UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 18, 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 10. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON DECEMBER 16, 2013 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 2, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 9, 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 11 THROUGH 23. 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 NOVEMBER 25, 2013, AT 2:30 P.M.

Matters to be Called for Argument

1. 13-32210-A-13 CHRISTOPHER/SARA VENTURA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-28-13 [24]

- ☐ 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, adding the under collateralized portion of secured debt list on Schedule D to the listed unsecured debt reported on Schedule F reveals that the debtors owe noncontingent, liquidated unsecured debt of $473,965, well in excess of the cap set by 11 U.S.C. § 109(e) for chapter 13 eligibility.

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

Third, 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. This means that counsel may receive a maximum fee of up to $4,000 for a consumer case (like this one) and have that fee approved in connection with the confirmation of the plan. In this case, however, counsel's proposed fee of $5,000 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1. Therefore, he must apply for compensation pursuant to 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. The provision in the plan for payment of compensation without the requisite application cannot be confirmed.

Further, because the debtor intends to discharge counsel, the court will not approve any fees pursuant to the Local Rule. Instead, to the extent has charged or will charge the debtor anything for work related to this case, counsel shall file a fee application establishing that fees charged (whether before or after the filing of the case) or to be charged are reasonable and

necessary.

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.

2. 09-20016-A-13 ALFRED/ANNETTE LUNA — MOTION TO VACATE DISMISSAL
AMD-77 — 10-28-13 [105]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor asks the court to reconsider the October 23, 2013 dismissal of the case despite admitting that the debtor failed to meet a reasonable deadline to confirm a modified plan set by the court. Because the court concludes the failure to meet the deadline was not due to excusable neglect and because the modified plan proposed by the debtor cannot be confirmed, the motion will be denied.

The deadline was imposed because the priority tax claims of the IRS and the FTB were higher than anticipated by the debtor. Therefore, the confirmed plan, which required payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2), would not in fact pay those claims in full while paying all other dividends required by the confirmed plan.

This problem, however, could have been determined by counsel upon receipt of the Notice of Filed Claims filed by the trustee on September 29, 2009 and served on counsel. However, despite being told by the trustee that the tax claims were higher than assumed by the plan, the debtor and counsel did nothing to either object to the higher claims or to modify the plan to provide for them. Finally, on July 9, 2013, the trustee moved to dismiss the case because the debtor and counsel had failed to modify the plan. But, while the trustee's motion had merit, the court did not dismiss the case. Instead, it set a 45-day deadline to confirm a modified plan. The debtor failed to confirm a plan with that deadline because counsel failed to properly serve the motion to confirm the plan on the IRS.

Even if the motion had not been dismissed it would not be confirmed. As recounted in the trustee's objections to the prior proposed plan and to the latest plan, there are numerous good reasons to not confirm the plans proposed by the debtor.

3. 13-31722-A-13 EDWIN GUADAMUZ AND PATRICIA MORENO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-30-13 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of

the proposed chapter 13 plan 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, while the debtor appeared at the meeting of creditors, the debtor was not examined because at the debtor's request, the meeting was continued. Until the trustee has had an opportunity to examine the debtor, no plan will be confirmed.

Second, the debtor has failed to make $1,700 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Third, 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.

Fourth, the plan fails to provide at section 2.07 for a dividend to be on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

Fifth, 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 $4,180.34 but Form 22, after disallowing the deductions correctly objected to by the trustee, shows that the debtor will have $234,060 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.

4. 13-32140-A-13 IOAN/FLOARE DEJEU
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
10-30-13 [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, the debtor has failed to accurately complete Form 22. The debtor has taken the following impermissible deductions from current monthly income:

- the debtor has taken a $517 deduction for the cost of acquiring a vehicle. The debtor is not entitled to the deduction because the debtor has no expense associated with acquiring the vehicle. See Ransom v. MBNA Am. Bank (In re Ransom), 562 U.S. ____, 2011 WL 66438 (2011).

- the debtor has taken an expense deduction for a mortgages that the plan will strip off the debtor's home. Because nothing will be paid on account of the claim, the former mortgage payment may not be deducted from current monthly income of Form 22. See Thissen v. Johnson, 406 B.R. 888, 894 (E.D. Cal. 2009).

- the debtor has taken a deduction for 1/60th of the debtor's priority claims even though no priority claims are paid by the plan.

