

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

September 9, 2008 at 9:30 A.M.

1. [08-29007](#)-B-13J RAMONA SAUNDERS 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. In response to a creditor request under 11 U.S.C. § 521(i)(2), the court has elsewhere on this calendar confirmed the automatic dismissal of this case at 12:01 am on August 19, 2008 pursuant to 11 U.S.C. § 521(i)(1).

The court will issue a minute order.

2. [08-30835](#)-B-13J MICHAEL BRUNSON HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-14-08 [[8](#)]

Tentative Ruling: None.

3. [08-29164](#)-B-13J THERESA STEVENS HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-12-08 [[13](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. This case was automatically dismissed at 12:01 am on August 23, 2008 pursuant to 11 U.S.C. § 521(i).

The court will issue a minute order.

4. [08-29170](#)-B-13J EMMA NERSESYAN

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-13-08 [[15](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the missing filing fee installment on August 15, 2008. (Dkt. 21). No monetary sanctions are imposed.

The court will issue a minute order.

5. [05-21206](#)-B-13J VALERIE DAVIS
MDE #1
CITIMORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-5-08 [[22](#)]

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 the movant to foreclose on the real property located at 7441-P Auburn Oaks Court, Citrus Heights, CA 95621 (APN 204-0610-040-0006) (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 movant's collateral. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not 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 confirmed a plan on April 15, 2005. Confirmation is res judicata on issues of adequate protection, lack of equity and necessity for successful rehabilitation. In re Evans, 30 B.R. 530 (9th Cir. BAP 1983). Therefore, once a plan is confirmed, the only ground for granting relief from stay is a breach of that plan. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985). Movant alleges without dispute that the debtor is delinquent at least \$3,097.32 in class 4 plan payments. Therefore, debtor is in default under the confirmed plan. 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.

6. 08-26610-B-13J GEOFFREY WHITWORTH
JHK #1
DCFS TRUST, VS.

HEARING - MOTION FOR
RELIEF FROM THE AUTOMATIC
STAY AND CO-DEBTOR STAY
8-7-08 [44]

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 to the extent set forth herein. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to obtain possession of its collateral, a 2007 Dodge Ram 1500 (VIN 3D7KS19D07G744451) (the "Collateral"), to dispose of the Collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorney's fees awarded herein. Relief from the co-debtor stay is granted for the purposes stated above. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

The court has yet to confirm a plan in this case. The debtor's only plan on file in this case, which was denied confirmation on July 25, 2008, proposed to pay the movant's claim as a class 2 claim. Prior to confirmation, cause for relief from the automatic stay under Section 362(d)(1) exists if the movant is not adequately protected. Pursuant to 11 U.S.C. § 1326(a)(1)(A), within thirty days of the earlier of the filing of the petition or the filing of the plan, the debtor is to make payments proposed by the plan to the trustee. Pursuant to General Order 05-03 ¶ 5(c), the trustee is to then make adequate protection payments to holders of class 2 secured claims that are required by section 1326(a)(1)(C) and the proposed plan, whether or not the plan has been confirmed. The debtor's performance under § 1326(a) and the terms of the proposed plan thus normally constitute adequate protection.

Here, the movant has failed to comply with Local Bankruptcy Rule 4001-1(d)(2), and the motion could be denied on that basis. However, the movant alleges without dispute that it has not received any payments from the chapter 13 trustee in respect of its claim, and the trustee has filed a motion to dismiss (Dkt. 58) which alleges that the debtor is delinquent in payments to the trustee. The debtor's only plan on file was denied confirmation on July 25, 2008, and the debtor has not filed an amended plan. These facts constitute cause for relief from the automatic stay.

Continuation of the co-debtor stay would irreparably harm the movant's interest in the Collateral. 11 U.S.C. § 1301(c)(3).

The court will issue a minute order.

7. [07-24522](#)-B-13J SUE SOUTHWICK
APN #1
TOYOTA LEASE TRUST, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-8-08 [[132](#)]

Tentative Ruling: 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). In this instance, the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to obtain possession of the leased vehicle, a leased 2006 Lexus RX330 (VIN JTJHA31U560102712) (the "Vehicle"), to dispose of the Vehicle pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorney's fees awarded herein. The court awards no fees and costs. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

The court confirmed a plan on June 6, 2008. The confirmed plan assumed the subject lease and requires the debtor to make post-petition payments directly to the lessor. Confirmation is res judicata on issues of adequate protection, lack of equity and necessity for successful rehabilitation. In re Evans, 30 B.R. 530 (9th Cir. BAP 1983). Therefore, once a plan is confirmed, the only ground for granting relief from stay is a breach of that plan. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985). Movant alleges without dispute that the debtor is delinquent at least \$1,463.31 in post-petition direct payments required under Section 4.01 of the plan. Therefore, debtor is in default under the confirmed plan. These facts constitute cause for relief from the automatic stay.

Because the movant has not established that it is the holder of a secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

8. [08-28034](#)-B-13J STEVEN/JAMIE SCOTT
APN #2
NISSAN-INFINITI, LT, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-7-08 [[28](#)]

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

Because the movant has not established that it is the holder of a secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

9. [08-27339](#)-B-13J JOAN WASHBURN
SSK #1
SASHI KUMAR, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-31-08 [[22](#)]

Tentative Ruling: This motion is denied without prejudice or continued with the movant's consent to September 23, 2008 at 9:30 a.m.

The movant did not serve the debtor with the motion. The certificate of service filed by the debtor states that the debtor served only the chapter 13 trustee and the debtor's counsel with the motion. (Dkt. 22 at 2). There is therefore no presumption of service on the debtor. Service on the debtor is required under F.R.Bankr.P. 9014(b) and 7004(b)(9). F.R.Bankr.P. 9014(b) specifically states that "any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R.Civ.P.," i.e., on counsel if the debtor is represented by counsel in connection with the motion.

If the movant consents to the continuance, then on or before September 9, 2008, the date of this hearing, the movant shall serve a copy of the motion, its supporting papers, and notice of the continued hearing on the debtor. The movant shall also serve the notice of the continued hearing on all other appropriate parties in interest and file the notice with the court. Proof of service shall be filed within three court days thereafter. LBR 9014-1(e)(2). If the movant fails to do any of the foregoing the motion will be denied without prejudice for improper service.

The movant's consent to the continuance shall constitute a waiver of the time limitations contained in 11 U.S.C. § 362(e).

The court will issue a minute order.

10. [08-25054](#)-B-13J GUADALUPE NEVAREZ
JMS #2
CHASE HOME FINANCE, LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-5-08 [[46](#)]

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 debtor's amended plan was confirmed by order entered on September 7, 2008 and treats the movant's claim as a class 3 claim to be satisfied by the surrender of the collateral, the debtor's residence located at 1441 Delwood Avenue, Vallejo, CA 94591 (APN 0072032100) (the "Property"). 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.

The court will issue a minute order.

11. [08-28555](#)-B-13J NIKOLAY KONSTANTINOV
PD #1
AMERICA'S SERVICING CO., VS.

HEARING - MOTION FOR
IN REM RELIEF FROM AUTOMATIC
STAY, OR ALTERNATIVELY, MOTION
TO CONFIRM AUTOMATIC STAY IS
NOT EFFECT
8-13-08 [[19](#)]

Disposition Without Oral Argument: The motion is denied as moot. This case was automatically dismissed at 12:01 am on August 12, 2008 pursuant to 11 U.S.C. § 521(i), which dismissal was confirmed by order entered August 22, 2008. (Dkt. 25).

The court will issue a minute order.

12. [07-29564](#)-B-13J SHARI FRAZIER
TJS #1
JP MORGAGE CHASE BANK, N.A. VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-1-08 [[84](#)]

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 denied.

Through this motion, movant seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2001 Lexus GS300 (VIN JT8BD69S410122056), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. Movant claims that debtor has failed to remit one plan payment to the movant. Debtor, on the other hand, claims that she is current under the first modified plan and that the motion should be denied.

The court confirmed debtor's first modified plan on August 29, 2008. Confirmation is res judicata on issues of adequate protection, lack of equity and necessity for successful rehabilitation. In re Evans, 30 B.R. 530 (9th Cir. BAP 1983). Therefore, once a plan is confirmed, the only ground for granting relief from stay is a breach of that plan. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985). Here, movant has not shown that debtor is in default under the confirmed plan. The first modified plan (Dkt. 81) proposes monthly payments of \$4,400.00 through June 2008, \$1,100.00 for one month, and then \$800.00 for fifty-two months, beginning August 2008. The chapter 13 trustee's "receipt ledger" dated July 23, 2008, which movant filed in support of the motion, shows that debtor remitted plan payments totaling \$4,400.00 through April 22, 2008 and then made a payment of \$1,120.00 on July 21, 2008. (Dkt. 87 at 6). Based on these figures, debtor is current under the plan. Accordingly, movant has not shown cause for relief from the automatic stay.

The court will issue a minute order.

13. [05-35466](#)-B-13J ROSETTA BOLTON HEARING - MOTION FOR
IRS #1 RELIEF FROM STAY TO ALLOW
THE UNITED STATES OF FOR RIGHT OF SETOFF
AMERICA, IRS, VS. 7-25-08 [[71](#)]

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 to allow the movant, the Internal Revenue Service ("the Service") to exercise its right of setoff against \$2,332.00 of the debtor's income tax refund for the year 2002. Except as so ordered, the motion is denied.

The Service has presented evidence that it holds a claim for unpaid income taxes assessed in the year 2001, prior to the filing of the petition, and alleges without dispute that the debtor is owed a tax refund of \$2,332.00 for the 2002 tax year. By establishing its right to setoff pursuant to 11 U.S.C. § 553(a), the movant has made a prima facie showing of cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1). See In re Orlinki, 140 B.R. 600, 603 (Bankr. S.D. Ga. 1991). The debtor has filed a statement of non-opposition to the motion and has therefore failed to overcome the movant's prima facie showing.

The court will issue a minute order.

14. [08-25481](#)-B-13J JOHN IBARRA, JR. CONT. HEARING - MOTION FOR
SW #3 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER SERVICES 7-298-08 [[123](#)]
INC., VS.

