

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas Holman
Bankruptcy Judge
Sacramento, California

February 4, 2014 at 9:32 A.M.

PLEASE TAKE NOTE: This calendar will be heard by the Hon. David E. Russell.

1. [13-33800](#)-B-13 MARIA MEZ
JPJ-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
12-11-13 [[22](#)]

Tentative Ruling: This matter continued from January 7, 2014. The court issues the following tentative ruling.

The objection is overruled. The plan, filed October 25, 2013 (Dkt. 5), will be confirmed.

The trustee's objection is overruled because elsewhere on this calendar the court has granted the debtor's motion to value the collateral of Westlake Financial Services without oral argument.

The court will issue a minute order overruling the trustee's objection. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

2. [13-33800](#)-B-13 MARIA MEZ
PGM-2

MOTION TO VALUE COLLATERAL OF
WESTLAKE FINANCIAL SERVICES
1-2-14 [[25](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$5000.00 of Westlake Financial Services' claim in this case secured by a 2009 Chevrolet Aveo ("Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$5000.00 on the date of the petition.

The court will issue a minute order.

3. [13-34203](#)-B-13 MADELIN DRUSE OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON
1-15-14 [[49](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the initial plan filed December 2, 2013, is denied.

The court will issue a minute order.

4. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO OBJECTION TO CONFIRMATION OF
JPJ-1 AVINA-SEGURA PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-8-14 [[78](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the initial plan filed December 2, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before February 18, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

5. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO OBJECTION TO CONFIRMATION OF
JHW-4 AVINA-SEGURA PLAN BY TD AUTO FINANCE, LLC
1-8-14 [[68](#)]

Tentative Ruling: The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objection is sustained in part. Confirmation of the initial plan filed December 2, 2013, is denied.

The objecting creditor TD Auto Finance, LLC ("TDAF"), objects to confirmation of the initial plan on the ground that because no automatic stay came into effect on the commencement of this bankruptcy case, the claim secured by the creditor's collateral, a 2007 Dodge Ram 1500, "should not be administered through the chapter 13 plan, and debtors' plan should not be confirmed." However, TDAF cites no legal authority for the proposition that merely because the automatic stay did not come into effect that the debtor cannot confirm a plan which provides for treatment of its secured claim, even if an order was entered confirming that no stay came into effect. The court is aware of none. "The Court finds no language in the statute that allows it to conclude that Congress intended that the provisions of § 362(c)(4) preclude confirmation of a chapter 13 plan if a secured creditor objects to confirmation." In re Underhill, 425 B.R. 614 (Bankr. D. Utah, 2010).

However, as the objection points out that the debtors have had two bankruptcy cases that were pending and dismissed within the year prior to the date of the filing of the petition in this case, the court construes the objection as one made under 11 U.S.C. § 1325(a)(3) that the debtors have not proposed the chapter 13 plan in good faith. See In re Underhill, 425 B.R. at 619-20. The good faith requirement of § 1325(a)(3) is mandatory and the debtors have the burden of proving that it has been met. See In re Barnes, 32 F.3d 405, 407 (9th Cir. 1994); Chinichian v. Campolongo, 784 F.2d 1440 1443-44 (9th Cir. 1986). In this case, as no evidence presently exists in the court's record to the support the debtors' good faith in proposing the plan, the debtors have not carried their burden of showing that they have complied with § 1325(a)(3), and confirmation is denied.

The court will issue a minute order.

6. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO AVINA-SEGURA OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE, LLC 1-8-14 [[73](#)]

Tentative Ruling: The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objection is sustained in part. Confirmation of the initial plan filed December 2, 2013, is denied.

The objecting creditor TD Auto Finance, LLC ("TDAF"), objects to confirmation of the initial plan on the ground that because no automatic stay came into effect on the commencement of this bankruptcy case, the claim secured by the creditor's collateral, a 2007 Dodge Ram 1500, "should not be administered through the chapter 13 plan, and debtors' plan should not be confirmed." However, TDAF cites no legal authority for the proposition that merely because the automatic stay did not come into effect that the debtor cannot confirm a plan which provides for treatment of its secured claim, even if an order was entered confirming that no stay came into effect. The court is aware of none. "The Court

finds no language in the statute that allows it to conclude that Congress intended that the provisions of § 362(c)(4) preclude confirmation of a chapter 13 plan if a secured creditor objects to confirmation." In re Underhill, 425 B.R. 614 (Bankr. D. Utah, 2010).

However, as the objection points out that the debtors have had two bankruptcy cases that were pending and dismissed within the year prior to the date of the filing of the petition in this case, the court construes the objection as one made under 11 U.S.C. § 1325(a)(3) that the debtors have not proposed the chapter 13 plan in good faith. See In re Underhill, 425 B.R. at 619-20. The good faith requirement of § 1325(a)(3) is mandatory and the debtors have the burden of proving that it has been met. See In re Barnes, 32 F.3d 405, 407 (9th Cir. 1994); Chinichian v. Campolongo, 784 F.2d 1440 1443-44 (9th Cir. 1986). In this case, as no evidence presently exists in the court's record to the support the debtors' good faith in proposing the plan, the debtors have not carried their burden of showing that they have complied with § 1325(a)(3), and confirmation is denied.

The court will issue a minute order.

7. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO AVINA-SEGURA OBJECTION TO CONFIRMATION OF PLAN BY PNC BANK, N.A. 12-26-13 [[64](#)]
MJ-1

Tentative Ruling: The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objections are sustained. Confirmation of the initial plan filed December 2, 2013, is denied.

