

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas Holman

Bankruptcy Judge

Modesto, California

September 21, 2004 at 1:30 p.m.

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1. 04-90902-A-13 ANDY & TAASE JENNINGS HEARING ON MOTION FOR  
RLE #1 RELIEF FROM AUTOMATIC STAY  
FORD CREDIT TITLING TRUST VS. 8/16/04 [56]

**Disposition Without Oral Argument:** Oral argument would not assist the court in rendering a decision in this matter.

The motion is denied as moot. The court entered a confirmation order for debtors' chapter 13 plan on July 21, 2004. The debtors leased the subject property from the movant. The terms of Section D of the confirmed plan provide, "Any executory contract or unexpired lease not listed in table below is rejected. Entry of the confirmation order modifies the automatic stay of 11 U.S.C. § 362 to allow the nondebtor party to a rejected unexpired lease to obtain possession of the leased property." The debtors did not list this lease in the table at Section D of the plan. Thus, entry of the confirmation order constitutes an order granting relief from the automatic stay. In other words, movant has already received the requested relief by the order confirming the plan.

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

The court will issue a minute order.

2. 03-93003-A-13 FRANK J. AGENBROAD & HEARING ON MOTION  
TJH #1 MICHELLE R. AGENBROAD TO RESTORE MOTION FOR  
HOUSEHOLD MORTGAGE RELIEF FROM THE AUTOMATIC  
SERVICES VS. STAY TO CALENDAR FOR FURTHER  
CONSIDERATION  
8/16/04 [79]

**Tentative Ruling:** The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The debtors' opposition is unavailing. While the debtors claim they are

current in plan payments (and thus current on their Class 1 payment to this creditor), they provided no evidence they are current and the docket shows that the trustee filed a Notice of Default in plan payments on September 8, 2004. (ECF-86).

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral 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 movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling. Pursuant to Bankruptcy Rule 9021, the order shall not recite the reasons stated herein. It shall state only that, for the reasons stated by the court and appended to the minutes of the proceedings, (1) the automatic stay is modified in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, and to use the proceeds from its disposition to satisfy its claim including attorneys' fees awarded herein, (2) the 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived, (3) attorneys' fees and costs are granted in an amount equal to the lesser of \$675 or the amount actually billed, plus costs of \$150, and (4) except as so ordered, the motion is denied. See, Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 439 (9<sup>th</sup> Cir. BAP 1986).

3. 04-90016-A-13 JOHN & HEATHER HERRICK HEARING ON MOTION FOR  
MB #1 RELIEF FROM AUTOMATIC STAY  
COUNTRYWIDE HOME LOANS, 8/10/04 [16]  
INC. VS.

**Tentative Ruling:** The motion is denied.

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 initially notes that the movant failed to state it made the necessary pre-filing investigation under LBR 4001-1(d)(2). The movant's claim is a Class 1 or "conduit" claim which is funded from plan payments and paid through the trustee's office. Thus, prior to filing a motion for relief from the automatic stay, a creditor must confer with the trustee's office to determine whether the plan payments are current. Given the debtors' evidence versus the creditor's allegations, it seems the movant failed to complete this pre-filing investigation.

Termination of the automatic stay is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$72,603) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9<sup>th</sup> Cir. 1984).

Termination of the automatic stay under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on March 9, 2004. That plan provides for payment of the post-petition mortgage payments through the trustee's office. There is no evidence that the plan payments are in default. The debtors' opposition provided evidence that the trustee has paid the creditor through August 31, 2004, all owing post-petition mortgage payments.

Because the evidence establishes that the debtors were not delinquent at the time the motion was filed, the court finds the reasonable amount of fees for filing this motion is zero. 11 U.S.C. § 506(b).

Counsel for the movant shall submit an order that conforms to the court's ruling.

4. 98-93236-A-13 JIM & BARBARA WOOTEN HEARING ON MOTION FOR  
MB #1 RELIEF FROM AUTOMATIC STAY  
COUNTRYWIDE HOME LOANS, INC. VS. 8/10/04 [60]

**Tentative Ruling:** The motion is granted in part; adequate protection is ordered as set forth below.

The movant claims the debtors are five months in arrears, and the debtors contend they are only delinquent for part of the August and the entire September payments. The debtors provided evidence of their past payments.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) become completely post-petition current in mortgage payments, including any associated late fees, by September 30, 2004, and (2) pay any remaining plan payment(s) to the trustee in a timely manner.

Further adequate protection is ordered as follows: N/A.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

5. 03-94855-A-13 DANITA L. FULLER HEARING ON MOTION FOR  
MB #1 RELIEF FROM AUTOMATIC STAY  
U.S. BANK, N.A. VS. 8/20/04 [40]

CASE DISMISSED EOD 8/13/04

**Disposition Without Oral Argument:** The motion is denied as moot because the case was dismissed August 13, 2004.

The court will issue a minute order.

6. 04-91155-A-13 LOUIS L. CASTNER HEARING ON MOTION FOR  
MB #1 RELIEF FROM AUTOMATIC STAY  
COUNTRYWIDE HOME LOANS, INC. VS. 8/12/04 [13]

MOTION WITHDRAWN 9/3/04

ORDER DISMISSING 8/30/04

**Disposition Without Oral Argument:** This matter was withdrawn September 3, 2004 and is removed from the calendar.

7. 99-93755-A-13 VICTOR AND AMOR VIZARRA HEARING ON MOTION FOR  
MB #1 RELIEF FROM AUTOMATIC STAY  
COUNTRYWIDE HOME LOANS, INC. VS. 8/20/04 [41]

**Tentative Ruling:** The motion is granted in part; adequate protection is ordered as set forth below.

The movant claims the debtors are three months in post-petition arrears. The debtors claim the movant is not accepting their payments. The docket shows this 60 month plan should be ending in the near future, since the case was filed on August 24, 1999.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) tender (whether or not movant accepts or rejects the tender) sufficient funds to become completely post-petition current in mortgage payments, including any associated late fees, by September 30, 2004, and (2) pay any remaining plan payment(s) to the trustee in a timely manner.

Further adequate protection is ordered as follows: N/A.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

8. 04-90956-A-13 RICHARD & LINDA GIBSON HEARING ON MOTION FOR  
LJB #1 RELIEF FROM AUTOMATIC STAY  
PRINCIPAL RESIDENTIAL AND FOR LEAVE TO EXERCISE  
MORTGAGE, INC. VS. POWER OF SALE IN DEED OF  
TRUST TO REAL PROPERTY; OR,  
ALTERNATIVELY, FOR ADEQUATE  
PROTECTION; ATTORNEY'S FEES  
8/25/04 [14]

**Tentative Ruling:** The motion is denied.

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 initially notes that the movant failed to state it made the necessary pre-filing investigation under LBR 4001-1(d)(2). The movant's claim is a Class 1 or "conduit" claim which is funded from plan payments and paid through the trustee's office. Thus, prior to filing a motion for relief from the automatic stay, a creditor must confer with the trustee's office to determine whether the plan payments are current. Given the debtors' evidence versus the creditor's allegations, it appears that the movant failed to complete this pre-filing investigation.

Termination of the automatic stay is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$100,023) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9<sup>th</sup> Cir. 1984).

Termination of the automatic stay under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on May 19, 2004. That plan provides for payment of the post-petition mortgage payments through the trustee's office. There is no evidence that the plan payments are in default. The debtors' opposition provided evidence that the trustee has paid the creditor through July 31, 2004 (which was the last due plan payment before the motion was filed on August 25, 2004).

Because the evidence establishes that the debtors were not delinquent at the time the motion was filed, the court finds the reasonable amount of fees for filing this motion is zero. 11 U.S.C. § 506(b).

