

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**December 3, 2013 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 DECEMBER 30, 2013 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 16, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 23, 2013. 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 THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 16 THROUGH 39. INSTEAD, EACH OF THESE ITEMS HAS 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 DECEMBER 9, 2013, AT 2:30 P.M.

December 3, 2013 at 1:30 p.m.

**Matters to be Called for Argument**

1. 10-39100-A-13 SERGEV NEMOLYAEV AND MOTION TO  
PGM-6 IRINA SHULGINA MODIFY PLAN  
10-22-13 [123]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

2. 13-33027-A-13 GLENN ARMSTRONG OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN  
11-12-13 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Schools Financial Credit Union 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."

3. 10-28438-A-13 WILFREDO/CONCHITA MOTION TO  
BAS-3 CALACSAN MODIFY PLAN  
10-18-13 [100]

- 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 \$8,028 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).

4. 13-31442-A-13 JOHN ZUBER OBJECTION TO  
JPJ-1 EXEMPTIONS  
11-1-13 [16]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The debtor has claimed an exemption in a group term life insurance policy in the amount of "100% of fair market value" pursuant to Cal. Civ. Pro. Code § 704.100(a), in a universal life insurance policy in the amount of "100% of fair market value" pursuant to Cal. Civ. Pro. Code § 704.100(a), in a second universal life insurance policy in the amount of "100% of fair market value" pursuant to Cal. Civ. Pro. Code § 704.100(a), and in a third universal life insurance policy in the amount of "100% of fair market value" pursuant to Cal. Civ. Pro. Code § 704.100(a).

The debtor also has claimed an exemption of 4,200 in a universal life insurance policy in the amount of "100% of fair market value" pursuant to Cal. Civ. Pro. Code § 704.100(b), in a second universal life insurance policy in the amount of \$4,000 pursuant to Cal. Civ. Pro. Code § 704.100(b), and in a third universal life insurance policy in the amount of \$4,000 pursuant to Cal. Civ. Pro. Code § 704.100(b). No exemption was claimed pursuant to section 704.100(b) in the group term life insurance because it has no present value - it has no surrender or loan value.

Section 704.100(a) permits the exemption of an unmatured life insurance policy without specifying an exemption amount. However, section 704.100(b) imposes an aggregate exemption of \$12,200 on the loan value of such life insurance policies.

The court construes Schedule C to exempt the unmatured life benefit payable under the four policies pursuant to section 704.100(a), which has no dollar limit, and the loan value in the three universal life policies up to an aggregate amount of \$12,200. This is consistent with both sections.

5. 13-28646-A-13 FRANK/MARIETTA CIVITANO MOTION TO  
PLC-3 CONFIRM PLAN  
10-16-13 [47]

- 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 \$2,214 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, the debtor has failed to complete Form 22 with accurate information regarding the debtor's income in the six months prior to the filing of the case. The form states, under penalty of perjury, that the debtor had no income during that period of time. At the meeting of creditors, however, the debtor admitted that the debtor did not have income. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a) (3).

Third, the plan assumes the arrears on the secured claim of the El Dorado Tax Collector are approximately \$20,102. The creditor indicates that the arrears are more than \$31,000. At this higher level, the plan either will not pay this secured claim in full or doing so will take more than 5 years. The plan fails to comply with 11 U.S.C. §§ 1322(d) and 1325(a) (5) (B).

6. 13-28646-A-13 FRANK/MARIETTA CIVITANO MOTION TO  
JPJ-3 CONVERT CASE TO CHAPTER 7, ETC.  
10-14-13 [41]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the case converted to one under chapter 7 for the same reasons the court has denied confirmation of the debtor's plan. The court's ruling on PLC-3 is incorporated by reference. Because the debtor owns no exempt assets or equity in assets, the best interests of creditors is served by conversion rather than dismissal.

7. 13-34247-A-13 LORRAINE LITTLE-DENNIS MOTION TO  
SJS-1 EXTEND AUTOMATIC STAY  
11-12-13 [9]

- 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 in part.

This is the second chapter 13 case filed by the debtor. A prior case, Case No. 10-46452, was dismissed on October 18, 2013 because the debtor failed appear at a meeting of creditors over a 7-month period of time. During 5 months of that time, her attorney sought unsuccessfully to convert the case to chapter 13. This case was filed on November 5.