The court will issue a minute order.

8. [11-43807](#)-B-13 AJESH/REETA KUMAR MOTION TO APPROVE LOAN MODIFICATION 1-6-14 [[165](#)]
PGM-6

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The debtors are authorized to enter into the trial loan modification on the terms set forth in the trial period plan filed as Exhibit "A" to the motion. Except as so ordered, the motion is denied.

The court will issue a minute order.

9. [13-32507](#)-B-13 RICHARD/EDIE BEJAR MOTION TO CONFIRM PLAN
PLC-1 12-18-13 [[23](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed December 18, 2013, is denied.

The court will issue a minute order.

10. [13-32507](#)-B-13 RICHARD/EDIE BEJAR COUNTER MOTION TO DISMISS CASE
PLC-1 1-21-14 [[28](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before February 18, 2014, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

11. [12-39609](#)-B-13 MICHAEL/DEBRA RIETZKE MOTION FOR HARDSHIP DISCHARGE
JT-3 12-31-13 [[44](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

Pursuant to 11 U.S.C. § 1328(b), the motion is granted. The court finds that debtors are eligible for a "hardship" discharge pursuant to 11 U.S.C. § 1328(b). Pursuant to Fed. R. Bankr. P. 4007(d), the court establishes April 7, 2014, as the deadline to file a complaint to determine dischargeability of a debt under 11 U.S.C. § 523(a)(6). On or before February 14, 2014, the clerk shall cause notice of that deadline to be mailed to all creditors.

The court finds that the debtors have satisfied the requirements of 11 U.S.C. § 1328(b).

The court will issue a minute order.

12. [13-34711](#)-B-13 DAVID/SUSAN YOUNGER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-8-14 [[20](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the initial plan filed November 25, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before February 18, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

13. [11-38213](#)-B-13 LOU SAELOR AND MEY
PGM-6 SAEPHAN

MOTION TO AVOID LIEN OF SIMA
FAED
1-2-14 [[92](#)]

Tentative Ruling: The motion is denied without prejudice.

By this motion the debtors seek to avoid a judicial lien of creditor Sima Faed to the extent it impairs their claim of exemption in real property located at 300 Aldeburgh Circle, Sacramento, California (the "Property"). To avoid a judicial lien pursuant to 11 U.S.C. § 522(f), the debtor must show the following:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

In this case, the debtors have failed to show that there is a judicial lien that encumbers the Property. Under California law, a judgment lien on real property is created by recording an abstract of judgment with the county recorder. Cal. Civ. Proc. Code 697.310(a). The evidence cited by

the debtors in support of the motion, consisting of the claim filed by the creditor on the court's claims register, is not accompanied by an abstract of judgment recorded with the county recorder for the county in which the Property is located, but is instead accompanied by a copy of a Notice of Judgment Lien recorded with the California Secretary of State. While a notice of judgment lien filed with the Secretary of State can create a judicial lien with respect to personal property, the motion does not address or analyze the debtors' personal property except for a vague reference to Schedule B in the debtors' supporting declaration and their "request for judicial notice" (Dkt. 96).

Finally, the court will address the debtors' use of a "request for judicial notice" (Dkt. 96) as a means of introducing evidence to support the motion. It appears that the debtors misapprehended the purpose of a request for judicial notice. The Federal Rules of Evidence permit the court to take notice of an adjudicative fact, i.e., a fact that is not subject to reasonable dispute. Fed. R. Evid. 201. While the court may take judicial notice of the fact that a claim was filed on the court's claims register or that certain schedules were filed in this bankruptcy case, it cannot take judicial notice of the contents of those documents. Rather, it appears that the debtors or their counsel are attempting to use the "request for judicial notice" as a means of avoiding assembly and filing of documentary evidence in support of the motion, which is required by LBR or 9014-1(d)(5). This is not acceptable, as it forces both the court and potential respondents to search through the docket and the claims register for the evidence that is intended to support the motion. Further attempts to use the "request for judicial notice" in this manner will be construed as a violation of the court's Local Rules and grounds for, imposition of sanctions, including, inter alia, dismissal or denial of motions. LBR 1001-1(g).

The court will issue a minute order.

14. [14-20013](#)-B-13 THOMAS/LISA DOUGLASS MOTION TO VALUE COLLATERAL OF
SJS-1 JPMORGAN CHASE BANK, N.A.
1-7-14 [[10](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s ("Chase") claim in this case secured by the second deed of trust on real property located at 3349 Parkside Drive, Rocklin, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$194,206.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$210,000.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00.

The court will issue a minute order.

15. [13-33014](#)-B-13 VERONICA CORMIER AND MOTION TO CONFIRM PLAN
PGM-1 EUGENE HUBBARD 12-24-13 [[28](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed December 24, 2013, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

16. [13-32716](#)-B-13 NATHANIEL GOORE MOTION TO CONFIRM PLAN
DMA-2 12-14-13 [[41](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed December 14, 2013, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

17. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER OBJECTION TO CONFIRMATION OF
JPJ-1 AND JOSEPH ALEXANDER PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-8-14 [[17](#)]

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

The trustee's objection and motion to dismiss are dismissed.

The trustee's objection and motion to dismiss are moot. On January 21, 2014, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

18. [13-31019](#)-B-13 DEBRA FREEMAN MOTION TO VACATE ORDER
JPJ-2 CONFIRMING PLAN
1-10-14 [[34](#)]

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.

