UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 9, 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 7. 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 JUNE 13, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 31, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 7, 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 8 THROUGH 14 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 MAY 16, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-20724-A-13 STEPHEN/KAREN MALONEY — OBJECTION TO CLAIM
JMC-2
VS. TCF NATIONAL BANK — 3-23-16 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The debtor complains that the proof of claim includes amounts assessed on the date the bankruptcy case was filed, February 9, 2016.

However, nothing prohibits a creditor, particularly one holding a secured claim, from claiming amounts due on or after the filing of the petition. In fact, Fed. R. Bankr. P. 3002.1 permits such claims when the claim is secured by the debtor's residence as it is in this case.

Also, while there are four entries dated February 9, 2016 on the spreadsheet appended to the proof of claim, this entries are for amounts that were contractually due on May 23, 2015.

The debtor next argues that there is insufficient documentation for these four entries. In other words, the debtor maintains that the proof of claim is not documented sufficiently.

When a debtor objects to a creditor's proof of claim that does not conform with Fed. R. Bankr. P. 3001(c) by including copies of the documentation on which it is based, the bankruptcy court must resolve the dispute by reference to the burdens of proof associated with claims litigation.

In In re Heath, 331 B.R. 424, 436 (9th Cir. BAP 2005) and In re Campbell, 336 B.R. 430, 436 (9th Cir. BAP 2005), creditors filed proofs of claim that failed to provide adequate summaries or attach the documentation as required by Fed. R. Bankr. P. 3001. The debtors in these cases objected to the proofs of claim but came forward with no evidence that the claims were not owed. Therefore, the BAP concluded that even though the failure to include the summaries and/or documentation required by Rule 3001 deprived the proofs of claim of their prima facie validity, this was not a basis for disallowing the claims in the absence of evidence the claims were not owed.

The debtor's declaration indicates he was informed telephonically that he had been approved for a trial modification of the home loan. There is no documentary proof of any prebankruptcy loan modification. Nonetheless, assuming this to be true, the debtor has not taken account of the fact that after the loan modification, this case was filed. What impact did the petition have on the "trial" modification? Even if it had no impact on the willingness or the obligation of both parties to continue with the loan modification, what were the terms of the modification? Did it forgive the delinquent interest and principal (which the spreadsheet appended to the proof of claim indicates totaled $4,522.89)? Or, were these amounts capitalized and added to principal? The same issues arise in connection with the foreclosure costs identified on the spreadsheet. Those costs aggregate $5,320.08.

The objection asserts that the claim should be limited to an arrearage of $4,500. It appears to the court that the debtor concedes that the principal

and interest arrears totaled $4,522.89 but wants the court to disallow the foreclosure costs incurred before the case was filed. Why and on what basis?

Whether or not these costs are appropriately documented, the debtor has given the court no reason to disallow them.

2. 16-21359-A-13 ERIC/ADINA HENDERSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-20-16 [25]

- ☐ 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, 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.

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

Third, because the plan has no definite duration, the debtor cannot carry the burden of proving the plan is feasible and will pay the promised dividends nor that it will be completed within the maximum five-year duration. See 11 U.S.C. §§ 1322(d) and 1325(a)(6).

Because the plan proposed by the debtor is not confirmable, the debtor will be

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

3. 11-39370-A-13 JORGEN/DANA EIREMO — MOTION TO APPROVE LOAN MODIFICATION
SS-9 — 4-18-16 [113]

- ☐ 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 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.

4. 15-29871-A-13 KEITH/KATHY BOWLES — MOTION TO CONFIRM PLAN
SDH-1 — 3-21-16 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan provides for a home loan in Class 2. This means the claim must be paid in full during the plan even though it may be a long term debt. The monthly dividend, however, will not retire the claim in 5 years. Therefore, the plan does not satisfy 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B). To resolve this issue, the debtor proposes that if the property securing the claim is not sold, or the claim refinanced, by November 2017, the secured creditor "shall have relief from the stay to foreclose. . . ."

