

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 26, 2008 at 9:30 A.M.

1. [08-28617](#)-B-13J BAUTISTA ELY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-31-08 [[11](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. By order signed August 22, 2008, the court confirmed the automatic dismissal of this case as of 12:01 a.m. on August 13, 2008.

The court will issue a minute order.

2. [08-28619](#)-B-13J CIPRIANO PINKNEY HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-31-08 [[14](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. By order signed August 22, 2008, the court confirmed the automatic dismissal of this case as of 12:01 a.m. on August 13, 2008.

The court will issue a minute order.

3. [08-29925](#)-B-13J JOYCE ATKINS HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-31-08 [[7](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor filed the missing document on August 4, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

4. [08-28328](#)-B-13J SUZIE BERNSTEIN

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-31-08 [[17](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the delinquent filing fee installment on August 8, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

5. [08-28479](#)-B-13J EDDIE HENDERSON JR.

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-31-08 [[16](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. By order signed August 22, 2008, the court confirmed the automatic dismissal of this case as of 12:01 a.m. on August 11, 2008.

The court will issue a minute order.

6. [08-28480](#)-B-13J ADELA MACAJOLA

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-30-08 [[18](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. By order signed August 22, 2008, the court confirmed the automatic dismissal of this case as of 12:01 a.m. on August 11, 2008.

The court will issue a minute order.

7. [08-27191](#)-B-13J ROBERT NARAYAN

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-31-08 [[23](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot because this case was dismissed by order entered August 15, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

8. [06-25100](#)-B-13J MERCEDES MANUEL
DMM #1
WACHOVIA MORTGAGE, FSB, VS.

HEARING - MOTION FOR
RELIEF FROM STAY AS TO DEBTOR
AND CHAPTER 13 CO-DEBTOR
7-29-08 [[114](#)]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted in part and denied in part. As to the request for relief from the automatic stay of 11 U.S.C. § 362(a), the motion is denied as moot. As to the request for relief from the co-debtor stay of 11 U.S.C. § 1301(a), the co-debtor stay is modified to permit movant to foreclose on the real property located at 145 Parkhaven Drive, Vallejo, California (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law.. Except as so ordered, the motion is denied.

The court confirmed a plan in this case on October 22, 2007. The confirmed plan treats the movant's claim as a class 4 claim, to be paid directly by the debtor or third party. Pursuant to Section 3.15 of the confirmed plan "[e]ntry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is then pending under chapter 13." (Dkt. 98 at 3). The movant already has the relief it seeks by this motion as to the automatic stay of 11 U.S.C. § 362(a).

As to the co-debtor stay of 11 U.S.C. § 1301(a), the movant alleges without dispute that neither the debtor nor the co-debtor has made five post-petition mortgage payments. The movant's interest in the Property would be irreparably harmed by the continuation of the co-debtor stay. 11 U.S.C. § 1301(c)(3).

The court will issue a minute order.

9. [08-28424](#)-B-13J TERRI/DONALD STUTZMAN
TJS #1
MEDALLION BANK, ET AL., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-24-08 [[18](#)]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). In this instance, the court issues the following tentative ruling.

The motion is denied as moot. No fees or costs are awarded.

The debtors' plan was confirmed on August 15, 2008 and treats the movant's claim as a class 3 claim to be satisfied by the surrender of the collateral, a 2008 Dutchman 128SRV Travel Trailer (VIN 47CFDJP205G516576)

(the "Vehicle"). Pursuant to the Section 3.14 of the confirmed plan, "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." The movant already has the relief it seeks by this motion.

Because the movant has not established that the value the Vehicle exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

10. [07-21138](#)-B-13J MARCEL/LYDIA FRANCIS HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-28-08 [[33](#)]
SYSTEMS, INC., VS.

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). In this instance, the court issues the following tentative ruling.

The motion is denied as moot.

The movant seeks relief from the automatic stay to proceed to foreclose its interest in the debtors' real property located at 5422 Rowser Way, Elk Grove, California 95757 (APN 132-1470-003). The movant alleges that the debtors have failed to make six post-petition mortgage payments. However, the debtors' plan was confirmed on June 13, 2007 and treats the movant's claim as a class 4 claim, to be paid directly by the debtor or third party. Pursuant to Section 3.15 of the confirmed plan "[e]ntry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is then pending under chapter 13." (Dkt. 98 at 3). The movant already has the relief it seeks by this motion as to the debtor.

The court will issue a minute order.

11. [08-22254](#)-B-13J VERLENA KELLER HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-21-08 [[34](#)]
SYSTEMS, INC., VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) in order to permit movant to foreclose on the real property located at 101 Alabama Street, Vallejo, California 94590 (APN 0055-061-140) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards attorney's fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any. Except as so ordered, the motion is denied.

The court has yet to confirm a plan in this case. Prior to confirmation, cause for relief from the automatic stay under Section 362(d)(1) exists if the movant's interest is not adequately protected. The most recent plan proposed by the debtor, filed on June 24, 2008 (Dkt. 31) lists the movant's claim in class 1, but fails to specify both an ongoing payment for the claim and fails to specify a monthly dividend for curing pre-petition arrears. The Additional Provisions of the plan go on to state that the movant's claim is secured by a rental property lost to fire on April 2, 2008 and will be satisfied from insurance proceeds outside of the plan. The additional provisions do not specify any time when payment from insurance proceeds will occur. As the chapter 13 trustee has pointed out, due to the treatment for the movant's claim specified in the additional provisions, the trustee has not made any ongoing payment to the movant. The plan's failure to provide for ongoing payments to the movant and its failure to specify a cure of pre-petition arrears within a reasonable time does not adequately protect the movant's interest. These facts constitute cause for relief from the automatic stay.

Because the value of the Property exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the Property.

The court will issue a minute order.

12. [08-27501](#)-B-13J MOHAMMAD/LINA KADER
APN #1

HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN AND TO THE MOTION TO
VALUE ITS COLLATERAL CONTAINED
THEREIN BY WELLS FARGO
FINANCIAL
7-28-08 [[16](#)]

Tentative Ruling: This is a properly filed objection to confirmation under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

13. [07-28804](#)-B-13J JAMES/DENISE BURSON
PGM #2

HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-17-08 [[33](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the modified plan filed July 17, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

14. [08-26506](#)-B-13J WAYNE/JOAN KIRKLING
ND #1

CONT. HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN BY BANK OF AMERICA
6-24-08 [[30](#)]

CONT. FROM 7-22-08

Disposition Without Oral Argument: This matter continued from July 22, 2008. The court established a briefing schedule. The failure of any party in interest to file timely written opposition may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is now resolved without oral argument.

The objection of creditor Bank of America ("BofA") is sustained. Confirmation of the initial plan filed May 16, 2008 is denied. The attached motion to value the collateral of Chase is granted. Chase's collateral securing its second deed of trust, real property located at 9559 Calibra Lane, Sacramento, CA 95827, had a value of \$280,000.00 on the date of the petition. \$0.00 of Chase's claim secured by the second deed of trust is an allowed secured claim and the balance of its claim is an allowed unsecured claim.

BofA's objection that the plan fails to provide for its pre-petition arrears claim is sustained for the reason set forth in BofA's objection. The plan proposes to pay the ongoing payment to BofA through class 4 of the plan, but does not propose to pay any dividend for the purpose of curing the arrears. The plan does not comply with either 11 U.S.C. § 1325(a)(5)(B)(ii) or 1322(b)(5). The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The attached motion to value the collateral of Chase was properly noticed and served pursuant to G.O. 05-03 ¶ 3. Therefore, no timely objection to the attached motion having been filed, the attached motion is granted. For the purposes of the attached motion, Chase's collateral securing its second deed of trust, real property located at 9559 Calibra Lane,

Sacramento, CA 95827, had a value of \$280,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Bank of America with a balance of \$329,145.00. The value of the collateral available to Chase on its second deed of trust is \$0.00.

The court will issue a minute order.

15. [08-27608](#)-B-13J DONALD/KATHLEEN MINNICH HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN BY ECAST SETTLEMENT CORP.
7-30-08 [[19](#)]

Tentative Ruling: As an initial matter, the court notes that the objecting creditor improperly stated in its notice of hearing that written opposition to this motion was required on or before the date of this hearing. Pursuant to General Order 05-03 ¶ 3(c) a standalone objection to the initial plan shall comply with LBR 9014-1(f)(2), to which no written opposition is required. Even if it were permissible to set the objection for hearing under LBR 9014-1(f)(1), such matters must be filed and served at least twenty-eight days before the hearing; here, the objecting creditor filed and served the objection only twenty-seven days before the hearing without an order shortening time. A failure to comply with the local rules regarding motion practice is grounds for overruling the objection. LBR 9014-1(l). In this instance, however, the court will treat this motion as one filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

16. [08-27608](#)-B-13J DONALD/KATHLEEN MINNICH HEARING - OBJECTION
JPJ #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
7-30-08 [[16](#)]

Tentative Ruling: This is a properly filed objection to confirmation and motion for conditional dismissal under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

17. [08-29608](#)-B-13J ROBERT/LAURA ROLLER HEARING - MOTION TO
PLG #1 VALUE COLLATERAL OF
HOUSEHOLD BANK
7-29-08 [[8](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the

purposes of this motion, Household Bank's collateral securing its second deed of trust, real property located at 8127 Palmerson Drive, Antelope, California 95843, had a value of \$305,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Countrywide with a balance of \$441,703.78. Thus, the value of the collateral available to Household Bank on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

18. [08-23109](#)-B-13J BENNY/JOANNE PILLAZO
WKM #1

CONT. HEARING - MOTION
TO CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
5-15-08 [[18](#)]

CONT. FROM 7-8-08

Tentative Ruling: The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court construes the trustee's request for a conditional dismissal order as a countermotion for dismissal filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on the request.

The court will issue a minute order.

19. [06-25112](#)-B-13J GEORGE/PATRICIA FEATHER
WSS #6

HEARING - MOTION
FOR CONFIRMATION OF
FOURTH AMENDED PLAN
7-10-08 [[206](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is denied as moot. By order entered August 15, 2008, this case was dismissed.

The court will issue a minute order.

20. [06-25112](#)-B-13J GEORGE/PATRICIA FEATHER JPJ #8 HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM NO. 18 OF RAYNE CORPORATION 7-8-08 [[202](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is overruled as moot. By order entered August 15, 2008, this case was dismissed.

The court will issue a minute order.

21. [08-25712](#)-B-13J CHRIS/JENNIFER FOLK PGM #1 HEARING - MOTION TO CONFIRM DEBTORS' FIRST AMENDED PLAN 7-7-08 [[33](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the amended plan filed July 7, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor(s) shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

22. [08-27812](#)-B-13J DANTE/MELISA YUSON JPJ #1 HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE 7-30-08 [[16](#)]

Tentative Ruling: This is a properly filed objection to confirmation and motion to dismiss under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

23. [07-29413](#)-B-13J MICHAEL/MONICA WILSON JPJ #1 HEARING - TRUSTEE'S OBJECTION TO ALLOWANCE OF CLAIM NO. 12 OF PATELCO CREDIT UNION 7-8-08 [[20](#)]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 12

on the court's claims register, filed by Patelco Credit Union, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was March 12, 2008, and to file a government claim was May 4, 2008. Patelco Credit Union filed the Claim for \$17,251.25 on March 13, 2008.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The court will issue a minute order.

24. 08-26613-B-13J JAMES WOODARD, JR. HEARING - MOTION TO
AJW #1 CONFIRM CHAPTER 13 PLAN
7-21-08 [[29](#)]

Tentative Ruling: The motion is denied, due to a procedural defect and, alternatively, on its merits.

The debtor did not serve all creditors listed on the master address list (Dkt. 4) with the motion. There is therefore no presumption that all parties in interest have received notice of the motion.

Alternatively, the motion is denied on its merits. The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition. The debtor has failed to carry his burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court construes the trustee's request for a conditional dismissal order as a countermotion for dismissal filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on the request.

The court will issue a minute order.

