

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Modesto, California

October 5, 2004 at 1:30 p.m.

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1. 02-94500-D-13 NOEL & MIRNA SALGADO HEARING ON MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 9/8/04 [35]
SYSTEMS, INC. VS.

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

The motion is denied. Termination of the automatic stay under 11 U.S.C. § 362(d)(2) is inappropriate because the value of the subject real property exceeds the total of the liens. There is equity (\$90,265.33) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984). Termination of the automatic stay under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a modified plan on August 30, 2004. That plan provides for payment of the pre-petition arrears and post-petition defaults in the amount of \$4,153.27 through the plan. There is no evidence that the plan payments are in default.

The debtor opposition states that the alleged missed payments have been made with certified funds and provides a copy of the cashier's check but that argument is not the reason the motion is denied. The amount of the delinquency stated in the motion is substantially less than the amount included in the modified plan which was confirmed nine days prior to this motion being filed. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. Because of the plan modification, the plan was not in default when this motion was filed. The movant is adequately protected by the confirmed plan and receipt of post-petition payments.

The court notes that the debtors' subsequent \$4,447.27 payment by cashier's check will place them substantially ahead in their mortgage payments.

Because the plan was not in breach on the date this motion was filed, the court finds that the reasonable fee for this motion is \$0.00. 11 U.S.C. § 506(b).

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

2. 02-92901-D-13 MICHAEL & SHELLY SCHEIDT HEARING ON MOTION FOR
TJH #1 RELIEF FROM AUTOMATIC STAY
SAXON MORTGAGE SERVICES, INC. VS. 9/8/04 [29]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules and the Federal Rules of Bankruptcy Procedure, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with LBR 9004-1(c) and Fed. R. Bankr. P. 9011(a) (requiring all documents submitted to the court be signed by the attorney or pro se party submitting them). This motion was manually filed. Neither the motion nor the notice of hearing contained a manual signature. Instead, movant included the symbol required to be present for documents filed electronically. The provisions of General Order 04-01 do not apply to documents filed manually. Manual signatures are required.

The court will issue a minute order.

3. 03-90407-D-13 MICHAEL & CATHERINE SILCOX HEARING ON MOTION FOR
SML #2 RELIEF FROM AUTOMATIC STAY,
CHASE MANHATTAN MORTGAGE VS. OR IN THE ALTERNATIVE, FOR
ADEQUATE PROTECTION
8/31/04 [23]

STIP. & ORDER FILED 9-17-04

Disposition Without Oral Argument: This matter is resolved by the stipulation approved by the court on September 17, 2004. It is removed from the calendar.

4. 03-94328-D-13 DAVID & JOY RAMSEY HEARING ON MOTION FOR
BRR #1 RELIEF FROM AUTOMATIC STAY
INDUSTRIAL FINANCE CO. VS. 7/15/04 [40]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules and the Federal Rules of Bankruptcy Procedure, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with LBR 4001-1(c) (requiring a complete post-petition payment history for all stay relief motions alleging post-petition payment defaults) and Fed. R. Bankr. P. 9014(a) (requiring all motions be served on the parties against whom relief is sought). Movant has failed to include a post-petition payment history for either lease. Mrs. Ramsey was not served with the motion at her current address. She

filed a change of address on July 6, 2004; seven days before this motion was served and nine days before it was filed.

When movant re-files this motion, the court requires that separate motions be filed for each item of collateral. The court only allows combined motions when all of the collateral is subject to the same lease or sales contract. In this motion, each fork lift is the subject of a separate lease. The only common factor is the identity of the debtor.

The court will issue a minute order.

5. 04-92230-D-7 MICHAEL & HELENE HANEY HEARING ON MOTION FOR
MB #1 RELIEF FROM AUTOMATIC STAY
WM SPECIALTY MORTGAGE VS. 8/25/04 [19]

CONV. TO CHP. 7 EOD 9/10/04

Disposition Without Oral Argument: This matter is continued to October 26, 2004 at 2:00 p.m. The matter is also converted to one filed pursuant to LBR 9014-1(f)(2). Opposition may be presented orally at the continued hearing.

So as to provide the new trustee with adequate notice of the motion, moving party shall serve him with the moving papers on or before October 12, 2004. Movant shall also serve all parties in interest with notice of the continued hearing by the same date. Proof of service of the above shall be filed with the court on or before October 15, 2004. If movant fails to do any of the foregoing, the motion will be denied without prejudice for inadequate service.

The court will issue a minute order.

6. 02-94540-D-13 EDWARD & CHERYL HOLT HEARING ON MOTION FOR
SML #2 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION OR IN THE ALTERNATIVE, FOR
SYSTEMS INC. VS. ADEQUATE PROTECTION
9/7/04 [27]

Disposition Without Oral Argument: This matter is resolved by stipulation approved October 4, 2004. It is removed from the calendar.

7. 04-92352-D-13 ADOLFO JIMENEZ HEARING ON MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
LONG BEACH MORTGAGE CO. VS. 9/8/04 [25]

CASE DISMISSED EOD 9/15/04

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on September 15, 2004.

The court will issue a minute order.

