UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 11, 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 13. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON AUGUST 4, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 21, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 28, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 14 THROUGH 30. 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 JULY 21, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-22621-A-13 MIKE/SANDRA HANSBROUGH — MOTION TO CONFIRM PLAN
VS-3 — 5-30-14 [41]

- ☐ 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 $2,530 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).

2. 10-51430-A-13 AARON HASTINGS — MOTION FOR RELIEF FROM AUTOMATIC STAY
AEH-5 — 6-2-14 [308]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Before the case was filed, the creditor obtained a Colorado judgment against the debtor. Thereafter, the creditor filed in a California court an action to have the Colorado judgment recognized as a California judgment. Before the California court could act to grant or deny such judgment, this bankruptcy case was filed.

In the bankruptcy case, the debtor confirmed a plan and has made all of the payments required by it. The creditor has been paid the dividend required by the plan. This case is all but over. Nonetheless, the debtor seeks to modify his own automatic stay in order to collaterally attack the Colorado judgment by having the California court set it aside somehow.

The problem is that the California action is moot – the debtor has paid the creditor and the creditor is barred from proceeding against the debtor on her judgment, whether it is from Colorado or California. This conceivably might change if the debtor dismissed this case prior to entry of a discharge but given the completion of the plan payments, that possibility rests solely in his hands.

The court will not put the creditor through the useless exercise of defending her claim after it was paid to the extent required by the confirmed chapter 13 plan.

3. 14-25147-A-13 MATTHEW KELLOGG AND VERONICA SANCHEZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-25-14 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant

to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

First, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed or will agree to a home loan modification and changes the amount of the ongoing monthly installment payment and fails to provide for a cure of the prepetition arrears. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of RC Willey in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule I does not include unemployment benefits being paid to the debtor. 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, counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. This means that counsel may receive a maximum fee of up to $4,000 for a consumer case (like this one) and have that fee approved in connection with the confirmation of the plan. In this case, however, counsel's proposed fee of $4,025 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1. Therefore, he must apply for compensation pursuant to 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. The provision in the plan for payment of compensation without the requisite application cannot be confirmed.

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.

4. 14-25147-A-13 MATTHEW KELLOGG AND VERONICA SANCHEZ
PD-1 WELLS FARGO BANK, N.A. VS.
OBJECTION TO CONFIRMATION OF PLAN
6-25-14 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 to the extent and for the reasons explained in the ruling on the trustee's objection (JPJ-1). That ruling is incorporated by reference.

5. 14-24949-A-13 MARY LOUISE PADLO
JPJ-1
OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
6-25-14 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

The debtor filed a prior chapter 13 case, Case No. 09-32358, on June 16, 2009. In that case, secured creditor LCI Lenders/Pacific Capital filed a motion for relief from the automatic stay. In connection with that motion, the court issued an order requiring the debtor to make ongoing mortgage payments to the creditor. In the event of default, the automatic stay terminated without the necessity of a further court order. See Docket #41. In April 2014, the debtor defaulted and failed to make ongoing payments to the creditor. Then, on May 5, 2014, the debtor voluntarily dismissed the earlier case. In the application to dismiss the case, the debtor represented that she had incurred unexpected taxes and expenses that made it impossible to comply with the terms of her plan.

Five days later, the second chapter 13 case was filed.

A comparison of the schedules filed in each case shows no new tax claims in the second case, a decrease of approximately $4,000 in secured claims and a modest increase of $2,200 in nonpriority unsecured claims. The latter increase actually is not an increase. In the last plan proposed by the debtor in the prior case, the amount of unsecured debt was identical to the amount scheduled in this case.

11 U.S.C. § 109(g)(2) provides: ". . . no individual . . . may be a debtor in a case under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if . . . the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay. . . ."

The debtor is an individual. The prior case was dismissed with 180 days after the dismissal of the prior case. The dismissal was voluntary. And, the request for dismissal not only followed the filing of a motion for relief from the automatic stay, it is a fair inference that the dismissal was requested because the debtor was unable to comply with the terms of the adequate protection order.

The debtor was not eligible to be a chapter 13 debtor when this case was filed.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $43,183.17 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors. This problem arises because the debtor has claimed a $175,000 homestead exemption pursuant to Cal. Civ. Pro. Code § 704.730 when she entitled to claim an exemption of only $75,000. To claim the higher exemption, the debtor must be disabled, be over 65, or be over 55 with gross income of no more than $25,000. She falls into none of these categories.

