**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**October 14, 2014 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 15. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

**IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON NOVEMBER 10, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 27, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 3, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.**

**THERE WILL BE NO HEARING ON ITEMS 16 THROUGH 25 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 20, 2014, AT 2:30 P.M.**

***Matters to be Called for Argument***

1. 13-27002-A-13 RICHARD ROBERTS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 9-24-14 [108]

- ☐ 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, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6). Schedules I and J show that the debtor will have monthly net income of approximately $1,443.12; the plan requires a monthly payment of $1,581.78.

Third, the debtor has failed to give the trustee financial records regarding 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).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to include a nonfiling spouse's income on Form 22 and in questions 1 and 2 of the statement of financial affairs, and the debtor has failed to list interests in Auburn real property and a trust fund. 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).

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

2. 13-27002-A-13 RICHARD ROBERTS
TAA-4

MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
9-17-14 [94]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, 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.

Special counsel for the former chapter 7 trustee has filed his first and final motion for approval of compensation. The requested compensation consists of $2m,145 in fees. 11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The compensation relates to services provided in connection with a complaint objecting to the debtor's discharge. The debtor converted the case to chapter 13 had has proposed a plan to pay all claims in full in order to avoid the prosecution of the complaint. The services have, in effect, benefitted the estate and creditors and the requested compensation is reasonable.

3. 13-27002-A-13 RICHARD ROBERTS
TAA-5

MOTION TO APPROVE COMPENSATION FOR TRUSTEE
9-17-14 [100]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The motion seeks an award of compensation for the former chapter 7 trustee. If allowed, this compensation would be an administrative expense. See 11 U.S.C.

§§ 503(b)(2) & 507(a)(1). This motion will be granted.

The proposed chapter 13 plan, if consummated, will pay out approximately $75,385 to creditors and other parties in interest other than the debtor. This is net of the compensation likely payable to the chapter 13 trustee for his compensation.

Several bankruptcy courts have considered whether a chapter 7 trustee may be compensated when the case has been converted or dismissed before he or she has distributed any funds to creditors. See e.g., In re Berry, 166 B.R. 932 (Bankr. D. Ore. 1994); In re Stabler, 75 B.R. 135 (Bankr. M.D. Fla. 1987); In re Woodworth, 70 B.R. 361 (Bankr. N.D. N.Y. 1987). While 11 U.S.C. § 330(a) permits the bankruptcy court to allow a trustee reasonable compensation, 11 U.S.C. § 326(a) limits any compensation:

"*(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title to the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, and 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000 upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.*"

The literal application of section 326(a) poses an apparent difficulty for any chapter 7 trustee who is displaced by dismissal or conversion. If the chapter 7 trustee has not disbursed or turned over money to parties in interest other than the debtor, section 326(a) seemingly allows no compensation beyond the minimum fee specified in section 330(b).

In cases where the chapter 7 trustee has marshaled assets or performed other substantial services, some bankruptcy courts depart from the apparent literal application of section 326(a) and award compensation based upon a quantum meriut theory. See In re Berry, 166 B.R. at 934-35; In re Flying S Land & Cattle Co., 23 B.R. 56, 58 (Bankr. C.D. Cal. 1982); In re Rennison, 13 B.R. 951, 953 (Bankr. W.D. Ky. 1981). According to these courts, the limitations imposed by section 326(a) upon trustee compensation are confined to those cases where administration by the chapter 7 trustee is not stymied by conversion or dismissal. In re Yale Mining Corp., 59 B.R. 302 (Bankr. W.D. Va. 1986).

However, these courts do not completely discard section 326(a). These courts attempt to estimate how much the trustee would have received if the chapter 7 case had gone to its full term and award some portion of the percentage fee that would have been allowed under section 326(a).