8. 02-93655-D-13 BLASA OLACIO
ASW #1
UNION FEDERAL BANK OF
INDIANAPOLIS VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
9/2/04 [24]

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

The movant claims the debtor is two months in arrears plus accrued late fees. The debtor proposes to cure through payment of \$1,130.00 with the remaining arrears being included in a modified plan. Even if the debtor's plan is confirmed she will remain \$434.54 delinquent. This amount consists of accrued post-petition late charges.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtor (1) remits the official check detailed in the opposition so that it is received by movant on or before October 8, 2004; pays the October and November 2004 mortgage payments so that they are received by movant within the grace period, if any; (3) remit an additional \$217.27 with each of the October and November 2004 mortgage payments; (4) confirm her second modified plan on October 19, 2004; and (5) pay the October and November chapter 13 plan payment(s) to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor(s) default in post-petition mortgage payments during the period: December 1, 2004 to May 31, 2005.

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.

9. 01-92360-D-13 JANET SUSAN CUNNINGHAM
SJM #2
BANK OF AMERICA MORTGAGE VS.

CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
2/27/04 [36]

Tentative Ruling: None. This matter has been continued three times with no apparent progress toward resolution. This matter is set for an evidentiary hearing on October 20, 2004, commencing at 1:30 p.m. and ending no later than 5:00 p.m. The provisions of LBR 9017-1 regarding direct testimony by declaration shall not apply; declarations, whether previously filed or not, will not be considered. Witnesses must appear in court in person and testify on direct and cross examination. The provisions of LBR 9017-1 regarding documents shall apply, except that the time specified in LBR 9017-1(b)(1) is shortened to five court days, and the time specified in LBR 9017-1(b)(2) is shortened to two court days.

The court will issue a minute order.

10. 04-91462-D-13 CHERIE M. DAVIS
LJB #1
WELLS FARGO HOME MORTGAGE, INC. 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
8/30/04 [23]

CASE DISMISSED EOD 8/23/04

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on August 23, 2004.

The court will issue a minute order.

11. 03-90171-D-13 ROBERT & SHERYL AMARAL
PPR #1
EMPIRE FUNDING CORP. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
8/26/04 [38]

CASE DISMISSED EOD 9/14/04

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on September 14, 2004.

The court will issue a minute order.

12. 04-91077-D-13 DERON & JULLIAN CURTIS
WTW #4
DANIELLE COWART VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
9/7/04 [38]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules and the Federal Rules of Bankruptcy Procedure, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with Federal Rules of Bankruptcy Procedure 4001(a)(1), 9014(b) and 7004(b)(9) (requiring service of a motion for relief from automatic stay on the debtors and their counsel of record in the bankruptcy case); LBR 9014-1(d)(3) (requiring, inter alia, that the notice of hearing state whether written opposition is required and if so, on whom, where and when it must be filed and served); and LBR 9014-1(d)(6)(requiring evidence of the factual allegations contained in the motion. Movant failed to serve the debtors or their bankruptcy counsel with this motion. Service on an alleged state court counsel (whose identity does not appear in the court's file) is wholly inadequate.

The court notes that these identical defects were present in movant's last attempt at this motion. If they are present in a subsequent motion seeking the same relief, monetary sanctions may be imposed in addition to denial of the motion.

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

The court will issue a minute order.

13. 04-92091-D-13 TRACY & JANICE GATZ HEARING ON MOTION FOR
PPR #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE LENDERS NETWORK 8/31/04 [27]
USA, INC. VS.

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on September 24, 2004.

The court will issue a minute order.

14. 04-92644-D-13 CLARA FANNIE TURNER HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL OR
IMPOSITION OF SANCTIONS FOR
FAILURE OF DEBTOR TO PAY
FILING FEE INSTALLMENT
(\$50.00 DUE AUGUST 11, 2004)
9/2/04 [18]

Tentative Ruling: None.

15. 04-93256-D-13 ANTHONY FRAUENDORFER HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL
AND/OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTOR AND/OR DEBTOR'S
ATTORNEY TO FILE A MASTER
ADDRESS LIST AND WITHOUT
PAYMENT OF AMENDMENT FEE OF
\$26.00
9/3/04 [4]

Tentative Ruling: None.

16. 04-93000-D-13 CYNTHIA KAY BOULDT HEARING ON OBJECTIONS
MB #1 TO PROPOSED CHAPTER 13
PLAN AND CONFIRMATION
THEREOF FILED BY COUNTRYWIDE
HOME LOANS, INC.
9/7/04 [9]

Disposition Without Oral Argument: The objections to confirmation are overruled as moot. On September 21, 2004, debtor filed an amended plan. The plan to which creditor objects is no longer before the court.

The court will issue a minute order.

17. 03-90901-D-13 VICTOR & AMY GARZA
HWW #1

HEARING ON MOTION TO
MODIFY CHAPTER 13 PLAN
8/11/04 [58]

Tentative Ruling: The trustee's objection is overruled as moot and the motion is granted. The trustee objects that the plan is not feasible unless debtors' objection to claim at matter 18 is sustained. As the objection to claim is sustained without oral argument, the trustee's objection to this motion is overruled and 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 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.

18. 03-90901-D-13 VICTOR & AMY GARZA
HWW #2

HEARING ON OBJECTION
TO ALLOWANCE OF FILED CLAIM
OF AMERICAN GENERAL FINANCE
8/20/04 [65]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 055 on the Notice of Filed Claims, filed by American General Finance, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. As to the claimed security interest in debtors' household goods, that lien was avoided July 3, 2003 as part of the confirmation order in this case. As to the claimed security interest in debtors' vehicle, 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 proof of perfection. B.R. 3001(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 debtors shall submit an order that conforms to the court's ruling.