Counsel for the movant shall submit an order that conforms to the court's ruling.

9.	03-90362-A-13	LOUIS & MARIA PANTANO	HEARING ON MOTION FOR
	RLE #1		RELIEF FROM AUTOMATIC STAY
	FORD MOTOR CREDIT CO. VS.		8/20/04 [43]

**Tentative Ruling:** The motion is granted as set forth below.

The movant contends the debtors are five months in arrears on their plan payment, which has caused them (as a Class 2 creditor) to not be paid. The debtors seeks 30 days to close an escrow on their real property which has approximately \$214,743 in equity. The creditor should be paid in full through escrow.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect through October 21, 2004 at midnight if the debtors pay the September 2004 chapter 13 plan payment to the trustee in a timely manner. In any event, the automatic stay is modified, effective at 12:01 a.m. on October 22, 2004, to permit foreclosure and actions necessary to obtain possession after foreclosure.

If the debtors fails to do any of the foregoing, the court will modify the automatic stay prior to October 22, 2004 to permit foreclosure and

actions necessary to obtain possession after foreclosure based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

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

Counsel for the movant shall submit an order that conforms to the court's ruling.

10.	03-90362-A-13 LOUIS & MARIA PANTANO LJB #1 WELLS FARGO BANK, N.A. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY AND FOR LEAVE TO EXERCISE POWER OF SALE IN DEED OF TRUST TO REAL PROPERTY; OR, ALTERNATIVELY, FOR ADEQUATE PROTECTION; ATTORNEY'S FEES 8/24/04 [52]
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**Tentative Ruling:** The motion is granted as set forth below.

The movant contends the debtors are two months in arrears, and the debtors seeks 30 days to close an escrow on the subject property which has approximately \$214,743 in equity.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect through October 21, 2004 at midnight if the debtors pay the September 2004 chapter 13 plan payment to the trustee in a timely manner. In any event, the automatic stay is modified, effective at 12:01 a.m. on October 22, 2004, to permit foreclosure and actions necessary to obtain possession after foreclosure.

If the debtors fails to do any of the foregoing, the court will modify the automatic stay prior to October 22, 2004 to permit foreclosure and actions necessary to obtain possession after foreclosure based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

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

Counsel for the movant shall submit an order that conforms to the court's

ruling.

11. 04-92662-A-13 GARRETT J. KREBBS HEARING ON MOTION FOR  
DT #1 RELIEF FROM AUTOMATIC STAY  
PREMIER COMMUNITY 8/16/04 [12]  
CREDIT UNION VS.

**Disposition Without Oral Argument:** Oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied as filed by an attorney not admitted to practice in the Eastern District of California. LBR 1001-1(c), incorporating E.D. Cal Local Rule 83-180.

Even if the attorney were authorized to practice law in this court, the motion would have still been denied as improperly filed. The motion was filed without a Relief from Stay Information Sheet in violation of LBR 4001-1(c), and improperly combined two separate motions for relief from stay in one pleading. The movant should have filed a separate motion for each lending agreement. LBR 9014-1(a).

The court will issue a minute order.

12. 04-92066-A-13 DANIEL R. HERRERA, JR. HEARING ON MOTION FOR  
LJB #1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. AND FOR LEAVE TO EXERCISE  
POWER OF SALE IN DEED OF  
TRUST TO REAL PROPERTY;  
OR, ALTERNATIVELY, FOR  
ADEQUATE PROTECTION;  
ATTORNEY'S FEES  
8/23/04 [25]

**Disposition Without Oral Argument:** This matter was withdrawn by the moving party on September 15, 2004 and is removed from the calendar.

13. 01-93972-A-13 DENISE BETTY WEIS HEARING ON PART II MOTION  
RSS #1 FOR RELIEF FROM AUTOMATIC  
CAL STATE GROWTH FUND STAY, OR IN THE ALTERNATIVE,  
FOR ADEQUATE PROTECTION  
8/30/04 [32]

**Disposition Without Oral Argument:** Oral argument would not benefit the court in rendering a decision in this matter.

The motion is denied for filing defects, pursuant to LBR 9014-1(l). The motion was filed with an outdated Relief from Stay Information Sheet and under the "Part II" notice requirements. See, 4001-1(c). There have been no "Part II" motions in this court for several years. See, LBR 9014-1(f).

A copy of the current local rules of this court and certain required forms is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

14.	04-92791-A-13 DENNIS R. SUAREZ MET #1 BANK OF THE WEST VS.	HEARING ON MOTION FOR TERMINATION OF AUTOMATIC STAY 8/16/04 [13]
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**Disposition Without Oral Argument:** Oral argument would not assist the court in rendering a decision in this matter.

The motion is denied as moot. The court entered a confirmation order for debtor's chapter 13 plan on September 15, 2004. The debtor leased the subject property from the movant. The terms of Section D of the confirmed plan provide, "Any executory contract or unexpired lease not listed in table below is rejected. Entry of the confirmation order modifies the automatic stay of 11 U.S.C. § 362 to allow the nondebtor party to a rejected unexpired lease to obtain possession of the leased property." The debtor did not list this lease in the table at Section D of the plan. Thus, entry of the confirmation order constitutes an order granting relief from the automatic stay. In other words, movant has already received the requested relief by the order confirming the plan.

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

The court will issue a minute order.

15.	04-90999-A-13 CARLOS & DEBRA TORRES SML #1 OCWEN FEDERAL BANK FSB VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY OR IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION 8/24/04 [20]
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CASE DISMISSED EOD 8/19/04

**Disposition Without Oral Argument:** The motion is denied as moot as the case was dismissed August 19, 2004.

The court will issue a minute order.

16. 04-93137-A-13 DEONN L. LEWIS HEARING ON ORDER TO  
SHOW CAUSE RE DISMISSAL OF  
CASE OR IMPOSITION OF  
SANCTIONS FOR FAILURE OF  
DEBTOR AND/OR DEBTOR'S  
ATTORNEY TO FILE A MASTER  
ADDRESS LIST AND PAYMENT OF  
THE AMENDMENT FEE OF \$26.00  
8/26/04 [4]

**Tentative Ruling:** None.

17. 03-93001-A-13 CLAYTON & NANCY RAPOZA HEARING ON MOTION TO  
DN #2 MODIFY PLAN  
8/10/04 [28]

**Tentative Ruling:** The trustee's objections are conditionally overruled, and the motion to confirm is conditionally granted.

The trustee's objection regarding the CitiFinancial claim is conditionally overruled; the condition being that the order confirming the modified plan provides for CitiFinancial's Class 2 claim at \$0 (or, if appropriate, the amount already paid by the trustee). CitiFinancial holds a second deed of trust on debtors' residence. An unopposed motion to value CitiFinancial's collateral (attached to the debtors' original plan) was granted. That motion valued the collateral securing CitiFinancial's claim at \$215,000. After deducting the \$230,000 claim of Ocwen, the holder of the first deed of trust, there was no collateral value available to CitiFinancial. Therefore, its secured claim became \$0, and its claim should have appeared at that amount in Class 2. The valuation of the collateral securing CitiFinancial's claim is final, at least as to CitiFinancial; it will not change unless CitiFinancial seeks and obtains relief from that order.

The trustee's objection regarding the dividend to Class 7 is conditionally overruled; the condition being that the order confirming the modified plan provides for a 7% dividend to Class 7 claims.

