

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

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

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1. [14-20302](#)-B-13 MATTHEW SINGH AND MARTHA OBJECTION TO CONFIRMATION OF
JPJ-1 ZARATE PLAN BY JAN P. JOHNSON
2-26-14 [[18](#)]

Tentative Ruling: The objection is continued to April 29, 2014, at 9:32 a.m., to be heard after the continued meeting of creditors under 11 U.S.C. § 341, which will be held on April 17, 2014, at 8:30 a.m.

2. [14-20302](#)-B-13 MATTHEW SINGH AND MARTHA OBJECTION TO CONFIRMATION OF
MRG-1 ZARATE PLAN BY CAPITAL ONE AUTO
FINANCE
2-4-14 [[14](#)]

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 overruled.

The creditor, Capital One Auto Finance ("Capital One"), asserts two objections to confirmation of the initial plan.

First, Capital One asserts that the debtors may use 11 U.S.C. § 506 to reduce the amount of its secured claim based on the value of its collateral (the "Collateral") pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a), as the debtors incurred the debt underlying Capital One's secured claim less than 910 days before the date of the hearing. The objection is overruled because the debtors' plan does not propose to utilize § 506 to value the Collateral. In fact, Capital One's secured claim is listed in class 2A of the plan, which is reserved for secured claims "not reduced based on value of collateral." As a result, pursuant to section 2.04 of the plan, Capital One's proof of claim, not the plan or the schedules determines the amount and classification of its claim. By the court's calculations, the plan is sufficiently funded to pay Capital One's secured claim in full on the terms specified in the plan. The fact that the debtors estimated the amount of Capital One's secured claim in the class 2 table in the plan in an amount less than the filed amount of the claim is irrelevant; the claim estimate in the class 2

table is not a motion to value collateral, nor is it an objection to Capital One's filed claim.

Second, Capital One asserts that "the plan fails to provide sufficient payments to [Capital One] for adequate protection." Since the substance of Capital One's argument focuses on the interest rate to be paid on its secured claim over the plan term, the court construes the objection as one under 11 U.S.C. § 1325(a)(5)(B)(ii) that the plan does not provide "value as of the effective date of the plan" that "is not less than the allowed amount" of Capital One's claim, i.e., that the plan does not provide for a stream of future payments discounted to a present value that is not less than the allowed amount of Capital One's secured claim. To provide value, as of the effective date of the plan, on a secured claim that is being paid over the plan term, a rate of interest must be paid on the claim. The rate of interest to be applied is governed by the Supreme Court's decision in Till et ux. v. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787 (2004). Till directs this court to conduct a present value calculation as of the effective date of the plan by starting with the risk free rate and adjusting upward for appropriate risk factors. The form plan provides that the plan is "effective from the date it is confirmed." The court takes judicial notice pursuant to Federal Rule of Evidence 201 that the current prime rate is 3.25%. The debtor proposes an interest rate of 3.5% per annum. Although Capital One asserts that the rate should be 5.5%, it has presented no evidence to support that assertion. Till places the burden on the creditor to show that an upward adjustment is necessary. Id. at 479. Capital One's vague references to "the nature of the loan, the quality of the Secured Creditor's security, and the risk of default" are insufficient to carry Capital One's burden of justifying the upward adjustment it requests.

The court will issue a minute order.

3. [12-29408](#)-B-13 JOYCE YOUNG MOTION TO MODIFY PLAN
WW-1 2-6-14 [[31](#)]

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

The motion is granted, and the modified plan filed February 6, 2014 (Dkt. 35), is confirmed.

The court will issue a minute order.

4. [14-20108](#)-B-13 BOYET/ANGELINE DINAMARCA OBJECTION TO CONFIRMATION OF
JPJ-2 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-20-14 [[28](#)]

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 March 4, 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.

5. [14-20608](#)-B-13 UNDR/LADEANA SHELTON MOTION TO VALUE COLLATERAL OF
ACK-1 ARGENT MORTGAGE
COMPANY, LLC
2-6-14 [[16](#)]

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 Argent Mortgage Company, LLC's ("Argent") claim in this case secured by the second deed of trust on real property located at 206 Berryessa Drive, Vacaville, 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 \$241,819.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Deutsche Bank National Trust Company with a balance of approximately \$312,000.00. Thus, the value of the collateral available to Argent on its second deed of trust is \$0.00.

The court will issue a minute order.

6. [14-21509](#)-B-13 JUANITA MCKINLEY-LOPES MOTION TO EXTEND DEADLINE TO
DEF-1 FILE SCHEDULES OR PROVIDE
REQUIRED INFORMATION
3-3-14 [[9](#)]

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.

7. [14-20112](#)-B-13 TONY/CONNIE EVENICH OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-26-14 [[25](#)]

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 January 20, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 1, 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.

8. [11-37114](#)-B-13 MATIAS CARRAZCO AND MOTION TO APPROVE LOAN
MMM-1 CLAUDIA IBARRA CARRAZCO MODIFICATION
3-3-14 [[33](#)]

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

9. [14-20114](#)-B-13 MONICA GRIMES-BURGER OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-20-14 [[15](#)]

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 overextension of the plan is overruled. The trustee's remaining objections are sustained. Confirmation of the initial plan filed January 6, 2014 is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 1, 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 trustee's first objection, that the plan will take 69 months to complete, is overruled for the reasons stated in the debtor's response.