25. 08-26613-B-13J JAMES WOODARD, JR. HEARING - MOTION TO
AJW #2 VALUE COLLATERAL OF
SELECT PORTFOLIO SERVICING
7-21-08 [[32](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is denied without prejudice due to procedural defects.

First, the debtor did not properly serve Select Portfolio Servicing ("SPS"), the creditor whose collateral the debtor seek to value, with the motion. Pursuant to Federal Rules of Bankruptcy Procedure 9014 and 7004(b)(3), service of a contested matter upon a domestic or foreign corporation is accomplished by mailing a copy of the motion to "the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). Here, the debtors served SPS generally at a P.O. Box in Salt Lake City, Utah.

Second, the notice of hearing improperly states that written opposition to the motion must be filed and served "no later than 7 calendar days after the first date set for the meeting of creditors." (Dkt. 33). It is impossible for creditors to comply with that instruction, because the first date set for the meeting of creditors was June 26, 2008. No party in interest was served with the motion until July 21, 2008.

Third, the motion is not signed by the debtor's attorney. Pursuant to Local Bankruptcy Rule 9004-1(c), all pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Here, the debtor's attorney presented the motion, but did not sign it.

Fourth, the motion and supporting declaration were submitted as a single document. Pursuant to Paragraph 3(a) of the court's Revised Guidelines for the Preparation of Documents, motions and declarations must be filed as separate documents.

The court will issue a minute order.

26. [07-30416](#)-B-13J NEAL ROGERS
CC #2

HEARING - DEBTOR'S
MOTION TO CONFIRM DEBTOR'S
SECOND MODIFIED CHAPTER 13 PLAN
6-30-08 [[37](#)]

Tentative Ruling: The trustee's opposition is conditionally overruled, and the motion to confirm the modified plan is granted in part.

The first modified plan, filed on June 30, 2008, is confirmed with the following modification included in the order confirming the plan. The Additional Provisions of the plan shall state: "The priority claim of the Internal Revenue Service will not be paid in full. The priority claim of the Internal Revenue Service shall be paid from available funds paid into the plan after payment of all other class 1, class 2, and class 5 claims as required by the plan. The priority claim of the Internal Revenue Service shall not be discharged in this case." In the absence of any further opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

27. [08-24416](#)-B-13J KENNETH/VICKI MORGAN
HDR #3

HEARING - MOTION
TO VALUE COLLATERAL OF
HOUSEHOLD FINANCE CORPORATION
OF CALIFORNIA
7-22-08 [[42](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion, Household Finance Corporation's collateral securing its second deed of trust, real property located at 535 Eider Lane, Suisun City, California 94585, had a value of \$258,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Aurora Loan Servicing with a balance of \$301,638.98. Thus, the value of the collateral available to Household Finance Corporation on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

28. [05-32420](#)-B-13J VICTOR/RENEE PADILLA
DEF #1

HEARING - MOTION TO
CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
7-7-08 [[35](#)]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(5) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

29. [08-23020](#)-B-13J ROSITA MOLINA
PGM #1

HEARING - MOTION TO
MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-18-08 [[19](#)]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(5) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of

11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

30. [08-23520](#)-B-13J CINDY ENRIQUEZ
ADS #1

HEARING - MOTION
TO VALUE COLLATERAL OF
FRANK ALTAMURA AND
GIOVANNI GIANFERMI
7-22-08 [[29](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion, Frank Altamura and Giovanni Gianfermi's collateral securing their second deed of trust, real property located at 4112 Applegate Drive, Sacramento, California 95826, had a value of \$265,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Homecomings Financial with a balance of \$309,812.92. Thus, the value of the collateral available to Frank Altamura and Giovanni Gianfermi on their second deed of trust is \$0.00. \$0.00 of creditors' claim secured by the second deed of trust is an allowed secured claim, and the balance of their claim is an allowed unsecured claim.

The court will issue a minute order.

31. [07-29621](#)-B-13J CHERYL MORRIS
JPJ #3

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM NO. 4 OF FIRESIDE BANK
7-8-08 [[52](#)]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 4 on the court's claims register, filed by Fireside Bank, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was March 19, 2008, and to file a government claim was May 11, 2008. Fireside Bank filed the Claim for \$3,067.74 on March 27, 2008.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R.

146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The court will issue a minute order.

32. [07-29621](#)-B-13J CHERYL MORRIS
MET #3

HEARING - MOTION
TO MODIFY PLAN
7-11-08 [[56](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the modified plan filed July 11, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

33. [07-24522](#)-B-13J SUE SOUTHWICK
PGM #5

HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-16-08 [[127](#)]

Tentative Ruling: The motion is denied. The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

Although no party in interest has objected to the motion, the court has an independent duty to determine whether the plan satisfies the requirements for confirmation. Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443-1444 (9th Cir. 1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."), In re Lucas, 3 B.R. 252, 253 (Bankr. S.D. Cal. 1980) ("In order to confirm any Chapter 13 Plan, the court must be satisfied, by an independent analysis of the facts, that the plan meets all of the requirements of § 1325(a)."). See, also, Everett v. Perez (In re Perez), 30 F.3d 1209, 1213 (9th Cir. 1994), a case involving confirmation of a Chapter 11 plan:

In normal adversarial litigation, neither the trial judge nor opposing counsel have the responsibility to raise issues a party fails to raise; if the affected party fails to object, the issue never comes before the court.

The matter is different in bankruptcy proceedings where debtors-in-possession and trustees have a responsibility to raise certain issues, and the court itself must pass on those issues, whether or not they're specifically put in dispute.

Here, the debtors has proposed a modified plan that proposes to cure a delinquency under the current confirmed plan, due to a temporary change in income. As set forth in the debtor's supporting declaration, the temporary change in income is the loss of employment by both the debtor and her husband. Based on the most recent schedule I filed by the debtor on November 30, 2007, the only income the debtor and her husband receive comes from their employment. The debtor has failed to present evidence showing that she will be able to make the proposed plan payments over the remainder of the sixty-month plan, considering her loss of regular income.

The court will issue a minute order.

34. [08-26722](#)-B-13J MAUEL/DENISE HERNANDEZ HEARING - OBJECTION
JPJ #2 TO DEBTOR'S CLAIM OF EXEMPTION
7-15-08 [[20](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is overruled as moot. On July 21, 2008, the debtors filed an amended Schedule C that changed the statutory authority under which the debtors have exempted their food service trailer. The claim of exemption to which the trustee objects is no longer before the court.

The court will issue a minute order.

35. [08-21323](#)-B-13J MICHAEL ROBINSON AND HEARING - MOTION
PGM #1 TANIYA OGATA TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-22-08 [[39](#)]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The trustee's objection is overruled. The motion is granted.

The chapter 13 trustee objects that the \$2,500.00 plan payment proposed by the debtors to be paid in months 5-60 of the plan do not equal the aggregate of the trustee's fees, monthly contract installments due on Class 1 claims, \$570.00 for administrative expenses and monthly dividends for class 1 arrearage claims and class 2 secured claims. The trustee asserts that the plan payment should be \$2,810.69. However, the court's review of the modified plan reveals that monthly dividends for class 1 arrearage claims are not to begin until September 2008, or month 7 of the plan, and the \$570.00 administrative expense payment is sufficient to pay the \$2,500.00 in attorney's fees to be paid through the plan in 4.4 months. As a result, the \$570.00 payment for administrative expenses and the \$570.00 monthly dividend for the class 1 arrearage claim will not be paid at the same time. After considering the remaining payments required

38. [07-28824](#)-B-13J RONICA/SUNJEET SINGH
JPJ #4

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM NO. 30 OF WORLD
FINANCIAL NETWORK NATL BANK
7-8-08 [[41](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is overruled as moot. The claimant withdrew the claim to which the trustee objects on July 15, 2008 (Dkt. 46).

The court will issue a minute order.

39. [08-28924](#)-B-13J XANN WEBSTER
MET #1

HEARING - MOTION FOR
ORDER VALUING COLLATERAL
OF CHASE
7-21-08 [[12](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion, Chase's collateral securing its second deed of trust, real property located at 2518 Talisman Court, Fairfield, California 94533, had a value of \$383,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by IndyMac Bank with a balance of \$405,373.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

40. [05-22825](#)-B-13J KIMBERLY TAYLOR
SDB #4

HEARING - MOTION TO
MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-21-08 [[89](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the modified plan filed July 21, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

41. [07-28725](#)-B-13J SUSANA VEGA

HEARING - MOTION
TO CONFIRM CHAPTER 13 PLAN
7-17-08 [[67](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the amended plan filed July 17, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor(s) shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

42. [07-28725](#)-B-13J SUSANA VEGA
JPJ #3

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM OF WORLD FINANCIAL
NETWORK
7-8-08 [[55](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is overruled as moot. The claimant withdrew the claim to which the trustee objects on July 15, 2008 (Dkt. 64).

The court will issue a minute order.

43. [08-24025](#)-B-13J JENNIFER KNIPPSCHILD
JPG #2

HEARING - MOTION
TO CONFIRM AMENDED
CHAPTER 13 PLAN
7-10-08 [[46](#)]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The chapter 13 trustee's objections are sustained. The Golden 1 Credit Union's ("Golden 1") objection is sustained in part and denied in part. The motion is denied.

The trustee's objections are sustained for the reasons set forth in the trustee's opposition.

The Golden 1's objection is sustained to the extent that the Golden 1 objects to the plan's proposal to establish the amount of the Golden 1's claim or the number of payments remaining on the underlying contract as of the petition date. In the absence of a motion to value collateral or

an objection to claim, the Golden 1's filed claim controls the amount and classification of the claim. However, to the extent that the Golden 1 argues that the payments proposed to be paid on its claim by the debtor are insufficient to pay its claim, the objection is overruled. The Golden 1 has filed a secured claim in the amount of \$13,185.00, and an unsecured claim \$3,483.17 in this case. The debtor proposes to pay \$421.37 to the Golden 1 over 38 months, for a total of \$16,012.06. The debtor also proposes to pay a 3.88% dividend on general unsecured claims of \$40,955.72, or \$1,590.63, which distribution must be made pro rata among all unsecured creditors. Even if the Golden 1 held 100% of the general unsecured debt in this case, the total payments proposed to be paid by the debtor to the Golden 1 exceed the amount of the Golden 1's secured claim, plus the distribution proposed by the plan to be paid on the unsecured claim. The Golden 1 has not made any argument that the debtor must pay more to general unsecured creditors than the dividend proposed by the plan. The court also finds no provision in the plan that expressly limits the Golden 1's right to receive a distribution on its unsecured claim.

The court acknowledges the debtor's offer to resolve the objections raised by the trustee and the Golden 1 by including modifications in the order confirming the plan. However, there is a limit to the modifications that the court will approve in an order confirming a plan. Here, in order to resolve the objections, the confirming order would have to strike several provisions from the plan, add provisions specifying the administrative expense payment for the debtor's attorney according to the proposed payment schedule, and modify plan payments to cure a \$140.00 delinquency over the first two months of the plan. The number of needed modifications is directly related to the debtor's use of plan provisions to negotiate with Golden 1. In addition, as to the provision to cure the debtor's plan payment delinquency, the debtor has failed to demonstrate that the proposed reduction of the plan payment in the first two months of the plan is not a material modification that must be noticed to all parties in interest since it might cause creditors to question the debtor's ability to make the \$470/month plan payment and therefore the feasibility of the plan.

The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

44. 07-30828-B-13J MATTIE PERSON
ADS #2

HEARING - SECOND MOTION
TO CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
7-17-08 [45]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. §

1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court construes the trustee's request for a conditional dismissal order as a countermotion filed under LBR 9014-1(f)(2). As to this request, opposition may be presented at the hearing. The court issues no tentative ruling on this request.

The court will issue a minute order.