19. 02-91305-D-13 RICHARD & JAN GIBBS
FW #3

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
BARBARA BEASLEY
8/17/04 [30]

Disposition Without Oral Argument: The failure of a creditor to file

written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 0005 on the Notice of Filed Claims, filed by Barbara Beasley, ("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)]. Ms. Beasley asserts a priority status for the Claim pursuant to 11 U.S.C. § 507(a)(6). However, that subsection does not apply to the facts of this case. On the date this case was filed, Section 507(a)(6) allowed priority status for up to \$2,100 for monies held by debtors which constituted a "deposit, before the commencement of the case, of money in connection with the purchase, lease or rental of property...." (West 2004). In this case, debtors were the lessees and claimant was the lessor. Claimant cannot hold a priority claim under Section 507(a)(6). 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 debtors shall submit an order that conforms to the court's ruling.

20. 03-92505-D-13 ESMAIL BAHAR HEARING ON MOTION TO
FW #2 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
8/30/04 [33]

Tentative Ruling: The trustee's objection is conditionally overruled if debtor provides in the order confirming plan for a plan term of 48 months and uses the trustee's preferred language for suspension of plan payments as consented in his reply. With those conditions, the motion is granted. In the absence of any additional opposition and subject to the above conditions, 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.

21. 03-91106-D-13 CHRISTOPHER & DEBRA HEARING ON OBJECTION
FW #2 SCHIFFILEA TO ALLOWANCE OF CLAIM OF
DIRECT MERCHANTS CREDIT
CARD BANK
8/13/04 [34]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 10 on the court's claims register, filed by Direct Merchants Credit Card Bank ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was August 5, 2003, and to file a government claim was September 15, 2003. Direct Merchants Credit Card Bank filed the Claim for \$1,935.92 on October 21, 2003.

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

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

22. 04-91610-D-13 DANNY LY
PGM #2

HEARING ON MOTION TO
CONFIRM DEBTOR'S SECOND
AMENDED PLAN
8/23/04 [37]

Tentative Ruling: Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(iii).

The court has two initial comments. First, the amended schedules I and J have not been properly completed in this case. None of the declarations concerning schedules filed August 23, 2004 or September 29, 2004 contains the debtor's signature. Debtor's counsel signed the declarations instead. This violates Fed. R. Bankr. P. 1008 and Fed. R. Evid. 602. Counsel has no personal knowledge of debtor's income and expenses. Secondly, counsel for debtor is directed to cite to this court only from the official reporters. The case cited in debtor's reply originated in the District of Columbia Court of Appeals. The official reporter for the Courts of Appeals is the Federal Reporter (F., F.2d., and F.3d). Counsel is also directed to review proper blue book citation formats.

The trustee's objections are sustained in part and overruled in part and the motion is denied. The trustee's objection to the \$175.00 education expense is overruled. The expense is not per se unreasonable and the court finds that the amount listed is not unreasonable under the facts of this case. Debtor's argument that the expenses is commensurate with what would be required outside of the private school context is persuasive.

The trustee's remaining objections are sustained. The debtor has failed to carry his burden of establishing the requirements of 11 U.S.C. § 1325(a)(3) and (b)(1). Debtor's arguments are contradictory. He cannot argue that the expenses in this case are communal in nature and thus are intertwined and then argue that the other income providing parties are not debtors and thus entitled to their own expenses. It is his burden of proving that none of his disposable income was used to pay the objectionable expenses. This he has not done nor does it appear that he can. The debtor must provide a plan payment of \$950.00. Because the

plan payment proposed is different from that amount, the remaining objections are sustained. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

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

23. 04-90811-D-13 ERNEST L. SIMONI CONT. HEARING ON MOTION TO
JCK #1 CONFIRM THE FIRST AMENDED
CHAPTER 13 PLAN
7/15/04 [22]

Tentative Ruling: This matter continued from September 7, 2004 for the debtor to provide evidence sufficient to satisfy the court's feasibility objection. At the prior hearing, the trustee's good faith objection was overruled because the debtor had amended his Schedule B as requested by the trustee at the meeting of creditors.

The court is satisfied with the evidence submitted by debtor detailing the property which he is to inherit. As such, 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 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.

24. 03-95017-D-13 DONALD & CORINNE HEARING ON OBJECTION
FW #3 ROUDEBUSH TO ALLOWANCE OF CLAIM OF
GRUMA CORPORATION
8/20/04 [37]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 012 on the Notice of Filed Claims, filed by Gruma Corporation dba Mission Foods, ("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 [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). This claim is for unpaid lease payments on property from which the debtors have been evicted. There is no collateral involved. 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 debtors shall submit an order that conforms to the court's ruling.

25. 03-94018-D-13 VALERIE HARRIS
PGM #1

CONT. HEARING ON MOTION TO
CONFIRM DEBTOR'S FIRST
AMENDED PLAN
6/30/04 [41]

Tentative Ruling: This matter continued from August 17, 2004 for the debtor to amend her schedules and provide evidence of family assistance. Neither filed by debtor is persuasive. First, the amended Schedules I and J have not been properly completed in this case. The declaration concerning schedules filed August 23, 2004 does not contain the debtor's signature. Debtor's counsel signed the declaration instead. This violates Fed. R. Bankr. P. 1008 and Fed. R. Evid. 602. Counsel has no personal knowledge of debtor's income and expenses.

The declaration filed by Rosalind Stanley is inadequate. It merely contains conclusory statements unsupported by documentary evidence that she is gainfully employed and can "make the contributions as needed." The declaration does not disclose her job, income or disposable income available. In the future, her contribution may rise to as much as \$250 per month. There is no evidence to show that she can afford that amount.