The trustee's second objection regarding the debtor's failure to provide the trustee with a copy of her most recent tax return is sustained for the reasons set forth in the trustee's objection.

The trustee's third objection that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) is sustained for the reason set forth in the trustee's objection. The debtor's response is not persuasive. The amended Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (the "Form 22C") filed on February 19, 2014 (Dkt. 14) shows that the debtor has \$420.08 in monthly disposable income. This establishes a presumption that over the 60 month term of the plan the debtor must pay \$25,204.80 to unsecured creditors. The debtor's plan proposes to pay nothing to a priority unsecured claim in favor of the Internal Revenue Service in the amount of \$7345.41 and nothing to non-priority unsecured creditors. The debtor's response does not rebut the presumption created by her Form 22C. The debtor mistakenly believes that the monthly disposable income figure at line 59 of Form 22C must be equal to her proposed monthly plan payment. There is no such direct correlation between the debtor's monthly disposable income and her plan payment, as her proposed plan payment will also be used to pay a secured claim in class 2 of the plan and to pay administrative fees such as the debtor's attorney's fees and the chapter 13 trustee's fee.

The court will issue a minute order.

10. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER MOTION TO CONFIRM PLAN
LBG-2 AND JOSEPH ALEXANDER 1-21-14 [[30](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed January 21, 2014, is denied.

The court will issue a minute order.

11. [09-47319](#)-B-13 CALVIN SMITH MOTION TO MODIFY PLAN
CAH-6 1-31-14 [[75](#)]

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 31, 2014, is confirmed.

The court will issue a minute order.

12. [13-21819](#)-B-13 JOY KETSAVONG
ERR-2

MOTION TO VACATE DISMISSAL OF
CASE
2-19-14 [[51](#)]

CASE DISMISSED 5/28/13

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling.

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

The chapter 13 trustee's opposition is sustained for the reasons set forth therein. The debtor requests that the court vacate the order dismissing this case entered on May 28, 2013 (Dkt. 39), asserting that the dismissal of the case was due to excusable neglect as that term is used in Fed. R. Civ. P. 60(b)(1), made applicable to this bankruptcy proceeding by Fed. R. Bankr. P. 9024. The Supreme Court's decision in Pioneer Inv. Services Co. V. Brunswick Assoc. Ltd. P'ship, 507 U.S. 380, 392 (1993) (emphasis added) instructs the court to take all relevant circumstances into account when assessing whether excusable neglect exists. Those circumstances include (1) the danger of prejudice to the adverse party; (2) the length of any delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the moving party acted in good faith. Pioneer, 507 U.S. at 395.

In this case, although there is no evidence that the debtor is acting in bad faith, the court finds that the length of the delay between the entry of the order dismissing the case and filing of the instant motion to vacate it (267 days), the resultant adverse impact on the proceedings and danger of prejudice to creditors of the estate outweighs the other circumstances cited by the debtor in the motion. Accordingly, the motion is denied.

The court will issue a minute order.

13. [14-20219](#)-B-13 VALDEMAR/JENNIFER NIELSEN
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-20-14 [[27](#)]

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 January 10, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 1, 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.

14. [14-20219](#)-B-13 VALDEMAR/JENNIFER NIELSEN MOTION TO VALUE COLLATERAL OF
RHM-1 CITIMORTGAGE
2-4-14 [[16](#)]

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 Citimortgage's claim in this case secured by the second deed of trust on real property located at 617 Jennings Avenue, Vallejo, 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 \$170,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Alliant Credit Union with a balance of approximately \$180,000.00. Thus, the value of the collateral available to Citimortgage on its second deed of trust is \$0.00.

The court will issue a minute order.

15. [14-20919](#)-B-13 JEFFREY/MELANIE PARR MOTION TO VALUE COLLATERAL OF
ACK-1 WELLS FARGO BANK, N.A.
2-10-14 [[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 Wells Fargo Bank, N.A.'s ("WFB") claim in this case secured by the second deed of trust on real property located at 9504 Tonkin drive, Orangevale, 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 WFB with a balance of approximately \$267,000.00. Thus, the value of the collateral available to WFB on its second deed of trust is \$0.00.

The court will issue a minute order.

16. [14-20023](#)-B-13 MARIO ALBERTO DIAZ MOTION TO CONFIRM PLAN
CAH-3 MARTINEZ 2-4-14 [[29](#)]

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. By order signed March 13, 2014, the court dismissed the bankruptcy case pursuant to 11 US code § 1307(b) at the request of the debtor.

The court will issue a minute order.

17. [10-36624](#)-B-13 MARK/ABIGAIL CAREY MOTION TO MODIFY PLAN
CA-2 2-6-14 [[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 February 6, 2014, is confirmed.

The court will issue a minute order.

18. [09-26625](#)-B-13 JUSTINE FOUT MOTION TO APPROVE LOAN
SDB-11 MODIFICATION
1-30-14 [[117](#)]

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

The motion is granted. The debtor is authorized to incur new debt on the terms set forth in the Loan Modification Agreement filed as Exhibit "C" to the motion (Dkt. 120 at 7).

The court will issue a minute order.

19. [09-26625](#)-B-13 JUSTINE FOUT MOTION TO MODIFY PLAN
SDB-10 1-30-14 [[110](#)]

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 30, 2014, is confirmed.