45. [08-21528](#)-B-13J MICHAEL SUGG JR. HEARING - MOTION
PGM #2 TO MODIFY CHAPTER 13
PLAN AFTER CONFIRMATION
7-17-08 [[30](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the modified plan filed July 17, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

46. [08-21630](#)-B-13J MICHAEL/KIRSTEN CRAIG HEARING - DEBTORS'
TJW #1 MOTION TO APPROVE FIRST
AMENDED CHAPTER 13 PLAN
6-23-08 [[28](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the amended plan filed June 23, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor(s) shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

47. [08-23530](#)-B-13J SHANEL LOVE HEARING - MOTION
SAC #2 TO CONFIRM AMENDED
CHAPTER 13 PLAN
7-14-08 [[40](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter. The motion is continued to September 23, 2008 at 9:30 a.m. to be heard with the debtor's motion to avoid the lien of Household Finance. Whether the plan can be confirmed depends on whether the lien avoidance motion is granted.

The court will issue a minute order.

48. [08-23530](#)-B-13J SHANEL LOVE
SAC #3

HEARING - MOTION
TO AVOID THE FIXING OF
LIENS OF HOUSEHOLD FINANCE
7-14-08 [[45](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter. The motion is continued to October 7, 2008 at 9:30 a.m. The debtor did not properly serve Household Finance ("Household"), the creditor whose judicial lien the debtors seek to avoid, with the motion. Pursuant to Federal Rules of Bankruptcy Procedure 9014 and 7004(b)(3), service of a contested matter upon a domestic or foreign corporation is accomplished by mailing a copy of the motion to "the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). Here, the debtors served Household "Attn Bankruptcy Dept." at a P.O. Box in City of Industry, California. That does not constitute service to the attention of an officer, a managing or general agent, or any other agent authorized to receive service of process.

In addition, the debtor has not provided the court with sufficient evidence of the judicial lien. The debtor has not provided a copy of the abstract of judgment, as the motion states. Instead, the debtor has submitted a printout from the Sacramento County Clerk showing search results for the debtor's name. The results do show a judgment lien in book 20080108, page 0944, but no further details are provided, such as the lien creditor's name. This is insufficient evidence to establish the existence of a judicial lien in favor of Household Finance.

On or before September 9, 2008, the date of this hearing, the debtor shall serve the motion, its supporting papers, a copy of the abstract of judgment recorded in the official records of Sacramento County and notice of the continued hearing on Household in the manner required by Bankruptcy Rule 7004. The debtor shall also file the notice of the continued hearing and the abstract of judgment with the court. Proof of service shall be filed within three court days thereafter. LBR 9014-1(e)(2). If the debtor fails to do any of the foregoing the motion will be denied without prejudice.

The court will issue a minute order.

49. [08-24032](#)-B-13J GHOLAM CHOOPANI/
PGM #1 SOUDABEH MADADIAN

HEARING - MOTION
TO CONFIRM DEBTOR'S
FIRST AMENDED PLAN
7-15-08 [[34](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the amended plan filed July 15, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor(s) shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The order shall include a specific reference to

the filing date of the amended plan.

50. [07-20334](#)-B-13J AISEA/LINITETI TUPOU
JPJ #2

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
GALWAY FINANCIAL SVCS LLC
7-8-08 [[72](#)]

Disposition Without Oral Argument: This objection has been filed pursuant to LBR 3007-1(d)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 4 on the court's claims register, filed by Galway Financial Services LLC, ("Claim") is resolved without oral argument.

The objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee. The chapter 13 trustee questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]. However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the trustee provides evidence that the Claim is a duplicate of claim no. 12 on the court's claims register, filed by Roundup Funding. Both claims recite the same account number as the basis of the claim and are filed in the same amount. By failing to respond to the objection, the creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

51. [08-27336](#)-B-13J JANICE SMITH
PGM #1

HEARING - MOTION
TO CONFIRM DEBTOR'S ORIGINAL
PLAN
7-11-08 [[18](#)]

Tentative Ruling: The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

52. [08-27336](#)-B-13J JANICE SMITH
PGM #2

HEARING - MOTION TO
VALUE COLLATERAL OF
GMAC MORTGAGE
7-21-08 [[23](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion GMAC Mortgage's collateral securing its second deed of trust, real property located at 2084 Frascati Drive, El Dorado Hills, California 95762, had a value of \$800,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by America's Servicing Company with a balance of \$849,877.09. Thus, the value of the collateral available to GMAC Mortgage on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

53. [08-25038](#)-B-13J GLORIA VALENCIA
MAA #1

HEARING - MOTION TO
CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
7-9-08 [[29](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The debtor filed an amended plan and motion to confirm it on August 21, 2008, setting the matter for hearing on October 7, 2008 at 9:30 a.m. The court construes the filing of the amended plan and motion to confirm as a withdrawal of this motion. This matter is therefore dropped from the calendar.

54. [08-27339](#)-B-13J JOAN WASHBURN

HEARING - OBJECTION
TO CONFIRMATION OF PLAN BY
SASHI KUMAR
7-24-08 [[13](#)]

Tentative Ruling: The notice of the hearing on this objection given by the creditor does not state whether written opposition is required. The court will treat this objection to confirmation as one filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the objection.

55. [08-26641](#)-B-13J ADAM/VICKY LOPEZ
SAC #1

HEARING - MOTION TO
VALUE COLLATERAL OF
GMAC AND TRAVIS CREDIT
UNION SERVICES
7-23-08 [[22](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion is granted. For the purposes of this motion, GMAC's collateral securing its second deed of trust, real property located at 5042 Buffwood Way, Sacramento, California 95841, (the "Property") had a value of \$247,500.00 on the date of the petition. \$0.00 of GMAC's claim secured by the second deed of trust is an allowed secured claim and the balance of its claim is an allowed unsecured claim. Also for the purposes of this motion, Travis Credit Union's collateral, a 2004 Chevrolet Impala (the "Vehicle"), had a value of \$8,000.00 on the date of the petition. Thus, \$5,750.00 of Travis Credit Union's claim is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The Property is encumbered by a first deed of trust held by Option One with a balance of approximately \$303,000.00. Thus, pursuant to Bankruptcy Rule 3012 and 11 U.S.C. § 506(a), the value of the collateral available to GMAC on its second deed of trust is \$0.00.

The debtors allege without dispute that the Vehicle had a value of \$8,000.00 on the date of the petition. Thus, pursuant to Bankruptcy Rule 3012 and 11 U.S.C. § 506(a) \$8,000.00 of Travis Credit Union's claim is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

56. [08-27342](#)-B-13J DENNIS/BECKY STONE
PGM #3

HEARING - MOTION
TO VALUE COLLATERAL OF
FRANCHISE TAX BOARD
7-16-08 [[34](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion is granted. For the purposes of this motion, the collateral of the Franchise Tax Board (the "FTB"), consisting of all of the debtors' real and personal property located in the state of California to which the FTB's lien for unpaid personal income taxes attaches pursuant to California Revenue and Taxation Code §

19221 and California Government Code § 7170 (the "Property"), had a value of \$2,720.00 on the petition date. Therefore, \$2,720.00 of the FTB's claim secured by the Property is a secured claim, and the balance of the FTB's filed secured claim shall be treated as a general unsecured claim.

Pursuant to the debtors' sworn Schedule A, a copy of which was filed with this motion, the debtors' real property located at 3324 East Island Court, Elk Grove, California (the "Real Property"), had a value of \$300,000.00 on the petition date and was encumbered by senior first and second deeds of trust in favor of HSBC Mortgage Services, securing debt with a balance of \$421,439.54. There is no value in the Real Property for the FTB's lien.

Pursuant to the debtors' sworn Schedule B, a copy of which was filed with this motion, the debtors also owned \$32,720.00 in personal property on the petition date (the "Personal Property"). Of that amount, \$18,000.00 of the Personal Property is allocated to a 2003 Toyota Sequoia, encumbered by a senior lien in favor of Safe Credit Union, which lien secures debt with a balance of \$24,930.20. Also, of th \$32,720.00 in Personal Property, \$12,000.00 of that amount is allocated to a 2003 Dodge Dakota, encumbered by a senior lien in favor of Chrysler Financial, which lien secures debt with a balance of \$18,821.88. Therefore, \$2,720.00 of the value of the Personal Property is unencumbered by liens senior to the FTB's lien, and \$2,720.00 is available for the FTB's lien.

This motion is granted because the first paragraph of the motion (Dkt. 34 at 1), gives sufficient notice to the FTB of the debtors' intention to value its collateral at \$2,720.00 and fix its secured claim in the same amount. However, this motion could have been denied without prejudice, as the motion omits any analysis of the kind set forth above by the court in reaching the result prayed for by the debtors. A failure to provide the relevant legal authorities and evidence applicable to the motion violates Local Bankruptcy Rules 9014-1(d)(5) and (d)(6) and impermissibly shifts the burden to the court to perform what is, in this instance, an analysis more complex than that required for the typical motion to value collateral.

The court will issue a minute order.

57. [08-27742](#)-B-13J LAURA FACINO
KAT #1

HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER
13 PLAN BY WASHINGTON MUTUAL
BANK
7-28-08 [[15](#)]

Tentative Ruling: This is a properly filed objection to confirmation under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

58. [07-28945](#)-B-13J TINA TOFFT
JPJ #1

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM NO. 8 OF PATELCO
CREDIT UNION
7-8-08 [[15](#)]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 8 on the court's claims register, filed by Patelco Credit Union, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was February 27, 2008, and to file a government claim was April 21, 2008. Patelco Credit Union filed the Claim for \$13,115.91 on March 14, 2008.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The court will issue a minute order.

59. [07-28945](#)-B-13J TINA TOFFT
JPJ #2

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM NO. 8 OF PATELCO
CREDIT UNION
7-8-08 [[19](#)]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 7 on the court's claims register, filed by Patelco Credit Union, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was February 27, 2008, and to file a government claim was April 21, 2008. Patelco Credit Union filed the Claim for \$10,093.02 on March 14, 2008.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The court will issue a minute order.

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The court construes the trustee's request for a conditional dismissal order as a countermotion for dismissal filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on the request.

The chapter 13 trustee's objections are sustained. Creditor Wells Fargo Financial's ("WFF") objections are sustained in part and overruled in part. The motion is denied.

The trustee's objections are sustained for the reasons set forth in the trustee's opposition.

WFF's objection to the \$142.00 dividend proposed to be paid on its claim is sustained, but only to the extent that the proposed dividend does not pay WFF's claim in full over the sixty-month term of the plan. By the court's calculations, even if the debtors' motion to value the collateral of WFF were granted today, \$156.04 would still remain to be paid on the claim. To the extent that WFF argues that \$142.00 does not adequately protect its interest, the objection is overruled. WFF has presented no evidence of the rate at which its collateral is declining to support its argument. The court declines to reach the issue of what constitutes a adequate protection of WFF's interest at this time.

WFF's objection that the 6.75% interest rate proposed to be paid on its plan is insufficient because it is not a "market rate" of interest is overruled. To the extent that WFF cites authority that adopts a "market rate" approach, including Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990) and In re Camino Real Landscape Maintenance Contractors, Inc., 818 F.2d 1503 (9th Cir. 1987), those authorities are superseded by the United States Supreme Court decision in Till et ux. v. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787 (2004). Contrary to WFF's assertion that Till endorses a "market rate" approach, Till explicitly rejected the coerced loan, presumptive contract rate, and costs of funds approaches to calculating the appropriate rate of interest to be paid on secured claims. Instead, Till directs this court to conduct a present value calculation as of the effective date of the plan by starting with the risk free rate and adjusting upward for appropriate risk factors. The form plan provides that the plan is "effective from the date it is confirmed." The court takes judicial notice pursuant to Federal Rule of Evidence 201 that the current prime rate is 5.00%. See http://www.federalreserve.gov/releases/h15/data/Daily/H15_PRIME_NA.txt. Starting from the prime rate and adjusting upward places the evidentiary burden "squarely on the creditors." Till, 541 U.S. at 479. The debtors need not provide evidence that 5.00%, the current national prime rate, is

a "market rate." Rather, the creditor must provide evidence showing that an upward adjustment is appropriate based on specific risk factors. The creditor has provided no such evidence here for its proposed upward adjustment of five percentage points to 10%. Accordingly, the objection is overruled.