In the absence of any other opposition and subject to the above conditions, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

18. 03-93701-A-13 MICHAEL & RHONDA COLLINS HEARING ON MOTION TO  
FW #1 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
7/23/04 [34]

**Tentative Ruling:** The motion is conditionally granted, the condition being that an order confirming the modified plan provide the term sought by the trustee in his opposition and agreed to in the debtors' reply, to wit, the language to properly suspend payment arrears. The trustee's

objection to the provision for the IRS claim is overruled, because the IRS's amended claim matches the debtors' plan.

In the absence of any other opposition and subject to the above condition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

19. 04-92204-A-13 VICKI G. RAMIREZ HEARING ON TRUSTEE'S  
RDG #3 OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
8/11/04 [32]

**Disposition Without Oral Argument:** The motion is denied and the plan objections are overruled as moot because the case was voluntarily dismissed on August 30, 2004.

The court will issue a minute order.

20. 04-92205-A-13 JOHNNY & SHIREE MOITOSO HEARING ON TRUSTEE'S  
RDG #1 OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
8/11/04 [13]

**Tentative Ruling:** The motion is continued to October 19, 2004, at 1:30 p.m. to allow the debtors an opportunity to tender requested documents to the trustee.

The court will issue a minute order.

21. 04-90810-A-13 RUDY G. SALAZAR, JR. & HEARING ON MOTION TO  
JCK #1 JEANETTE SALAZAR MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
8/11/04 [18]

**Tentative Ruling:** The trustee's objections are overruled, and the motion is granted. The debtors' amended schedules support the plan terms, and the trustee has failed to explain why the fact that he can only pay the administrative and Class 1 claims for the first year constitutes a valid feasibility objection under 11 U.S.C. § 1325(a)(6). In the absence of any other opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

22. 04-90611-A-13 JOSEPH FRANK HERNANDEZ HEARING ON MOTION TO  
JCK #1 MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
8/3/04 [14]

**Tentative Ruling:** The trustee's objection is sustained, and the motion to confirm is denied.

The debtor failed to carry the 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

23. 03-91715-A-13 WILLIAM & VERNA SORRICK HEARING ON MOTION TO  
MET #1 MODIFY PLAN  
8/10/04 [49]

**Tentative Ruling:** The motion is conditionally granted, the condition being that an order confirming the modified plan provide the terms sought by the trustee in his opposition and agreed to in the debtors' reply. In the absence of any opposition and subject to that condition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

24. 04-91915-A-13 LEN VAN GAALEN, JR. & HEARING ON MOTION TO  
FW #1 SHERRIE VAN GAALEN CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
7/23/04 [18]

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

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

25. 04-92319-A-13 RICKY & JENIFER CABANISS HEARING ON TRUSTEE'S  
RDG #1 OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
8/18/04 [25]

**Tentative Ruling:** The motion is continued to October 19, 2004, at 1:30 p.m. to allow the debtors an opportunity to tender requested documents to the trustee.

The court will issue a minute order.

26. 02-94120-A-13 RUDY & SUSAN LEON HEARING ON MOTION TO  
PGM #3 MODIFY CHAPTER 13 PLAN  
AFTER CONFIRMATION  
8/4/04 [79]

**Tentative Ruling:** The trustee's objection is sustained, and the motion to confirm is denied.

The debtors failed to carry the 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

27. 04-90121-A-13 DENNIS & DEANNA RALEIGH HEARING ON MOTION TO  
FW #3 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
8/13/04 [48]

**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. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

28. 04-92021-A-13 THEODORE & TINA GAMBOA HEARING ON MOTION TO  
MJH #2 FILE AMENDED CHAPTER 13  
PLAN AND TO SUSPEND  
CHAPTER 13 PAYMENTS  
8/9/04 [21]

**Tentative Ruling:** The motion is conditionally granted, the condition

being that an order confirming the amended plan provide the terms sought by the trustee in his opposition. In the absence of other opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

29. 04-91322-A-13 LESTER OWENS & CONT. HEARING ON MOTION TO  
FF #3 ERIKA MONTGOMERY-OWENS CONFIRM DEBTORS' FIRST  
AMENDED PLAN  
6/21/04 [35]

**Tentative Ruling:** This matter was continued from August 3, 2004. At that hearing, the court allowed the Class 1 claim of Homeq Servicing Corporation in the amount of \$12,116.43 (ECF-70), overruled the trustee's objection to the plan provision for debt to the Arizona Department of Revenue, and continued the matter to allow three stand-alone motions to value to be heard. The court granted the debtors' three motions to value in the next matters on the calendar. Nonetheless, the plan still fails to provide for the claim of Homeq Servicing Corporation in the newly allowed amount of \$12,116.43. Thus, the trustee's objection's on this final point (failure to fully provide for this creditor's secured claim) is sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

30. 04-91322-A-13 LESTER LEE OWENS & HEARING ON MOTION TO  
FF #4 ERIKA MONTGOMERY-OWENS VALUE COLLATERAL OF FRANKLIN  
CAPITAL CORPORATION  
8/10/04 [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 pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2002 Isuzu Axion, had a value of \$15,745 on the date of the petition. Thus, \$15,745 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

31. 04-91322-A-13 LESTER LEE OWENS & HEARING ON MOTION TO  
FF #5 ERIKA MONTGOMERY-OWENS VALUE COLLATERAL OF PATELCO  
CREDIT UNION  
8/10/04 [60]

**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 pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2002 Chevrolet Suburban, had a value of \$26,665 on the date of the petition. Thus, \$26,665 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

32. 04-91322-A-13 LESTER LEE OWENS & HEARING ON MOTION TO  
FF #6 ERIKA MONTGOMERY-OWENS VALUE COLLATERAL OF UNITED  
CONSUMER FINANCIAL  
8/10/04 [65]

**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 pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a vacuum, had a value of \$500 on the date of the petition. Thus, \$500 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

33. 02-93424-A-13 REBECCA LABONTE HEARING ON MOTION TO  
FW #1 MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
7/23/04 [18]

**Tentative Ruling:** The trustee's objection is sustained, and the motion to confirm is denied.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). In addition to the trustee's concern, the court notes the plan has inconsistent plan lengths. While the front page of the plan states the length is 60 months, the Additional Provisions state it is 26 months. 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

34. 03-93427-A-13 MARIO ARMENDARIZ  
FW #3

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
AMERICAN GENERAL FINANCE  
8/3/04 [45]

**Disposition Without Oral Argument:** Oral argument would not benefit the court in ruling on this matter.

The debtor's objection to Claim No. 4 on ECF, filed by American General Financial is overruled as moot, because the claim was withdrawn on July 19, 2004. The court's ECF claim register already shows this claim was withdrawn.

The court will issue a minute order.

35. 03-94727-A-13 ANTONIA HOWARD  
FW #2

HEARING ON MOTION TO  
MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
8/6/04 [58]

**Tentative Ruling:** The motion is conditionally granted, the condition being that an order confirming the modified plan provide the terms sought by the trustee in his opposition and agreed to in the debtor's reply. In the absence of any other opposition and subject to that condition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

36. 03-94828-A-13 DOMINGO & ERMELINDA  
FW #1 PATRICIO

HEARING ON MOTION TO  
VALUE COLLATERAL OF  
DAIMLERCHRYSLER SERVICES,  
LLC  
8/12/04 [44]

**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 pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2000 Nissan, had a value of \$15,542.50 on the date of the petition. Thus, \$15,542.50 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

37. 03-94828-A-13 DOMINGO & ERMELINDA HEARING ON MOTION TO  
FW #2 PATRICIO MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
8/12/04 [50]

**Tentative Ruling:** The trustee's objections are sustained, in part and overruled in part, and the motion to confirm is denied.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(3). The debtors are claiming educational expenses for an undisclosed child in the Philippines.

