

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

August 17, 2015 at 1:30 p.m.

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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 29. 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 SEPTEMBER 14, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 31, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 8, 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 30 THROUGH 49 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 24, 2015, AT 2:30 P.M.

August 17, 2015 at 1:30 p.m.

**Matters to be Called for Argument**

1. 13-35504-A-13 DEANA GUSTAVES-ELLIS MOTION TO  
JPJ-1 MODIFY PLAN  
7-13-15 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be conditionally granted and the objection will be overruled.

Since this case was filed, the debtor's monthly income has increased approximately \$1,288 a month. It is this substantial increase in income that prompts the trustee to move to amend the plan by requiring a \$74 monthly payment increase. That increase over the remaining plan term will pay unsecured creditors in full.

Post-confirmation modification of a plan is in the court's discretion. There is no requirement that the proponent of a modification establish that there have been significant and unanticipated changes warranting the modification, although such changes may be considered. Powers v. Savage (In re Powers), 202 B.R. 618, 622-23 (B.A.P. 9<sup>th</sup> Cir. 1996). However, the debtor's increased monthly income is a significant change that warrants a modification.

The objection will be overruled on the condition that the additional provisions attached to the previously confirmed plan are incorporated into the modified plan. Those provisions concern the treatment of the claim of Wells Fargo Education Financial Services. Also, the trustee shall sign the plan.

2. 15-24604-A-13 ANDREW BAIMA OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
7-29-15 [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.

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, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, 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.

Fourth, the debtor has failed to make \$1,669.69 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).

Fifth, because the plan fails to specify how debtor's counsel's fees will be approved, either pursuant to Local Bankruptcy Rule 2016-1 or by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, but nonetheless requires the trustee to pay counsel a monthly dividend on account of such fees, in effect the plan requires payment of fees even though the court has not approved them. This violates sections 329 and 330.

Sixth, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the arrearages owed to the Class 1 home loan. And, because the debtor has not made timely plan payments, the trustee has been unable to maintain post-petition installment payments. This arrearage is not cured by the proposed plan. By failing to provide for a cure of these arrears, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

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

3. 15-24805-A-13 DORIAN BELLAN  
JPJ-1

OBJECTION TO  
CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
7-29-15 [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's feasibility depends on the debtor successfully prosecuting motions to value the collateral of GM and RC Wiley 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."

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. 15-25105-A-13 FLORA NANCA  
CAH-2  
VS. DEUTSCHE BANK NATIONAL TRUST CO.

MOTION TO  
VALUE COLLATERAL  
7-28-15 [25]

- 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 \$212,415 as of the date the petition was filed. It is encumbered by a first deed of trust held by Onewest Bank. The first deed of trust secures a loan with a balance of approximately \$324,444.95 as of the petition date. Therefore, Deutsche Bank National Trust Company'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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$212,415. 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 (5<sup>th</sup> Cir. 1980).

5. 15-25105-A-13 FLORA NANCA MOTION TO  
CAH-3 VALUE COLLATERAL  
VS. PNC BANK, N.A. 7-28-15 [30]

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 \$211,734 as of the date the petition was filed. It is encumbered by a first deed of trust held by The Bank of New York Mellon. The first deed of trust secures a loan with a balance of approximately \$228,668.53 as of the petition date. Therefore, PNC 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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$211,734. 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 (5<sup>th</sup> Cir. 1980).

6. 15-25105-A-13 FLORA NANCA OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
7-28-15 [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 and the motion to dismiss the case will be conditionally denied.

First, the debtor has failed to make \$5,527 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).

Second, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a long term secured claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrearages owed to the Class 1 claims of One West and Bank of New York Mellon. Because the debtor has not made timely plan payments, the trustee has been unable to maintain post-petition installment payments to these two creditors. The resulting arrearages are not cured by the proposed plan. By failing to provide for a cure of these arrears, these Class 1 secured claims will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

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

7. 15-22915-A-13 SHELLEY FAIRCHILD MOTION TO  
RAH-3 CONFIRM PLAN  
7-1-15 [53]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, 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 \$4,300 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.

