UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 1, 2014 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 12. 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 29, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 15, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 22, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 13 THROUGH 25 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON DECEMBER 9, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 11-32212-A-13 KATHRYN MCOMIE — ORDER TO SHOW CAUSE 11-10-14 [113]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: On October 1, 2013, Deutsche Bank National Trust Company filed a proof of claim. On October 25, 2014, it filed a transfer of this claim to Deutsche Bank National Trust Company, as trustee, etc. However, neither transferor nor transferee paid the $25 transfer fee required by 28 U.S.C. § 1930(b). Therefore, the transfer and assignment of the claim will be disallowed and not recognized by the court until the fee is paid.

2. 14-29914-A-13 DEATRICE EVERETT — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 11-13-14 [27]
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 will be conditionally denied.

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

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

3. 14-29330-A-13 ALFRED/CAROLYN SHULTS
CAH-2

MOTION TO CONFIRM PLAN
10-16-14 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $1,745 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 plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Richard Rogers and Lana Munger in order to strip down or strip off one their secured claims 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."

The objections of Rogers and Munger will be sustained in part.

The objection to the value of the real property will be overruled inasmuch as the debtor has filed no motion to value. The objection that the plan understates their claims and the claims of others will be overruled because the plan makes clear that the proofs of claim filed by creditors will determine the amounts and character of their claims, not the plan.

However, the court agrees that the debtor has not established the feasibility of the plan. See 11 U.S.C. § 1325(a)(6). First, they filed an earlier case in 2013 that was dismissed because the debtor failed to maintain plan payments. Second, the objecting creditors granted several accommodations and extensions to the debtor but the debtor was unable keep those modified financial commitments. Third, the debtor has failed to make timely payments in this case.

4. 14-29330-A-13 ALFRED/CAROLYN SHULTS
CAH-2

COUNTER MOTION TO DISMISS CASE
11-17-14 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The counter motion will be granted and the case will be dismissed.

The fact that an earlier chapter 13 case was dismissed in 2014 and that the debtor has failed to maintain regular payments in this case indicates to the court that no plan is likely to be feasible. This has resulted in delay that

is prejudicial to creditors and is cause for dismissal. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

5. 14-29658-A-13 DAVID BROWN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-13-14 [40]

- ☐ 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 in part and the motion to dismiss the case will be conditionally denied.

To pay the dividends required by the plan and to pay the secured claim of the IRS at the amount demanded, $26,908, rather than the scheduled amount, $20,542, will take 81 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

The other issues raised by the trustee have been resolved by the filing of motions to value and amended schedules.

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 75 days, the case will be dismissed on the trustee's ex parte application.

6. 14-31065-A-13 DANNY/RENEE JOHNSON — MOTION TO EXTEND STAY
SLH-1 — 11-14-14 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the most recent petition.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 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, it appears that the debtor was unable to maintain plan payments in the first case due to unemployment. The debtor is re-employed effective January 2015. This is a sufficient change in circumstances rebut the presumption of bad faith.

7. 14-30069-A-13 JOSEPH/LORI AUGUSTINE — ORDER TO SHOW CAUSE 11-13-14 [17]

- ☐ 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 $77 due on November 10 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

8. 14-29485-A-13 MARK TRIEBWASSER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 11-13-14 [32]
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 case will be dismissed.

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

Second, although the petition indicates that the debtor received a credit counseling briefing before filing the case and that a certificate evidencing such is attached to the petition, no certificate is attached to it. Therefore, the debtor has failed to establish his eligibility for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition.

Third, the debtor has failed to cooperate with the trustee. The debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3). In the same vein, the debtor failed to file documents in an earlier chapter 13 case, Case No. 14-20638, resulting in its dismissal.

Fourth, the debtor has not carried the burden of proving the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Infeasibility is suggested by the failure of the debtor to make plan payments totaling $1,980, the fact that Schedules I and J show no monthly net income with which to fund a plan and Form 22 indicates the debtor had no income in the 6 months prior to the filing of this case, and the fact that a prior case, Case No. 14-20638, was dismissed due to the debtor's failure to make plan payment.

There is no need to reach the other objections raised by the trustee. The foregoing warrants denial of confirmation and dismissal.

9. 14-29485-A-13 MARK TRIEBWASSER
RSL-1
MISSION FINANCIAL SERVICES CORP. VS.

OBJECTION TO CONFIRMATION OF PLAN
11-6-14 [27]

- ☐ 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.

First, the objection is moot given that the court will dismiss the case (JPJ-1).

