

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

April 1, 2014 at 9:32 A.M.

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1. [10-40405](#)-B-13 SHAWN/MADEIRA HEAVENS MOTION TO VALUE COLLATERAL OF
JDP-2 WELLS FARGO BANK, N.A.
3-6-14 [[49](#)]

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 5011 Southglen Court, Elk Grove, 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 \$250,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Litton Loan Servicing with a balance of approximately \$306,061.21. 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.

2. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO MOTION TO CONFIRM PLAN
DRE-1 AVINA-SEGURA 2-18-14 [[94](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The opposition filed by Green Tree Servicing, LLC ("Green Tree") is sustained. The oppositions filed by TD Auto Finance, LLC ("TD") are sustained in part. The motion to confirm the amended plan filed February 18, 2014, is denied.

The chapter 13 trustee's opposition is sustained for the reasons set forth therein.

Green Tree's opposition is sustained for the reasons set forth therein.

TD's objection that the plan is not proposed in good faith is overruled. TD argues that the plan is not proposed in good faith because the debtors have had two prior bankruptcy cases that were pending and dismissed within the one year period prior to the filing of the instant case, and because the plan proposes to dividends and installment payments in an

aggregate amount that exceeds the proposed monthly plan payment. These facts, standing alone, do not amount to evidence of a lack of good faith in proposing the plan. "Bad faith" under 11 U.S.C. § 1325(a)(3) is determined based on an examination of the totality of the circumstances. Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988) (citing Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir.1982)). The court does not consider multiple filings alone to constitute evidence of bad faith. See Downey Savings and Loan Ass'n v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir. 1987). It is not incumbent on the court to search through the records of the debtors' prior cases in order to uncover additional facts which would support TD's argument. TD's remaining objections are sustained for the reasons set forth therein.

The court will issue a minute order.

3. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO COUNTER MOTION TO DISMISS CASE
DRE-1 AVINA-SEGURA 3-3-14 [[103](#)]

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 15, 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.

4. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO MOTION TO VALUE COLLATERAL OF
DRE-2 AVINA-SEGURA GREENTREE SERVICING
2-18-14 [[99](#)]

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 Green Tree servicing's ("Green Tree") claim in this case secured by the second deed of trust on real property located at 17249 County Road 85B, Esparto, 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 \$240,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank Of America with a balance of approximately \$530,000.00. Thus, the value of the collateral available to Green Tree on its second deed of trust is \$0.00.

The court will issue a minute order.

5. [14-20907](#)-B-13 LESLIE/JULIE WILLIAMS OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
3-12-14 [[14](#)]

Tentative Ruling: The chapter 13 trustee's objection is sustained. Confirmation of the initial plan filed January 31, 2014, is denied.

The trustee's objections are sustained for the reasons set forth therein. With respect to the trustee's objection that the plan is insufficiently funded to complete within 60 months, the court acknowledges the debtors' argument that, based on the claims filed in this case as of the date of the hearing on the objection, the 8.4% dividend for non-priority unsecured claims proposed by the plan will not cause the plan to be overextended. However, non-governmental creditors will have until June 4, 2014, to file a claim in this case and governmental creditors will have until July 30, 2014, to file a claim. Until such time as those deadlines pass, the court finds the trustee's inclusion of filed and scheduled claims in his plan calculation to be appropriate for assessing the plan's ability to complete within its proposed term.

The court will issue a minute order.

6. [14-20108](#)-B-13 BOYET/ANGELINE DINAMARCA MOTION TO VALUE COLLATERAL OF
SBT-1 U.S. BANK, N.A.
2-6-14 [[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 U.S. Bank, N.A.'s claim in this case secured by the second deed of trust on real property located at 1401 Elliott Drive, Vallejo, 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 Nationstar Mortgage, LLC with a balance of approximately \$391,000.00. Thus, the value of the collateral available to U.S. Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

7. [14-20608](#)-B-13 UNDR/LADEANA SHELTON
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
CONDITIONAL MOTION TO DISMISS
CASE
3-6-14 [[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 sustained. Confirmation of the initial plan filed January 23, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 15, 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. [09-48813](#)-B-13 JEFFREY/FRANCES ALDAL
DJC-2

MOTION TO MODIFY PLAN
2-18-14 [[65](#)]

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 18, 2014, is confirmed.

The court will issue a minute order.