With these deductions eliminated, the debtor must pay no less than $20,775 to Class 7 unsecured creditors. Because the plan will pay these creditors nothing, it does not comply with 11 U.S.C. § 1325(b).

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

Third, the debtor has failed to give the trustee records related to the valuation of their home. 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.

5. 13-33657-A-13 STEVEN HERRON — MOTION TO EXTEND AUTOMATIC STAY 11-4-13 [19]
SG-2

- ☐ 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 denied.

This is the second chapter 13 case filed by the debtor. A prior case was filed on August 16, 2013 and then dismissed on September 3 because the debtor failed to file all schedules and statements within 14 days of the filing of that case.

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, despite being warned by the court in an order dated August 16 that the first case would be dismissed if the debtor did not timely file all documents, the debtor failed to file those documents.

The debtor then waited six weeks and filed this case. Despite having six weeks to do so, the debtor failed to receive the credit briefing required by 11 U.S.C. § 109(h). That is, before filing this case, the debtor did not request and receive the briefing. Without explanation, the debtor filed this case and then received the briefing. Because the debtor is not an eligible debtor, the motion will be denied. The court cannot conclude that this case is more apt to succeed than the last case.

6. 13-32290-A-13 GARY/MARIAH SCHMIDT
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
10-30-13 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

- the debtor has deducted $517, the allowed IRS standard for acquiring a vehicle, and also deducted a payment of $296.33 on an auto loan. The latter must be deducted from the former.

- the debtor is surrendering the collateral of Worldmark but has deducted the monthly payment to Worldmark as an expense on Form 22. Expenses related to property being surrendered to a secured creditor are not reasonable and necessary expenses that may be deducted from current monthly income. American Express Bank v. Smith (In re Smith), 418 B.R. 359, 369 (B.A.P. 9th Cir. 2009).

- the debtor has deducted the same expense twice. The debtor deducted $542.96 has a payroll deduction and again on Line 31. It may deducted only once.

With these deductions eliminated, the debtor must pay no less than $39,660 to Class 7 unsecured creditors. Because the plan will pay these creditors $3,033.24 it does not comply with 11 U.S.C. § 1325(b).

Second, the debtor has failed to make $150 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).

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.

7. 11-37191-A-13 GUY/LISA HERNANDEZ — MOTION TO APPROVE LOAN MODIFICATION
EAT-1 — 10-31-13 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

8. 13-29894-A-13 AARON/THERESA PELICAN — MOTION TO CONFIRM PLAN
MRL-4 — 10-1-13 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

- the debtor has deducted $517, the allowed IRS standard for acquiring a vehicle, and also deducted a car lease payment of $647.40. However, that lease will continue for only 33 months. Averaging the remaining lease payment over the 60-month applicable commitment period permits the debtor to deduct a monthly amount of $361.57 for the lease. This amount must be subtracted from the $517 allowance, leaving a deduction of $155.43.

- the debtor is claiming additional expenses for food, clothing and utilities but has failed to substantiate both the additional amounts deducted and their necessity.

- the debtor is deducting $491 a month for education expenses for a 19-year old son. The debtor may only deduct education expenses related to minors.

With these deductions eliminated, the debtor must pay no less than $166,508.40 to Class 7 unsecured creditors. Because the plan will pay these creditors $52,124.10, it does not comply with 11 U.S.C. § 1325(b).

The objection of Marriot will be sustained in part. While the court will not conclude that the contract rate of interest is the rate of interest that Till requires, the court will not confirm a plan that pays anything on account of Marriott's secured claim. It is secured by a vacation time share that has no net equity. The debtor has produced no evidence that payment of a claim secured by the timeshare is a reasonable and necessary expense.

Secured debt must be "necessary" before it is deductible from current monthly income. The debtor in In re Owsley, 384 B.R. 739, 746-49 (Bankr. N.D. Tex. 2008), wanted to keep a recreational vehicle securing debt. The RV was not necessary to the support of the debtor or the debtor's dependents and the plan proposed to maintain payments scheduled as contractually due. The court refused to confirm the plan concluding that because the debtor made no effort to establish the necessity of the RV to the debtor's support. Accord In re Namie, 395 B.R. 594, 597-98 (Bankr. D.S.C. 2008) (Actual monthly mortgage expense of $5,376.54 is allowed by § 1325(b)(3) but fails reasonableness and necessity review. "[T]hough 11 U.S.C. § 1325(b)(3) allows for the categorical deduction of certain actual expenses, those expenses must be 'reasonably necessary' regardless of whether Debtor is above the median income. . . . Debtor's housing expense is more than five times that allowed by the I.R.S. and is not reasonable or necessary considering Debtor's family size, income level, location, and lack of other special needs.")

