UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 16, 2013 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 16. 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 OCTOBER 15, 2013 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 30, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 7, 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 17 THROUGH 38. 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 SEPTEMBER 23, 2013, AT 2:30 P.M.

Matters to be Called for Argument

1. 09-20016-A-13 ALFRED/ANNETTE LUNA — MOTION TO VALUE COLLATERAL
GFG-77 — 8-27-13 [76]
VS. CAVALRY PORTFOLIO SERVICES, LLC

☐ 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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $4,577 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $4,577 of the respondent's claim is an allowed secured claim. When the respondent is paid $4,577 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.

2. 09-20016-A-13 ALFRED/ANNETTE LUNA — MOTION TO MODIFY PLAN
GFG-91 — 8-9-13 [54]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

First, to pay the dividends required by the plan and the rate proposed by it will take 69 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, the plan proposes to retroactively and prospectively change the interest rate payable on the secured claim of Harley Davidson. Nothing in 11 U.S.C. § 1329 permits an amendment that changes the interest rate due on a secured claim after the court has set that rate in a confirmed plan.

Third, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Wachovia 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. 08-39318-A-13 STEVEN/HEATHER WOODCOCK — MOTION TO MODIFY PLAN 8-9-13 [116]
WW-5

☐ 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 $704 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. 13-23223-A-13 GLENN HAGELE — MOTION TO RECONSIDER 8-13-13 [99]
JJC-3

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was filed on March 11, 2013. The debtor proposed a chapter 13 plan with the petition. His plan, however, attracted both an objection to its confirmation and a motion to dismiss from the chapter 13 trustee [JPJ-1]. WestAmerica Bank and Lauranell Burch [MET-1 and KY-1, respectively] also objected to confirmation and they supported the trustee's motion to dismiss the case.

These objecting parties raised a number of serious issues. But, because there was no dispute that the plan initially proposed by the debtor was not confirmable, the court sustained one of the trustee's objections to its confirmation and continued the hearing on the trustee's motion to dismiss the case. The court issued the following ruling on May 20:

"The objections will be sustained in part and the hearing will be continued to as to the motion to dismiss the case to permit the debtor to brief the eligibility and good faith issues raised in the trustee's objection and WestAmerica Bank's objection.

"The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $800 is less than the $937.79 in dividends and expenses the plan requires the trustee to pay each month.

"Also, there is substantial doubt that the debtor is not eligible for chapter 13 relief.

"Prior to the case being filed, Lauranell Burch prevailed in a motion for summary judgment in state court. That motion established the liability of the debtor. A trial was then held to determine damages. Ms. Burch prevailed in a jury trial and was awarded $350,000. While no judgment was entered because this bankruptcy case was filed, the entry of the judgment is but a formality. In addition to these damages, the claimant has been awarded more than $39,000 in attorney's fees and costs. The claimant maintains that she is entitled to a further $30,000 in fees and costs.

"While the debtor scheduled this claim, he listed the claim as contingent and unliquidated and he neglected to include the fees and costs in the claim amount. Given the summary judgment, the jury trial, the orders awarding fees and costs, it appears that, even though the debtor might continue to dispute the impending judgment i[n] post-trial motions and/or on appeal, Ms. Burch's claim is no longer unliquidated and contingent. The fact that claim is disputed is irrelevant when determining eligibility.

"Nonetheless, the hearing will be continued to permit the debtor to do further research and present authority for the proposition that a claim based on a state court proceeding in which the debtor's liability has been fixed by the court and damages set by a jury nonetheless remains contingent and/or unliquidated because the bankruptcy case happened to be filed before a formal judgment could be entered.

"Also, the debtor's education certificate indicates he received his credit counseling briefing on March 2. He purchased a vehicle financed by WestAmerica on March 4. He did not disclose to WestAmerica that he intended to file bankruptcy. Hence, the debtor financed a major purchase on the eve of bankruptcy, never made a payment on the loan, then filed a chapter 13 case.

