

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

February 18, 2014 at 9:32 A.M.

1. [13-32500](#)-B-13 KEVIN VANARDEL MOTION TO CONFIRM PLAN
SJS-1 1-3-14 [[30](#)]
CASE DISMISSED 1/7/14

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

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed by order entered January 7, 2014 (Dkt. 39).

The court will issue a minute order.

2. [13-35500](#)-B-13 LOURDES DEVERA OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-14 [[14](#)]
WITHDRAWN BY M.P.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 motion to dismiss are removed from the calendar. The trustee withdrew the objection and motion to dismiss on January 28, 2014 (Dkt. 23).

3. [13-35903](#)-B-13 MARK/DEJA HERBERS OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-30-14 [[18](#)]

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 20, 2013, is denied. The trustee's motion to dismiss is

conditionally denied, the conditions being that on or before March 4, 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.

4. [12-30304](#)-B-13 RODOLFO RODRIGUEZ MOTION TO SELL
RIN-04 1-21-14 [[53](#)]

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

The motion is granted. Pursuant to 11 U.S.C. § 363(b), the debtor is authorized to sell his interest in the real property located at 6820 Sandrock Way, Sacramento, California on the terms and conditions set forth in the motion. Except as so ordered, the motion is denied.

The court will issue a minute order.

5. [11-21207](#)-B-13 ALEKSEY/YELENA DZHEDZHERA MOTION TO APPROVE LOAN
MS-2 MODIFICATION
1-2-14 [[98](#)]

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

The motion is granted. The debtors are authorized to incur credit on the terms set forth in the Loan Modification Agreement filed as Exhibit "A" to the motion (Dkt. 100).

The court will issue a minute order.

6. [11-21207](#)-B-13 ALEKSEY/YELENA DZHEDZHERA MOTION TO MODIFY PLAN
MS-1 1-2-14 [[105](#)]

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

The motion is granted. The modified plan filed January 2, 2014, is confirmed.

The court will issue a minute order.

7. [13-32507](#)-B-13 RICHARD/EDIE BEJAR CONTINUED MOTION TO CONFIRM
PLC-1 PLAN
12-18-13 [[23](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the amended plan filed December 18, 2013, will be confirmed with the following modification to be included in the order confirming the plan: Section 2.06 of the plan shall provide that attorney's fees to be paid through the plan shall be \$3270.54.

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.

8. [13-32507](#)-B-13 RICHARD/EDIE BEJAR CONTINUED COUNTER MOTION TO
PLC-1 DISMISS CASE
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 denied.

The court will issue a minute order.

9. [12-26408](#)-B-13 CAROLYN AMARO MOTION TO MODIFY PLAN
SL-4 12-20-13 [[49](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the modified plan filed December 20, 2013, is denied.

The court will issue a minute order.

10. [14-20112](#)-B-13 TONY/CONNIE EVENICH SOL-1 MOTION TO EXTEND DEADLINE TO FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION 1-17-14 [[12](#)]

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, as resolved by order entered February 7, 2014 (Dkt. 23).

11. [11-38213](#)-B-13 LOU SAELOR AND MEY PGM-6 SAEPHAN CONTINUED MOTION TO AVOID LIEN OF SIMA FAED 1-2-14 [[92](#)]

Tentative Ruling: Creditor Sima Faed's ("Faed") opposition is overruled. 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).

Faed's opposition is overruled because it does not set forth any cognizable grounds on which this motion to avoid a judicial lien should be denied. Faed argues that the debtors have acted inequitably toward her and that they have been unjustly enriched at her expense. However, "there does not appear to be a single case holding that an 'unjust enrichment' exception exists to the lien avoidance provisions of § 522(f)(1). '[M]ost case law hold[s] that liens resulting from nondischargeable debts are avoidable under § 522(f) if they impair the debtor's exemption. [Citations].' S & C Home Loans, Inc. v. Farr (In re Farr), 2002 Bankr.LEXIS 535 (B.A.P. 9th Cir. May 6, 2002)." In re Keys, 2010 WL 2730904 at *6 (C.D. Cal. Jul. 2, 2010). Despite the foregoing, nothing in this ruling shall be construed as a finding that Faed is estopped from raising such matters in connection with other aspects of this case.

The court will issue a minute order.

12. [11-43113](#)-B-13 DANIEL/MARGARET FRANCO CONTINUED MOTION TO INCUR DEBT
PGM-5 11-13-13 [[82](#)]

Tentative Ruling: This motion continued from January 7, 2014. The court's order continuing the motion (Dkt. 93) conditionally granted the motion, the condition being that the debtors file proof of final approval of the loan described in the motion on or before February 13, 2014. The debtors filed supplemental information on February 12, 2014 (Dkt. 96-99). The court now issues the following tentative ruling.

The motion is denied without prejudice.

