UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 21, 2014 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 10. 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 19, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL MAY 5, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 12, 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 11 THROUGH 25. 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 28, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 13-35915-A-13 SAMUEL/LISA DOLAN — MOTION TO CONFIRM PLAN
RWH-1 — 2-28-14 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because during the first 21 months of the plan, the monthly plan payment of $2,516 is less than the $2,590.74 in dividends and expenses the plan requires the trustee to pay each month.

2. 10-23022-A-13 RAYMOND/ESTHER ESCALANTE — OBJECTION TO CLAIM AND TO NOTICE OF MORTGAGE PAYMENT CHANGE
WW-9
VS. THE BANK OF NEW YORK MELLON — 12-26-13 [98]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objections will be sustained in part.

The claimant holds a first prior deed of trust encumbering the debtor's residence. When the case was filed, the debtor had failed to make monthly payments to the claimant for the period October 2009 through February 2010. This chapter 13 case was filed on February 9, 2010. The note provides for a variable interest rate.

The claimant filed a proof of claim on February 18, 2010. It demands $8,609.19 for the five missed monthly installments, as wells $310.88 in late charges, $28.50 in inspection fees and $1,035.34 in an escrow shortage. The proof of claim also indicates that the principal and interest monthly installment, which was subject to fluctuation due to the variable interest rate, was $1,324.27. Inasmuch as the insurance for the dwelling is paid by the debtor, the escrow shortage relates only to real property taxes.

On June 11, 2013, the claimant filed a notice that the mortgage payment would change effective July 2013. The principal and interest component of the installment would be $1,022.15 and escrow impound would be $625.45, for a total of $1,647.58.

The debtor objects to the original proof of claim because it overstates the escrow arrears. The claimant has included the escrow shortage in its arrearage demand for the period October 2009 through February 2010 as well as a separate line item in its claim. And, regardless of how it is calculated in the proof of claim it is overstated.

The principal and interest component of the October 2009 installment was $972.03, for November 2009 through January 2010 it was $904.22, and for February 2010 it was $927.02. Subtracting these amounts (a total of $4,611.71) from the $8,609.19 in monthly installments demanded by the claimant in its proof of claim yields $3,997.48 for escrow impounds.

In 2010 (the record does not include the amount for 2009) the debtor's property taxes were $3,734.79. If collected over 12 months, this would make the escrow impound approximately $311.23 a month. Hence, during the five month period before bankruptcy, the failure make the monthly installment should have resulted in an arrearage of $4,611.71, principal and interest, and $1,556.15 for escrow impounds, a total of $6,167.86. Thus, included in the pre-petition arrearage is $2,441.33 for past due escrow impounds. When this is added to the separately claimed escrow shortage of $1,035.34, the proof of claim demands $3,476.67 for escrow shortages.

However, the claimant sent to the debtor on February 1, 2010, an escrow analysis [Exhibit B] indicating that the escrow shortage was a total of $1,080.35. This is suspiciously close to the $1,035.34, escrow shortage demanded separately in the proof of claim. Therefore, whether the $3,476.67 hidden in the demand for the delinquent monthly installments is a duplicate demand for an escrow shortage or something else, the claim will be reduced by $3,476.67. To the extent the claimant may have been paid more than this amount, if it will not voluntarily refund it to the debtor, the debtor and/or the trustee must file an adversary proceeding. See Fed. R. Bankr. P. 7001.

The objection to the notice of a change in the mortgage payment is likewise sustained in part. The claimant is and has been demanding an amount, now approximately $625.43 a month, for ongoing real property taxes. Annualized, this is $7,505.16. Yet, the debtor's taxes for the four years of the chapter 13 case have been $3,748.79 in 2010, $3,911.57 in 2011, $3,765.59 in 2012, $2,248.74 in 2013. It is clear, then, that the current demand for escrow impounds is more than double than is necessary to pay taxes and that the creditor has over-collected and not accounted for all of the impounds.

While the court cannot order a refund without an adversary proceeding, it will sustain the objection to the amount of the monthly installment. It is $1,022.71 principal and interest, and $188, 1/12th of the current taxes.