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 an inheritance received in 2014. 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, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,304 is less than the $1,320.39 in dividends and expenses the plan requires the trustee to pay each month.

6. 14-24949-A-13 MARY LOUISE PADLO — OBJECTION TO CONFIRMATION OF PLAN
MWP-1 — 6-26-14 [24]
PACIFIC CAPITAL INVESTMENT, L.L.C. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be overruled.

The objection that the plan may not modify the objecting creditor's claim because it is secured only by the debtor's residence will be overruled. While 11 U.S.C. § 1322(b)(2) does include such an "anti-modification" provision, there are exceptions to it. One of the exceptions is found at 11 U.S.C. § 1322(c)(2) which provides: "Notwithstanding subsection 1322(b)(2) . . . in a

case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title."

Hence, because the creditor's loan admittedly matures before the end of the debtor's 60-month plan, the plan may modify the claim.

The objection that the proposed rate of interest is insufficient is likewise overruled. The creditor's claim is secured by the debtor's home which as a value of $197,795 according to the schedules. The creditor is owed less than $65,000. Hence it is, to say the least, well secured.

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, the debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

The prime rate today is 3.25% as reported by http://www.bankrate.com/rates/interest-rates/prime-rate.aspx?ec_id=m1022561&s_kwcid=AL!1325!3!41196775088!b!!g!!wall%20street%20prime%20rate&ef_id=Uoo8gwAAAf3canga:20140705190430:s

As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 4.75% gives a 1.5% upward adjustment. The size of this increase, combined with the fact that the movant is secured rather than unsecured and is more than adequately protected by a huge equity cushion, satisfies section 1325(a)(B)(ii).
Fourth, the objection that the creditor is entitled to its contract rate of interest is overruled. Till requires the court to use the formula approach when setting interest rates on secured claims.

Fifth, the fact that the plan may erroneously understate the amount of the secured claim is not important because section 2.04 makes clear that the proof of claim filed by the creditor will determine the amount of its claim, not the debtor's estimate of it as stated in the plan.

7. 13-34650-A-13 HOLLY BELLAMY
LBG-2

MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
6-10-14 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

Counsel for the debtor seeks compensation of $4,132.70 in fees and costs. Included in the fees requested, is compensation for services rendered by the staff of counsel. An hourly rate of $65 has been billed for these services.

If the staff members are para-professionals, the application fails to specify their education and experience in admissible declarations. If these staff persons are part of counsel's nonprofessional staff, they were performing clerical tasks that cannot be compensated. This cost is part of counsel's overhead and is compensated by compensating him at a reasonable rate.

Therefore, the court disallows a total of 1.0 hour of time billed by staff at $65 per hour. The court also disallows the $40 cost of doing a credit check. The motion fails to establish the reasonableness of the necessity of the check.

8. 14-25050-A-13 STEPHEN PATTON
PD-1
WELLS FARGO BANK, N.A. VS.

OBJECTION TO CONFIRMATION OF PLAN
6-26-14 [23]

- ☐ 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.

The plan assumes there are no arrears on the objecting creditor's claim secured only by the debtor's home. In fact, there are arrears of approximately $6,332.32. The failure to provide for the cure these arrears is a violation of the anti-modification provision in 11 U.S.C. § 1322(b)(2) and also means the secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

9. 14-24958-A-13 JEOFFREY/ROSEMARIE BALDOVINO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
6-25-14 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant

to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

First, 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.

Second, the debtor has failed to accurately complete Form 22. The debtor has taken the following impermissible deduction from current monthly income: the debtor has overstated income tax liabilities by $631 a month. With this adjustment to expenses, the debtor would have enough to pay an additional $37,860 to nonpriority unsecured creditors. The failure to do so means that the plan does not comply with 11 U.S.C. § 1325(b).

The objections concerning the valuation of city of Vacaville's security and the avoidance of Discover Bank's judicial lien are moot.

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.

10.	12-21765-A-13 JT-1 VS. BANK OF AMERICA, N.A.	WADE KIRCHNER AND LISA BUSCHMANN	OBJECTION TO CLAIM 11-25-13 [32]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. Given the creditor's failure to file additional evidence on or before June 30 and given the contradictory information in the accounting and the discovery responses filed by the creditor, the court will compel the attendance of a qualified representative of the creditor at an evidentiary hearing to explain its claim.