Second, the objection revolves around the failure of the debtor to provide for a secured claim.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The debtor filed a motion against his former spouse seeking sanctions for an alleged violation of the automatic stay. Before the bankruptcy was filed, the former spouse received a judgment for delinquent support payments and was garnishing the debtor's wages at the rate of $600 a month to collect that support. The garnishment has continued since the filing of the case. The

debtor maintained that this is a violation of 11 U.S.C. § 362(a). His motion asserted:

"It is clear that the debt supporting claim #7 arose pre-petition, and the collection post-petition is a clear violation of the automatic stay. In this instance, the post-petition garnishment has not stopped. [A] [r]equest to stop this garnishment has been denied."

This is not a violation of the automatic stay. Section 362(b)(2)(C) provides in relevant part that a bankruptcy "petition . . . does not operate as a stay . . . with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial . . . order or a statute. . . ."

There has been no violation of the automatic stay. Nor is it a violation of the terms of a confirmed plan. See 11 U.S.C. § 1327(a). There is no confirmed plan.

Counsel for the former spouse therefore demanded that the debtor's motion for sanctions be dismissed. If it was not, counsel intended to seek sanctions against the debtor and his attorney pursuant to Fed. R. Bankr. P. 9011. At least 21 days before a Rule 9011 motion was first set for hearing, the former spouse served it on the debtor and her attorney. It points out that the garnishment was not a violation of the automatic stay and demands that the debtor's motion for sanctions be dismissed.

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

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

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

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

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

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

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

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

violation."

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

Counsel for the debtor and the debtor refused to dismiss the motion for sanctions. At the hearing on that motion, the court agreed with the debtor's spouse – garnishing post-petition wages based on a pre-petition judgment for support was not a violation of the automatic stay by virtue of section 362(b)(2)(C). The court denied the motion for sanctions.

Now the former spouse is pursuing her Rule 9011 motion.

That motion complies with the safe harbor requirements. A ready-for-filing Rule 9011 motion was served on debtor's counsel on September 24, 24 days prior to the initial October 18 hearing.

The debtor and his counsel have advanced no convincing argument that the filing of a motion for sanctions was justified by the evidence or under existing law or a nonfrivolous extension thereof. Section 362(b)(2)(C) was clearly applicable.

In arguing to the contrary, counsel makes two arguments.

First, he maintains that once a proof of claim was filed, the former spouse was precluded from seeking payment outside of the chapter 13 plan. However, the only significance of filing a claim is that the former spouse's claim was eligible for payment through the plan; it did not mean she was precluded from seeking payment through other avenues. No authority to the contrary has been submitted to the court.

Second, he argues that there was some doubt that the former spouse was collecting a judgment for support. If there was no judgment, section 362(b)(2)(C) would not be applicable. However, the judgment is appended to the claim (it was added by amendment on October 14), and the remedy of garnishment is available only to enforce a judgment. See Cal. Civ. Pro. Code §§ 706.010, *et seq.* That is, absent a judgment there would not have been judicial enforcement of the support obligation.

Reading the debtor's motion for sanctions makes clear that both the debtor and his counsel understood there was a state court order compelling the payment of support. And, while there may have been a dispute regarding the exact amount of past due support, there is no dispute that there was a judgment for that support. Schedule D identifies both the support obligation and the court in which the judgment was entered.

The debtor's attorney also argues that the former spouse and her attorney acted in violation of the stay by both collecting the support judgment outside of the chapter 13 case and by filing a claim and demanding payment as part of the chapter 13. However, the former was not a violation of the stay by virtue of section 362(b)(2)(C) and the latter could not possibly be a violation of the automatic stay – that is, asking for payment in bankruptcy case is precisely what creditors are expected to do. And, asking for both streams of payment, while perhaps not practical or feasible from the debtor's point of view, also did not violate section 362.

To the extent the debtor is concerned that the former spouse would be receiving two streams of payments to satisfy a single obligation, he a straight forward course of action.

Because property of the estate in a chapter 13 case includes the debtor's post-petition earnings, section 362(b)(2)(C) has much significance in chapter 13 practice. A debtor coming into a chapter 13 case with a support arrearage or with a regular support payment obligation faces withholding from income to pay that arrearage or to pay that ongoing debt without interference from the automatic stay. The continuation of pre-petition withholding from income to pay a DSO will compete with payments to the trustee and any provisions in the plan for paying pre- or post-petition DSO claims. A plan dependent on the debtor's post-petition income stream could be disrupted by a post-petition state court order to garnish the debtor's wages.

