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UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 5, 2018 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 21. 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 DECEMBER 3, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 19, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 26, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 22 THROUGH 43 AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON NOVEMBER 12, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-26605-A-13 DEBRA THOMPSON — MOTION TO EXTEND AUTOMATIC STAY
TAG-1 — 10-19-18 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the most recent petition because the debtor failed to confirm a plan within a deadline set by the court. She was unable to do so because the IRS filed a priority tax claim based on the debtor's failure to file the tax returns for the prior two years.

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

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

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

Here, the debtor has now filed the missing tax returns and proposed a plan that will pay the priority tax claim for the tax years in full. This is a sufficient change in circumstances rebut the presumption of bad faith.

2. 14-24219-A-13 DAVID/KAREN WARN
PGM-4

OBJECTION TO
NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, CHARGES AND REQUEST FOR ATTORNEY FEES
9-11-18 [90]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot.

The claimant has voluntarily dismissed the Notice of Postpetition Mortgage Fees, Expenses, and Charges to which the debtor objects.

The debtor, however, demands $1,550 attorney's fees for having to make this objection.

The claimant asserts that no fees can be awarded pursuant to Cal. Civil Code § 1717 because that section permits an award of fees only when a contract provides for fees in action to enforce that contract. Here, the claimant maintains there is no action on the underlying note and deed of trust. It is, instead, a proceeding pursuant to Fed. R. Bankr. P. 3002.1(e).

While this is indeed a proceeding under Rule 3002.1(e), this rule requires the court to resolve disputes concerning fees and charges claimed by a home lender are "required by the underlying agreement and applicable nonbankruptcy law."

The court concludes that the dispute – whether fees and costs claimed in the Notice can be assessed to the debtor under the contract – is an action on the contract.

However, the court awards no fees to the debtor because none are reasonable.

The claimant's notice was filed on August 3, 2018. The debtor's objection was filed on September 11, 2018. There is nothing with the objection indicating that the debtor attempted to resolve a relatively minor issue by contacting the lender and demanding the withdrawal of the notice for the reasons argued in this objection. There was plenty of time to do so because Rule 3002.1(e) gives the debtor one year from the notice to make the objection.

3. 18-24442-A-13 RONALD TREJO
NLL-2
JPMC SPECIALTY MORTGAGE, L.L.C. VS.

OBJECTION TO
CONFIRMATION OF PLAN
9-28-18 [36]

- ☐ 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 overruled.

The plan proposes to cure a post-petition arrearage on a home mortgage. The creditor does not "consent" to this and therefore objects to confirmation.

Even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2), (b)(3) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The plan may provide for the cure of post-petition arrears.

The offer of the creditor to enter into a separate adequate protection stipulation makes no sense.

The traditional role of an adequate protection order is to protect a creditor's interest in the debtor's property after the filing of the petition until the confirmation of the plan. Once the plan is confirmed, the plan makes provision for the adequate protection of the claim. There is no need to make provision for payment of a claim outside of the plan once the plan is confirmed. See In re Cason, 190 B.R. 917, 932 (Bankr. N.D. Ala. 1995); In re Johnson, 63 B.R. 550 (Bankr. D. Colo. 1986); In re Moore, 13 B.R. 914 (Bankr. D. Or. 1981). The only post-confirmation role for an adequate protection order is to insure that a relatively minor plan default is cured promptly.

A chapter 13 plan should govern the treatment of a claim, not a two-party stipulation. To permit otherwise has two unacceptable consequences. It means that the court, the trustee, United States Trustee, and creditors must examine not only the plan and the order confirming the plan to know what is in a plan, but they also examine every order entered in connection with a motion for relief from the stay or an adequate protection motion. From a purely administrative point of view, this makes no sense.

More substantively, an adequate protection order that operates after confirmation of the plan amounts to a secret plan modification. That is, other creditors, the trustee, and the United States Trustee know nothing about it and they have no opportunity to object it. They may wish to complain if the adequate protection offered to just one creditor is unduly preferential.

Or, if the adequate protection order hobbles the debtor's ability to complete the plan, other parties in interest may wish to be heard. Since most chapter 13 debtors, including this debtor, are in chapter 13 in an effort to save their homes, any secret provision that unnecessarily hinders this effort is a concern to all creditors. If the stay is terminated pursuant to the stipulation, a debtor is likely to dismiss the case or permit the trustee to dismiss it. As a result all other creditors suffer.