Second, Citimortgage holds a secured claim secured only by the debtor's home. Therefore, the claim may not be modified by the plan. See 11 U.S.C. §

1322(b)(2). The debtor is limited to maintaining ongoing installment payments and curing the pre-petition arrears. The plan, however, fails to provide for the arrears.

8. 13-28417-A-13 PAUL/SARAH HAMM MOTION TO  
JPJ-7 MODIFY PLAN  
7-13-15 [71]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the objection will be overruled.

Since this case was filed, the debtor's monthly income has increased approximately \$716 a month. It is this substantial increase in income that prompts the trustee to move to amend the plan by requiring a \$15 monthly payment increase. That increase over the remaining plan term will pay unsecured creditors in full.

Post-confirmation modification of a plan is in the court's discretion. There is no requirement that the proponent of a modification establish that there have been significant and unanticipated changes warranting the modification, although such changes may be considered. Powers v. Savage (In re Powers), 202 B.R. 618, 622-23 (B.A.P. 9<sup>th</sup> Cir. 1996). However, the debtor's increased monthly income is a significant change that warrants a modification.

The objection, which maintains that no modification is warranted because the confirmed plan complies with 11 U.S.C. § 1325(b), is overruled. This is not a reason to not modify a plan if, for no other reason, section 1325(b) does not apply to modified plans. See Burgie v. McDonald (In re Burgie), 239 B.R. 406 (B.A.P. 9<sup>th</sup> Cir. 1999). Further, the citation to Kagenveama is irrelevant inasmuch as it has been overruled. See In Re Flores, 735 F.3d 855 (9<sup>th</sup> Cir. 2013).

9. 15-23928-A-13 SHAWN/JACQUELINE MOTION TO  
EJS-2 CUNNINGHAM CONFIRM PLAN  
7-8-15 [38]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan includes no provision requiring the debtor to make a plan payment. The plan does not satisfy 11 U.S.C. §§ 1322(a)(1) and 1325(a)(6).

10. 10-38136-A-13 SCOTT/GINA ANDERSON MOTION TO  
SJS-8 APPROVE LOAN MODIFICATION  
8-3-15 [114]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule

9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

11. 15-23144-A-13 STACI TERRY OBJECTION TO  
JPJ-2 EXEMPTIONS  
6-18-15 [22]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained.

The debtor has exempted 100% of cash on hand and on deposit, a total of \$1,845.26, pursuant to Cal. Civ. Pro. Code § 704.070. That section permits a debtor to exempt 75% of paid earnings "levied upon or otherwise sought to be subjected to the enforcement of a money judgment." See Cal. Civ. Pro. Code § 704.070(b)(2). The debtor argues that because the debtor's monthly paid wage is \$2,718, the \$1,845.26 is exempt because it is less than 75% of that wage. However, the statute makes clear that the amount exempt is 75% of the amount levied and not 75% of the debtor's total paid wages.

12. 15-24844-A-13 JASBIR SANGHA OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
7-29-15 [28]

- 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 has failed to commence making plan payments and has not paid approximately \$3,365.53 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, 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.

Fourth, the plan specifies no dividend for Class 7, the nonpriority unsecured claims. Without this information, the plan's compliance with 11 U.S.C. § 1325(a)(4), (a)(6), and (b) cannot be proven.

Fifth, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Charles Gardyn 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."

Sixth, the exemption claimed for cash, a checking account and a vehicle is patently defective. The exemption specified is for a homestead. Without this exemption, the plan must pay at least \$19,350 to unsecured creditors. The plan fails to specify any dividend. See 11 U.S.C. § 1325(a)(4).

Seventh, according to Form 22, the debtor will have \$88,426.20 of projected disposable income over the next five years. This must be paid to holders of unsecured claims. However, as just noted, the plan promises nothing to holders of nonpriority unsecured claims. The plan does not satisfy 11 U.S.C. § 1325(b).