The trustee's objection to the interest rate on Daimlerchrysler claim is overruled. The 10% interest rate was in error.

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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

38. 04-92828-A-13 JOHN & JEAN MICHAEL HEARING ON MOTION TO  
JCK #1 VALUE COLLATERAL OF UNITED  
CONSUMER  
8/18/04 [14]

**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 pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a vacuum, had a value of \$200 on the date of the petition. Thus, \$200 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

39. 01-91830-A-13 JOSE & GLORIA HERNANDEZ HEARING ON TRUSTEE'S  
RDG #1 OBJECTION TO ALLOWANCE OF  
CLAIM OF GUARANTY FEDERAL  
BANK, FSB THROUGH ITS AGENT  
GUARANTY RESIDENTIAL  
LENDING  
8/3/04 [45]

**Tentative Ruling:** The trustee's objection to Claim No. 9 on ECF, filed by Guaranty Residential Lending, Inc. ("Bank"), is overruled. The Bank filed a timely informal proof of claim on September 10, 2001, through its motion for relief from the automatic stay and supporting documentation. The non-governmental claim bar date was September 18, 2001. Claim No. 9 is an amendment to the Bank's timely-filed informal claim.

To constitute an informal proof of claim, a creditor must point to an explicit written demand made during the claim filing period that shows the nature and amount of the claim and an intent to hold the debtor liable for it. Sambo's Rests., Inc. v. Wheeler (In re Sambo's Rests., Inc.), 754 F.2d 811, 815 (9<sup>th</sup> Cir. 1985). Here, the documents supporting the motion for relief from stay explicitly establish the nature and amount of the claim and the Bank's intent to hold the debtors liable for it.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

40. 01-91830-A-13 JOSE & GLORIA HERNANDEZ                   CONT. HEARING ON MOTION TO  
JMO #3   MODIFY CHAPTER 13 PLAN  
  AFTER CONFIRMATION  
  7/8/04 [35]

**Tentative Ruling:** This matter was continued from August 17, 2004, at the request of the parties. No further pleadings being submitted on this matter, the court reissues its prior ruling.

The trustee's objections are sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (6). The debtors also failed to provide evidence on why they are modifying their plan. 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

41. 02-93830-A-13 MICHAEL A. JOHNSON                   HEARING ON MOTION TO  
FW #2   INCUR DEBT  
  8/23/04 [24]

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

42. 04-92230-A-13 MICHAEL & HELENE HANEY           HEARING ON TRUSTEE'S  
RDG #2   OBJECTION TO CONFIRMATION  
  OF PLAN AND MOTION TO  
  DISMISS  
  8/11/04 [12]

**Disposition Without Oral Argument:** The trustee's chapter 13 plan objections are overruled and the motion to dismiss is denied as moot. On

September 9, 2004, the debtors converted their case to Chapter 7.

The court will issue a minute order.

43. 03-93231-A-13 RICHARD & CAROL ESTES HEARING ON OBJECTION  
MDG #6 TO ALLOWANCE OF CLAIM  
NO. 15 OF AUTOMOTIVE  
FINANCE CORP.  
8/4/04 [130]

**Disposition Without Oral Argument:** Oral argument would not benefit the court in ruling on this matter.

The debtors' objection to Claim No. 15 on ECF, filed by Automotive Finance Corp is overruled as moot, because the claim was amended by Claim No. 16 on ECF, filed on August 16, 2004. The court's ECF claim register already shows Claim No. 15 as amended.

The court will issue a minute order.

44. 04-90131-A-13 JAMES & CHRISTINE GREEN HEARING ON MOTION TO  
JCK #1 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
8/18/04 [20]

**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. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan, in this case the plan filed August 25, 2004.

45. 02-92732-A-13 PAMELA L. GILMORE HEARING ON TRUSTEE'S  
RDG #1 OBJECTION TO ALLOWANCE OF  
CLAIM OF GMAC MORTGAGE  
CORPORATION  
7/14/04 [83]

**Disposition Without Oral Argument:** Oral argument would not benefit the court in ruling on this matter.

The debtor's objection to Claim No. 24 on ECF, filed by GMAC Mortgage Corporation is overruled as moot, because the claim was amended by Claim No. 27 on ECF, filed on July 22, 2004. The court's ECF claim register already shows Claim No. 24 as amended. Nothing in this ruling constitutes or implies a ruling on any objection to Claim No. 27 that may be filed.

The court will issue a minute order.

46. 04-92533-A-13 TIMOTHY & SABRINA STEWART HEARING ON OBJECTION  
RLE #1 TO CONFIRMATION OF DEBTORS'  
CHAPTER 13 PLAN AND TO THE  
MOTION TO VALUE ITS  
COLLATERAL CONTAINED THEREIN  
FILED BY DAIMLERCHRYSLER  
SERVICES NORTH AMERICA LLC  
8/24/04 [14]

**Disposition Without Oral Argument:** The secured creditor's plan objections are overruled as moot, because the debtors voluntarily dismissed their case on September 16, 2004.

The court will issue a minute order.

47. 04-92234-A-13 GARY & MARY ACOSTA HEARING ON TRUSTEE'S  
RDG #2 OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
8/11/04 [22]

**Tentative Ruling:** The trustee's objections to confirmation are overruled as moot because the debtors filed a first amended plan on August 23, 2004. A hearing on confirmation is set for October 5, 2004. The plan to which the trustee objects is no longer before the court. The motion to dismiss is denied without prejudice.

The court will issue a minute order.

48. 04-92236-A-13 RUBEN SANDOVAL HEARING ON TRUSTEE'S  
RDG #1 OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
8/11/04 [27]

**Disposition Without Oral Argument:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(4) and (6) and § 1325(b)(a)(B). 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The trustee's motion to dismiss is granted, pursuant to § 1307(c). The debtor did not respond to this motion, indicating his consent to the dismissal of this case under the local bankruptcy rules.

The trustee shall submit an order that conforms to the court's ruling.

49. 04-92239-A-13 MARK MCKEE

HEARING ON MOTION FOR  
CONFIRMATION OF SECOND  
AMENDED CHAPTER 13 PLAN  
8/9/04 [18]

**Disposition Without Oral Argument:** Oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied for filing defects. The motion failed to provide the proper time to file an opposition, pursuant to LBR 9014-1(d)(3) and 9014-1(f)(1). Also, the amended plan improperly attached a motion to value collateral. Since this amended plan was not served at least eleven calendar days before the section 341 meeting, motions to value must be filed as "stand-alone" motions.

The court notes that counsel-of-record for the debtor needs to update his address with the District Court clerk's office.

The court will issue a minute order.

50. 03-94040-A-13 WILLIE WOODS  
FW #5

HEARING ON MOTION TO  
MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
8/12/04 [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. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

51. 04-92241-A-13 BRENDA CARROL FIELDS  
RDG #1

HEARING ON TRUSTEE'S  
OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
8/6/04 [17]

**Tentative Ruling:** The objection is sustained and the motion to dismiss is granted.

The court notes that, in violation of LBR 9014-1(c), the trustee used the same Docket Control Number for another motion (ECF-25). In this instance, the court will not issue sanctions and will address the merits of the motion. But see, 9014-1(l).

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re

Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The trustee's motion to dismiss is granted, pursuant to § 1307(c). The debtor has not responded to this motion, indicating her consent to the dismissal of this case under the local bankruptcy rules.

The trustee shall submit an order that conforms to the court's ruling.