"The proposed plan modifies the claim of WestAmerica by accelerating the 7-year term and repaying the claim over 5 years. This will be to the detriment of unsecured creditors who will see available income diverted for the benefit of WestAmerica and otherwise would have gone to them. The plan proposes to pay nothing to unsecured creditors.

"This smacks of bad faith. First, the debtor induced WestAmerica to extend him credit while concealing a material fact – his intention to file bankruptcy. Second, loading up on debt on the eve of bankruptcy that the debtor will fund with resources otherwise available to unsecured creditors, would seem to be a fraud on, not only WestAmerica, but all unsecured creditors. This suggests a lack of good faith in filing this case as well as in proposing the plan. See 11 U.S.C. § 1325(a)(3) & (a)(7).

"Again, the court will give the debtor time to respond to these serious allegations. But, there is no need to continue the hearing insofar as the confirmation of the plan is concerned. Because the plan payment will not fund the dividends promised in the plan, the plan will not be confirmed for that reason alone.

"However, the hearing on the trustee's objection will be continued to June 17 at 1:30 to consider his request that the case be dismissed because of the debtor's lack of eligibility for chapter 13 relief and lack of good faith in filing the case and proposing the plan. The debtor

is to propose a modified plan and file and serve a motion to confirm that plan on or before June 3. Also by June 3, the debtor shall file and serve written opposition to the trustee's motion to dismiss this case, responding to the assertion that he is not eligible for chapter 13 relief and has not proceeded in good faith. The trustee, Ms. Burch, and WestAmerica shall file and serve any reply by June 10."

After the hearing on May 20, the debtor did two things. First, he proposed a modified plan and set a hearing on July 29 to consider its confirmation. Second, he filed a further response to the trustee's motion to dismiss the case.

The continued hearing on the trustee's motion to dismiss the case went forward on June 17. After considering the written response filed by the debtor and considering the arguments of all parties, the matter was submitted to the court for decision. The court issued the following ruling on July 25.

"The court previously disposed of the objection to confirmation. The hearing was continued to permit briefing and then consider the motion to dismiss the case.

"The debtor is not eligible for chapter 13 relief. See 11 U.S.C. § 109(e).

"Prior to the case being filed, Lauranell Burch prevailed in a motion for summary judgment in state court. That motion established the liability of the debtor. A trial was then held to determine damages. Ms. Burch prevailed in a jury trial and was awarded $350,000. No judgment, however, was entered because this bankruptcy case was filed. In addition to these damages, the claimant has been awarded more than $39,000 in attorney's fees and costs. The claimant maintains that she is entitled to a further $30,000 in fees and costs.

"While the debtor scheduled this claim, he listed the claim as disputed, contingent, and unliquidated, and he neglected to include the fees and costs in the claim amount. Given the summary judgment, the jury trial, the orders awarding fees and costs, it appears that, even though the debtor might continue to dispute the impending judgment in post-trial motions and/or on appeal, Ms. Burch's claim is no longer unliquidated or contingent. The fact that claim is disputed is irrelevant when determining eligibility. See 11 U.S.C. § 109(e).

"Also, the debtor's education certificate indicates he received his credit counseling briefing on March 2. He purchased a vehicle financed by WestAmerica on March 4. He did not disclose to WestAmerica that he intended to file bankruptcy. Hence, the debtor financed a major purchase on the eve of bankruptcy, never made a payment on the loan, then filed a chapter 13 case.

"The proposed plan modifies the claim of WestAmerica by accelerating the 7-year term and repaying the claim over 5 years. This will be to the detriment of unsecured creditors who will see available income diverted for the benefit of WestAmerica and otherwise would have gone to them. The plan proposes to pay nothing to unsecured creditors.

"This is bad faith. First, the debtor induced WestAmerica to extend him credit while concealing a material fact – his intention to file bankruptcy. Second, loading up on debt on the eve of bankruptcy that the

debtor will fund with resources otherwise available to unsecured creditors, is a fraud on, not only WestAmerica, but all unsecured creditors. This demonstrates a lack of good faith in filing this case as well as in proposing a plan. See 11 U.S.C. § 1325(a)(3) & (a)(7).