The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(5) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a separate order to show cause directed to Austin P. Nagel, Esq. requiring Mr. Nagel to show cause why sanctions should not be imposed against him under F.R.Bankr.P. 9011(b)(2) and (c)(1)(B) for filing the opposition (Dkt. 42) which contains, at page 3, lines 21-22, and later advocating, the contention that "Debtors must pay Secured Creditor a market rate of interest."

The court will issue a minute order and a separate order to show cause.

61. 08-26945-B-13J BRENT/ANGEL SAYLOR
SAC #2

HEARING - MOTION
TO VALUE COLLATERAL OF
COUNTRYWIDE HOME LOANS
AND WELLS FARGO
7-22-08 [27]

Tentative Ruling: The court cannot fully resolve the motion on the pleadings before the court. As to the request to value the collateral of Wells Fargo Financial, a 2005 Chevrolet Monte Carlo, the debtors assert that the value of their 2005 Chevrolet Monte Carlo is \$7,325.00. The debtors base their valuation on their knowledge of the vehicle, as set forth in their supporting declaration. Respondent creditor Wells Fargo Financial objects to this valuation and has submitted evidence showing that the retail value of the vehicle is \$10,860.00, but Wells Fargo's valuation is dated July-August 2008, after the petition date. To determine the necessary information required to resolve this motion, i.e. the value of the vehicle on the date of the filing of the petition, this matter is continued to a final evidentiary hearing.

Even though the request to value the collateral of Countrywide Home Loans in the motion is unopposed, the court continues that request as well because the debtors have chosen to include it in the same motion as the request to value Wells Fargo's collateral.

On or before September 26, 2008, each party shall serve on the other party all documentary evidence the party intends to present at the hearing and a witness list (which includes a general summary of the testimony of each designated witness). The parties shall also lodge on September 26, 2008, two additional copies of all materials, one for the judge and one for the courtroom deputy. The parties shall lodge and serve these documents regardless of whether they have filed them in the past with this court, and shall designate the documents as "Exhibits for Evidentiary Hearing on Brent and Angel Saylor's Motion to Value the Collateral of Wells Fargo Financial, D.C. No. SAC-2." The judge's and

courtroom deputy's copies shall be submitted in three-ring binders, tabbed as necessary. The hearing exhibits shall be pre-marked, with the creditor enumerating its exhibits as "1, 2, 3...", and debtors enumerating their exhibits "A, B, C...."

The court will issue a minute order.

62. [08-27950](#)-B-13J THOMAS WATKINS
JPJ #1
- HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
7-30-08 [24]

Tentative Ruling: This is a properly filed objection to confirmation under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

63. [07-29452](#)-B-13J SHOMARI/MONIQUE TURNER
JPJ #2
- HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM NO. 17 OF SCHOOLS
FINANCIAL CREDIT UNION
7-8-08 [69]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 17 on the court's claims register, filed by Schools Financial Credit Union, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was March 19, 2008, and to file a government claim was May 4, 2008. Schools Financial Credit Union filed the Claim for \$57.94 on March 28, 2008.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The court will issue a minute order.

64. [07-29452](#)-B-13J SHOMARI/MONIQUE TURNER
ADS #4

CONT. HEARING - MOTION
TO VALUE COLLATERAL OF
LITTON LOAN SERVICING
6-23-08 [[61](#)]

CONT. FROM 7-22-08

Disposition Without Oral Argument: This matter continued from July 22, 2008 for service on creditor Litton Loan Servicing on or before July 29, 2008. Oral argument will not assist the court in resolving this matter.

The motion is denied without prejudice.

Following the hearing on July 22, 2008, on July 25, 2008 the court issued a minute order which directed debtors to perform several tasks ("the Order"). (Dkt. 74). First, the Order directed debtors to serve the motion and notice of continued hearing in accordance with Bankruptcy Rule 7004(b)(3) on Litton Loan Servicing by July 29, 2008. Second, the Order directed debtors to file a notice of continued hearing with the court. Finally, the Order directed debtors to file a proof of service within three court days thereafter. There is no evidence on the docket that debtors complied with these directives. Neither a notice of continued hearing nor a proof of service in connection with a notice of continued hearing has been filed in this matter. There is therefore no presumption of service on Litton Loan Servicing.

The court will issue a minute order.

65. [08-21252](#)-B-13J TROY BACHMAN
KB #2

HEARING - MOTION TO
CONFIRM SECOND AMENDED PLAN
6-23-08 [[34](#)]

Tentative Ruling: The trustee's opposition is conditionally overruled, and the motion to confirm the amended plan is granted in part.

The amended plan, filed on June 23, 2008, is confirmed with the following modification included in the order confirming the plan: the term in the Additional Provisions under Section 7.01 of the plan stating "The Trustee will receive \$436.50 a month" is stricken. In the absence of any further opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

66. [07-30253](#)-B-13J JAMES/DEBORAH LEACH
SDB #3

HEARING - MOTION TO
MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-22-08 [[54](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the modified plan filed July 22, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

67. [07-20454](#)-B-13J ROBERT/MARY MORSE
GG #1

HEARING - MOTION
TO APPROVE DEBTORS'
MODIFIED PLAN
6-12-08 [[21](#)]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The court construes the trustee's request for a conditional dismissal order as a countermotion for dismissal filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on the request.

The trustee's objection is sustained in part. The motion is denied.

The debtors seek to modify their confirmed plan to allow them to "deal with" their mortgage creditor and their unspecified property tax creditor through class 4 of the plan, which treatment allows the debtors to make payments to creditors outside the plan. To the extent that the trustee objects to the debtors' proposal to treat the claim of America's Servicing Company ("ASC") through class 4, the objection is sustained. Class 4 treatment is inappropriate, as it is for claims that mature after the completion of the plan and are not in default. According to the proof of claim filed by ASC on May 16, 2007, the debtors were \$21,685.60 in arrears on the petition date and were in default. The debtors have presented no evidence showing that they are not in default to the creditor and they have made no provision in the plan for a cure of the pre-petition arrears.

The trustee's objection that the debtors have not filed amended Schedules I and J substantiating their ability to make the ongoing payment to ASC outside as well as the plan payment is overruled. The debtors' Schedule J (Dkt. 1 at 36) shows that they have \$3,717.66 in net monthly income. They have proposed an \$825.00 plan payment, and have listed the ongoing contract installment payment to ASC at \$2,317.68. Together these amounts total \$3,142.68, \$574.98 less than the debtors' net monthly income. Based on these figures, the debtors are able to make the payments

proposed by the plan.

Although it is not specifically raised by the trustee, attempting to place in Class 4 a claim that is in default and that is secured by the debtors' residence creates a major feasibility problem. Class 4 provides relief from the automatic stay upon confirmation of the plan. Nothing would prevent the mortgage holder from foreclosing after confirmation based on the pre-filing defaults. The debtors have presented no evidence to carry their burden of showing that the plan would be feasible if the mortgage holder foreclosed.

The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

68. 08-24354-B-13J MAX/CHRISTINE NISPEROS
CYB #1

HEARING - MOTION
TO VALUE COLLATERAL
OF BANK OF AMERICA
7-14-08 [[19](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion, Bank of America's collateral securing its second deed of trust, real property located at 6825 Marinvale Drive, Citrus Heights, California 95621, had a value of \$255,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Countrywide Home Loans with a balance of \$264,742.00. Thus, the value of the collateral available to Bank of America on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

69. 07-30557-B-13J RANDALL/KIMBERLY KERSHAW
SDH #2

HEARING - MOTION
TO CONFIRM SECOND MODIFIED
CHAPTER 13 PLAN
7-11-08 [[31](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to September 9, 2008 at 9:30 a.m. to allow the debtors time to resolve the trustee's objections, as set forth in the debtors' reply. Supplemental documents supporting the motion shall be filed on or before September 2, 2008.

The court will issue a minute order.

70. [08-27458](#)-B-13J WAJID/MEHNAZ KHAN
PGM #1

HEARING - MOTION TO
VALUE COLLATERAL OF
WASHINGTON MUTUAL BANK
7-22-08 [[16](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion, Washington Mutual Bank's collateral securing its second deed of trust, real property located at 5017 Percheron Drive, Elk Grove, California 95757, had a value of \$344,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by World Savings/Wachovia with a balance of \$354,528.25. Thus, the value of the collateral available to Washington Mutual Bank on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

71. [08-27962](#)-B-13J JEFF/SARAH DORRICOTT
SS #1

HEARING - MOTION TO
VALUE COLLATERAL OF
CITIMORTGAGE
7-28-08 [[16](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion, Citimortgage's collateral securing its second deed of trust, real property located at 7020 Tiant Way, Elk Grove, California, had a value of \$285,000.00 on the date of the petition. The debtors allege without dispute that the property is encumbered by a first deed of trust held by World Savings/Wachovia with a balance of approximately \$400,000.00. Thus, the value of the collateral available to Citimortgage on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured

claim.

The court will issue a minute order.

72. [07-29564](#)-B-13J SHARI FRAZIER
PGM #3

HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-18-08 [[78](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the modified plan filed July 18, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

73. [07-29365](#)-B-13J NEAL OTLANG
PGM #1

HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-22-08 [[45](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the modified plan filed July 22, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

74. [07-28967](#)-B-13J JANET BRIDEN
JPJ #1

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM NO. 18 OF WORLD
FINANCIAL NETWORK NTL BANK
7-8-08 [[20](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is overruled as moot. The claimant withdrew the claim to which the trustee objects on July 15, 2008. (Dkt. 25).

The court will issue a minute order.

75. [08-27667](#)-B-13J CICIRO REYES
EC #1

HEARING - OBJECTION TO
CONFIRMATION OF PROPOSED
CHAPTER 13 PLAN BY DAIMLER-
CHRYSLER FINANCIAL SERVICES
AMERICAS LLC
6-30-08 [[17](#)]

Tentative Ruling: The objection is overruled. Creditor Daimler-Chrysler Financial Services Americas LLC ("DCFS") objects to confirmation of the debtors' initial plan filed June 10, 2008. DCFS' argument against confirmation of the plan is that the debtors are impermissibly trying to "cram down" DCFS' secured claim by attempting to value its collateral, a 2006 Dodge Dakota XLT pursuant to 11 U.S.C. § 506(a). DCFS argues that the "hanging paragraph" of 11 U.S.C. § 1325(a*) prevents the debtors from doing so.

DCFS' argument overlooks the fact that the debtors are not attempting to cram down its claim by valuing its collateral pursuant to 11 U.S.C. § 506. There is no motion to value collateral attached to the plan or filed on the court's docket. The fact that the debtors have listed the claim in a slightly lower amount than the amount of the filed claim in the class 2 table on the form plan does not constitute a valuation of DCFS' collateral. As the debtor points in his written opposition, section 3.04 of the plan states that the filed claim, not the plan or the schedules, determines the amount and classification of the claim. The treatment for the filed secured claim proposed by the debtor is sufficient to pay DCFS' secured claim in full over the plan term.

The court will issue a minute order overruling the objection. Counsel for the debtor shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the plan.

76. [08-27667](#)-B-13J CICIRO REYES
WGM #1

HEARING - OBJECTION TO
CONFIRMAITON OF DEBTOR'S
CHAPTER 13 PLAN BY WASHINGTON
MUTUAL BANK
7-22-08 [[29](#)]

Tentative Ruling: The objection is overruled. Creditor Washington Mutual Bank ("WMB") objects to confirmation of the debtor's initial plan filed June 10, 2008. WMB argues that confirmation of the plan should be denied because the plan does not propose any ongoing payments to WMB or any dividend to cure pre-petition arrears owed to WMB.

However, the treatment proposed by the debtor is permissible, as the debtor has attached to the plan a motion pursuant to Bankrutpcy 3012 and 11 U.S.C. § 506(a) to value WMB's collateral, consisting of real property located at 2924 Bandoni Court, Stockton, California. Pursuant to the attached motion, the debtor alleges without dispute from WMB that the real property had a value of \$199,000.00 on the petition date, and that it is encumbered by a first deed of trust in favor of IndyMac Bank securing a debt in the amount of \$219,713.00. As a result, the value of

the collateral available to WMB on its second deed of trust is \$0.00. In the absence of any opposition from WMB, the debtor is permitted to value WMB's secured claim at \$0.00 and treat the remainder of its claim as a general unsecured claim. See In re Lam, 211 B.R. 36 (9th Cir. BAP 1997).