9. [11-43113](#)-B-13 DANIEL/MARGARET FRANCO
PGM-6

MOTION TO INCUR DEBT
3-4-14 [[105](#)]

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 debt for the purposes of purchasing real property located at 5403 Cherokee Way, Antioch California on the terms set forth in the motion. Except as so ordered, the motion is denied.

The court will issue a minute order.

10. [14-20515](#)-B-13 PHYLLIS MANK
EAT-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
3-12-14 [[21](#)]

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

The creditor's objection is sustained. Confirmation of the initial plan filed January 30, 2014, is denied.

In addition, the creditor is advised that objections to confirmation to the initial plan must comply with LBR 9014-1(f)(2), to which no written opposition is required. See also LBR 3015-1(c)(4) ("The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary.") In this instance the court treats the objection as one filed under LBR 9014-1(f)(2). However, the creditor is advised that failure to comply with the court's local rules in the future may result in the imposition of sanctions, including, inter alia, dismissal of objections or motions. LBR 1001-1(g).

The court will issue a minute order.

11. [14-20515](#)-B-13 PHYLLIS MANK
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
3-12-14 [[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 30, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 15, 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.

12. [12-39016](#)-B-13 CHRISTENE GERHART MOTION TO VACATE DISMISSAL OF
SJS-1 CASE
2-25-14 [[33](#)]
CASE DISMISSED 12/20/13

Tentative Ruling: The motion will be granted in part, and the order entered December 20, 2013 (Dkt. 30) dismissing the bankruptcy case will be vacated if the debtor pays \$3152.67 to the chapter 13 trustee and the payment posts to the trustee's website on or before April 7, 2014. If payment is not so made, the motion will be denied. Except as so ordered, the motion is denied.

The foregoing payment condition will be strictly enforced.

The court will issue a minute order on the motion. The trustee shall, on or promptly after April 8, 2014, submit an appropriate declaration regarding the payment and an appropriate order either vacating the dismissal order or denying the motion.

13. [09-35021](#)-B-13 CLAYTON/DEBRA GARDNER MOTION TO VALUE COLLATERAL OF
CA-5 OPERATING ENGINEERS LOCAL UNION
#3
3-18-14 [[79](#)]

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.

14. [13-34227](#)-B-13 MARVIN/EMMA BRIDGES MOTION TO DISMISS CASE
TJW-1 3-11-14 [[34](#)]

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

15. [11-25630](#)-B-13 JULIUS/JULIETA DE LEON MOTION TO BORROW
PGM-2 2-28-14 [[51](#)]

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 Promissory Note filed as Exhibit "B" (Dkt. 54

at 8) to the motion.

Nothing in this ruling constitutes court authorization to purchase a vehicle. The debtors have not identified in the motion any vehicle to be purchased nor any terms of a specific purchase.

The court will issue a minute order.

16. [14-21133](#)-B-13 ELMA VIRTUCIO MRG-1 OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 2-20-14 [[19](#)]

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

The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed by order entered March 24, 2014 (Dkt. 43).

The court will issue a minute order.

17. [10-47835](#)-B-13 MARVIN/MARY WILLIAMS SDB-5 MOTION TO MODIFY PLAN 2-14-14 [[50](#)]

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 14, 2014, is confirmed.

The court will issue a minute order.

18. [13-32737](#)-B-13 CATHERINE PORTER PGM-3 MOTION TO APPROVE LOAN MODIFICATION 2-25-14 [[33](#)]

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 credit on the

terms set forth in the Loan Modification Agreement filed as Exhibit "A" to the motion (Dkt. 36).

The court will issue a minute order.

19. [10-46539](#)-B-13 ROBERT/RACHEL MANIECE MOTION FOR SUBSTITUTION
SDB-5 2-28-14 [[80](#)]

Tentative Ruling: The motion is granted in part. Pursuant to Federal Bankruptcy Rule 1004.1, joint debtor Rachel Maniece is authorized to perform the obligations and duties of deceased debtor Robert Maniece in this case, in addition to performing her own obligations and duties. Except as so ordered, the motion is denied.

The court will issue a minute order.

20. [10-46539](#)-B-13 ROBERT/RACHEL MANIECE DEBTOR'S MOTION TO OBTAIN
SDB-4 DISCHARGE AND WAIVER OF
REQUIREMENT TO COMPLETE
DEBTOR'S CERTIFICATE AND
CERTIFICATE OF CHAPTER 13
DEBTOR REGARDING EXEMPTIONS
2-28-14 [[74](#)]

Tentative Ruling: The motion is granted in part. Pursuant to Federal Bankruptcy Rule 1016, administration of case no. 10-46539-B-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of debtor Guadalupe Guihuis had not occurred. Except as so ordered, the motion is denied.