Effectively, after the plan was served on all parties, one creditor and the debtor got together and modified the plan without notice to every other party interest even though the modification potentially affects all other creditors. The requirement of Rules 2002(b) and 3015(d) and (e) that the trustee, the United States Trustee, and other creditors be served with the plan or a summary of it is seriously compromised, even negated, if the debtor and one creditor can modify the plan in this fashion.

4. 18-25342-A-13 REECE/RODINA VENTURA — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 10-10-18 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The 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). While the debtor may have appeared at a continued meeting, this was after the deadline for objections to confirmation. Therefore, the debtor shall file a motion to confirm the plan to give creditors and the trustee another opportunity to file objections after the opportunity to question the debtor.

5. 18-25649-A-13 LYDIA HINOJOSA — ORDER TO SHOW CAUSE
10-12-18 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $86 due on October 1 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

6. 18-24150-A-13 STEVEN ADAMS — MOTION TO CONFIRM PLAN
PGM-2 — 10-1-18 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan proposes to defer the payment of a home mortgage until the conclusion of state court litigation. There is no convincing proof from the debtor either that the debtor will prevail in that litigation or that, in the event the creditor prevails, the debtor will be able to pay the claim in full as required by 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B). The debtor has not proven the

plan is feasible. See 11 U.S.C. § 1325(a)(6). Given the debtor's eight prior cases, it would appear unlikely that the debtor will be able to refinance the property.

7. 18-25450-A-13 JERRY DOWNING — OBJECTION TO CONFIRMATION OF PLAN
JHW-1
CAB WEST, L.L.C. VS. — 9-18-18 [16]

- ☐ 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 overruled.

The objecting creditor asserts that it leased personal property to the debtor. The lease is unexpired. The creditor complains that the plan neither assumes nor rejects the lease. This is incorrect. While the plan does not identify the objecting creditor's lease, the plan provides:

"4.02. Any executory contract or unexpired lease not listed in the table below is rejected."

The objecting creditor and its lease is not identified in the table. Therefore the plan rejects the lease as permitted by 11 U.S.C. § 365.

8. 18-26352-A-13 TIMOTHY CLARK — MOTION TO IMPOSE AUTOMATIC STAY
PGM-1 — 10-22-18 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

This is the fourth case filed by the debtor. The three prior cases, all dismissed, are summarized below.

Case No.	Chap	Filed	Disposition
18-26352	13	10/08/18	Pending
18-21986	13	04/02/18	Dismissed 09/20/18 Failure to confirm plan and make payments
17-27928	13	12/05/17	Dismissed 05/04/18 Failure to obtain prefiling credit briefing
17-27295	7	11/02/17	Dismissed 12/01/17 Failure to file schedules & statements

Because the three cases filed immediately prior to this case were dismissed within one year of the most recent petition, 11 U.S.C. § 362(c)(4), not section 362(c)(3) is applicable.

11 U.S.C. § 362(c)(4) provides that the automatic stay never goes into effect in a new single or joint bankruptcy case of an individual debtor if that debtor had two or more single or joint cases pending within the previous one-year period that were dismissed.

Under section 362(c)(4), on motion of a party in interest brought within thirty days of the commencement of the latest case, after notice and a hearing, the court may order the stay to take effect only if the party seeking such action "demonstrates that the filing of the later case is in good faith as to the creditors to be stayed." Unlike section 362(c)(3)(B), there is no requirement in section 362(c)(4)(B) that the hearing on the motion to impose the stay be completed within the thirty-day period.

This motion was made within 30 days of the filing of the current case. The issue is whether the case was filed in good faith. Section 362(c)(4)(D) invokes a presumption that the case was "filed not in good faith."

The debtor asserts in his motion that his prior cases failed because he lost income when he and his wife divorced and then when his commission only job provided inconsistent income. While this does not explain the failure to obtain credit counseling and the failure to file all bankruptcy schedules and statements, the court notes that the debtor obtained a briefing before filing this case and that the petition is accompanied by all necessary schedules and statements. Further, the debtor has new employment that provides him with a based income as well as commissions.