The court will issue a minute order.

20. [14-21025](#)-B-13 GAYLEN/TERRI LUSCH MOTION TO VALUE COLLATERAL OF
ULC-1 SANTANDER CONSUMER USA, INC.
2-14-14 [[11](#)]

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. \$6545.00 of Santander Consumer USA, Inc.'s claim in this case secured by a 2007 Chevrolet Impala LTZ ("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 \$6545.00 on the date of the petition.

The court will issue a minute order.

21. [14-21025](#)-B-13 GAYLEN/TERRI LUSCH MOTION TO VALUE COLLATERAL OF
ULC-2 AARON'S SALES AND LEASING
2-14-14 [[16](#)]

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 Aaron's Sales and Leasing's claim in this case secured by a living room set, which includes a couch, love seat, tables and lamps ("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.

Tentative Ruling: This objection to confirmation of the debtor's chapter 13 plan continued from February 18, 2014. The court established a briefing schedule. The debtor timely filed supplement opposition. The objecting creditor timely filed a supplemental 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. ("Wells Fargo") 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.

The debtor presents two main arguments in opposition to the creditor's objection:

1.) That the obligation to Wells Fargo should be excluded from the 11 U.S.C. § 109(e) unsecured debt calculation because it is non-recourse in nature and she is shielded from liability by Cal. Civ. Proc. Code § 580b.

2.) That the obligation to Wells Fargo should be reduced in amount or considered partially contingent because California's "one action rule," Cal. Civ. Proc. Code § 726, "requires the lender to collect on the secured property prior to collection efforts against the individual." The debtor further argues that the "secured portion" of the debt, i.e. a portion of the debt equivalent to the value of the Property, should be counted as contingent debt and excluded from the debt calculations of § 109(e) because "debtor is liable upon the secured portion of the debt contingent upon the lender foreclosing and receiving less than the amount scheduled by the debtor. The contingency is not related to a judicial proceeding, but the requirement that the lender collect first against the property."

Pursuant to 11 U.S.C. § 109(e), the debtor is ineligible for relief under chapter 13 if, on the date of the filing of the petition, she owes more than \$383,175.00 of non-contingent, liquidated unsecured debts. 11 U.S.C. § 101(12) defines a "debt" as "a liability on a claim." A "claim" is "a right to payment, whether or not such right is reduced to judgment,

liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." 11 U.S.C. § 101(5)(A). A debt is liquidated if the "amount is readily determinable." Slack v. Wilshire Ins. Co. (In re Slack), 187 F.3d 1070, 1073 (9th Cir. 1999). Debts of a contractual nature are generally liquidated. In re Nicholes, 184 B.R. 82, 91 (9th Cir. BAP 1995). A debt is non-contingent if all events giving rise to liability occurred prior to the filing of the petition. In re Loya, 123 B.R. 388, 340 (9th Cir. BAP 1991).

In this case, the debt in question is based on a "SmartFit Home Equity Account (SM) Agreement" dated March 7, 2005 and executed by the debtor in favor of Wells Fargo on March 10, 2005, with a credit line limit of \$440,000.00 (the "Agreement"). The Agreement is secured by a Deed of Trust on the Property. Contrary to the debtor's assertions, the Agreement is not purchase money in nature and is a recourse obligation, as it pre-dates January 31, 2013 and is not subject to the protections of Cal. Civ. Proc. Code § 580b. Wells Fargo filed a claim in the bankruptcy case on February 14, 2014, in which it asserts that the balance on the obligation evidenced by the Agreement was \$440,546.35 as of the petition date.

The court finds that the obligation to Wells Fargo is a debt that is liquidated and non-contingent for the purposes of 11 U.S.C. § 109(e). The amount of the debt is readily determinable as of the petition date, and all events giving rise to the debtor's liability, i.e., execution of the Agreement and advancement of funds by Wells Fargo, occurred prior to the date of the filing of the petition. As explained by the bankruptcy court in In re Silva, 2011 WL 5593040 (Bankr. N.D. Cal. Nov. 16, 2011):

When the debtors signed the BAC Home Loans promissory note secured by the Bakersfield Property, the lender obtained a right to payment on the note. Debtors argue that there is no right to payment until the lender surrenders its right to non-judicial foreclosure, commences a judicial foreclosure, and obtains a deficiency judgment. Whether or not the lender has to follow a particular process to enforce its right to payment, it has the right to be paid from the moment the note is signed. Thus, the amount owed on the note that is collateralized by Bakersfield Property is, quite simply, a debt.

In re Silva, 2011 WL 5593040 at *2 (Bankr. N.D. Cal. Nov. 16, 2011) (emphasis added).

The court also finds that the debt qualifies as an unsecured debt for the purposes of 11 U.S.C. § 109(e). 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 to the debtor's argument that the debt to Wells Fargo should be eliminated from the § 109(e) calculation, although the court agrees with the debtor's argument and the reasoning of the court in In re Silva 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 in the form of a copy of the Agreement, described above, that the debt is recourse in nature. On that point, then, Silva is not applicable to this case.