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)(4) and (a)(6). The debtor's schedule J is unrealistic to support the debtor and her two minor children (and certainly not her 18 year old as well). Debtor's argument that she has lived on the budget for some time is utterly unpersuasive where this chapter 13 case seeks to discharge some \$29,000 in unsecured credit card debt. The debtor has not been living within the proposed budget.

The debtor has not provided sufficient evidence that she can make the increased step payments. General assertions that family will help her is not sufficient to show feasibility and as stated above, the declaration provided is inadequate. Furthermore, the trustee can investigate the value of the home in the context of the liquidation test. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

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

26. 03-93820-D-13 DANNY & LORI BLANCHARD
JCK #5

HEARING ON THIRD MOTION
TO MODIFY DEBTORS'
CONFIRMED CHAPTER 13 PLAN
8/18/04 [102]

Tentative Ruling: The trustee's objection is sustained, for the reasons

stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(3) and (a)(6). The court finds the debtors' failure to provide the class 1 checklists in this case to constitute a lack of good faith. This is the third consecutive motion to modify to which the trustee has raised this objection. Debtors have failed to comply since May 2004 when the objection was first raised. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

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

27. 03-94423-D-13 SID & DIAN REAMS HEARING ON OBJECTION
FW #1 TO ALLOWANCE OF CLAIM OF
MARILYN TANK (RICHARDS)
8/19/04 [30]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 023 on the Notice of Filed Claims, filed by Marilyn Richards (Tank), ("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 [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 debtors shall submit an order that conforms to the court's ruling.

28. 04-92125-D-13 KENNETH & M'BETA KING HEARING ON MOTION TO
JCK #1 VALUE COLLATERAL OF BIG &
LITTLE USED CARS
8/30/04 [14]

Tentative Ruling: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Nevertheless, the court issues a tentative ruling.

The court notes that the motion fails to comply with LBR 9014-1(f)(1)

because the entire motion was not served on 28 days notice. The debtors filed and served a declaration in support of the motion 21 days before hearing. However, in this instance, the defect is waived because the declaration proposes a value higher than that proposed in the original motion. Creditor is not harmed by the late filing.

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2000 Dodge Caravan, had a value of \$7,011.47 on the date of the petition. Thus, \$7,011.47 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.

29. 04-91726-D-13 CASH & MALINDA BRYAN HEARING ON MOTION TO
JCK #2 VALUE COLLATERAL OF
FRANKLIN CAPITAL CORP.
8/26/04 [33]

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

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2003 Nissan Altima, had a value of \$21,033.00 on the date of the petition. Thus, \$21,033.00 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.

30. 04-91726-D-13 CASH & MALINDA BRYAN HEARING ON MOTION TO
JCK #3 VALUE COLLATERAL OF GMAC
8/26/04 [36]

Disposition Without Oral Argument: This matter is continued by the court to November 15, 2004 at 9:00 a.m. The continued hearing on this matter will be held in Sacramento at the United States Courthouse, 501 I Street, 7th floor, courtroom 28. Debtors have failed to serve this motion on the address provided by GMAC in the court's file. On May 24, 2004, GMAC filed its proof of claim and a request for notice. Both list a post office box in Fort Worth, Texas as the address for notices in this bankruptcy case. Debtors did not serve GMAC at that address.

So as to provide proper notice, debtors shall serve the motion and a notice of continued hearing on GMAC at the address specified in the May 24, 2004 Request for Special Notice on or before October 18, 2004. If debtors fail to do so, the motion will be denied without prejudice for inadequate notice.

The court will issue a minute order.

31. 04-91926-D-13 LARRY & MOLLIE SPRINGER SW #1
CONT. HEARING ON OBJECTION TO CONFIRMATION OF PLAN AND COLLATERAL VALUATION MOTION FILED BY WFS FINANCIAL, INC.
7/14/04 [23]

CASE DISMISSED EOD 9/13/04

Disposition Without Oral Argument: The objection to confirmation is overruled as moot because the case was dismissed on September 13, 2004.

The court will issue a minute order.

32. 04-92527-D-13 OLE & MARIE-ROSE SKIFTER PHS #1
HEARING ON OBJECTION TO CONFIRMATION OF PLAN FILED BY PETER H. SMITH
9/1/04 [12]

VACATED PER STIPULATION AND ORDER FILED 9/15/04

Disposition Without Oral Argument: This matter is resolved by stipulation and order entered September 15, 2004. The matter is removed from the calendar.

33. 03-93132-D-13 GARY & MINNIE VAUGHN FW #2
HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF BENEFICIAL
8/11/04 [31]

Tentative Ruling: The objection to claim is overruled without prejudice. Debtors have failed to serve the proper party with this objection. Beneficial transferred its interest in the claim to eCAST Settlement Corporation on July 22, 2004. Debtors attach a copy of the transfer of claim to their objection. But, debtors did not serve the transferee with this objection. eCAST is the real party in interest now and must be served with the objection.

The court will issue a minute order.

34. 03-93132-D-13 GARY & MINNIE VAUGHN FW #3
HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF KIMBERLEE SUE SCHAAL
8/19/04 [38]

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

The objection is sustained. The Claim was not timely filed. The last date to file a claim was December 9, 2003, and to file a government claim was January 31, 2004. Kimberlee Schaal filed the Claim for \$1,261.37 on January 30, 2004.