Based on this record, the court is convinced that the debtor's financial situation has changed appreciably. The court concludes that this case is more apt to succeed than the prior cases. The automatic stay will be imposed as to all creditors.

9. 18-24656-A-13 BACHAR ALBOKAI — MOTION TO CONFIRM PLAN 9-26-18 [21]
LBG-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has not satisfied the burden of proving the plan's feasibility as required by 11 U.S.C. § 1325(a)(6). Schedules I/J do not demonstrate the financial ability to make the plan payments.

Second, the plan provides for the cure of a post-petition arrearage but fails to indicate the amount of the arrearage. Without that information, the debtor cannot prove the plan complies with 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B).

10. 18-21957-A-13 WILLIAM AMARAL — MOTION TO SELL
PGM-5 — 9-28-18 [120]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Both the debtor and the nondebtor spouse are claiming a $100,000 exemption. Only one exemption may be claimed. Until it is determined who is entitled to the exemption, no sale will be approved unless both spouses agree that one exemption of $100,000 is possible and, further, until it is determined by a court which spouse is entitled to that exemption (or until it is determined how the $100,000 is to be pro rated between them). If they can agree on this, the $100,000 will be held by the trustee and if the case is dismissed before the issue is resolved, the trustee to pay the $100,000 to both spouses jointly.

Even if this issue resolved by agreement, the motion would granted only on the following conditions.

First, before the sale may be consummated, a plan must be confirmed. That plan must include provisions that will implement the other conditions stated below.

Second, if a plan is confirmed, the sale must generate sufficient proceeds to pay all liens and encumbrances. This payment shall be through the plan and the trustee.

Third, if one-half of the remaining proceeds are sufficient to pay all other claims in full, that one-half shall be paid to the trustee for disbursal to all creditors pursuant to the plan. The other one-half of the remaining sale proceeds shall be paid to the nondebtor co-owner.

If one-half of the remaining proceeds are not sufficient to pay all claims in full, all remaining proceeds shall be paid to the trustee. The trustee shall hold the proceeds until it is determined which claims are claims against the former community and which are not. Once this is determined by this court, the claims of the former community shall be paid. If they are paid in full, one-half of the then remaining sales proceeds shall be paid to the nondebtor spouse. The remaining half of the sales proceeds allocable to the debtor shall be used to pay debts for which the former community is not responsible. Once all claims are paid in full, any balance shall be refunded to the debtor.

In the event this case is dismissed before the trustee is able to pay community claims, the funds held by the trustee shall be refunded to the debtor and the nondebtor co-owner jointly.

11. 18-21957-A-13 WILLIAM AMARAL
PGM-6

MOTION TO CONFIRM PLAN
9-28-18 [125]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor and his nondebtor spouse are separated and in the midst of a divorce. They dispute which of the debtor's debts are community debts. If all are community debts, the debtor's and the nondebtor's spouse's interest in the community real property being sold will not be sufficient to all claims in full as required by the plan because each are claiming a $100,000 exemption.

If only the debtor's one-half interest in the property being sold is available to pay claims, that interest will be insufficient to pay claims in full as required by the plan.

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

12. 18-25259-A-13 NIKOLAY MARTYNOV
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
10-10-18 [31]

- ☐ 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 conditionally denied.

First, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal.

Second, the additional provisions of the plan provide for the treatment of a home mortgage held by Shellpoint. Those provisions prospectively modify its claim. That is, the debtor does not provide only for the cure of the arrears and the maintenance of the ongoing installment payment. Absent Shellpoint's agreement, this 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). There is no proof of Shellpoint's agreement.

Third, the debtor has failed to fully and accurately provide all information

required by the petition, schedules, and statements. Specifically, the petition does not disclose the debtor's prior bankruptcy cases and Schedules I/J do not attach a detailed statement of business income and expenses. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

The trustee will object to all of the debtor's Cal. Civ. Pro. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married, as admitted in Schedules I/J, and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done.

While this may be a basis for disallowing the debtor's exemptions, it has no bearing on confirmation of the proposed plan which will pay unsecured creditors in full.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 60 days, the case will be dismissed on the trustee's ex parte application.

13. 15-29262-A-13 IBRAHEYMA ALHARK — MOTION TO MODIFY PLAN 9-17-18 [42]
SDH-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

14. 18-25264-A-13 JAMES/LORI PERRY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 10-10-18 [21]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 conditionally denied.

