

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 3, 2015 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 25. 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 31, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 17, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 24, 2015. 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 26 THROUGH 46 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 AUGUST 10, 2015, AT 2:30 P.M.

August 3, 2015 at 1:30 p.m.

Matters to be Called for Argument

1. 15-24504-A-13 TERRANCE/APEAR OBJECTION TO
JPJ-1 HENDRICKSON CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-15-15 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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

If requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal.

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.

2. 15-22621-A-13 ROSHAWN INGRAM MOTION TO
CA-1 CONFIRM PLAN
6-22-15 [23]

- 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 \$702 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).

3. 15-24522-A-13 ANTHONY/ANGELINA BOTELHO OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-15-15 [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.

The plan impermissibly reduces a secured claim collateralized by a purchase money security interest in the debtor's vehicle that was created within 910 days of the petition. The plan violates the "hanging" paragraph following 11 U.S.C. § 1329(a)(9).

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. 15-21424-A-13 ROBERT/LEE-ANN MAHAN MOTION TO
MRL-3 CONFIRM PLAN
6-15-15 [46]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$9,959 is less than the \$10,136.07 in dividends and expenses the plan requires the trustee to pay each month.

Second, according to Schedules I and J, the debtor's monthly net income is less than \$10,136.07. Once again the plan is not feasible.

Third, the debtor has failed to make \$3,880 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).

Fourth, the plan's feasibility depends on the debtor successfully prosecuting motions to value the collateral of Folsom Ready Mix, Granite State Insurance, Cha-Dor Realty, in order to strip down or strip off their secured claims from their collateral. No such motions have been filed, served, and granted.

Absent successful motions 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."

Fifth, the debtor is not eligible for chapter 13 relief because debtor owes more than \$450,000 in noncontingent, liquidated unsecured debt. While this is determined in the first instance by the schedules, the debtor listed one under-collateralized unsecured debt of more than \$144,000 as unknown even though the creditor had obtained a judgment. Given the failure to accurately list a known debt, the debtor gerrymandered eligibility. Because of this bad faith, the court will determine eligibility by supplementing its review of the schedules with the debtor's admissions in the plan and the with the proofs of claim. This demonstrates that unsecured exceeds the \$383,175 maximum permitted by 11 U.S.C. § 109(e).

5. 15-21424-A-13 ROBERT/LEE-ANN MAHAN STATUS CONFERENCE
15-2075 4-15-15 [1]
KEEFER V. MAHAN

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: None.

6. 12-35128-A-13 ERWIN/MARY ANN SANTOS MOTION TO
PGM-2 MODIFY PLAN
6-4-15 [125]

- 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). While schedules I and J show that the debtor will have monthly net income of approximately \$50, this assumes the debtor's unemployment income will continue. However, it ceased in June. As a result, the debtor has no monthly income. The infeasibility of the plan is corroborated by the debtor's failure to make a \$50 plan payment in June.

7. 13-27629-A-13 LORI BISHOP MOTION TO
TJW-3 VACATE DISMISSAL OF CASE
7-7-15 [46]

- 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 denied.

First, Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, **501 I Street, Suite 10-100, Sacramento, CA 95814**; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044. Service in this case is deficient because the IRS was not served at the second and third addresses.

Second, there is no cause to vacate the dismissal. The court ordered the debtor to file amended schedules I and J by a deadline. The debtor neither filed them by that deadline nor asked for an extension of time. Nothing prevented the debtor from complying with the court's order or requesting an extension. Therefore, no cause exists to vacate the dismissal.

8. 15-25432-A-13 ANDREA LARA
MRL-1

MOTION TO
IMPOSE AUTOMATIC STAY
7-13-15 [12]

- 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 denied.

This is the third chapter 13 case filed by the debtor. The prior cases were dismissed within one year of the filing of the current case. The prior cases, were dismissed because the debtor was unable to maintain plan payments. In the first case, the debtor lost her job. In the second, the debtor incurred attorney's fees in a custody dispute that prevented timely payments.

