UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 3, 2014 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 13. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON DECEMBER 1, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 17, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 24, 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 14 THROUGH 21 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 NOVEMBER 10, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 12-39409-A-13 RICHEY HARRISON — MOTION TO MODIFY PLAN
MC-3 — 9-24-14 [86]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $10,775.00 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 though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the arrearages owed to the Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

2. 10-47920-A-13 LANCE/CINDY WEIDMAN — MOTION FOR HARDSHIP DISCHARGE
CAH-5 — 10-20-14 [91]

- ☐ 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.

11 U.S.C. § 1328(b) permits a discharge "at any time after confirmation of the plan" if three cumulative conditions are met: 1) the debtor's failure to complete payments under the plan is due to circumstances "for which the debtor should not justly be held accountable"; 2) the debtor has satisfied the best interests of creditors test of 11 U.S.C. § 1325(a)(4); and 3) modification of the plan is not practicable.

One of the debtor's has been laid off from a job and, while looking for new employment, he has been unemployed since August 2014. The other debtor ceased working and returned to school.

In the words of one commentator, "*Hardship discharge under § 1328(b) is reserved for the truly worst of the awfuls – something more than just the temporary loss of a job or temporary physical disability. . . Changes in financial condition that are less than total collapse are material for modification after confirmation but support a hardship discharge only if the debtor is unable to fund any modified plan.*" Lundin, 3 Chapter 13 Bankruptcy, § 9.20, p. 9-45 (2d ed. 1994). More recently, Judge Lundin stated: "*If the 'not justly . . . held accountable' standard means anything, then bankruptcy courts must reserve hardship discharge for circumstances exceeding the normal or ordinary range of mishaps that befall Chapter 13 debtors. . . Circumstances indicative of true hardship are permanent in nature. . . .*" Lundin, 4 Chapter 13 Bankruptcy, § 353.1, p. 353.1-3 (3rd ed. 2000).

The court cannot conclude that a temporary job loss and the decision of a joint debtor to return to school satisfies the first prong of the three part test. Cf. In re Cummins, 266 B.R. 852, 856-57 (Bankr. N.D. Iowa 2001) (temporary job loss and election to remain at home with children are economic reasons that do not support hardship discharge).

"Where a debtor is unable to complete payments under a Chapter 13 plan due to economic circumstances that did not exist nor were foreseeable at the time of confirmation of the plan, where those circumstances are beyond the debtor's control, and where the debtor has made every effort to overcome those circumstances but is unable to do complete his plan payments, . . . the requirement of § 1328(b)(1) has been met." In re Edwards, 207 B.R. 728, 730 (Bankr. N.D. Fla. 1997). The evidence with this motion does not satisfy this standard a prove the "justly accountable standard."

The motion will be denied.

3. 12-40820-A-13 DANNIKA BARNETT — MOTION TO SELL
HLG-1 — 10-15-14 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The motion to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full. To the extent the sale is inconsistent with the confirmed plan, the debtor shall continue to

perform the plan as confirmed until it is modified.

4. 14-28538-A-13 MICHAEL/TERRY MAXWELL — OBJECTION TO CONFIRMATION OF PLAN 10-15-14 [17]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The proposed plan does not pay nonpriority unsecured creditor what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). The plan will pay these creditors nothing. This is so even though the debtor has nonexempt equity aggregating more than $1 million in life insurance, real property, and an inheritance.

5. 14-27258-A-13 ROUBINDER SINGH — MOTION TO CONFIRM PLAN 9-17-14 [27]
SNM-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan proposes to pay Class 7 nonpriority unsecured claims, which are estimated to be $131,684.34, no less than a 9% dividend. This will aggregate approximately $11,851.59.

According to Form 22, the debtor will have no projected disposable income during the plan. However, the current monthly income reported on that form for the six month period prior to bankruptcy, $10,943.55, no longer reflects the debtor's actual income. He now receives $11,416.68 a month (not $12,368.07 as asserted by the trustee). This change is material and it is a known change due to a rise in the debtor's employment income. Therefore, Form 22 must be amended to reflect this additional monthly income. See Hamilton v. Lanning, 130 S.Ct. 2464 (2010).