52. 04-92544-A-13 CARLOS & MALINDA MARTINEZ HEARING ON OBJECTION  
JMP #1 TO CONFIRMATION OF  
CHAPTER 13 PLAN FILED BY  
CITIFINANCIAL MORTGAGE  
COMPANY, INC.  
8/19/04 [12]

**Tentative Ruling:** The secured creditor's objections are sustained in part and overruled in part, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1322(d) and § 1325(a)(6). Specifically, the debtors did not address the secured creditor's objections regarding feasibility and plan length.

The secured creditor's objections to failing to make the first payment and the amount of the arrears is overruled. The debtors agreed to provide for the full arrears and have begun making plan payments.

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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Because the value of the collateral exceeds movant's claim, the movant may amend its filed claim to include an award of attorneys fees equal to the lesser of \$675 or the amount actually billed.

Counsel for the secured creditor shall submit an order that conforms to the court's ruling.

53. 01-90646-A-13 TROY DANIEL, JR. & HEARING ON MOTION TO  
HWW #4 MARIA DANIEL MODIFY CHAPTER 13 PLAN  
8/18/04 [65]

**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. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

54. 04-93049-A-13 SHIRLEY E. HOWARD  
MB #1

HEARING ON OBJECTIONS  
TO PROPOSED CHAPTER 13 PLAN  
AND CONFIRMATION THEREOF  
FILED BY WM SPECIALTY  
MORTGAGE LLC  
8/23/04 [10]

CASE DISMISSED EOD 8/20/04

**Disposition Without Oral Argument:** The motion is denied as moot because the case was dismissed August 20, 2004.

The court will issue a minute order.

55. 04-91350-A-13 GOLDIE M. POWERS  
RDG #1

HEARING ON TRUSTEE'S  
OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
8/18/04 [13]

**Tentative Ruling:** No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. In this instance, the court issues a tentative ruling.

The debtor failed to carry the 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The trustee's motion to dismiss is granted, pursuant to § 1307(c). The debtor did not respond to this motion, indicating her consent to the dismissal of this case under the local bankruptcy rules.

The trustee shall submit an order that conforms to the court's ruling.

56. 04-92451-A-13 FARON & LENA HAIR  
RDG #2

HEARING ON TRUSTEE'S  
OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
8/18/04 [34]

**Disposition Without Oral Argument:** The trustee's chapter 13 plan objections are overruled and the motion to dismiss is denied as moot. The case was dismissed on September 15, 2004.

The court will issue a minute order.

57. 02-90152-A-13 RICKY & GINA GUILLORY HEARING ON MOTION TO  
CLH #1 MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
8/9/04 [50]

**Tentative Ruling:** None. The debtors submitted a late reply on September 17, 2004. The court awaits the trustee's comments prior to ruling on the merits of the motion.

58. 02-90152-A-13 RICKY & GINA GUILLORY HEARING ON MOTION TO  
CLH #2 INCUR DEBT  
8/9/04 [54]

**Tentative Ruling:** None. The debtors submitted a late reply on September 17, 2004. The court awaits the trustee's comments prior to ruling on the merits of the motion.

59. 03-90854-A-13 DONALD & PATRICIA HEARING ON MOTION TO  
FW #1 ANDRZEJEWSKI MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
8/11/04 [26]

**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. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

60. 04-90858-A-13 WILMA ABBOTT HEARING ON MOTION TO  
FW #1 MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
8/9/04 [27]

**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)(4) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

61. 03-93563-A-13 RANDALL & SHEILA SMITH HEARING ON OBJECTION  
JCK #3 TO ALLOWANCE OF CLAIM OF  
FAIRBANKS CAPITAL  
CORPORATION  
7/28/04 [30]

**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 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Nevertheless, the court issues a tentative ruling.

The objection to claim is overruled. The objection fails on its face. It is undisputed that on the filing date the debtors were delinquent the amount stated on the proof of claim: \$1,186.01. The debtors seek to have the claim reduced by \$1,000.00; the amount of a payment they made directly to claimant on or about September 16, 2004; twelve days post-petition. The debtors' problem is that the claim of this creditor is mis-classified in Class 4. Because it was in arrears on the filing date, it should have been in Class 1. Nevertheless, Claimant correctly completed the proof of claim. Because the claim is correct, the objection to claim is overruled. Debtors must deal with the arrearage by plan modification, not by claim objection.

The court will issue a minute order.

62. 04-91363-A-13 THOMAS & VIVIAN ANDERSON HEARING ON MOTION TO  
MSN #1 MODIFY DEBTORS' CHAPTER 13  
PLAN  
8/2/04 [36]

WITHDRAWN 8/3/04

**Disposition Without Oral Argument:** The motion was withdrawn by debtors on August 31, 2004 and is removed from the calendar.

63. 04-92364-A-13 CHARLES & DELORES FRANKLIN HEARING ON MOTION FOR  
CFH #1 CONFIRMATION OF FIRST  
AMENDED CHAPTER 13 PLAN  
8/12/04 [9]

**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)(5) and (a)(6). In addition, the court notes that debtors have used the incorrect plan form for this 2004 case. 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

64. 04-90768-A-13 JAMES & CORNELIA BRODIE HEARING ON OBJECTION  
PC #1 TO ALLOWANCE OF CREDITOR'S  
CLAIM OF CHRISTOPHER  
ARTIAGA/LAW OFFICE OF  
FLUETSCH & FLUETSCH  
8/6/04 [54]

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

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

65. 04-90768-A-13 JAMES & CORNELIA BRODIE CONT. HEARING ON MOTION TO  
PC #2 CONFIRM AMENDED CHAPTER 13  
PLAN  
6/25/04 [41]

**Tentative Ruling:** This matter continued from August 3, 2004 to be heard with the debtors' objection to the claim of Christopher Artiaga. That objection to claim having been sustained, the trustee's objection in this matter is overruled and the motion is granted. In the absence of any additional opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

66. 04-92668-A-13 YSIDORE & LAURENE HEARING ON OBJECTION  
SML #1 MARTINEZ TO CONFIRMATION OF CHAPTER  
13 PLAN AND REQUEST FOR  
DISMISSAL  
8/26/04 [13]

**Disposition Without Oral Argument:** This matter is continued by the court to November 15, 2004 at 2:00 p.m. to be heard with any additional objections to confirmation which may be filed following conclusion of the meeting of creditors on September 29, 2004.

The court will issue a minute order.

67. 04-92768-A-13 CONNIE J. STANLEY

HEARING ON OBJECTION  
TO CHAPTER 13 PLAN FILED BY  
CITIMORTGAGE, INC.  
8/25/04 [17]

**Tentative Ruling:** The objections to confirmation are overruled in part and conditionally overruled in part.

Creditor raises three objections to confirmation. The first two are overruled. As an initial matter, the debtor does not make any payments to movant under the terms of her plan. Debtor makes payments to the trustee who then pays both the conduit payment and arrears owed to movant. The debtor is current on plan payments to the trustee. It is administratively impossible for the trustee to pay the first post-petition payment because the first plan payment is not due until the 25<sup>th</sup> day of the month following the one in which the case is filed. The second objection borders on frivolous. Movant's recourse for a breach of this plan is the same as for any plan; a motion for relief from stay or a motion to dismiss under Section 1307.

The third objection is conditionally overruled if debtors provide in the order confirming plan that the correct conduit payment is \$672.67. The court has one additional condition for confirmation of this plan. The debtor shall amend the payment schedule to account for the earlier than expected sale of debtor's residence. The time for filing objections to debtor's plan has ended. There are no other objections to this plan pending. In the absence of additional objections and subject to the two conditions above, the plan is conditionally confirmed and 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 that conforms to the court's ruling which has been approved by the trustee.