The court does not waive any filing requirements because elsewhere on this calendar it has authorized joint debtor Rachel Maniece to perform the obligations and duties of deceased debtor Robert Maniece. The court does not order the Clerk to enter a discharge because the motion does not show any grounds for such relief and because, absent specific statutory authority, injunctive relief may only be obtained by adversary proceeding.

The court will issue a minute order.

21. [14-20340](#)-B-13 ARSENIO/LEONORA BUCAD TJW-1 MOTION TO AVOID LIEN OF CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU 3-10-14 [[22](#)]

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

22. [14-20340](#)-B-13 ARSENIO/LEONORA BUCAD JPJ-1 CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CHAPTER 13 TRUSTEE, JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-26-14 [[17](#)]

Tentative Ruling: None.

23. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN JPJ-2 OBJECTION TO CLAIM OF AUTO FINANCE OF SACRAMENTO, CLAIM NUMBER 8 2-6-14 [[87](#)]

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

The trustee's objection is sustained, and claim No. 8, filed on December 5, 2013, by Auto Finance of Sacramento in the amount of \$1759.12 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was October 16, 2013, and to file a government claim was December 11, 2013. The Claim was filed on December 5, 2013.

The court will issue a minute order.

24. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN MMM-1 MOTION TO CONFIRM PLAN 2-3-14 [[83](#)]

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. On March 18, 2014, the debtors filed a fifth amended plan, and a motion to confirm it. The amended plan supersedes the plan which the debtors seek to confirm by this motion. 11 U.S.C. § 1323(b).

The court will issue a minute order.

25. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN COUNTER MOTION TO DISMISS CASE
MMM-1 3-14-14 [[91](#)]

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 countermotion is denied because on March 18, 2014, the debtors filed a fifth amended plan (Dkt. 97) and a motion to confirm the fifth amended plan, setting the matter for hearing on May 6, 2014, at 9:32 a.m. The filing of the amended plan and the motion to confirm it provides the relief sought in the countermotion.

The court will issue a minute order.

26. [13-35642](#)-B-13 LARRY/COLLEEN EDWARDS MOTION TO CONFIRM PLAN
2-24-14 [[48](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained in part and overruled in part. The motion to confirm the amended plan filed February 24, 2014 is denied.

The chapter 13 trustee objects to confirmation of the plan under 11 U.S.C. § 1325(b)(1), arguing that the plan does not provide that all of the debtors' projected disposable income will be applied to make payments to unsecured creditors during the applicable commitment period of the plan. The trustee's argument is based on four categories of entries on the debtors' Official Form B 22C, Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Dkt. 1 at 49):

- 1.) Overstatement of household size and related adjustment to standard expenses based on household size (Form 22C lines 16, 24A, 24B and 25A).
- 2.) Overstatement of telecommunications expenses (Form 22C, line 37).
- 3.) Overstatement of tax expense at line 30 (Form 22C, line 30).

4.) Claimed additional food and clothing expense without supporting evidence justifying that the expenses necessary and reasonable (Form 22C, line 44).

The court's analysis of the foregoing issues is based on the debtors' initial Form 22C (Dkt. 1 at 49), taking into account the arguments made by the debtors in their motion (Dkt. 48) and reply (Dkt. 62). Although the debtors in their reply to the trustee's opposition (Dkt. 62) state that they filed an amended Form 22C concurrently with their reply, an amended Form 22C does not appear on the docket. The debtors' initial Form 22C states that they have \$-66.82 in monthly disposable income, which would not require them to pay any amount to unsecured creditors. The court uses that figure as the starting point for the adjustments discussed herein.

As for items 1 and 2 above, the debtors concede the trustee's objections and concede that they overstated their household size by 1 person and their telecommunications expense by \$132.00, resulting in an upward adjustment to their monthly disposable income in the amount of \$484.00, due to adjustments in standard expenses on the initial Form 22C at lines 24A, 24B and 25A.

As for item 4 above, the court finds that the debtors have sufficiently explained and justified an additional \$51.00 expense for additional food and clothing based on the practical requirements Mr. Edwards' occupation as a deputy sheriff. As the debtors' initial Form 22C claimed at \$61.00 expense at line 44, based on their overstated household size, adjusting the expense at line 44 results in a \$10.00 upward adjustment in the debtors' monthly disposable income.