11. 14-24772-A-13 CAROLYN STUBBS
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
6-25-14 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

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

Second, the debtor is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that a briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $100 is less than the $1,217.02 in dividends and expenses the plan requires the trustee to pay each month.

Fourth, 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).

Fifth, 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.

Sixth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to complete Form 22 and Schedule I. Both items relate to the debtor's income. 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).

Seventh, 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.

Eighth, to pay the dividends required by the plan and the rate proposed by it will take 601 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Ninth, the plan fails to state the amount of the dividend to Class 7, holders of nonpriority unsecured claims, whether that dividend is nothing, 100%, or something in between. By not specifying the dividend, the debtor cannot prove the plan is feasible or will pay unsecured creditors the minimums required by the Bankruptcy Code. See 11 U.S.C. § 1325(a)(4), (a)(6), (b).

12. 14-24772-A-13 CAROLYN STUBBS — OBJECTION TO CONFIRMATION OF PLAN
BHT-1
DEUTSCHE BANK NATIONAL TRUST CO. VS. — 6-26-14 [31]

- ☐ 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.

The plan assumes the arrears on the objecting creditor's Class 1 secured claim are approximately $15,000. The creditor indicates that the arrears are more than $19,000. At this higher level, the plan either is not feasible or it will not pay the objecting secured claim in full. The plan fails to comply with 11 U.S.C. §§ 1325(a)(5)(B) & (a)(6).

13. 14-26492-A-13 FRED/JENNIFER RAMOS
PLG-1

MOTION TO
EXTEND AUTOMATIC STAY
6-27-14 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within the prior year because the debtor failed to maintain plan payments.

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

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

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

Here, it appears that the debtor was unable to maintain plan payments in the first case due to unexpected extended family expenses that are unlikely to reoccur. Further, the debtor's income has increased somewhat and a comparison of Schedule J filed in each case indicates to the court that the debtor's monthly maintenance expenses are more realistic in this case. These facts, combined with a lower plan payment, is a sufficient change in circumstances rebut the presumption of bad faith.

FINAL RULINGS BEGIN HERE

14. 11-46306-A-13 GARY/DONNA KAEMPER — MOTION TO MODIFY PLAN
WW-3 — 6-3-14 [37]

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. 14-25106-A-13 IRIS FRAZIER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-25-14 [20]

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 objection will be overruled. The objection is based on the fact that when the objection was filed, the court had not then granted a valuation motion concerning the collateral of Wells Fargo Bank. That motion was granted at a hearing on June 30. Hence, the premise of the objection is no longer true.

16. 13-35312-A-13 JOYCE SPRINGER — OBJECTION TO CLAIM
SBT-6 — 5-28-14 [85]
VS. DEUTSCHE BANK NATIONAL TRUST CO.

Final Ruling: This objection to the proof of claim of Deutsche Bank National Trust Co. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The proof of claim indicates that the pre-petition arrearage on the debtor's home mortgage is $42,454.81. However, the last statement received by the debtor immediately prior to filing her bankruptcy case indicates that the arrearage is $23,293.45. Based on this admission, the claim is allowed in the amount of $23,293.45.

17. 13-35312-A-13 JOYCE SPRINGER
SBT-7

MOTION TO CONFIRM PLAN
5-29-14 [90]

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 objection will be overruled. The objection is based on the fact that a secured creditor filed a proof of claim substantially higher than assumed by the plan. If allowed as filed, the claim either would not be paid as required by 11 U.S.C. § 1325(a)(5)(B) or the plan's duration would exceed the maximum duration permitted by 11 U.S.C. § 1322(d). However, the court has allowed the claim in the amount assumed by the plan. Hence, the premise of the objection is no longer true.

18. 13-33313-A-13 CLEMENTE/YOLANDA JIMENEZ
PGM-4

MOTION TO APPROVE LOAN MODIFICATION
6-12-14 [54]

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. 14-20019-A-13 WALTER/PATRICIA JONES
SJS-2
VS. INTERNAL REVENUE SERVICE

OBJECTION TO CLAIM
5-22-14 [39]

Final Ruling: The objection will be dismissed without prejudice. After the objection was filed, the IRS filed an amended claim that appears to resolve the substance of the objection.