"Therefore, the case will be dismissed."

An order was entered on July 31 dismissing the case. The debtor then moved on August 13 for reconsideration of the dismissal.

In the motion for reconsideration, the debtor ominously asserts that the court retroactively amended its ruling on the trustee's dismissal motion.

This argument is based on the fact that the original minutes for June 17 hearing indicated the matter was submitted for decision. When the court issued its ruling on July 25, the ruling was appended to a document titled amended minutes. The amended minutes bear the date of the hearing, June 17, but the amended minutes were entered on the docket on July 25. The time to appeal did not begin to run until July 31, when the dismissal order was entered.

In short, the minutes were amended to include a ruling. There was no ruling on the original minutes of the hearing because the matter was taken under submission. The court changed no earlier ruling when it issued its July 25 ruling. When that ruling was issued, it was attached to amended minutes for June 17 hearing and then the amended minutes were docketed and served on the parties.

The debtor appears to be arguing that the court made some sort of ruling on the merits on June 17 then retroactively changed it on July 25. The court made no ruling on June 17. The minutes indicate the matter was taken under submission. And, on July 25 the court issued its decision. Nothing was retroactively changed. The minutes of the June 17 hearing were amended to attach the court's ruling. As the docket indicates, this was done on July 25.

If the debtor is arguing that the court erred by ruling on the dismissal motion before it considered his motion to confirm the modified plan, he is in the one in error. Because the trustee's dismissal motion raised an eligibility issue and a good faith issue, the court's initial ruling quoted above made clear that the court intended to consider the issues even before it considered any modified plan the debtor might propose. This is evident from the differing deadlines the court set for the hearing on the dismissal motion and the confirmation of a plan.

The debtor also attempts to argue that by "retroactively dismissing the case," the court did not consider his July 18 brief. However, that brief was not part of the record on the dismissal motion. It was filed in connection with the motion to confirm the modified plan. The dismissal motion was considered by the court apart from the debtor's motion to confirm a modified plan. As a result, the only things considered by the court were the briefs and evidence filed prior to June 17 hearing and pursuant to the briefing schedule set by the court.

To the extent the debtor wishes to argue that facts and law presented in connection with his motion to confirm the modified plan should be belatedly considered in the context of the dismissal motion, the argument is rejected.

First, the court set a briefing schedule on the dismissal motion and considered only what was filed timely by the parties prior to the June 17 hearing on the

dismissal motion.

Second, the argument that the car dealer, WestAmerica's predecessor in interest, somehow prevented the debtor from telling the truth on a credit application is incredible. And, considering the debtor's occupation – an independent paralegal who works in bankruptcy – it should have seemed self-evident that borrowing money on the eve of bankruptcy without disclosing his intentions to file bankruptcy and without disclosing a huge jury verdict was not likely to end well for him.

Third, the court understands and appreciates that tort claims are generally unliquidated for purposes of eligibility under 11 U.S.C. § 109(e). However, in this case, there was a summary judgment establishing liability and a jury verdict setting damages. And, even though there was a possibility the verdict might have been altered by post-trial motions or reduced or reversed on appeal, once the jury came to its verdict, in this court's judgment, the debt was sufficiently liquidated for purposes of section 109(e). And, the fact that the debtor disputed the verdict makes no difference because disputed debts are not excluded under section 109(e). In re Slack, 187 F.3d 1070, 1073 (9th Cir. 1999); In re Sylvester, 19 B.R. 671, 673 (B.A.P. 9th Cir. 1982).

Even belated consideration of the Figter and Latham Lithographic cases, cited in a brief filed after the motion to dismiss the case was submitted and in response to objections to the confirmation of the amended plan, and cited again in this motion, are of no avail to the debtor. Neither deal with section 109(e) or even chapter 13.