19. [13-32323](#)-B-7 JENNIFER BOWMAN CONTINUED AMENDED OBJECTION TO
RCO-1 CONFIRMATION OF PLAN BY
JPMORGAN CHASE BANK, N.A.
10-16-13 [[27](#)]

CASE CONVERTED 1/21/14

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

The objection is dismissed.

The objection is moot. By notice of voluntary conversion filed January 22, 2014 (Dkt. 44), the debtor converted this case to one under chapter 7.

The court will issue a minute order.

20. [14-20023](#)-B-13 MARIO ALBERTO DIAZ MOTION TO EXTEND AUTOMATIC STAY
CAH-1 MARTINEZ 1-3-14 [[9](#)]

Tentative Ruling: The motion is denied.

By this motion, the debtor seeks an extension of the automatic stay of 11 U.S.C. § 362(a), pursuant to 11 U.S.C. § 362(c)(3)(B), as the debtor has had one case that was pending and dismissed within the 12 month period prior to the commencement of the instant case. 11 U.S.C. § 362(c)(3)(B) requires that the hearing on such a motion be completed before the expiration of thirty days after the commencement of the case. In this case, the debtor's case was commenced on January 2, 2014. The thirty day period specified in § 362(c)(3)(B), including the automatic extension of time provided by Fed. R. Bankr. P. 9006(a)(1), expired on February 3, 2014. Relief under § 362(c)(3)(B) is no longer available to the debtor.

The court will issue a minute order.

21. [13-34924](#)-B-13 DAVID RODEN
MDE-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
12-26-13 [[14](#)]

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

The trustee's objection and motion to dismiss are dismissed.

The trustee's objection and motion to dismiss are moot. On January 6, 2014, the debtor filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

22. [11-23125](#)-B-13 STEVEN/KRISTEN HEWITT
SAC-1

MOTION TO MODIFY PLAN
12-13-13 [[31](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The modified plan filed December 13, 2013 is confirmed.

The motion is granted and the modified plan is confirmed in the absence of any objection under 11 U.S.C. § 1325(b)(1)(B) by the trustee or the holder of an allowed unsecured claim. The court notes, however, that the modified plan reduces the applicable commitment period of the plan to a length of less than 60 months for debtors whose annualized current monthly income is greater than the applicable median family income, in contravention of 11 U.S.C. § 1325(b)(4) and the holding of the Ninth Circuit Court of Appeals in In re Flores, 735 F.3d 855 (9th Cir. 2013). As the court considers an objection to the applicable commitment period of the plan to be one made under § 1325(b)(1)(B), the court may not raise it sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim.

The court will issue a minute order.

23. [12-38432](#)-B-13 JOHN/NATALIE PICOTTE
DMB-10

CONTINUED MOTION TO CONFIRM
PLAN
12-6-13 [[186](#)]

Tentative Ruling: The stipulation between the debtors and the chapter 13 trustee filed on January 27, 2014 (Dkt. 197) is approved. Pursuant to the terms of the stipulation, the chapter 13 trustee's objection under 11 U.S.C. § 1325(a)(4) is deemed withdrawn. The trustee's remaining objection is overruled. The motion is granted and the amended plan filed December 6, 2013, is confirmed with the following modification to be included in the order confirming the plan: Section 2.06 of the plan shall provide that no additional fees for the debtors' attorney shall be paid through the chapter 13 plan.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

24. [12-38432](#)-B-13 JOHN/NATALIE PICOTTE
DMB-10

CONTINUED COUNTER MOTION TO
DISMISS CASE
12-30-13 [[193](#)]

Tentative Ruling: This countermotion continued from January 21, 2014. It remains in a preliminary posture pursuant to LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court will issue a minute order.

25. [13-35332](#)-B-13 JAMES/IOLANI NEARY
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-8-14 [[28](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the initial plan filed December 3, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before February 18, 2014, the debtors file a new plan, a motion to confirm the new plan and

28. [13-33436](#)-B-13 RAYMOND MILES
LBG-1

MOTION TO CONFIRM PLAN
12-19-13 [[25](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the amended plan filed November 27, 2013, is confirmed with the following modification to be included in the order confirming the plan: The additional provisions regarding payment of debtor's attorneys' fees are stricken from the plan. Debtor's attorney will seek approval of additional fees by complying with Local Bankruptcy Rule 2016-1(c).

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

29. [13-33436](#)-B-13 RAYMOND MILES
LBG-1

COUNTER MOTION TO DISMISS CASE
1-17-14 [[34](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court will issue a minute order.

30. [13-32540](#)-B-13 CARLOS/VANESSA MORALES
EJS-2

MOTION TO CONFIRM PLAN
12-23-13 [[80](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed October 31, 2013, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

31. [11-43843](#)-B-13 STEVEN/YVONNE AMSTUTZ MOTION TO VALUE COLLATERAL OF
JT-2 CITIBANK, N.A.
1-3-14 [[41](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Citibank, N.A.'s ("Citibank") claim in this case secured by the second deed of trust on real property located at 4700 Whistlewood Court, Antelope, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$150,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$251,000.00. Thus, the value of the collateral available to Citibank on its second deed of trust is \$0.00.

The court will issue a minute order.

32. [11-29944](#)-B-13 STEVEN BARTLEY OBJECTION TO CLAIM OF SOLANO
JPJ-1 COUNTY TAX COLLECTOR, CLAIM
NUMBER 3
12-17-13 [[54](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The objection is sustained. The amendment of claim no. 3 on the court's claims register, filed by the debtor on September 9, 2013, is disallowed. Nothing in this ruling shall be construed as a complete disallowance of claim no. 3. Except as so ordered, the objection is overruled.

