

The debtor also helps support a disabled brother, primarily by allowing him to occupy one of the two rental properties owned by the debtor. From his social

security income, the brother pays less than half of the fair rental value of the property. The creditor asserts that this represents a manipulation of the debtor's income – the debtor is not renting the property at its full rental value in order to artificially reduce her current monthly income for purposes of section 1325(b). To the extent this arrangement represents the debtor's payment of support to her brother, it represents an expense that is unnecessary because the debtor has no legal obligation to support her brother.

The creditor also questions two other expenses in the debtor's monthly budget: a $500 charitable contribution; and a $337.85 payment on account of a retirement loan. The creditor maintains that the $500 contribution was not reported to it in connection with the loan modification and asserts that it is not in keeping with the debtor's prior charitable giving. As to the repayment of the retirement loan, the creditor believes it should be treated like all other "unsecured" debt.

By virtue of these expenses, the debtor has no projected disposable income on Form 22. If there were such income, it would be due to holders of unsecured claims, like the objecting creditor. The creditor maintains that with the rental property leased at its fair rental and with all of the above expenses eliminated, the debtor could pay $143,060 to her unsecured creditors over 5 years. The plan proposes to pay nothing to unsecured creditors.

Because the debtor's income exceeds the median income of a like-sized California household, the debtor's projected disposable income is calculated on Form 22. See 11 U.S.C. § 1325(b)(3). That form, after calculating current monthly income based on the income actually received by the debtor in the 6 months prior to bankruptcy, permits the debtor to deduct living and business expenses as limited by 11 U.S.C. § 707(b)(2).

As to the support of the debtor's grandchildren and the subsidy given to the brother by discounting his rent, the objection that such expenses cannot be deducted will be overruled. Section 707(b)(2)(A)(ii)(II) permits a debtor to deduct reasonable and necessary actual expenses paid for the care and support of an "elderly, chronically ill, or disabled . . . member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor . . . who is unable to pay such reasonable and necessary expenses."

However, while such expenses are deductible, the debtor has not produced to the satisfaction of the court, documentation and corroboration of the amount of these expenses, their necessity, the duration these expenses are likely to persist, and of the grandchildren's and the brother's financial inability to pay these expenses themselves. In large part, the evidence offered to corroborate these expenses are inadmissible. The evidentiary objections to this evidence are sustained. Therefore, this aspect of the objection to the confirmation of the plan will be sustained.

The objection to the debtor's deduction from income of a CALPERS retirement expense of $337.85 will be sustained. The additional evidence provided by the debtor establishes that the election to pay this amount is revocable, and it represents the repayment of previously withdrawn retirement contributions. The debtor, then, is deducting voluntary pension contributions. 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).

Finally, as to the charitable contribution, the objection will be overruled in part. Continued charitable contributions [as defined by 26 U.S.C. § 170(c)] up to 15% of gross income to a qualified religious or charitable entity or organization [as defined by 26 U.S.C. § 731(c)(2)(C)] may be deducted under the means test from current monthly income. See 11 U.S.C. § 707(b)(1). The $500 easily falls within this benchmark. However, like the expenses allegedly paid for family members, the debtor has not proven to the satisfaction of the court that these contributions have been and are being actually made. The debtor has established only that she is making approximately $120 a month in contributions, not $500. The difference will be disallowed.

To the extent the creditor may be objecting that this plan is proposed in bad faith because the debtor earns a relatively high income but is paying nothing to creditors while paying for rental properties and supporting extended family members, the objection will be overruled. See 11 U.S.C. § 1325(a)(3). Provided the expenses can be documented, the debtor is entitled to deduct them when calculating projected disposable income. 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).

8. 13-34069-A-13 KAREN MCCORD — OBJECTION TO CONFIRMATION OF PLAN
PCJ-1
SOLANO FIRST FEDERAL CREDIT UNION VS. — 12-12-13 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained in part to the extent and for the reasons explained in the ruling on the motion to confirm the plan, RAC-3. That ruling is incorporated by reference.

9. 14-20380-A-13 MILDRED PITTMAN — ORDER TO SHOW CAUSE 3-24-14 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $70 due on March 17 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

10. 10-48784-A-13 WILFREDO/FLORENCE MAGTOTO — MOTION TO VALUE COLLATERAL
CA-2
VS. BANK OF AMERICA, N.A. — 3-31-14 [55]

- ☐ 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 $253,500 as of the date the petition was filed. It is encumbered by a first deed of trust held by Chase Home Finance, LLC. The first deed of trust secures a loan with a balance of approximately $448,627 as of the petition date. Therefore, Bank of America, N.A.'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 $253,500. 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).