Thus far, this ruling makes no reference to the claimant's response to the objection. It filed a response but it says nothing of note. Basically, the claimant says only that when it can understand its own financial records, it will refund any overpayments to the debtor.

3.	09-21538-A-13 BLG-1	ED DE LEON AND GEMMA LOPEZ	MOTION TO SELL 4-7-14 [80]

- ☐ 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 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.

4. 14-22058-A-13 GARY/MICAELA MCCONNELL — MOTION TO VALUE COLLATERAL
MRL-1
VS. CALHFA MORTGAGE ASSISTANCE CORP. — 4-7-14 [21]

- ☐ 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 $490,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ocwen. The first deed of trust secures a loan with a balance of approximately $550,000 as of the petition date. Therefore, CalHFA Mortgage Assistance 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 $490,000. 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).

5. 14-21561-A-13 DAVID/KRISTINE SMITH — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-31-14 [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 motion to dismiss the case will be conditionally denied.

The plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected

disposable income. The plan will pay unsecured creditors nothing even though Form 22 shows that the debtor will have $$107,744.40 in projected disposable income 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.

6. 14-21565-A-13 DAVID/TERESA GRANADOS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-31-14 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

Despite the fact that the debtor operates a business, the debtor failed to complete the questions regarding the operation of business contained in the Statement of Financial Affairs and the debtor failed to update Schedule I despite a change in employment income since the filing of the case. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(1), (3) & (a)(4). 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.

7. 14-21565-A-13 DAVID/TERESA GRANADOS — OBJECTION TO CONFIRMATION OF PLAN
RCO-1 — 4-3-14 [27]
JPMORGAN CHASE BANK, N.A. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

If the confirmation of the plan is not denied for the reasons argued by the trustee, the hearing on the creditor's objection will be continued to June 2, 2014 at 1:30 p.m. to be held in conjunction with the motion to value the objecting creditor's collateral.

8. 13-21970-A-13 ADEESHA JONES — MOTION TO MODIFY PLAN 3-17-14 [21]
PGM-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $425 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).

9. 14-21877-A-13 LAWANNA WHITE-MONTGOMERY — ORDER TO SHOW CAUSE 4-2-14 [17]

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

10. 14-21499-A-13 DAVID/VICTORIA JOHNSON — OBJECTION TO CONFIRMATION OF PLAN 4-3-14 [19]
GEORGE DUNDER 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 creditor objects on the ground that is debtor is not the chapter 13 debtor but a related corporate debtor. If that is so, it should not file a claim in this case. If it files no claim it will not be paid. The mere fact that the debtor has scheduled the claim as his own and has provided treatment for it in the plan does not transmute a corporate claim into an individual claim.

FINAL RULINGS BEGIN HERE

11. 14-21204-A-13 CESAR RAMAGOZA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-31-14 [30]

Final Ruling: The objection and the related dismissal motion will be dismissed as moot. The case was dismissed on April 4.

12. 13-35606-A-13 HERMAN/BRENDA HODGES — MOTION TO CONFIRM PLAN
DPR-2 — 3-4-14 [30]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

13. 13-34418-A-13 FELIPE OLIVARES AND SALLY SANDOVAL OLIVARES — MOTION TO CONFIRM PLAN
MG-3 — 3-4-14 [51]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

14. 13-31641-A-13 DARIN KLEP — MOTION TO MODIFY PLAN
MWB-1 — 3-10-14 [24]

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.

15. 14-22741-A-13 MANUEL/DOROTHY MACHADO — MOTION TO VALUE COLLATERAL
RDS-2
VS. BENEFICIAL FINANCIAL I, INC. — 3-20-14 [13]

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 $257,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Beneficial Financial I, Inc. The first deed of trust secures a loan with a balance of approximately $385,000 as of the petition date. Therefore, Beneficial Financial I, Inc.'s other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real

property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $257,000. 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. 13-32945-A-13 CARISSA BUCHMEIER — MOTION TO WITHDRAW AS ATTORNEY
CAH-1 — 3-7-14 [33]

Final Ruling: Given the withdrawal of the debtor's opposition to the motion, the court has entered an order granting the motion.