The court will issue a minute order.

33. [13-25147](#)-B-13 MATTHEW/MAYRA SPINKS OBJECTION TO CLAIM OF SALLIE
JPJ-3 MAE, INC./DEPARTMENT OF
EDUCATION, CLAIM NUMBER 19
12-5-13 [[76](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 19, filed on October 17, 2013, by Sallie Mae, Inc./Department of Education in the amount of \$10,990.82 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was August 21, 2013, and to file a government claim was October 15, 2013. The Claim was filed on October 17, 2013.

The court will issue a minute order.

34. [13-25147](#)-B-13 MATTHEW/MAYRA SPINKS
JPJ-4
- OBJECTION TO CLAIM OF
DEPARTMENT OF EDUCATION/SALLIE
MAE, INC., CLAIM NUMBER 20
12-5-13 [[80](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 20, filed on October 17, 2013, by Sallie Mae, Inc./Department of Education in the amount of \$20,519.39 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was August 21, 2013, and to file a government claim was October 15, 2013. The Claim was filed on October 17, 2013.

The court will issue a minute order.

35. [13-25147](#)-B-13 MATTHEW/MAYRA SPINKS
JPJ-5
- OBJECTION TO CLAIM OF CSS,
INC., CLAIM NUMBER 18
12-5-13 [[84](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 18, filed on September 16, 2013, by CSS, Inc. in the amount of \$309.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was August 21, 2013, and to file a government claim was October 15, 2013. The Claim was filed on September 16, 2013.

The court will issue a minute order.

36. [13-29447](#)-B-13 JOSEPHINE TOLLESON
APN-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY PNC
BANK, N.A.
8-26-13 [[24](#)]

Tentative Ruling: This objection to confirmation continued from December 10, 2013. It remains in a preliminary posture pursuant to LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objection is sustained in part. Confirmation of the initial plan filed July 17, 2013, is denied.

For the plan to be feasible and to comply with 11 U.S.C. § 1325(a)(5), the debtor must obtain an order valuing the objecting creditor's collateral in an amount less than that owed to the holder of the first priority deed of trust on the creditor's real property collateral. The debtor has yet to obtain such an order. Therefore, the creditor's objection is sustained and confirmation of the initial plan is denied.

Nothing in this ruling shall be construed as a finding regarding the actual value of the real property located at 1392 Freswick Drive, Folsom, California.

The court will issue a minute order.

37. [13-34252](#)-B-13 RICHARD/PAULA CUMMINGS
CAH-3

MOTION TO CONFIRM PLAN
12-12-13 [[31](#)]

Tentative Ruling: This motion is properly filed under LBR 9014-1(f)(1). The chapter 13 trustee's countermotion is properly filed under LBR 9014-1(f)(2). Opposition to the countermotion may be presented orally at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The chapter 13 trustee's opposition is sustained. The motion to confirm the plan filed December 12, 2013, is denied. The countermotion is conditionally denied, the conditions being that on or before February 18, 2014, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

38. [12-22553](#)-B-13 JASON/SHANON ROBLE
BLG-2

CONTINUED MOTION TO MODIFY PLAN
12-17-13 [[28](#)]

Disposition Without Oral Argument: This motion continued from January 21, 2014, to allow the debtors to file supplemental evidence in support of the motion. The debtors did so timely. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed December 17, 2013, is confirmed.

Based on the amended Schedule J filed on January 28, 2014 (Dkt. 36), the court finds that the debtors have met their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The court will issue a minute order.

39. [13-35555](#)-B-13 DANIEL DESMOND
LBG-1

MOTION TO EXTEND DEADLINE TO
FILE SCHEDULES OR PROVIDE
REQUIRED INFORMATION
12-23-13 [[9](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion granted, and the debtor shall have to and including Tuesday, February 11, 2014, to (1) file with the Bankruptcy Court and (2) serve by United States Mail on the chapter 13 trustee and United States Trustee, all of the documents enumerated in the Notice Of Incomplete Filing (Dkt. 3). Nothing in this ruling shall be construed as altering the requirements of 11 U.S.C. § 1324.

The court will issue a minute order.

40. [13-34857](#)-B-13 SYLVIA ALKILANY
PGM-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
12-26-13 [[24](#)]

Tentative Ruling: The motion to value collateral of Wells Fargo Bank, N.A. is continued to a final evidentiary hearing on March 14, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before March 7, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and

(iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtors' binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before March 7, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

41. [13-35359](#)-B-13 JASEN SMITH
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-8-14 [[21](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection regarding the debtor's failure to appear at the meeting of creditors is overruled. The trustee's objection regarding the debtor's failure to file a spousal waiver of right to claim exemptions pursuant to C.C.P. § 703.140(a)(2) is overruled. The trustee's remaining objections are sustained. Confirmation of the plan filed December 4, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before February 18, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The debtor appeared at the continued meeting of creditors which was held on January 16, 2014. The meeting of creditors was concluded as to the debtor on that date. Therefore, the trustee's objection that the debtor failed to appear at the meeting of creditors is overruled.

The debtor filed the Spousal Waiver of Right to Claim Exemptions Pursuant to C.C.P. § 703.140(a)(2) on January 31, 2014 (Dkt. 38). It is fully executed and signed by both the debtor and his non-filing spouse. Therefore, the trustee's objection that the debtor failed to file this

form is overruled.

The court will issue a minute order.