One change also needs to be made to the expenses deducted from income on Form 22. With the higher employment income comes higher taxes and wage withholdings. Instead of these deductions totaling $4,041.18 a month, they now total $4,169.78.

This results in a monthly net change of $344.54. However, this increase in net income is not enough to produce monthly projected disposable income. With these changes, monthly projected disposable income is -$200.98.

6. 10-44862-A-13 JONATHAN HESS — MOTION TO SELL O.S.T. 10-27-14 [50]
EJS-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The motion to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full. To the extent the sale is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

7. 14-28972-A-13 TERRY/KATHALEEN SCOTT — OBJECTION TO CONFIRMATION OF PLAN 10-9-14 [18]
VVF-1
AMERICAN HONDA FINANCE CORP. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained in part.

First, whether the court adopts the value urged by the plan or by the creditor, there is no dispute that the objecting creditor's claim is under-secured. The plan proposes to pay this secured claim over the life of the plan with interest at the rate of 4%. The creditor objects to this rate.

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

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

The prime rate is currently 3.25%. As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 4% gives a .75% upward adjustment. The very modest size of this increase, combined with the fact that the movant is under-secured and secured by a five year old car indicates to the court that the interest rate is not enough to satisfy 11 U.S.C. § 1325(a)(B)(ii).

But, the objecting creditor's protestations about the low value ascribed to its collateral misses the mark because the debtor did not file a valuation motion and set it for a hearing before or contemporaneously the deadline for objections to confirmation as required by Local Bankruptcy Rule 3015-1(j) which 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."

Therefore, while the court will not determine value now, the failure of the debtor to bring the issue to the court seasonable is a second reason to deny confirmation.

8. 10-21180-A-13 ROBERT MACBRIDE — MOTION TO CONFIRM CURE OF MORTGAGE DEFAULT; DAMAGES; SANCTIONS 5-8-14 [194]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. This will be a status conference to set an evidentiary hearing.

9. 14-25389-A-13 FRANK NAVARRETTE — OBJECTION TO CLAIM ETC. 9-16-14 [41]
PGM-2
VS. MARGARET L. PENNINGTON

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be dismissed without prejudice and the motion for sanctions will be denied.

The motion seeks sanctions for an alleged violation of the automatic stay. The respondent creditor is the former spouse of the debtor. Before the bankruptcy was filed, she received a judgment for support and was garnishing the debtor's wages at the rate of $600 a month to collect the support. The garnishment has continued since the filing of the case. The debtor maintains this is a violation of 11 U.S.C. § 362(a). It is not. Section 362(b)(2)(C) provides in relevant part that a bankruptcy "petition . . . does not operate as a stay . . . with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial . . . order or a statute. . . ."

There has been no violation of the automatic stay. Nor is it a violation of

the terms of a confirmed plan. See 11 U.S.C. § 1327(a). There is no confirmed plan.

Insofar as the debtor complains about the amount of support included in the proof of claim filed by the creditor, the court will defer to the state court that awarded the support. The automatic stay is modified, to the extent it must be, to permit either party to return to the court issuing the support order to obtain its determination of the amount due and owing as of the petition date.

To the extent the objection asserts that the claim must be disallowed because it is not supported by "admissible evidence," the objection is overruled. While Fed. R. Bankr. P. 3001(c) and (d) require that certain documentation for a proof of claim be appended to it, the failure to do so is not sufficient to disallow the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b), which does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier, but the debtor must still come forward with probative evidence that the claim is not owed. This has not been done.

10. 14-25389-A-13 FRANK NAVARRETTE — MOTION FOR SANCTIONS
RK-1 — 10-18-14 [59]

- ☐ 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 denied.

Fed. R. Bankr. P. 9011(b) provides:

"By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

...