If the debtor wishes to accomplish this result, the additional provisions must provide that after November 30, 2017, if the claim is not paid in full, the property securing the claim will be surrendered as a Class 3 claim. Section 1325(a)(5) permits a plan to pay a secured claim pursuant to an agreement with the secured creditor, by paying it in full, or by surrendering the collateral for the claim. Providing "relief from the stay" none of these. Further, this provision in the plan is ambiguous. Does this mean the automatic stay will terminate if a motion is filed? Automatically?

5. 15-25875-A-13 CARLO/KIM SAMMARTINO — OBJECTION TO CLAIM
PGM-1
VS. SOLANO COUNTY TAX COLLECTOR — 3-21-16 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

Solano County's original proof of claim demands payment of $5,242.14 in real property taxes assessed for the July 1, 2015 - June 30, 2016 fiscal year. When this case was filed on July 24, 2015, these taxes had been assessed but were not yet delinquent. The first installment was due before December 10, 2015 and the second installment was due before April 11, 2016. The debtor has or is paying these taxes directly to the county.

The proof of claim demands $11,219.23, more than the $5,242.14 due for 2015-16. This is the essence of the debtor's objection which would be well taken if it were not for the fact the County amended its proof of claim on April 18, 2016 to clarify that it is owed not only the 2015-16 taxes but also the taxes for 2014-15. This accounts for the difference between the total demanded in the original proof of claim and the 2015-16 taxes. The amended proof of claim also acknowledges receipt of the debtor's two installments paid on account of the 2015-16 taxes and reduces the demand to $4,686.68, the amount due for 2014-15 less payments received from the trustee pursuant to the confirmed plan (which provides for the delinquent 2014-15 taxes).

6. 16-20477-A-13 ROBIN DIMICELI — MOTION TO CONFIRM PLAN
SR-1 — 3-30-16 [28]

- ☐ 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 the monthly plan payment of $153.88 is less than the $167 in dividends and expenses the plan requires the trustee to pay each month.

7. 16-20883-A-13 WALTER FLETSCHER — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 4-19-16 [25]

- ☐ 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, the debtor owes a domestic support obligation. Local Bankruptcy Rule 3015-1(b)(6) provides:

"The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*."

The debtor failed to deliver to the trustee the Domestic Support Obligation Checklist. This checklist is designed to assist the trustee in giving the notices required by 11 U.S.C. § 1302(d).

The trustee must provide a written notice both to the holder of a claim for a domestic support obligation and to the state child support enforcement agency. See 11 U.S.C. §§ 1302(d)(1)(A) & (B). The state child support enforcement agency is the agency established under sections 464 and 466 of the Social Security Act. See 42 U.S.C. §§ 664 & 666. Section 1302(d)(1)(C) requires a third, post-discharge notice to both the claim holder and the state child support enforcement agency.

The trustee's notice to the claimant must: (a) advise the holder that he or she is owed a domestic support obligation; (b) advise the holder of the right to use the services of the state child support enforcement agency for assistance in collecting such claim; and (c) include the address and telephone number of the state child support enforcement agency.

The trustee's notice to the State child support enforcement agency required by section 1302(d)(1)(B) must: (a) advise the agency of such claim; and (b) advise the agency of the name, address and telephone number of the holder of such claim.

By failing to provide the checklist to the trustee, the debtor has disregarded the rule that it be provided, has breached the duty to cooperate with the trustee imposed by 11 U.S.C. § 521(a)(3) & (a)(4). This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

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, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to disclose that the repossession of a boat and the sale of three vehicles in 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).

Fourth, 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.

Fifth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $39,985.50 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $29,322 to unsecured creditors.