42. [13-35359](#)-B-13 JASEN SMITH OBJECTION TO CONFIRMATION OF
PD-1 PLAN BY J.P. MORGAN CHASE BANK,
N.A.
12-18-13 [[16](#)]

Tentative Ruling: Creditor JPMorgan Chase Bank, N.A. ("Chase")'s amended objections (Dkt. 27) are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

Chase's amended objections are sustained. Confirmation of the plan filed December 4, 2013 (Dkt. 5) is denied.

Regarding Chase's first two objections relating to the valuation of its claim, the court acknowledges that the debtor filed a motion to value collateral of Chase on January 29, 2014 (Dkt. 30), setting the matter for hearing on February 18, 2014. However, feasibility of the plan depends on a successful motion to value consistent with the plan's proposed treatment of Chase's claim. It is not enough to simply have the matter filed, served, and set for hearing.

Regarding Chase's final objections that its pre-petition arrears are not provided for or promptly cured by the plan, the court notes that Chase filed its proof of claim, claim no. 1, on December 13, 2013 in the amount of \$95,796.80. This amount includes a pre-petition arrearage of \$3,633.63 which the plan does not currently provide for. Section 2.04 of the form plan states that "the proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." As noted above, the court is yet to issue a disposition on the valuation motion. Therefore, Chase's proof of claim controls and its objections are sustained because the plan fails to provide for or promptly cure the pre-petition arrears on Chase's claim.

The court will issue a minute order.

43. [13-34760](#)-B-13 BRANDO/MYLENE CAYABYAB MOTION TO CONFIRM PLAN
CAH-4 12-17-13 [[33](#)]

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

This matter is continued to March 4, 2014 at 9:32 a.m., to be heard after disposition of Debtors' Motion to Value Collateral of RC Willey Home Furnishings.

44. [13-34760](#)-B-13 BRANDO/MYLENE CAYABYAB COUNTER MOTION TO DISMISS CASE
CAH-4 1-16-14 [[40](#)]

Tentative Ruling: The motion is granted, and the modified plan filed December 31, 2013 (Dkt. 135) is confirmed.

The court will issue a minute order.

45. [10-40661](#)-B-13 ROBERT/EVELYN FERREIRA MOTION TO MODIFY PLAN
MAC-10 12-31-13 [[131](#)]

Tentative Ruling: The motion is granted, and the modified plan filed December 31, 2013 (Dkt. 135) is confirmed.

The court will issue a minute order.

46. [10-40661](#)-B-13 ROBERT/EVELYN FERREIRA MOTION TO INCUR DEBT
MAC-11 1-10-14 [[143](#)]

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.

47. [13-34662](#)-B-13 MARWAN ABDULRAHIM MOTION TO AVOID LIEN OF ALAN L.
CAH-1 BAILEY
12-31-13 [[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.

48. [13-34662](#)-B-13 MARWAN ABDULRAHIM MOTION TO AVOID LIEN OF ALAN L.
CAH-2 BAILEY
12-31-13 [[27](#)]

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.

49. [13-34662](#)-B-13 MARWAN ABDULRAHIM
CAH-3

MOTION TO AVOID LIEN OF HSBC
FINANCE CORPORATION
12-31-13 [[32](#)]

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.

50. [13-34662](#)-B-13 MARWAN ABDULRAHIM
CAH-4

MOTION TO AVOID LIEN OF HSBC
FINANCE CORPORATION
12-31-13 [[37](#)]

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.

51. [13-34662](#)-B-13 MARWAN ABDULRAHIM
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-8-14 [[43](#)]

WITHDRAWN BY M.P.

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

The objection and counter motion to dismiss are removed from the calendar. The trustee withdrew the objection and counter motion to dismiss on January 14, 2014 (Dkt. 46).

52. [11-46464](#)-B-13 LEONID/LYUDMILA VASILENKO
JT-6

MOTION TO VALUE COLLATERAL OF
CITIBANK, N.A.
1-3-14 [[69](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Citibank, N.A.'s claim secured by the second deed of trust on real property located at 7858 Antelope Run Drive, Antelope, CA 95843 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$255,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$409,482.71. Thus, the value of the collateral available to Citibank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

53. [12-26864](#)-B-13 MARC/LORA SUTHERLAND OBJECTION TO CLAIM OF
JPJ-1 SPECIALIZED LOAN SERVICING,
CLAIM NUMBER 10
12-5-13 [[35](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 10, filed on October 31, 2013 by Specialized Loan Servicing, LLC in the amount of \$89,807.16 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was August 22, 2012. The Claim was filed on October 31, 2013.

The court will issue a minute order.

54. [11-40670](#)-B-13 JASON/RACHEL KIRLIS MOTION TO VALUE COLLATERAL OF
JT-2 PNC BANK
1-3-14 [[30](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of PNC Bank, N.A.'s claim secured by the second deed of trust on real property located at 3 Shearwater Court, Sacramento, CA 95833 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$249,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Citimortgage, Inc. with a balance of approximately \$257,884.38. Thus, the value of the collateral available to PNC Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

55. [13-34171](#)-B-13 GASOLO TAWAKE
GDG-1

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
12-30-13 [[22](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$10,273.00 of Santander Consumer USA, Inc.'s claim secured by a 2006 Nissan Titan King Cab (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$10,273.00 on the date of the petition.

The court will issue a minute order.

56. [13-34171](#)-B-13 GASOLO TAWAKE
GDG-2

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL, INC.
12-30-13 [[25](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$2,711.00 of One Main Financial, Inc.'s claim secured by a 2000 Mercury Mountaineer (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$2,711.00 on the date of the petition.

The court will issue a minute order.