As to the debtor's argument that part of the debt should be characterized as contingent based on California's one action rule, the court does not agree with the debtor's position that Cal. Civ. Proc. Code § 726 dictates only one outcome with respect to the issue of the debtor's personal liability on the debt. First, the court does not agree that the Cal. Civ. Proc. Code § 726 requires a lender to foreclose on property before pursuing the borrower personally. As pointed out by the objecting creditor and stated in Prestige Ltd. Pship. v. East Bay Car Wash Partners (In re Prestige Partnership), 234 F.3d 1108 (9th Cir. 2000), a case cited by the debtor:

Cal.Civ.Proc.Code § 726(a) provides, in relevant part, that "[t]here can be but one form of action for the recovery of any debt or the enforcement of any right secured by mortgage upon real property or an estate for years therein, which action shall be in accordance with the provisions of this chapter." Section 726 "is both a 'security-first' and 'one-action' rule: It compels the secured creditor, in a single action, to exhaust his security judicially before he may obtain a monetary 'deficiency' judgment against the debtor." O'Neil v. General Sec. Corp., 4 Cal.App.4th 587, 5 Cal.Rptr.2d 712, 716 (1992) (citing Security Pac. Nat'l Bank v. Wozab, 51 Cal.3d 991, 275 Cal.Rptr. 201, 800 P.2d 557 (1990) ("Wozab")). Thus, when a secured creditor sues on the obligation rather than seeking foreclosure of the mortgage or deed of trust, he has made an election of remedies, "electing the single remedy of a personal action, and thereby waiv[ing] his right to foreclose on the security or to sell the security under a power of sale." [In re Prestige Ltd. Partnership-Concord, 205 B.R. at 434.]

Prestige Ltd. Pship. v. East Bay Car Wash Partners (In re Prestige Partnership), 234 F.3d 1108, 1114 (9th Cir. 2000) (emphasis added). Cal. Civ. Proc. Code § 726 does not prescribe a single method by which the creditor may enforce the debt; it may make an election of remedies. However, the court recognizes that Cal. Civ. Proc. Code § 726 can be raised as an affirmative defense to an action on the debt:

Our Supreme Court has explained that "the operation of section 726 is in large part within the control of the debtor." (Security Pacific, supra, 51 Cal.3d at p. 1004, 275 Cal.Rptr. 201, 800 P.2d 557.) "If a secured creditor brings an action on the debt before foreclosing the security, the debtor can interpose section 726 as an affirmative defense, thereby requiring the creditor to exhaust the

security before he may obtain a money judgment against the debtor. If the debtor does not raise the statute as an affirmative defense, the creditor's action on the debt is allowed to proceed to judgment. The creditor, however, is precluded from thereafter foreclosing on the security. He is deemed to have elected his remedy. [Citations.]” (Id. at pp. 1004-1005, 275 Cal.Rptr. 201, 800 P.2d 557.) A debtor also may waive the protections afforded by section 726. (Security Pacific, supra, at p. 1005, 275 Cal.Rptr. 201, 800 P.2d 557.

Bank of America, N.A. v. Roberts, 217 Cal.App.4th 1386, 1397 (2013).

The amount of the debt for which the debtor is ultimately personally held liable may change depending on 1.) whether or not Wells Fargo sues on the Agreement prior to foreclosing and 2.) whether or not the debtor raises Cal. Civ. Proc. Code § 726 as an affirmative defense. However, because there is no single prescribed outcome for the disposition of the debt, the possibility that future events might the amount for which the debtor is ultimately personally liable does not render all or part of the debt contingent for the purposes of 11 U.S.C. § 109(e). Adopting the debtor's position would require the court to engage in speculation which is not supported by evidence in the record.

As a result, the court finds that the obligation owed to Wells Fargo Bank, N.A. is properly considered as a non-contingent, liquidated 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 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 a debtor 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. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
2-21-14 [[36](#)]

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 March 15, 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.

24. [13-33928](#)-B-13 DAVID NEWBERRY
PLG-1

MOTION TO CONFIRM PLAN
1-21-14 [[52](#)]

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 21, 2014, 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.

25. [11-27530](#)-B-13 CARMEN HINTON
MET-3

MOTION TO SELL O.S.T.
3-1-14 [[64](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling on the merits of the motion.

The motion is granted. Pursuant to 11 U.S.C. § 363(b), the debtor is authorized to sell the real property located at 355 Parkview Terrace #A3, Vallejo, California (the "Property") in an "as-is," "where-is" condition for \$83,000.00 on the terms and conditions set forth in the motion and the Residential Purchase Agreement and Joint Escrow Instructions filed as Exhibit "A" to the motion. This order does not authorize sale of the Property free and clear of liens and does not require any lienholder to reconvey or release its interest in the Property unless it has voluntarily agreed to do so. The debtor is authorized to execute all documents necessary to complete the approved sale. The 14-day stay of Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The sale shall be subject to overbidding on terms approved by the court at the hearing.

The debtor has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

The trustee shall submit an order that conforms to the foregoing ruling.

26. [12-20532](#)-B-13 ANITA GARCIA
SLH-4

MOTION TO APPROVE LOAN
MODIFICATION
2-10-14 [[41](#)]

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

The motion is granted. The debtor is authorized to incur new debt on the terms set forth in the Home Affordable Modification Agreement filed as Exhibit "A" to the motion (Dkt. 44 at 3).

The court will issue a minute order.

27. [13-35332](#)-B-13 JAMES/IOLANI NEARY
CRG-2

MOTION TO CONFIRM PLAN
2-4-14 [[59](#)]

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

The motion is granted and the amended plan filed February 4, 2014, 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.