The motion is denied due to the debtors' failure to satisfy the condition created by the court's February 5, 2014 order that they file evidence of final approval of the loan. The supplemental documentation filed by the debtors includes a commitment letter from lender Wells Fargo Bank, N.A. ("Wells Fargo") and a rate lock agreement from Wells Fargo. However, the commitment letter indicates that the loan will be made conditioned on several conditions to be satisfied by the debtors, of which there is no evidence on the docket that those conditions have been satisfied. In addition, the court notes that several key terms of the proposed transaction have changed since the filing of the motion, as evidenced by the "supplemental" motion filed on February 12, 2014 (Dkt. 96), including the identity of the real property which the debtors wish to purchase, the total amount of the money to be borrowed and the interest rate on the loan. Parties in interest to the motion, which includes all creditors, will have had only six days' notice of these material changes to the motion as of the date of the hearing. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

13. [11-49416](#)-B-13 JOHN/TERI BOLINGER
TBH-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF THOMAS HJERPE FOR
THOMAS B. HJERPE, DEBTORS'
ATTORNEY(S), FEES: \$5,695.00,
EXPENSES: \$0.00
1-15-14 [[74](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330, the application is approved on an interim basis for the period of January 17, 2012, through and including December 16, 2013, in the amount of \$5,695.00 in fees and \$0.00 in costs, for a total of \$5695.00. Applicant is authorized to apply \$831.00 from the balance in its trust account to the allowed fees and costs. The balance of the approved fees and costs shall be paid by the trustee through the chapter 13 plan as an administrative expense. Except as so ordered, the motion is denied.

On December 22, 2011, the debtors filed a chapter 13 petition with the assistance of Frederick Clement, Esq. No attorney's fees or costs were approved in connection with confirmation of the debtors' chapter 13 plan. By order entered February 3, 2012 (Dkt. 37), the court approved, on a first and final basis, fees and costs for Clement in the total amount of \$2169.00. Clement subsequently substituted the applicant, Thomas Hjerpe, Esq., in as counsel of record for the bankruptcy case. Hjerpe now seeks interim approval of fees in the amount of \$5695.00 for services rendered following the substitution. As set forth in the attorney's application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

14. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER
LBG-1 AND JOSEPH ALEXANDER

MOTION TO VALUE COLLATERAL OF
NATIONAL CITY BANK
1-10-14 [[20](#)]

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 National City Bank's ("NCB") claim in this case secured by the second deed of trust on real property located at 2540 Muir Court, Cool, California (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 \$330,000.00 on the date of the petition. The

Property is encumbered by a first deed of trust held by GMAC Mortgage with a balance of approximately \$416,000.00 thus, the value of the collateral available to NCB on its second deed of trust is \$0.00.

The court will issue a minute order.

15. [13-34924](#)-B-13 DAVID RODEN MOTION TO CONFIRM PLAN
CK-1 1-6-14 [[17](#)]

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

The motion is granted and the amended plan filed January 6, 2014 (Dkt. 20), 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. [10-25125](#)-B-13 ROBERT/SANDRA JOHNSON MOTION TO APPROVE LOAN
WW-3 MODIFICATION
12-23-13 [[69](#)]

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

The motion is granted. The debtors are authorized to incur credit on the terms set forth in the Loan Modification Agreement filed as Exhibit "B" to the motion (Dkt. 72 at 3).

The court will issue a minute order.

17. [14-20025](#)-B-13 RUBEN/MIGUELINA MORENO MOTION TO VALUE COLLATERAL OF
DBJ-1 U.S. BANK, N.A.
1-15-14 [[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 U.S. Bank, N.A.'s ("USB") claim in this case secured by the second deed of trust on real property located at 6422 County Road 11, Orland, 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 \$113,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase Home Finance with a balance of approximately \$170,000.00. Thus, the value of the collateral available to USB on its second deed of trust is \$0.00.

The court will issue a minute order.

18. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR MOTION TO VALUE COLLATERAL AND
DAO-1 TO AVOID LIENS OF J.P. MORGAN
CHASE BANK, N.A., SOUTHGATE
GARDEN HOMES OWNERS ASSOCIATION
1-21-14 [[16](#)]

Tentative Ruling: The motion is dismissed without prejudice in part and denied without prejudice in part.

The motion was not properly served on two of the three parties against whom the debtors seek relief. By this motion, the debtors seek to value real property located at 10318 Chaves Court, Elk Grove, California (the "Property") for the purpose of fixing the secured claims of JPMorgan Chase Bank, N.A. and Southgate Garden HOA at \$0.00 and for the purpose of avoiding a judicial lien in favor of Payment Solutions.

This matter is a contested matter pursuant to Fed. R. Bankr. P. 9014. As such, it must be served on the respondent creditor's consistent with the requirements of Fed. R. Bankr. P. 7004(b). In this case, Payment Solutions and Southgate Garden HOA were not properly served with the motion. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. The debtors' certificate of service (Dkt. 20) does not reflect service in such a manner.

Although the certificate of service shows that JPMorgan Chase Bank, N.A. ("Chase") was properly served with the motion, because the various requests in the motion depend on a single valuation of the Property, the court denies the motion without prejudice as to the relief sought against Chase in order to avoid inconsistent findings regarding the value of the Property in this bankruptcy case.

The court will issue a minute order.

19. [10-46729](#)-B-13 RICHARD/CARRIE HOLBEN MOTION TO APPROVE LOAN
RDS-4 MODIFICATION
1-24-14 [[75](#)]

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.