20. 14-25727-A-13 TIMOTHY/BRENDA LLOYD
LBG-1
VS. CAPITAL ONE AUTO FINANCE

MOTION TO VALUE COLLATERAL
6-10-14 [8]

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 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 $10,286 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, $10,286 of the respondent's claim is an allowed secured claim. When the respondent is paid $10,286 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.

21. 14-24039-A-13 TROY FINLEY — ORDER TO SHOW CAUSE 6-25-14 [52]

Final Ruling: The order to show cause will be dismissed because it is moot. The case was previously dismissed.

22. 12-28147-A-13 JUAN/LETICIA LUJAN — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 5-21-14 [54]
CAH-3
VS. NATIONSTAR MORTGAGE, L.L.C.

Final Ruling: This objection to the proof of claim of has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The creditor filed and served a notice of a change in the debtor's mortgage payment pursuant to Fed. R. Bankr. P. 3002.1. The notice provided that the monthly installment payment would increase from $2,250.83 to $2,717.83. The notice, however, reports no change in the escrow impound or increase in the interest rate. Consequently, the reason for the increase is not evident from the notice. Under this circumstance, the objection will be sustained. There is no evident reason for the increase in the payment.

23. 14-24958-A-13 JEOFFREY/ROSEMARIE BALDOVINO — MOTION TO VALUE COLLATERAL 6-9-14 [17]
HDR-1
VS. THE CITY OF VACAVILLE

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 $250,000 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 $271,559.87 as of the petition date. Therefore, The City of Vacaville'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 $250,000. 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).

24. 14-24958-A-13 JEOFFREY/ROSEMARIE BALDOVINO — MOTION TO AVOID JUDICIAL LIEN
HDR-3 — 6-9-14 [22]
VS. DISCOVER BANK

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $271,559.87. The debtor has an available exemption of $1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

25. 12-41260-A-13 DAVID/TERESA THURSTON — MOTION TO MODIFY PLAN
SS-2 — 6-3-14 [43]

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.

26. 13-27584-A-13 JEFFREY JOHNSON — MOTION TO INCUR DEBT
JME-1 — 6-2-14 [27]

Final Ruling: The motion will be dismissed without prejudice.

The certificate of service indicates that the motion was served on July 15, 2014, a date after the hearing. Hence, there is no proof that the necessary notice was given to creditors.

27. 13-20087-A-13 JOSEFINA/JOSE LORICO — MOTION TO APPROVE LOAN MODIFICATION
HDR-8 — 6-4-14 [97]

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.

28. 14-25490-A-13 DANIEL/AURORA SANTOS — MOTION TO VALUE COLLATERAL
CAH-1 — 6-12-14 [14]
VS. JPMORGAN CHASE BANK, N.A.

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $280,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by JPMorgan Chase Bank, N.A. The first deed of trust secures a loan with a balance of approximately $287,733.33 as of the petition date. Therefore, JPMorgan Chase Bank, N.A.'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 $280,000. 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).

29. 14-24896-A-13 STANLEY WOO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-25-14 [21]

Final Ruling: The court continues the hearing to August 4, 2014 at 1:30 p.m. to give the trustee an opportunity to conclude the meeting of creditors and to obtain financial records from the debtor.

The debtor is to provide the financial information requested by the trustee and referenced in the objection no later than July 10 at the continued meeting. If the further examination of the debtor and a review of the debtor's financial records raises additional issues, the trustee and any other party in interest may amend a timely objection to include these issues. The amended objection shall be filed and served no later July 21. The debtor's written response to all objections (both original and amended objections) shall be filed and served no later than July 28.

30. 14-24896-A-13 STANLEY WOO — OBJECTION TO CONFIRMATION OF PLAN
SMR-1 — 6-25-14 [18]
PROFIT INVESTMENT COMPANY, INC. VS.

Final Ruling: The court continues the hearing to August 4, 2014 at 1:30 p.m. to give the trustee an opportunity to conclude the meeting of creditors and to obtain financial records from the debtor.

The debtor is to provide the financial information requested by the trustee and referenced in the objection no later than July 10 at the continued meeting. If the further examination of the debtor and a review of the debtor's financial records raises additional issues, the trustee and any other party in interest may amend a timely objection to include these issues. The amended objection shall be filed and served no later July 21. The debtor's written response to all objections (both original and amended objections) shall be filed and served no later than July 28.