Finally, the court also understands that eligibility is generally evaluated based on the debtor's schedules. See In re Scovis, 249 F.3d 975, 983 (9th Cir. 2001). In Scovis, the Ninth Circuit held: "[T]he bankruptcy court should normally look to the petition to determine *the amount of debt* owed, checking only to see that the schedules were made in good faith." Id. at 982 (emphasis added). In this case, however, the court finds bad faith. Rather than schedule the jury verdict and other court orders and list the amounts assessed as disputed, the debtor listed what he maintains he owes or might owe, not what the court or the jury said he owed. Inasmuch as the schedules permit the debtor to indicate what is disputed, a debtor is expected to list what the creditor claims. By listing some lesser amount, the debtor was attempting to gerrymander eligibility.

The motion will be denied.

The court adds that it welcomes motions to reconsider its decisions when there are new circumstances warranting re-evaluation of a motion or when it has over-looked some fact or relevant law. Here, however, the debtor has attempted to gin up some sort of conspiracy, the lynchpin of which is that the court "retroactively" changed a decision. It did not. It received a motion, granted the debtor's request for further briefing, considered that briefing, held a second hearing, took the matter under submission, made a decision, served that decision, then entered an order that was consistent with its decision.

5. 13-29331-A-13 MICHAEL THOMAS
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
8-29-13 [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 and the case will be dismissed.

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

Second, the debtor has failed to give the trustee bank records for the 60 days prior to bankruptcy as well as copies of state income tax returns. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,330 is less than the $1,390.99 in dividends and expenses the plan requires the trustee to pay each month.

Fourth, to pay the dividends required by the plan and the rate proposed by it will take 93 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fifth, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that two home lenders have agreed to home loan modifications. 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 installments. See 11 U.S.C. § 1322(b)(5).

6. 13-29331-A-13 MICHAEL THOMAS
MBB-1
BANK OF AMERICA, N.A. VS.

OBJECTION TO CONFIRMATION OF PLAN
8-29-13 [19]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a

written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained to the extent and for the reasons explained in the ruling on the trustee's objection to confirmation (JPJ-1).

7. 13-29134-A-13 WILLIAM/VIVIANA BARRANTES — OBJECTION TO CONFIRMATION OF PLAN
BAYVIEW LOAN SERVICING, LLC VS. — 8-30-13 [30]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

The objection will be sustained to the extent and for the reasons explained in the ruling on the trustee's objection (JPJ-1).

Additionally, because the deed of trust provides that interest shall accrue on disbursements by the creditor, the plan must provide for interest on at least this portion of the arrearage.

8. 13-29134-A-13 WILLIAM/VIVIANA BARRANTES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-29-13 [27]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,300.62 is less than the $3,661.71 in dividends and expenses the plan requires the trustee to pay each month.

Second, counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However, counsel has not complied with Rule 2016-1 by filing the rights and responsibilities

agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. Therefore, the provision in the proposed plan requiring the trustee to pay the fees without counsel first making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, permits payment of fees without the required court approval. This violates sections 329 and 330.

Third, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

9. 13-29334-A-13 JACQUELINE/ROBERT COONEY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-29-13 [22]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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

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

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be prejudicial and that there will then be cause

for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

10. 13-27438-A-13 JOHN/TERRI MOULE — MOTION TO VALUE COLLATERAL
CAH-1
VS. INTERNAL REVENUE SERVICE — 8-15-13 [35]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The IRS agrees that its interest in its security, both real and personal, totals $102,360.85. However, to the extent its claim exceeds this amount, the excess is both priority and nonpriority unsecured debt. That is, to the extent the portion of the claim would be a priority claim had it not been secured, it is a priority unsecured claim once stripped from the collateral for the claim. 11 U.S.C. § 506(a) does not provide that the stripped off portion of the claim becomes a nonpriority claim; it provides only that it is unsecured. Whether it is priority or nonpriority depends on whether and to the extent the claim meets the criteria of 11 U.S.C. § 507(a)(8).