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

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

35. 02-92234-D-13 ANDREW & NOREEN LOPEZ HEARING ON OBJECTION
FW #1 TO ALLOWANCE OF CLAIM OF
HOUSEHOLD RETAIL SERVICES
8/19/04 [25]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 0019 on the Notice of Filed Claims, filed by Household Retail Services, Inc., ("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 [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). This claim attaches a blank credit application and a computerized account summary. 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 debtors shall submit an order that conforms to the court's ruling.

36. 04-92234-D-13 GARY & MARY ACOSTA HEARING ON MOTION FOR
PFF #1 CONFIRMATION OF DEBTORS'
FIRST AMENDED CHAPTER 13
PLAN AND MOTION TO VALUE
COLLATERAL OF FORD MOTOR
CREDIT COMPANY
8/23/04 [31]

Tentative Ruling: The motion is conditionally granted, the condition being that the order confirming plan provide that debtors will make plan payments of \$1,675.00 for 34 months giving a total plan term of 36 months. In the absence of any other opposition and subject to that

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

The debtors' motion to value collateral is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). Ford Motor Credit's collateral, a 2002 Ford Focus, had a value of \$6,515.00 on the date of the petition. Thus, \$6,515.00 of its claim is an allowed secured claim, based on this valuation.

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.

37. 03-94035-D-13 JAMES & JUDY STURTEVANT HEARING ON OBJECTION
DN #2 TO ALLOWANCE OF CLAIM OF
DELL FINANCIAL SERVICES
L.P. FILED NOVEMBER 10,
2003 FOR \$1,120.07
8/18/04 [27]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 012 on the Notice of Filed Claims, filed by Dell Financial Services, Inc., ("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 [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 debtors shall submit an order that conforms to the court's ruling.

38. 03-94035-D-13 JAMES & JUDY STURTEVANT HEARING ON MOTION TO
DN #3 MODIFY PLAN
8/18/04 [31]

Tentative Ruling: No written opposition to this matter was filed; however, the court nevertheless issues a tentative ruling.

The motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(1). The claim of Blackmun Equipment Leasing ("Blackmun") is mis-classified in Class 3. That class is for a secured claim that is being satisfied by a surrender of the collateral that secures the claim. Blackmun is the lessor of equipment to the debtors. Any argument that the lease is a disguised

secured transaction was foreclosed by confirmation of the original plan that treated the transaction as a lease. Therefore, Blackmun does not hold a security interest in the equipment; it owns the equipment. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

If the debtors now wish to surrender the equipment leased from Blackmun, they must do so by providing in the Additional Provisions that they are now rejecting the lease previously assumed in the original plan confirmed January 14, 2004.

The court will issue a minute order.

39. 03-93136-D-13 TORINA CARTER HEARING ON MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
8/23/04 [25]

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 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.

40. 03-93136-D-13 TORINA CARTER HEARING ON MOTION TO
FW #2 SELL REAL PROPERTY
8/23/04 [29]

Tentative Ruling: The motion to sell debtor's residence located at 1138 Balsam Drive in Newman, California is granted subject to the inclusion of the trustee's four standard conditions.

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

41. 03-93538-D-13 STEVEN FRIES, JR. HEARING ON MOTION TO
FW #2 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
8/26/04 [27]

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 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.

42. 04-92843-D-13 MICKEY & MARGARET LANDRUM HEARING ON MOTION TO
FW #1 CONFIRM FIRST AMENDED
CHAPTER 13 PLAN AND MOTIONS
TO VALUE COLLATERAL
8/26/04 [22]

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). Specifically, the debtors are delinquent in plan payments.

In addition to the objection raised by the trustee, the debtors improperly served the motion to confirm the proposed amended plan. The docket shows that on August 16, 2004, the debtors filed and served the proposed amended plan with numerous attached motions to value, but without any motion to confirm the amended plan. (ECF-9). The trustee concluded the meeting of creditors on August 25, 2004, nine days later. (ECF-17). The next day, August 26, 2004, the debtors filed and served a motion to confirm the amended plan, without the amended plan, and a stand-alone motion to value the collateral of Citifinancial (a 1995 Dodge). That stand-alone motion is a duplicate to one of the motions attached to the August 16, 2004 plan. A motion to confirm an amended plan is not properly made unless the motion and the amended plan are served together. G.O. 03-03, ¶¶ 3(b) and 8(a).

Finally, the amended plan improperly deals with at least some of the secured claims for which no stand alone motions to value have been filed.

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

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

43. 04-92843-D-13 MICKEY & MARGARET LANDRUM HEARING ON MOTION TO
FW #2 VALUE COLLATERAL OF
CITIFINANCIAL
8/26/04 [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 pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 1995 Dodge Intrepid, had a value of \$7,542.50 on the date of the petition. Thus, \$7,542.50 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.

44. 02-92644-D-13 KEITH & TIMMA DODSON HEARING ON MOTION TO
FW #6 SELL REAL PROPERTY
8/26/04 [72]

Tentative Ruling: The motion to sell the real property located at 1824 Mount Vernon Drive in Modesto, California is granted subject to the inclusion of the trustee's four standard conditions, including a plan modification to shorten the plan term and increase the dividend to Class 7 to 100%. Subject to those conditions, sale of the property is consistent with the debtors' performance of their confirmed plan.

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

45. 03-93244-D-13 PAUL B. MOLINA HEARING ON MOTION TO
MSN #3 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
8/31/04 [38]

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

The trustee's proposed curative language regarding suspension of post-petition arrearages on Class 1 claims is unavailing. Suspension of such arrearages cannot appear for the first time in the order confirming the modified plan.