57. [11-25374](#)-B-13 YIA VUE
DBJ-4

MOTION TO MODIFY PLAN
1-3-14 [[49](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because it was not properly noticed to all parties-in-interest. To confirm a modified plan, Local Bankruptcy Rule 3015-1(d)(2) states that "notice of the motion shall comply with Fed. R. Bankr. P. 3015(g), which requires twenty-one (21) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 3015(g) and LBR 9014-1(f)(1), parties-in-interest shall be served at least thirty-five (35) days prior to the hearing." LBR 3015-1(d)(2).

Thirty-five days prior to today's hearing was December 31, 2013. According to the proof of service (Dkt. 54), the motion and notice of the hearing were served on all parties-in-interest on January 3, 2014, which is only thirty-two days prior to the hearing. Thus, the debtor has failed to comply with the noticing requirements of Local Bankruptcy Rule 3015-1(d)(2). A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

58. [12-36675](#)-B-13 DOUGLAS/JULIETTE AXT MOTION TO INCUR DEBT
MMM-3 1-13-14 [[45](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The motion was not properly noticed. The debtors seek court approval to enter into an agreement with BMW Financial Services ("BMW") to lease a 2014 BMW X1. The motion is governed by the provisions of Bankruptcy Rule 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Fed. R. Bankr. P. 4001(c)(1)(C). Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by Bankruptcy Rule 4001(c)(1) and "to such other entities as the court may direct." Fed. R. Bankr. P. 4001(c)(3).

Based on the foregoing, the court requires that the debtors serve, consistent with the provisions of Bankruptcy Rule 7004, a motion to incur new debt on the United States Trustee, the chapter 13 trustee, and the creditor who will be extending credit to the debtors (unless service has been waived by the creditor in the loan documentation or by appearance at the hearing). The court also requires that the debtor give notice of the motion to all other creditors.

In this case, the proof of service (Dkt. 50) indicates that the motion and notice of hearing was served on BMW, parties requesting special notice, the United States Trustee, the chapter 13 trustee, "as well as the attached matrix." However, there is no creditor matrix attached to the proof of service. The debtors have provided the court with no other evidence that all other creditors were provided notice of the motion and hearing. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

59. [13-20576](#)-B-13 GALEN/CHRISTINE CHANEY MOTION FOR CONSENT TO ENTER
RDS-5 INTO LOAN MODIFICATION
AGREEMENT
1-8-14 [[103](#)]

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.

60. [13-31277](#)-B-13 MICHAEL/PAULA RHOADES CONTINUED MOTION TO CONFIRM
PLC-3 PLAN
10-7-13 [[26](#)]

Tentative Ruling: The trustee's opposition is removed from the calendar. Creditor Steven Nemeč ("Mr. Nemeč")'s objection that the plan fails the liquidation analysis of 11 U.S.C. § 1325(a)(4) is overruled. Mr. Nemeč's objection that the debtors have failed to comply with his 11 U.S.C. § 521 request is sustained. Mr. Nemeč's objection that the plan provides for an impermissible modification of the secured claim of Guardian Home Brokers, Inc. ("Guardian") and may violate the Bankruptcy Code's requirement of good faith is overruled without prejudice. Confirmation of the plan filed October 7, 2013 (Dkt. 24) is denied.

The trustee withdrew his opposition on November 27, 2013 (Dkt. 55). Therefore, the opposition is removed from the calendar.

Mr. Nemeč's first objection that the plan fails the liquidation analysis of 11 U.S.C. § 1325(a)(4) is overruled. Mr. Nemeč's objection on this point is two-fold. First, he argues that, after accounting for the value of Guardian's deed of trust (\$245,000.00) and the debtors' claim of exemption in their residence (\$100,000.00), there remains non-exempt equity available for distribution to general unsecured creditors based on his valuation of the residence. This issue was continued to a final evidentiary hearing on January 21, 2014, to establish the value of the debtors' residence. The court determined the value to be \$340,000.00 (Dkt. 71). Based on this valuation, it is apparent that the residence has no non-exempt equity available for distribution to general unsecured creditors in liquidation after accounting for all encumbrances and claims of exemption, and Mr. Nemeč's argument fails on this point. The second part of Mr. Nemeč's argument relates to the debtors' alleged unencumbered interest in a timeshare, which they listed on a previous Schedule A (Dkt. 12, p.3) with a value of \$15,000.00. This property was not claimed as exempt on a previous Schedule C (Dkt. 12, p.8), and Mr. Nemeč argues that the amended plan fails to distribute the value of this asset to general unsecured creditors. However, the debtors explain in their motion that the plan is being amended because their timeshare was foreclosed upon and had to be removed from the plan and schedules (Dkt. 26, p.2, para.9). They contend that the timeshare is located in Florida and that they have removed the asset from the plan and schedules due to an anti-deficiency statute under Florida law. Mr. Nemeč does not address this point in his opposition, stating only that the asset was listed on Schedules A and D

with a value of \$15,000.00 but with no offsetting secured debt. Mr. Nemeč is relying on schedules that have since been amended (Dkt. 25), does not address the fact that the timeshare was foreclosed upon, and fails to cite to any applicable Florida law to refute the debtors' contentions.

Mr. Nemeč's second objection that the debtors have failed to satisfy his 11 U.S.C. § 521 request for their federal tax return is sustained. Mr. Nemeč filed an ex parte request for a copy of the debtors' federal tax return on September 18, 2013 (Dkt. 17). He subsequently filed an ex parte application for a Bankruptcy Rule 2004(a) examination in which he requested, among other things, production of an account transcript of the debtors' most recent federal income tax return. The court approved this application by order entered December 9, 2013 (Dkt. 57). There is no evidence before the court that the debtors have provided this information to Mr. Nemeč. Therefore, the court cannot confirm the plan because the debtors have failed to comply with 11 U.S.C. § 521(e)(2)(A)(ii). 11 U.S.C. § 1325(a)(1).

