UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 23, 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 11. 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 JULY 21, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 7, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 14, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 12 THROUGH 20. 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 JUNE 30, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-24314-A-13 CHRISTINA/PETE PUENTE — MOTION TO VALUE COLLATERAL
HDR-1 — 5-13-14 [8]
VS. WELLS FARGO BANK, N.A.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $10,000 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $10,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $10,000 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

2. 14-24317-A-13 JOHN BAXTER AND PATRICI GRIFFIN RICE BAXTER — MOTION TO VALUE COLLATERAL
CA-1 — 6-3-14 [21]
VS. ONEMAIN FINANCIAL

- ☐ 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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $2,375 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $2,375 of the respondent's claim is an allowed secured claim. When the respondent is paid $2,375 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

3. 14-24039-A-13 TROY FINLEY MOTION TO OBJECT FROM RELIEF FROM STAY 6-2-14 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Louden, L.L.C. leased residential real property in Fairfield to the debtor. The debtor defaulted in the payment of rent and owes in excess of $30,000 of rent according to Louden. This default prompted the movant to serve the debtor with a 3-day notice to pay or quit. The debtor neither paid nor quit. This resulted in an unlawful detainer action being filed which ultimately ended when the debtor agreed to vacate the premises on May 1, 2014. This bankruptcy case was filed before the May 1 deadline.

The debtor has filed three bankruptcy petitions since entering into the lease.

The first case, 13-25495-13, was filed jointly with the debtor's spouse, Tiffany McIntyre Finley, on April 22, 2013 and was dismissed on August 6, 2013 because the debtors failed to pay the installment filing fee as ordered by the court.

The second case, 13-33706-13, was filed jointly with the debtor's spouse, Tiffany McIntyre Finley, on October 24, 2013 and was dismissed on February 3, 2014 because the debtors failed to make plan payments and give the trustee their last filed tax return.

This most recent case was filed by the debtor alone on April 21, 2014. A review of the petition reveals that the debtor failed to disclose the two prior cases filed and dismissed within the prior year, as well as two other cases filed by the debtor in 2012, Case Nos. 10-52849 (jointly with spouse) and 10-50946.

In addition to these cases, the debtor's spouse filed four other petitions without Mr. Finley as a co-debtor: Case Nos. 13-23779, 13-21928, 13-20484, 12-41643. All of these cases were failed chapter 13 cases in which the spouse failed to pay filing fees, or file schedules, statements and a plan, or both.

When Louden filed a motion for relief from the automatic stay to take possession of the property, the court concluded that the foregoing was cause to terminate the automatic stay: the prebankruptcy termination of the debtor's tenancy, the pre-petition rent default, and the use of multiple bankruptcy cases to prevent the movant from retaking possession. However, it was unnecessary to terminate the automatic stay for the simple reason there is no automatic stay.

Because the debtor filed two prior cases that were dismissed in the prior year, the automatic stay never went into effect in this case. See 11 U.S.C. § 362(c)(4). There was nothing to terminate. The court confirmed, however, the absence of the automatic stay. See 11 U.S.C. § 362(j).

The court also granted prospective relief from any automatic stay that may arise from a bankruptcy case filed by any debtor during the next two years.

11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .

with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property."

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised upon "changed circumstances or for other good cause shown. . . ."

Here, the debtor and his spouse have filed a series of bankruptcy cases that were calculated only to acquire the automatic stay and were not filed in a genuine effort to reorganize their finances. These facts evidence a clear scheme to delay, hinder, or defraud the movant and prevent it from retaking possession of its property.

Therefore, the court granted relief from the automatic stay that was effective for a period of two years in any future case filed by anyone claiming an interest in the subject property, provided the recordation requirements of section 362(d)(4) are satisfied by the movant or its successor.

The debtor then filed this motion. The court interprets it as a request that the court reconsider its ruling on Louden's motion for relief from the automatic stay. The motion will be denied. The motion asserts that the failure to pay rent was due to a habitability defense asserted by the debtor and that he was tricked into agreeing to return possession to Louden. If either or both is true, this should be brought to the attention of the state court in the unlawful detainer trial. This court is not determining that Louden's assertions about breaches under the lease are true. It determines only that a prima facie case has been made out that Louden is entitled possession if its allegations are true. Whether or not they are true must be decided in state court.