28. [10-35537](#)-B-13 ALBERT/JULIE WONG
WW-2

CONTINUED MOTION TO MODIFY PLAN
12-23-13 [[75](#)]

Tentative Ruling: This motion continued from February 18, 2014. The chapter 13 trustee withdrew his opposition to the motion on February 26, 2014 (Dkt. 104). This motion is unopposed. The court now issues the following tentative ruling.

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 claim of Chase, secured by a first deed of trust against debtors' residence, is provided for in Class 1 for months 1 (July, 2010) to 41 (November, 2013) and is provided for in class 4 in month 42 (December, 2013) through the remainder of the plan term.

Although the chapter 13 trustee withdrew his opposition, the court grants the motion and confirms the plan subject to the condition stated above based on the trustee's first objection to confirmation,

as the language to be included in the order confirming the plan will eliminate ambiguity regarding classification of the secured claim of JPMorgan Chase Bank, N.A.

The court will issue a minute order.

29. [13-30339](#)-B-13 MICHAEL/JOYCE BONANNO MOTION TO CONFIRM PLAN
CAH-5 1-30-14 [[123](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed January 30, 2014, is denied.

The court will issue a minute order.

30. [13-30339](#)-B-13 MICHAEL/JOYCE BONANNO COUNTER MOTION TO DISMISS CASE
CAH-5 2-24-14 [[133](#)]

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 April 1, 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.

31. [11-21640](#)-B-13 AZALEE RUTLEDGE MOTION TO MODIFY PLAN
SJS-23 2-7-14 [[230](#)]

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

The court will issue a minute order.

The debtors' reply is unpersuasive as it does not address the trustee's argument, *i.e.*, that the requirements of 11 U.S.C. § 1325(a)(6) are not met because there is no evidence of a pending loan modification agreement between the debtors and Bank of America, N.A./Rushmore Loan Management Services (the "Lender"). Proper service of the plan (which includes multiple alternative treatments for Lender based on the outcome of an alleged loan modification request), coupled with a lack of opposition from Lender, is insufficient evidence that the plan is feasible where there is no evidence that the Lender is even considering a loan modification.

The court will issue a minute order.

35. [12-31346](#)-B-13 RAUL/ROSA YANEZ
SL-1

MOTION TO INCUR DEBT
2-21-14 [[33](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is dismissed without prejudice for two reasons. First, the motion was not properly served. The debtors seek court approval to purchase a used 2011 Nissan Sentra. Such a request is governed by the provisions of Federal Bankruptcy Rule 4001(c). Federal 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). Federal Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by Federal 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 Federal 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. Here, the proof of service filed February 21, 2014 (Dkt. 39) indicates that only the United States Trustee and the chapter 13 trustee were electronically served with the motion and a proposed order. Therefore, the motion was not served in a manner consistent with the requirements of Federal Bankruptcy Rule 4001(c).

Second, the motion is not ripe for adjudication, as the debtors have failed to establish that there is an actual agreement for the court to approve. The absence of an actual agreement or 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 proposed vehicle loan, no case or controversy within the meaning of Article III exists. Here, although the motion states that a copy of the debt agreement has been attached as Exhibit "A", the court sees no such attachment. The debtors have provided no

other evidence that an agreement exists for it to approve. As such, the motion is not ripe for adjudication.

Although the motion is dismissed without prejudice for the above reasons, the courts notes that, even if the motion were not dismissed, the motion would be denied without prejudice because notice of the hearing is defective. According to the caption for the amended notice of hearing filed February 21, 2014 (Dkt. 38) (the "Amended Notice of Hearing"), the matter before the court today is a "motion of debtor's to purchase a vehicle." However, the body of the Amended Notice of Hearing states that "a hearing has been scheduled to hear debtor's Motion to Abandon a Business." The court has no confidence that, based on this information, any interested party has been given proper notice of the matter that is actually before the court today, *i.e.*, a motion to incur new debt.

The court will issue a minute order.

36. [13-35848](#)-B-13 JERRY DE VORE AND LESLIE OBJECTION TO CONFIRMATION OF
JPJ-1 JEAN FURNAS PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-19-14 [[20](#)]

Tentative Ruling: The objection is removed from the calendar. The plan filed December 18, 2013 (Dkt. 5) will be confirmed.

The trustee withdrew the objection on March 10, 2014 (Dkt. 25).

The court will issue a minute order removing the trustee's objection from the calendar. 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.

37. [13-33651](#)-B-13 DALE GERGER MOTION TO CONFIRM PLAN
CAH-3 1-30-14 [[34](#)]

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 30, 2014 (Dkt. 38) 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.

38. [13-36051](#)-B-13 KEVIN MEADOWS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-19-14 [[27](#)]

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 24, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 1, 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.

39. [13-22852](#)-B-13 DAVID/YOLANDA BENSON
PLC-6

MOTION TO CONFIRM PLAN
12-20-13 [[91](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed December 19, 2013 (Dkt. 90) is denied.

The trustee's objection is based on the plan's failure to provide treatment for the secured claim filed by the Internal Revenue Service (the "IRS") in the amount of \$11,923.81. While the court acknowledges that this amount is provided for in Class 5, this is an inappropriate classification for the secured portion of the IRS's claim. Pursuant to Section 2.04 of the plan, "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." To date, the debtors have not taken any action to affect the amount or classification of the IRS's claim.