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

46. 04-91645-D-13 LORETTA BECK HEARING ON MOTION TO
PGM #1 CONFIRM DEBTOR'S FIRST
AMENDED PLAN
8/23/04 [34]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on September 22, 2004 and is removed from the calendar.

47. 04-92845-D-13 DONNA FLOWERDAY HEARING ON OBJECTION
SJM #1 TO CONFIRMATION OF
DEBTOR'S CHAPTER 13 PLAN
FILED BY ABN AMRO MORTGAGE
GROUP, INC.
9/3/04 [11]

Disposition Without Oral Argument: This matter is continued to October 19, 2004, at 1:30 p.m. to be heard concurrently with the trustee's combination motion to dismiss and objection to plan.

48. 03-90146-D-13 MICHAEL PODWINSKI, JR. & HEARING ON MOTION TO
FW #3 STACY PODWINSKI MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8/24/04 [34]

WITHDRAWN BY M.P.

Disposition Without Oral Argument: This matter was withdrawn by the moving party on September 21, 2004 and is removed from the calendar.

49. 03-90146-D-13 MICHAEL PODWINSKI, JR. & HEARING ON MOTION TO
FW #4 STACY PODWINSKI INCUR DEBT
8/24/04 [38]

WITHDRAWN BY M.P.

Disposition Without Oral Argument: This matter was withdrawn by the moving party on September 21, 2004 and is removed from the calendar.

50. 04-91451-D-13 ANTHONY & DEANNA LUCERO HEARING ON MOTION TO
PGM #2 CONFIRM DEBTORS' SECOND
AMENDED PLAN AND MOTION TO
VALUE COLLATERAL
8/26/04 [41]

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 court notes from the outset that the debtors improperly attached a motion to value the collateral of Transouth Financial. There is no provision in G.O. 03-03, ¶ 8(a) for attaching motions to value collateral to the form plan. Attached motions are allowed only when the debtor is proceeding under G.O. 03-03, ¶ 3. When a debtor has not served a proposed amended plan least eleven calendar days before the section 341 meeting, motions to value must be filed as "stand-alone" motions.

Only in this particular instance, because the motion to value has the same value as that stated by the creditor in its proof of claim, the court will grant the motion to confirm and the motion to value. In the

future, the debtors' attorney will properly present motions to value or risk their denial.

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

The attached unopposed motion to value the collateral of Transouth is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, 2001 Dodge, had a value of \$5,760 on the date of the petition. Thus, \$5,760 of its claim is an allowed secured claim, based on this valuation.

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.

51. 02-90756-D-13 ERIC SWANSON HEARING ON OBJECTION
FW #2 TO ALLOWANCE OF CLAIM OF
BANK OF AMERICA
8/13/04 [48]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 6 on ECF, filed by Bank of America, N.A., ("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 9, 2002, and to file a government claim was September 3, 2002. Bank of America filed the Claim for \$8,057.15 on July 19, 2004.

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

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

52. 04-91556-D-13 ARDETO & FLOR ESTILLORE HEARING ON MOTION TO
JCK #3 CONFIRM THE SECOND
AMENDED CHAPTER 13 PLAN
8/27/04 [45]

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(b). Furthermore, in addition to the objection raised by the trustee, the debtors improperly attached a motion to value the

collateral of Ford Motor Credit. There is no provision in G.O. 03-03, ¶ 8(a) for attaching motions to value collateral to the form plan. Attached motions are allowed only when a debtor is proceeding under G.O. 03-03, ¶ 3. When a debtor has not served a proposed amended plan least eleven calendar days before the section 341 meeting, motions to value must be filed as "stand-alone" motions.

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

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

53. 03-94758-D-13 LARRY HADDOCK & HEARING ON MOTION TO
FW #2 LINDA VERVALEN MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8/19/04 [41]

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)(5) and (6). The debtors' motion proposed suspension of three months of payments to Washington Mutual, which is insufficient to cure the mortgage arrearages. The directly affected creditor claims the debtors are actually five (not four) months in post-petition arrears. Adding additional months to the suspension in an order confirming the proposed modified plan is improper because neither the directly effected creditor nor the other creditors got proper notice of the additional provision. The magnitude of the total arrearage to be cured affects, at a minimum, the issue of feasibility. Both the directly affected creditor and the other creditors are entitled to proper notice of the full cure proposal in order to assess the debtors' proposed modification. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

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

54. 03-93659-D-13 SUSAN BOWER HEARING ON MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
8/25/04 [25]

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.

55. 04-91759-D-13 DIANE VARGAS HEARING ON MOTION TO
FW #1 CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
8/31/04 [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. 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.

56. 03-94467-D-13 RAMON FERRALES HEARING ON MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
8/27/04 [16]

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.

57. 04-92767-D-13 KENNETH R. WARWICK HEARING ON MOTION FOR
MOT #1 CONFIRMATION OF AMENDED
CHAPTER 13 PLAN
8/24/04 [13]

Tentative 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)(5) and (6). In addition to the trustee's objection, the court notes the debtor is married, but his current Schedule I does not include household income from his spouse. (ECF-11). Furthermore, there is no listed expense for housing on the current Schedule J and the plan does not include a Class 1 or 4 claim.

Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1

(2000 & Supp. 2002).

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

58. 04-92874-D-13 ANTHONY & KARI ARNEBECK HEARING ON OBJECTION
TMM #1 TO CHAPTER 13 PLAN FILED BY
TOM BLOCK
9/8/04 [20]

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

The objection is stricken 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. Because the objection is stricken, the matter is dropped from the calendar.