WMB's reply is not persuasive. Any order valuing WMB's collateral need not be "contingent upon the completion of plan payments and entry of a discharge," nor must it provide that WMB shall retain its lien in the event of dismissal or conversion because an order valuing collateral does not affect the fixing of the lien itself to the collateral; it simply values the collateral and fixes the amount of the secured claim for the purposes of the chapter 13 case. The process of "lien-stripping" or "Lam stripping" pursuant to In re Lam, 211 B.R. 36 (9th Cir. BAP 1997) involves multiple steps. The valuation of collateral is the first step. That establishes the amount of the creditor's secured claim and unsecured claim for the purposes of the chapter 13 plan. The second step is the completion of the plan and the receipt of a discharge. Completion of the plan satisfies the secured claim, and the discharge eliminates the debtor's liability on the unsecured claim. Therefore, upon completion of the plan and receipt of the discharge, the debtor is entitled to a reconveyance of the second deed of trust. If it is not reconveyed, the debtor may file an adversary proceeding under F.R.Bankr.P. 7001(2). At the present time the debtor proposes to take only the first step in the Lam lien stripping process.

The court will issue a minute order overruling the objection. Counsel for the debtors shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the plan.

77. <u>08-21468</u> -B-13J JULIUS/KABELLA MAGEE, VS. PLG #3 HOME EQ SERVICING	HEARING - MOTION FOR VALUATION OF SECURITY; DETERMINATION OF SECURED STATUS AND AVOIDANCE OF LIEN AND MODIFICATION OF RIGHTS OF LIENHOLDER 7-15-08 [61]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion, Home Eq Cash Control's collateral securing its second deed of trust, real property located at 1481 Mayfield Street, Sacramento, CA 95838, had a value of \$351,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Home Eq Cash Control with a balance of \$360,156.27. Thus, the value of the collateral available to Home Eq Cash Control on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

78. [08-26368](#)-B-13J JOSE/MARGARET EQUIHUA HEARING - MOTION
FF #1 TO CONFIRM CHAPTER 13 PLAN
7-16-08 [[22](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the amended plan filed May 29, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

79. [08-26368](#)-B-13J JOSE/MARGARET EQUIHUA HEARING - MOTION
FF #2 TO VALUE COLLATERAL OF
AMERICA'S SERVICING COMPANY
7-16-08 [[26](#)]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

In the absence of opposition, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. For the purposes of this motion, America's Servicing Company's collateral securing its second deed of trust, real property located at 206 Quail Hollow Drive, Galt, CA 95632, had a value of \$285,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by America's Servicing Company with a balance of \$369,873.00. Thus, the value of the collateral available to America's Servicing Company on its second deed of trust is \$0.00. \$0.00 of creditor's claim secured by the second deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim.

The court will issue a minute order.

80. [08-20670](#)-B-13J RANDY/JULIE PRICE HEARING - MOTION
KB #2 TO CONFIRM SECOND
AMENDED PLAN
6-26-08 [[43](#)]

Tentative Ruling: The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11

U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

81. 08-27470-B-13J EDWARD/GENOLA BIGHAM
FF #2

HEARING - MOTION
TO CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
7-14-08 [16]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The trustee's objection is sustained. Creditor Washington Mutual's objection is sustained. Creditor Washington Mutual's request for attorney's fees is denied. The motion seeking to confirm the plan filed July 14, 2008 is denied.

The trustee's objection is sustained for the reasons stated in the chapter 13 trustee's opposition.

Creditor Washington Mutual's objection that the plan is not feasible is sustained. Under section 3.04 of the plan, the proof of claim, not the plan or the schedules, controls the amount and classification of the each claim. Debtors propose to provide for Washington Mutual in class 1 of the plan with a pre-petition arrearage claim of \$24,865.90, an interest rate of 0.00% per annum, and a monthly dividend of \$621.62. On July 2, 2008, Washington Mutual filed a claim in the amount of \$278,000.73 with an arrearage claim amount of \$32,257.09. (POC 2). Considering an arrearage claim amount of \$32,257.09, an interest rate of 0% and 40 payments, debtors must pay \$806.43 per month to cure the arrearage claim. Considering these figures and the proposed plan treatment, the plan is underfunded as to Washington Mutual's claim.

Creditor Washington Mutual's request for attorney's fees is denied. Because Washington Mutual has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(1) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

82. [08-27470](#)-B-13J EDWARD/GENOLA BIGHAM
FF #3

HEARING - MOTION
TO VALUE COLLATERAL OF
GMAC FINANCIAL SERVICES
7-14-08 [[20](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter. The motion is continued to September 23, 2008 at 9:30 a.m. The debtors did not properly serve the motion on the creditor. Pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(3), service of a motion to value collateral on a domestic corporation is accomplished by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by statute to receive service of process. Here, the debtors' certificate of service indicates that they served the creditor whose collateral they wish to value only generally at its address in Glendale, Arizona.

On or before August 26, 2008, the date of this hearing, the debtors shall serve the motion and notice of the continued hearing in accordance with Bankruptcy Rule 7004(b)(3) on GMAC Financial Services. The debtors shall also file the notice of the continued hearing with the court. Proof of service shall be filed within three court days thereafter. LBR 9014-1(e)(2). If the debtors fail to do any of the foregoing, the motion will be denied without prejudice for improper service.

The court will issue a minute order.

83. [07-28071](#)-B-13J SCOTT/MICHELLE STOVER
PGM #1

HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-22-08 [[42](#)]

Tentative Ruling: The trustee's opposition is conditionally overruled, and the motion to confirm the modified plan is granted in part.

The modified plan, filed on July 22, 2008, is confirmed with the following modification included in the order confirming the plan: the plan payment is \$650.00 each month for months 1 through 60. In the absence of any further opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

84. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #2

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 29
OF EVETTE SOLTESZ
7-2-08 [[41](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

85. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #3

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 30
OF JAMES SALADIN
7-2-08 [[45](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

86. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #4

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 12
OF ROBERT FERGUSON
7-2-08 [[49](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

87. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #5

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 14
OF JASON BAILEY
7-3-08 [[53](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

88. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #6

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 16
OF DAVID BARRIGAN
7-3-08 [[57](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

89. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #7

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 18
OF MICHELLE DUVAL
7-3-08 [[61](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

90. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #8

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 22
OF STEVE HARMON
7-3-08 [[65](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

91. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #9

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 24
OF MIKE NEVAREC, JR.
7-3-08 [[69](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

92. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #10

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 25
OF SCOTT LOKEY
7-3-08 [[73](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

93. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #11

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 26
OF RICKY REESE
7-3-08 [[77](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

94. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #12

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 27
OF RODNEY IRVING
7-3-08 [[81](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

95. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #13

HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 28
OF NIKKI BARNHART
7-3-08 [[85](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

By order entered August 12, 2008, this matter was continued to September 9, 2008 at 9:30 a.m. on the stipulation of the debtor, chapter 13 trustee, and creditor employees. This matter is therefore dropped from this calendar.

96. [07-25373](#)-B-13J JENNIFER GRANT
PGM #4

HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-15-08 [[55](#)]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(6) (and § 1322(a)(2)). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court notes that debtor filed a reply on August 19, 2008. Through the reply, debtor requests a continuance of this motion or, alternatively, that the objection be overruled. A written application for a continuance must disclose whether all parties in interest oppose or support the request for a continuance. LBR 9014-1(j). Debtor's response fails to represent whether any, let alone all, parties in interest oppose or support this request. Accordingly, the court declines to approve this request.

Additionally, the court is not persuaded that the objection should be overruled. Debtor argues that the trustee's objection that the plan fails to provide for the claim of Geweke Ford may be overruled as moot because the debtor has filed an objection to the claim of Geweke Ford. That objection (Dkt. 67) has not yet been resolved and is set for hearing on October 7, 2008. The court directs counsel's attention to section 3.04 of the form plan. That section provides that the proof of claim, not the plan or the schedules, controls the amount and classification of the claim. Section 3.04 of the form plan further provides that, until the granting of a valuation or a lien avoidance motion or the sustaining of a claim objection, the claim shall determine the amount and classification of the claim.

The court will issue a minute order.

97. [08-27973](#)-B-13J TANYA KAILINOVSKAYA
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
7-30-08 [[17](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is overruled as moot. By order entered on August 15, 2008, this bankruptcy case was dismissed.

The court will issue a minute order.

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The trustee's objection is sustained. The motion is denied.

The trustee's objection that the plan fails the liquidation test set forth in 11 U.S.C. § 1325(a)(4) is sustained, but not simply because, as the trustee states "[t]here is nothing in 11 U.S.C. § 1329 permitting the court to change the value of the residence after setting it in a confirmed plan." Although it is not articulated in the objection, the trustee objects to the debtor's assertion that her residence has undergone a post-petition decline in value and that she is entitled to a \$6,476.84 exemption in the residence as a means of reducing the amount of non-exempt property in the estate such that a plan that presently will pay a 100% dividend to general unsecured creditors can be modified to pay a 0% dividend to general unsecured creditors.

The trustee's objection raises the issue of the meaning of the "effective date of the plan" for the purposes of the liquidation analysis under § 1325(a)(4) when a debtor or other party seeks to modify a plan under 11 U.S.C. § 1329. The authorities are presently split on this issue. Some courts hold that the effective date of the modified plan is the date on which the modification pursuant to 11 U.S.C. § 1329 is approved by the court. Other courts hold that the effective date is the date on which the plan is first confirmed. See Keith M. Lundin, Chapter 13 Bankruptcy § 254.1 (3rd Ed. 2000 and Supp. 2004). This court takes the latter view, as set forth by the Eighth Circuit Bankruptcy Appellate Panel in In re Forbes, 215 B.R. 183 (8th Cir. BAP 1997). Specifically, this court agrees with the Forbes court's rationale that "there is only one plan to which the Code refers. Regarding the effective date of the plan, there is only one plan. The effective date is not altered by modification of the plan, for the modified plan remains, ever constant, the plan." Forbes, 215 B.R. at 189. This rationale is also supported by the language of 11 U.S.C. § 1329(b)(2), which states that "the plan, as modified, becomes the plan unless, after notice and a hearing, such modification is disapproved." The foregoing language supports the view that once a plan is confirmed in a chapter 13 case it may be modified, but the modification is just that - a modification of the confirmed plan, not a new plan.

The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(4) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

Debtor filed a reply on August 19, 2008. The reply acknowledges that debtors are not permitted to pay a 0% dividend to general unsecured creditors and requests that the order confirming plan correct that error by providing for a 100% dividend to general unsecured creditors. The trustee has not had an opportunity to comment on that proposal.

The court will issue a minute order.

99. [08-20675](#)-B-13J NORRIS/KATHLEEN ZORN
WW #1
- HEARING - MOTION TO
CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
7-18-08 [[31](#)]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court construes the trustee's request for a conditional dismissal order as a countermotion filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues not tentative ruling on the request.

The court will issue a minute order.

100. [03-30276](#)-B-13J LLOYD/KAREN FERGUSON
WW #6
- HEARING - MOTION
TO VACATE THE DISMISSAL
7-17-08 [[129](#)]

CASE DISMISSED 1-25-08

Tentative Ruling: None.

101. [08-27978](#)-B-13J KIMBERLY BRITZ
JPJ #1
- HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
7-30-08 [[19](#)]

Tentative Ruling: This is a properly filed objection to confirmation and motion to dismiss under LBR 9014-1(f)(2). Opposition to either or both may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

The court will issue a minute order.