9. 13-28595-A-13 ROBERT JEFFREY — MOTION TO CONFIRM PLAN 10-2-13 [103]
RJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan proposes to pay two unsecured claims owed to Macy's and Chase Bank in full while paying all other unsecured claims a 1% dividend. There is no evidence that such discrimination is fair to those creditors not being paid in full. See 11 U.S.C. § 1322(b)(1).

Second, the fails to account for all prior payments made by the debtor under the terms of the prior plans.

Third, the claims of Wells Fargo Bank are secured by second and third deeds of trust on the debtor's home. The plan provides for the claims in Class 4. Class 4 is reserved for secured claims that are not in default when the case was filed and that are not modified by the plan. As noted in Wells Fargo Bank's objection, its claims have variable monthly payments but the plan modifies these payments by permitting fixed monthly payments. This means the claims are being modified. Because the claims are being modified, the claims must be paid in full through the plan as Class 1 claims. However, by modifying the claims the debtor is required to pay them in full through and during the chapter 13 case.

11 U.S.C. § 1222(b)(9) permits a chapter 12 plan to modify a secured claim and

make it long term debt. That is, it need not be paid in full during the duration of the plan. Section 1222(b)(9) provides that a chapter 13 "*plan may - . . . provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c).*" Section 1222(c) otherwise would require that a chapter 12 plan pay all claims within three to five years.

Chapter 13 has nothing comparable to section 1222(b)(9). Consequently, the only debt that can be permitted to remain long term debt is debt that is not modified by the chapter 13 plan. As long as the plan is only curing an arrearage, the long term debt may continue beyond the length of the plan. See 11 U.S.C. § 1322(b)(3) & (5). However, if a long term debt is modified prospectively, such as by changing its interest rate, the entire claim must be paid during the chapter 13 case. See 11 U.S.C. §§ 1322(d) and 1325(a)(5).

This very point was recently decided by the Ninth Circuit in Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). It held: "'a chapter 13 debtor may not invoke both a modification of a secured creditor's claim under § 1322(b)(2) and the right to 'cure and maintain' over the life of the original loan as authorized under 1322(b)(5)." See In re Scott, 121 B.R. 605, 608-09 (Bankr. E.D. Okla. 1990) (explaining that it is not permissible to modify a secured claim under § 1322(b)(2) while extending payments beyond the plan's term pursuant to § 1322(b)(5)); see also In re Hussain, 250 B.R. 502, 507 (Bankr. D.N.J. 2000)."

10. 13-28595-A-13 ROBERT JEFFREY — COUNTER MOTION TO DISMISS CASE
RJ-1 — 11-4-13 [115]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

Despite having proposed twelve plans, no plan has been confirmed by the debtor. The inability to confirm a plan despite a reasonable opportunity to do so indicates to the court that the debtor is unable to both confirm and modify the plan. This is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. § 1307(c).

THE FINAL RULINGS BEGIN HERE

11. 13-31704-A-13 STANLEY IBARRA — MOTION TO AVOID JUDICIAL LIEN
SJS-3
VS. GE CAPITAL RETAIL BANK — 10-18-13 [31]

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 $181,078 as of the date of the petition. The unavoidable liens total $205,984. The debtor has an available exemption of $100. 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).

12. 13-28513-A-13 CORY/TINA-MARIE STANHOPE — MOTION TO CONFIRM PLAN
9-18-13 [41]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for a plan payment of $4,200 beginning November 25, 2013 and continuing thereafter for the remainder of the plan. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

13. 13-32419-A-13 WILLIAM/SANDRA RIDER — MOTION TO VALUE COLLATERAL
ADR-1
VS. BANK OF AMERICA, N.A. — 10-21-13 [16]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 $65,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage. The first deed of trust secures a loan with a balance of approximately $114,700 as of the petition date. Therefore, Bank of America'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 $65,000. 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).

14. 10-51430-A-13 AARON HASTINGS — MOTION FOR SANCTIONS
AH131118-1 — 10-16-13 [230]

Final Ruling: The motion will be dismissed.

First, the motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) 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 moving party has failed to establish that the motion was served on all necessary parties in interest.