The IRS has identified in its amended proof of claim that its claim is $102,360.85, secured; $44,681.71, priority unsecured; and $11,090.05 nonpriority unsecured. To the extent the debtor wishes to otherwise dispute the priority claim (or any other claim component) the debtor may due so. At this point the court only determines the value of the IRS's security and that the stripped off portion of its ostensibly secured claim may be a priority claim to the extent it qualifies as such under section 507(a)(8).

11. 13-20943-A-13 CRISTIE TALBOTT — MOTION TO RECONSIDER
SJJ-3 — 8-12-13 [98]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was filed on January 24, 2013. The debtor has never confirmed a plan despite filing a plan on the day the case was filed.

That plan provided for the secured claim of Bank of America in Class 2C. That is, because the debtor believed the real property securing the bank's claim, after deducting the amount owed on a senior encumbrance, had no value, the debtor proposed to pay the claim nothing. Put differently, the debtor was attempting to apply 11 U.S.C. § 506(a), as interpreted by the Ninth Circuit in In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997), and treat the bank's claim as wholly unsecured because its collateral had no net value.

In order to provide for the bank's claim in this fashion, it was necessary for the debtor to file a motion to value the bank's collateral, the debtor's home. That motion [MCN-1] was filed on February 28, 2013 and set for hearing on April 1.

The bank objected both to its treatment in the plan and to the valuation motion. Both objections were premised on the belief that its security had a

value of $200,000. At this value, equity remained for the bank's claim even with a senior lien of $165,927.01.

The court sustained the bank's objection to confirmation, not because it agreed the property had a value of $200,000 but because the debtor had failed to comply with Local Bankruptcy Rule 3015-1(j) by setting the valuation hearing prior to, or contemporaneous with, the March 25 hearing on plan confirmation.

Despite the denial of the plan's confirmation, the April 1 hearing on the valuation motion preceded. Because of a material disputed fact – the value of the property – the court set an evidentiary hearing on April 22.

Before the evidentiary hearing took place, the bank withdrew its objection to the confirmation of the plan and to the valuation motion. As to the objection to the confirmation of the plan, the dismissal of the objection came too late – it was filed after the hearing and after the court issued its final ruling that confirmation would be denied.

As to the valuation motion, the minutes of the hearing note that the matter was no longer contested and the court directed the debtor to lodge an order granting the motion. No order was ever lodged.

Because the debtor had never filed an modified plan nor set a hearing to confirm a plan after the court denied confirmation at the hearing on March 25, the trustee moved to dismiss the case on May 24. The trustee's motion prompted the debtor to file a motion to confirm the original plan. Apparently, the debtor intended to ask the court to confirm the original plan given the bank's tardy withdrawal of its objection to it and to the valuation motion.

At the June 17 hearing on the trustee's dismissal motion, the court declined to dismiss the case. Because the debtor had filed the May 24 motion to confirm the plan, the court conditionally denied the trustee's dismissal motion. That is, on the condition that the court confirmed the debtor's motion to confirm a plan on July 29, the case would remain pending. If a plan was not confirmed, the case would be dismissed on the trustee's ex parte communication.

Next, the trustee objected to the debtor's motion to confirm the plan. The trustee noted that there was no order valuing the bank's collateral and that such an order was necessary if the claim was to be treated in Class 2C. See Local Bankruptcy Rule 3015-1(j).

Even though the only task remaining was for the debtor to lodge an order granting the valuation motion, MCN-1, the debtor did not lodge the order prior to July 29 hearing and counsel for the debtor, despite appearing at the July 29 hearing, did not offer to do so.

As a result, the court denied confirmation of the plan a second time because there had been no valuation of the bank's collateral.

This motion does not explain this failure. It states only that because the bank had withdrawn its opposition to the valuation motion, the debtor assumed the motion was no longer contested. While true, this did not eliminate the need for an order granting the motion. And, the court notes that the minutes of the April 22 hearing on the valuation motion direct the debtor to lodge an order, which was not done and the failure to do so has not been explained.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside an order or a judgment for: (1) mistake,

inadvertence, surprise, or excusable neglect; "(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the [order]."