CONT. FROM 8-12-08

Disposition Without Oral Argument: The motion is denied as moot because the bankruptcy case was dismissed by order entered on September 8, 2008. (Dkt. 158).

The court will issue a minute order.

15. [06-24700](#)-B-13J MATTHEW/ELIZABETH WHITE CONT. HEARING - DEBTORS'
CC #1 MOTION TO CONFIRM FIRST
MODIFIED CHAPTER 13 PLAN
6-23-08 [[32](#)]

CONT. FROM 8-12-08

Tentative Ruling: This matter was continued from August 12, 2008 without a briefing schedule after counsel's attention was drawn to California Probate Code § 13101. Nothing further has been filed in this matter since the prior hearing. In this instance, the court issues the following tentative ruling.

The motion is denied.

The proposed plan is not signed by the debtor, Mr. Matthew White. Each co-debtor's signature is required on the plan.

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.

16. [08-28601](#)-B-13J CHRISTOPHER/MEGAN SOLOMON HEARING - OBJECTION
JPJ #2 TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[23](#)]

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.

17. [08-28701](#)-B-13J WILLIAM/VERNA COSTA HEARING - MOTION
BSJ #1 TO CONFIRM DEBTOR'S
CHAPTER 13 PLAN
7-14-08 [[17](#)]

Tentative Ruling: The court notes that the instant motion is unnecessary, as debtors filed the plan in compliance with ¶ 3(a) of GO 05-03. Nevertheless, because debtors have filed a motion to confirm, debtors are proceeding to confirmation under ¶ 8 of GO 05-03. In this instance, the court issues the following tentative ruling.

The motion to avoid lien attached to the plan is denied without prejudice for procedural defects. The trustee's objections are sustained. The motion to confirm the plan filed July 14, 2008 (Dkt. 16) is denied.

The attached motion to avoid the lien of Litton Loan Servicing is denied without prejudice due to procedural defects. The court notes that attached to the plan is an attached motion to avoid the lien of Litton Loan Servicing. Attached motions to avoid liens pursuant to section 522(f) or motions to value collateral are permitted by Paragraph 3(b) of General Order 05-03. Paragraph 8(a) of General Order 05-03, under which the attached motion is brought, contains no provision for attached motions. Even if the attached motion was permitted here, the motion was required to have been served with a separate notice of the motion. Here, debtors failed to file or serve a separate notice of the attached motion to avoid lien. Accordingly, the attached motion to avoid lien is procedurally improper.

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

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 no tentative ruling on this request.

The court will issue a minute order.

18. [08-28701](#)-B-13J WILLIAM/VERNA COSTA HEARING - OBJECTION
JPJ #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[35](#)]

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.

19. [07-29502](#)-B-13J MARK/LORETTA ADDIS HEARING - MOTION
MAA #2 TO MODIFY CHAPTER 13 PLAN
8-5-08 [[44](#)]

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 no tentative ruling on the request.

The court will issue a minute order.

20. [08-27405](#)-B-13J FRANCO DELOSREYES
APN #1

CONT. HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN AND TO THE MOTION TO
VALUE ITS COLLATERAL CONTAINED
THEREIN BY WELLS FARGO FINANCIAL
7-3-08 [[13](#)]

CONT. FROM 8-12-08

Disposition Without Oral Argument: This matter continued from August 12, 2008 with a briefing schedule. Opposition was due by August 26, 2008. Replies, if any, were due by September 2, 2008. No briefs have been filed in this matter pursuant to the briefing schedule. The court therefore resolves the matter without oral argument.

The attached motion to value Wells Fargo Bank's collateral is denied without prejudice. Wells Fargo Bank's objections are sustained in part and overruled in part. The motion seeking to confirm the plan filed June 3, 2008 is denied.

The attached motion to value the collateral of Wells Fargo Bank ("WFB") is denied without prejudice as it is procedurally improper. Attached to the plan is a motion to value WFB's collateral, a 2005 Scion XB Sport Wagon, at \$7,785.00. Attached motions to value collateral are permitted by Paragraph 3(b) of General Order 05-03. Paragraph 8(a) of General Order 05-03, under which the present motion is brought, contains no provision for attached motions to value collateral. Even if attached motions were permitted here, each such motion must be served with a separate notice of the motion. Here, debtor failed to file or serve a separate notice of the attached motion to value collateral.

WFB's objection that the plan fails to comply with 11 U.S.C. § 1325(a)(5) is sustained. The plan proposes to treat WFB's claim in class 2 with a claim amount of \$7,785.00, an interest rate of 6.5%, and a monthly dividend of \$100.00. On June 12, 2008, WFB filed a claim in the secured amount of \$11,625.00 and in the unsecured amount of \$6,062.39 for a total claim amount of \$17,687.39. (POC 2). 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. Considering a claim amount of \$11,625.00, an interest rate of 6.5%, 12 payments per year, and 60 total payments, WFB must receive monthly payments of at least \$227.46. The plan's proposed monthly dividend of \$100.00 is less than the minimum amount (\$227.46) needed to pay WFB's claim in full through the plan. Accordingly, the plan is underfunded as to WFB's claim.

WFB's objection that the 6.50% interest rate proposed to be paid on its claim is insufficient because it is not a "market rate" of interest is overruled. To the extent that WFB 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 WFB'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/update/>. Starting from the prime rate and adjusting upward places the evidentiary burden "squarely on the creditors." Till, 541 U.S. at 479. The debtor 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 roughly ten points to 16.24%. Accordingly, the objection is overruled. The court declines to determine an appropriate rate of interest on WFB claim.

The court declines to reach the merits of the balance of WFB's arguments.

The debtor has failed to carry his 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.

21. [08-25707](#)-B-13J PAM BJORK
JPJ #1

HEARING - TRUSTEE'S
MOTION TO RECONVERT CASE TO
A CHAPTER 7 PROCEEDING OR IN
THE ALTERNATIVE DISMISS CASE
8-6-08 [[15](#)]

Disposition Without Oral Argument: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of the debtor and all other parties 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, the matter is resolved without oral argument.

The motion is granted, and this case is converted to one under chapter 7.

By this motion the chapter 13 trustee requests that this case be dismissed or reconverted to one under chapter 7. The trustee's motion alleges that the debtor has failed to prosecute this case by failing to take the steps necessary to confirm a plan in this case, warranting conversion or dismissal under 11 U.S.C. § 1307(c)(1). In particular, the trustee alleges that debtor failed to file a plan in compliance with ¶ 3(a) of GO 05-03 and also failed to file a plan and motion to confirm in compliance with ¶ 8 of GO 05-03. The debtor has not filed written opposition to this motion. The court notes that the debtor filed an amended plan and a motion to confirm on August 14, 2008, after the trustee filed the instant motion. Considering the foregoing, the court finds that the debtor's inability to confirm a plan in the more than six months that this case has been pending constitutes an unreasonable delay

that is prejudicial to creditors and grounds for dismissal or conversion of this case under 11 U.S.C. § 1307(c) (1).

The court finds that reconversion of this case to one under chapter 7 rather than dismissal is in the best interests of creditors and the estate, as there is \$1,133,334.00 of non-exempt property in the estate.

The court will issue a minute order.

22. [08-22308](#)-B-13J KEVIN SAY HEARING - MOTION
CC #1 TO CONFIRM DEBTOR'S FIRST
AMENDED CHAPTER 13 PLAN
7-16-08 [[27](#)]

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 16, 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 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.

23. [08-28808](#)-B-13J DAVID/SHAWNDA PRUITT HEARING - OBJECTION
JPJ #1 TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[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.

24. [08-25610](#)-B-13J MANUEL/ROSE AVILA HEARING - MOTION TO
SS #2 VALUE COLLATERAL OF
GREENPOINT MORTGAGE
7-31-08 [[31](#)]

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, GreenPoint Mortgage's collateral securing its

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.

27. [08-21714](#)-B-13J JAMES BLACK
PLG #1

HEARING - MOTION FOR
CONFIRMATION OF DEBTOR'S
MODIFIED CHAPTER 13 PLAN
8-1-08 [[25](#)]

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 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 filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on this request.

The court will issue a minute order.

28. [08-21714](#)-B-13J JAMES BLACK
PLG #2

HEARING - MOTION
TO VALUE COLLATERAL OF
AMERICAN GENERAL
7-22-08 [[20](#)]

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, American General's collateral securing its second deed of trust, real property located at 538 Silver Sky Court, Rio Linda, CA 95673, had a value of \$218,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Saxon Mortgage with a balance of \$352,019.08. Thus, the value of the collateral available to American General 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.

29. [08-21714](#)-B-13J JAMES BLACK
PLG #3

HEARING - MOTION
TO VALUE COLLATERAL OF
AMERICAN GENERAL CREDIT
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, American General Credit's collateral, a 1993 Chevy 3500 pickup, had a value of \$800.00 on the date of the petition. Thus, \$800.00 of the creditor'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.

30. [08-21018](#)-B-13J WILLIAM/PAULETTE CONWAY
SAC #4

HEARING - MOTION
FOR ORDER AUTHORIZING DEBTORS
TO EMPLOY ATTORNEYS
8-8-08 [[101](#)]

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 without prejudice.

The debtors have failed to cite any authority showing that court approval of employment of counsel for a chapter 13 debtor is necessary or authorized by the Bankruptcy Code. See, e.g., Holland v. EMC Mortgage Corporation (In re Holland), 374 B.R. 409 (Bankr. D. Mass. 2007); In re Powell, 314 B.R. 567, 569-570 (Bankr. N.D. Tex. 2004); In re Gutierrez, 309 B.R. 488, 500-501 (Bankr. W.D. Tex. 2004)

The court will issue a minute order.

31. [08-23520](#)-B-13J CINDY ENRIQUEZ
ADS #1

HEARING - MOTION
TO CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
7-22-08 [[25](#)]

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). Opposition may be presented at the hearing. The court issues no tentative ruling on that request.

The court will issue a minute order.

32. [08-26722](#)-B-13J MANUEL/DENISE HERNANDEZ HEARING - DEBTORS'
PLG #1 MOTION TO CONFIRM FIRST
MODIFIED CHAPTER 13 PLAN
7-21-08 [[27](#)]

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 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), 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.

