UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 21, 2018 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 5. 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 JUNE 11, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 29, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 4, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 6 THROUGH 17 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 JUNE 4, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-20405-A-13 DBJ-8 VS. INVESTMENT RETRIEVERS, INC.
EFREN/ELIZABETH MEMORACION
MOTION TO AVOID JUDICIAL LIEN 4-3-18 [184]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

While it is true that the debtor filed an earlier motion to avoid the respondent's judicial lien, the disposition of that motion was not on the merits and was without prejudice.

First, the debtor amended Schedule C on November 1, 2017, to claim the exemptions referenced in the motion, but the debtor did not serve the Amended Schedule C on any of the creditors and the trustee. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). By failing to serve the amended exemptions, the debtor has not afforded parties in interest the opportunity to object to those exemptions.

Second, even if the amended Schedule C was served, and even if no objection was raised, there is no evidence with this motion establishing that the debtor was entitled to the exemptions. It is not enough that the debtor claimed the exemption and it has been allowed because no one objected. If the debtor wishes to avoid a judicial lien, the debtor must establish that the debtor is actually entitled to the exemption. Accord Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). The supporting declaration by the debtor's attorney makes no effort to establish the factual requirements for an exemption of the property and it is doubtful he has the requisite personal knowledge to do so.

2. 16-25513-A-13 DBL-2
GEORGE/CHRISTINE WEAVER
NOTICE OF DEATH OF A DEBTOR, MOTION FOR OMNIBUS RELIEF ETC 5-4-18 [35]

- ☐ 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.

Debtor Christine Weaver died on February 22, 2018. Prior to her death, both debtors confirmed but had not yet completed a plan. Both debtors filed a financial management certificate on October 17, 2017. See 11 U.S.C. §§ 110, 111, 1328(g)(1) and Fed. R. Bankr. P. 1007(c). The co-debtor, George Weaver, is authorized to continue the case and to perform the plan. He is further authorized pursuant to Local Bankruptcy Rule 1016-1 to file the case-ending documents required by Local Bankruptcy Rules 1007(c) and 5009-1. The clerk shall enter the discharge of both debtors when the co-debtor is otherwise entitled to a discharge.

3. 18-20729-A-13 MRL-2 — STEVEN PROTOPAPPAS AND JOSEPHINE RAMIREZ — MOTION TO CONFIRM PLAN 3-25-18 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objecting creditor holds a claim secured only by the debtor's principal residence. Its claim will mature on December 21, 2021, before the debtor completes payments under the proposed plan. The plan provides for payment in full of the claim in Class 2 over the life of the plan. This effectively means that the due date will be extended beyond the contractual maturity date. The claim will be paid in full by approximately in late 2022 or early 2023.

The creditor maintains that this extension of the maturity of the loan violates the anti-modification provision in 11 U.S.C. § 1322(b)(2). However, this objection ignores 11 U.S.C. § 1322(c)(2) which provides:

"Notwithstanding subsection (b)(2) and applicable nonbankruptcy law –

. . .

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title."

11 U.S.C. § 1325(a)(5)(B) in turn permits a debtor to pay a secured claim by paying a value over the life of the plan that equals its allowed amount.

4. 18-22744-A-13 SS-1 — JENNIFER SALAZAR — MOTION TO EXTEND AUTOMATIC STAY 5-7-18 [11]

- ☐ 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.

A review of the court's electronic case files reveals that the debtor has filed four prior chapter 13 cases since 2014. These cases are summarized in the table below.

Case No.	Chap.	Date Filed	Disposition	
2018-22744	13	05/02/18	Pending	
2017-20752	13	02/06/17	Dismissed 03/21/18	Failure to make plan payments
2016-21327	13	03/03/16	Dismissed 06/06/16	Failure to pay filing fee
2015-26251	13	08/05/15	Dismissed 10/13/15	Failure to pay filing fee
2014-27196	13	07/11/14	Dismissed 11/13/16	Failure to pay filing fee

This motion was not accompanied by the debtor's schedules, statements and a proposed plan. And, while the motion is accompanied by the debtor's declaration, it provides only cursory and conclusory information about the failure of her last case and her present financial condition. It makes no mention of the three earlier chapter 13 cases.

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 her immediately prior case. This motion does not establish that the debtor will be any more successful in this case. The evidence of the debtor's financial condition and ability to fund a plan is too nonspecific. Further, given the debtor's filing history since 2014 and her inability to confirm a plan and then

perform it in four earlier cases, suggests this case is not likely to be successful.