20. [13-31929](#)-B-13 EVANGELINA MANZO
TJW-1

MOTION TO CONFIRM PLAN
12-19-13 [[32](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed December 19, 2013, is denied.

The court will issue a minute order.

21. [13-31929](#)-B-13 EVANGELINA MANZO
TJW-1

COUNTER MOTION TO CONDITIONALLY
DISMISS CASE
1-29-14 [[36](#)]

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 March 4, 2014, the debtor files 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 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.

22. [13-34920](#)-B-13 VICTORIA BARNEY
SAC-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RICHARD
BARNEY AND/OR MOTION TO CONVERT
CASE TO CHAPTER 7
12-26-13 [[15](#)]

Tentative Ruling: This objection to confirmation of the debtor's chapter 13 plan continued from January 21, 2014. The court established a briefing schedule. The debtor timely filed opposition. The objecting creditor timely filed a reply. The court now issues the following tentative ruling.

The creditor's objection pursuant to 11 U.S.C. § 109(e) that the debtor is ineligible for relief under chapter 13 is sustained. The bankruptcy case is dismissed due to the debtor's ineligibility. The creditor's remaining objections that the chapter 13 plan was not proposed in good faith and that chapter 13 plan does not satisfy 11 U.S.C. § 1325(b)(1)(B) are dismissed as moot.

As to the creditor's objection under 11 U.S.C. § 109(e), the issue before the court is whether the obligation owed to Wells Fargo Bank, N.A. in the amount of \$441,147.00, listed on the debtor's sworn Schedule D should be considered a secured claim for the purposes of §

109(e), despite the fact that the real property collateral (the "Property") securing the obligation is not listed on the debtor's sworn Schedule A and the debtor concedes that neither she nor the bankruptcy estate has an interest in the Property.

Although the court agrees with the debtor's argument and the reasoning of the court in In re Silva, 2011 WL 5593040 (Bankr. N.D. Cal. Nov. 16, 2011) that a purchase money obligation secured by real property should not be included in the unsecured debt calculation for the purposes of § 109(e) due to the non-recourse nature of such obligations pursuant to Cal. Civ. Proc. Code § 580b, the objecting creditor has presented evidence that the obligation in this case is not a non-recourse purchase money obligation. Rather, it is a non-purchase money obligation based on a home equity line of credit agreement which pre-dates January 1, 2013, and is not subject to the protection Cal. Civ. Proc. Code § 580b. The debtor's citation to Silva is therefore unavailing.

As the proposition for which the debtor cites Silva is inapplicable to the facts of this case, the court next considers whether the obligation should be considered as secured even though the estate does not have an interest in the Property. On this point the court agrees with the court in In re Hurtt, 454 B.R. 733 (Bankr. E.D. Ky. 2011) that the estate must have an interest in the Property for it to be considered a secured debt for the purposes of the chapter 13 case. This conclusion is consistent with the language of 11 U.S.C. § 506(a), which provides in part: "An allowed claim...secured by a lien on property in which the estate has an interest... is a secured claim...." 11 U.S.C. § 506(a) (emphasis added). Eligibility is normally determined based on the figures included in the debtor's original schedules, checking only to see that the schedules were prepared in good faith. In re Scovis, 249 F.3d 975, 982 (9th Cir. 2001). Although the debtor did schedule the obligation as secured debt on her sworn Schedule D, Schedule D is not the only schedule the court may consider. The debtor also did not list the Property on Schedule A. "It is not properly assertable that merely placing an obligation on a schedule of secured debts makes it a fully secured obligation. Neither the Court nor the debtor is permitted to close its eyes to the obvious, as reflected by the schedules." In re McClaskie, 92 B.R. 285, 287 (Bankr. S.D. Ohio 1988). As a result, the court finds that the obligation owed to Wells Fargo Bank, N.A. is properly considered an unsecured debt for the purposes of 11 U.S.C. § 109(e). As the debtor has also scheduled \$181,948.35 of non-contingent, liquidated unsecured debts on Schedule F, she clearly exceeds the secured debt limit of \$383,175.00 established by § 109(e). Therefore, the bankruptcy case is dismissed due to the debtor's ineligibility to be debt under chapter 13.

As the case is dismissed, the creditor's remaining objections to confirmation under 11 U.S.C. § 1325(a)(3) and (b)(1)(B) are dismissed as moot.

The court will issue a minute order.

23. [13-21430](#)-B-13 SUE BOYAN
PGM-2

MOTION TO MODIFY PLAN
1-3-14 [[36](#)]

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

The motion is granted and the modified plan filed January 3, 2014, is confirmed.

The court will issue a minute order.

24. [10-47431](#)-B-13 MARYANN PALMER
SDB-3

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
1-17-14 [[68](#)]

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 Bank of America N.A.'s ("BoFA") claim in this case secured by the second deed of trust on real property located at 904 Youngsdale Drive, Vacaville, California (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 \$220,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Bank, N.A. with a balance of approximately \$237,000.00. Thus, the value of the collateral available to BoFA on its second deed of trust is \$0.00.