33. [08-28922](#)-B-13J MICHAEL CHASTAIN AND HEARING - MOTION
MAA #1 JENNIFER UDOUTCH TO VALUE COLLATERAL OF
CITIFINANCIAL RETAIL SERVICES
7-18-08 [[14](#)]

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, Citifinancial Retail Services' collateral, a couch and an entertainment center, had a value of \$500.00 on the date of the petition. Thus, \$500.00 of the creditor'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.

34. [08-28922](#)-B-13J MICHAEL CHASTAIN AND HEARING - MOTION
MAA #2 JENNIFER UDOUTCH TO VALUE COLLATERAL OF
HOMECOMINGS FINANCIAL
7-18-08 [[18](#)]

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, Homecomings Financial's collateral securing its second deed of trust, real property located at 9950 Redstone Drive, Sacramento, CA 95827, had a value of \$215,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Indymac Bank with a balance of \$252,000.00. Thus, the value of the collateral available to Homecomings Financial 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.

35. [08-27823](#)-B-13J WILLIAM/SUSAN BARTSHE
JAT #1

HEARING - MOTION TO
VALUE COLLATERAL OF HOMEQ
SERVICING AND AVOIDANCE OF
LIEN
7-28-08 [[14](#)]

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 debtors did not properly serve HomeQ Servicing ("HQS"), the creditor whose collateral the debtors 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 HQS generally at a P.O. Box in Sacramento, California and to the attention of a foreclosure department in Raleigh, North Carolina. (Dkt. 17). Neither of these attempts satisfy the requirements of Fed. R. Bankr. P. 7004(b)(3).

On or before September 9, 2008, the date of this hearing, the debtors shall serve the motion, its supporting papers, and notice of the continued hearing on HQS in the manner required by Bankruptcy Rule 7004. 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.

The court will issue a minute order.

36. [08-25326](#)-B-13J NATHAN BEAN
BSJ #1

HEARING - MOTION
TO CONFIRM DEBTOR'S FIRST
AMENDED CHAPTER 13 PLAN
7-14-08 [[25](#)]

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

The motions attached to the plan, a motion to avoid lien and a motion to value collateral, are denied without prejudice for procedural defects. The trustee's objections are sustained. The motion to confirm the plan filed July 14, 2008 is denied.

The motions attached to the plan are denied without prejudice due to procedural defects. Attached to the plan are a motion to avoid the lien of American General Finance and a motion to value Sacramento County Tax Collector's collateral. Attached motions to avoid liens pursuant to section 522(f) or motions to value collateral are permitted by Paragraph 3(b) of General Order 05-03. Paragraph 8(a) of General Order 05-03, under which the instant motions are brought, contains no provision for attached motions. Even if the attached motions were permitted here, the motions were required to have been served with a separate notice of the motion. Here, debtors failed to file or serve a separate notice of the attached motions. Accordingly, the attached motions are procedurally improper.

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

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 no tentative ruling on this request.

The court will issue a minute order.

37. [08-29027](#)-B-13J GWENDOLYN WILSON
LKM #1

HEARING - DEBTOR'S
MOTION TO VALUE COLLATERAL
OF HSBC MORTGAGE SERVICES
8-1-08 [[15](#)]

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, HSBC Mortgage Service's collateral securing its second deed of trust, real property located at 3328 Kittiwake Drive, Sacramento, CA 95833, had a value of \$315,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by GMAC Mortgage with a balance of \$344,565.00. Thus, the value of the collateral available to HSBC Mortgage Services 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.

38. [08-29729](#)-B-13J MICHAEL/CELISA PRIEST HEARING - DEBTOR'S
LKM #1 MOTION TO VALUE COLLATERAL OF
PROVIDENT FUNDING ASSOCIATION
8-8-08 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1). In this instance, the court issues the following tentative ruling.

Creditor Provident Funding Association ("PFA") filed a response on August 27, 2008. The response does not dispute debtors' valuation of the subject property. Instead, the response argues that PFA's lien cannot be avoided until completion of the plan and entry of the discharge. The motion does not request avoidance of PFA's lien at this time. Based on the substance of PFA's response, particularly its failure to contest debtors' valuation of the property, the court considers this motion unopposed.

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, PFA's collateral securing its second deed of trust, real property located at 3392 Corvina Drive, Rancho Cordova, CA 95670, had a value of \$380,000.00 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 \$409,144.27. Thus, the value of the collateral available to PFA on its second deed of trust is \$0.00. \$0.00 of PFA'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.

39. [07-30830](#)-B-13J STEVEN/LEYNA IRWIN HEARING - MOTION
SDB #2 TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
7-23-08 [[69](#)]

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 filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on that request.

The court will issue a minute order.

40. [08-23131](#)-B-13J JERROLD/ROTANDA LLOPIS ADS #3 HEAIRNG - MOTION TO CONFIRM FIRST AMENDED CHAPTER 13 PLAN 7-22-08 [[71](#)]

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 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), 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.

41. [08-29133](#)-B-13J ANGELO/JENNIFER ZANASSI LKM #1 HEARING - DEBTOR'S MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION 8-1-08 [[14](#)]

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, Safe Credit Union's collateral securing its second deed of trust, real property located at 8552 Twin Trails Drive, Antelope, CA 95843, had a value of \$290,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Indymac Bank with a balance of \$328,961.25. Thus, the value of the collateral available to Safe Credit Union 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.

42. [04-20535](#)-B-13J AARON/SHAWNA KELLEY
WW #11

HEARING - FINAL
APPLICATION RE: ADDITIONAL
FEES AND EXPENSES IN CHAPTER
13 CASE (\$5,573.25 FEES;
\$243.28 COSTS)
8-11-08 [[152](#)]

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.

The application is approved for a total of \$5,816.53 in fees and costs to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524.

On January 20, 2004, the debtors filed a chapter 13 petition. As part of confirmation of the debtors' chapter 13 plan, applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$2,500.00 through the plan. (Dkt. 15). The debtors' attorney now seeks additional compensation through March 18, 2008, in the amount of \$5,573.25 in fees and \$243.28 in costs.

As set forth in the attorney's application, these fees are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work applicant has done in this case is sufficient greater than a "typical" chapter 13 case so as to justify additional compensation under the Guidelines. In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

The court will issue a minute order.

43. [08-27935](#)-B-13J JERRY/CONCEPCION TORRICER
KAK #1

HEARING - MOTION TO
VALUE COLLATERAL OF BENEFICIAL
7-29-08 [[19](#)]

Tentative Ruling: This motion has been filed pursuant to LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties 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). In this instance, the court issues a tentative ruling.

The motion is denied without prejudice.

The debtors seek to value the collateral of "BENEFICIAL," real property located at 5221 Kungsting Way, Elk Grove, CA 95757 (the "Property"), by asserting that the "value of the collateral is \$0.00." (Dkt. 19 at 2). First, the court cannot determine whether this motion has been properly

45. [07-27841](#)-B-13J GARY/PAMELA STEEGE
WW #2

HEARING - MOTION TO
CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
7-30-08 [[55](#)]

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 30, 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. [07-27841](#)-B-13J GARY/PAMELA STEEGE
WW #3

HEARING - MOTION
TO VALUE THE COLLATERAL OF
AMERICAN GENERAL FINANCE
7-30-08 [[61](#)]

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, American General Finance's collateral, consisting of a couch, a loveseat, and a chaise lounge, had a value of \$800.00 on the date of the petition. Thus, \$800.00 of the creditor'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.

47. [08-28542](#)-B-13J JUSTIN/JENNIFER GRINDER
SAC #1

HEARING - MOTION TO
VALUE COLLATERAL OF WILSHIRE
CREDIT CORPORATION AND FORD
MOTOR CREDIT
7-30-08 [[18](#)]

Disposition Without Oral Argument: The motion is denied as moot because the bankruptcy case was dismissed by order entered on August 22, 2008. (Dkt. 35).

The court will issue a minute order.

48. [08-26646](#)-B-13J IVAN CAMPBELL
PLG #2

HEARING - DEBTOR'S
MOTION TO CONFIRM FIRST
AMENDED CHAPTER 13 PLAN
7-31-08 [[36](#)]

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 31, 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 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.

49. [05-38547](#)-B-13J MARK/KENDAL AMICK
ADS #3

HEARING - MOTION
TO SET ASIDE DISMISSAL AND
REINSTATE CHAPTER 13 CASE
8-12-08 [[62](#)]

CASE DISMISSED 7-11-08

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1). In this instance, the court issues the following tentative ruling.

The motion is denied on its merits and due to a procedural defect.

A brief summary of factual background of this case is appropriate.

The debtors commenced this case by filing a voluntary chapter 13 petition on October 16, 2005. Debtors confirmed their initial plan by order entered on January 18, 2006 (Dkt. 16) and later their first modified plan by order entered on June 30, 2006 (Dkt. 29). On April 18, 2008, the chapter 13 trustee filed a notice of default and application to dismiss (Dkt. 55) ("Dismissal Motion"), which alleged that debtors were delinquent in plan payments in the amount of \$165.00 as of April 16, 2008. The Dismissal Motion also explained that debtors' bankruptcy case would be dismissed unless, within thirty days from April 18, 2008, debtors performed one of the following tasks: (1) file a written objection by May 18, 2008 and set it for hearing; (2) admit that there is a default in payments and cure the delinquent amount; or (3) admit that there is a default and file a modified plan and motion to confirm. On April 18, 2008, the Dismissal Motion was served on the debtors at their address of record (Dkt. 54) and on debtors' counsel at the firm's address of record. (Dkt. 57). Between April 18, 2008 and May 18, 2008, debtors did not file an objection to the Dismissal Motion, a modified plan, or a motion to confirm. On July 3, 2008, the chapter 13 trustee filed and served on all parties in interest a declaration in support of the Dismissal Motion which stated that debtors had failed to perform any of the three tasks listed in the Dismissal Motion. (Dkt. 58). By order entered on July 11, 2008, debtors' bankruptcy case was dismissed ("Dismissal Order"). (Dkt. 59).