68. 04-92768-A-13 CONNIE STANLEY  
FW #1

HEARING ON MOTION TO  
SELL REAL PROPERTY  
8/17/04 [13]

**Tentative Ruling:** The motion to sell debtor's residence located at 1050 Alpha Road, Turlock California is granted subject to the inclusion of the trustee's four standard conditions. On September 16, 2004, the trustee withdrew his second and third objections. The first and fourth objections are overruled as moot because debtor's plan is confirmed at matter 67 above. Sale of the debtor's residence is consistent with her performance under the plan confirmed at matter 67.

Counsel for debtor shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

69. 03-94971-A-13 MARCELO & MARIA LAMAS  
JCK #1

HEARING ON MOTION TO  
MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
8/3/04 [18]

**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. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

70. 04-91672-A-13 GARY & PAMELA QUALLS  
RDG #1

HEARING ON TRUSTEE'S  
OBJECTION TO THE DEBTORS'  
CLAIM OF EXEMPTION OF  
RESIDENCE PURSUANT TO  
AMENDED SCHEDULE C FILED  
JULY 21, 2004  
8/11/04 [39]

**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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Nevertheless, the court issues a tentative ruling.

The objection is overruled. The trustee has provided no evidence that the exemption is improperly claimed. There is no declaration attached to the objection to establish the facts alleged in the objection. See LBR 9014-1(d)(6). Furthermore, the court takes judicial notice that the adversary referenced in the objection was voluntarily dismissed on September 13, 2004. There is no basis to sustain the objection.

The court will issue a minute order.

71. 04-91675-A-13 WILLIAM & KATHLEEN JOSEPH  
RDG #2

CONT. HEARING ON TRUSTEE'S  
OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS  
6/18/04 [27]

**Tentative Ruling:** This matter continued from August 3, to allow debtors to complete their unfiled tax returns and provide copies to the trustee. Nothing additional has been filed in this case.

The trustee's objection to confirmation is sustained, for the reasons stated in the chapter 13 trustee's filing, and confirmation 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The motion to dismiss is granted. The court continued this matter six weeks for the debtor to complete their missing returns. Their failure to do so is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

72. 04-92476-A-13 JEANNE CLARE FURTH HEARING ON MOTION TO  
JCK #1 CONFIRM THE FIRST AMENDED  
CHAPTER 13 PLAN  
8/11/04 [11]

**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. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

73. 99-91276-A-13 VICTORIA JONES-ICE HEARING ON OBJECTION  
FW #3 TO ALLOWANCE OF CLAIM OF  
TOM WATSON, TREASURER-  
TAX COLLECTOR  
8/6/04 [53]

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

The objection is sustained. The Claim was not timely filed. The last date to file a claim was July 27, 1999, and to file a government claim was September 20, 1999. Tom Watson, Treasurer-Tax Collector filed the Claim for \$90.00 on November 7, 2000.

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

Counsel for debtor shall submit an order that conforms to the court's ruling.

74. 04-90880-A-13 ROZELLE HOLGATE  
FW #1

HEARING ON MOTION TO  
INCUR DEBTOR  
8/27/04 [13]

**Tentative Ruling:** The trustee's objection is overruled and the motion to incur debt is granted subject to the inclusion of the trustee's four standard conditions. Incurring the new debt is consistent with the debtor's performance of her confirmed plan. The trustee's objection has been cured by the second amended Schedule I filed September 9.

Counsel for debtor shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

75. 04-90582-A-13 RENEE PEACOCK  
FW #1

HEARING ON MOTION TO  
MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
8/3/04 [29]

**Tentative Ruling:** The trustee's objections are sustained in part and denied in part. The feasibility objection regarding the need to sustain the objection to the claim of Ford Credit is overruled because that objection is sustained below at matter 76. The remaining feasibility 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

76. 04-90582-A-13 RENEE PEACOCK  
FW #2

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
FORD CREDIT  
8/3/04 [24]

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

The objection is sustained. The debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a security interest but attaches no security documents or proof of perfection. B.R. 3001(c) and (d). Thus, the Claim does not constitute prima facie evidence of the validity and amount of the Claim. The objection is sustained and the Claim is disallowed as a secured claim and allowed as a general

unsecured claim, except to the extent already paid as a secured claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

77. 04-92684-A-13 JOE & JUDY HETU HEARING ON OBJECTION  
PC #2 TO CONFIRMATION OF DEBTORS'  
CHAPTER 13 PLAN FILED BY  
ETTER TRUST  
8/5/04 [10]

**Disposition Without Oral Argument:** This matter is continued by the court to November 15, 2004 at 9:00 a.m. to be heard with any additional objections to confirmation which may be filed following conclusion of the meeting of creditors on September 29, 2004. Because of the change in LBR 1002-1, the continued hearing on this matter will be heard in Courtroom 28 at the United States Courthouse, 501 I street, seventh floor, Sacramento California.

The court will issue a minute order.

78. 03-94387-A-13 NALLARARNAM DAYANANTHAN HEARING ON MOTION TO  
FW #2 MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
8/5/04 [45]

**Disposition Without Oral Argument:** The chapter 13 trustee withdrew his opposition to the motion on September 16, 2004. No additional written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any additional opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

79. 03-94387-A-13 NALLARARNAM DAYANANTHAN HEARING ON OBJECTION  
FW #3 TO ALLOWANCE OF CLAIM OF  
OAKLAND MUNICIPAL CREDIT  
8/5/04 [49]

**Disposition Without Oral Argument:** The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 006 on the Notice of Filed Claims, filed by Oakland Municipal Credit, ("Claim") is resolved without oral argument.

The objection is sustained. The debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima

facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a priority interest but did not specify which subsection of §507(a) supports that classification, as directed to on the proof of claim, Box 6. Thus, the Claim does not constitute prima facie evidence of the nature of the Claim. The objection is sustained and the Claim is disallowed as a priority claim and allowed as a general unsecured claim, except to the extent already paid as a priority claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

80. 03-94888-A-13 DAVID & LESLEY CARDOZA HEARING ON MOTION TO  
FW #1 CONFIRM SECOND AMENDED  
CHAPTER 13 PLAN  
8/2/04 [82]

**Tentative Ruling:** The chapter 13 trustee has consented in his opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Neither Mortgage Electronic Registration Systems ("MERS") 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 MERS have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

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

The trustee's fourth objection, that the plan proposes to pay \$0.00 in November 2004, is overruled. The plan proposes no such thing. The \$0.00 payment in the additional provisions section is attributable to July 2004 as the debtors have listed all payments to be made during the entire 17 month plan term. The trustee's remaining objections are sustained for the reasons set forth in the trustee's opposition.

MERS' third and fourth objections are overruled. While the debtors have the ultimate burden of proof on all confirmation issues, objecting creditors must provide some factual and legal basis to support their objections. MERS' third and fourth objections are nothing more than one sentence conclusory statements that the plan is not filed in good faith and does not comply with the Bankruptcy Code. MERS' remaining objections are sustained.

The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(5) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

81. 03-93689-A-13 MARGIE HICKS  
FW #2

HEARING ON MOTION  
TO INCUR DEBT  
8/26/04 [45]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). The court is aware of the trustee's response and the debtor's reply. However, other opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

82. 00-90190-A-13 ELENA O. MASCORRO  
RDG #1

HEARING ON TRUSTEE'S  
OBJECTION TO ALLOWANCE OF  
CLAIM OF SAN JOAQUIN COUNTY  
TAX COLLECTOR (SHABBIR A.  
KHAN)  
7/14/04 [32]

**Tentative Ruling:** The debtor's opposition, to the extent that it actually is an opposition, is overruled and the trustee's objection to claim is sustained. The trustee objects to claim No. 2 on the court's claims register, filed by San Joaquin County Tax Collector ("Claim"). The Claim was not timely filed. The last date to file a claim was May 23, 2000, and to file a government claim was July 17, 2000. San Joaquin County Tax Collector filed the Claim for \$3,028.52 on May 24, 2001.