The court will issue a minute order.

25. [14-20335](#)-B-13 ALFRED/ESTHER BURKES
RAC-1

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
1-20-14 [[8](#)]

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 Real Time Resolutions, Inc.'s ("Real Time") claim in this case secured by the second deed of trust on real property located at 2310 Geary Street, West Sacramento, California (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 \$205,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Green Tree with a balance of approximately \$247,000.00. Thus, the value of the collateral available to Real Time on its second deed of trust is \$0.00.

The court will issue a minute order.

26. [10-35537](#)-B-13 ALBERT/JULIE WONG MOTION TO APPROVE LOAN
WW-3 MODIFICATION
1-21-14 [[88](#)]

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

The motion is granted. The debtors are authorized to incur new debt on the terms set forth in the Home Affordable Modification Agreement filed as Exhibit "B" (Dkt. 91 at 5) to the motion.

The court will issue a minute order.

27. [10-35537](#)-B-13 ALBERT/JULIE WONG MOTION TO MODIFY PLAN
WW-2 12-23-13 [[75](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed December 23, 2013 is confirmed with the following modification: The Additional Provisions in section 6 of the plan shall state that the classification of Chase, secured by a first deed of trust against debtors' residence, is being changed from class 1 to class 4.

The trustee's first objection is resolved by the modification to the plan stated above. The trustee's second objection is overruled because the court finds that the debtors have presented sufficient evidence in support of their declaration in reply that their life insurance expense is a reasonably necessary expense as that term is defined by 11 U.S.C § 1325(b) (2).

The court will issue a minute order.

28. [13-32737](#)-B-13 CATHERINE PORTER MOTION TO APPROVE LOAN
PGM-2 MODIFICATION
1-10-14 [[25](#)]

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

The motion is dismissed without prejudice.

The motion was not properly served. The debtors seek court approval to enter into a loan modification with Bank of America, N.A. ("BofA"). The motion is governed by the provisions of Fed. R. Bankr. P. 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." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct."

Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor who is refinancing the loan. The court also requires that the debtor give notice of the motion to all other creditors.

In this case, although the debtors did give notice of the motion to all other creditors, they did not serve BofA with the motion consistent with the requirements of Bankruptcy Rule 7004. Pursuant to Fed. R. Bankr. P. 7004(h) service on an insured depository institution is accomplished by certified mail addressed to an officer of the institution unless one of the exceptions set forth in Bankruptcy Rule 7004(h)(1)-(3) applies. The debtors have not shown that one of the aforementioned exceptions applies and they did not serve BofA by certified mail to the attention of an officer.

The court will issue a minute order.

29. [13-32138](#)-B-13 ROLAND/JENNIFER STENSON MOTION TO VALUE COLLATERAL OF
WW-1 COUNTRYWIDE BANK, N.A.
12-17-13 [[26](#)]

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 Bank of America, N.A.'s ("BofA") claim in this case secured by the second deed of trust on real property located at 6605 Farleigh Court, Elk Grove, 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 \$225,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BofA, N.A. with a balance of approximately \$251,000.00 thus, the value of the collateral available to BofA on its second deed of trust is \$0.00.

The court will issue a minute order.

30. [13-32138](#)-B-13 ROLAND/JENNIFER STENSON MOTION TO MODIFY PLAN
WW-2 12-17-13 [[29](#)]

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, 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. [10-22339](#)-B-13 TODD/SHERRY WALLACE MOTION TO APPROVE LOAN
CJO-1 MODIFICATION
1-23-14 [[57](#)]

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

The motion is granted. The debtors are authorized to incur new debt on the terms set forth in the Freddie Mac Loan Modification Agreement filed as Exhibit "1" to the motion (Dkt. 59 at 2).

The motion is granted because the debtors have filed a statement of non-opposition to the motion (Dkt. 61). In this instance, the court treats the debtors' non-opposition as a joinder in the motion. The court notes that the movant, secured creditor Bank of America, N.A. does not have standing to bring this motion itself absent a joinder by the debtors. 11 U.S.C. § 364, entitled "Obtaining Credit," at subsection (c), authorizes "the trustee" to obtain secured credit, subject to certain requirements. The preceding section only permits the trustee, and not to any "interested party" to obtain credit.

The court will issue a minute order.

32. [13-33339](#)-B-13 ANTHONY HOFFMAN MOTION TO CONFIRM PLAN
JSO-5 1-7-14 [[55](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed January 7, 2014, is denied.

The trustee's opposition is sustained for the reasons set forth therein. In addition, with respect to the plan's proposed treatment of the secured

claim of the Shasta County Tax Collector, the court notes that the creditor's claim appears to be based on a lien for unpaid property taxes. Such liens have automatic priority over all other on the property, regardless of time of creation. Cal. Rev. & Tax Code §§ 2187, 2192.1. As a result, the debtors cannot use other liens on the property pursuant to 11 U.S.C. § 506(a) to attempt to fix the tax collector's secured claim at \$0.00.

The court will issue a minute order.