Through the instant motion, debtors seek to set aside the Dismissal Order and reinstate their case. In support of this request, debtors concede that they were delinquent in plan payments in or about April 2008, which gave rise to the Dismissal Motion. Debtors do not challenge the Dismissal Motion nor claim that they performed any of the three tasks listed in the Dismissal Motion. Instead, debtors explain the causes of their delinquency, which include the death of a family member and problems with a psychologist which prevented debtor Kendal Amick from returning to work.

The motion fails to cite or discuss any legal authority in support of debtors' request. Pursuant to LBR 9014-1(d)(5), each motion shall cite the legal authority relied upon by the filing party. A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The debtors' motion really alleges newly discovered evidence pursuant to Federal Rule of Civil Procedure ("F.R.Civ.P.") 60(b)(2), made applicable to this case by Federal Rule of Bankruptcy Procedure ("F.R.Bankr.P.") 9024 - that they are now able to do what they were not able to do before. Unfortunately for debtors, to qualify as newly discovered evidence under F.R.Civ.P. 60(b)(2), the evidence must have existed at the time of the hearing or trial that generated the order or judgment from which the debtors seek relief. Jones v. Aero/Chem Corp., 921 F.2d 875, 878 (9th Cir. 1990). The evidence urged by debtors does not meet that requirement. The debtors' showing also fails to establish "mistake, inadvertence, surprise or excusable neglect". As stated above, it only shows that the debtors are now able to do what they were not able to do before. "Excusable neglect" implies that one could have done something at the appropriate time, but neglected to do so for reasons that are excusable. The debtors have not made that showing here.

A party is not entitled to judgment simply because no one opposes. All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007) ("...default does not entitle a plaintiff to judgment as a matter of right or as a matter of law.").

The court will issue a minute order.

50. [08-28649](#)-B-13J AAMIR/COLLEEN MOHAMMED
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[18](#)]

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.

51. [08-28750](#)-B-13J ROBERT/ELLEN HUMPHREY
JPJ #1
- HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[20](#)]

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.

52. [08-28950](#)-B-13J DAVID/ANALE WRIGHT
- HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN AND OPPOSITION TO MOTION
TO VALUE COLLATERAL OF AMERICAN
HONDA FINANCE CORPORATION
7-30-08 [[14](#)]

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 25, 2008 the debtors filed an amended plan. The filing of the amended plan constitutes a withdrawal of the plan and attached motion to which the objection is directed.

The court will issue a minute order.

53. [08-28950](#)-B-13J DAVID/ANALE WRIGHT
MBJ #1
- HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN BY SIERRA CENTRAL
CREDIT UNION
8-5-08 [[18](#)]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on August 27, 2008 and is removed from the calendar.

54. [08-28950](#)-B-13J DAVID/ANALE WRIGHT
JPJ #1
- HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[23](#)]

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 25, 2008 the debtors filed an amended plan. The filing of the amended plan constitutes a withdrawal of the plan to which the trustee's objection is directed.

The court will issue a minute order.

55. [08-24651](#)-B-13J STEVE/STACI GONZALES
JLK #1

HEARING - MOTION FOR
ORDER VALUING COLLATERAL
OF HSBC, ET AL.
7-28-08 [[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, HSBC's collateral securing its second deed of trust, real property located at 745 W. Cross Street, Woodland, CA 95695, had a value of \$286,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Carrington Mortgage Services with a balance of \$302,305.41. Thus, the value of the collateral available to HSBC 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.

56. [08-24651](#)-B-13J STEVEN/STACI GONZALES
JLK #2

HEARING - MOTION TO
CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
7-28-08 [[27](#)]

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 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), 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.

57. [08-23952](#)-B-13J RAGHBIR SINGH AND
PGM #2 RAMINDERJIT PELIA

HEARING - MOTION TO
CONFIRM DEBTORS' FIRST
AMENDED PLAN
7-23-08 [[34](#)]

Tentative Ruling: This motion has been filed pursuant to LBR 9014-1(f)(1). 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 chapter 13 trustee's objection is overruled. The motion seeking to confirm the plan filed July 23, 2008 is granted.

The trustee's objection that the plan fails to comply with 11 U.S.C. § 1325(b) (1) (B) is overruled. The trustee asserts that debtors' amended chapter 13 statement of current monthly income and calculation of commitment period and disposable income ("Form 22") lists a current monthly income of \$2,140.59 for debtor Raminderjit Pelia ("Pelia"). (Dkt. 41 at 4). Trustee further points out that debtors' Schedule I shows projected monthly income of \$3,930.16 for Pelia. Trustee then contends that Pelia testified at the meeting of creditors that she was steadily employed with the United States Postal Service for the entire six-month period prior to the filing. Based on this information, trustee contends that debtors' income on Form 22 is understated.

Debtors, on the other hand, agree with the trustee's figures but argue that the plan complies with 11 U.S.C. § 1325(b) (1) (B). In particular, debtors point out that the income provided on Form 22 is a historical figure which provides an average monthly income of the debtors based on income received during the six months preceding the filing date. Debtors explain that Pelia suffered reduced earnings during September 2007 and November 2007, which deflated the current monthly income figure on Form 22. Debtors also explain that Pelia's statement that she was "steadily employed" only meant that Pelia had suffered no job loss in the six months prior to filing.

The debtors have carried their burden of showing that the plan complies with 11 U.S.C. § 1325(b) (1) (B). 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, the debtors have shown that their current monthly income, as used on Form 22, was deflated, relative to debtors' current income levels, due to Pelia's reduced earnings in September and November, 2007. The trustee's reference to Pelia's income on Schedule I does not show that debtors' current monthly income on Form 22 is understated.

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.

58. [08-27052](#)-B-13J DANNIEL/RONAVIV GARCIA CONT. HEARING - MOTION
FF #1 TO VALUE COLLATERAL FOR
6-13-08 [[12](#)]
LIEN OF GMAC MORTGAGE

CONT. FROM 8-12-08

Disposition Without Oral Argument: This matter continued from August 12, 2008 for service on creditor GMAC on or before August 12, 2008. Oral argument will not assist the court in resolving this matter.

The motion is denied without prejudice.

Following the hearing on August 12, 2008, the court issued a minute order, which directed debtors to perform several tasks ("the Order"). (Dkt. 25). First, the Order directed debtors to serve the motion and notice of continued hearing in accordance with Bankruptcy Rule 7004 on GMAC by August 12, 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 GMAC.

The court will issue a minute order.

59. [08-23255](#)-B-13J PAULA LAROT HEARING - MOTION
SL #1 TO CONFIRM 1ST AMENDED
CHAPTER 13 PLAN
7-17-08 [[32](#)]

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 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.

60. [08-25355](#)-B-13J KENNETH/MONICA ALBERTS HEARING - MOTION TO
RI #2 VALUE COLLATERAL OF SAFE
CREDIT UNION
7-31-08 [[53](#)]

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, Safe Credit Union's collateral, a 2003 Chevy Silverado, had a value of \$21,430.00 on the date of the petition. Thus, \$21,430.00 of the creditor'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.

61. [08-25355](#)-B-13J KENNETH/MONICA ALBERTS HEARING - MOTION TO
RI #3 VALUE COLLATERAL OF AMERICAN
GENERAL FINANCE
7-31-08 [[57](#)]

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, American General Finance's collateral, a 2003 Cougar Fifth Wheel, had a value of \$17,490.00 on the date of the petition. Thus, \$17,490.00 of the creditor'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.

62. [08-25355](#)-B-13J KENNETH/MONICA ALBERTS HEARING - MOTION TO
RI #4 CONFIRM DEBTORS' FIRST
AMENDED CHAPTER 13 PLAN
7-31-08 [[61](#)]

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 31, 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.

The subject plan includes an attached motion to value Safe Credit Union's collateral, a 2003 Chevy Silverado. Elsewhere on this calendar, the court ruled on a separate, stand alone motion to value Safe Credit Union's collateral, which also related to a 2003 Chevy Silverado (Dkt. 53). Based on that motion, the court deems the attached motion to value withdrawn.

63. [08-28056](#)-B-13J MARSHA BOYKIN
PGM #1

HEARING - MOTION TO
VALUE COLLATERAL OF
POPULAR MORTGAGE SERVICING
8-8-08 [[17](#)]

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, Popular Mortgage Servicing's collateral securing its second deed of trust, real property located at 15 Dargate Court, Sacramento, CA 95838, had a value of \$200,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Wachovia with a balance of \$246,908.22. Thus, the value of the collateral available to Popular Mortgage Servicing 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.

64. [08-28756](#)-B-13J GEORGE/ANA GARCIA
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[15](#)]

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.

65. [08-23358](#)-B-13J ALFREDO/WENDY MARTINEZ
SMR #1

HEARING - MOTION TO
CONFIRM CHAPTER 13 PLAN
7-22-08 [[28](#)]

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 filed under LBR 9014-1(f)(2). Opposition may be

presented at the hearing. The court issues no tentative ruling on that request.

The court will issue a minute order.

66. [08-29258](#)-B-13J DERYL/BRIDGET CLARK
MET #1

HEARING - MOTION FOR
ORDER VALUING COLLATERAL
OF COUNTRYWIDE HOME LOAN
8-4-08 [[13](#)]

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, Countrywide Home Loans' collateral securing its second deed of trust, real property located at 131 Richard Place, Vacaville, CA 95687, had a value of \$280,566.00 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 \$337,861.00. Thus, the value of the collateral available to Countrywide Home Loans 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.

67. [08-28659](#)-B-13J DEBORAH CRAMPTON
JPJ #2

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[24](#)]

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 26, 2008 the debtor filed an amended plan. The filing of the amended plan constitutes a withdrawal of the plan to which the trustee's objection is directed.

The court will issue a minute order.

68. [07-30260](#)-B-13J HARRY LANUM
GG #1

CONT. HEARING - MOTION
TO APPROVE DEBTOR'S PLAN
4-30-08 [[29](#)]

CONT. FROM 8-12-08, 6-24-08

Tentative Ruling: This motion continued from August 12, 2008 without a briefing schedule. The debtor filed supplemental briefing on August 7,

2008 and on August 14, 2008.

The motion is denied. The debtor has failed to carry his 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).