As for item 3, the debtors' claim a monthly expense of \$2,153.91 for taxes, as the amount actually incurred for all federal, state and local taxes, except for sales and real estate taxes. The trustee contends that this expense should be reduced downward to \$1,883.32 per month, based on the debtors' total tax liability for 2012. The debtors contend that they correctly calculated the amount based on the tax amounts withheld from their pay advices for the six-month period prior to the date of the filing of the petition.

The court notes that neither the trustee nor the debtors have cited any authority supporting their respective positions. The court's own search of authority on this matter did not uncover any binding authority. However, of those courts which have considered the issue of the correct manner in which to calculate a debtor's actual monthly tax expense, this court agrees with majority of those courts which have held that using the monthly amount withheld from the debtors' pay advices is incorrect. See In re Stimac, 366 B.R. 889, 893-94 (Bankr. E.D. Wis. 2007) ("Several courts have held that simply inserting the amount withheld from a debtor's paycheck . . . is incorrect.") (citing Baxter v. Johnson (In re Johnson), 346 B.R. 256 (Bankr.S.D.Ga.2006); In re Balcerowski, 353 B.R. 581 (Bankr.E.D.Wis.2006); In re Lawson, 361 B.R. 215 (Bankr.D.Utah 2007)). See also In re Woodruff, 416 B.R. 369, 372 (Bankr. D. Mass 2007) ("Although courts have struggled with the best way to calculate a debtor's actual monthly tax expense, the courts have held that for the purposes of the Means Test Form, the amount withheld is not the appropriate way to measure a debtor's actual tax liability unless the debtor will not receive a tax refund.") (citing In re Robinette, No. 7-06-10585, 2007 WL 2955960 at *3 (Bankr.D.N.M. Oct. 2, 2007); In re

Bishop, No. 07-50431, 2007 Bankr.LEXIS 3096, at *10 -*11 (Bankr.E.D.Ky. Sept. 17, 2007); In re Lipford, 397 B.R. 320, 334 (Bankr.M.D.N.C.2008); In re Barbour, No. 09-00553-8-RDD, 2009 WL 3053697 at *5 (Bankr.E.D.N.C. Sept. 18, 2009). The court agrees with the foregoing authorities because the amount withheld from a taxpayer's pay advices is within the taxpayer's control. Some withhold an amount just sufficient to avoid penalties for under-withholding. Others withhold an amount greater than their expected tax liability so they won't have to worry about extra payment(s) to the government in April. If the debtors' proposed method were the standard, Form 22C and the calculation of disposable monthly income could be easily manipulated. Therefore, as the debtors have not shown that their claimed expense represents the amount that they actually pay for taxes and that their calculation of disposable monthly income is correct, the trustee's opposition is sustained.

The court will issue a minute order.

27. [13-35642](#)-B-13 LARRY/COLLEEN EDWARDS COUNTER MOTION TO DISMISS CASE
CAH-4 3-18-14 [[60](#)]

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 15, 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.

28. [13-24744](#)-B-13 JOAQUIN MOQUETTE MOTION TO MODIFY PLAN
JMC-4 2-11-14 [[67](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed February 7, 2014 (Dkt. 66) is denied.

The debtor's reply (Dkt. 74) is unpersuasive for two reasons. First, the reply was not timely filed. Pursuant to Local Bankruptcy Rule 9014-1(f)(1)(C), a written reply to the trustee's opposition was to have been filed and served no later than seven (7) days prior to today's hearing. Today's date is April 1, 2014. Seven days prior to the hearing date was March 25, 2014. The reply was not filed and served until March 27, 2014, which is only five (5) days prior to the hearing date.

Second, even if the reply were timely filed it would be unpersuasive because the debtor has failed to provide sufficient evidence to warrant a departure from the presumptive current monthly income or the presumptive

current monthly expenses stated on his most recently filed Form 22C (Dkt. 40) for the purposes of calculating new monthly and projected disposable income figures. Under this court's interpretation of Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010), in order to rebut the aforementioned presumptions, the debtor must provide evidence which shows both (a) a substantial change in his circumstances, and (b) known or virtually certain figures to be used in place of those listed on Form 22C. Although Lanning dealt with facts concerning only a change in income for a debtor, the Supreme Court commented that its analysis would also apply to expenses. Lanning, 130 S.Ct. at 2475. Here, the debtor states that his household size has increased from two to four since the filing of the petition. The court accepts that as a substantial change in his circumstances. However, the debtor has failed to provide the court with any specific expense figures to be used in place of those listed on Form 22C. Simply stating that his disposable income is lower because "an increase in household size naturally results in a substantial change in monthly expenses", without more, is insufficient to rebut the presumption created by the Form 22C.