33. [13-33339](#)-B-13 ANTHONY HOFFMAN COUNTER MOTION TO DISMISS CASE
JSO-5 2-3-14 [[63](#)]

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 March 4, 2014, the debtor files 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 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.

34. [13-36139](#)-B-13 PABLO SILVA-RAMIREZ AND MOTION TO VALUE COLLATERAL OF
CRG-1 LETICIA SILVA CITIFINANCIAL SERVICES, INC.
1-14-14 [[17](#)]

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 CitiFinancial Services, Inc. ("CitiFinancial") claim in this case secured by the second deed of trust on real property located at 337 Falcon Drive, Vallejo, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim. Except as so ordered, the motion is denied.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$210,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by First Franklin, a division of National City Bank of Indiana with a balance of approximately \$485,000.00 thus, the value of the collateral available to CitiFinancial on its second deed of trust is \$0.00.

The court will issue a minute order.

35. [09-35241](#)-B-13 ANTHONY DICUS AND LILIA
LOPEZ

MOTION FOR SANCTIONS
1-6-14 [[93](#)]

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

The motion is dismissed without prejudice.

The motion was not properly served. This motion for imposition of sanctions and injunctive relief against certain creditors is a contested motion under Fed. R. Bankr. P. 9014. As such, it must be served pursuant to the requirements of Fed. R. Bankr. P. 7004. As a contested matter under Fed. R. Bankr. P. 9014, the motion must be served in accordance with Fed. R. Bankr. P. 7004. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. Also, pursuant to Fed. R. Bankr. P. 7004(h) service on an insured depository institution is accomplished by certified mail addressed to an officer of the institution unless one of the exceptions set forth in Bankruptcy Rule 7004(h)(1)-(3) applies.

In this case, the debtors' certificate of service (Dkt. 97), shows that they served Ocwen Loan Servicing, LLC and NBS Default Services, LLC generally and not to the attention of an officer or agent for service of process, as required by Bankruptcy Rule 7004(b)(3). The certificate of service also shows that the debtors served OneWest Bank, FSB and Deutsche Bank National Trust Company, but they did not serve those entities to the attention of an officer via certified mail, as required by Bankruptcy Rule 7004(h).

In addition, the court also finds that the motion suffers from other procedural defects. The debtors did not file a separate notice of hearing with the motion, as required by LBR 9014-1(d)(2), and which contains the contents specified in LBR 9014-1(d)(3). The debtors also did not assign a docket control number to the motion, as required by LBR 9014-1(c). Failure to comply with the court's local rules is grounds for imposition of sanctions including, inter alia, dismissal of motions. LBR 1001-1(g).

Accordingly, based on the foregoing, the motion is dismissed without prejudice.

The court will issue a minute order.

36. [10-33341](#)-B-13 SAEED BAGHERI
CAH-6

MOTION TO APPROVE LOAN
MODIFICATION
1-17-14 [[83](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion is denied.

The trustee's opposition is sustained for the reasons set forth therein.

The court will issue a minute order.

37. [13-35642](#)-B-13 LARRY/COLLEEN EDWARDS MOTION TO VALUE COLLATERAL OF
CAH-1 SCHOOLS FINANCIAL CREDIT UNION
1-21-14 [[15](#)]

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. \$12,000.00 of Schools Financial Credit Union's claim in this case secured by a 2006 Ford Expedition ("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 \$12,000.00 on the date of the petition.

At The court will issue a minute order.

38. [13-35642](#)-B-13 LARRY/COLLEEN EDWARDS MOTION TO VALUE COLLATERAL OF
CAH-2 SPRINGLEAF FINANCE SERVICES,
INC.
1-21-14 [[20](#)]

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. \$600.00 of Springleaf Financial Services, Inc.'s claim in this case secured by a desk and a wall shelf (collectively, 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 \$600.00 on the date of the petition.

The court will issue a minute order.

39. [13-35642](#)-B-13 LARRY/COLLEEN EDWARDS MOTION TO VALUE COLLATERAL OF
CAH-3 GE CAPITAL RETAIL BANK
1-21-14 [[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

44. [11-33547](#)-B-13 MICHAEL/LOLITA CHANEY MOTION TO VALUE COLLATERAL OF
PGM-2 B-LINE, LLC
1-20-14 [[52](#)]

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. \$250.00 of B-Line, LLC's claim secured by a Movado watch (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 \$250.00 on the date of the petition.

The court will issue a minute order.

45. [13-35347](#)-B-13 ANGEL/KARINA GARCIA OBJECTION TO CONFIRMATION OF
JHW-1 PLAN BY TD AUTO FINANCE, LLC
1-3-14 [[21](#)]

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

This objection is dropped from calendar pursuant to the terms of the stipulation filed February 4, 2014 (Dkt. 44), which was approved by court order signed February 14, 2014.

46. [13-35347](#)-B-13 ANGEL/KARINA GARCIA OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-14 [[40](#)]

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 plan's feasibility depending on a motion to value collateral of Golden 1 Credit Union ("Golden 1") is overruled. The trustee's objection regarding the plan's feasibility depending on a motion to value collateral of TD Auto Finance, LLC ("TD") is sustained. Confirmation of the plan filed December 3, 2013 (Dkt. 8) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before March 4, 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 motion to value collateral of Golden 1 was heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment of Golden 1's claim. Therefore, this objection is overruled.