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 debtor's plan proposes to pay only a percentage of the priority unsecured claim filed by the Internal Revenue Service (the "Service") filed on December 21, 2007 in the amount of \$60,163.78, with the remainder of the debt still due and owing upon completion of the plan. This proposed treatment violates 11 U.S.C. § 1322(a)(2), which provides that a chapter 13 plan shall provide for the full payment of all claims entitled to priority under 11 U.S.C. § 507, unless the holder of a particular claim agrees to different treatment. The debtor has not shown that the Service has agreed to the proposed treatment.

Although the Service has not objected to confirmation of the plan, the failure of a priority creditor to object to confirmation does not constitute acceptance of the plan in this case. A priority creditor's implied acceptance of the plan is inconsistent with the language of the form plan itself, which states in section 3.18:

If the holder of a priority claim has agreed to accept less than payment in full . . . the identity of the claim holder and the treatment proposed shall be included in the Additional Provisions below. The failure to provide treatment for a priority claim that complies with sections 1322(a)(2) or 1322(a)(4) is a breach of this plan.

Section 3.18's reference to a priority creditor who "has agreed" to accept less than payment in full indicates that the plan requires the debtor to obtain a priority creditor's explicit agreement to a plan that

pays less than the full amount of the creditor's filed claim. A failure to provide for full payment of a priority claim is inconsistent with § 1322(a)(2) and, pursuant to the terms of the plan, is a breach of the plan. See In re Glazier, 2008 WL 2148555 at *3-4 (Bankr. E.D. Cal. May 20, 2008). Since the continuance of this motion the debtor submitted two supplemental briefs stating that the Service has consented to the proposed treatment. In support of the supplemental briefs, the debtor has twice submitted a letter received from the Service. However, as the court previously explained to debtor's counsel on August 12, 2008, the letter is not evidence of the Service's unconditional consent to the proposed treatment. Rather, the letter shows that the Service consents to the proposed treatment of its priority claim only if certain conditions are satisfied - that the Service is allowed to perfect a tax lien for the debtor's pre-petition unpaid tax obligations for the 2005 and 2006 tax years and that the debtor provides for payment of the Service's secured claim through the plan. The letter states that if those conditions are met, the Service will stipulate to the proposed treatment of its priority claim. There is no evidence before the court that either of the foregoing conditions has been satisfied. Additionally, there is no evidence to substantiate debtor's assertion that the Service has since "agreed to hold off filing any tax liens for the years 2005 and 2006." (Dkt. 42 at 1). Therefore, the Service has not stipulated to the proposed treatment. The court neither makes nor implies any ruling on whether it will approve conversion of a pre-filing unsecured claim into a pre-filing secured claim.

The court will issue a minute order.

69. [08-28862](#)-B-13J SHARON MARCUS PD #1 HEARING - OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN BY CHASE HOME FINANCE, LLC 8-4-08 [[14](#)]

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.

70. [08-22763](#)-B-13J RICHARD/KELLY SCHWAB CFH #1 CONT. HEARING - MOTION TO VALUE COLLATERAL OF CONCORD DIABLO FEDERAL CREDIT UNION 6-13-08 [[25](#)]

CONT. FROM 8-12-08

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, Concord Diablo Federal Credit Union's collateral, a 2000 Ford F-250, had a value of \$17,155.00 on the date of the petition. Thus, \$17,155.00 of the creditor'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.

71. [08-22763](#)-B-13J RICHARD/KELLY SCHWAB CONT. HEARING - DEBTORS'
CFH #2 MOTION TO CONFIRM FIRST
MODIFIED CHAPTER 13 PLAN
6-13-08 [[30](#)]

CONT. FROM 8-12-08

Disposition Without Oral Argument: This motion continued from August 12, 2008 to be heard with debtors' continued motion to value Concord Diablo Federal Credit Union's collateral. That matter was granted elsewhere on this calendar. In this instance, the court determines that oral argument will not aid the court in rendering a decision on this matter.

The motion is granted and the amended plan filed June 13, 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.

72. [08-23766](#)-B-13J DAVID/SONIA WILSON HEARING - MOTION
EJS #2 TO CONFIRM SECOND AMENDED
CHAPTER 13 PLAN
7-21-08 [[33](#)]

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 filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on that request.

The court will issue a minute order.

73. [08-24467](#)-B-13J HENRY/VICTORIA FONTES
PGM #2

HEARING - MOTION
TO VALUE COLLATERAL OF
WASHINGTON MUTUAL BANK/
FIDELITY
8-7-08 [[67](#)]

Tentative Ruling: This matter cannot be resolved on the pleadings before the court. The debtors assert that the value of their their real property located at 3407 Lakeland Way, Elk Grove, California 95758 (the "Property") is \$375,000.00. The debtors base their valuation on their opinion of value, as set forth in their supporting declaration. Respondent creditor Washington Mutual Bank objects to this valuation and has submitted a comparative market analysis dated August 5, 2008 showing that the value of the Property as of that date is \$425,000.00. The creditor has not submitted evidence of the value of the Property as of the petition date. To determine the necessary information required to resolve this motion, i.e. the value of the Property on the date of the filing of the petition, this matter is continued to a final evidentiary hearing on November 4, 2008 at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before October 28, 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 October 28, 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 Henry and Victoria Fontes' Motion to Value the Collateral of Washington Mutual Bank, D.C. No. PGM-2." 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.

74. [08-27567](#)-B-13J SHELLIE MUNOZ
PGM #1

HEARING - MOTION TO
VALUE COLLATERAL OF HOMECOMINGS
FINANCIAL, LLC
8-1-08 [[18](#)]

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, Homecomings Financial LLC's collateral securing their second deed of trust, real property located at 1718 Sycamore Drive,

Fairfield, California 94533, had a value of \$300,000.00 on the date of the petition. The property is encumbered by a first deed of trust also held by Homecomings Financial LLC with a balance of approximately \$385,000.00. Thus, the value of the collateral available to Homecomings Financial LLC 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.

75. [07-28968](#)-B-13J JOSEPH HASHASH
WW #4
- HEARING - MOTION
TO CONFIRM THIRD AMENDED
CHAPTER 13 PLAN
7-23-08 [[104](#)]

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 his 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.

76. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #1
- CONT. HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
5-28-08 [[32](#)]
- CONT. FROM 8-12-08

Tentative Ruling: None.

77. [06-25472](#)-B-13J DEWEY MCDANIEL
SDB #2
- HEARING - DEBTOR'S
OBJECTION TO CLAIM NO. 29
OF EVETTE SOLTESZ
7-2-08 [[41](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

78. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #3 OBJECTION TO CLAIM NO. 30
OF JAMES SALADIN
7-2-08 [[45](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

79. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #4 OBJECTION TO CLAIM NO. 12
OF ROBERT FERGUSON
7-2-08 [[49](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

80. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #5 OBJECTION TO CLAIM NO. 14
OF JASON BAILEY
7-3-08 [[53](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

81. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #6 OBJECTION TO CLAIM NO. 16
OF DAVID BARRIGAN
7-3-08 [[57](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

82. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #7 OBJECTION TO CLAIM NO. 18
OF MICHELLE DUVAL
7-3-08 [[61](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

83. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #8 OBJECTION TO CLAIM NO. 22
OF STEVE HARMON
7-3-08 [[65](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

84. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #9 OBJECTION TO CLAIM NO. 24
OF MIKE NEVAREC, JR.
7-3-08 [[69](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

85. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #10 OBJECTION TO CLAIM NO. 25
OF SCOTT LOKEY
7-3-08 [[73](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

86. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #11 OBJECTION TO CLAIM NO. 26
OF RICKY REESE
7-3-08 [[77](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

87. [06-25472](#)-B-13J DEWEY MCDANIEL HEARING - DEBTOR'S
SDB #12 OBJECTION TO CLAIM NO. 27
OF RODNEY IRVING
7-3-08 [[81](#)]

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

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

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

Tentative Ruling: This matter cannot resolved on the pleadings before the court. The parties should be prepared to discuss a discovery schedule and continued hearing date.

89. [08-20075](#)-B-13J MAISHA LYONS
WGM #1

HEARING - OBJECTION
TO CONFIRMATION OF DEBTOR'S
CHAPTER 13 PLAN BY HSBC
MORTGAGE SERVICES
8-13-08 [[63](#)]

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 the initial 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 seek confirmation of a second amended plan 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.

Nothing in this ruling constitutes a confirmation of any plan.

The court will issue a minute order.

90. [08-20075](#)-B-13J MAISHA LYONS
PLG #2

HEARING - MOTION FOR
CONFIRMATION OF DEBTORS'
MODIFIED CHAPTER 13 PLAN
7-23-08 [[43](#)]

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, 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, for the reason set forth in the chapter 13 trustee's opposition, and the motion is denied. The court

declines to reach the objection of HSBC Mortgage Services at this time.

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 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.

91. [08-20075](#)-B-13J MAISHA LYONS
PLG #3

HEARING - MOTION TO
VALUE COLLATERAL OF HSBC
MORTGAGE SERVICES
7-23-08 [[48](#)]

Tentative Ruling: This matter cannot be resolved on the pleadings before the court. The debtor asserts that the value of her real property located at 1940 Grande Circle #65, Fairfield, California 94533 (the "Property") is \$170,000.00. The debtors bases her valuation on their opinion of value, as set forth in their supporting declaration. Respondent creditor HSBC Mortgage Services objects to this valuation and asserts that it believes that there is value in the Property to secure its second deed of trust. HSBC states that it is in the process of obtaining a valuation of the Property. To determine the necessary information required to resolve this motion, i.e. the value of the Property on the date of the filing of the petition, this matter is continued to a final evidentiary hearing on October 21, 2008 at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before October 14, 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 October 14, 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 Maisha Lyons' Motion to Value the Collateral of HSBC Mortgage Services, D.C. No. PLG-3." 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 debtor enumerating her exhibits "A, B, C...."

The court will issue a minute order.

92. [08-29076](#)-B-13J SCOTT/ELIZABETH FERRIS HEARING - OBJECTION
EDH #1 TO CONFIRMATION OF CHAPTER 13
PLAN BY U.S. BANK N.A.
7-28-08 [[19](#)]

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 20, 2008, the debtors filed an amended plan and a motion to confirm it, setting the matter for hearing on October 7, 2008 at 9:30 a.m. The court construes the filing of amended plan and motion to confirm it as a withdrawal of the plan to which the creditor objects.