The court will issue a minute order.

40. [13-22852](#)-B-13 DAVID/YOLANDA BENSON
PLC-6

COUNTER MOTION TO DISMISS CASE
2-25-14 [[95](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 95) 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 April 1, 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.

41. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE MOTION TO MODIFY PLAN
SL-1 2-14-14 [[59](#)]

Tentative Ruling: The motion to confirm the modified plan filed February 14, 2014 (Dkt. 61) is denied.

The motion is denied because it suffers from the following defects. First, proper notice of the motion was not provided to all interested parties. 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 February 11, 2014. According to the proof of service (Dkt. 62), the motion and notice of the hearing were served on all interested parties on February 14, 2014, which is only thirty-two (32) days prior to the hearing. Thus, the debtors have 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).

Second, the debtors have not carried their 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."). Here, the motion fails to supply any analysis whatsoever of the proposed plan. Additionally, the debtors have provided no evidence, i.e., a declaration, that the proposed plan satisfies the confirmation requirements of 11 U.S.C. § 1325(a).

Third, if the motion were not denied on procedural grounds, the trustee's objections would be sustained for the reasons stated therein.

The court will issue a minute order.

42. [12-27153](#)-B-13 TIMOTHY/KELLY MCJUNKIN MOTION TO ALLOW FURTHER
MET-4 ADMINISTRATION OF THE CASE
UNDER FRBP 1016
2-11-14 [[58](#)]

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

The motion is granted in part. Pursuant to Federal Bankruptcy Rule 1004.1, joint debtor Kelly M. McJunkin is authorized to perform the obligations and duties of deceased debtor Timothy D. McJunkin in this case, in addition to performing her own obligations and duties. Pursuant to Federal Bankruptcy Rule 1016, administration of case no. 12-27153-B-13 shall proceed and be concluded in the same manner, so far as possible, as though the death of debtor Timothy D. McJunkin had not occurred. Except as so ordered, the motion is denied.

The court will issue a minute order.

43. [13-32457](#)-B-13 BETTY BOYD MOTION TO SELL
ACK-1 2-13-14 [[32](#)]

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 the real property located at 1676-1686 5th Avenue, Olivehurst, CA 95961 to Pieter Tiche for \$280,000.00 on the terms set forth in the Offer to Purchase Real Estate attached as Exhibit "A" to the motion (Dkt. 35, p.3). Except as so ordered, the motion is denied.

The court will issue a minute order.

44. [13-34857](#)-B-13 SYLVIA ALKILANY MOTION TO CONFIRM PLAN
PGM-2 2-4-14 [[48](#)]

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

The motion is granted, and the amended plan filed February 4, 2014 (Dkt. 52) 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.

45. [11-35968](#)-B-13 JAMES/ELIZABETH WILSON MOTION TO SELL
WW-3 2-18-14 [[36](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the debtors are authorized to short sell real property located at 7331 Single Way, Citrus Heights, CA 95610 (the "Property") for \$230,000.00 to Jaime Snyder and Kenneth Dent on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions attached as Exhibit "C" to the motion (Dkt. 39, p.5), provided that the court's ruling does not authorize sale of the Property to any other purchaser, does not authorize sale of the Property free and clear of liens, and does not require any lienholder to reconvey or release its interest in the Property unless it has voluntarily agreed to do so. Except as so ordered, the motion is denied.

The court treats Green Tree Servicing LLC's conditional non-opposition (Dkt. 41) as consent to a closing after March 10, 2014.

The court will issue a minute order.

46. [14-20276](#)-B-13 JOY MOORE OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-26-14 [[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 objections are dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 1, 2014, the debtor files 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 trustee's objections are moot. On March 13, 2014, the debtor filed an amended plan (Dkt. 25). The amended plan supersedes the plan to which the trustee's objections are directed. 11 U.S.C. § 1323(b). The trustee's motion to dismiss is conditionally denied because, although the debtor filed an amended plan, a motion to confirm it has not been filed and properly served.

The court will issue a minute order.

47. [14-20276](#)-B-13 JOY MOORE MOTION TO VALUE COLLATERAL OF
RWH-1 CHASE
2-14-14 [[16](#)]

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

48. [11-25079](#)-B-13 VAN/JOAN PERRIN MOTION TO MODIFY PLAN
EJS-2 2-11-14 [[37](#)]

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

The motion is granted, and the modified plan filed February 11, 2014 (Dkt. 41) 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 100.00% to 90.00%. 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.

49. [14-20180](#)-B-13 ROSA/CARLOS HERRERA OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-20-14 [[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 plan filed January 9, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 1, 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.

50. [14-20180](#)-B-13 ROSA/CARLOS HERRERA MOTION TO AVOID LIEN OF REAL
MHL-1 TIME SOLUTIONS, INC.
2-13-14 [[15](#)]

Tentative Ruling: The court construes the motion as a request to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), and issues the following abbreviated tentative ruling.

The motion is granted. \$0.00 of Real Time Resolutions, Inc.'s claim secured by the second deed of trust on real property located at 1817 Redondo Road, West Sacramento, CA 95691 (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 \$352,353.00 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 \$508,061.00. 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.

51. [13-26082](#)-B-13 LINDA DIXON MOTION TO MODIFY PLAN
SJJ-6 1-30-14 [[119](#)]

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 30, 2014 (Dkt. 124) 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 16.00% to 6.00%. 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 court will issue a minute order.