Regarding the motion to value collateral of TD, the court notes that the motion was resolved by stipulation between the parties filed February 4, 2014 (Dkt. 44) and approved by order entered February 14, 2014. However, the motion was resolved in a manner inconsistent with the plan's treatment of TD's claim. 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 terms of the stipulation will require the debtors to increase their monthly plan payments by \$74.03 to \$1,574.03. According to the debtors' most recently filed Schedule J (Dkt. 14, p.24), the debtors have monthly net income of \$1,500.00, all of which is being devoted to plan payments for the first fourteen months. The debtors have not shown either that they can afford an increased plan payment of \$1,574.03 or that leaving the plan payment the same while increasing the dividend to TD from \$195.00 to \$269.03 will not adversely affect other creditors. 11 U.S.C. § 1325(a)(6). As such, 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.

47. [13-35347](#)-B-13 ANGEL/KARINA GARCIA MOTION TO VALUE COLLATERAL OF
RJ-1 TD AUTO FINANCE, LLC
1-15-14 [[30](#)]

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, as resolved by the stipulation of the parties filed February 4, 2014 (Dkt. 44) and approved by the court by order signed February 14, 2014.

48. [13-35347](#)-B-13 ANGEL/KARINA GARCIA MOTION TO VALUE COLLATERAL OF
RJ-2 GOLDEN 1 CREDIT UNION
1-15-14 [[34](#)]

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. \$5,600.00 of Golden 1 Credit Union's claim secured by a 2002 Chevrolet Tahoe (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 \$5,600.00 on the date of the petition.

The court will issue a minute order.

49. [13-33349](#)-B-13 ILIYA PEYCHEV MOTION TO CONFIRM PLAN
MS-3 12-4-13 [[40](#)]

Tentative Ruling: The trustee's opposition is sustained. Creditor Wells Fargo Bank, N.A.'s opposition is sustained. The motion to confirm the plan filed December 4, 2013 (Dkt. 39) is denied.

The court will issue a minute order.

50. [13-33349](#)-B-13 ILIYA PEYCHEV COUNTER MOTION TO DISMISS CASE
MS-3 2-4-14 [[56](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 56) 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 March 4, 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.

51. [13-23150](#)-B-13 DHANI/NIRMALA RAM OBJECTION TO CLAIM OF CAPITAL
ULC-4 ONE BANK USA, N.A., CLAIM
NUMBER 7
12-26-13 [[66](#)]

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

The objection is removed from the calendar. The debtors withdrew the objection on February 10, 2014 (Dkt. 78).

52. [13-23150](#)-B-13 DHANI/NIRMALA RAM
ULC-5

MOTION TO MODIFY PLAN
12-26-13 [[71](#)]

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. 65) is confirmed.

The court will issue a minute order.

53. [11-42651](#)-B-13 RONALD/LILLIAN DILL
JT-3

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
1-10-14 [[44](#)]

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 Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 1170 Lois Lane, Yuba City, CA 95991 (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 \$138,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$152,021.38. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

54. [13-33854](#)-B-13 WENDEL/MECIA GILL
SJS-2

MOTION TO CONFIRM PLAN
1-6-14 [[26](#)]

Tentative Ruling: The motion to confirm the amended plan filed January 6, 2014 (Dkt. 30) is denied.

Although no party in interest 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, plan provides for the claim of Wells Fargo FNB/Beck's Furniture in Class 2B1 to be reduced to a value of \$200.00. However, to date the debtors have failed to file, serve, and set for hearing a motion to value this creditor's collateral. Section 2.09(c) states that the debtors "may reduce the claim to the value of the collateral securing it by filing, serving, setting for hearing, and prevailing on a motion to determine the value of that collateral. If this plan proposes to reduce a claim based upon the value of its collateral, the failure to move to value that collateral in conjunction with plan confirmation may result in the denial of confirmation." By failing to file, serve, and set for hearing a motion to value collateral, the debtors are not in compliance with a provision of the form plan. 11 U.S.C. § 1325(a)(6). As such, 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.

55. [13-32555](#)-B-13 JEFFREY WARNES MOTION TO CONFIRM PLAN
MRL-2 12-22-13 [[38](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed December 9, 2013 (Dkt. 31) is denied.

The court will issue a minute order.

56. [13-32555](#)-B-13 JEFFREY WARNES COUNTER MOTION TO DISMISS CASE
MRL-2 2-4-14 [[42](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 42) 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 March 4, 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.

57. [13-35955](#)-B-13 CHARLES/LISA GOERLICH MOTION TO VALUE COLLATERAL OF
RAC-1 REAL TIME RESOLUTIONS, INC
1-17-14 [[14](#)]

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 Real Time Resolutions, Inc.'s claim secured by the second deed of trust on real property located at 7316 Gail Way, Fair Oaks, CA 95628 (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 \$304,150.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Select Portfolio Servicing, Inc. with a balance of approximately \$444,363.00. Thus, the value of the collateral available to Real Time Resolutions, Inc. on its second deed of trust is \$0.00.