The court will issue a minute order.

29. [10-26445](#)-B-13 MICHAEL/ROXANA HARA MOTION TO APPROVE LOAN
ACK-1 MODIFICATION
2-27-14 [[37](#)]

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

The debtors' motion for authority to incur new debt on the terms set forth in the Freddie Mac Standard Modification Agreement submitted as Exhibit "A" to the motion (Dkt. 40, p.3) is granted.

The court will issue a minute order.

30. [10-47645](#)-B-13 DANIEL HAMREN AND MOTION TO APPROVE LOAN
JSO-9 PATRICIA BENNETTS HAMREN MODIFICATION
2-25-14 [[134](#)]

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 enter into a permanent loan modification agreement with Bank of America, N.A. ("BA"). 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 for approval of a loan modification agreement 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 debtors give notice of the motion to all other creditors. Here, the proof of service filed February 25, 2014 (Dkt. 138) indicates that only the United States Trustee, the chapter 13 trustee, BA, the debtors, and three separate attorneys were served via United States mail with the motion, its associated papers, and the notice of the hearing. 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 with BA 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, no case or controversy within the meaning of Article III exists. Here, although the debtors have attached as Exhibit "B" to the motion a copy of the proposed loan modification agreement (Dkt. 137, p.5) (the "Agreement"), the Agreement has not been signed by the debtors or a representative of BA. The debtors have provided no other evidence that BA consents to the terms of the Agreement, and there is therefore no agreement for the court to approve. As such, the motion is not ripe for adjudication.

The court will issue a minute order.

31. [14-21145](#)-B-13 GARY/PAMELA FOWLER MOTION TO VALUE COLLATERAL OF
CK-1 GREEN TREE SERVICING, LLC
2-24-14 [[18](#)]

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 Green Tree Servicing, LLC's claim secured by the second deed of trust on real property located at 6920 Weeks Road, Redding, CA 96002 (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 \$167,250.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Everhome Mortgage Co. with a balance of approximately \$181,698.00. Thus, the value of the collateral available to Green Tree Servicing, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

Tentative Ruling: The motion to confirm the amended plan filed February 18, 2014 (Dkt. 58) 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)).

The court cannot confirm the plan for two reasons. First, the debtors state in the Additional Provisions section of the plan that they "dispute the claims filed from Internal Revenue Service and will have them amended before the plan confirmation hearing date. The claim amounts that the Chapter 13 Plan provides for is the amounts the Debtors owe based on their Federal Income Tax Returns filed for 2010 and 2011." The court cannot accept this proposed treatment of the Internal Revenue Service (the "IRS")'s claim. Section 2.04 of the form plan makes clear that "the proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." In this instance, the claims register indicates that the IRS filed an amended proof of claim, claim no. 5, on February 21, 2014, in the amount of \$28,017.51, \$21,162.58 of which is entitled to priority treatment. Pursuant to § 2.04 of the form plan, the amounts stated in the IRS's proof of claim control the amount provided for by the plan. There is no evidence before the court that the IRS has further amended its claim or that the debtors have filed a formal claim objection or taken other action which would amend the claim consistent with the plan's proposed treatment. The debtors have failed to comply with § 2.04 of the form plan. Furthermore, the debtors have failed to establish that they will be able to make all payments due under the plan when accounting for the higher priority claim of the IRS. 11 U.S.C. § 1325(a)(6).

Second, the debtors state in the Additional Provisions section of the plan that they "are in the process of filing their 2012 Tax Returns." However, 11 U.S.C. § 1325(a)(9) requires that the debtors file all federal, state, and local tax returns as required by 11 U.S.C. § 1308. 11 U.S.C. § 1308(a) provides that "not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition." 11 U.S.C. § 1308(a). The first date set for the meeting of creditors in this case was December 19, 2013, meaning that the debtors were to have filed their tax returns for the four years prior to the petition date by no later

than December 18, 2013. Although 11 U.S.C. § 1308(b) allows for the trustee to hold open the meeting of creditors for a limited period of time so that the debtors may file any outstanding tax returns, in this case the meeting of creditors was concluded as to the debtors on January 16, 2014. Therefore, the debtors have failed to comply with 11 U.S.C. § 1325(a)(9) and Local Bankruptcy Rule 3015-1(b)(4), and have therefore defaulted under § 5.02 of the form plan.