11 U.S.C. § 362(c)(4)(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 more than one single or joint case of the debtor was pending within the

preceding one-year period but were dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease does not go into effect unless imposed by the court.

Section 362(c)(4) 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 impose the automatic stay before the 30th day after the filing of the petition.

In order to impose 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 prior cases. This motion does not establish that the debtor will be any more successful in this case. While the motion states the custody dispute has ended, there is no evidence of reemployment. The court cannot conclude that this case is more apt to succeed.

9. 15-25432-A-13 ANDREA LARA MOTION TO
MRL-2 VALUE COLLATERAL
VS. THE BANK OF NEW YORK MELLON 7-20-15 [19]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$300,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Pennymac Loan Services. The first deed of trust secures a loan with a balance of approximately \$485,000 as of the petition date. Therefore, The Bank of New York Mellon'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 \$300,000. 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).

10. 15-23036-A-13 CRAIG NELSON
TLA-1

MOTION TO
CONFIRM PLAN
6-15-15 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, because the debtor has significantly understated the amount of the IRS' priority unsecured claim, the plan will not be completed within the maximum 60 month plan term permitted by 11 U.S.C. § 1322(d).

Second, the debtor admitted at the meeting of creditors that the debtor failed to file an income tax return for 2013 and 2014. The returns are delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was held and concluded. While it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is impossible for the debtor to comply with section 1308.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has not moved for dismissal. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

11. 15-24639-A-13 THOMAS ALLIE
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-15-15 [23]

- 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 established that the plan will pay all projected disposable income to unsecured creditors as required by 11 U.S.C. § 1325(b). The debtor has made two impermissible deductions from current monthly income on Form 22.

The debtor has erroneously deducted business expenses when calculating current monthly income. Gross business income, without expense deduction, is part of the debtor's current monthly income. Once total current monthly income is calculated, business expenses may be deducted as an expense when calculating current monthly income. Accord In re Weigand, 386 B.R. 238 (9th Cir. BAP 2008).

Also, the debtor has taken an impermissible deduction from current monthly income for a \$1,000.00 voluntary pension contribution. This is disposable income; the debtor may not make those contributions and deduct them from the debtor's current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

As a result, the debtor has monthly projected disposable income of \$1,344. If paid to unsecured creditors, they would share a total of \$80,640 over the life of the plan. Because the plan will pay only \$39,061 to these creditors, it does not comply with 11 U.S.C. § 1325(b).

Finally, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor has not included a detailed statement of business income on Schedule I. 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).

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.

12. 15-21243-A-13 ANTONIO BROWN AND LAKIYA ORDER TO
LOWE-BROWN SHOW CAUSE
7-6-15 [76]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

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, 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).

Third, 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 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.

15. 10-49746-A-13 EVIE CORREA MOTION TO
CJO-1 APPROVE LOAN MODIFICATION
6-8-15 [51]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the motion fails to explain why the loan modification was entered into in 2013 without court approval.

Second, the motion fails to include proof that the debtor is able to afford the modified loan while continuing to perform the chapter 13 plan. The debtor failed to file amended Schedules I and J.

Third, to the extent the approval is retroactive, the modified loan is inconsistent with the confirmed plan. Therefore, the trustee has overpaid the home lender pursuant to the confirmed plan. The motion fails to address this overpayment.

16. 10-45052-A-13 PATRICK/TRACY APPLEWHITE MOTION TO
CJO-1 APPROVE LOAN MODIFICATION
6-8-15 [68]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the motion fails to explain why the loan modification was entered into in 2013 without court approval.

Second, the motion fails to include proof that the debtor is able to afford the modified loan while continuing to perform the chapter 13 plan. The debtor failed to file amended Schedules I and J.

Third, to the extent the approval is retroactive, the modified loan is inconsistent with the confirmed plan. Therefore, the trustee has overpaid the home lender pursuant to the confirmed plan. The motion fails to address this overpayment.

17. 15-24652-A-13 CHRISTINA SONLEITNER OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-15-15 [24]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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

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 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.

Also, 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).