17. 11-37652-A-13 RONALD/RACHEL KALDOR — MOTION TO MODIFY PLAN
MMN-7 — 3-7-14 [101]

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 the second

and third addresses listed above.

18. 12-21254-A-13 BERNARD/CAROLYN GOODBY — MOTION TO AVOID JUDICIAL LIEN
JLB-4 — 3-6-14 [68]
VS. WESCO DISTRIBUTION, INC.

Final Ruling: The motion will be dismissed without prejudice.

First, according to the certificate of service, the respondent, Wesco Distribution, was not served with the motion.

Second, it the person identified on the certificate, James W. Poindexter of Poindexter & Doutre, Inc., is an attorney representing the respondent, service remains insufficient.

A motion is a contested matter and it must be served like a summons and a complaint. See Fed. R. Bankr. P. 9014 incorporating by reference Fed. R. Bankr. P. 7004. Service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. While the debtor may have served the motion on an attorney for the creditor, unless the creditor agreed to permit its attorney to accept service, such service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). A review of the docket reveal that Mr. Poindexter has not appeared in the bankruptcy case for the respondent and there is nothing on the certificate suggesting the respondent agreed to permit its attorney to accept service. Service, then, is deficient.

19. 13-25558-A-13 RAUL/SUSANA RODRIGUEZ — ORDER TO SHOW CAUSE
4-2-14 [52]

Final Ruling: The order to show cause will be discharged because it is moot.

The creditor filed a transfer of a claim but failed to pay the required fee of $25. However, after the issuance of the order to show cause, the delinquent fee was paid. No prejudice was caused by the late payment.

20. 14-20460-A-13 BELEN VALENCIA — MOTION TO CONFIRM PLAN
HLG-1 — 3-5-14 [21]

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.

After the objection to the motion was filed by the trustee, the debtor filed a signed copy of the plan as well as a plan that was signed by the debtor. The objection, therefore, is moot.

21. 14-20460-A-13 BELEN VALENCIA — COUNTER MOTION TO DISMISS CASE
HLG-1 — 4-4-14 [28]

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.

Given that the plan will be confirmed, the motion to dismiss the case will be denied.

22. 11-44167-A-13 MICHAEL FULTON — MOTION TO AVOID JUDICIAL LIEN
CAH-2
VS. NORMAN DOWLER, L.L.P. — 4-1-14 [39]

Final Ruling: The motion will be dismissed without prejudice.

First, counsel has failed to lodge an order reopening the case as required by the court. Docket 38.

Second, the certificate of service is unsigned. Consequently, there is no proof the motion was served.

23. 12-29567-A-13 MICHAEL/LISA KIRKPATRICK — MOTION TO MODIFY PLAN
SDB-1 — 3-11-14 [33]

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.

24. 14-21485-A-13 DOROTHY BROOKINS — OBJECTION TO CONFIRMATION OF PLAN
IRS-1
INTERNAL REVENUE SERVICE VS. — 4-3-14 [33]

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.

This objection is related to a motion for relief from the automatic stay filed by another objecting creditor. The court has set a final hearing on that motion for May 12, 2014 at 1:30 p.m. The hearing on the objection will be continued to the same date and time. The debtor's written opposition to the objection shall be filed and served no later than April 28, 2014 and the objecting creditor's reply shall be filed and served no later than May 5, 2014.

25. 14-21485-A-13 DOROTHY BROOKINS — OBJECTION TO CONFIRMATION OF PLAN
SMO-3
MAX-Y CO., L.P. VS. — 4-3-14 [36]

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.

This objection is related to a motion for relief from the automatic stay filed

by the objecting creditor. The court has set a final hearing on that motion for May 12, 2014 at 1:30 p.m. The hearing on the objection will be continued to the same date and time. The debtor's written opposition to the objection shall be filed and served no later than April 28, 2014 and the objecting creditor's reply shall be filed and served no later than May 5, 2014.