The court notes that the meeting of creditors was continued to October 6, 2004. The creditor should review General Order 03-03, ¶ 3(c) regarding when an objection to confirmation of a chapter 13 plan may be presented. A copy of the current local rules of this court, the general orders and certain required forms are available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

59. 04-92576-D-13 KEVIN & JULIE GANT HEARING ON OBJECTION
MSN #1 TO ALLOWANCE OF CLAIM OF
GREENTREE SERVICING
8/25/04 [14]

Disposition Without Oral Argument: This matter was withdrawn by the objecting party on October 1, 2004 and is removed from the calendar.

60. 03-93979-D-13 BRUCE SWANSON HEARING ON MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
8/31/04 [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 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.

61. 04-91280-D-13 JOSE & CAROL BARAJAS
FW #1

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8/23/04 [37]

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.

62. 03-91782-D-13 MIKE & BRENDA MCCALIP
FW #4

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8/27/04 [45] [46]

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.

63. 03-94283-D-13 BRIAN & CHRISTY DERUYTER
FW #3

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
BANK OF THE WEST AKA
BASELINE FINANCIAL
SERVICES, ASSIGNEE OF
RECORD
8/19/04 [45]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 6 on ECF, filed by Bank of the West, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was March 9, 2004, and to file a government claim was April 26, 2004. Bank of the West filed the Claim for \$8,452.36 on July 19, 2004.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed except to the extent already paid by the trustee.

See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

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

64. 04-91284-D-13 JOHN DIXON HEARING ON MOTION TO
FW #1 CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
8/16/04 [46]

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 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.

65. 04-92485-D-13 LISA R. WALKER HEARING ON OBJECTION
DRW #1 TO CONFIRMATION OF PLAN
FILED BY NOVASTAR MORTGAGE,
INC.
8/25/04 [15]

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.

66. 04-91787-D-13 AARON & YOLANDA ROMERO HEARING ON MOTION TO
FW #1 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8/26/04 [21]

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 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 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.

67. 02-92888-D-13 CHARLES & MELISSA HEARING ON MOTION TO
FW #7 CALLAHAN MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8/19/04 [90]

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.

68. 04-92688-D-13 KENNETH LEE HOWRY HEARING ON MOTION TO
JCK #1 VALUE COLLATERAL OF CIRCUIT
CITY/BANK ONE, DELAWARE,
N.A.
8/30/04 [10]

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 motion is denied. While the debtor titles this motion as one to value collateral, the substance is really one to modify the plan to change the class treatment of a creditor from Class 7 to Class 2. The docket is quite clear that the debtor scheduled Circuit City as a Schedule F creditor (unsecured nonpriority claim) and provided for it as a Class 7 creditor in his confirmed plan. (ECF-13). Then, Circuit City filed a secured claim, and the debtor wants to change the plan to provide for Class 2 treatment. If the debtor wants to modify the plan to conform to filed claims, he needs to file the appropriate motion to accomplish that.

The court will issue a minute order.

69. 03-92289-D-13 JEAN CHASTANG HEARING ON MOTION TO
FW #1 INCUR DEBT
9/9/04 [22]

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.

70. 04-90189-D-13 GONZALO & CRYSTAL CHAIDEZ HEARING ON OBJECTION
JCK #2 TO ALLOWANCE OF CLAIM OF
CB MERCHANT SERVICES
8/18/04 [17]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 5 on ECF, filed by CB Merchants Services, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was May 25, 2004, and to file a government claim was July 14, 2004. CB Merchants filed the Claim for \$654.67 on June 3, 2004.

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

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

71. 00-90790-D-13 HECTOR & MARIA DE LA FUENTE HEARING ON MOTION TO
FW #6 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8/20/04 [179]

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). In addition, the debtors' plan does not specify how many months are being suspended "through the month of July, 2004." The magnitude of the total arrearage to be suspended affects, at a minimum, the issue of feasibility. The court and creditors are entitled to proper notice of the full suspension proposal in order to assess the debtors' proposed modification. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

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

72. 03-90491-D-13 ABBAS & ADLA MANSOUR HEARING ON MOTION TO
FW #2 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8/30/04 [51]

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.

73. 01-93195-D-13 GEORGE BUNDICK HEARING ON MOTION TO
FW #3 INCUR DEBT
9/14/04 [35]

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.

74. 04-91895-D-13 THOMAS & LORI MENDES HEARING ON MOTION
DN #2 TO CONFIRM AMENDED PLAN
8/26/04 [31]

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)(5) and (6). Furthermore, in addition to the objection raised by the trustee, the debtors improperly attached a motion to value the collateral of United Consumer Financial. There is no provision in G.O. 03-03, ¶ 8(a) for attaching motions to value collateral to the plan. Attached motions are allowed only when a debtor is proceeding under G.O. 03-03, ¶ 3. When a debtor has not served a proposed amended plan least eleven calendar days before the section 341 meeting, motions to value must be filed as "stand-alone" motions.

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

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

75. 04-92395-D-13 STEVEN & JENNIFER HENDREN HEARING ON MOTION TO
FW #1 CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
8/26/04 [20]

Tentative Ruling: The motion to confirm is denied.