However, section 362(b)(2)(C) only creates an exception to the automatic stay. It does not prohibit a chapter 13 plan from providing for payment of pre-petition DSO claims. In fact, DSO claims now have first priority under 11 U.S.C. § 507(a)(1) and must be paid in full to accomplish confirmation unless the holder of the claim consents otherwise. A chapter 13 debtor can still confirm a plan that provides for full payment of pre-petition DSO claims from post-petition income. This may include a provision prohibiting withholding of income for separate payment of a DSO outside of the chapter 13 plan. By virtue of 11 U.S.C. § 1327(a), the former spouse would be bound by the plan and compelled to halt collection of the DSO order outside of the chapter 13 plan.

The remedy was not to threaten contempt and sanctions but to confirm a plan that provided for the claim and restricted extra-chapter 13 enforcement of the claim.

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: This motion seeks a remedy for the violation of Rule 9011 by the debtor and his attorney.

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

result of the violation." Fed. R. Bankr. P. 9011(c)(2).

The court is unconvinced that a substantial sanction is warranted to deter a repetition of this conduct.

Counsel for the debtor shall pay $500 to the clerk of the court.

No fees and costs will be shifted to counsel for the debtor or the debtor. While the rule permits an award of fees and costs, the court has discretion as to whether they should be awarded and the amount awarded. This is because Rule 9011 is not a fee shifting statute. See Doering v. Union County, 857 F.2d 101 (3rd Cir. 1988). This case, not unlike too many cases between former spouses, involved, if not misconduct, conduct that toed the line of impropriety by both sides. On the one hand, the debtor and his attorney attempted to bludgeon the former spouse and her attorney with sanctions for violation of the automatic stay to end a dispute regarding past due support. On the other hand, the former spouse filed a significantly inflated proof claim in the amount of $85,524 and demanded that it be paid both inside and outside of the chapter 13 plan, an economic impossibility, given the debtor's obligation to pay ongoing support and to fund the plan. Her claim was then reduced to $62,000, an amount more proximate to the debtor's initial $60,000 estimate and the audit by DCSS, after further proceedings in state court. But for the intervention by the state court, this court would have been required to reduce the support claimed in connection with the debtor's initial motion for sanctions (which also objected to the proof of claim).

The court may examine the conduct of both parties when determining whether fees and costs may be reasonably assessed as a sanction. See In re Yagman, 796 F.2d 1165 (9th Cir. 1986), *cert. denied*, 484 U.S. 963 (1987). Considering their conduct, both sides carry blame for escalation and protraction of the dispute concerning the past due support and its payment here. The court will not add gasoline to that fire.

The motion will be granted in part.

12. 14-25389-A-13 FRANK NAVARRETTE — MOTION TO CONFIRM PLAN
PGM-3 — 9-23-14 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan provides for payment in full of the DSO through the plan as required by 11 U.S.C. § 1322(a)(2). While the amount of the DSO may have been the subject of some controversy, the amount was settled by the state court at $62,000. And, while the plan states the arrears are $60,000, by virtue of section 2.04 of the plan, the proof of claim determines the amount of the claim, not the plan.

The argument that the monthly dividend payment to the DSO claimant must equal the monthly amount ordered by the state court is rejected. Section 1322(a)(2) requires only that the claim be paid in full. The plan requires payment in full.

To the extent the debtor's disposable income may increase in the future because the debtor's ongoing support obligation comes to an end, counsel for the debtor has agreed to a plan amendment that increases the plan payment by the amount of the expiring obligation.

THE FINAL RULINGS BEGIN HERE

13. 11-49905-A-13 KEVIN/ANNETTE BROWN — MOTION FOR RELIEF FROM AUTOMATIC STAY
GAR-1 — 10-28-14 [39]
NATIONSTAR MORTGAGE, L.L.C. VS.

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 dismissed as moot.

A plan was confirmed in this case on February 27, 2012. That plan provided for the movant's claim as a Class 3 secured claim. This means that the plan provided for the surrender of the movant's collateral in order to satisfy its secured claim. It also provides at section 3.14:

"*Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 3 secured claim to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and nonjudicial remedies against its collateral.*"

Thus, the stay has already been terminated and the motion is moot. To the extent the plan's description of the surrendered collateral is not as comprehensive as in the creditor's security documentation, the order may recite that the collateral identified in the motion has been surrendered and the stay previously terminated.

14. 14-30206-A-13 STANLEY WOO — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1 — 11-3-14 [34]
PROFIT INVESTMENT COMPANY, INC. VS.

Final Ruling: The motion will be dismissed.

Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. When the person served is the debtor, the debtor and the debtor's attorney both must be mailed the summons and complaint. See Fed. R. Bankr. P. 7004(b)(9) & (g). Here, the motion was served only on the debtor's attorney. Nothing has been filed by or on behalf of the debtor that might be considered a waiver of this service defect. Therefore, service is defective and the motion must be dismissed without prejudice.