102. [08-26779](#)-B-13J JAMES/SHERRI ROSSELL
SW #1

CONT. HEARING - OBJECTION TO
CONFIRMATION OF PLAN AND
COLLATERAL VALUATION MOTION
BY GENERAL MOTORS ACCEPTANCE
CORPORATION
7-1-08 [[20](#)]

CONT. FROM 7-22-08

Tentative Ruling: This matter cannot be resolved on the pleadings before the court. The debtors assert that the value of their 2004 Chevrolet Avalanche is \$14,710.00. The debtors base their valuation on their knowledge of the vehicle, as set forth in their supporting declaration, and on the opinion of Ronald Walter Wolff, a desk manager at Elk Grove Ford, as set forth in his supporting declaration. Respondent creditor General Motors Acceptance Corporation objects to this valuation and has submitted evidence showing that the retail value of the vehicle is \$20,650.00, but General Motors Acceptance Corporation's valuation is dated June 16, 2008. To determine the necessary information required to resolve this motion, i.e. the value of the vehicle on the date of the filing of the petition, this matter is continued to a final evidentiary hearing on October 3, 2008 at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before September 26, 2008, each party shall serve on the other party all documentary evidence the party intends to present at the hearing and a witness list (which includes a general summary of the testimony of each designated witness). The parties shall also lodge on September 26, 2008, a judge's copy of all materials. The parties shall lodge and serve these documents regardless of whether they have filed them in the past with this court, and shall designate the documents as "Exhibits for Evidentiary Hearing on James and Sherri Rossell's Motion to Value the Collateral of General Motors Acceptance Corporation, D.C. No. SW-1." The judge's copies shall be submitted in a three-ring binder, tabbed as necessary. The hearing exhibits shall be pre-marked, with the creditor enumerating its exhibits as "1, 2, 3..." and debtors enumerating their exhibits "A, B, C..."

The court will issue a minute order.

103. [08-26779](#)-B-13J JAMES/SHERRI ROSSELL
WGM #1

CONT. HEARING - OPPOSITION
TO DEBTORS' MOTIONS TO VALUE
COLLATERAL OF WASHINGTON
MUTUAL BANK
7-3-08 [[27](#)]

CONT. FROM 7-22-08

Disposition Without Oral Argument: This matter continued from July 22, 2008 with a briefing schedule. Opposition due by August 12, 2008. Replies, if any, due by August 19, 2008. No subsequent briefs have been filed in this matter. Therefore, the matter is resolved without further oral argument.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f) (1) (ii) and (iii).

Washington Mutual's opposition to the attached motion to value is sustained, and the motion is denied. Washington Mutual's objection to confirmation is sustained. The plan, filed on May 22, 2008, is denied confirmation.

Washington Mutual argues that the attached motion to value must fail because debtors have not shown that Washington Mutual's claim is completely under-secured. An allowed secured claim may be fixed at \$0.00 pursuant to 11 U.S.C. § 506(a) only if the claim is completely under-secured. In re Lam, 211 B.R. 36, 41-42 (B.A.P. 9th Cir. 1997) and Zimmer v. PSB Lending Corporation (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002) (adopting position taken in Lam). Here, debtors seek to fix Washington Mutual's allowed secured claim at \$0.00 by valuing Washington Mutual's collateral securing its third deed of trust, real property located at 9629 Ridgerock Drive, Elk Grove, California 95624, at \$450,000.00. The motion is based on the debtors' assertion that the balance owing on the first deed of trust in favor of GMAC Bank is \$351,670.00. The motion is further based on debtors' assumptions that Washington Mutual holds a second deed of trust in the amount of \$195,510.02 and a third deed of trust in an undisclosed amount. Washington Mutual asserts, however, that debtors' motion incorrectly characterizes Washington Mutual's claim. Washington Mutual alleges without dispute that the second deed of trust in favor of Washington Mutual secured an original principal amount of \$206,000.00 (Dkt. 32 at 2), which amount was later extended to \$250,000.00 pursuant to a modification agreement (Dkt. 32 at 10). Washington Mutual further alleges without dispute that it holds no third deed of trust on the subject property. Based on the foregoing, the court finds that debtors have failed to show that Washington Mutual's claim is completely undersecured. Accordingly, debtors have failed to show that Washington Mutual's secured claim may be fixed at \$0.00 pursuant to 11 U.S.C. § 506(a).

Because the motion to value Washington Mutual's collateral is denied, the plan fails to provide for the full Washington Mutual secured claim. Therefore, the plan fails to comply with 11 U.S.C. § 1325(a) (5) (B) (ii).

The court will issue a minute order.

104. [08-27579](#)-B-13J CORY/REMEDIOS JONES
PD #1

HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN BY WASHINGTON MUTUAL BANK
7-22-08 [\[14\]](#)

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f) (2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

105. [07-23780](#)-B-13J MEL ALLEN
AJP #6

HEARING - MOTION
FOR CONFIRMATION OF SECOND
AMENDED CHAPTER 13 PLAN
7-2-08 [[135](#)]

Tentative Ruling: The trustee's opposition is conditionally overruled, and the motion to confirm the amended plan is granted in part.

The amended plan, filed on July 2, 2008, is confirmed with the following modifications included in the order confirming the plan: Debtors shall pay to Trustee the sum of \$1,330.00 for months one through ten; \$1,500.00 for months eleven through fourteen; and \$1,234.00 for months fourteen through sixty of the plan. In the absence of any further opposition, and including those modifications, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

106. [07-27080](#)-B-13J CHRISTOPHER/MARIA RICHERT
JPJ #2

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM OF SCHOOL FINANCIAL
CREDIT UNION
7-8-08 [[31](#)]

Disposition Without Oral Argument: This objection has been filed pursuant to LBR 3007-1(d)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 2 on the court's claims register, filed by Schools Financial Credit Union, c/o John Creedon, Esq., ("Claim") is resolved without oral argument.

The objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee. The chapter 13 trustee questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. See Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the trustee provides evidence that the Claim is a duplicate of claim no. 12 on the court's claims register, filed by Schools Financial Credit Union. Both claims recite the same account number as the basis of the claim. By failing to respond to the objection, the creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

CONT. FROM 7-22-08

Tentative Ruling: This matter continued from July 22, 2008 with a briefing schedule. Opposition due by August 12, 2008. Replies, if any, due by August 19, 2008. Debtor timely filed written opposition on August 12, 2008. Creditor Victor Correia timely filed a reply on August 19, 2008.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

Creditor Victor Correia's ("Correia") objections are sustained in part and overruled in part. The plan, filed May 22, 2008, is denied confirmation.

The court construes Correia's objection - that debtor has attempted to mislead the court with respect to his projected future income - as an objection under 11 U.S.C. § 1325(b)(1)(B). As so construed, the objection is sustained. Debtor has proposed a plan that will pay a five percent (5.0%) dividend to general unsecured claims estimated at approximately \$251,207.17.

Projected disposable income is determined by multiplying debtor's disposable income over the "applicable commitment period", if any. 11 U.S.C. § 1325(b)(1)(B); Maney v. Kagenveama (In re Kagenveama), No. 06-17083 (9th Cir. June 5, 2008). Disposable income is defined as "current monthly income received by the debtor. . . less amounts reasonably necessary to be expended. . ." 11 U.S.C. § 1325(b)(2). Current monthly income is defined as the "average monthly income from all sources that the debtor receives" during the 6-month period preceding the commencement of the case or a date upon which the current income is determined by the court. 11 U.S.C. § 101(10A)(A) (emphasis added). Here, Correia argues that debtor must pay a greater dividend to general unsecured creditors because debtor's future income will be greater than that reported by the debtor. This argument is misplaced. Current monthly income is the only relevant measure of debtor's income for the purposes of evaluating an objection under 11 U.S.C. § 1325(b)(1)(B). As previously noted, current monthly income is based on a historical calculation. Debtor's current monthly income is calculated at \$18,256.34. Correia has not shown that this figure is inaccurate. Therefore, the relevant income figure for determining projected disposable income is \$18,256.34.

Correia also argues that debtor is improperly claiming deductions from his current monthly income for two parcels of real property, the first located at 220 Main Avenue, Sacramento, California and the second located at 151 McDaniels Circle, Sacramento, California (collectively the

"Properties"), that debtor no longer owns. Correia alleges without dispute that debtor no longer owns the Properties as a result of pre-petition foreclosure sales on the Properties.

Section 1325(b)(3) requires that if a debtor's annualized current monthly income is greater than the median family income of similarly-sized households, then "amounts reasonably necessary to be expended" are determined in accordance with 11 U.S.C. § 707(b)(2). Here, debtor's Form B-22C shows that debtor is above the applicable median income. Debtor lists the total of all deductions allowed under 11 U.S.C. § 707(b)(2) at \$21,151.14. Of the total deductions, debtor claims deductions of \$7,676.66 for the debts secured by the Properties (Dkt. 1 at 41). Considering Correia's undisputed allegation that debtor lost the Properties to foreclosure before the bankruptcy filing, debtor may not claim such deductions for the Properties as these amounts fail to constitute amounts contractually due to secured creditors during the pendency of the plan. 11 U.S.C. § 707(b)(2)(A)(iii)(I). If the deductions for the Properties are taken out of the disposable income calculation, debtor's disposable income rises to \$4,781.86 (18,256.34 - 13,474.48). 11 U.S.C. § 1325(b)(2). Considering debtor's "applicable commitment period" of five (5) years, debtor's projected disposable income is \$286,911.60 (4,781.86 x 60 mos). 11 U.S.C. § 1325(b)(4). Debtor's plan proposes to pay \$12,560.35 to general unsecured creditors. This amount (\$12,560.34) is less than debtor's projected disposable income figure (\$286,911.60). Therefore, the proposed plan fails to comply with 11 U.S.C. § 1325(b)(1)(B).

Correia's other objections are overruled because they are inconsistent with the proper calculation of projected disposable income, as described above.

The court will issue a minute order.

108. [07-28981](#)-B-13J KIM/JULIA VANDENBERG
JPJ #1

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE OF
CLAIM NO. 14 OF APRIA
HEALTHCARE, INC.
7-8-08 [[28](#)]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 14 on the court's claims register, filed Apria Healthcare, Inc. ("Claim"), is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was February 27, 2008, and to file a government claim was April 22, 2008. Apria Healthcare, Inc. filed the Claim for \$1,211.00 on March 3, 2008.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal

Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The court will issue a minute order.

109. 07-26082-B-13J BLAINE EVANS
GG #2

HEARING - MOTION
TO APPROVE DEBTOR'S PLAN
6-19-08 [67]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The objection filed by the chapter 13 trustee was withdrawn on August 14, 2008. (Dkt. 81). The objection filed by Americredit Financial Services ("Americredit") is overruled. The motion seeking to confirm the amended plan filed on June 19, 2008 is granted.

Americredit's objection that the plan impermissibly attempts to "cram down" Americredit's claim is overruled. Americredit's argument is based on the mistaken belief that the debtor is attempting to value Americredit's collateral and reduce the amount of its secured claim. However, no motion to value Americredit's collateral has been filed in connection with the subject plan. Debtors' previous two attempts to value Americredit's collateral were denied (Dkt. 34; Dkt. 55), and no subsequent motion to value Americredit's collateral has been filed. Americredit's filed claim currently controls the amount and classification of its claim. Americredit has neither argued nor established that the plan is underfunded as to Americredit's claim; however, even if the court construes the objection as raising this issue, the objection still must be overruled. Americredit filed a secured claim in the amount of \$27,343.41. (POC 3). Considering a claim amount of \$27,343.41, an interest rate of 8.0%, and 60 monthly payments, Americredit must receive monthly payments of at least \$554.43. The plan lists Americredit in class 2 with a claim amount of \$27,344.00 and proposes to pay Americredit a monthly dividend of \$260.00, which is subject to "increase to maximum allowable after attorney fees and computer are paid and as plan payments [go] up." Considering the claims and fees proposed to be paid through this plan, including attorney's fees, trustee's fees, and Dell's claim, and the total of all proposed plan payments (\$38,400.00), it appears that the plan is sufficiently funded. Americredit has not shown that the subject plan must or should be denied confirmation.