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

Here, the creditor asserts that the debtor and his counsel violated Rule 9011 by filing a motion for sanctions against the creditor. The sanction motion asserts that the creditor violated the automatic stay by collecting a domestic support order from the debtor's income after the bankruptcy case was filed without relief from the automatic stay.

Fed. R. Bankr. P. 9011(c) provides:

"If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation."

Rule 9011(c)(1)(A) prescribes that "[a] motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees."

"A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." Fed. R. Bankr. P. 9011(c)(2).

The certificate of service for this motion indicates that it was served on the debtor and his attorney on October 18 as well as filed on October 18. The motion was set for a hearing on November 3. So, the debtor and his attorney were not given 21 days from service to correct or withdraw their allegedly misguided motion to sanction the creditor. The creditor has not satisfied the 21-day safe harbor provision.

11. 14-25389-A-13 FRANK NAVARRETTE — MOTION FOR REIMBURSEMENT OF FEES AND COSTS 10-18-14 [64]
RK-2

- ☐ 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 denied.

This motion seeks fees and coss pursuant to Fed. R. Bankr. P. 9011. However, the predicate to this motion is the granting of a Rule 9011 motion. As indicated in the ruling on RK-1, that motion has been denied.

12. 10-52190-A-13 ISMAEL SOMOSIERRA AND JENNIFER — MOTION TO VALUE COLLATERAL 10-11-14 [54]
SAC-1
VS. BANK OF AMERICA, N.A.

- ☐ 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 America's Servicing Company. The first deed of trust secures a loan with a balance of approximately $470,000 as of the petition date. Therefore, Bank of America, N.A.'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 $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).

13. 12-34290-A-13 VASCO DEMELLO — MOTION TO MODIFY PLAN 9-24-14 [83]
WSS-3

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

sustained.

First, the plan has inconsistent provisions. It has a 60 month duration but only provides for 59 monthly plan payments.

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

THE FINAL RULINGS BEGIN HERE

14. 13-36134-A-13 CHRISTOPHER/RENEE WADE — OBJECTION TO CLAIM
JPJ-1
VS. LAW OFFICES OF KENOSIAN AND MIELE — 9-4-14 [47]

Final Ruling: This objection to the proof of claim of the Law Offices of Kenosian and Miele 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 will be disallowed.

According to the documentation attached to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the claim, the last payment was received on November 6, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

15. 13-36134-A-13 CHRISTOPHER/RENEE WADE — OBJECTION TO CLAIM
JPJ-2
VS. LAW OFFICES OF KENOSIAN AND MIELE — 9-4-14 [43]

Final Ruling: This objection to the proof of claim of the Law Offices of Kenosian and Miele 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 will be disallowed.

According to the documentation attached to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the claim, the last payment was received on October 2, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

16. 13-36134-A-13 CHRISTOPHER/RENEE WADE
JPJ-3
VS. CALVARY INVESTMENTS, LLC

OBJECTION TO CLAIM
9-4-14 [51]

Final Ruling: This objection to the proof of claim of Calvary Investments 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 will be disallowed.

According to the documentation attached to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the claim, the last payment was received on June 6, 2001, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

17. 13-25164-A-13 JOSE LOPEZ
PGM-4

MOTION TO APPROVE LOAN MODIFICATION
10-3-14 [65]

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.

18. 13-21273-A-13 GLENN/LISA TOOF
SJS-2

MOTION TO MODIFY PLAN
9-25-14 [46]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to

the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

19. 14-26173-A-13 HILLIARY WALTON — ORDER TO SHOW CAUSE 10-14-14 [44]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $80 installment when due on October 9. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

20. 12-39777-A-13 PETER HERNANDEZ — MOTION TO MODIFY PLAN 9-25-14 [56]
PGM-3

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. 13-33192-A-13 WHITNEY BREAULT-MCPHERSON — MOTION TO MODIFY PLAN 9-25-14 [23]
PGM-2

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 and the objection will be overruled. The objection concerns the absence of an order a valuation motion. The order was entered on October 21. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.