The trustee's objection is overruled, since the debtors agree to cure the trustee's objection in an order confirming the plan. Nonetheless, the debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (6). Specifically, the court cannot grant their attached motions to value, upon which their plan is dependent. Attached motions are allowed only when a debtor is proceeding under G.O. 03-03, ¶ 3. When a debtor has not served a proposed amended plan least eleven calendar days before the section 341 meeting, motions to value must be filed as "stand-alone" motions. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

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

76. 03-90402-D-13 DANIEL/DEBRA LOHR, VS. HEARING ON MOTION TO
FW #4 AVOID LIEN ON DEBTOR'S
RESIDENCE
SYNDICATED OFFICE SYSTEMS 9/21/04 [54]

Disposition Without Oral Argument: This matter was withdrawn by the moving party on September 29, 2004 and is removed from the calendar.

77. 99-95319-D-13 RUBEN TORRES, JR. HEARING ON MOTION FOR
EE #2 RELIEF FROM AUTOMATIC STAY
HOUSEHOLD FINANCE 9/21/04 [121]
CORPORATION OF CALIF., VS.

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.

78. 01-93547-D-13 MICHAEL & SUSAN KERNS CONT. HEARING ON MOTION TO
DN #4 AVOID JUDICIAL LIEN ON
MICHAEL & SUSAN KERNS VS. EXEMPT PROPERTY
9/7/04 [71]
T.A. ROSS COLLECTION

Tentative Ruling: This is a continued 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.

79. 02-92447-D-13 ASOLEIUGA/ROSALIND ILAOA HEARING ON RESTORED
SW #2 MOTION FOR RELIEF FROM THE
WFS FINANCIAL, INC., VS AUTOMATIC STAY
11/4/03 [41]

Tentative Ruling: This is restored motion filed in accordance with the court's December 15, 2003 order. Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

80. 02-90450-D-13 MICHAEL/CHRISTINA RELLOQUE HEARING ON MOTION
WGM #1 FOR RELIEF FROM AUTOMATIC
LONG BEACH MORTGAGE STAY ON REAL PROPERTY
COMPANY, VS. 9/21/04 [26]

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.

81. 03-94758-D-13 LARRY HADDOCK AND HEARING ON MOTION
WGM #1 LINDA VERVALEN RELIEF FROM AUTOMATIC STAY
LONG BEACH MORTGAGE ON REAL PROPERTY
COMPANY, VS. 9/21/04 [55]

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.

82. 04-92970-D-13 GREGORY RODRIGUEZ HEARING ON MOTION FOR
DEM #1 RELIEF FROM AUTOMATIC STAY
ONYX ACCEPTANCE CORP., VS. 9/21/04 [11]

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.

83. 04-92578-D-13 ANTHONY/TAMARA MCDANIEL HEARING ON MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
LONG BEACH MORTGAGE CO., VS. ON REAL PROPERTY
9-21-04 [15]

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

84. 01-91481-D-13 JAMES & JOAN BLACKWELL HEARING ON MOTION TO
FW #2 INCUR DEBT
9/15/04 [23]

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 parties may appear and oppose the motion. Therefore, the court issues no tentative ruling on the merits of the motion.

85. 03-93683-D-13 MARIO & LAVINA TREVINO CONT. HEARING ON MOTION TO
FW #1 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
7/29/04 [25]

Tentative Ruling: This matter continued from September 21, 2004 and from September 7, 2004 before that 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. Debtors finally supplied their evidence on September 29, 2004. The evidence shows that the trustee has received sufficient funds to pay nine conduit payments of the eleven that had come due when the exhibit was prepared. The September 2004 plan payment is not reflected on the exhibit having come due after it was prepared.

Therefore, the motion is conditionally granted provided that debtors made the September 2004 plan payment and are current on plan payments pursuant to the modified plan. 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.

86. 03-93683-D-13 MARIO & LAVINA TREVINO CONT. HEARING ON MOTION FOR
KK #1 RELIEF FROM AUTOMATIC STAY
OLD KENT MORTGAGE COMPANY VS. 8/9/04 [29]

Tentative Ruling: This matter continued from September 21, 2004 and from September 7, 2004 before that 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. Debtors finally supplied their evidence on September 29, 2004. The evidence shows that the trustee has received sufficient funds to pay nine conduit payments of the eleven that had come due when the exhibit was prepared. The remaining two mortgage payments are included in the modified plan.

Therefore, Termination of the automatic stay is denied; adequate protection is ordered as follows. Termination of the stay under 11 U.S.C. § 362(d)(2) 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 (\$84,782.09) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Termination of the stay under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a modified plan at matter 85 above. That plan provides for payment of the pre-petition arrears and three post-petition payments through the plan (one was already included in the original confirmed plan). There is no evidence that the plan payments are in default under the modified plan. The debtor opposition states that the trustee has remitted nine payments through the modified plan. With the three payments included in the modified plan, the debtor is post-petition current with movant. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. Because of the debtors' modification of the plan, the plan is not in default. The movant is adequately protected by the confirmed plan and receipt of post-petition payments.

Adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor default in plan payments during the period of October 1, 2004 through March 31, 2005. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration, an updated Information Sheet (compliant with LBR 4001-1(c)), verified payment history (compliant with LBR 4001-1(d)(1)(i)), and statement compliant with LBR 4001-1(d)(ii) or (iii) or LBR 4001-1(d)(2), if applicable, in the Modesto Division not less than fifteen calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the required supplemental documentation, detailed above) not less than fifteen calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1(a) and LBR 9014-1(f)(3), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than seven calendar days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. The movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150 to be paid through the plan. However, if relief from the automatic stay is granted, the movant may enforce any unpaid portion of the fee award 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.