52. [08-29287](#)-B-13 GUADALUPE/ELDA
PLG-2 VILLALPANDO MOTION FOR SANCTIONS FOR
VIOLATION OF THE DISCHARGE
INJUNCTION AND/OR MOTION FOR
CIVIL CONTEMPT SANCTIONS
2-3-14 [[109](#)]

CASE CLOSED 11/18/13
WITHDRAWN BY M.P.

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 debtors withdrew the motion on March 3, 2014 (Dkt. 115).

53. [13-33887](#)-B-13 MICHEAL MCCALL MOTION TO CONFIRM PLAN
1-20-14 [[41](#)]
CASE DISMISSED 2/20/14

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 February 20, 2014 (Dkt. 52).

The court will issue a minute order.

54. [11-21697](#)-B-13 EDWARD/SYLVIA GOMEZ MOTION TO MODIFY PLAN
PGM-5 2-3-14 [[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 February 3, 2014 (Dkt. 75) is confirmed.

The court will issue a minute order.

55. [09-38199](#)-B-13 MARCIA RUDE MOTION TO MODIFY PLAN
MOH-4 1-30-14 [[66](#)]

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 6, 2013 (Dkt. 56) is confirmed.

For counsel's future reference, it is an improper practice to file a motion to confirm a previously denied modified plan rather than just filing a new plan. The court originally heard a motion to confirm the second modified plan on January 21, 2014, denying it because the debtor had failed to establish all of the plan confirmation requirements of 11 U.S.C. § 1325(a) (Dkt. 63). The Local Bankruptcy Rules make clear that "if the debtor...modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it." LBR 3015-1(d)(2). Here, the debtor did not file and serve the second modified plan with the instant motion to confirm it. The court confirms the plan only because the proof of service from the previous motion (Dkt. 55) indicates that the plan was served on all interested parties. A failure to comply with the procedures of the Local Bankruptcy Rules constitutes grounds to deny future motions. LBR 1001-1(g).

The court will issue a minute order.

56. [14-21487](#)-B-13 AARON/ALICIA TODD MOTION TO EXTEND AUTOMATIC STAY
BLG-1 2-20-14 [[8](#)]

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

57. [11-46988](#)-B-13 CHANDENG PONGPHIMKHAM MOTION TO MODIFY PLAN
SAC-2 1-28-14 [[32](#)]

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 28, 2014 (Dkt. 35) is confirmed.

The motion is granted in the absence of opposition. The court notes that the modified plan reduces the applicable commitment period to a term of less than three years, yet does not provide for payment in full of all allowed unsecured claims as required by 11 U.S.C. § 1325(b)(4)(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 commitment period 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 court will issue a minute order.

58. [13-34190](#)-B-13 LAURA SEAY MOTION TO CONFIRM PLAN
SJS-1 1-23-14 [[22](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed January 23, 2014 (Dkt. 24) is denied.

The court will issue a minute order.

59. [13-34190](#)-B-13 LAURA SEAY COUNTER MOTION TO DISMISS CASE
SJS-1 3-3-14 [[35](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 35) 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 April 1, 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.

60. [13-34891](#)-B-13 MICHAEL/KATHERINE CONTINUED MOTION TO VALUE
NBC-1 HOLLIDAY COLLATERAL OF HSBC MORTGAGE
SERVICES
1-10-14 [[14](#)]

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 17, 2014 (Dkt. 24) and approved by the court by order signed March 13, 2014 (Dkt. 25).

61. [10-26793](#)-B-13 STEPHEN/CHRISTINE ROBERTS TRUSTEE'S OBJECTION TO DEBTORS'
JPJ-2 CERTIFICATIONS AND ENTRY OF
DISCHARGE
2-14-14 [[106](#)]

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

The motion is granted, and the clerk of the court shall close this case without entry of a discharge upon successful completion of the case.

Pursuant to 11 U.S.C. § 1328(f)(1), the debtors are not eligible to receive a chapter 13 discharge in this case, case no. 10-26793, because they received a chapter 7 discharge on July 13, 2010 (Dkt. 23) prior to the conversion of the case to chapter 13 on October 28, 2010 (Dkt. 49). The debtors' chapter 7 discharge was never revoked.

The chapter 13 trustee shall submit a proposed form of order consistent with the foregoing ruling.

62. [11-32793](#)-B-13 FRED/ROBIN IMFELD MOTION TO MODIFY PLAN
DBJ-3 1-24-14 [[55](#)]

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 24, 2014 (Dkt. 56) is confirmed.

The court will issue a minute order.

63. [12-40994](#)-B-13 MICHAEL LITTLE MOTION TO CONFIRM PLAN
DBJ-7 1-27-14 [[226](#)]

Tentative Ruling: Creditor Sterling Bank and Trust ("Sterling")'s opposition is sustained. The motion to confirm the amended plan filed January 27, 2014 (Dkt. 230) is denied.