4. 14-24253-A-13 ROMY OSTER — ORDER TO SHOW CAUSE 5-30-14 [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 May 27 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

5. 12-28955-A-13 LAWRENCE HERTZOG — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-19-14 [88]
APN-1
NCEP, L.L.C. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed and confirmed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant's predecessor and has failed to insure the vehicle. Because the debtor has failed to insure the vehicle, and has not paid the movant's claims, there is cause to terminate the automatic stay.

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.

6. 12-23663-A-13 JOE/YVETTE MARCH — MOTION TO MODIFY PLAN 3-27-14 [130]
PGM-11

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $1,575 of the 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).

Second, the debtor has failed to give the trustee financial records regarding income from the adoption of children. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(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).

7. 12-20370-A-13 KAYLENE RICHARDS-EKEH — MOTION TO MODIFY PLAN
NUU-1 — 5-6-14 [46]

- ☐ 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 $378.68 of the 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).

8. 14-21877-A-13 LAWANNA WHITE-MONTGOMERY — ORDER TO SHOW CAUSE
6-2-14 [38]

- ☐ 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 May 27 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

9. 14-22885-A-13 MARK/LISA THARALDSEN — MOTION TO CONFIRM PLAN
CK-4 — 5-12-14 [36]

- ☐ 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 $455 is less than the $475 in dividends and expenses the plan requires the trustee to pay each month.

10. 14-22885-A-13 MARK/LISA THARALDSEN — COUNTER MOTION TO DISMISS CASE
CK-4 — 6-9-14 [49]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

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.

11. 14-25989-A-13 SHAWNA WILLIAMS
CPG-1
ALDEA HOMES, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-9-14 [11]

- ☐ 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). The movant or its predecessor completed a nonjudicial foreclosure sale before the bankruptcy case was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure and to attempt to reorganize the debt formerly secured by the property.

Because the movant no longer holds a secured 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.

THE FINAL RULINGS BEGIN HERE

12. 13-31806-A-13 ELINOR O'ROURKE — MOTION TO CONFIRM PLAN
PGM-3 — 5-12-14 [82]

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. 14-23928-A-13 REBECCA/MARLON LAWAS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 5-14-14 [30]
MERCEDES-BENZ FIN'L SVCS. USA, L.L.C., VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security (assuming it has not done so), and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed and confirmed a plan that makes no provision for the claim. However, two days before this case was filed, the debtor surrendered the vehicle to the movant. This is cause to terminate the automatic stay.

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) will be waived.

14. 14-23928-A-13 REBECCA/MARLON LAWAS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-2 — 5-19-14 [37]
MERCEDES-BENZ FIN'L SVCS. USA, L.L.C., VS.

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

The motion will be dismissed because it is moot.

A plan was confirmed in this case on June 16, 2014. That plan provided for the movant's claim as a Class 3 secured claim. This means that the plan provided for the surrender of the movant's collateral in order to satisfy its secured claim. It also provides at section 3.14:

"*Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 3 secured claim to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and nonjudicial remedies against its collateral.*"

Thus, the stay has already been terminated and the motion is moot. To the extent the plan's description of the movant's identity or of the surrendered collateral is not accurate or as comprehensive as in the movant's security documentation, the order may recite that the collateral identified in the motion has been, or will be, surrendered to the movant pursuant to the terms of a confirmed plan and, as a result, the automatic stay was previously terminated.

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).

15. 09-40140-A-13 RICARDO/BLANCA TORRES — MOTION TO APPROVE LOAN MODIFICATION
JLK-3 — 5-23-14 [41]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the 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 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.

16. 14-22058-A-13 GARY/MICAELA MCCONNELL — ORDER TO SHOW CAUSE
6-6-14 [47]

Final Ruling: The order to show cause will be discharged and the case will remain pending.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $70 installment when due on June 2. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

17. 12-20370-A-13 KAYLENE RICHARDS-EKEH
NUU-2
VS. LAND HOME FINANCIAL SERVICES

MOTION TO
VALUE COLLATERAL
5-6-14 [51]

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 $204,800 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 $455,193 as of the petition date. Therefore, Land Home Financial Services'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 $204,800. 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. 13-31170-A-13 KIM BRITTON — MOTION TO APPROVE LOAN MODIFICATION
PGM-5 — 5-20-14 [89]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the 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 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.

19. 13-26675-A-13 JANET YAROSLAV — MOTION TO MODIFY PLAN
FHS-3 — 5-8-14 [48]

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.

20.	13-35880-A-13 SJS-1	GREGORY SWANGIN AND LADRENA GUNN-SWANGIN	MOTION TO MODIFY PLAN 5-16-14 [30]

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.