18. 11-42358-A-13 MICHAEL/LUANN KOPPEL MOTION TO
JME-1 INCUR DEBT
7-16-15 [57]

- 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 motion to incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan given that the debtor's performance of the plan is complete or nearly complete.

19. 15-25258-A-13 KIMBERLY GALLEGOS MOTION TO
MRL-1 VALUE COLLATERAL
VS. CITIBANK, N.A. 7-13-15 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$190,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Chase Mortgage. The first deed of trust secures a loan with a balance of approximately \$259,084 as of the petition date. Therefore, Citibank'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 \$190,000. 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).

20. 15-24459-A-13 THOMAS/HEATHER PINTO OBJECTION TO
MDE-1 CONFIRMATION OF PLAN
VW CREDIT, INC. VS. 6-26-15 [24]

- 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's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of VW Credit 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."

21. 15-24263-A-13 MARLENE MCCRARY OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-15-15 [30]

- 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.

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

(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 fully and accurately provide all information required by the petition, schedules, and statements. The debtor has not included a detailed statement of business income on Schedule I. 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).

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to list business equipment and supplies in a storage locker. 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).

24. 14-25389-A-13 FRANK NAVARRETTE MOTION TO
JPJ-2 CONVERT OR TO DISMISS CASE
6-29-15 [129]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be converted to one under chapter 7.

The debtor has failed to make \$2,460 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. This is cause for dismissal or conversion to chapter 7, whichever is in the interests of creditors. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6). Because the debtor has nonexempt equity exceeding \$25,000, the best interests of creditors would be served by conversion of the case to one under chapter 7.

25. 15-25393-A-13 JAMES BALLANTYNE MOTION TO
MOH-1 VALUE COLLATERAL
VS. WELLS FARGO BANK, N.A. 7-20-15 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing

schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$147,500 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Bank. The first deed of trust secures a loan with a balance of approximately \$162,804.81 as of the petition date. Therefore, Wells Fargo Bank'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 \$147,500. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Final Rulings Begin Here

26. 11-37902-A-13 JOSEPH/ROSALINA FERNANDEZ MOTION TO
SDB-3 VALUE COLLATERAL
VS. WELLS FARGO BANK, N.A. 6-24-15 [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 \$119,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Bank. The first deed of trust secures a loan with a balance of approximately \$155,887 as of the petition date. Therefore, Wells Fargo Bank'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 \$119,000. 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).

27. 15-24422-A-13 JOHNATHAN DAILEY OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-16-15 [16]

Final Ruling: The trustee has voluntarily dismissed the objection and the related dismissal motion.

28. 15-21528-A-13 KEVIN KRONE MOTION TO
CAH-3 CONFIRM PLAN
6-19-15 [43]

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.

29. 14-29030-A-13 BRIAN/ASHLEY TURPEN OBJECTION TO
JPJ-1 CLAIM
VS. NAVIENT SOLUTIONS, INC. 6-8-15 [38]

Final Ruling: This objection to the proof of claim of Navient Solutions, Inc., 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 last date to file a timely proof of claim was January 14, 2015. The proof of claim was filed on May 15, 2015. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

30. 11-35234-A-13 STEPHEN/HAZEL HUTCHINS MOTION TO
CAH-2 INCUR DEBT
6-30-15 [23]

Final Ruling: The motion will be dismissed without prejudice. A review of the certificate of service for the motion reveals the trustee was not served with the motion as required by Local Bankruptcy Rule 3015-1(i)(5).

31. 15-25239-A-13 FREDERICK BARRETT MOTION TO
TLA-1 VALUE COLLATERAL
VS. WELLS FARGO BANK, N.A. 7-6-15 [11]

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 \$192,700 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Bank. The first deed of trust secures a loan with a balance of approximately 207,561 as of the petition date. Therefore, Wells Fargo Bank'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 Hobby, 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 \$192,700. 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

32. 15-25239-A-13 FREDERICK BARRETT
TLA-2
VS. JPMORGAN CHASE BANK, N.A.