Eighth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule I fails to list the debtor's occupation and length of employment, Schedule D gives differing values for real property in Manteca, Schedule B fails to list wearing apparel, the Statement of Financial Affairs does not list the debtor's 2014 income, and Form 22 fails to state the debtor's marital status. These nondisclosures are a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to



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

First, the debtor has failed to commence making plan payments and has not paid approximately \$200 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Even if the plan payment were made, the court would conclude the plan is not feasible. According to Schedules I and J, the debtor has no monthly net income with which to fund any plan.

Second, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, 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.

Fourth, the plan specifies no dividend for Class 7, the nonpriority unsecured claims. Without this information, the plan's compliance with 11 U.S.C. § 1325(a)(4), (a)(6), and (b) cannot be proven.

Fifth, the debtor has claimed exemptions pursuant to Cal. Civ. Proc. Code § 703.140(b). These exemptions total \$1,200. The trustee correctly argues that because the debtor is married and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done. Without this exemption, the plan must provide for the payment of \$1,200 to nonpriority unsecured creditors as required by 11 U.S.C. § 1325(a)(4). It does not so provide.

Sixth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule B fails to list a bank account, and the Statement of Financial Affairs fails to disclose that the debtor is married. These nondisclosures are 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).

Given the inaccuracies in the schedules and statements, the failure to provide information to the trustee, the failure to commence plan payments, and the failure to propose a plan that includes all basic terms, the court concludes that this case has been commenced in bad faith and for purpose of hindering and delaying creditors. The case will be dismissed.

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. 14-30556-A-13 HARRY HERNANDEZ MOTION TO  
NUU-2 MODIFY PLAN  
7-6-15 [41]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the objection will be overruled.

While the debtor did not make a timely plan payment in July, the delinquency

was cured on August 1. Therefore, it appears the plan is feasible as required by 11 U.S.C. § 1325(a)(6).

18. 15-22659-A-13 ZAFU EMBAYE MOTION TO  
RS-2 CONFIRM PLAN  
7-1-15 [37]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the debtor has failed to make \$3,140 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).

The plan's feasibility is called further into doubt by the fact that Schedules I and J show that the debtor's monthly net income is approximately \$700 less than the proposed plan payment.

Second, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors \$46,699.97 but Form 22 shows that the debtor will have \$75,042 over the next five years.

Third, the debtor has failed to give the trustee a copy of state tax return as he requested. Further, Schedule I omits a nonfiling spouse's income. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

19. 15-22659-A-13 ZAFU EMBAYE COUNTER MOTION TO  
RS-2 DISMISS CASE  
8-3-15 [44]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The counter motion will be conditionally denied.

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

20. 13-25164-A-13 JOSE LOPEZ MOTION TO  
JPJ-1 MODIFY PLAN  
7-13-15 [80]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be conditionally denied and the objection will be overruled.



23. 14-30471-A-13 MICHELLE CAMPAU MOTION TO  
RJ-2 MODIFY PLAN  
6-29-15 [39]

- 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 \$100 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).

24. 11-43877-B-13 VINCENT/SHELLY CAPERELLO MOTION TO  
DF-6 COMPEL DISCOVERY ETC  
7-13-15 [77]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied.

Bank of America filed a proof of claim on November 22, 2011. On June 4, 2015 Bank of America transferred its claim to US Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust. The servicing agent of US Bank is Caliber Home Loans, Inc.

On May 20, 2015, shortly before the transfer of the claim, the debtor objected to the proof of claim filed by Bank of America. The next day, counsel for the debtor served interrogatories and a request for the production of documents on Bank of America. Bank of America did not respond to this discovery. This motion seeks to compel a response and seeks attorney's fees.

The problem with the discovery is that it is not directed to a party. While Bank of America was a party, its claim has been transferred. Interrogatories and requests for the production of documents must be directed to parties. Fed. R. Civ. Pro. 33 and 34.