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

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

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

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

Here, it appears that the debtor was unable to maintain her plan payments in the first case due to serious health condition that interrupted her ability to work. That condition has now been treated and the debtor is able to maintain her plan payments. This is a sufficient change in circumstances rebut the presumption of bad faith.

The failure to convert the prior chapter 7 case to chapter 13 can be laid at the feet of counsel for the debtor. However, of concern here is the fact that the same counsel continues to represent the debtor. And, the debtor was not entirely blameless in the prior case - she repeatedly failed to appear at the meeting of creditors, ostensibly because she believed the case was about to be converted.

Given the problems in the first case, the court will grant this relief only on two conditions. First, the debtor must appear at the meeting of creditors. Any failure to appear will result in dismissal on the trustee's ex parte application. Second, the debtor will have 75 days to confirm a plan. There will be no repeating the failure to prosecute a motion by the debtor as was encountered in the first case

8. 13-32163-A-13 DENNIS SPEARS  
CAH-2

MOTION TO  
CONFIRM PLAN  
10-15-13 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the case will be dismissed.

First, the trustee was unable to conclude the meeting of creditors because counsel for the debtor failed to appear. Hence, there has not been effective compliance with 11 U.S.C. § 343.

Second, the debtor has failed to make \$2,180 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).

Third, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

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

9. 13-32163-A-13 DENNIS SPEARS  
CAH-2

COUNTER MOTION TO  
DISMISS CASE  
11-4-13 [31]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The counter motion will be granted and the case will be dismissed for same reasons the court has denied confirmation of the plan. The ruling on CAH-2 is incorporated by reference.

10. 12-29568-A-13 ADRIENNE HULST  
SW-1  
ALLY FINANCIAL INC. VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
11-12-13 [18]

- 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 as moot.

The court confirmed a plan on August 15, 2012. That plan provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 2.11:

**"2.11. Class 4 includes all secured claims paid directly by Debtor or third party.** Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

The movant shall bear its own fees and costs.

11. 13-30971-A-13 NORMAND/JANICE JOLICOEUR MOTION TO  
DBJ-1 VALUE COLLATERAL  
VS. PLUMAS BANK 8-28-13 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** There is a material disputed fact - the value of the subject property. An evidentiary hearing will be scheduled. At that evidentiary hearing, the court will permit examination of the persons expressing opinions of value in the existing written record. That written record is now closed. The hearing will be set at the October 21 hearing. The parties will be given 45 minutes each to make argument, examine and cross-examine witnesses, and make objections.

12. 13-30971-A-13 NORMAND/JANICE JOLICOEUR MOTION TO  
DBJ-2 VALUE COLLATERAL  
VS. PLUMAS BANK 8-28-13 [18]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** There is a material disputed fact - the value of the subject property. An evidentiary hearing will be scheduled. At that evidentiary hearing, the court will permit examination of the persons



15. 13-33496-A-13 PATRICK FAGUNDES  
GMN-2  
JASBIR BRAR VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
11-13-13 [28]

- 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 granted in part.

This is the second chapter 13 case filed by the debtor in 2013. A prior case, Case No. 13-30417, was dismissed on August 30, 2013. This case was filed on October 18. Hence, the debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

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

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has not filed a motion to extend the automatic stay and, because the 30<sup>th</sup> day after the filing of the petition has come and gone, it is no longer possible to extend the automatic stay in this case.

Therefore, pursuant to 11 U.S.C. § 362(j) the court confirms the absence of the automatic stay.

**THE FINAL RULINGS BEGIN HERE**

16. 13-20401-A-13 JOSE RIVERA AND CHRISTINE OBJECTION TO  
PLC-2 HERNANDEZ - RIVERA CLAIM  
VS. FEDERAL NATIONAL MORTGAGE ASSOC. 10-16-13 [27]

**Final Ruling:** This objection to the proof of claim of Federal National Mortgage Association 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

By this objection, the debtor objects to the allowance of \$440 in attorney's fees claimed by the claimant. These fees were incurred after the bankruptcy case was filed. The underlying note and deed of trust provide for such fees in the event of a default. When the case was filed, there was no default on the note and the deed of trust. Hence, there appears no basis in the contract for the fees. And, the claimant has not come forward with the evidence in a response to the objection to prove that the fees are within the contract and are reasonable.