The court will issue a minute order.

93. [08-27579](#)-B-13J CORY/REMEDIOS JONES HEARING - MOTION
CYB #1 TO VALUE COLLATERAL OF
GMAC MORTGAGE
8-8-08 [[21](#)]

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 9138 Laguna Springs Way, Elk Grove, California 95758, had a value of \$250,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Washington Mutual with a balance of \$91,405.00. 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.

94. [07-27080](#)-B-13J CHRISTOPHER/MARIA RICHERT HEARING - MOTION TO
MMA #2 MODIFY CHAPTER 13 PLAN
7-29-08 [[37](#)]

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 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), 1325(a), and 1329.

The court will issue a minute order.

95. [08-25982](#)-B-13J LAWRENCE WHITING
SS #1

HEARING - MOTION
TO VALUE COLLATERAL OF
CHASE HOME FINANCE
8-7-08 [[56](#)]

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 Home Finance's collateral securing its second deed of trust, real property located at 1178 Silver Spur Way, Plumas Lake, California 95961, had a value of \$205,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Citimortgage with a balance of \$257,400.00. Thus, the value of the collateral available to Chase Home Finance 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.

96. [08-27682](#)-B-13J WILLIAM/JAZETTE LEWIS
PGM #1

HEAIRNG - MOTION
TO VALUE COLLATERAL OF
GMAC MORTGAGE, LLC
8-1-08 [[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, GMAC Mortgage LLC's collateral securing its second deed of trust, real property located at 11 Starview Court, Sacramento, California 95823, had a value of \$180,000.00 on the date of the petition. The property is encumbered by a first deed of trust also held by GMAC Mortgage LLC with a balance of \$193,389.27. Thus, the value of the collateral available to GMAC Mortgage LLC 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.

97. [08-28582](#)-B-13J CHRISTOPHER HEBRON
JPJ #1
HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [[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.

98. [08-28882](#)-B-13J ANTHONY/SINDY CESARINI
JMO #1
HEARING - OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN BY FIA CARD SERVICES
8-13-08 [[23](#)]

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

The objecting creditor withdrew the objection on August 22, 2008. This matter is therefore dropped from the calendar.

99. [08-28684](#)-B-13J MARY BASS
FF #1
HEARING - MOTION
TO CONFIRM CHAPTER 13 PLAN
7-24-08 [[17](#)]

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 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. [08-23886](#)-B-13J MICHAEL/ANNETTE BOWERS
JAT #1
CONT. HEARING - MOTION
TO VALUE COLLATERAL OF
HSBC/MS AND AVOIDANCE
OF LIEN
7-15-08 [[30](#)]

CONT. FROM 8-12-08

Tentative Ruling This matter continued from August 12, 2008 to allow the debtors to properly serve the creditor whose collateral they seek to

value. The debtors did so timely. 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). In this instance, the court issues a tentative ruling.

The motion is granted in part. The request to value the collateral securing HSBC/MS' ("HSBC") second deed of trust, the real property located at 2025 Wilcox Ranch road, Plumas Lake, California, 95961 (the "Property") at \$230,000.00 is granted pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). For the purposes of the motion, the Property had a value of \$230,000.00 on the date of the petition. \$0.00 of HSBC'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 request in the motion to avoid or extinguish HSBC's lien is denied without prejudice. Except as so ordered the motion is denied.

The debtors seeks to value the Property and also seek avoidance or extinguishment of HSBC's lien. Based on the debtors' undisputed opinion of value set forth in the supporting declaration, the court finds that the Property had a value of \$230,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase Home Finance with a balance of \$300,818.64. Thus, the value of the collateral available to HSBC's second deed of trust is \$0.00.

The request in the motion to avoid or extinguish HSBC's lien is denied without prejudice because 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 debtors are entitled to a reconveyance of the second deed of trust. If it is not reconveyed, the debtors may file an adversary proceeding under F.R.Bankr.P. 7001(2).

The court will issue a minute order.

101. [08-23886](#)-B-13J MICHAEL/ANNETTE BOWERS
JAT #1

HEARING - MOTION
TO VALUE COLLATERAL OF HSBC/
MS AND AVOIDANCE OF LIEN
8-12-08 [[38](#)]

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

This entry on the court's calendar was created by the debtors' filing of a second copy of their motion to value the collateral of HSBC/MS under DC No. JAT-1, in response to the court's order continuing the motion to this calendar. The filing of a second copy of the motion was not ordered by the court, as it unnecessarily created a second, redundant calendar entry. The court has resolved DC No. JAT-1 elsewhere on this calendar. This matter is therefore removed from the calendar.

102. 08-23886-B-13J MICHAEL/ANNETTE BOWERS
JAT #2

CONT. HEARING - MOTION
TO VALUE COLLATERAL OF
GEMB-GREENTREE MORTGAGE
AND AVOIDANCE OF LIEN
7-15-08 [32]

CONT. FROM 8-12-08

Tentative Ruling This matter continued from August 12, 2008 to allow the debtors to properly serve the creditor whose collateral they seek to value. The debtors did so timely. 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). In this instance, the court issues a tentative ruling.

The motion is granted to the extent set forth herein. The motion to value the collateral securing GEMB-Greentree Mortgage's ("GEMB") third deed of trust, the real property located at 2025 Wilcox Ranch road, Plumas Lake, California, 95961, at \$230,000.00 (the "Property"), is granted pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). For the purposes of the motion, the Property had a value of \$230,000.00 on the date of the petition. \$0.00 of GEMB's claim secured by the third deed of trust is an allowed secured claim, and the balance of its claim is an allowed unsecured claim. The request in the motion to avoid or extinguish GEMB's lien is denied without prejudice. Except as so ordered the motion is denied.

The debtors seek to value the Property and also seek avoidance or extinguishment of GEMB's lien. Based on the debtors' undisputed opinion of value set forth in their supporting declaration, the court finds that the Property had a value of \$230,000.00 on the date of the petition. The property is encumbered by a first deed of trust held by Chase Home Finance with a balance of \$137,537.76. The property is also encumbered by a second deed of trust held by HSBC/MS with a balance of \$70,499.00. Thus, the value of the collateral available to GEMB's third deed of trust is \$0.00.

The request in the motion to avoid GEMB's lien is denied. 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 debtors' liability on the unsecured claim. Therefore, upon completion of the plan and receipt of the discharge, the debtors are entitled to a reconveyance of the second deed of trust. If it is not reconveyed, the debtors may file an adversary proceeding under F.R.Bankr.P. 7001(2).

The court will issue a minute order.

103. [08-23886](#)-B-13J MICHAEL/ANNETTE BOWERS
JAT #2

HEARING - MOTION
TO VALUE COLLATERAL OF
GEMB-GREENTREE MORTGAGE AND
AVOIDANCE OF LIEN
8-12-08 [[42](#)]

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

This entry on the court's calendar was created by the debtors' filing of a second copy of their motion to value the collateral of HSBC/MS under DC No. JAT-2, in response to the court's order continuing the motion to this calendar. The filing of a second copy of the motion was not ordered by the court, as it unnecessarily created a second, redundant calendar entry. The court has resolved DC No. JAT-2 elsewhere on this calendar. This matter is therefore removed from the calendar.

104. [05-25687](#)-B-13J DAVID/JULIE JOHNSON
PGM #2

HEARING - MOTION
TO MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-6-08 [[41](#)]

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

The motion is denied without prejudice. As the chapter 13 trustee points out in his objection, the amended plan filed by the debtors on August 6, 2008 is missing its third page. Although the debtors filed a corrected, complete version of the plan on August 28, 2008, it was filed only twelve days before this hearing and there is no evidence that the debtors served that plan on all parties in interest. Pursuant to General Order 05-03 ¶ 8(a), all parties in interest must receive notice of all provisions of the amended plan that the debtors seek to confirm at least thirty-nine days before the date of the hearing.

The court will issue a minute order.

105. [07-29587](#)-B-13J PHYLLIS TEJEDA
CYB #3

HEARING - MOTION
FOR CONFIRMATION OF DEBTOR'S
THIRD AMENDED CHAPTER 13 PLAN
7-22-08 [[61](#)]

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 22, 2008, is confirmed with the following modifications included in the order confirming the plan: the plan payment starting with the August 2008 payment and continuing for the remainder of the plan term shall be \$8,980.00 per month. 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 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.

106. [08-30289](#)-B-13J MARK/MICHELLE PROCTOR
MWB #1

HEARING - MOTION
TO VALUE COLLATERAL OF
BENEFICIAL/HFC
8-6-08 [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, Beneficial/HFC's collateral securing its second deed of trust, real property located at 2034 Stonybrook Drive, Red Bluff, California (APN 024-270-78-1), had a value of \$145,000.00 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 \$147,510.00 on the date of the filing of the petition. Thus, the value of the collateral available to Beneficial/HFC 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.

107. [07-30090](#)-B-13J SHADANA BROWN
SLB #3

CONT. HEARING - MOTION TO
CONFIRM SECOND AMENDED
CHAPTER 13 PLAN
6-24-08 [87]

CONT. FROM 8-12-08

Tentative Ruling: This matter continued from August 12, 2008. Nothing new having been filed since the continuance, the court reissues its prior tentative ruling.

The motion is continued to November 12, 2008 at 9:30 a.m. Whether the plan can be confirmed depends at least in part on whether the debtor's motion to value the collateral of Wells Fargo Auto Financial will be granted. The motion to value collateral has been continued to an evidentiary hearing on November 3, 2008 at 10:00 a.m. This motion is therefore continued to a date after the evidentiary hearing on the motion to value will be held.

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.

108. [07-30090](#)-B-13J SHADANA BROWN
SLB #4

CONT. HEARING - MOTION FOR
DETERMINING VALUE OF COLLATERAL
AND ALLOWING DEFICIENCY AS AN
UNSECURED CLAIM
6-24-08 [[91](#)]

CONT. FROM 8-12-08

Tentative Ruling: This matter continued from August 12, 2008, to allow the parties additional time to negotiate a settlement. Nothing new having been filed since the continuance, the court reissues its prior tentative ruling.