5. 18-20571-A-13 MARK ENOS — MOTION FOR CONTEMPT
PLC-3 — 3-16-18 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Before filing this case, the debtor borrowed money from the respondent. As part of the transaction, the debtor gave the respondent a post-dated check to repay all or a portion of the loan. Prior to the date of that check, this case was filed. The debtor's attorney gave the respondent notice that this case was filed by having his employee contact the respondent by phone, by faxing a copy of the petition to the respondent, and by listing the respondent as a creditor in this case. Thereafter, and despite notice and knowledge of the case, the respondent presented the post-dated check to the debtor's bank. The bank honored the check.

The debtor asserts that presenting and negotiating the check were willful acts that violated the automatic stay entitling him to damages pursuant to 11 U.S.C. § 362(k) and the court's contempt power.

The automatic stay is a fundamental protection given to bankruptcy debtors. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1214 (9th Cir. 2002). The filing of a bankruptcy case "operates as a stay, applicable to all entities, of the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor . . .; the enforcement . . . of a judgment . . .; any act to obtain possession of property of the estate . . .; [and] any act to create, perfect, or enforce any lien. . . ."

The respondent's conduct in cashing the debtor's post-dated check was an act to collect a debt. Arguably, this violated the automatic stay. However, the respondent's fell within an exception to the automatic stay. Section 362(b)(11) provides:

"(b) The filing of a petition under section 301 . . . does not operate as a stay —

. . .

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument[.]"

California law defines a "negotiable instrument" as "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it is all of the following: (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder. (2) Is payable on demand or at a definite time. (3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money . . . ." Cal. Com. Code § 3104(a).

Checks generally constitute negotiable instruments and the debtor makes no argument here that this check was not. Roy Supply, Inc. v. Wells Fargo Bank N.A., 39 Cal.App.4th 1051, 1059 n. 6 (1995).

"Presentment," as defined in the California Commercial Code is "a demand made by or on behalf of a person entitled to enforce an instrument. . . ." Cal. Com. Code § 3501(a). As the payee named in the check, the respondent was entitled to present the check for payment. And, while a payee of a check may not present it for payment when the obligor/debtor has discharged the underlying debt in bankruptcy, the debtor has not yet received a discharge in this case. The fact that the debtor's debt to the respondent may be dischargeable in the future does not make it, for purposes of presentment, a "discharged" debt. Accord Thomas v. Money Mart Fin. Servs., Inc. (In re Thomas), 317 B.R. 776, 779 (8th Cir. B.A.P. 2004), aff'd, 428 F.3d 735 (8th Cir. 2005); In re Snowden, 422 B.R. 737, 744 (Bankr. W.D. Wash. 2009); In re Kearns, 432 B.R. 276, 280-81 (Bankr. D. Id. 2010).

Therefore, the respondent did not violate the automatic stay when it presented, post-petition, the check it received before the case was filed for payment.

This is not to say, however, that the debtor has no remedy. Excepting the presentment of negotiable instruments from the automatic stay and permitting the transfer of money that is property of a bankruptcy estate does not insulate the transfer from avoidance. See Franklin v. Kwik Cash of Martin (In re Franklin), 254 B.R. 718 (Bankr. W.D. Tenn. 2000); Wittman v. State Farm Life Insurance Co., Inc., (In re Mills), 167 B.R. 663, 664 (Bankr. D. Kan. 1994) aff'd., 176 B.R. 924 (D. Kan. 1994).

Section 549(a) of the Bankruptcy Code provides that the trustee may avoid unauthorized post-petition transfers of property of the estate. 11 U.S.C. § 549(a)(1) and (2)(B). Checking account balances become "property of the estate" once a bankruptcy petition is filed. 11 U.S.C. § 541(a). In the case of Barnhill v. Johnson, 503 U.S. 393 (1992), the Supreme Court held that "[f]or the purposes of payment by ordinary check, . . . a 'transfer' as defined by 101(54) [of the Bankruptcy Code] occurs on the date of honor, and not before." Id. at 400, 112 S.Ct. 1386. "[T]he payment of checks presented post-petition constitutes a 'transfer' of property of the estate and if this transfer is not authorized by the Bankruptcy Code it may be set aside pursuant to 11 U.S.C. § 549." In re Hoffman, 51 B.R. 42, 46 (Bankr. W.D. Ark. 1985).

Of course, while the debtor has this potential remedy, it must be exercised in an adversary proceeding. Fed. R. Bankr. P. 7001.