15. 14-30011-A-13 TIFFANY FINLEY — ORDER TO SHOW CAUSE
11-12-14 [26]

Final Ruling: The order to show case will be discharged. The case was dismissed on November 18.

16. 12-36721-A-13 DONALD BUCHMAN
PGM-7

MOTION TO MODIFY PLAN
10-23-14 [100]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

17. 14-29224-A-13 RUBEN/MARIA CARDENAS
SS-2

MOTION TO CONFIRM PLAN
10-14-14 [23]

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.

18. 14-29940-A-13 LORNA SISON
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
11-13-14 [28]

Final Ruling: Given the filing of modified plans after the filing of the original plan to which this objection pertains, the court deems the original plan to have been abandoned and voluntarily dismissed by the debtor.

19. 14-30040-A-13 SANDRA AZAM

ORDER TO SHOW CAUSE
11-12-14 [22]

Final Ruling: The order to show case will be discharged. The case was dismissed on November 18.

20. 14-26441-A-13 MICHAEL/JEANETTE DELOZIER — MOTION TO CONVERT OR DISMISS CASE
JPJ-2 — 10-22-14 [24]

Final Ruling: This motion to dismiss or to convert the case 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 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 debtor's default is entered and the matter will be resolved without oral argument.

The motion will be granted and the case converted to chapter 7.

This case was filed on June 19, 2014. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court sustained the trustee's objection to confirmation at a hearing on August 18. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal or conversion to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5). Because the schedules suggest that the debtor has in excess of $100,000 in nonexempt equity in assets, unsecured creditors benefit more from conversion to chapter 7.

21. 14-29262-A-13 WALLEN YEP — OBJECTION TO EXEMPTIONS
JPJ-2 — 10-28-14 [26]

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 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 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.

The trustee objects to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married 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.

A debtor's exemptions are determined as of the date the bankruptcy petition is filed. Owen v. Owen, 500 U.S. 305, 314 (1991); see also In re Chappell, 373 B.R. 73, 77 (B.A.P. 9th Cir. 2007) (holding that "critical date for determining exemption rights is the petition date"). Thus, the court applies the facts and law existing on the date the case was commenced to determine the nature and extent of the debtor's exemptions.

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Proc. Code § 703.130, the State of California opted out of the federal exemption scheme relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

California state law gives debtors filing for bankruptcy the right to choose (1) a set of state law exemptions similar but not identical to the Bankruptcy Code exemptions; or (2) California's regular non-bankruptcy exemptions. See Cal. Civ. Proc. Code §§ 703.130, 703.140. In the case of a married debtor, if either spouse files for bankruptcy individually, California's regular non-bankruptcy exemptions apply unless, while the bankruptcy case is pending, both spouses waive in writing the right to claim the regular non-bankruptcy state exemptions in any bankruptcy proceeding filed by the other spouse. See Cal. Civ. Proc. Code § 703.140(a)(2).

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition.

22. 14-29066-A-13 ANGELA SMITH — ORDER TO SHOW CAUSE 11-13-14 [26]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on November. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

23. 14-30076-A-13 THOMAS/CYNTHIA MOORE — MOTION TO VALUE COLLATERAL 10-22-14 [14]
MWB-1
VS. BENEFICIAL CALIFORNIA, INC.

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 $100,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Citifinancial. The first deed of trust secures a loan with a balance of approximately $82,951 as of the petition date. Therefore, Beneficial California, Inc'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 $100,000. 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).

24. 10-27982-A-13 OSOTONU/BETTY OSOTONU — MOTION TO SUBSTITUTE PARTY
PGM-6 — 10-31-14 [87]

Final Ruling: This 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 creditors 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 creditors are entered and the matter will be resolved without oral argument.

The motion will be granted in part. There is no need to substitute a party for a deceased debtor because death does not necessarily cause the dismissal of the case. See Fed. R. Bankr. P. 1016. Nonetheless, given the evidence with the motion, the court concludes that further administration of the case is possible given the willingness of the joint debtor to make the plan payments. Upon plan completion, and upon compliance with Local Bankruptcy Rule 5009-1 except to the extent the court may waive compliance upon appropriate application by the relative, the debtor shall receive a discharge.

25. 14-26685-A-13 ALFONSO VALENTINE — MOTION TO VALUE COLLATERAL
MRL-2 — 10-29-14 [62]
VS. U.S. BANK, N.A.

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 $85,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ocwen Loan Servicing LLC. The first deed of trust secures a loan with a balance of approximately $161,594 as of the petition date. Therefore, U.S. Bank, N.A.'s claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (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 $85,000. 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).