Second, no evidence accompanies the motion. For instance, there is no evidence that the movant complied with the safe harbor provision of Fed. R. Bankr. P. 9011(c)(1) and no evidence of damages.

Third, because the movant has used an idiosyncratic method to identify his motions, rather that the docket control numbering system mandated by Local Bankruptcy Rule 9014-1(c)(3), the court is unsure which documents filed in connection with the four sanction motions pertain to each particular motion. Further, each motion fails to identify by docket number each offending document filed by the respondent.

Fourth, it appears that the court ruled on the merits of each of the pleadings filed by the respondent before the 21-day safe harbor period expired. In that event, Rule 9011 is not applicable. The respondent must have the opportunity to withdraw the offending pleading before the hearing on the merits. Filing a sanction motion under Rule 9011 after the hearing on the merits, or filing it less than 21 days prior to the hearing on the underlying matter does no good.

Finally, both the movant and the respondent are without the benefit of a lawyer. They both have made numerous procedural and substantive mistakes throughout the course of this case. Nonetheless, with quite of bit of patience, the court has attempted to reach the merits of underlying controversies whenever the record permitted it. As a result, a plan has been confirmed that will pay something to unsecured creditors. The court does not intend to rehash the three-year history of this case and the litigation between the parties that preceded it by picking over the mistakes both have made throughout this case.

15. 10-51430-A-13 AARON HASTINGS
AH131118-2

MOTION FOR SANCTIONS
11-4-13 [247]

Final Ruling: The motion will be dismissed.

First, the motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) 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 moving party has failed to establish that the motion was served on all necessary parties in interest.

Second, no evidence accompanies the motion. For instance, there is no evidence that the movant complied with the safe harbor provision of Fed. R. Bankr. P. 9011(c)(1) and no evidence of damages.

Third, because the movant has used an idiosyncratic method to identify his motions, rather that the docket control numbering system mandated by Local Bankruptcy Rule 9014-1(c)(3), the court is unsure which documents filed in connection with the four sanction motions pertain to each particular motion. Further, each motion fails to identify by docket number each offending document filed by the respondent.

Fourth, it appears that the court ruled on the merits of each of the pleadings filed by the respondent before the 21-day safe harbor period expired. In that event, Rule 9011 is not applicable. The respondent must have the opportunity to withdraw the offending pleading before the hearing on the merits. Filing a sanction motion under Rule 9011 after the hearing on the merits, or filing it less than 21 days prior to the hearing on the underlying matter does no good.

Finally, both the movant and the respondent are without the benefit of a lawyer. They both have made numerous procedural and substantive mistakes throughout the course of this case. Nonetheless, with quite of bit of patience, the court has attempted to reach the merits of underlying controversies whenever the record permitted it. As a result, a plan has been confirmed that will pay something to unsecured creditors. The court does not intend to rehash the three-year history of this case and the litigation between the parties that preceded it by picking over the mistakes both have made throughout this case.

16. 10-51430-A-13 AARON HASTINGS
AH131118-3

MOTION FOR SANCTIONS
10-16-13 [233]

Final Ruling: The motion will be dismissed.

First, the motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) 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 moving party has failed to establish that the motion was served on all necessary parties in interest.

Second, no evidence accompanies the motion. For instance, there is no evidence that the movant complied with the safe harbor provision of Fed. R. Bankr. P. 9011(c)(1) and no evidence of damages.

Third, because the movant has used an idiosyncratic method to identify his motions, rather that the docket control numbering system mandated by Local Bankruptcy Rule 9014-1(c)(3), the court is unsure which documents filed in connection with the four sanction motions pertain to each particular motion. Further, each motion fails to identify by docket number each offending document filed by the respondent.

Fourth, it appears that the court ruled on the merits of each of the pleadings filed by the respondent before the 21-day safe harbor period expired. In that event, Rule 9011 is not applicable. The respondent must have the opportunity to withdraw the offending pleading before the hearing on the merits. Filing a sanction motion under Rule 9011 after the hearing on the merits, or filing it less than 21 days prior to the hearing on the underlying matter does no good.

Finally, both the movant and the respondent are without the benefit of a lawyer. They both have made numerous procedural and substantive mistakes throughout the course of this case. Nonetheless, with quite of bit of patience, the court has attempted to reach the merits of underlying controversies whenever the record permitted it. As a result, a plan has been confirmed that will pay something to unsecured creditors. The court does not intend to rehash the three-year history of this case and the litigation between the parties that preceded it by picking over the mistakes both have made throughout this case.

