UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 3, 2016 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 14. 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 OCTOBER 31, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 17, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 24, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 15 THROUGH 28 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 OCTOBER 11, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-29914-A-13 DEATRICE EVERETT — MOTION TO MODIFY PLAN
WW-3 — 8-24-16 [49]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor is proposing to forgive plan payments not previously made and to reduce the monthly plan payment from $600 to $545 even though the debtor is making $200 voluntary pension contributions. Also, even with the reduced payment, the debtor's income will permit payment of a 20% dividend to class 7 but the plan proposes no dividend. Given the voluntary pension contributions and pay a dividend to unsecured creditors, the court concludes the plan has been proposed in bad faith. See 11 U.S.C. § 1325(a)(3).

2. 16-26025-A-13 GAYE PERKINS — MOTION TO EXTEND AUTOMATIC STAY
SJS-1 — 9-19-16 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed on May 18, 2016 because the debtor to maintain her plan payments. This case was filed on September 9.

Hence, the debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

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

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has

filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

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

Here, it appears that the debtor was unable to maintain her plan payments in the first case due to a reduction in employment income. While Schedule I still reports her income as being approximately $700 a month lower than in the first case, Schedule J shows the debtor's expenses have been reduced by approximately $1,000. This is a sufficient change in circumstances rebut the presumption of bad faith.

3. 13-31030-A-13 SOS AYRAPETYAN — OBJECTION TO EXEMPTIONS
JPJ-2 — 8-26-16 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: This ruling addresses the chapter 13 trustee's objection to the debtor's amended exemptions (JPJ-2) as well as the trustee's motion to convert or dismiss the case (JPJ-3). The objection will be overruled and the motion will be denied.

Both the objection and the motion are premised on the fact that the debtor failed to schedule a claim for personal injuries. The debtor was injured in a car accident that occurred on October 18, 2013, approximately two months after the chapter 13 case was filed. The debtor retained an attorney (not the same attorney that represents the debtor in the bankruptcy) on April 28, 2014. While the record is unclear as to whether a personal injury action was filed, the debtor's personal injury claim has been settled for a gross amount of $550,000. After payment of medical liens and her attorney, the debtor will receive $179,148.84.

The debtor amended Schedules B and C on August 22, 2016 to disclose the pending settlement and to exempt the net settlement amount to be received by the debtor pursuant to Cal. Civ. Pro. Code §§ 704.140(d) and 704.150(c).

The debtor proposed a chapter 13 plan on August 21, 2013, before the accident. The court denied confirmation of that plan at hearing on October 21, 2013 and in an order filed October 20, 2013. The debtor then proposed a modified plan on November 18, 2013. It proposed 36 months of $150 payments to be derived from the debtor's employment income. The plan paid no dividends to any creditors. It stripped an under-water second mortgage from the debtor's home and required the debtor to make direct payments to the holder of a first mortgage which was not in default. Unsecured creditors received nothing. The $150 monthly plan payment, then, paid only the debtor's attorney's fees and the trustee's fees.

A review of the motion to confirm the modified plan reveals that the debtor did not disclose the car accident, her injuries, or a personal injury claim.

The modified plan was confirmed on February 10, 2014 without any objections from any party in interest.

The debtor has paid all 36 monthly payments required by the modified plan. Even though the plan required no dividend to unsecured creditors, the trustee received sufficient funds to pay $1,958.07 to the unsecured creditors who hold total of $40,967.82 in claims.

The trustee asserts that the debtor's failure over a period of approximately 28 months after the retention of a personal injury attorney to amend the schedules to disclose the post-petition personal injury claim warrants disallowing the exemption as well as conversion of the case to chapter 7 or the dismissal of the case. The court disagrees.

First, assuming for sake of argument that the court converted the case to one under chapter 7, the personal injury claim would not be property of the estate even though 11 U.S.C. § 1306(a)(1) makes it property of the chapter 13 estate. This is because 11 U.S.C. § 348(f)(1) limits property of the chapter 7 estate to "property of the estate, AS OF THE DATE OF THE FILING OF THE PETITION. . . ." [Emphasis added.] The post-petition, pre-conversion personal injury claim would not be administered by the chapter 7 trustee.

Second, assuming for sake of argument that the personal injury claim is not exempt and was reported before the court confirmed the modified plan, nothing would change. This is because the dividend payable to unsecured creditors is dictated by 11 U.S.C. § 1325(a)(4) which requires that they receive the present value of what they would receive in a chapter 7 liquidation. As just discussed above, in a chapter 7 liquidation the chapter 7 trustee would not administer a post-petition personal injury claim, exempt or not, for the benefit of unsecured creditors.