11. 14-21485-A-13 DOROTHY BROOKINS — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMO-1 — 3-31-14 [17]
MAX-Y CO., L.P. 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.

To the extent the motion is based on the assertion that the debtor filed an earlier case that was dismissed within one year of the current case, the motion will be denied. According to the petition in this case, the early case was not filed by the debtor and her signature on that petition is a forgery. Because the signatures on the two petitions appear to be different and because the record filed in connection with this motion includes no convincing evidence to the contrary, the court will grant no relief under 11 U.S.C. § 362(c)(3) & (j).

However, the motion will be granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of $150,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of approximately $165,000 held by the

movant as well as involuntary tax liens of approximately $128,000. There is no equity and there is no evidence that the subject real property is necessary to a reorganization. And, as to the likelihood of reorganization, the court notes that the debtor filed two chapter 13 cases in 2008 and 2012, both of which were dismissed without the debtor confirming and completing a plan. There is no evidence that this case is likely to be more successful that the prior two attempts at confirmation.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

12. 14-21485-A-13 DOROTHY BROOKINS — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMO-2 — 3-31-14 [23]
MAX-Y CO., L.P. 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.

To the extent the motion is based on the assertion that the debtor filed an earlier case that was dismissed within one year of the current case, the motion will be denied. According to the petition in this case, the early case was not filed by the debtor and her signature on that petition is a forgery. Because the signatures on the two petitions appear to be different and because the record filed in connection with this motion includes no convincing evidence to the contrary, the court will grant no relief under 11 U.S.C. § 362(c)(3) & (j).

However, the motion will be granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of $150,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of approximately $168,000 held by the movant as well as involuntary tax liens of approximately $128,000. There is no equity and there is no evidence that the subject real property is necessary to a reorganization. And, as to the likelihood of reorganization, the court notes that the debtor filed two chapter 13 cases in 2008 and 2012, both of which were dismissed without the debtor confirming and completing a plan. There is no evidence that this case is likely to be more successful that the prior two

attempts at confirmation.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

13. 14-21494-A-13 YUSUF LEWIS — ORDER TO SHOW CAUSE 3-25-14 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $70 due on March 20 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

***THE FINAL RULINGS BEGIN HERE***

14. 14-21214-A-13 KEVIN/SUSAN BENNETT — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-26-14 [16]

**Final Ruling:** The trustee has voluntarily dismissed the objection as well as the related counter motion to dismiss the case.

15. 14-22323-A-13 DONALD/RAELEIN HAMBLEN — MOTION TO VALUE COLLATERAL
MMM-1 — 3-10-14 [8]
VS. GOLDEN ONE CREDIT UNION

**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 $202,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage LLC. The first deed of trust secures a loan with a balance of approximately $258,932 as of the petition date. Therefore, Golden One Credit Union'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 $202,000. 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).

16. 14-21238-A-13 ANTHONY HOLLOWAY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-25-14 [18]

**Final Ruling:** The trustee has voluntarily dismissed the objection and the counter motion to dismiss the case.

17. 14-22555-A-13 MELANIO/ELLEN VALDELLON — MOTION TO VALUE COLLATERAL
SJS-1 — 3-14-14 [10]
VS. HFCA BANK, N.A.

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See

Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $301,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ocwen Loan Servicing, LLC. The first deed of trust secures a loan with a balance of approximately $309,088.86 as of the petition date. Therefore, HFCA Bank, N.A.'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 $301,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

18. 14-21173-A-13 GLENN/THERESE HOLLAND — OBJECTION TO EXEMPTIONS
JPJ-1 — 3-17-14 [15]

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

While the trustee's objection appears to have merit, after the objection was filed, the debtor amended the debtor's exemptions. Therefore, to the extent their may be an objection to the amended exemptions, the trustee and any other party in interest may object to the amended exemptions within the time required by Fed. R. Bankr. P. 4003(b).

19. 14-20174-A-13 TRANG PHAN — MOTION TO CONFIRM PLAN
AVN-1 — 3-1-14 [19]

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

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 the IRS was not served at any of these addressed.