MOTION TO
VALUE COLLATERAL
7-6-15 [15]

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 \$192,700 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Bank. The first deed of trust secures a loan with a balance of approximately \$207,561 as of the petition date. Therefore, JPMorgan Chase Bank'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 \$192,700. 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).

33. 13-22441-A-13 SYBIL MURRAY OBJECTION TO
JPJ-2 CLAIM
VS. NAVIENT SOLUTIONS, INC. 6-8-15 [38]

Final Ruling: This objection to the proof of claim of Navient Solutions, Inc., 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 last date to file a timely proof of claim was July 3, 2013. The proof of claim was filed on May 8, 2015. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

34. 13-22441-A-13 SYBIL MURRAY OBJECTION TO
JPJ-3 CLAIM
VS. NAVIENT SOLUTIONS, INC. 6-8-15 [42]

Final Ruling: This objection to the proof of claim of Navient Solutions, Inc., 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 last date to file a timely proof of claim was July 3, 2013. The proof of claim was filed on May 8, 2015. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

35. 14-32051-A-13 SIL/YUN KIM OBJECTION TO
JPJ-3 CLAIM
VS. LVNV FUNDING, LLC 6-1-15 [65]

Final Ruling: The objection will be dismissed as moot. The case was dismissed on June 3.

36. 14-31455-A-13 ANGELLE GARNER MOTION TO
TLA-1 MODIFY PLAN
6-19-15 [24]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

37. 15-24459-A-13 THOMAS/HEATHER PINTO MOTION FOR
JHW-1 RELIEF FROM AUTOMATIC STAY
MERCEDES-BENZ FIN'L SVCS. USA, L.L.C. VS. 7-2-15 [28]

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, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that will surrender the vehicle to the movant in satisfaction of its secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's claim will not be paid and the vehicle securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

38. 15-21667-A-13 KENNETH BEALL ORDER TO
SHOW CAUSE
7-6-15 [34]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$77 installment when due on June 30. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

39. 14-31872-A-13 PETER RODDA MOTION TO
DBJ-3 CONFIRM PLAN
6-22-15 [50]

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.

40. 14-30076-A-13 THOMAS/CYNTHIA MOORE OBJECTION TO
JPJ-2 CLAIM
VS. CAVALRY SPV I, L.L.C. 5-29-15 [37]

Final Ruling: This objection to the proof of claim of Cavalry SPV I, L.L.C., 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.

According to the documentation attached to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the claim, the last payment was received on December 11, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

41. 15-23578-A-13 MARGARET DANLEY MOTION TO
BB-2 CONFIRM PLAN
6-17-15 [21]

Final Ruling: The motion will be denied without prejudice.

A review of the certificate of service for this motion and the proposed plan indicates that it is undated and unsigned. Consequently, there is no proof that all parties were served and given the notice required by Local Bankruptcy Rule 3015-1.

42. 15-23084-A-13 MONA LAWSON MOTION FOR
APN-1 RELIEF FROM AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. VS. 6-24-15 [14]

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

The motion will be dismissed as moot.

A plan was confirmed in this case on July 22, 2015. 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 for the termination of the automatic stay to permit the creditor to enforce its claim against its surrendered collateral. 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.

43. 14-30390-A-13 BERNARD MOSE AND FARRAH MOTION TO
PGM-2 LAVULO-MOSE CONFIRM PLAN
6-22-15 [49]

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.

44. 15-23190-A-13 ANDREW/ERICA BENZINGER MOTION TO
CAH-1 CONFIRM PLAN
6-15-15 [24]

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.

45. 13-32991-A-13 SUSAN VERA AMENDED MOTION TO
RJ-6 MODIFY PLAN
6-17-15 [46]

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.

46. 13-23897-A-13 TOMMY/CAROL JOHNSON OBJECTION TO
JPJ-3 CLAIM
VS. GRANT & WEBER 6-8-15 [114]

Final Ruling: This objection to the proof of claim of Grant & Weber 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 last date to file a timely proof of claim was July 24, 2013. The proof of claim was filed on April 15, 2015. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).