Third, for purposes of the chapter 13 case, once the plan was confirmed, the personal injury claim no longer was property of the estate. The plan revested property of the estate upon confirmation.

Fourth, the assertion that the debtor did something wrong by not more promptly scheduling the personal injury claim is incorrect. Nothing in the Bankruptcy Code or Rules requires a debtor to affirmatively disclose or schedule property that becomes property of the estate solely through the operation of section 1306(a)(1). Fed. R. Bankr. P. 1007(h) does not require it. That rule applies only the disclosure of property that becomes property of the estate under 11 U.S.C. § 541(a)(5). That is, section 541(a)(5) requires the disclosure of property received within 180 days of filing the petition from an inheritance, spousal property agreement, divorce decree, or life insurance and death benefit. Such property is included in the property of the chapter 7 estate and so it must be disclosed whether the case proceeds under chapter 7 or chapter 13. See also Cusano v. Klein, 264 F.3d 936, 947 (9th Cir. 2011) (a debtor has no duty to schedule a cause of action that did not accrue prior to bankruptcy). The post-petition personal injury claim is the kind of property described in section 541(a)(5).

The primary purpose of section 1306(a)(1) is to give the protection of section 362(a) to a chapter 13 debtor's post-petition property to insure the debtor is able to perform the plan.

Because nothing would be different if the debtor had reported the personal injury claim as soon as it accrued, no cause exists to convert the case or to dismiss it because it was not disclosed.

The objection to the debtor's exemption of the personal injury claim also will be overruled.

First, as explained above, it makes no difference whether the claim is exempt or not. It does not change the dividend unsecured creditors will receive in this chapter 13 case or in a chapter 7 case should it be converted from chapter 13. This warrants dismissal of the objection.

Second, while the trustee is correct that exemptions typically are determined as of the petition date, this is so because the property of the estate typically is limited to the debtor's property as of the petition date. However, when the property of the estate includes post-petition property, nothing in the Bankruptcy Code prevents the debtor from claiming it as exempt. 11 U.S.C. § 522(b)(1) makes clear that an individual debtor may exempt any property of the estate. The only limitation is that the debtor is limited to those exemptions available as of the petition date. The trustee's objection does not assert that the debtor in this case is claiming exemptions that became effective after the petition date.

The trustee's objection has merit insofar as the debtor is claiming the personal injury claim as exempt under Cal. Civ. Pro. Code 704.140(d) which applies to damages or a settlement that is payable periodically. The debtor's settlement will be paid in a lump sum. Also, Cal. Civ. Pro. Code 704.150(c) is limited to damages from, or a settlement of, a wrongful death claim. Here, the claim does not arise out of a wrongful death claim.

To the extent any purpose would be served by claiming an exemption in this case, the applicable exemption is Cal. Civ. Pro. Code 704.140(a) which permits the exemption of a personal injury claim. The debtor's response to the objection argues that it is exempt under this section as well as section 704.140(c) and section 704.150(c). The court will deem the exemption claimed under this section unless the trustee can point to any prejudice if the court permits an amendment of the debtor's claim of exemption without requiring amendment of Schedule C.

4. 13-31030-A-13 SOS AYRAPETYAN — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-3 — 8-26-16 [53]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied for the reasons explained in the ruling on the related objection to the debtor's exemption (JPJ-2).

5. 16-25939-A-13 YOLANDA ARRIAGA — MOTION FOR RELIEF FROM AUTOMATIC STAY
KHS-4 — 9-14-16 [13]
DAVID NEJELY VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given

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

The debtor occupies residential property on a month-to-month tenancy. The movant elected to terminate that tenancy prior to the filing of this case and served a notice on the debtor to that effect. The debtor did not vacate the property and so the movant commenced an unlawful detainer action. It was served on the debtor but this case was filed one day prior to the trial.

Given the service a notice terminating the debtor's month to month tenancy, the debtor's right to possession has terminated and there is cause to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1). In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The stay will be modified to permit the movant to seek possession of the property in state court. No fees and costs are awarded. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

6. 16-23841-A-13 RANDY/STEPHANIE STANLEY — MOTION TO CONFIRM PLAN
SNM-6 — 8-16-16 [62]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

According to the plan, the debtor will make plan payments aggregating $25,200 over 36 months. However, the plan proposes to pay in full the secured claim of the IRS, the secured claim of the FTB, and debtor's counsel's fees. These total $19,400, $9,400 and $2,000. Even without considering the chapter 13 trustee's fees and the interest due on the two secured claims, $25,200 will not pay $30,800 in total claims and expenses. The plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

7. 16-23841-A-13 RANDY/STEPHANIE STANLEY — MOTION TO VALUE COLLATERAL
SNM-7
VS. CACH, L.L.C. — 9-9-16 [73]

- ☐ 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.