This matter cannot be resolved on the pleadings before the court. The debtor seeks to value the collateral of Wells Fargo Auto Finance, a 2004 Toyota Camry (the "Camry"), at \$10,156.00. The debtor bases her valuation on her opinion of value after obtaining a June 2, 2008 valuation from Sacramento Auto Center, a Carmax appraisal value, and consulting Kelley Bluebook. Debtor asserts that the Camry is in fair condition and has 80,000 miles. Wells Fargo Auto Finance objects to the debtor's valuation and asserts that the court should determine that the Camry has a value of \$13,280.00, based on a January-February 2008 Kelley Bluebook valuation of the Camry with 80,000 miles. To determine the necessary information required to resolve this motion, i.e. the value of the Camry as of November 27, 2007, the date of the filing of the petition, this matter is continued to a final evidentiary hearing on November 3, 2008 at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before October 27, 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 October 27, 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 Shadana Brown's Motion to Value the Collateral of Wells Fargo Auto Finance, D.C. No. SLB-4." 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 debtor enumerating her exhibits "A, B, C...."

The court will issue a minute order.

109. [08-28190](#)-B-13J DAVID/MONICA ALLSTON
SAC #1

HEARING - MOTION
TO VALUE COLLATERAL
OF BENEFICIAL
7-30-08 [[14](#)]

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, Beneficial's collateral securing its second and third deeds of trust, real property located at 8177 La Almendra Way, Sacramento, California 95823, had a value of \$194,000.00 on the date of the petition. The property is encumbered by a first deed of trust also held by Beneficial with a balance of \$319,987.00 on the date of the filing of the petition. Thus, the value of the collateral available to Beneficial on its second and third deeds of trust is \$0.00. \$0.00 of creditor's claims secured by the second and third deeds of trust is an allowed secured claim, and the balance of its claims is an allowed unsecured claim.

The court will issue a minute order.

110. [08-28590](#)-B-13J ANTHONY/HEATHER STILLWELL JPJ #1 HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE 8-12-08 [[20](#)]

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.

111. [08-26191](#)-B-13J RENE/KYLA ZUBIA MOH #1 HEARING - MOTION TO CONFIRM CHAPTER 13 PLAN 7-17-08 [[18](#)]

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 chapter 13 trustee's objection is sustained for the reason set forth in the trustee's opposition. The debtors' reply is not persuasive. The debtors assert that the priority claim of Wendy Lightbody should be disallowed or allowed only as a general unsecured claim, but the court will not grant such relief without an objection to claim brought under Bankruptcy Rule 3007 and LBR 3007-1.

In addition, 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 have filed with the motion notices regarding the motions to value the collateral of Wells Fargo Auto Finance ("Wells Fargo") and Les Schwab that are attached to the plan. The notices apprise the creditors of the debtors' intent to have the attached motions granted in conjunction with the motion to confirm the plan. However, no such procedure exists under General Order 05-03 for the granting of attached motions on a motion to confirm filed under G.O. 05-03 ¶ 8. To value the collateral of the creditors, the debtors must file and set for hearing separate motions. The debtors have not done so here. As a result, while the plan as proposed is sufficiently funded to pay the filed secured claim of Wells Fargo, it is not sufficiently funded to pay the filed secured claim of Les Schwab.

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.

112. 08-28791-B-13J GARY/TAMERA RUSSEL
JPJ #1

HEARING - OBJECTION
TO CONFIRMATION OF PLAN
BY TRUSTEE
8-12-08 [26]

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.

113. [08-29591](#)-B-13J JAIME/CHRISTINA SALCEDO
CJY #1

HEARING - DEBTORS'
MOTION TO VALUE COLLATERAL
OF BAYVIEW LOAN SERVICING
7-22-08 [8]

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

The motion is denied without prejudice.

This motion to value the collateral of Bayview Loan Servicing ("Bayview"), holder of the second deed of trust on real property, fails to set forth important information needed for the analysis required to fix the creditor's secured claim at \$0.00 for the purposes of the bankruptcy case. The motion does not disclose the identity of the real property that the debtors seek to value, the value that the debtors request to be given to the property for the purposes of the motion, or the identity of the holder of the first deed of trust and the balance of the debt secured by the first deed of trust. Without the foregoing information the court cannot perform the required analysis. The debtors should not expect the court or parties in interest to search its docket for the necessary information. Although some of the foregoing information can be ascertained from the exhibit submitted with the motion, the declarations and exhibits should support the factual allegations of the motion [LBR 9104-1(d)(6)]; they should not contain the only statement of the factual allegations.

Furthermore, the motion does not properly apprise the creditor of the alleged basis for relief that the motion seeks. The value of the collateral is not \$0.00, as alleged in the motion. The debtors incorrectly assume that the creditor's collateral is the second deed of trust. It is not. The collateral is the real property. The second deed of trust is what makes the real property collateral. In order to give proper notice to the creditor, the motion should identify the collateral (here the real property located at 1301 Homewood Drive, Woodland, California 95695) allege that the value of the collateral is a dollar figure (here presumably \$290,000.00), that the prior lien (or liens) on the collateral (here a first deed of trust) held by a named creditor (here Residential Credit Solutions) secures a claim of another dollar figure (here \$\$331,448.86) and that the collateral value available to the holder of the second deed of trust is therefore \$0.00.

The court will issue a minute order.

114. [08-27295](#)-B-13J CLAYTON WINTER
SDB #2

HEARING - DEBTOR'S
MOTION FOR ORDER VALUING
COLLATERAL OF GMAC
7-30-08 [24]

Tentative Ruling: This matter cannot be resolved on the pleadings before the court. The debtor seeks to value the collateral of GMAC, a 2003 Chevrolet Silverado 2500 pickup truck (the "Silverado"), at \$14,490.00. The debtor bases his valuation on his opinion of value and a Kelley Blue Book printout dated July 25, 2008, showing that the suggested retail

value for a 2003 Chevrolet Silverado 2500 Pickup HD Long Bed in excellent condition with 80,000 miles is \$14,365.00. GMAC objects to the debtor's valuation and asserts that the court should determine that the Silverado has a value of \$23,685, based on a July-August 2008 Kelley Bluebook valuation of a Chevrolet Silverado 2005 extended cab pickup with 80,000 miles. GMAC asserts that the debtor's evidence is flawed because it does not show the value of an extended cab model. However, the court notes that GMAC's valuation is based on a valuation for the Minnesota market. (Dkt. 31 at 7). GMAC has submitted no evidence showing that the Silverado or the debtor is located in Minnesota. To determine the necessary information required to resolve this motion, i.e. the value of the Silverado as of June 2, 2008, the date of the filing of the petition, this matter is continued to a final evidentiary hearing on November 3, 2008 at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before October 27, 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 October 27, 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 Clayton Winter's Motion to Value the Collateral of GMAC, D.C. No. SDB-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 debtor enumerating his exhibits "A, B, C...."

The court will issue a minute order.

115. [07-22496](#)-B-13J LORETTA DRAPER
MOH #5

HEARING - DEBTOR'S
MOTION TO CONFIRM FOURTH
AMENDED CHAPTER 13 PLAN
7-18-08 [[101](#)]

Tentative Ruling: 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). In this instance the court issues a 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 debtor has failed to carry her burden of showing that she will be able to make the \$1,263.00 plan payment that is to begin with the plan payment due September 25, 2008. The latest Schedule J filed by the debtor on April 25, 2007 shows that the debtor has only \$756.00 in net monthly income. The debtor has submitted no evidence showing that she will be able to make a \$501.00, or 65.7% increase in her plan payment.

The court will issue a minute order.

116. [08-27296](#)-B-13J PHOMIA PIERSON
SMR #2

HEARING - MOTION
TO CONFIRM CHAPTER 13 PLAN
7-21-08 [[26](#)]

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 conversion 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 trustee's objections are sustained in part and overruled in part. The motion is denied.

The trustee's objection that the debtor has not satisfied her burden of showing that she will be able to pay the lump sum proposed by the plan in the twenty-fourth month because the plan does not specify the source of the lump sum is overruled. Section 1325(a)(6) does not require the plan to specify the source of lump sum payments, it only requires the debtor to show that she will be able to make the proposed plan payments. The debtor has specified the source of the lump sum payment in her supporting declaration as the proceeds of the sale of a boat, identified on Schedule B as a motor yacht held by a Delaware limited liability company, Bling Inc., in which the debtor and her husband have a 100% ownership interest.

The remainder of the trustee's objections are sustained for the reasons set forth in the chapter 13 trustee's opposition.

The debtor has failed to carry her 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.

117. [08-27499](#)-B-13J SHARON TOMASELLO
KFC #1

HEARING - MOTION
TO CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
7-29-08 [23]

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 overruled. The motion is granted and the amended plan filed July 25, 2008 is confirmed.

The trustee objects that the debtor has not presented evidence that American Home Mortgage ("AHM"), the debtor's mortgage lender, has agreed to the terms of a loan modification agreement described in the additional provisions of the plan, which modification cures the debtor's default under the terms of the note and deed of trust obligation. However, the debtor has presented evidence of AHM's acceptance of the loan modification in the form of a letter from Walter Fudge, a bankruptcy representative employed by AHM.

In the absence of any other 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.

118. [08-29007](#)-B-13J RAMONA SAUNDERS
RDW #1
PATELCO CREDIT UNION, VS.

HEARING - APPLICATION FOR
ORDER CONFIRMING TERMINATION
OF THE AUTOMATIC STAY
8-18-08 [20]

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.

119. [08-31309](#)-B-13J JAMIA GARDNER
PLG #1

HEARING - MOTION TO
CONTINUE THE AUTOMATIC STAY
AS TO ALL CREDITORS
8-21-08 [[8](#)]

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.

120. [08-26610](#)-B-13J GEOFFREY WHITWORTH

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-21-08 [[56](#)]

Tentative Ruling: None.