17. 10-51430-A-13 AARON HASTINGS — MOTION FOR SANCTIONS
AH131118-4 — 10-16-13 [232]

Final Ruling: The motion will be dismissed.

First, the motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a separate proof/certificate of service. Appending a proof of service to one of the supporting documents (assuming such was done) 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 moving party has failed to establish that the motion was served on all necessary parties in interest.

Second, no evidence accompanies the motion. For instance, there is no evidence that the movant complied with the safe harbor provision of Fed. R. Bankr. P. 9011(c)(1) and no evidence of damages.

Third, because the movant has used an idiosyncratic method to identify his motions, rather that the docket control numbering system mandated by Local Bankruptcy Rule 9014-1(c)(3), the court is unsure which documents filed in

connection with the four sanction motions pertain to each particular motion. Further, each motion fails to identify by docket number each offending document filed by the respondent.

Fourth, it appears that the court ruled on the merits of each of the pleadings filed by the respondent before the 21-day safe harbor period expired. In that event, Rule 9011 is not applicable. The respondent must have the opportunity to withdraw the offending pleading before the hearing on the merits. Filing a sanction motion under Rule 9011 after the hearing on the merits, or filing it less than 21 days prior to the hearing on the underlying matter does no good.

Finally, both the movant and the respondent are without the benefit of a lawyer. They both have made numerous procedural and substantive mistakes throughout the course of this case. Nonetheless, with quite of bit of patience, the court has attempted to reach the merits of underlying controversies whenever the record permitted it. As a result, a plan has been confirmed that will pay something to unsecured creditors. The court does not intend to rehash the three-year history of this case and the litigation between the parties that preceded it by picking over the mistakes both have made throughout this case.

18. 13-28646-A-13 FRANK/MARIETTA CIVITANO — MOTION TO CONVERT OR DISMISS CASE 10-14-13 [41]
JPJ-3

Final Ruling: The hearing is continued by the court to December 5, 2013 at 1:30 p.m. so that it will coincide with a hearing on the confirmation of a plan.

19. 13-32168-A-13 THELMA LA CAZE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 10-30-13 [21]
JPJ-1

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

The trustee's objection raises numerous issues related to the plan's compliance with 11 U.S.C. § 1325(b). The debtor's written response concedes the merit of the objection and agrees to propose a modified 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.

20. 13-32171-A-13 PAVEL KOZHAYEV — MOTION FOR RELIEF FROM AUTOMATIC STAY 10-18-13 [20]
EAT-1
BANK OF AMERICA, N.A. VS.

Final Ruling: This motion for relief from the automatic stay has been set for

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1). The movant completed a nonjudicial foreclosure sale before the bankruptcy case was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. If the foreclosure sale was not in accord with state law, this should be asserted as a defense to an unlawful detainer proceeding in state court. The purchaser's right to possession after a foreclosure sale is based on the fact that the property has been "duly sold" by foreclosure proceedings. Cal. Civ. Pro. Code § 1161a. Therefore, it is necessary that the plaintiff prove that each of the statutory procedures has been complied with as a condition for seeking possession of the property. See Miller & Starr, California Real Estate 2d, §§ 18.140 and 18.144 (1989). Alternatively, the debtor should press an independent claim for relief in state court to challenge the foreclosure. The automatic stay is a respite from creditor action while the debtor attempts to reorganize. Here, the debtor has no apparent right to reorganize the movant's debt because of the foreclosure unless that foreclosure was improper. Whether or not it was improper must be decided in state court.

21. 10-41078-A-13 KAREN DERA — MOTION TO INCUR DEBT
SAC-1 — 10-21-13 [35]

Final Ruling: This motion to borrow has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 to incur a purchase money loan to purchase a vehicle will be granted. The motion establishes a need for the vehicle and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.

22. 13-31182-A-13 DANILA WONG — MOTION TO VALUE COLLATERAL
MAC-1
VS. CHARTER ONE BANK, N.A. — 10-4-13 [20]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to

the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 $195,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Home Mortgage. The first deed of trust secures a loan with a balance of approximately $209,025.52 as of the petition date. Therefore, Charter One'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 $195,000. 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).

23. 13-31182-A-13 DANILA WONG — MOTION TO CONFIRM PLAN 10-4-13 [24]
MAC-2

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.