The note and the deed of trust include a provision for an award of fees and costs in the event of a default. The attempt to claim amounts not owed under the note and deed of trust is itself a default by the claimant. It has the right to demand and collect only the amounts due under the loan. By virtue of Cal. Civil Code § 1717, the attorney's fee provision in the documentation is reciprocal. The court awards reasonable fees and costs of \$440 for the prosecution of PLC-2 and PLC-3.

17. 13-20401-A-13 JOSE RIVERA AND CHRISTINE OBJECTION TO  
PLC-3 HERNANDEZ - RIVERA NOTICE OF POST-PETITION MORTGAGE  
FEES, EXPENSES AND CHARGES  
10-16-13 [32]

**Final Ruling:** This objection to the proof of claim of Federal National Mortgage Association 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

By this objection, the debtor objects to the allowance of a \$807.05 pre-petition arrearage allegedly resulting from an escrow shortage. When the bankruptcy case was filed, there was an escrow overage of \$415.80. The claimant has not come forward with the evidence in a response to the objection

to prove that the fees are within the contract and are reasonable.

The note and the deed of trust include a provision for an award of fees and costs in the event of a default. The attempt to claim amounts not owed under the note and deed of trust is itself a default by the claimant. It has the right to demand and collect only the amounts due under the loan. By virtue of Cal. Civil Code § 1717, the attorney's fee provision in the documentation is reciprocal. The court awards reasonable fees and costs of \$440 for the prosecution of PLC-2 and PLC-3.

18. 13-32912-A-13 CYNTHIA SOLORZANO MOTION TO  
SS-1 VALUE COLLATERAL  
VS. WELLS FARGO BANK, N.A. 11-4-13 [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 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$300,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Caliber Home Loans, Inc. The first deed of trust secures a loan with a balance of approximately \$355,000 as of the petition date. Therefore, Wells Fargo Bank, 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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> Cir. 2000).

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

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9<sup>th</sup> Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That

motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$300,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5<sup>th</sup> Cir. 1980).

19. 13-32919-A-13 RAYYA ROUNTEE MOTION FOR  
UST-1 IMPOSITION OF A FINE  
10-30-13 [17]

**Final Ruling:** This motion pursuant to 11 U.S.C. § 110 against a bankruptcy petition preparer has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent preparer to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the default of the respondent is entered and the matter will be resolved without oral argument.

The motion will be granted.

James Powe is a bankruptcy petition preparer within the meaning of 11 U.S.C. § 110(a)(1). He is not an attorney.

Mr. Powe prepared and filed the debtor's bankruptcy petition. His disclosure

of compensation of attorney statement states that he agreed to prepare the debtor's petition documents in exchange for a fee but he fails to state the amount of the fee. The failure to disclose the amount of the fee means that Mr. Powe has failed to comply with 11 U.S.C. § 110(h)(2) which requires the fee's disclosure.

Second, Mr. Powe failed to provide the debtor and file the notice required by section 110(b)(2).

A preparer who violates any of subsections (b) through (h) of section 110 may be fined up to \$500 for each violation. 11 U.S.C. § 110(l)(1). Because Mr. Powe has prepared petitions for other debtors and engaged in the same misconduct, the maximum fine of \$1000 is warranted here.

Further, the court will order Mr. Powe to disgorge whatever fee received for work in connection with this case to the debtor, pursuant to 11 U.S.C. § 110(h)(3)(B), which provides: "All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g)."

20. 10-47630-A-13 ROSE LAZOOTIN  
PGM-5

MOTION TO  
APPROVE COMPENSATION OF DEBTOR'S  
ATTORNEY (FEES \$1,000)  
11-5-13 [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 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The motion seeks approval of \$1,000 in additional fees incurred primarily in obtaining confirmation of a modified plan and assisting the debtor with a loan modification. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

21. 12-26132-A-13 ALANNA KING  
JPJ-1  
VS. CITIMORTGAGE, INC.

OBJECTION TO  
CLAIM  
10-7-13 [24]

**Final Ruling:** This objection to the proof of claim of Citimortgage, Inc., has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the

claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was August 8, 2012. The proof of claim was filed on September 2, 2013. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

22. 09-43940-A-13 PETER BEST AND OLA ADAMS- MOTION TO  
PGM-7 BEST SELL  
11-4-13 [146]

**Final Ruling:** This motion to sell property 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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, or in such amounts as the lien holders may expressly agree, and in a manner consistent with the plan. Insofar as surplus sale proceeds are available, they shall be paid over to the trustee to the extent required by the confirmed plan with such additional amounts as volunteered by the debtor. The turnover of the surplus sale proceeds is voluntary. Burgie v. McDonald (In re Burgie), 239 B.R. 406, 409-410 (B.A.P. 9<sup>th</sup> Cir. 1999) ("The proceeds of the sale of a debtor's real estate in a chapter 13 case never become disposable income for the purposes of chapter 13. This result applies in a chapter 13 case whether or not the property is exempt from execution. . . . Postpetition disposable income does not include prepetition property or its proceeds.").