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

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedules I/J give differing amounts for the debtor's monthly income and Schedules I/J fail to attach detailed statements of the debtor's business income and expenses. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 60 days, the case will be dismissed on the trustee's ex parte application.

15. 18-25565-A-13 KACEE PEREZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-17-18 [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 conditionally denied.

The debtor has failed to commence making plan payments and has not paid approximately $1,355 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 60 days, the case will be dismissed on the trustee's ex parte application.

16. 18-25574-A-13 KAY MILLER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-10-18 [20]

- ☐ 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 conditionally denied.

The debtor admitted at the meeting of creditors that she has not filed federal income tax returns for 2015 to the present.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has not moved for dismissal. Also, 11 U.S.C. § 1325(a)(9)

and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 60 days, the case will be dismissed on the trustee's ex parte application.

17. 18-25774-A-13 JAYWAUN CLARK — ORDER TO SHOW CAUSE 10-18-18 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on October 15 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

18. 18-24188-A-13 VINCENT/WENDY CHALK — MOTION TO VALUE COLLATERAL 9-13-18 [24]
JSO-2
VS. THE ROBERT L. GRIFFIN 2002 TRUST

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor seeks to value the debtor's residence at a fair market value of $175,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by the Dept. of Veterans Affairs. The first deed of trust secures a loan with a balance of approximately $197,261 as of the petition date. Therefore, the debtor argues that the Robert L. Griffin 2022 Trust's claim secured by a junior deed of trust is completely under-collateralized and should not be allowed as a secured claim. See 11 U.S.C. § 506(a).

The debtor's valuation is based on the debtor's opinion. He is not an expert. Rather, as the owner he is qualified to state his opinion as to his home's value. 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).

However, the respondent has produced the opinion of an expert that the property has a value of $225,000. Given the qualifications of the expert to give this opinion, and the absence of any reply from the debtor explaining why the expert should be disbelieved, the court can give little weight to the debtor's lay opinion.

19. 18-23795-A-13 DENNIS GARRETT
BB-11

MOTION TO CONFIRM PLAN
9-19-18 [136]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $5,030 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 additional provisions fail to specify the dividends on Class 2 claims and, to the extent it provides for an increase in a dividend, the plan violates the requirement that monthly dividends on secured claims be equal monthly installments.

Third, as to the HSBC/Wells Fargo Class 2 claim, the plan fails to provide for the escrowed monthly fees included with its contractual installment.

20. 18-25697-A-13 JOHN/KIMBERLY MUNO
DAO-2
VS. TD AUTO FINANCE

MOTION TO VALUE COLLATERAL
10-22-18 [24]

- ☐ 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 debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $13,500 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $13,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $13,500 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.

21. 17-26998-A-13 MILES RICHARD FRANCISCO
MC-1

MOTION TO MODIFY PLAN
9-25-18 [71]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

FINAL RULINGS BEGIN HERE

22. 18-23408-A-13 SUSAN OLSEN — MOTION TO CONFIRM PLAN
LBG-2 — 9-20-18 [32]

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

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

23. 18-25209-A-13 ROMANA HERRERA — MOTION TO VALUE COLLATERAL
TAG-1 — 10-4-18 [15]
VS. SAFE CREDIT UNION

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 debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $2,500 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $2,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $2,500 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.

24. 16-25215-A-13 MEREDITH LAWLER — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-2 — 10-1-18 [53]

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

25. 18-22731-A-13 THOMAS/BECKY BOYES — MOTION TO CONFIRM PLAN
LBG-4 — 9-20-18 [55]

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

26. 18-24937-A-13 JOHN HUGHES — OBJECTION TO CLAIM OF EXEMPTIONS
JPJ-2 — 9-27-18 [22]

Final Ruling: This objection to the debtor's exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained and the exemption of the vehicle under Cal. Civ. Pro. Code § 704.060 is disallowed. The vehicle was claimed exempt under Cal. Civ. Pro. Code § 704.010. The latter exemption precludes the former exemption if it exempts a vehicle that is reasonably adequate for use in the debtor's business. The debtor has come forward with no evidence that the vehicle is not reasonably adequate.