One of the more recent cases addressing this issue takes a different tack. See In re Hages, 252 B.R. 789 (Bankr. N.D. Cal. 2000). Like the trustee in this case, the trustee in Hages made no distributions nor took possession of money or assets. Nonetheless, the bankruptcy court awarded compensation to the chapter 7 trustee. The bankruptcy court held:

"*This court agrees with the UST that distributions made through the chapter 13 plan should be imputed to the chapter 7 trustee, for purposes of calculating the chapter 7 trustee's maximum fees. However, this court uses somewhat different reasoning than Rodriguez, [240 B.R. 912 (Bankr. D. Colo 1999),] and*

*disagrees with its holding that the maximum can only be calculated piecemeal, as each plan payment is distributed. The Rodriguez court treated all trustees in any given case as a single 'composite' trustee, thereby imputing distributions by the chapter 13 trustee to the chapter 7 trustee for purposes of section 326(a). This analysis led the Rodriguez court to combine trustees' fees in applying the section 326(a) cap, limiting the chapter 7 trustee to whatever is left over after the anticipated total fees payable to the chapter 13 trustee. As discussed below, this court interprets the statute to permit payment of the chapter 7 trustee without having to treat both trustees as a single trustee."*

. . .

"*When a debtor converts a case from chapter 7 to chapter 13 it is often, if not usually, because the chapter 7 trustee has either uncovered assets that otherwise would not be available to creditors or taken some action adverse to the debtor, such as objecting to the debtor's discharge. [The chapter 7 trustee's] work in this case revealed potential equity in the debtor's home above the claimed homestead exemption, which apparently motivated the debtor to convert to chapter 13. Whether or not the chapter 7 trustee actually turns over cash to the chapter 13 trustee, the chapter 7 trustee turns over an estate that must generate distributions to creditors under a chapter 13 plan that are equal to or greater than they will receive in Chapter 7. 11 U.S.C. § 1325(a)(4). Given these realities, it is entirely appropriate to impute the moneys that will be distributed by the chapter 13 trustee to the chapter 7 trustee for purposes of computing the maximum fee the chapter 7 trustee can charge, and allowing interim fees up to that maximum.*"

. . .

"*. . .[T]his court holds that a chapter 7 trustee's maximum fees in a case converted to Chapter 13 should be based on distributions to be made by the chapter 13 trustee under the chapter 13 plan. As discussed below, this does not necessarily mean that every chapter 7 trustee will have an administrative claim on par with other expenses of administration, nor that the maximum percentage of such claim should be paid with every distribution. What it does mean is that chapter 7 trustees can receive no more than 25% of total distribution to be made by the chapter 13 trustee under the chapter 13 plan for the first $5,000 of distributions, and then no more than the other percentages set forth in section 326(a).*"

The court in Hages also concluded that the compensation payable to the former chapter 7 trustee is not impacted by the compensation payable to the chapter 13 trustee. In other words, the requirement of 11 U.S.C. § 326(c) that multiple trustees be compensated at the same rate as a single trustee, is applicable only as to chapter 7 trustees. It does not apply when a chapter 7 trustee is displaced by a chapter 13 trustee. The Hages court held: "*[I]t is not necessary to hold that conversion from chapter 7 to chapter 13 creates a new bankruptcy case. Rather, section 326(c) applies only where more than one person serves as trustee in the 'case under chapter 7' (or chapter 11, 12 or 13). That is not the present situation, so section 326(c) is inapplicable.*"

This court agrees with the reasoning of Hages. In this case, it is clear from the record that the chapter 7 trustee's efforts would have culminated in a substantial dividend to unsecured creditors. They will still receive that dividend, albeit in the context of a chapter 13 case.

The plan proposes to pay as much as $75,385 to creditors excluding the chapter 13 trustee. The maximum compensation permitted by section 326(a) on this amount would be $7,019.25 (25% of $5,000.00, 10% of $45,000 and 5% of $25,385).

11 U.S.C. § 326(a) does not grant the chapter 7 trustee a right to the maximum compensation. It is a cap on his or her compensation. Within that cap, the trustee is entitled only to reasonable compensation. 11 U.S.C. § 326(a) & 330(a)(1)(A); see Matter of Rauch, 110 B.R. 467, 472-73 (Bankr. E.D. Cal. 1990). In Hages, the trustee was not awarded the maximum compensation but was limited to a lodestar award that was beneath the section 326(a) cap.

In this case, the former trustee spent 8.95 hours of time pursing assets, including assets no listed on the schedules. Given that the requested compensation is less than the amount permitted by section 326(a), and given that creditors will be paid in full, the court finds the fees requested are reasonable and it awards the lesser amount $4,000.