Absent either payment in full (i.e., a 100% dividend) of all filed proofs of claim or the approval of a modified plan that permits the plan to be completed without payment in full, the plan shall not be deemed completed by payment of the sale proceeds to the trustee.

23. 10-41646-A-13 DEWAYN/CATHERINE MOTION TO  
SAC-4 BARNHARDT APPROVE COMPENSATION OF DEBTORS'  
ATTORNEY (FEES \$4,250)  
10-30-13 [54]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The motion seeks approval of \$4,250 in fees incurred primarily in obtaining confirmation of a plan, assisting the debtor with a home loan modification, and valuing the collateral of a secured creditor. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

24. 13-25246-A-13 CORNELIUS/GLENDA MOTION TO  
NUU-4 WESTBROOK CONFIRM PLAN  
10-18-13 [51]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

25. 13-33346-A-13 WAHEED/BUSHRA JAWADI MOTION TO  
JT-1 VALUE COLLATERAL  
VS. KEYPOINT CREDIT UNION 10-29-13 [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 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$313,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Citimortgage, Inc. The first deed of trust secures a loan with a balance of approximately \$338,909 as of the petition date. Therefore, Keypoint Credit Union's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is

secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Bartee, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> Cir. 2000).

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$313,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5<sup>th</sup> Cir. 1980).

26. 13-30047-A-13 RALPH/MARY LANGLOIS  
CA-2

MOTION TO  
CONFIRM PLAN  
10-15-13 [20]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

27. 13-31866-A-13 STEVEN/TAMMY VASQUEZ  
CYB-1  
VS. WELLS FARGO BANK, N.A.

MOTION TO  
VALUE COLLATERAL  
10-21-13 [16]

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$187,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by U.S. Bank, N.A. The first deed of trust secures a loan with a balance of approximately \$242,000 as of the petition date. Therefore, Wells Fargo Bank, 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 (9<sup>th</sup> Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9<sup>th</sup> Cir. 1997). See also In re Barte, 212 F.3d 277 (5<sup>th</sup> Cir. 2000); In re Tanner, 217 F.3d 1357 (11<sup>th</sup> Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3<sup>rd</sup> Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1<sup>st</sup> Cir. 2000).

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$187,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5<sup>th</sup> Cir. 1980).

28. 13-31866-A-13 STEVEN/TAMMY VASQUEZ MOTION TO  
CYB-2 VALUE COLLATERAL  
VS. AMERICAN HONDA FINANCE CORP. 10-21-13 [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 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the

defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a replacement value of \$1,500 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9<sup>th</sup> Cir. 2004). Therefore, \$1,500 of the respondent's claim is an allowed secured claim. When the respondent is paid \$1,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

29. 13-31866-A-13 STEVEN/TAMMY VASQUEZ MOTION TO  
CYB-3 CONFIRM PLAN  
10-21-13 [25]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

30. 09-38868-A-13 FRANCISCO/JENNIFER OBJECTION TO  
JPJ-1 NEGRETE CLAIM  
VS. VW CREDIT, INC. 10-7-13 [64]

**Final Ruling:** This objection to the proof of claim of VW Credit, Inc., has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was December 30, 2009. The proof of claim was filed on September 6, 2013. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).



is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

34. 12-32783-A-13 JOHN/ROSALINA LUBUGUIN MOTION TO  
JT-1 INCUR DEBT  
10-28-13 [30]

**Final Ruling:** This motion to borrow 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion to incur a purchase money loan to purchase a vehicle will be granted. The motion establishes a need for the vehicle and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.

35. 13-20087-A-13 JOSEFINA/JOSE LORICO MOTION TO  
HDR-6 APPROVE LOAN MODIFICATION  
10-23-13 [83]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

36. 13-20087-A-13 JOSEFINA/JOSE LORICO MOTION TO  
HDR-7 MODIFY PLAN  
10-23-13 [77]

**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



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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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