FINAL RULINGS BEGIN HERE

6. 18-20201-A-13 LISA THOMPSON — MOTION TO CONFIRM PLAN
PGM-2 — 4-9-18 [43]

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on May 11.

7. 16-23810-A-13 DANIEL WRIGHT — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 4-19-18 [22]
SANTANDER CONSUMER USA INC. 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.

The movant leased a vehicle to the debtor. The confirmed plan provided for the assumption of the lease and the payment of the lease obligations by the debtor directly to the movant. The lease has now expired and the debtor has returned the vehicle to the movant. The stay is modified to permit the movant to dispose of the vehicle in accordance with the terms of the lease and applicable nonbankruptcy law.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

8. 18-20116-A-13 MICHAEL CHRISTIAN — MOTION TO CONFIRM PLAN
MOH-2 — 4-5-18 [50]

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.

9. 14-25147-A-13 MATTHEW KELLOGG AND VERONICA SANCHEZ
PGM-3
VS. ALTAIR OH XIII, L.L.C.
OBJECTION TO CLAIM
3-28-18 [87]

Final Ruling: The objection has been voluntarily dismissed.

10. 18-21349-A-13 MYRNA SYKES
NLL-1
FEDERAL NATIONAL MORTGAGE ASSOC. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
4-20-18 [13]

Final Ruling: This case was converted to one under chapter 7 on May 11. Douglas Whatley is the chapter 7 trustee. He has not been served with this motion. Therefore, the hearing is continued to June 4, 2018 at 10:00 a.m. in order to give the movant the opportunity to serve the trustee and to give notice to all parties in interest of the continued hearing. If the movant will not waive the time requirements of 11 U.S.C. § 362(e) to permit this continuance, it shall lodge an order dismissing the motion without prejudice due to the failure to serve the chapter 7 trustee.

11. 18-21550-A-13 RAJESH KAPOOR
ORDER TO SHOW CAUSE
4-27-18 [35]

Final Ruling: The order to show cause will be discharged. The case was dismissed on May 8.

12. 18-21550-A-13 RAJESH KAPOOR
TLA-1
MOTION TO CONVERT CASE
4-18-18 [27]

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on May 8.

13. 18-21651-A-13 ALAN MILLSPAUGH
JLW-1
VS. GREENPOINT MORTGAGE FUNDING, INC.
MOTION TO VALUE COLLATERAL
4-16-18 [24]

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 $306,756 as of the date the petition was filed. It is encumbered by a first deed of trust held by the Bank of New York Mellon. The first deed of trust secures a loan with a balance of approximately $351,000 as of the petition date. Therefore, Greenpoint'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 $306,756. 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. 18-21651-A-13 ALAN MILLSPAUGH — MOTION TO AVOID JUDICIAL LIEN
JLW-2 — 4-16-18 [29]
VS. CITIBANK, N.A.

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.

A judgment was entered against the debtor in favor of American Express Centurion Bank for approximately $8,737.63. The abstract of judgment was recorded in El Dorado County. As a result, a judicial lien attached to the debtor's interest in real property in that county.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $306,756 as of the petition date. The unavoidable liens totaled approximately $351,000. The debtor claimed an exemption in the property in the amount of $1 pursuant to Cal. Civ. Pro. Code § 703.140(b)(5).

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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

15. 18-20861-A-13 CHRISTOPHER/NEVA FULLER — OBJECTION TO EXEMPTIONS
JPJ-2 — 4-17-18 [41]

Final Ruling: The objection has been voluntarily dismissed.

16. 17-28364-A-13 STEPHANIE MUZZI — MOTION TO CONFIRM PLAN
TAG-2 — 4-6-18 [39]

Final Ruling: The motion will be dismissed without prejudice.

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.

Because there is no proof of service, the debtor cannot demonstrate that the service and notice required by Fed. R. Bankr. P. 2002(b) was given to all parties in interest.

17. 17-24878-A-13 ORASTINE HEAGLER — MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR
PGM-2 — 4-13-18 [66]

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, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 to the extent stated below.

The debtor died on March 11, 2018. Prior to her death, the debtor confirmed but did not complete a plan. Her son is prepared to continue making payments on behalf of the debtor. The debtor's son is authorized pursuant to Local Bankruptcy Rule 1016-1 to file the case ending documents required by Local Bankruptcy Rules 1007(c) and 5009-1 as well as a motion for a hardship discharge pursuant to 11 U.S.C. § 1328(b), if appropriate. However, given the death of the debtor, the requirement that the debtor complete a course on personal financial management will be waived. The clerk shall enter a discharge when the debtor is otherwise entitled to a discharge.