27. 18-25541-A-13 KARAPET ELBAKYAN — OBJECTION TO CONFIRMATION OF PLAN
SPECIALIZED LOAN SERVICING, L.L.C. VS. — 9-12-18 [10]

Final Ruling: The objection will be dismissed without prejudice.

First, any contested matter placed on the calendar by the moving party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a matter are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with the matter.

This objection was filed without a docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to profit from possible confusion caused by this breach of the court's local rules.

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

proof/certificate of service, the objecting party has failed to establish that the motion was served on all necessary parties in interest.

28. 18-25541-A-13 KARAPET ELBAKYAN — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 10-10-18 [17]

Final Ruling: The objection has been voluntarily dismissed.

29. 18-24442-A-13 RONALD TREJO — MOTION TO CONFIRM PLAN
DRE-1 — 9-24-18 [29]

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

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

30. 18-25342-A-13 REECE/RODINA VENTURA — OBJECTION TO CONFIRMATION OF PLAN
BENJAMIN VILLANUEVA VS. — 10-11-18 [26]

Final Ruling: The objection will be dismissed without prejudice.

Any contested matter placed on the calendar by the moving party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a matter are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with the matter.

This objection was filed without a docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to profit from possible confusion caused by this breach of the court's local rules.

31. 18-24150-A-13 STEVEN ADAMS — OBJECTION TO CONFIRMATION OF PLAN
NLL-2
CARISBROOK ASSET HOLDING TRUST VS. — 10-4-18 [63]

Final Ruling: The court has considered this objection as opposition to the debtor's motion to confirm a plan (PGM-2). This objection should not have been filed as a separate contested matter.

32. 18-22156-A-13 ROBERT/DEANNA HAMMAN — MOTION TO CONFIRM PLAN
HLG-4 — 9-13-18 [67]

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

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

33. 18-24757-A-13 YAROSLAV/SVETLANA TKACHUK — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLL-1 — 9-26-18 [16]
THE BANK OF NEW YORK MELLON VS.

Final Ruling: The motion will be dismissed as moot. Because the case was dismissed on October 16, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362)(c)(1) & (c)(2).

34. 18-21064-A-13 VIKASH SHARMA — MOTION TO DISMISS OR TO CONVERT CASE
PRC-1 — 9-21-18 [81]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on October 19.

35. 18-21064-A-13 VIKASH SHARMA — MOTION TO CONFIRM PLAN
SLE-2 — 9-1-18 [73]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on October 19.

36. 18-25264-A-13 JAMES/LORI PERRY — MOTION TO VALUE COLLATERAL
PGM-1 — 10-6-18 [16]
VS. HSBC USA, N.A., VS.

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 $310,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bank of New York Mellon. The first deed of trust secures a loan with a balance of approximately $318,227.13 as of the petition date. Therefore, HSBC Bank USA'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 $310,000. 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).

37. 18-23675-A-13 PAUL/ARIADNA SEVERIN — MOTION TO CONFIRM PLAN
WLG-1 — 10-1-18 [27]

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

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

38. 17-27876-A-13 MARTIN OLIVAS — MOTION TO MODIFY PLAN
MC-2 — 9-28-18 [41]

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 debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, 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.

39. 18-23578-A-13 CYNTHIA TRUSTY — MOTION TO CONFIRM PLAN
TAG-1 — 9-20-18 [31]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-

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

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

40. 18-25189-A-13 SARAH SANNEBECK — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-10-18 [24]

Final Ruling: The objection and motion will be dismissed as moot. The case was dismissed on October 25.

41. 18-25193-A-13 AARON BOREN AND GENEE FELTS-BOREN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-10-18 [23]

Final Ruling: The objection and motion will be dismissed as moot. The debtor has filed a modified plan. If the bases for the objection and motion remain, they should be interposed as objections to the modified plan.

42. 18-23795-A-13 DENNIS GARRETT — MOTION TO CONFIRM PLAN
BB-10 — 9-17-18 [124]

Final Ruling: The motion will be dismissed. There is no certificate of service with the motion and it appears the motion has been voluntarily dismissed inasmuch as another motion to confirm a plan was filed after this motion was filed.

43. 18-25197-A-13 LORI MICKENS — MOTION TO CONFIRM PLAN
PSB-2 — 9-18-18 [22]

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

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

1323(c), 1325(a), and 1329.