4. 14-29113-A-13 SIMONE MUNGUIA — MOTION TO VALUE COLLATERAL
RK-1
VS. AMERICREDIT FINANCIAL SERVICES, INC. — 9-15-14 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2010 Kia Soul that secures Americredit's Class 2 claim. While the debtor has opined that the vehicle has a value of $9,750 based on the vehicle's model, year, and 75,907 miles, no specific information is given in the motion regarding the car's condition, equipment, and accessories.

Americredit counters that the value of the vehicle is $21,775 based on a retail evaluation by the NADA valuation guide.

To the extent the objection urges the court to reject the debtor's opinion of value because the debtor's opinion is not admissible, the court instead rejects the objection. As the owner of the vehicle, the debtor is entitled to express an opinion as to the vehicle's value. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Any opinion of value by the owner must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell,

Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by NADA is $11,850. This valuation, however, presumes the condition of the vehicle is excellent and is in saleable condition by a car retailer

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value. The creditor's retail value assumes that the vehicle is in excellent condition. This is not based on any facts, at least facts proven to the court. 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." That is, what would a retailer charge for the vehicle as it is?

Nor has the debtor proven to the court's satisfaction the replacement value of the vehicle. The motion contains very little specific information about the vehicle other than its model, year, and mileage.

While neither party has persuaded the court as to the replacement value of the vehicle under section 506(a)(2), it is the debtor who has the burden of proof. Accordingly, the valuation motion must be denied.

5. 14-28319-A-13 SHEVON BAILEY-TAYLOR — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 9-24-14 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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, Local Bankruptcy Rule 3015-1(b)(6) provides: "*Documents Required by Trustee*. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist,* or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee*

*Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

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

Third, the IRS has a secured claim of more than $254,000. The plan fails to provide for this claim even though the plan retains the collateral for the claim, a public pension, and utilizes the pension in order to fund the proposed plan. The plan does not satisfy 11 U.S.C. § 1325(a)(5)(B).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to disclose an unsuccessful chapter 13 case filed and dismissed in 2009 even though this information must be included on the petition. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

6. 14-28319-A-13 SHEVON BAILEY-TAYLOR — OBJECTION TO CONFIRMATION OF PLAN
USA-1
VS. INTERNAL REVENUE SERVICE — 9-24-14 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained to the extent and for the reasons the court has sustained the trustee's objection.

7. 14-28242-A-13 JPJ-1 — JUAN RAMIREZ AND ARACELI AGUILAR — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 9-24-14 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 a motion to value the collateral of Bank of America 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.

8. 14-29243-A-13 JLS-1 — SHELVIE KIDD — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-25-14 [17]
PARKVIEW EDGE PROPERTIES, L.L.C. 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 motion will be dismissed in part and denied in part.

According to the motion, the debtor filed two prior cases that were dismissed within the year prior to the filing of this case. Hence, there is no automatic stay in this case. See 11 U.S.C. § 362(c)(4). There is no automatic stay to terminate. The court will confirm, however, the absence of the automatic stay. See 11 U.S.C. § 362(j).

The motion also is moot. The court has dismissed the case pursuant to its notice of deficient filing. To the extent there was an automatic stay, it has expired. See 11 U.S.C. § 362(c)(1) & (c)(2).

Thus, the motion will be dismissed to the extent it seeks the termination of the automatic stay.

The motion will be denied to the extent it requests prospective in rem relief.

11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

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

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

Relief under 11 U.S.C. § 362(d)(4) will be denied because the movant is no longer "a creditor whose claim is secured by an interest in such real property," for purposes of 11 U.S.C. § 362(d)(4). The movant is the owner of the property. According to the motion, the movant purchased the property at the pre-petition foreclosure sale. The movant no longer owns a debt secured by the property.

Finally, in rem relief will be denied under 11 U.S.C. § 105 as well, because such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

9. 14-29570-A-13 SHELVIE KIDD — OBJECTION TO CERTIFICATION BY A DEBTOR 10-3-14 [13]

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

First, the debtor has no right to cure a lease default under California law because the debtor is not a lessee. The debtor is the former owner of the property which was lost in a nonjudicial foreclosure.

Second, the debtor is dead. The petition was filed by an imposter. So, to the extent the debtor may have had the right to cure the default, the debtor no longer can cure it.