Mr. Nemeč's final objection that the plan provides for an impermissible modification of Guardian's secured claim, which he contends may violate the good faith requirement of the Bankruptcy Code, is overruled without prejudice. The court construes this objection as being brought under 11 U.S.C. §§ 1322(b)(2) and 1325(a)(3). Guardian is the holder of a claim secured only by a security interest in the debtors' principal residence. As such, 11 U.S.C. § 1322(b)(2) dictates that its claim cannot be modified absent its consent. The court notes that Guardian has not objected to the plan, which constitutes acceptance of the plan. Andrews v. Loheit (In re Andrews), 49 F.3d 1404, 1409 (9th Cir. 1995). Mr. Nemeč has failed to cite to or analyze any Ninth Circuit authority which states that he, as a general unsecured creditor, has standing to raise an 11 U.S.C. § 1322(b)(2) objection. He also provides no evidence that Guardian's secured claim is even being modified by the plan, stating only that the promissory note and deed of trust securing the debtors' residence are a part of the discovery he seeks. Finally, "bad faith" under 11 U.S.C. § 1325(a)(3) is determined based on an examination of the totality of the circumstances. Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988) (citing Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir.1982)). Mr. Nemeč has failed to cite to or analyze the factors applicable to the bad faith analysis. Accordingly, this objection is overruled without prejudice.

The court will issue a minute order.

61. [13-31277](#)-B-13 MICHAEL/PAULA RHOADES CONTINUED COUNTER MOTION TO
PLC-3 DISMISS CASE
11-4-13 [[38](#)]

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

The counter motion to dismiss is removed from the calendar. The trustee withdrew the counter motion to dismiss on November 27, 2013 (Dkt. 55).

62. [11-32578](#)-B-13 GABRIEL MONARREZ MOTION TO APPROVE LOAN
MAC-10 MODIFICATION
1-15-14 [[114](#)]

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.

63. [11-32578](#)-B-13 GABRIEL MONARREZ CONTINUED MOTION TO MODIFY PLAN
MAC-9 8-29-13 [[102](#)]

Tentative Ruling: The motion is granted, and the modified plan filed August 29, 2013 (Dkt. 107) is confirmed.

The court will issue a minute order.

64. [13-25079](#)-B-13 MEGAN/ADAM ENOS MOTION TO CONFIRM PLAN
MRL-4 12-13-13 [[83](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the amended plan filed December 13, 2013 (Dkt. 88) will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

65. [13-34180](#)-B-13 WILLIAM/YVETTE MARTINEZ MOTION TO CONFIRM PLAN
SJS-2 12-18-13 [[24](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the amended plan filed December 18, 2013 (Dkt. 25) will be confirmed.

The court grants the motion in the absence of opposition. The court notes that the plan does not provide for the filed unsecured priority claim of the Internal Revenue Service ("IRS"). However, the court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd. 49 F.3d

1404 (9th Cir. 1995). The court expresses no opinion as to whether the amended plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

66. [10-27381](#)-B-13 GARRY RHONE MOTION TO MODIFY PLAN
SS-3 12-20-13 [[49](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed December 20, 2013 (Dkt. 53) is confirmed.

The motion is granted in the absence of opposition. The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors from 22.00% to 0.00%, an amount less than that required by 11 U.S.C. section 1325(b)(1)(B). The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd. 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C). The chapter 13 trustee has filed a statement of non-opposition to the motion.

The court will issue a minute order.

67. [10-27381](#)-B-13 GARRY RHONE OBJECTION TO CLAIM OF BAC HOME
SS-4 LOANS SERVICING, LP, CLAIM
NUMBER 7-1
12-20-13 [[55](#)]

Tentative Ruling: None.

68. [10-27381](#)-B-13 GARRY RHONE MOTION TO APPROVE LOAN
SS-5 MODIFICATION
12-20-13 [[60](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The debtor's motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Agreement submitted as Exhibit

"1" to the motion (Dkt.63, p.2), retroactive to June 1, 2013.

The court will issue a minute order.

69. [12-27181](#)-B-13 MICHAEL PALMER
LC-1

MOTION FOR ORDER ALLOWING
DEBTOR TO OBTAIN A REVERSE
MORTGAGE
1-9-14 [[27](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The debtor seeks court approval to obtain a reverse mortgage in the sum of up to \$181,481.00 from Sacramento 1st Mortgage, Inc. dba Comstock Mortgage (the "Lender") in order to pay off his existing mortgage and complete his chapter 13 plan. However, the debtor has failed to provide evidence that the Lender consents to the proposed reverse mortgage or that an actual financing will take place if the court approves the motion.

The absence of an actual transaction for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual agreement for the reverse mortgage, no case or controversy within the meaning of Article III exists.

The court has reviewed the Conditional Loan Approval attached as Exhibit "A" to the motion (Dkt. 30, p.2) and is not persuaded that the motion is ripe for adjudication. The debtor has failed to show that the Lender consents to the terms of the reverse mortgage for two reasons. First, the Conditional Loan Approval has not been signed by a representative of the Lender and the debtor has provided no other evidence that the Lender consents to the reverse mortgage. Second, there are a series of "loan conditions" listed that have not been checked as "cleared," and the debtor has failed to provide evidence that all loan conditions needed for the Lender's consent have been satisfied. Because the debtor has failed to establish that the Lender consents to the reverse mortgage, there is no proof that an actual financing will occur if the court approves the motion. Therefore, there is no actual case or controversy for the court to approve. As such, the motion is dismissed without prejudice.