The court will issue a minute order.

58. [11-22456](#)-B-13 GUADALUPE/VICTORIA MOTION FOR SUBSTITUTION OF
JT-7 QUIHUIS DECEASED PARTY
1-30-14 [[93](#)]

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.

59. [11-24357](#)-B-13 MICHAEL/CHRISTYNA MOTION TO APPROVE LOAN
SAC-2 THOMPSON MODIFICATION
1-24-14 [[51](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The debtors seek court approval to enter into a permanent loan modification with SunTrust Mortgage, Inc. ("SunTrust"). However, the debtors have failed to establish that there is an actual agreement for the court to approve.

The absence of an actual agreement 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 proposed loan modification, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges that the debtors have attached as Exhibit "A" to the motion (Dkt. 54, p.3-9) a copy of the loan modification agreement (the "Agreement"). However, the Agreement has not been signed by either the debtors or a representative of SunTrust. The debtors have provided no evidence that SunTrust consents to the terms of the Agreement. Therefore, there is no actual agreement for the court to approve and the motion is dismissed without prejudice.

The court notes that, even if the motion were not dismissed, it would be denied without prejudice for failure to comply with the noticing requirements of the Local Bankruptcy Rules. The debtors' notice of hearing (Dkt. 52) takes the form of a motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1), *i.e.*, it states that opposition to the motion must be filed and served no later than fourteen (14) days prior to the hearing date. However, a motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1) must be filed and served at least twenty-eight (28) days prior to the hearing date. LBR 9014-1(f)(1). Today's date is February 18, 2014. Twenty-eight days prior to today's date was January 21, 2014. This motion was filed, served, and set for hearing on January 24, 2014, which is only twenty-five (25) days prior to today's hearing. A motion set on less than twenty-eight days' notice must conform to the requirements of Local Bankruptcy Rule 9014-1(f)(2), unless an order shortening time is requested. 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.

60. [10-37859](#)-B-13 MARIO DIMANNO
EJS-2

MOTION TO SELL O.S.T.
2-4-14 [[36](#)]

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.

61. [13-35359](#)-B-13 JASEN SMITH
DRE-1

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
1-29-14 [[30](#)]

Tentative Ruling: The motion to value collateral of JPMorgan Chase Bank, N.A. is continued to a final evidentiary hearing on April 25, 2014, at 10:00 a.m. before the Honorable Jane D. McKeag in courtroom 32.

On or before April 18, 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 debtor's 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 April 18, 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 JPMorgan Chase 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 notes that, ordinarily, this motion would have been denied without prejudice for failure to comply with the noticing requirements of the Local Bankruptcy Rules. The debtor's notice of hearing (Dkt. 31) takes the form of a motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1), *i.e.*, it states that opposition to the motion must be filed and served no later than fourteen (14) days prior to the hearing date. However, a motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1) must be filed and served at least twenty-eight (28) days prior to the hearing date. LBR 9014-1(f)(1). Today's date is February 18, 2014. Twenty-eight days prior to today's date was January 21, 2014. This motion was filed, served, and set for hearing on January 29, 2014, which is only twenty (20) days prior to today's hearing. A motion set on less than twenty-eight days' notice must conform to the requirements of Local Bankruptcy Rule 9014-1(f)(2), unless an order shortening time is requested. In this instance, because JPMorgan Chase Bank, N.A. timely filed a response to the motion, the court determines that an evidentiary hearing is necessary to resolve the valuation dispute. Debtor's counsel should not expect to have future motions granted if he does not comply with the requirements of the Local Bankruptcy Rules. LBR 1001-1(g).

The court will issue a minute order.

62. [13-35359](#)-B-13 JASEN SMITH
JPJ-1

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

Tentative Ruling: This matter is continued to April 29, 2014, at 9:32 a.m.

63. [13-35359](#)-B-13 JASEN SMITH OBJECTION TO DEBTOR'S CLAIM OF
JPJ-2 EXEMPTIONS
1-9-14 [[24](#)]
WITHDRAWN BY M.P.

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

The objection is removed from the calendar. The trustee withdrew the objection on January 30, 2014 (Dkt. 36).

64. [13-35359](#)-B-13 JASEN SMITH CONTINUED OBJECTION TO
PD-1 CONFIRMATION OF PLAN BY J.P.
MORGAN CHASE BANK, N.A.
12-18-13 [[16](#)]

Tentative Ruling: This matter is continued to April 29, 2014, at 9:32 a.m.

65. [13-33765](#)-B-13 RACHELLE HICKS MOTION TO CONFIRM PLAN
SJS-3 1-3-14 [[36](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed January 3, 2014 (Dkt. 38) is denied.

The court will issue a minute order.

66. [10-41467](#)-B-13 JEFFREY/JANICE COPELAND MOTION FOR SUBSTITUTION OF
ACK-1 DECEASED PARTY PURSUANT TO
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 7025
2-3-14 [[47](#)]

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.

67. [13-35570](#)-B-13 FRANK LILLY
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-14 [[18](#)]

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 plan filed December 10, 2013 (Dkt. 7) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before March 4, 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.