10. 12-23663-A-13 JOE/YVETTE MARCH — MOTION TO MODIFY PLAN
PGM-12 — 7-7-14 [147]

- ☐ 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 $1,610 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). And, even if this is cured, the court is unconvinced the plan is feasible.

When the case was filed in February 2012, the debtor reported monthly income from "adoption assistance" of $5,338 on both Form 22 and Schedule I. Also reported on Schedule I was income from real property of $1,353 a month. Hence, when the case was filed, the debtor reported total monthly income of $6,691. After monthly expenses of $2,891 as reported on Schedule J, the debtor had monthly net income of $3,800 to fund a plan.

On July 2, 2012, an amended Form 22 was filed to report that the debtor had received the $1,353 in real property income during the six months prior to bankruptcy. No change was made to the adoption assistance income.

On July 26, 2012, an amended Schedule J was filed that increased monthly living expenses from $2,891 to $3,131. This reduced monthly net income to $3,560. No changes were made to the income reported on Schedule I.

On the basis of this income and expense information, the court confirmed a plan on October 11, 2012.

By March 2013, the debtor found it necessary to modify the plan. The modification was due to two problems. First, the debtor had failed to make plan payments for approximately three months. Second, the debtor had successfully negotiated a home loan modification that, in effect, cure the pre-petition default which permitted the debtor to make future installment payments directly to the home lender rather than through the trustee. Taking into account these factors, the debtor proposed to reduce the plan payment to $1,540 a month. This plan was confirmed in May 2013.

However, the debtor again was unable to maintain regular plan payments. In June 2013 and February 2014, the trustee served the debtor with notices of default indicating the debtor had failed to maintain regular plan payments. The first default was cured but the second was not. As to the second default, the debtor proposed another modified plan. In the motion to confirm that plan, the debtor recited that the difficulty in maintaining regular plan payments was a loss of overtime at a job and an increase of $340 in the debtor's medical insurance.

The court denied confirmation of the modified plan on June 23, 2014 because the debtor had failed to make a $1,575 monthly payment required by the proposed

plan. Also, the trustee, concerned about the debtor's repeated defaults under the terms of both the confirmed and proposed plans, demanded that the debtor produce financial records regarding income from the adoption of children. The debtor failed to produce those records.

Now, the debtor makes a third attempt to modify the plan. In the motion, the debtor states that the debtor was unable to maintain regular plan payments because of a loss of overtime, a loss of hours at the debtor's employment with United Airlines, medical emergencies, and needed car repairs. With the proposed modified plan, the debtor filed an amended Schedule I indicating that adoption assistance had been reduced from $5,338 to $2,776 a month.

The trustee once again objected to confirmation noting that the debtor had failed to make the first post-modification plan payment and the debtor had neither explained nor documented the reduction in adoption assistance. In response the debtor has produced receipts for the assistance received in 2012, 2013 and 2014 for three adopted children.

The court is not satisfied with the response to the trustee's objection.

First, none of the records produced for 2012, 2013 and 2014 have been authenticated.

Second, the records for 2012 are not complete. One monthly statement is missing for Josiah and Alannah, and two are missing for Amelia.

Third, the motion and the response to the objection indicate that the adoption assistance decreased after the case was filed. But, the statements indicate that the debtor overstated adoption assistance by approximately $3,000 from the moment the case was filed. And, during the case, the assistance has increased, not decreased. Based on the most recent receipts the monthly assistance is now $2,659, up from $2,382 when the case was filed. Yet, despite the increase, despite the loan modification, the debtor repeatedly has been unable to maintain plan payments.

11. 14-27963-A-13 JAMES/KATHRYN BAGGARLY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 9-24-14 [18]

- ☐ 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 plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of King Properties 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."

Second, despite retaining the collateral of the FTB, the treatment of the claim in Class 2A does include payment of the claim. Hence, the plan does not comply with 11 U.S.C. § 1325(a)(5)(B).

Third, the debtor has failed to accurately complete Form 22. The debtor has taken the following impermissible deductions from current monthly income:

- the debtor has deducted $612 for the operation of vehicles. The maximum deduction is $472. The deduction is over-stated by $140 a month.

- the debtor has deducted a total of $846.95 on two secured tax claims even though these amounts will not be paid in the future.