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances." Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The movant has not established any basis under Rule 60(b) for the court to vacate or reconsider its dismissal of the case. While neglect is present – failure to lodge an order – more than neglect must be shown. Excusable neglect is required for reconsideration. Greenspun v. Bogan, 492 F.2d 375, 382 (1st Cir. 1974) (holding that relief from order under Rule 60(b) should not be given to a party whose failure to appear at a hearing was due to a mistake bordering on carelessness or was due to carelessness). Mere neglect is not sufficient for the granting of relief under Rule 60(b). Excusable neglect is required. See Greenspun at 382.

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice . . .; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The motion addresses none of this. It simply says the debtor thought the valuation motion was uncontested. It was but even uncontested motions require an order. And, the debtor was told to lodge an order in April then never lodged one, even after the trustee raised the issue in his objection to the confirmation of the plan.

12. 13-23948-A-13 MARILEA LINNE — MOTION TO VACATE DISMISSAL OF CASE 8-28-13 [35]
TJW-2

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was filed on March 25, 2013. The debtor has never confirmed a plan despite filing a plan on the day the case was filed.

That plan provided for the secured claim of Patelco Credit Union in Class 2C. That is, because the debtor believed the real property securing the credit union's claim, after deducting the amount owed on a senior encumbrance, had no value, the debtor proposed to pay the claim nothing. Put differently, the debtor was attempting to apply 11 U.S.C. § 506(a), as interpreted by the Ninth Circuit in In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R.

36 (B.A.P. 9th Cir. 1997), and treat the credit union's claim as wholly unsecured because its collateral had no net value.

In order to provide for the credit union's claim in this fashion, it was necessary for the debtor to file a motion to value the credit union's collateral, the debtor's home. That motion [TJW-1] was filed on May 22, 2013 and set for hearing on July 1.

The trustee objected to the proposed treatment of Patelco's claim because the valuation motion was set for hearing after the May 28 hearing on the confirmation of the plan. Local Bankruptcy Rule 3015-1(j) required chapter 13 debtors to set valuation motions for hearing prior to, or contemporaneous with, the confirmation hearing.

The court sustained the trustee's objection to confirmation because the debtor had failed to comply with Local Bankruptcy Rule 3015-1(j) by setting the valuation hearing prior to, or contemporaneous with, the May 22 hearing on plan confirmation. Additionally, the plan did not comply with 11 U.S.C. § 1325(b) by paying all projected disposable income to unsecured creditors. Despite these two problems, the court conditionally denied the trustee's motion to dismiss the case (which was included with the objection to confirmation). That is, on the condition that the court confirmed a plan within the next 75 days, the case would remain pending. If a plan was not confirmed, the case would be dismissed on the trustee's ex parte communication.

Despite the denial of the plan's confirmation, the July 1 hearing on the valuation motion preceded. Patelco did not oppose the motion and the court issued a ruling granting the motion. The minutes of the hearing, which include the ruling, also ordered the debtor to lodge an order granting the valuation motion.

The case was dismissed on August 21. The trustee moved for dismissal on an ex parte basis in accordance with the ruling on his objection to confirmation because the debtor had filed a new plan with a motion to confirm it, and the debtor had never lodged an order granting the valuation motion.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside an order or a judgment for: (1) mistake, inadvertence, surprise, or excusable neglect; "(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the [order]."

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances." Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The movant has not established any basis under Rule 60(b) for the court to vacate or reconsider its dismissal of the case. While neglect is present – failure to file a modified plan and to move its confirmation and the failure to lodge an order – more than neglect must be shown. Excusable neglect is required for reconsideration. Greenspun v. Bogan, 492 F.2d 375, 382 (1st Cir. 1974) (holding that relief from order under Rule 60(b) should not be given to a

party whose failure to appear at a hearing was due to a mistake bordering on carelessness or was due to carelessness). Mere neglect is not sufficient for the granting of relief under Rule 60(b). Excusable neglect is required. See Greenspun at 382.