68. [13-35777](#)-B-13 SIDNE ALLINGER
LBG-1

MOTION TO VALUE COLLATERAL OF
CHASE
1-10-14 [[14](#)]

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 Chase's claim secured by the second deed of trust on real property located at 203 Del Monte Way, Auburn, CA 95603 (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 \$195,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing with a balance of approximately \$257,722.53. 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.

69. [11-43785](#)-B-13 JESUS MERCADO
TOG-7

CONTINUED 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.

70. [13-32286](#)-B-13 MARCOS SMITH
WW-1

OBJECTION TO CLAIM OF BOSCO
CREDIT II TRUST SERIES 2010-1,
CLAIM NUMBER 2
12-30-13 [[36](#)]

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

The debtor's objection is sustained. Claim no. 2 on the court's claims register, filed on October 21, 2013 (the "Claim"), by Bosco Credit II Trust Series 2010-1 (the "Claimant") is disallowed, except to the extent already paid by the trustee.

The debtor questions the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the debtor alleges without dispute that the Claim is time-barred under California law. Pursuant to the California Code of Civil Procedure Section 337, the statute of limitations on an action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in California Code of Civil Procedure 336(a), is four years. Cal. Code Civ. P. § 337. Here, the debtor alleges without dispute in his sworn declaration (Dkt. 38) that he has not lived at the property securing the Claim since October 2006. He further alleges without dispute that he has not may any payments on the note that is the subject of the Claim since October 2006. Furthermore, the property was sold at a pre-petition foreclosure sale in May 2008. The debtor has provided sufficient evidence that the Claimant's cause of action on its Claim began to accrue more than four years ago. By failing to respond to the objection, the Claimant has failed to carry its burden of proving up the Claim. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

Tentative Ruling: Creditor Victor Correia ("Mr. Correia")'s objections are overruled. The motion to confirm the amended plan filed December 23, 2013 (Dkt. 33) is denied.

Mr. Correia's objections under 11 U.S.C. § 1325(b)(1)(B) are irrelevant because the plan proposes to pay all claims, including Mr. Correia's in Class 6, in full. That treatment would satisfy the requirements of 11 U.S.C. § 1325(b)(1)(A), which is an alternative to 11 U.S.C. § 1325(b)(1)(B).

Mr. Correia's objections that either the plan or this case was filed in bad faith are overruled because he has failed to cite to or analyze the relevant Ninth Circuit authorities for analyzing bad faith. "To determine bad faith a bankruptcy judge must review the 'totality of the circumstances.' A judge should ask whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner.'" In re Eisen, 14 F.3d at 470; see also Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 93 (9th Cir. BAP 1988) *citing* Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir. 1982). Simply stating that he is not receiving payments and that a case filed over five years ago failed in the fifty-ninth month of the plan, without more, is insufficient.

Although the court has overruled Mr. Correia's objections, the court notes that it 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, because Mr. Correia has raised an 11 U.S.C. § 1325(b) objection, the court notes that the value of the property to be distributed under the plan, as of the effective date of the plan, is less than the amount of the filed claims in this case. 11 U.S.C. § 1325(b)(1)(A). Particularly, the court notes that Mr. Correia has filed two proofs of claim, claim numbers 5-1 and 6-1, in the amount of \$22,785.53 each, to which no objection has been filed. Unless objected to, a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). The plan appears to be underfunded. 11 U.S.C. § 1325(a)(6). As such, the debtor has not carried his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

72. [13-34188](#)-B-13 HENRY/HAZEL CASTILLO MOTION TO CONFIRM PLAN
SJS-2 1-6-14 [[30](#)]

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

The motion is granted, and the amended plan filed January 6, 2014 (Dkt. 32) 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.

73. [13-33189](#)-B-13 DANIEL/LORI CAMARENA MOTION TO APPROVE LOAN
PGM-4 MODIFICATION
1-13-14 [[53](#)]

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

The debtors' motion for authority to incur new debt is granted on the terms set forth in the Wells Fargo Home Mortgage Loan Modification Proposal submitted as Exhibit "A" to the motion (Dkt. 56, p.2).

The court will issue a minute order.

74. [13-35493](#)-B-13 RICHARD/OTTOMESE RICE OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-23-14 [[22](#)]

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 The Bank of New York Mellon.

75. [13-35895](#)-B-13 NICOLE BERT
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
1-29-14 [[32](#)]

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 Debtor's Motion to Value Collateral of USAA Federal Savings Bank and Debtor's Motion to Value Collateral of Darraq Family Trust/Evelyn Rodies Trust.

76. [13-35895](#)-B-13 NICOLE BERT
MRG-1
OBJECTION TO CONFIRMATION OF
PLAN BY USAA FEDERAL SAVINGS
BANK
1-17-14 [[17](#)]

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 Debtor's Motion to Value Collateral of USAA Federal Savings Bank.

77. [08-36297](#)-B-13 ANDREW ELLENBERGER
TBH-3
MOTION TO APPROVE LOAN
MODIFICATION
1-21-14 [[135](#)]

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.