With these deductions reduced and eliminated, the debtor must pay no less than $53,645 to Class 7 unsecured creditors. Because the plan will pay these creditors only $12,371.30, it does not comply with 11 U.S.C. § 1325(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.

12. 13-22380-A-13 EDEN SANA — MOTION TO INCUR DEBT
MET-4 — 9-13-14 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has not complied with Local Bankruptcy Rule 3015-1(i)(2)(C) by filing evidence of an ability to make future plan payments, pay maintenance expenses, as well as the installment payments required by the proposed home loan. Because the debtor is relying on a former spouse's income to repay the new loan, this evidence should have included the former spouse's current income and expenses.

13. 14-28680-A-13 BALRAJ/BALJIT BRAR — MOTION TO AVOID JUDICIAL LIEN
MC-1
VS. PORTFOLIO RECOVERY ASSOCIATES, L.L.C. — 9-30-14 [14]

- ☐ 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $350,000 as of the date of the petition. The unavoidable liens total $408,659. The debtor has an available exemption of $1. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

14. 14-28680-A-13 BALRAJ/BALJIT BRAR — MOTION TO AVOID JUDICIAL LIEN
MC-2
VS. MIDLAND FUNDING, L.L.C. — 9-30-14 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $350,000 as of the date of the petition. The unavoidable liens total $408,659. The debtor has an available exemption of $1. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

15. 14-28297-A-13 PORFIRIO MENDOZA AND JULIA LOPEZ
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
9-24-14 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

Also, the plan does not indicate whether or not there are additional provisions that supplement the printed text of the proposed 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.

***THE FINAL RULINGS BEGIN HERE***

16. 14-27909-A-13 JUAN/REINA TORRES — MOTION TO VALUE COLLATERAL
ALF-1
VS. SANTANDER CONSUMER USA — 9-10-14 [20]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $7,300 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, $7,300 of the respondent's claim is an allowed secured claim. When the respondent is paid $7,300 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.

17. 14-29113-A-13 SIMONE MUNGUIA — MOTION TO VALUE COLLATERAL
RK-2
VS. JPMORGAN CHASE BANK, N.A. — 9-15-14 [14]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $6,625 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, $6,625 of the respondent's claim is an allowed secured claim. When the respondent is paid $6,625 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.

18. 10-20018-A-13 YOLANDA/ARTEMIO CABATIC — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
PGM-4 — 9-11-14 [59]

**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 (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. The additional fees represent 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, if applicable.

19. 10-51330-A-13 WILFREDO/ROWENA PAGTAKHAN — MOTION TO VALUE COLLATERAL
SDB-2 — 9-9-14 [56]
VS. CITIBANK, N.A.

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $177,900 as of the date the petition was filed. It is encumbered by a first deed of trust held by Citibank, N.A. The first deed of trust secures a loan with a balance of approximately $205,951.42 as of the petition date. Therefore, Citibank, N.A.'s other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

(3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $177,900. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

20. 11-36348-A-13 EDWARD RITZ — MOTION TO MODIFY PLAN
RAC-1 — 9-5-14 [34]

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

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

21. 13-25070-A-13 JENNIFER ZINDA — MOTION TO MODIFY PLAN
PLG-2 — 8-27-14 [37]

**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 $303 beginning October 25, 2014. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

22. 14-28677-A-13 CHRISTOPHER/ELIZABETH MORRIS — MOTION TO VALUE COLLATERAL
EJS-2
VS. FIRST TENNESSEE BANK — 9-9-14 [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 $346,913 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 $459,960 as of the petition date. Therefore, First Tennessee Bank's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $346,913. 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).

23. 10-52478-A-13 DARRELL PEEBLES — MOTION TO INCUR DEBT
CAH-8 — 9-5-14 [103]

**Final Ruling:** This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

24. 13-33192-A-13 WHITNEY BREAULT-MCPHERSON — MOTION TO VALUE COLLATERAL
PGM-1 — 9-12-14 [18]
VS. STERLING JEWELERS

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $200 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, $200 of the respondent's claim is an allowed secured claim. When the respondent is paid $200 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.

25. 14-28894-A-13 ARMANDO SERRANO
DJC-1
VS. SANTANDER CONSUMER USA, INC.

MOTION TO
VALUE COLLATERAL
9-16-14 [15]

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

The 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 $7,000 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, $7,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $7,000 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.