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

The debtor's opposition is overruled. Nothing in this matter seeks disgorgement of any monies. Nor does this objection to claim have any effect on any claim other than the one to which the objection is directed. The claims filed on behalf of this creditor by debtor are in no way addressed by this matter.

Counsel for trustee shall submit an order that conforms to the court's ruling.

83. 04-92091-A-13 TRACY & JANICE GATZ  
FW #1

HEARING ON MOTION TO  
SELL REAL PROPERTY  
8/30/04 [21]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). The court is aware of the trustee's written opposition. However, other opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

84. 03-91392-A-13 DAVID KELLIS  
AAC #3

HEARING ON OBJECTION  
TO ALLOWANCE OF CLAIM OF  
STATE OF ARIZONA, EX.  
REL., DEPARTMENT OF  
ECONOMIC SECURITY  
(RICHARD L. WINSLOW)  
7/29/04 [89]

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

The objection is sustained. The debtor questions the validity and nature of this claim. A proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

Counsel for debtor shall submit an order that conforms to the court's ruling.

85. 04-91592-A-13 JOSEPH & JANET RAMIREZ  
FW #1

HEARING ON MOTION TO  
CONFIRM AMENDED CHAPTER 13  
PLAN  
8/3/04 [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)(4) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

86. 04-90293-A-13 MICHAEL & CHRISTINE TOON  
JCK #2

HEARING ON MOTION TO  
VALUE COLLATERAL OF BANK  
OF STOCKTON  
8/18/04 [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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter

is resolved without oral argument.

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2000 Buick Century Custom sedan, had a value of \$7,730.00 on the date of the petition. Thus, \$7,730.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

87. 02-93095-A-13 TERRENCE & PATRICIA HEARING ON MOTION TO  
FW #4 PREBALICK INCUR DEBT  
8/24/04 [79]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). The court is aware of the trustee's written response. However, other opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

88. 04-91395-A-13 SHELLEY VINCENT HEARING ON MOTION TO  
FW #2 CONFIRM SECOND AMENDED  
CHAPTER 13 PLAN  
8/3/04 [25]

**Tentative Ruling:** The trustee's objection is conditionally overruled if debtor provides in the order confirming plan for interest of 1.23% on general unsecured claims as consented in her reply. With that condition, the motion is granted. In the absence of any additional opposition and subject to the above condition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

89. 04-91695-A-13 VINCENT & ANNETTE TAYLOR HEARING ON MOTION TO  
SDH #1 CONFIRM SECOND AMENDED  
PLAN  
8/9/04 [30]

**Tentative Ruling:** The trustee's objection is conditionally overruled if debtors provide in the order confirming plan for interest of 1.55% on general unsecured claims. With that condition, the motion is granted. In the absence of any additional opposition and subject to the above condition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

90. 04-92197-A-13 WILLIE M. SEEGER, JR. & HEARING ON MOTION TO  
JCK #1 DEBRA L. SEEGER CONFIRM THE FIRST AMENDED  
CHAPTER 13 PLAN  
8/11/04 [15]

**Disposition Without Oral Argument:** This matter is continued by the court to October 19, 2004 at 1:30 p.m. The motion is premature as the meeting of creditors had not concluded as of the date the trustee's response to the motion was due. The court notes that the attached motion to value collateral is not authorized by General Order 03-03, ¶ 3. A stand alone motion will be necessary.

The court will issue a minute order.

91. 03-92798-A-13 PATRICIA L. ROLAND HEARING ON MOTION TO  
JCK #4 MODIFY DEBTOR'S CONFIRMED  
CHAPTER 13 PLAN  
8/3/04 [40]

**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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

92. 04-92099-A-13 RONALD L. EDWARDS CONT. HEARING ON OBJECTION  
TO CONFIRMATION OF DEBTOR'S  
CHAPTER 13 PLAN FILED BY  
CUNA MUTUAL MORTGAGE  
CORPORATION  
7/2/04 [11]

**Disposition Without Oral Argument:** The objection is overruled as moot because this case was dismissed September 15, 2004.

The court will issue a minute order.

93. 03-90402-A-13 DANIEL & DEBRA LOHR HEARING ON MOTION TO  
FW #2 AVOID LIEN ON DEBTOR'S  
DANIEL & DEBRA LOHR VS. RESIDENCE  
9/2/04 [40]  
SYNDICATED OFFICE SYSTEMS

**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 (9<sup>th</sup> Cir. 1995); LBR 9014-1(f)(1). Nevertheless, the court issues a tentative ruling.

The motion is denied without prejudice to debtors seeking the requested relief in an adversary proceeding. The debtors seek avoidance of the lien solely on the basis that it was recorded post-petition. This is a proceeding to determine the validity of a lien and that relief requires an adversary proceeding pursuant to Fed. R. Bankr. P. 7001(2). Lien avoidance is only authorized by motion when the basis is section 522(f).

The court will issue a minute order.

94. 04-90806-A-13 GEORGE & ANNETTE ANDERSON CONT. HEARING ON OPPOSITION TO MOTION TO AVOID JUDICIAL LIEN OF STEVEN F. JOHNSON, D.C.  
4/28/04 [26]

**Tentative Ruling:** This matter continued again from September 7, 2004. It is clear that discovery is not complete. The matter involves disputed facts that cannot be resolved on declarations. The parties shall be prepared to discuss the reopening of discovery, the length of any extension to the discovery cutoff, and dates for an evidentiary hearing.

95. 04-90806-A-13 GEORGE & ANNETTE ANDERSON CONT. HEARING ON OBJECTION TO NOTICE OF MOTION TO AVOID LIENS OF GAGEN, MCCOY, MCMAHON & ARMSTRONG ON BEHALF OF JOE FONZI'S HALL OF FAME  
GLM #1  
4/26/04 [19]

**Tentative Ruling:** This matter continued again from September 7, 2004. It is clear that discovery is not complete. The matter involves disputed facts that cannot be resolved on declarations. The parties shall be prepared to discuss the reopening of discovery, the length of any extension to the discovery cutoff, and dates for an evidentiary hearing.

96. 04-90806-A-13 GEORGE & ANNETTE ANDERSON CONT. HEARING ON OBJECTION TO CONFIRMATION OF DEBTORS' PROPOSED CHAPTER 13 PLAN AND TO MOTION TO AVOID JUDICIAL LIEN FILED BY FORD MOTOR CREDIT COMPANY  
DGN #1  
4/28/04 [22]

**Tentative Ruling:** This matter continued again from September 7, 2004. It is clear that discovery is not complete. The matter involves disputed facts that cannot be resolved on declarations. The parties shall be prepared to discuss the reopening of discovery, the length of any extension to the discovery cutoff, and dates for an evidentiary hearing.

97. 04-91825-A-13 DANIEL W. POMBO CONT. HEARING ON DEBTOR'S  
HWW #1 MOTION TO CONFIRM AMENDED  
CHAPTER 13 PLAN  
7/30/04 [37]

**Tentative Ruling:** This matter continued from September 7, 2004 at the request of the parties. Nothing new having been filed, the court reissues its prior ruling.