121. [07-24522](#)-B-13J SUE SOUTHWICK
PGM #5

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

CONT. FROM 8-26-08

Tentative Ruling: This matter continued from August 26, 2008 to permit the debtor to supplement the motion with evidence regarding her ability to pay the payments proposed by the plan. The debtor filed a supplemental declaration on September 2, 2008 and amended Schedules I and J on September 3, 2008. The court now issues the following 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 an alleged 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. The debtor's supplemental declaration states that her husband recently obtained employment and takes home \$4,972.00 per month. However, the supplemental declaration is contradicted by the amended Schedule I filed by the debtor, which indicates that her husband's net monthly take home pay is \$2,476.56 per month. Combined with the \$1,800.00 in monthly unemployment benefits received by the debtor, the debtor and her husband have a combined average monthly income of \$4,276.56. Considering their expenses of \$3,776.56 per month, the debtor's Schedule I shows \$500.00 per month in net monthly income. Under the terms of the modified plan, a \$500.00 plan payment is sufficient to satisfy the plan payment until February 2009, when it increases substantially to \$1,250.00 per month. The debtor has presented no evidence of an anticipated increase in her income by the time the plan payment increases. She has also presented no evidence showing that she will continue to receive unemployment benefits up to February 2009, which benefits are necessary to allow her to continue to make the reduced \$500.00 plan payment.

The court will issue a minute order.

122. [08-30823](#)-B-13J DAVID MARONI, JR.

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-15-08 [[7](#)]

Tentative Ruling: None.

123. [08-30823](#)-B-13J DAVID MARONI, JR.

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-20-08 [[10](#)]

Tentative Ruling: None.

CONT. FROM 8-26-08,8-12-08

Tentative Ruling: This matter continued from August 26, 2008. The court ordered supplemental briefing. The debtors timely filed supplemental briefing. The court now issues the following tentative ruling.

The motion is granted. The amended plan filed April 10, 2008 is confirmed.

At the prior hearing on this matter, the trustee withdrew his objections to confirmation, representing to the court that his analysis of the plan's provisions showed that it was sufficiently funded to pay allowed claims pursuant to the terms of the plan.

The objection of creditors David L and Jacquelyn L Vaughn and Charles and Patricia Townsend (collectively "Vaughn") that the plan lists an incorrect claim amount for Vaughn is overruled. 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. (Claim no. 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. As stated above, the trustee represented at the prior hearing on this matter, at which hearing Vaughn did not appear, that the plan was sufficiently funded to pay Vaughn's 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. (Claim no. 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. The Vaughn deed of trust is not secured only by a lien on the debtors' residence.

Vaughn's objection that the debtors have failed to remain current on their plan payments is overruled. As of August 26, 2008, the debtors were current under the plan, and the chapter 13 trustee withdrew his objection that the debtors were delinquent in payments. Furthermore, on September 4, 2008 the debtors filed a supplemental declaration supporting their ability to make the proposed plan payment.

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' 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 will issue a minute order.

125. [07-28231](#)-B-13J WILLIAM/SUNG KING HEARING - MOTION FOR
SL #2 ENTRY OF CHAPTER 13 DISCHARGE
8-25-08 [[62](#)]

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.

126. [08-29040](#)-B-13J NINA BARTHOLOMEW HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-15-08 [[15](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i) and the automatic extension of time permitted by Bankruptcy Rule 9006(a), this case was automatically dismissed as of 12:01 a.m. on August 19, 2008. The debtor failed to timely file all of the information required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

127. [08-29943](#)-B-13J STEVE/LALIN SANTINI HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-20-08 [[13](#)]

Tentative Ruling: None.

128. [08-31148](#)-B-13JBRIAN/REINELDA WILKERSON HEARING - MOTION FOR
RTD #1 RELIEF FROM AUTOMATIC STAY
SACRAMENTO CREDIT UNION, VS. 8-25-08 [[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.

129. [08-22254](#)-B-13J VERLENA KELLER CONT. HEARING - MOTION FOR
MBB #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 7-21-08 [[34](#)]
SYSTEMS, INC., VS.

CONT. FROM 8-26-08

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, 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. 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 an ongoing payment for the claim or 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 provision does not specify any time when payment from insurance proceeds will occur, or the expected amount of the proceeds. 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 pursuant to 11 U.S.C. § 1322(b)(5) does not adequately protect the movant's interest. These facts constitute

cause for relief from the automatic stay.

The declaration of Robert Keller, the debtor's non-filing spouse, presumably intended to constitute the debtor's opposition to the motion, is not persuasive. The declaration is irrelevant. It is the debtor's plan that controls the manner frequency of the debtor's payments to the movant in this case. The plan does not specify any payments to the movant other than satisfaction from insurance proceeds at an unspecified time in the future, and the trustee has made no payments to the movant.

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.

130. [07-30557](#)-B-13J RANDALL/KIMBERLY KERSHAW
SDH #2
CONT. FROM 8-26-08

CONT. 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 denied as moot. By order signed September 5, 2008 this case was converted to one under chapter 7.

The court will issue a minute order.

131. [08-29857](#)-B-13J ANNETTE HORNSBY
LEF #1
CHASE AUTO FINANCE CORP., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-22-08 [[19](#)]

Tentative Ruling: This is a properly filed motion for relief from the automatic stay under LBR 4001-1 and 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. [08-29861](#)-B-13J KATHRYN JIMENEZ

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-25-08 [[17](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i), this case was automatically dismissed as of 12:01 a.m. on September 5, 2008. The debtor failed to timely file all of the information required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

133. [08-24467](#)-B-13J HENRY/VICTORIA FONTES
KAT #1

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

CONT. FROM 8-26-08

Tentative Ruling: This objection to confirmation is continued to November 12, 2008 at 9:30 a.m., to be heard after the evidentiary hearing on the debtors' motion to value the objecting creditor's collateral. Whether the plan can be confirmed depends on the outcome of the evidentiary hearing.

The court will issue a minute order.

134. [08-29870](#)-B-13J STARROLYN SYLVAS

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
FOR FAILURE TO TENDER FEES
8-21-08 [[16](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the delinquent filing fee installment on September 5, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

135. [08-27776](#)-B-13J CARLIE HODGES-KENT

HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-14-08 [[31](#)]

Disposition Without Oral Argument: The order to show cause is discharged because the debtor paid the delinquent filing fee installment on August 20, 2008. No monetary sanctions are imposed.

The court will issue a minute order.

136. [08-29380](#)-B-13J MELVERN/NORA HOGAN
RTD #1

HEARING - OBJECTION TO
CONFIRMATION OF THE CHAPTER 13
PLAN AND OPPOSITION TO DEBTORS'
MOTION TO VALUE COLLATERAL BY
SCHOOLS FINANCIAL CREDIT UNION
8-21-08 [[22](#)]

Tentative Ruling: This matter cannot be resolved on the pleadings before the court. Objecting creditor Schools Financial Credit Union ("Schools") objects to confirmation of the debtors' initial plan filed July 11, 2008 and to the treatment of its claims secured by a 2006 Kia Sedona (the "Sedona") and a 2004 Chevrolet Silverado (the "Silverado"), and to the debtors' attached motion to value the Silverado.

The debtors have conceded Schools' objection as to the Sedona, but they oppose Schools' objection as to their proposed valuation of the Silverado and their proposed treatment of the claim secured by the Silverado. The debtors seek to value the Silverado pursuant to 11 U.S.C. § 506(a) at \$12,230.00. Schools asserts that the value of the Silverado is \$17,885.00. The parties disagree over the options installed on the Silverado, its condition, and the cost to repair any damage or defects. To determine the necessary information required to resolve this objection i.e. the value of the Silverado as of July 11, 2008, the date of the filing of the petition, this matter is continued to a final evidentiary hearing on November 3, 2008 at 2:00 p.m. before the Honorable David E. Russell in courtroom 32. Whether the plan can be confirmed depends on the attached motion to value the Silverado.

On or before October 27, 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 October 27, 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 Schools Financial Credit Union's Objection to Confirmation of Plan and Opposition to Attached Motion to Value Collateral, D.C. No. RTD-4." 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.

137. [06-22385](#)-B-13J RICHARD/JUDITH RHOADES
SAC #2

HEARING - MOTION
FOR ENTRY OF CHAPTER 13
DISCHARGE
8-18-08 [[33](#)]

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. [08-29287](#)-B-13J GUADALUPE/ELDA VILLALPANDO HEARING - OBJECTION
WGM #1 TO CONFIRMATION OF DEBTORS'
CHAPTER 13 PLAN
8-18-08 [[35](#)]

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.

139. [08-29287](#)-B-13J GUADALUPE/ELDA VILLALPANDO HEARING - MOTION
MAA #2 TO VALUE COLLATERAL OF
HSBC MORTGAGE SERVICES
8-25-08 [[42](#)]

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.

140. [08-29288](#)-B-13J MICHAEL OFFIAH HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-14-08 [[16](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i) and the automatic extension of time permitted by Bankruptcy Rule 9006(a), this case was automatically dismissed as of 12:01 a.m. on August 26, 2008. The debtor failed to timely file all of the information required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

141. [08-29489](#)-B-13J RAYMOND GUANILL HEARING - ORDER
TO SHOW CAUSE RE DISMISSAL
OF CASE OR IMPOSITION OF
SANCTIONS
8-18-08 [[20](#)]

Disposition Without Oral Argument: The order to show cause is discharged as moot. Pursuant to 11 U.S.C. § 521(i), this case was automatically dismissed as of 12:01 a.m. on August 29, 2008. The debtor failed to timely file all of the information required by 11 U.S.C. § 521(a)(1). No monetary sanctions are imposed.

The court will issue a minute order.

142. [08-29191](#)-B-13J TROY GALLINEAU
JHW #1
AMERICREDIT FINANCIAL
SERVICES INC., VS.
HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-20-08 [[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.

143. [08-24195](#)-B-13J GEORGE BARLOW
MEA #1
OCEAN LOAN I, LP, VS.
HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-25-08 [[170](#)]

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

The movant withdrew the motion on September 4, 2008. This matter is therefore dropped from the calendar.

The court will issue a minute order.

144. [05-25299](#)-B-13J KEVIN/SONYA OWENS
WW #7
CONT. FROM 8-26-08
CONT. HEARING - MOTION TO
CONFIRM FOURTH MODIFIED
CHAPTER 13 PLAN
7-18-08 [[99](#)]

Tentative Ruling: This matter continued from August 26, 2008. Nothing new having been filed since the continuance, the court reissues its prior 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.