Sixth, the debtor is not eligible for chapter 13 relief because Schedules D and F shows that the debtor owes $466,672 in noncontingent, liquidated unsecured debt. This includes the listed nonpriority unsecured debt and the under-collateralized portion of listed secured debt. These two categories of unsecured debt exceed the $394,725 maximum permitted by 11 U.S.C. § 109(e).

THE FINAL RULINGS BEGIN HERE

8. 16-20210-A-13 FRANKLIN RAMIREZ — MOTION TO CONFIRM PLAN 3-24-16 [23]
FF-1

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.

9. 15-25240-A-13 MARVIN/KAREN MURASE — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY 4-5-16 [93]
PGM-5

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 will be granted in part.

According to the Fed. R. Bankr. P. 2016(b) disclosure filed by counsel, counsel agreed to file and prosecute this case for $4,000. The debtor paid a retainer of $2,190. Therefore, the plan provides for $1,810 through the plan and pursuant to Local Bankruptcy Rule 2016-1(c), the court's voluntary chapter 13 attorney's fee rule.

While the debtor's original attorney has been replaced, the modified plan indicates that counsel received the retainer, $2,190, and new counsel would receive the remainder of the $4,000 fee, $1,810.

The motion seeks approval of $4,350 in fees for work in filing and prosecuting this case. While ordinarily the court does not approve fees when counsel and the debtor have agreed that fees will be paid pursuant to Local Bankruptcy Rule 2016-1(c), the court will consider this application given the change in counsel.

The amount in excess of the $4,000 will be disallowed but the $4,000 will be

approved with $2,190 going to original counsel and $1,810 going to new counsel. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer 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 and Local Bankruptcy Rule 2016-1, if applicable.

10. 16-21140-A-13 BEHARI PRASAD — MOTION TO VALUE COLLATERAL
PGM-1
VS. BANK OF AMERICA, N.A. — 4-8-16 [20]

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 $360,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bank of America. The first deed of trust secures a loan with a balance of approximately $365,000 as of the petition date. Therefore, Bank of America'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 $360,000. 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).

11. 15-29648-A-13 TERI TAYLOR — MOTION TO VALUE COLLATERAL
TAG-3
VS. SANTANDER CONSUMER USA, INC. — 3-18-16 [52]

Final Ruling: The parties have resolved this matter by stipulation.

12. 10-30862-A-13 JAY/JOANNE ROBINSON — MOTION TO VALUE COLLATERAL
DBJ-5
VS. JOHN AND NORMA SNYDER — 4-4-16 [100]

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $160,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bogman, INc. The first deed of trust secures a loan with a balance of approximately $281,000 as of the petition date. Therefore, John and Norma Snyder'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 $160,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

13. 11-39370-A-13 JORGEN/DANA EIREMO — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
SS-8 — 4-6-16 [108]

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 will be granted in part.

The motion seeks approval of $1,920 in additional fees and costs incurred principally in connection with a second plan modification and a home loan modification. However, the application makes a $40 arithmetic error – the fees are $1,840 and the costs are $40, which is a total of $1,880, not $1,920. The $1,880 represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer 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 and Local Bankruptcy Rule 2016-1, if applicable.

14. 16-20883-A-13 WALTER FLETSCHER — OBJECTION TO CONFIRMATION OF PLAN
PPR-1 — 3-30-16 [16]
BANK OF AMERICA, N.A. VS.

Final Ruling: The objection will be dismissed without prejudice.

Local Bankruptcy Rule 3015-1(c)(4) provides:

Objecting to Plan Confirmation. 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.

Here, the Notice instructed parties in interest to set a hearing on any objection on May 9. While this objection was set on the correct day, the notice informed the debtor that the hearing had been set pursuant to Local Bankruptcy Rule 9014-1(f)(1). As indicated in Rule 3015-1(c)(4), it should have informed the debtor that the hearing was set pursuant to Local Bankruptcy Rule 9014-1(f)(2). By referring to the wrong rule, the notice required a written response to the objection even though the rules of this court require no written response.