The court will issue a minute order.

70. [11-43785](#)-B-13 JESUS MERCADO
TOG-7

MOTION TO APPROVE LOAN
MODIFICATION
1-11-14 [[64](#)]

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.

71. [13-32386](#)-B-13 JOSE ALBERTO
TJW-2

MOTION TO CONFIRM PLAN
12-12-13 [[26](#)]

Tentative Ruling: The motion to confirm the amended plan filed October 30, 2013 (Dkt. 16) is denied.

Although no interested party has opposed the motion, the court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). Here, the debtor proposes a payment of \$3,113.30 for the first month, followed by monthly payments of \$3,260.00 for the remainder of the plan. The debtor has failed to explain in either his motion or declaration how he will be able to afford the increased payment after the first month. 11 U.S.C. § 1325(a)(6). According to Schedule J (Dkt. 1, p.20), the debtor's monthly net income is only \$3,113.46. Therefore, the debtor has not carried his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

For counsel's future reference, it is an improper practice to file a motion to confirm a plan that has been previously denied. The court originally heard a motion to confirm the first amended plan on December 10, 2013, denying it on procedural grounds (Dkt. 33). The Local Bankruptcy Rules make clear that "if the debtor[s] modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor[s] shall file and serve the modified chapter 13 plan together with a motion to confirm it." LBR 3015-1(d)(1). A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

72. [11-28289](#)-B-13 THOMAS/KIMBERLY SZARMACH
JLB-5

MOTION TO MODIFY PLAN
12-26-13 [[78](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed December 26, 2013 (Dkt. 77) is denied.

The trustee has opposed this motion on the grounds that the modified plan

will take more than sixty months to complete and that the modified plan fails to specify a cure of the post-petition arrearage owed to Class 1 creditor Wells Fargo Bank, N.A. In order to remedy the trustee's objections, the debtors propose in their untimely filed reply brief (Dkt. 90) to increase the monthly plan payment to \$2,348.00. The court finds this proposal unacceptable.

The court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). According to the most recently filed Schedule J (Dkt. 76, p.6), the debtors have monthly net income of \$2,130.41. The debtors have failed to explain in either their reply brief or other supporting documents how they will be able to afford the increased payment of \$2,348.00. 11 U.S.C. § 1325(a)(6). Therefore, the debtors have not carried their burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

73. [13-29992](#)-B-13 JUAN COLEMAN MOTION TO CONFIRM PLAN
SNM-2 12-17-13 [[40](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the amended plan filed December 17, 2013 (Dkt. 39) will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

74. [13-30394](#)-B-13 GEORGE VELA MOTION TO CONFIRM PLAN
AF-2 12-21-13 [[65](#)]

Tentative Ruling: The trustee's objections are sustained. The motion to confirm the amended plan filed December 21, 2013 (Dkt. 66) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before February 18, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court notes that, even if the trustee's objections were not sustained, the motion would be denied without prejudice for two reasons. First, proper notice of the motion was not provided to all parties-in-interest as is required by the Local Bankruptcy Rules and the Federal Bankruptcy Rules. To confirm an amended plan, Local Bankruptcy Rule 3015-1(d)(1) states that "the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two (42) days prior to the hearing." LBR 3015-1(d)(1). Federal Bankruptcy Rule 2002(b) specifically requires that the debtor provide notice of the hearing to consider confirmation of a chapter 13 plan to the trustee and all creditors. Fed. R. Bankr. P. 2002(b). Here, the proof of service (Dkt. 69) shows that the motion, plan, declaration, and notice of hearing were served on PNC Mortgage, the chapter 13 trustee, the United States Trustee, and the court. The court acknowledges that an earlier plan (Dkt. 61) was served on all creditors. However, the proof of service of that plan (Dkt. 62) only lists the names of the creditors. Their addresses are omitted. It is impossible for the court to tell if these creditors were served with the plan at their proper addresses. Even if they were, there is no evidence that these creditors were provided proper notice of this hearing or served with the most recently filed plan.

Second, the debtor has not carried his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). The court also has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). Here, the plan's feasibility depends on the outcome of a pending loan modification agreement with PNC Bank, N.A. The debtor has provided no evidence that the loan modification will be approved or that PNC Bank, N.A. is even considering a loan modification. The court acknowledges that the debtor filed a "Loan Modification Application Declaration" on December 9, 2013 (Dkt. 53). However, that matter was never set for hearing as required by Local Bankruptcy Rule 9014-1, nor was any evidence provided in that motion/application to suggest that there is a final loan modification for the court to approve.

The court will issue a minute order.

75. [13-31095](#)-B-13 GEOFFREY GREITZER CONTINUED MOTION TO CONFIRM
DBJ-2 PLAN
11-26-13 [[52](#)]

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

The motion is removed from the calendar. The debtor withdrew the motion on January 28, 2014 (Dkt. 76).

76. [13-31095](#)-B-13 GEOFFREY GREITZER CONTINUED COUNTER MOTION TO
DBJ-2 DISMISS CASE
12-26-13 [[58](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 58) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before February 18, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

77. [11-31037](#)-B-13 CHRISTOPHER/SHELLI BECK MOTION TO SELL O.S.T.
CJY-4 1-27-14 [[87](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3)(motions set on shortened time). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.