The trustee's objections are sustained, and the motion to confirm is denied.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(1) and (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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

98. 04-91825-A-13 DANIEL W. POMBO CONT. HEARING ON MOTION TO  
HWW #2 SELL REAL PROPERTY FREE  
AND CLEAR OF LIENS  
8/11/04 [42]

**Tentative Ruling:** None.

99. 04-93033-A-13 STEVEN & PAMELA HATCH HEARING ON MOTION FOR  
CCR #1 RELIEF FROM STAY FOR CAUSE  
IRWIN & A. POLLY STEINPRESS VS. FOR VIOLATION OF 11 U.S.C.  
SECTION 109(E)  
9/7/04 [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.

100. 04-92241-A-13 BRENDA CARROL FIELDS CONT. HEARING ON OBJECTION  
SML #1 TO CONFIRMATION OF  
CHAPTER 13 PLAN AND REQUEST  
FOR DISMISSAL FILED BY  
CHASE MANHATTAN MORTGAGE  
CORPORATION  
7/29/04 [11]

**Tentative Ruling:** This matter continued from September 7 at the request of the court and the parties. Nothing new having been filed in this

case, the court reissues its prior ruling.

This motion has been filed pursuant to 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 may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Nevertheless, the court issues a tentative ruling.

The objection to confirmation is sustained. The motion to dismiss is granted. Debtor is barred from filing another bankruptcy case until March 7, 2005. 11 U.S.C. § 109(g)(1).

The objection to confirmation is sustained. The plan fails to provide for the full amount of creditor's arrears claim. The difference in amount, nearly \$7,000, would require an increase in plan payment not supported by debtor's schedules. The term cannot increase because it is already at 60 months. 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The motion to dismiss with a 180 day bar is granted. The debtor has failed to respond to this motion to dismiss. She has failed to rebut the allegation that this case is filed solely for the purpose of delay. It is debtor's third bankruptcy case. This case was filed shortly after this creditor received relief from the automatic stay in debtor's prior case.

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

Counsel for the movant shall submit an order that conforms to the court's ruling.

101.	04-92241-A-13	BRENDA CARROL FIELDS	CONT. HEARING ON MOTION FOR
	SML #1		RELIEF FROM AUTOMATIC STAY
	CHASE MANHATTAN MORTGAGE CORP. VS.		8/9/04 [20]

**Tentative Ruling:** This matter continued from September 7 at the request of the court and the parties. Nothing new having been filed in this case, the court reissues its prior ruling.

The motion is denied as moot because the case is dismissed at matter 14 above.

The court will issue a minute order.

102. 01-93547-A-13 MICHAEL & SUSAN KERNS HEARING ON MOTION TO  
DN #3 AVOID JUDICIAL LIEN ON  
MICHAEL & SUSAN KERNS VS. EXEMPT PROPERTY  
9/7/04 [67]  
AMERICAN GENERAL FINANCE, INC.

**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.

103. 01-93547-A-13 MICHAEL & SUSAN KERNS HEARING ON MOTION TO  
DN #4 AVOID JUDICIAL LIEN ON  
MICHAEL & SUSAN KERNS VS. EXEMPT PROPERTY  
9/7/04 [71]  
T.A. ROSS COLLECTION

**Disposition Without Oral Argument:** This matter is continued by the court to October 5, 2004 at 1:30 p.m. The court requires motions of this kind to be served on the judgment creditor at the address stated in Item 3 of the abstract of judgment, and at any other address(es) known to the debtors or disclosed in the bankruptcy file, e.g., in a filed proof of claim. The debtors failed to serve the judgment creditor at the address listed in Item 3 of the abstract of judgment.

So as to provide the judgment creditor with sufficient notice of the continued motion, debtors shall serve the moving papers on the judgment creditor at the address in Item 3 on or before September 21, 2004; the date of this hearing. Debtors shall serve all parties in interest with notice of the continued hearing. Proof of the above service shall be filed with the court on or before September 24, 2004. If debtors fail to do any of the forgoing, the motion will be denied without prejudice.

The court will issue a minute order.

104. 04-92451-A-13 FARON & LENA HAIR CONT. HEARING ON OPPOSITION  
RSA #1 TO MOTION TO VALUE  
COLLATERAL OF AMERICREDIT  
FINANCIAL SERVICES, INC.  
7/26/04 [23]

**Disposition Without Oral Argument:** The objection is overruled as moot because this case was dismissed September 15, 2004.

The court will issue a minute order.

105. 04-92154-A-13 HAROLD PLACHETA CONT. HEARING ON MOTION TO  
FW #1 CONFIRM FIRST AMENDED  
CHAPTER 13 PLAN  
7/19/04 [12]

**Tentative Ruling:** This matter continued from September 7, 2004 to give



The trustee's objections to the plan payment terms are overruled. The debtors agreed, in their reply, to provide curative language in an order confirming the modified plan.

The debtors nonetheless still failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). The debtors did not state in their reply that they provided the trustee with the Class 1 checklist, which allows the trustee to verify the amount of the Class 1 payments and evaluate feasibility. Furthermore, as noted above, the plan fails to provide for the entire arrears claim filed by Fairbanks Capital Corporation. 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

109. 03-93683-A-13 MARIO & LAVINA TREVINO  
FW #1

CONT. HEARING ON MOTION TO  
MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
7/29/04 [25]

**Tentative Ruling:** This matter continued from September 7, 2004 for the debtors to provide evidence of two plan payments, and therefore two conduit payments, allegedly made by debtors that were not reflected in the record at the prior hearing. Nothing additional has been filed. The court therefore reissues its prior ruling.

No party in interest has filed opposition to this motion but the motion is denied nevertheless. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, the plan fails to address all of the missed conduit payments owing to Class 1 claimant Fifth Third Bank. The trustee's July 7, 2004 notice of default stated that the debtors were delinquent three plan payments with a fourth due on July 25, 2004. The proposed plan suspends these missed payments. This means that at least four conduit payments were not made (excluding the first post-petition payment already included in the confirmed plan).

The modified plan only proposes to place two additional post-petition payments to Fifth Third Bank into the plan. This leaves two post-petition payments unaccounted for and therefore in default. The court will not confirm a modified plan that is in default at the hearing on confirmation. 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The court will issue a minute order.

110. 03-93683-A-13 MARIO & LAVINA TREVINO  
KK #1  
OLD KENT MORTGAGE COMPANY VS.

HEARING ON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8/9/04 [29]

**Tentative Ruling:** This matter continued from September 7, 2004 for the debtors to provide evidence of two plan payments, and therefore two conduit payments, allegedly made by debtors that were not reflected in the record at the prior hearing. Nothing additional has been filed. The court therefore reissues its prior 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).

As it pertains to movant's interest in the subject real property, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on November 18, 2003. The plan states that post-petition mortgage payments are made from the plan payments paid to the chapter 13 trustee. The plan also provides that the first post-petition conduit payment is included in Class 1 to be paid as arrears. Movant alleges that debtors have failed to make six post-petition payments to movant. The actual number is five because as noted above, the October 2003 payment is included in the plan.

Debtors' opposition is unpersuasive. The debtors' modified plan above at matter 25 seeks to place an additional two payments into the plan. This is insufficient to cure the five presently delinquent payments.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus \$150 in costs. 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.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

111. 01-91787-A-13 TEODORO LOZANO, JR. &  
JCK #5 JULIA LOZANO

CONT. HEARING ON MOTION TO  
MODIFY DEBTORS' CONFIRMED  
CHAPTER 13 PLAN  
6/22/04 [61]

**Tentative Ruling:** This matter was continued from a second time from September 7, 2004, to allow the debtors an opportunity to present



The trustee's 1325(b) objection is overruled. The amended schedules omits the disputed lumped expense redistributing it into the proper categories. None of the expenses appears to be unreasonable. The objection regarding the need for a stand alone motion to value collateral is sustained. The debtors failed to carry the 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 (9<sup>th</sup> Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.