The respondent holds a judicial lien on any real property located in Solano County by the debtor. The motion indicates the debtor owns no real property in Solano County. The court cannot value property the debtor does not own. While the appropriate vehicle to deal with this claim might be a claim objection, the court notes that the respondent has yet to file a proof of claim.

8. 16-23841-A-13 RANDY/STEPHANIE STANLEY — MOTION TO VALUE COLLATERAL 9-9-16 [78]
SNM-8
VS. RESURGENCE CAPITAL, L.L.C.

- ☐ 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.

The respondent holds a judicial lien on any real property located in Solano County by the debtor. The motion indicates the debtor owns no real property in Solano County. The court cannot value property the debtor does not own. While the appropriate vehicle to deal with this claim might be a claim objection, the court notes that the respondent's proof of claim concedes that the claim is unsecured.

9. 16-24341-A-13 PAMELA AMUNDSEN — MOTION TO CONFIRM PLAN 8-15-16 [23]
RWH-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The IRS has filed a priority claim for 2014 taxes in this case and a related

case. In this case, the plan does not provide for payment in full of the IRS claim as required by 11 U.S.C. § 1322(a)(2). While the response to the objection indicates the debtor in the related case will pay the claim in full, the plan in this case does not require the IRS claim to be satisfied by the other debtor as a condition to the completion of the plan in this case and this debtor's discharge. Nor does it require this debtor to pay the claim to the extent not paid by the related debtor.

10. 16-26041-A-13 NICOLE KELLY — MOTION TO EXTEND AUTOMATIC STAY 9-19-16 [9]
FF-1

- ☐ 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 second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the filing of the current case. The prior case was dismissed because the debtor failed to make all plan payments and was unable to cure the default or modify the plan in order to resolve the default.

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

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

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

Here, it appears that the debtor was unable to maintain plan payments in the first case. The debtor now asserts that her income has increased by $9,000 a year (approximately $750 a month), she will be able to maintain payments in this case. However, comparison of Schedules I and J in this case to the amended Schedules I and J in the first case suggests very little has changed. While the debtor's income has increased by approximately $750, her expenses have increased by more than $800 a month. Hence, any increase in income is more than offset by the increase in expenses. The court cannot conclude that this case is more apt to succeed.

11. 16-24844-A-13 DEBRA FREEMAN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 9-14-16 [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 case will be dismissed.

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

Second, 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, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender, Quicken Loans, has agreed or will agree to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5). Doing so will take in excess of 599 in violation of 11 U.S.C. § 1322(d).

12. 16-24844-A-13 DEBRA FREEMAN
AP-1
QUICKEN LOANS, INC. VS.

OBJECTION TO
CONFIRMATION OF PLAN
9-13-16 [19]

- ☐ 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 for the reasons and to the extent discussed in the ruling on the trustee's objection, JPJ-1.

13. 16-25868-A-13 WALTER/TARA VIDOSH
MRL-1
VS. AURORA LOAN SERVICES, L.L.C.

MOTION TO
VALUE COLLATERAL
9-19-16 [16]

- ☐ 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 $400,000 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 $424,767 as of the petition date. Therefore, Aurora Loan Services' 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 $400,000. 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).

14. 16-26169-A-13 KANIKA REED
TLA-1

MOTION TO
EXTEND AUTOMATIC STAY
9-16-16 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the filing of the current case. The prior case was dismissed because the debtor was unable to maintain plan payments despite being permitted to modify her plan in order to lower those payments just two months before defaulting on them. In the motion before the court the debtor maintains that her income in the first case was less than expected. However, when calculating her current monthly income on Form 22 in the current case, the court can discern no dip in income during the period the debtor defaulted in the first case.

A comparison of Schedules I and J in both cases are substantially similar. The debtor's approximate income and expenses have remained the same in both cases.

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

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

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

Here, it appears that the debtor was unable to maintain plan payments in the first case. This motion does not establish that the debtor will be any more successful in this case, and comparison of the schedules in the two cases does not indicate that the debtor's financial situation has changed appreciably. The court cannot conclude that this case is more apt to succeed.