That said, the court will issue a subpoena compelling Bank of America to appear for a deposition and to produce its records. While the discovery is pending, the court will continue the hearing on the objection to the claim.

25. 15-24578-A-13 BRYAN RONK MOTION TO  
DEF-2 CONFIRM PLAN  
6-26-15 [19]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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, 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.

26. 15-24578-A-13 BRYAN RONK COUNTER MOTION TO  
DEF-2 DISMISS CASE  
8-3-15 [33]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be conditionally denied.

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

27. 15-24879-A-13 IMOGENE ESPINOZA OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
7-29-15 [17]

- 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 failed to commence making plan payments and has not paid approximately \$1,700 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, 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.

Third, 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.

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to list income from 2013 in the answer to question 1 of the statement of financial affairs as well as social security and retirement income in the answer to the second question. 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).

Fifth, the Ocwen secured claim is misclassified in Class 1. That class is reserved for long term claims not modified by the plan. Such claims receive their ongoing contract installment payment and any arrears are cured. See 11 U.S.C. § 1322(b)(2) and (b)(5).

Ocwen will not be paid its ongoing contract claim but will receive a different amount. Hence, the claim belongs in Class 2. And, because the claim is being modified, the entire claim, including unmatured principal, must be paid in full through the plan. The only debt that can be permitted to remain long term debt is debt that is not modified by the chapter 13 plan. As long as the plan is only curing an arrearage, the long term debt may continue beyond the length of the plan. See 11 U.S.C. § 1322(b)(3) & (5). Whenever a long term debt is modified prospectively in a chapter 13 case, such as by changing its interest rate or future installments, the entire claim must be paid during the chapter 13 case. See 11 U.S.C. §§ 1322(d) and 1325(a)(5). See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9<sup>th</sup> Cir. 2004).

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.

28. 13-35880-A-13 GREGORY SWANGIN AND MOTION FOR  
AT-1 LADRENA GUNN-SWANGIN RELIEF FROM AUTOMATIC STAY  
VS. VILLA SAN JUAN OWNERS ASSOCIATION 6-29-15 [59]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted in part.

The motion demonstrates that the debtor failed to make monthly homeowner association payments totaling \$5,118. The motion demand payment of this sum plus \$483.20 in interest.

The debtor concedes the payments were not made but states that tenders of those payments were refused. Further, since the original hearing on the motion, the debtor has paid to the movant a total of \$5,118. The issue remaining concerns the movant's right to fees for bringing the motion and interest on the delinquent assessments.

As to interest, if the court had any admissible evidence that payments were tendered and refused, it would award no interest. But, there is no such interest. Therefore, if the debtor's do not pay the \$483.20 with their September HOA fee, the court will terminate the automatic stay on the movant's further ex parte application.

The court will award no fees and costs because the movant admits the subject property is over-encumbered. See 11 U.S.C. § 506(a).

29. 15-24980-A-13 MONETA HOLLIS OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
7-29-15 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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

The 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).

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.

**THE FINAL RULINGS BEGIN HERE**

30. 14-26107-A-13 ROBIN LANGLEY MOTION TO  
SET ASIDE  
7-30-15 [33]

**Final Ruling:** The motion will be dismissed without prejudice.

First, a motion placed on the calendar by the moving party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a motion are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with the motion.

This motion was filed without a docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to profit from possible confusion caused by this breach of the court's local rules.

Second, the moving party set the hearing pursuant to a "notice and opportunity for hearing procedure." This court's local rules provide at Local Rule 9014-1(k)(1):

The notice of opportunity for hearing procedure, as defined in 11 U.S.C. § 102(1), may only be used as permitted in LBR 3015-1(c) and (d) relating to confirmation of chapter 13 plans. In all other matters, if an order is necessary or is desired by the moving party, the motion shall be set for hearing pursuant to this Local Rule.