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice . . .; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The motion addresses none of this. It simply says the debtor thought the court would prepare an order on her valuation motioned. This fails to even address the failure to propose modified plan and it ignores the fact that the court's ruling directed the debtor to lodge an order.

13. 13-28557-A-13 KEVIN MEADOWS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-15-13 [18]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

The debtor has failed to give the trustee documentation for business expenses and for the valuation of his home as he agreed to furnish. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

14. 13-29372-A-13 TERRY ARNOLD — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-29-13 [18]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

First, to pay the dividends required by the plan and the rate proposed by it will take 82 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors $23,638.67 but Form 22 shows that the debtor will have $45,380.40 over the next five years.

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

15. 13-29489-A-13 GRIGOR KESOYAN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-29-13 [14]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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

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

It is unnecessary to address the remaining objections.

16. 10-24598-A-13 JACOB/JOEY FIELD
RPB-4

MOTION TO
MODIFY PLAN
7-31-13 [102]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

The debtor failed to utilize the court's mandatory form plan as required by Local Bankruptcy Rule 3015-1(a) (effective on and after May 1, 2012, in all cases regardless when filed).

THE FINAL RULINGS BEGIN HERE

17. 13-28602-A-13 GHERGHINA TOPORISTE — MOTION TO VALUE COLLATERAL
JLB-1 — 7-31-13 [17]
VS. GREEN TREE SERVICING, LLC

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $450,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Chase. The first deed of trust secures a loan with a balance of approximately $590,191 as of the petition date. Therefore, Green Tree Servicing, LLC'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 $450,000. 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).

18. 13-28602-A-13 GHERGHINA TOPORISTE — MOTION TO VALUE COLLATERAL
JLB-2
VS. ROOM SOURCE — 7-31-13 [21]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $1,650 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $1,650 of the respondent's claim is an allowed secured claim. When the respondent is paid $1,650 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.

19. 12-41913-A-13 PATRICK/DEBORAH TOOHEY — MOTION TO DISMISS CASE 8-29-13 [45]
RAH-4

Final Ruling: Because the debtor has the unilateral right to dismiss a chapter 13 case when the case has not been previously converted from another chapter. 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. A review of the motion and the docket reveals that this petition was filed as a chapter 13 case, and the case has not previously been converted to or from another chapter. Therefore, 11 U.S.C. § 1307(b) permits the debtor to dismiss the case.

20. 13-28417-A-13 PAUL/SARAH HAMM — ORDER TO SHOW CAUSE 8-28-13 [29]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $40 installment when due on August 23. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

21. 13-30417-A-13 PATRICK FAGUNDES — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-3-13 [30]
GMN-1
JASBIR BRAR VS.

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on August 30. Consequently, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(2).

22. 12-40323-A-13 FRANK MANZANO — MOTION TO CONFIRM PLAN 8-5-13 [73]
JKU-4

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 sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

23. 13-29027-A-13 SUSAN PEYTON — MOTION TO DISMISS CASE 8-29-13 [25]
JPJ-1

Final Ruling: The motion will be dismissed as moot. The case was previously dismissed.

24. 10-51430-A-13 AARON HASTINGS — MOTION TO MODIFY PLAN 7-12-13 [201]
AEH-91316

Final Ruling: The motion will be dismissed without prejudice.

First, the proposed plan is not on the current form required by Local Bankruptcy Rule 3015-1(a).

Second, while a declaration accompanies the motion, it states only conclusions and not facts. For instance, it does not explain the factual basis for reducing plan payments. When the debtor files another motion, he may file amended Schedules I and J to explain any change in financial circumstances.

25. 10-51430-A-13 AARON HASTINGS — COUNTER MOTION TO DISMISS CASE 8-28-13 [208]
AEH-91316

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 denied without prejudice. There is a confirmed plan in this case. In the absence of evidence that the confirmed plan is in default, there is no basis for dismissal. The inability of the debtor to confirm a modified, without more, is not a basis for dismissal.

26. 13-27438-A-13 JOHN/TERRI MOULE — MOTION TO AVOID JUDICIAL LIEN 8-14-13 [23]
CAH-2
VS. FORTIS CAPITAL II, LLC

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A).