FINAL RULINGS BEGIN HERE

15. 16-25905-A-13 RALPH/SARA GODUCO — MOTION TO VALUE COLLATERAL
MC-1
VS. FIRST HORIZON HOME LOAN CORPORATION — 9-3-16 [10]

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 $281,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage. The first deed of trust secures a loan with a balance of approximately $302,205.99 as of the petition date. Therefore, First Horizon Home Loan Corporation'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 $281,000. 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).

16. 16-21007-A-13 ELIZABETH PAZ — MOTION TO CONFIRM PLAN
AF-4 — 8-14-16 [92]

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

The objection will be sustained.

First, the debtor has failed to make $2,858 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, even if the plan payments were current the plan would not be feasible because the monthly plan payments of $2,619 in months 1-12 and $3,840 in months 13-60 are less than the $3,985 in dividends and expenses the plan requires the trustee to pay each month.

Third, this motion is moot given the filing of a subsequent plan and a motion to confirm that plan.

17. 15-28808-A-13 BRIAN/CARMEN CARROLL — OBJECTION TO CLAIM
PGM-3 — 8-17-16 [44]
VS. WELLS FARGO FINANCIAL NATIONAL BANK

Final Ruling: This objection to the proof of claim of Wells Fargo Financial

National Bank 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 and the claim allowed as a nonpriority unsecured claim.

The proof of claim indicates that the underlying debt is based on an open-end, revolving credit arrangement. Using this credit facility, the debtor purchase supplies from Leslie's Pool Supplies. The claimant asserts that it is secured by those supplies. However, there is nothing stated in the claim or appended to it indicating that the debtor granted a security interest to the claimant, that the security interest was perfected, or describing the collateral beyond the generic description of "supplies". Without this basic information, the court cannot conclude that property of the debtor is impressed with a security interest in favor of the claimant.

18. 16-23812-A-13 SANDRA HARRIS — MOTION TO CONFIRM PLAN
MMM-2 — 8-15-16 [24]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the moving party has failed to establish that the motion was served on all necessary parties in interest.

19. 16-25913-A-13 ROBERT/EVELYN MCCARD — MOTION TO AVOID JUDICIAL LIEN
BHS-1 — 9-2-16 [8]
VS. BASELINE FINANCIAL SERVICES, INC.

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $199,000 as of the date of the petition. The

unavoidable liens total $159,700. The debtor has an available exemption of $39,300. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

20. 15-21528-A-13 KEVIN KRONE — MOTION TO APPROVE LOAN MODIFICATION
PGM-2 — 9-2-16 [63]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

21. 16-23134-A-13 DANA DREBERT — MOTION TO CONFIRM PLAN
MOH-1 — 8-22-16 [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.

22. 16-24946-A-13 TWILA HENRY — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 9-1-16 [20]
TD AUTO FINANCE, L.L.C. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, 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 does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

23. 16-20052-A-13 TRINA ENOS — MOTION TO MODIFY PLAN 8-24-16 [24]
PLG-1

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 $500 for twelve months and $891 for the remainder of the plan. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

24. 15-28553-A-13 VELMA WALL — MOTION TO MODIFY PLAN 8-16-16 [37]
SDH-1

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 $3,330 for the remainder of the plan. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

25. 16-24764-A-13 ANGELO/BRENDA WILLIAMS — MOTION TO VALUE COLLATERAL 9-2-16 [30]
HLG-2
VS. SPECIALIZED LOAN SERVICING, L.L.C.

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered

as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $250,143 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage. The first deed of trust secures a loan with a balance of approximately $279,288 as of the petition date. Therefore, Specialized Loan Servicing's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court

will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $250,143. 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).

26. 16-25168-A-13 TERI TAYLOR — MOTION TO VALUE COLLATERAL 9-1-16 [24]
TAG-2
VS. SANTANDER CONSUMER USA, INC.

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property, a 2006 Chrysler 300. In the debtor's opinion, the subject property had a value of $6,500 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 (9th Cir. 2004). Therefore, $6,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $6,500 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.

27. 16-25786-A-13 RONALD JACKSON — ORDER TO SHOW CAUSE 9-14-16 [11]

Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on September 19, 2016.

28. 16-25194-A-13 DAMON TURNER
SDH-1
VS. DITECH FINANCIAL, L.L.C.

MOTION TO
VALUE COLLATERAL
8-29-16 [16]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property, a 2002 Chevrolet Tahoe. In the debtor's opinion, the subject property had a value of $3,000 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $3,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $3,000 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.