In the absence of any further opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

110. [07-26082](#)-B-13J BLAINE EVANS, JR.
GG #2

HEARING - OBJECTION
TO CONFIRMATION OF PROPOSED
AMENDED CHAPTER 13 PLAN BY
AMERICREDIT FINANCIAL SERVICES,
INC.
6-30-08 [[73](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is dismissed. This objection was filed as a stand-alone objection to confirmation. These objections are permitted only pursuant to G.O. 05-03 ¶ 3(c), which provides that a creditor may file an objection to confirmation of a proposed plan when either the trustee or the debtor serves the plan on parties in interest pursuant to ¶ 3(a) and a confirmation hearing date has been set. In this instance, however, the debtor is proceeding to confirmation pursuant to G.O. 05-03 ¶ 8(a). The procedure for stand-alone objections is unavailable to creditors under ¶ 8(a).

Notwithstanding the foregoing, the court will consider the merits of the creditor's opposition in resolving the debtor's motion to confirm elsewhere on this calendar.

The court notes that nothing in this ruling constitutes a confirmation of any plan.

The court will issue a minute order.

111. [08-25082](#)-B-13J GREGORY/TERI MANTZ
CFH #1

CONT. HEARING - MOTION TO
VALUE COLLATERAL SECURED BY
THE CLAIM OF WACHOVIA DEALER
SERVICES
5-30-08 [[15](#)]

CONT. FROM 7-22-08

Disposition Without Oral Argument: This matter continued from July 22, 2008 to allow the debtors to file with the court and serve on Wachovia a notice of continued hearing that specifically advises Wachovia that debtors have filed a second motion to value collateral under D.C. No. CFH-1 that will be deemed unopposed by Wachovia absent the filing of a new written opposition by Wachovia. Oral argument will not assist the court in resolving this matter.

The motion is denied without prejudice.

Following the hearing on July 22, 2008, the court issued a minute order, which directed debtors to perform several tasks ("the Order"). (Dkt. 37). First, the Order directed debtors to serve on Wachovia a notice of continued hearing that specifically advises Wachovia that debtors have filed a second motion to value collateral under D.C. No. CFH-1 that will be deemed unopposed by Wachovia absent the filing of a new written opposition by Wachovia. Second, the Order directed debtors to file with the court a notice of continued hearing. Finally, the Order directed

debtors to file a proof of service within three court days thereafter. There is no evidence on the docket that debtors complied with these directives. Neither a notice of continued hearing nor a proof of service in connection with a notice of continued hearing has been filed in this matter. The debtors' failure to advise Wachovia of the second motion to value collateral, as instructed by the court's Order, constitutes grounds for denial without prejudice of the motion.

The court will issue a minute order.

112. [08-25082](#)-B-13J GREGORY/TERI MANTZ HEARING - DEBTORS'
CFH #2 MOTION TO CONFIRM FIRST
MODIFIED CHAPTER 13 PLAN
7-9-08 [[29](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the amended plan filed July 9, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order using EDC form 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

113. [08-26782](#)-B-13J LEWIS/NANCY MANOR CONT. HEARING - OBJECTION
FWP #1 OF FIRST NORTHERN BANK OF
DIXON TO COLLATERAL VALUATION
MOTION AND CHAPTER 13 PLAN
7-3-08 [[22](#)]

CONT. FROM 7-22-08

Tentative Ruling: This matter continued from July 22, 2008 without a briefing schedule. Nothing further has been filed in this matter. The matter remains in its preliminary posture as a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

114. [07-27086](#)-B-13J TIMOTHY/JANETTE MCCALL HEARING - TRUSTEE'S
JPJ #5 OBJECTION TO ALLOWANCE OF
CLAIM NO. 19 OF TRAVIS
CREDIT UNION
7-8-08 [[85](#)]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 19 on the court's claims register, filed by Travis Credit Union ("Claim"), is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was January 2, 2008, and to file a government claim was March 2, 2008. Travis Credit Union filed the Claim for \$9,145.52 on April 16, 2008.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The court will issue a minute order.

115. [08-27188](#)-B-13J MARY XIROUHAKIS HEARING - OBJECTION
JPJ #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
7-30-08 [[20](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is overruled as moot. By order entered August 22, 2008, this case was dismissed. (Dkt. 31).

The court will issue a minute order.

116. [03-30491](#)-B-13J HAIRO RAMOS HEARING - MOTION TO
JLK #4 CONFIRM THIRD MODIFIED
CHAPTER 13 PLAN
6-24-08 [[85](#)]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted and the modified plan filed June 23, 2008 is confirmed. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The court will issue a minute order.

117. [07-28283](#)-B-13J JEREMIAH MCNEIL HEARING - MOTION OF
MFB #3 FORMER CHAPTER 7 TRUSTEE
FOR APPROVAL OF ADMINISTRATIVE
CLAIM
7-30-08 [[81](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

118. [05-37891](#)-B-13J CHERYL ROGERS
PA #1

CONT. HEARING - EMPLOYMENT
DEVELOPMENT DEPARTMENT'S MOTION
REQUESTING RULING ON PHASE TWO
AND THREE BIFURCATED ISSUES
6-11-08 [[134](#)]

CONT. FROM 7-22-08

Tentative Ruling: None.

119. [07-28897](#)-B-13J TINA ANDRADE
JPJ #2

HEARING - TRUSTEE'S
OBJECTION TO ALLOWANCE
OF CLAIM NOS. 2 & 8 OF
A&S COLLECTION ASSOC.
7-8-08 [[37](#)]

Disposition Without Oral Argument: This objection has been filed pursuant to LBR 3007-1(d)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 2 on the court's claims register, filed by A & S Collection Associates, Inc., ("Claim") is resolved without oral argument.

The objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee. The chapter 13 trustee questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]. However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the trustee provides evidence that the Claim is a duplicate of claim no. 8 on the court's claims register, filed by D & R Auto Body Paint. Both claims rely on the same supporting documentation as the basis of the claim. By failing to respond to the objection, the creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

120. [08-22498](#)-B-13J KEN WILLIAMSON
ADS #2

HEARING - MOTION
TO CONFIRM SECOND AMENDED
CHAPTER 13 PLAN
7-15-08 [[76](#)]

Tentative Ruling: Neither the respondents within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant and respondents have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The objection of creditor Monica Guillen, formerly Monica Williamson ("Guillen") is sustained in part. The motion seeking confirmation of the plan filed July 15, 2008 is denied.

Guillen's objection that the petition was not filed in good faith is sustained. The court previously found that the plan filed April 28, 2008 and the petition were not filed in good faith. (Dkt. 63 at 2). The petition not having been filed in good faith, the debtor has not shown compliance with 11 U.S.C. § 1325(a)(7).

The debtor has failed to carry his burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(7). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court declines to reach the other objections raised by Guillen and the trustee.

The court will issue a minute order.

121. [08-22498](#)-B-13J KEN WILLIAMSON
DB #3

CONT. HEARING - MOTION
TO DISMISS CASE
6-25-08 [[67](#)]

CONT. FROM 7-22-08

Disposition Without Oral Argument: This matter continued from July 22, 2008 to permit creditor Monica Williamson ("Williamson") to serve the motion, its supporting papers, and notice of the continued hearing on the debtor. Williamson was also directed to serve the notice of the continued hearing on parties previously served with the motion and to file the notice of the continued hearing with the court. Williamson timely complied, having filed a notice of continued hearing (Dkt. 85) and certificate of service (Dkt. 87) on July 22, 2008. The failure of any party in interest to file timely written opposition as required by Local Bankruptcy Rule 9014-1(f)(1) is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted, and this case is dismissed.

By this motion, Williamson requests that this case be dismissed or converted to one under chapter 7. Williamson alleges without dispute that, by order entered June 12, 2008 (Dkt. 64) (the "Order"), this court previously sustained Williamson's objection that debtor's first amended plan and petition were not filed in good faith. (Dkt. 63). Accordingly, the court denied debtor's motion to confirm. Williamson further alleges without dispute that the findings underlying the Order and the Order are based on circumstances that will never change in this case. These include the nature and extent of the debt owed to Williamson and the timing of the filing of debtor's bankruptcy petition just days before an application with the Sacramento County Superior Court to remove debtor from the Family Residence could be heard. Elsewhere on this calendar, the court denied debtor's motion to confirm the second amended plan. That denial was based on the second amended plan's inability to comply

with 11 U.S.C. § 1325(a)(7). The court notes that the debtor has failed to oppose the motion. Based on the foregoing, the court finds cause for dismissal or conversion of this case under 11 U.S.C. § 1307(c).

The court finds that dismissal of this case is in the best interests of creditors and the estate, as debtor's schedules reveal minimal non-exempt property in the estate.

The court will issue a minute order.

122. [08-22498](#)-B-13J KEN WILLIAMSON HEARING - MOTION
DB #3 TO DISMISS CASE
7-22-08 [[84](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter was incorrectly placed on the court's calendar, as it is a duplicate of matter number 121 on the court's calendar. The matter is therefore dropped from this calendar.

123. [05-25299](#)-B-13J KEVIN/SONYA OWENS HEARING - MOTION TO
WW #7 CONFIRM FOURTH MODIFIED
CHAPTER 13 PLAN
7-18-08 [[99](#)]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

124. [08-27600](#)-B-13J RAMON/ADELA ARGUELLO HEARING - OBJECTION TO
EC #1 CONFIRMATION OF PROPOSED
CHAPTER 13 PLAN AND OPPOSITION
TO MOTION TO VALUE COLLATERAL
OF AMERICAN GENERAL FINANCE
8-5-08 [[24](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter. The objection to confirmation is overruled as untimely. Movant filed the objection on August 5, 2008. General Order 05-03 ¶ 3(c) and the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines (Dkt. 9) required objections to confirmation and opposition to the attached motions to value to be filed by July 31, 2008.

The court will issue a minute order.

125. [08-28302](#)-B-13J FELIX GARCIA
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[16](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter. The objection is overruled as moot.

On August 21, 2008, the debtor filed an amended plan. The filing of the amended plan constitutes a withdrawal of the instant plan to which the trustee's objection is directed.

The court will issue a minute order.

126. [08-28711](#)-B-13J EDWARD ESCOTO

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-4-08 [[16](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. This case was automatically dismissed at 12:01 am on August 15, 2008 pursuant to 11 U.S.C. § 521(i), which dismissal was confirmed by order entered August 22, 2008. (Dkt. 21).

The court will issue a minute order.

127. [08-21018](#)-B-13J WILLIAM/PAULETTE CONWAY
HSM #3
J. PAUL ASARO ARCHITECTURAL
CORPORATION, VS.

HEARING - MOTION
TO TERMINATE AND VACATE
AUTOMATIC STAY
8-12-08 [[106](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

128. [08-28720](#)-B-13J MELVIN STRONG

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-8-08 [[15](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. This case was automatically dismissed at 12:01 am on August 15, 2008 pursuant to 11 U.S.C. § 521(i), which dismissal was confirmed by order entered August 25, 2008. (Dkt. 19).

The court will issue a minute order.

CONT. FROM 8-12-08

Tentative Ruling: This matter continued from August 12, 2008 without a briefing schedule. The chapter 13 trustee filed supplemental written opposition to the motion on August 18, 2008. No further briefs have been filed. In this instance, the court issues the following tentative ruling.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The trustee's objections are sustained. The objections filed by creditors David & Jacquelyn Vaughn and Charles & Patricia Townsend (collectively "Vaughn") are sustained in part. The motion seeking to confirm the plan filed April 10, 2008 is denied.

The court construes the trustee's request for a conditional dismissal order as a countermotion filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on this request.

The trustee's objections are sustained for the reasons stated in the trustee's opposition and supplemental opposition.

Vaughn's objection that the plan lists an incorrect claim amount for Vaughn is sustained, but for reasons other than those articulated in the objection. Under section 3.04 of the plan, the proof of claim, not the plan or the schedules, controls the amount and classification of the each claim. On July 2, 2008, Vaughn filed a secured claim in the amount of \$305,441.66 with an arrearage claim of \$27,500.00. (POC 15). The issue for purposes of confirmation is not whether the plan correctly states the relevant amounts listed in the claim but whether it is sufficiently funded to pay the claim in full. As to the issue of whether the plan is sufficiently funded, Vaughn's objection is silent; however, the court construes Vaughn's objection as raising the issue. The proposed Class 2 dividend of \$2,750 on the Vaughn claim, multiplied by the commitment period of 60 months, equals \$165,000. That amount is insufficient to satisfy the Vaughn claim. The additional provisions provide, at § 7.01, that the debtors' two parcels of real property will be sold within 24 months of confirmation and that the proceeds, net of costs, of sale, will be distributed to lienholders. The additional provisions do not state that the lienholders will be paid in full, only that proceeds will be distributed to them. The plan is underfunded as to the Vaughn claim.