The court will issue a minute order.

33. [10-22953](#)-B-13 RUSSELL STIGER MOTION TO VALUE COLLATERAL OF
SS-6 BENEFICIAL CALIFORNIA, INC.
3-4-14 [[94](#)]

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 Beneficial California, Inc.'s claim secured by the second deed of trust on real property located at 7073 Wilshire Circle, Sacramento, CA 95822 (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 \$184,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by HSBC Mortgage Services, Inc. with a balance of approximately \$302,255.31. Thus, the value of the collateral available to Beneficial California, Inc. on its second deed of trust is \$0.00.

The court will issue a minute order.

34. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
3-12-14 [[19](#)]

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 30, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 15, 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.

35. [13-31657](#)-B-13 MARLENE/DANIEL CARSON MOTION TO CONFIRM PLAN
PGM-3 2-7-14 [[51](#)]
CASE DISMISSED 2/7/14

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 February 7, 2014 (Dkt. 50).

The court will issue a minute order.

36. [11-21264](#)-B-13 SCOTT PETERSON MOTION TO VALUE COLLATERAL OF
CA-3 WELLS FARGO BANK, N.A.
3-5-14 [[49](#)]

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.

37. [13-36065](#)-B-13 ARIE/KATHLEEN VAN DEN MOTION TO SELL
SLH-1 AKKER 3-11-14 [[28](#)]

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

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. By this motion the debtors seek court approval to short sell real property located at 1720 Kersley Circle, Lake Mary, FL 32746 to Jason and Elizabeth Laureano for \$435,000.00. However, the debtors have failed to establish that there is an actual short sale for the court to approve because they have provided no evidence that the lienholders have consented to the short sale.

The absence of an actual compromise or sale 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 compromise or sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court acknowledges that the debtors have attached as Exhibits "B" and "C" to the motion copies of the approval letters from SunTrust Bank ("SunTrust") (Dkt. 31, p.20-32). However, each letter makes clear that SunTrust's approval of the short sale is contingent upon the sale closing on or before March 22, 2014. Today's date is April 1, 2014. The debtors have provided no evidence that SunTrust has consented to an extension of this deadline. Because the debtors have failed to show that SunTrust consents to the short sale, there is no actual sale for the court to approve. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

38. [14-21466](#)-B-13 ANTHONY/SUZANNE VENTURA MOTION TO EXTEND AUTOMATIC STAY
AV-1 AND/OR MOTION TO REINSTATE
AUTOMATIC STAY
2-24-14 [[11](#)]

Tentative Ruling: The motion is denied.

By this motion, the debtors seek an extension of the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B), as the debtors have had one case that was pending and dismissed within the twelve month period prior to the commencement of the instant case. 11 U.S.C. § 362(c)(3)(B) requires that such a motion be heard prior to the expiration of thirty days after the commencement of the case. The instant case was commenced on February 18, 2014. The thirty day period specified in § 362(c)(3)(B) expired at 12:01 a.m. on March 20, 2014. Relief under 11 U.S.C. § 362(c)(3)(B) is no longer available to the debtors. Even if the motion were timely, it would be denied. No creditors were served with the motion. The court cannot extend the automatic stay as to creditors who received no notice of the request. Mullane v. Central Hanover Bank & Trust Co. et al., 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

The court will issue a minute order.

39. [14-20568](#)-B-13 NATALIYA SHAYNYUK OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON, TRUSTEE
3-12-14 [[31](#)]
CASE DISMISSED 3/17/14

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

The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed by order entered March 17, 2014 (Dkt. 38).

The court will issue a minute order.

40. [11-28172](#)-B-13 NIKKI HUGHES
SJS-4

MOTION TO INCUR DEBT
2-19-14 [[82](#)]

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

The debtor's motion for authority to incur new debt on the terms set forth in the Loan Modification Agreement submitted as Exhibit "B" to the motion (Dkt. 85, p.6) is granted.

The court will issue a minute order.