This motion does not concern the confirmation of a chapter 13 plan and it was not noticed for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). Therefore notice is deficient.

Even if the court were permit the use of a notice and opportunity for hearing procedure, this attempt is defective. The motion was filed and served on July 31 and the notice gave the debtor and any other respondent 21 days from service to set a hearing. Yet, the movant set a hearing on August 17, 18 days after service.

31. 15-22108-B-13 PETER/SUSAN SCATENA MOTION TO  
BB-1 VALUE COLLATERAL  
VS. WELLS FARGO BANK, N.A. 6-9-15 [25]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$262,300 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Home Mortgage. The first deed of trust secures a loan with a balance of approximately \$273,804.62 as of the petition date. Therefore, Wells Fargo 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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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 abovetreatment, violates In re Hobby, 130 B.R. 318 (B.A.P. 9<sup>th</sup> 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 \$262,300. 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 (5<sup>th</sup> Cir. 1980).

32. 14-24309-A-13 HEATHER SPEARS MOTION TO  
RJ-2 MODIFY PLAN  
7-9-15 [40]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for a plan payment of \$25 beginning August 25, 2015. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

33. 15-25517-A-13 VYACHESLAV DEMYAN MOTION FOR  
SMR-1 RELIEF FROM AUTOMATIC STAY  
GP EQUITIES, INC. VS. 7-20-15 [10]

**Final Ruling:** The motion will be dismissed as moot. The case was dismissed on August 12. Therefore, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c) (1) & (c) (2).

34. 15-25717-A-13 LORIN/IRENE PARTAIN ORDER TO  
SHOW CAUSE  
7-31-15 [15]

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

When the petition was filed, the \$310 filing fee was not tendered and the debtor did not request permission to pay that fee in installments. The failure to pay the filing fee is cause for dismissal. However, after issuance of the order to show cause, the filing fee was paid in full. No prejudice resulted from the delay in payment.

35. 15-23419-A-13 JOHN/RATIKORN CHANDO MOTION TO  
MRL-1 VALUE COLLATERAL  
VS. THE BANK OF NEW YORK MELLON 6-18-15 [25]

**Final Ruling:** The movant has voluntarily dismissed the motion.

36. 15-25719-A-13 MICHAEL/JUDITH PENNEY ORDER TO  
SHOW CAUSE  
7-31-15 [16]

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

When the petition was filed, the \$310 filing fee was not tendered and the debtor did not request permission to pay that fee in installments. The failure to pay the filing fee is cause for dismissal. However, after issuance of the order to show cause, the filing fee was paid in full. No prejudice resulted from the delay in payment.

37. 10-52724-A-13 HUGO/MARTHA GUZMAN MOTION TO  
CYB-2 APPROVE COMPENSATION OF DEBTORS'  
ATTORNEY  
8-3-15 [59]

**Final Ruling:** The motion will be dismissed without prejudice.

Counsel for the debtor seeks compensation for professional services rendered to the debtor in this case. This hearing was set on 14 days' notice of the hearing. Fed. R. Bankr. P. 2002(a)(6) requires a minimum of 21 days' notice of the hearings on motions to approve professional compensation and reimbursement of expenses. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(6) requires a minimum of 21 days of notice of the hearing and because only 14 days' was given, notice is insufficient.

38. 15-25032-A-13 SAMEE RASHID OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
7-28-15 [18]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. The debtor's response to the objection concedes its merit Accordingly, it is removed from calendar for resolution without oral argument.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of the IRS 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."

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.

39. 15-24844-A-13 JASBIR SANGHA OBJECTION TO  
EDT-1 CONFIRMATION OF PLAN  
RAJVINDER DHANOTA VS. 7-30-15 [32]

**Final Ruling:** The objection will be dismissed without prejudice. According to the certificate of service, the debtor was not served with the objection.

Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. When the person served is the debtor, the debtor and the debtor's attorney both must be mailed the summons and complaint. See Fed. R. Bankr. P. 7004(b)(9) & (g). Here, the motion was served only on the debtor's attorney. Nothing has been filed by or on behalf of the debtor that might be considered a waiver of this service defect. Therefore, service is defective and the motion must be dismissed without prejudice.

40. 14-25346-A-13 GERALDINE WHITNEY MOTION FOR  
GAM-1 RELIEF FROM AUTOMATIC STAY  
ARMANDO GARCIA VS. 6-4-15 [46]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 proceed to judgment before the state court/administrative tribunal in order to determine the debtor's liability and then to seek recovery from the Uninsured Employers Benefit Trust Fund in the event the state court/administrative tribunal determines that the debtor has liability to the movant.

Each party is to bear their own costs and fees in connection with this motion. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

41. 15-23650-A-13 RUDOLPH/RENEE LUNA MOTION TO  
PGM-2 VALUE COLLATERAL  
VS. PRESTIGIO JEWELERS, INC. 7-15-15 [37]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$500 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 (9<sup>th</sup> Cir. 2004). Therefore, \$500 of the respondent's claim is an allowed secured claim. When the respondent is paid \$500 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.

42. 15-25155-B-13 DOUGLAS/DENISE BRITT MOTION TO  
BLG-2 VALUE COLLATERAL  
VS. BANK OF AMERICA HOME LOANS 7-1-15 [13]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$167,490.15 as of the date the petition was filed. It is encumbered by a first deed of trust held by Greentree. The first deed of trust secures a loan with a balance of approximately \$213,689.44 as of the petition date. Therefore, Bank of America Home Loans' 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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$167,490.15. 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 (5<sup>th</sup> Cir. 1980).

43. 12-41260-A-13 DAVID/TERESA THURSTON MOTION TO  
SS-3 MODIFY PLAN  
7-13-15 [52]

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

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, to specify a plan duration of 33 months, and to require a plan payment of \$42,000 on September 25, 2015. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

44. 15-22965-A-13 JOHN PUGH MOTION TO  
RDS-1 DISMISS CASE  
7-17-15 [48]

**Final Ruling:** The motion will be dismissed because it is moot. The case was dismissed on August 8.

45. 15-24767-B-13 SUE WILLIAMSON OBJECTION TO  
APN-1 CONFIRMATION OF PLAN  
WELLS FARGO BANK, N.A. VS. 7-7-15 [17]

**Final Ruling:** This matter has been continued to October 7, 2015 at 10:00 a.m. in Dept. B.

46. 15-24767-B-13 SUE WILLIAMSON MOTION TO  
SJS-1 VALUE COLLATERAL  
VS. WELLS FARGO BANK, N.A. 7-9-15 [22]

**Final Ruling:** This matter has been continued to October 7, 2015 at 10:00 a.m. in Dept. B.

47. 15-24770-B-13 MICHAEL/MICHELLE BAYS MOTION TO  
SS-1 VALUE COLLATERAL  
VS. WELLS FARGO BANK, N.A. 6-23-15 [13]

**Final Ruling:** This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$322,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by SAFE Credit Union. The first deed of trust secures a loan with a balance of approximately \$391,938 as of the petition date. Therefore, Well Fargo 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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re

Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$322,000. 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 (5<sup>th</sup> Cir. 1980).

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$130,700 as of the date the petition was filed. It is encumbered by a first deed of trust held by Aurora Bank. The first deed of trust secures a loan with a balance of approximately \$191,731.03 as of the petition date. Therefore, Bank of America'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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> 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. 9<sup>th</sup> 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 \$130,700. 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 (5<sup>th</sup> Cir. 1980).

49. 14-30283-A-13 LARRY/VALERIE JONES MOTION TO  
MRL-2 APPROVE COMPENSATION OF DEBTORS'  
ATTORNEY  
7-13-15 [38]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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 seeks approval of \$3,707.50 in fees and costs incurred in connection with this case for work done on behalf of the debtor. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, to the extent applicable.