Vaughn's objection that the plan fails to provide for Vaughn's arrearage claim is overruled. Section 3.04 of the plan states that the proof of

claim, not the plan or the schedules, controls the amount and classification of the each claim. On July 2, 2008, Vaughn filed a secured claim in the amount of \$305,441.66 with an arrearage claim of \$27,500.00. (POC 15). The plan provides for Vaughn's entire claim, including arrearages, in Class 2. Arrearage claims need not be separately provided for in Class 2. Such separate treatment is required under 11 U.S.C. § 1322(b)(5) for most Class 1 claims - claims that are secured only by a lien on the debtor's residence (thereby invoking the restriction of 11 U.S.C. § 1322(b)(2)) and that extend beyond the plan term.

Vaughn's objection that the debtors have failed to remain current on their plan payments is sustained. Based on debtors' failure to tender all plan payments to the chapter 13 trustee, the debtors have failed to carry their burden of establishing that the plan is feasible. Accordingly, the objection is sustained under 11 U.S.C. § 1325(a)(6).

Vaughn's objection that the plan fails to provide an appropriate rate of interest on Vaughn's claim is overruled. The debtor must provide the appropriate value as of the effective date of the plan. See 11 U.S.C. § 1325(a)(5)(B)(ii). The plan states that it is effective from the date it is confirmed. The court takes judicial notice pursuant to Federal Rule of Evidence 201 that the current prime rate is 5.00%. See <http://www.federalreserve.gov/releases/h15/update/>. Debtor proposes to treat Vaughn's claim in class 2 with a 10.00% interest rate. The interest rate proposed in the plan is well above the prime rate. Vaughn has not provided evidence showing that an upward adjustment of more than five points is appropriate here. Till et ux. v. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787 (2004). The court declines to determine an appropriate rate of interest on Vaughn's claim.

The court declines to reach the merits of the balance of the arguments raised by Vaughn.

The court will issue a minute order.

130. [08-28034](#)-B-13J STEVEN/JAMIE SCOTT
APN #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN BY NISSAN-INFINITI LT'S
8-7-08 [24]

Disposition Without Oral Argument: The objection is overruled as moot because the bankruptcy case was dismissed by order entered on August 22, 2008.

The court will issue a minute order.

131. [08-25038](#)-B-13J GLORIA VALENCIA
MAA #3

HEARING - MOTION TO
VALUE COLLATERAL OF MIDCOUNTRY
BANK
8-12-08 [[63](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

132. [08-29038](#)-B-13J YEVGENIY KARAVAY

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-7-08 [[11](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Considering the automatic extension provided in Bankruptcy Rule 9006(a), this case was automatically dismissed at 12:01 am on August 19, 2008 pursuant to 11 U.S.C. § 521(i).

The court will issue a minute order.

133. [08-28347](#)-B-13J JOSEPH TAKAPU
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

134. [08-28347](#)-B-13J JOSEPH TAKAPU
MDE #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN AND OPPOSITION TO MOTION
TO VALUE COLLATERAL OF HSBC
AUTO FINANCE
8-7-08 [[19](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

135. [08-28753](#)-B-13J FAVIO SOSA

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-4-08 [[16](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. An order confirming dismissal of the bankruptcy case pursuant to 11 U.S.C. § 521(i) was entered on August 22, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

136. [08-28057](#)-B-13J LILIA LAVY
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[17](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

137. [08-24467](#)-B-13J HENRY/VICTORIA FONTES
KAT #1

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN AND MOTION/APPLICATION
TO VALUE COLLATERAL OF
WASHINGTON MUTUAL MORTGAGE
8-7-08 [[71](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

138. [08-28167](#)-B-13J ERROL/MELANI LAYTON
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

139. [08-29271](#)-B-13J MOHAMMED/FAHIMA SAFI

CONT. HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
7-17-08 [[10](#)]

CONT. FROM 8-12-08

Disposition Without Oral Argument: The order to show cause is discharged because the debtors filed the missing document on August 12, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

140. [06-25472](#)-B-13J DEWEY MCDANIEL
WGM #1
WASHINGTON MUTUAL BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
ON REAL PROPERTY
8-5-08 [[120](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. However, in this instance, the court issues the following tentative ruling.

The motion is denied as moot.

Debtors confirmed their initial chapter 13 plan on March 19, 2007. That plan provided for movant's claim in Class 4. As set forth in the plan's treatment of Class 4 claims, the entry of the confirmation order "constitute[d] an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation provided this case is then pending under chapter 13." Movant has had from and after that date the relief requested in this motion.

Additionally, the court notes that the filing of debtor's first modified plan on May 28, 2008 does not alter this result. Debtor's first modified plan provides for movant's claim in class 3. Nevertheless, the filing of the first modified plan does not change the fact that the automatic stay has already been modified with respect to movant's claim. Once the automatic stay has been modified, bankruptcy courts in this circuit have no power to reinstate it. Canter v. Canter (In re Canter), 299 F.3d 1150, 1155 n.1 (9th Cir. 2002).

Because the initial plan was confirmed more than a year before this motion was filed, the reasonable fees for bringing this motion are \$0.00.

The court will issue a minute order.

141. [08-28074](#)-B-13J EUGENE/KATHRYN DOLE
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[15](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

142. [08-20575](#)-B-13J DEBORAH KANIA
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[56](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

143. [08-27776](#)-B-13J CARLIE HODGES-KENT
JMW #1
U.S. BANK NATIONAL ASSOC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY,
INCLUDING PROSPECTIVE AND IN
REM RELIEF FROM THE AUTOMATIC
STAY; OR IN THE ALTERNATIVE FOR
AN ORDER CONFIRMING THAT NO
AUTOMATIC STAY IS IN EFFECT,
ET AL.
8-6-08 [[24](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

144. [08-27578](#)-B-13J PATRICK/ANTONETTE HARRIS

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-8-08 [[20](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. By order entered August 15, 2008, the court confirmed dismissal of the bankruptcy case as of July 22, 2008 pursuant to 11 U.S.C. § 521(i). (Dkt. 23). No monetary sanctions are imposed.

The court will issue a minute order.

145. [08-27681](#)-B-13J JOSE MACIAS
RWS #1

HEARING - OBJECTION TO
CONFIRMAITON OF DEBTOR'S CHAPTER
13 PLAN BY BANKRUPCY RECEIVABLES
MANAGEMENT
7-31-08 [[17](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

146. [08-29287](#)-B-13J GUDALUPE/ELDA VILLALPANDO
MAA #1

HEARING - MOTION TO
VALUE COLLATERAL OF HSBC
MORTGAGE SERVICES
8-5-08 [[23](#)]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on August 19, 2008 and is removed from the calendar.

147. [08-27188](#)-B-13J MARY XIROUHAKIS
KAT #1

HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN BY MORTGAGE ELECTONIC
REGISTRATION SYSTEMS, INC.
8-6-08 [[27](#)]

Disposition Without Oral Argument: The objection is overruled as moot because the bankruptcy case was dismissed by order entered on August 22, 2008. (Dkt. 31).

The court will issue a minute order.

148. [08-28190](#)-B-13J DAVID/MONICA ALLSTON
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[24](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

149. [08-28990](#)-B-13J KEVIN ALEXANDER

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-7-08 [[22](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the missing filing fee installment on August 21, 2008. (Dkt. 26). No monetary sanctions are imposed.

The court will issue a minute order.

150. [08-20092](#)-B-13J KIMBERLY CASTLEMAN
PGM #1

CONT. HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
6-23-08 [[24](#)]

CONT. FROM 8-12-08

Tentative Ruling: This matter continued from August 12, 2008 without a briefing schedule. Nothing further having been filed in this matter, the court issues the following tentative ruling.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The chapter 13 trustee's objection is sustained. The motion is denied.

The trustee's objection is sustained for the reason set forth in the chapter 13 trustee's written opposition. The plan is not sufficiently funded to provide for payment of the priority claim to the Franchise Tax Board (the "FTB") in full. The debtor's arguments raised in her reply fail. First, the trustee's plan calculation (Dkt. 30) does not include the claim of Wells Fargo Auto Financial. The plan calculation notes the amount of the claim, but does not show that the trustee included the claim in determining that the plan would take 105 months to complete.

Second, the debtor overlooks the fact that the FTB has filed more than one claim in this case. On February 20, 2008, the FTB filed two claims in this case. The FTB filed claim no. 4 asserting an unsecured priority claim in the amount of \$856.57, based on unpaid taxes for the period ending December 31, 2004. The FTB also filed claim no. 5 asserting a general unsecured claim of \$1,517.69 and an unsecured priority claim of \$5,557.09. On June 26, 2008, the FTB amended both claims by filing claim nos. 18 and 19. Claim no. 18 amended claim no. 4 to assert a general unsecured claim of \$11,760.09 and an unsecured priority claim of \$13,224.92. Claim no. 19 amended claim no. 5 to assert a \$0.00 claim. Thus, the FTB continues to assert a \$13,224.92 priority claim in this case. Until such time as that claim is amended or disallowed by order of the court, the filed claim continues to control its amount and

classification. The trustee's plan calculation is correct.

The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).

The court will issue a minute order.

151. [08-28195](#)-B-13J SAMVEL PASKEVICHYAN HEARING - OBJECTION
JPJ #2 TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[17](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. An order confirming dismissal of the bankruptcy case pursuant to 11 U.S.C. § 521(i) was entered on August 22, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

152. [08-28297](#)-B-13J RICARDO MARTINEZ HEARING - OBJECTION
JPJ #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

153. [08-28299](#)-B-13J ROC GANTT AND HEARING - OBJECTION
JPJ #1 LUCY CONCEPCION TO CONFIRMATION OF PLAN
BY TRUSTEE
8-7-08 [[14](#)]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on August 15, 2008 and is removed from the calendar.

154. [08-27667](#)-B-13J CICIRO REYES HEARING - RESPONSE TO
WGM #1 DEBTOR'S MOTION TO VALUE
COLLATERAL OF WASHINGTON
MUTUAL BANK
8-14-08 [[43](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter was incorrectly placed on the court's calendar, as it is a

reply involving matter number 76 on the court's calendar. The matter is therefore dropped from this calendar, and its merits will be addressed elsewhere on the calendar.

155. [08-28190](#)-B-13J DAVID/MONICA ALLSTON
KWS #1
- HEARING - OPPOSITION TO
CONFIRMAITON OF CHAPTER 13
PLAN BY SACRAMENTO MUNICIPAL
UTILITY DISTRICT
8-13-08 [[28](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter. The objection is overruled as moot.

On August 21, 2008, the debtor filed a notice of withdrawal of the initial plan. (Dkt. 41). The filing of the notice of withdrawal withdraws the plan to which the creditor's objections are directed.

The court will issue a minute order.

156. [08-27339](#)-B-13J JOAN WASHBURN
JPJ #1
- HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
7-30-08 [[17](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

157. [08-27823](#)-B-13J WILLIAM/SUSAN BARTSHE
MDE #1
- HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
8-22-08 [[21](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter. The objection to confirmation is overruled as untimely. The objecting creditor filed the objection on August 22, 2008. General Order 05-03 ¶ 3(c) and the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines (Dkt. 9) required objections to confirmation and opposition to attached motions to value to be filed by July 31, 2008.

Nothing in this ruling constitutes confirmation of the plan. The plan depends on the granting of a motion to value the collateral of Homeq Servicing. The debtors have filed a motion to value the collateral of Homeq Servicing, set for hearing on September 9, 2008 at 9:30 a.m. The court acknowledges that the debtors filed an attached motion to value Homeq Servicing's collateral with the plan, but the court construes the filing of the separate motion to value as a withdrawal of the attached motion to value.

The court will issue a minute order.