Sterling's objections are sustained for the reasons set forth therein. The court finds the debtor's reply unpersuasive for several reasons. First, as the court stated in its ruling denying the debtor's motion to confirm the fifth amended plan (Dkt. 223), the court is not convinced that the property securing Sterling's claim is not the debtor's principal residence. According to the debtor's voluntary petition filed December 5, 2012 (Dkt. 1, p.1), "703 W. 2nd Ave., Chico, CA 95925" is listed as the street address of the debtor. While the court recognizes that the debtor also lists this address for his place of employment on Schedule I (Dkt. 1, p.34), the fact that he listed it as his street address on his voluntary petition constitutes the debtor's admission that it is his principal residence. The debtor has cited to no authority which stands for the proposition that the property that a debtor uses as both his residence and place of employment, and also lists as his street address on his voluntary bankruptcy petition, is his business property rather than his principal residence. Instead, the debtor simply rehashes the exact same argument he made in his reply to Sterling's opposition in the previous motion (Dkt. 221, p.2, para.8).

Second, because the debtor has failed to convince the court that the subject property is not his principal residence, the debtor is incorrect

that 11 U.S.C. §§ 1322(b)(2) and (c)(2) do not apply to Sterling's claim. Those sections specifically apply to "real property that is the debtor's principal residence." Sterling holds a claim secured solely by the debtor's principal residence. As such, Sterling's analysis of 11 U.S.C. §§ 1322(b)(2) and (c)(2) is correct. 11 U.S.C. § 1322(b)(2) clearly states that a plan may not modify the rights of a holder of a claim secured only by a security interest in real property that is the debtor's principal residence (absent consent from the lienholder). 11 U.S.C. § 1322(c)(2) provides an exception to 11 U.S.C. § 1322(b)(2) where, as here, "the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due." 11 U.S.C. § 1322(c)(2). Under such circumstances, the claim may be modified pursuant to 11 U.S.C. § 1325(a)(5). Here, the plan provides for Sterling's claim in class 1 with a monthly arrearage dividend of \$498.45 and a monthly contract installment of \$3,000.00, which the debtor represents as adequate protection payments until the loan can be paid in full through refinancing during the fifth year of the plan. What the debtor fails to realize is that a plan which proposes equal monthly installments until the fifth year of the plan, followed by a balloon payment, is in clear violation of 11 U.S.C. § 1325(a)(5)(B)(iii)(I)'s requirement of "equal monthly amounts."

Third, the debtor's reference to 11 U.S.C. § 1322(b)(5) is misplaced, as that section applies only to "any unsecured claim or secured claim *on which the last payment is due after the date on which the final payment under the plan is due.*" 11 U.S.C. § 1322(b)(5) (emphasis added). Here, the loan to Sterling matures on April 1, 2015, which is before, not after, the last payment under the plan will come due.

Fourth, the court finds it irrelevant that there is "little modification" requested of Sterling's claim. 11 U.S.C. § 1322(b)(2) states that a claim secured only by a security interest in real property that is the debtor's principal residence may not be modified. It does not provide the debtor wiggle room to modify it only slightly.

Finally, the fact that the debtor is current on plan payments and that the trustee has filed a statement of non-opposition to the motion is insufficient to prove that the plan is feasible under 11 U.S.C. § 1325(a)(6). As Sterling correctly points out, the debtor has provided no evidence that he will be able to refinance the loan in the fifth year of the plan to pay off Sterling's claim in full. Merely asserting his confidence in the process, without more, is insufficient. In addition to Sterling's claim, as the court pointed out in its prior ruling the debtor has also failed to provide any evidence that he will be able to obtain the refinancing necessary to make the balloon payment to pay off Rush Funding's claim before the end of the fourth year of the plan.

The court will issue a minute order.

64. [12-29096](#)-B-13 DIANNIA LINDSEY
CAH-2

MOTION TO MODIFY PLAN
2-1-14 [[53](#)]

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

The motion is granted, and the modified plan filed February 1, 2014 (Dkt. 54) is confirmed.

The court will issue a minute order.

65. [13-31277](#)-B-13 MICHAEL/PAULA RHOADES
PLC-3

CONTINUED MOTION TO CONFIRM
PLAN
10-7-13 [[26](#)]

Tentative Ruling: The motion is continued to a final evidentiary hearing on April 25, 2014, at 2:00 p.m. before the Honorable Jane D. McKeag in courtroom 32. At the evidentiary hearing, evidence will be taken only on the following matters: (1) whether the debtors have filed their plan in bad faith under 11 U.S.C. § 1325(a)(3) because of the debtors' failure to provide a copy of their federal tax return pursuant to 11 U.S.C. § 521(e)(2)(A)(ii); and (2) whether the debtors' plan violates 11 U.S.C. § 1325(b)(1)(B) and (b)(2)(A)(ii) because (A) the debtors' income is greater than the income reported on Schedule I; and (B) the debtors' charitable contributions are less than the contributions reported on Schedule J.

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 debtors' binder tabs shall be consecutively numbered, commencing at number 1. The respondents' 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 Debtors' Motion to Confirm First Amended Plan. 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.

66. [10-41997](#)-B-13 ROBERT/MARCY WILKERSON MOTION TO BORROW
SDB-4 2-12-14 [[59](#)]

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

In the absence of opposition, the debtors' motion for authority to incur new debt is granted on the terms set forth in the Equipment Purchase Finance Agreement filed with the motion as Exhibit "D" (Dkt. 62, p.6).

The court will issue a minute order.

67. [13-36199](#)-B-13 DAVID MOORE AND SHANA OBJECTION TO CONFIRMATION OF
JPJ-1 MANGAL-MOORE PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-20-14 [[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 plan filed January 10, 2014 (Dkt. 12) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 1, 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.