The subject real property has a value of $190,000 as of the date of the petition. The unavoidable liens total more than $190,000. The debtor has an available exemption of $1. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of

the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

27. 13-28342-A-13 LUIS/LYDIA RAMIREZ — MOTION TO CONFIRM PLAN 7-29-13 [18]
SDB-1

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 sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

28. 13-30143-A-13 JANE GRAFF — MOTION TO VALUE COLLATERAL 8-12-13 [21]
DJC-3
VS. BANK OF AMERICA, N.A., ETC.

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $72,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bank of America Home Loans. The first deed of trust secures a loan with a balance of approximately $223,865 as of the petition date. Therefore, Green Tree Servicing, LLC'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 $72,000. 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).

29. 10-33562-A-13 LAKISCHA FULLARD — MOTION TO MODIFY PLAN
PGM-4 — 8-12-13 [96]

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 sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

30. 13-31163-A-13 THOR/KATHLEEN SWEGER — MOTION TO EXTEND AUTOMATIC STAY
MRP-1 — 8-30-13 [9]

Final Ruling: The motion will be dismissed.

First, Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at any of these addresses.

Second, there is no reliable proof that the motion was served on anyone. According to the certificate of service, the motion was served on December 7, 2012, a date that precedes the filing of this case.

31. 13-27368-A-13 MARLO/LORETA ONG — MOTION TO VALUE COLLATERAL
CA-2 — 7-2-13 [28]
VS. GREEN TREE SERVICING, LLC

Final Ruling: This matter was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2). The respondent was not required to file written opposition prior to the preliminary hearing. At the preliminary hearing, however, the respondent informed the court that there was opposition to the motion. The court then set a briefing schedule and required the respondent to file and serve written opposition on or before September 3. Nothing was filed. Therefore, the respondent's default is entered and, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $173,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ocwen Loan Servicing. The first deed of trust secures a loan with a balance of approximately $213,819.20 as of the petition date. Therefore, Green Tree Servicing's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's

principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $173,000. 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).

32. 10-43688-A-13 MELITON/RAQUEL GERONIMO — MOTION TO MODIFY PLAN
SDB-1 — 8-2-13 [28]

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 sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

33. 10-28890-A-13 LESTER/TRISHA ANDERSON — MOTION TO MODIFY PLAN
MWB-5 — 7-30-13 [105]

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 conditionally granted. Provided the plan is further modified in the order confirming it to accurately provide for the prior payments and to require a monthly plan payment of $1,375 for the remainder of the plan, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

34. 12-39195-A-13 MANUEL/MARIE CARMEL DUMONT — OBJECTION TO CLAIM
SNM-2
VS. WELLS FARGO BANK, N.A. — 8-1-13 [44]

Final Ruling: This objection to the proof of claim of Wells Fargo Bank has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed to the extent it includes arrears for pre-petition defaults. The loan was current when the case was filed. There were no arrears.

35. 12-39195-A-13 MANUEL/MARIE CARMEL DUMONT — OBJECTION TO CLAIM
SNM-3
VS. CAPITAL ONE, N.A. — 8-1-13 [49]

Final Ruling: This objection to the proof of claim of Capital One has been set

for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim allowed as a nonpriority unsecured claim.

Because the collateral for the claim has been discarded, the claim is now unsecured. It is allowed as such.

36. 13-28595-A-13 ROBERT JEFFREY — MOTION TO CONFIRM PLAN 8-5-13 [46]

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 sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

37. 13-23897-A-13 TOMMY/CAROL JOHNSON — MOTION TO CONFIRM PLAN 7-31-13 [86]
BMV-7

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 sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

38. 10-28098-A-13 ROBIN ROBINSON
LR-2

MOTION TO
MODIFY PLAN
7-25-13 [114]

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 conditionally granted. Provided the plan is further modified in the order confirming it to accurately provide for the prior payments and to require a monthly plan payment of $1,556 for the remainder of the plan, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.