41. [14-20875](#)-B-13 SANDRA CRAZE
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
3-12-14 [[15](#)]

Tentative Ruling: The trustee's objection 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 is sustained. Confirmation of the plan filed January 31, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 15, 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.

42. [13-20576](#)-B-13 GALEN/CHRISTINE CHANEY
RDS-6

MOTION TO CONFIRM PLAN
2-12-14 [[118](#)]

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 12, 2014 (Dkt. 122) 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.

43. [13-35777](#)-B-13 SIDNE ALLINGER MOTION TO CONFIRM PLAN
LBG-2 2-6-14 [[24](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed February 6, 2014 (Dkt. 29) is denied.

The court will issue a minute order.

44. [14-20377](#)-B-13 CHRISTOPHER/SHAYNA OBJECTION TO CONFIRMATION OF
JPJ-1 HOVENCAMP PLAN BY CHAPTER 13 TRUSTEE, JAN
P. JOHNSON AND/OR MOTION TO
DISMISS CASE
3-6-14 [[20](#)]

Tentative Ruling: The trustee's objection 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 is sustained. Confirmation of the plan filed January 23, 2014 (Dkt. 12) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 15, 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.

45. [14-20377](#)-B-13 CHRISTOPHER/SHAYNA OBJECTION TO CONFIRMATION OF
HOVENCAMP PLAN BY NAVY FEDERAL CREDIT
UNION
3-6-14 [[23](#)]

Tentative Ruling: Creditor Navy Federal Credit Union ("NFCU")'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.

NFCU's first objection that the plan provides for an impermissible modification of its secured claim is sustained. Its second objection that the plan fails to provide adequate protection for its secured claim is overruled without prejudice. Its final objection that the plan's proposed rate of interest on its secured claim does not provide for the present value of the claim when taking into account certain risk factors enumerated in Till et ux. v. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787 (2004) is overruled without prejudice.

Confirmation of the plan filed January 23, 2014 (Dkt. 12) is denied. NFCU's request for immediate dismissal of the case is denied.

NFCU objects to the plan treatment of its secured claim, a purchase money security interest in a 2012 Yamaha YZFR6 Motorcycle (the "Vehicle"). The claim is currently provided for in Class 2(A)(1) of the plan in the amount of \$9,989.85, to be paid in monthly dividends of \$181.73 at 3.50% interest. NFCU filed its proof of claim, claim no. 4, on February 7, 2014 in the amount of \$10,042.71. According to the promissory note and security agreement attached as Exhibit "B" to the motion (Dkt. 26, p.11), the debt was incurred on October 16, 2012, which is 456 days prior to the petition date in this case. NFCU alleges without dispute that the Vehicle was acquired by the debtors for personal use. Based on the foregoing, the "hanging paragraph" of 11 U.S.C. § 1325(a) applies to NFCU's claim and, therefore, the plan cannot propose to "cram down" the claim below its stated value of \$10,042.71. Therefore, NFCU's first objection is sustained.

NFCU's second objection is overruled without prejudice because it has provided no evidence of the rate of depreciation of the Vehicle to warrant additional adequate protection payments. LBR 9014-1(d)(6). Simply citing to non-controlling authority for the general proposition that a 2.00% increase in the monthly dividend is appropriate in this context to provide adequate protection is insufficient.

Finally, NFCU's third objection regarding the plan's proposed rate of interest on its secured claim is overruled without prejudice. NFCU alleges that, under Till, the interest rate should be 4.00% higher than the national prime rate because of the following risk factors: (1) the debtors are at a higher risk of default due to an overly stringent budget proposed on their Schedule J; (2) the debtors appear to have understated their expenses on Schedule J which may result in an overly optimistic repayment plan to creditors and a higher risk of default; (3) the Vehicle is a rapidly depreciating asset which loses value with continued use and time; and (4) there is additional risk of default by the debtors because the sixty month plan term exceeds the maturity date on the Vehicle contract by approximately fifteen months. NFCU suggests a 1.00% increase of the national prime rate for each of the above risk factors, for a total interest rate of 7.25%.

For the purposes of determining the appropriate interest rate to be paid on a secured claim that can be modified, 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) 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%. Starting from the prime rate and adjusting upward places the evidentiary burden "squarely on the creditors." Till, 541 U.S. at 479.

Here, although NFCU cites to several of the risk factors enumerated in Till, the court finds that it has failed to meet its evidentiary burden to justify an upward adjustment in the interest rate that the plan currently provides its secured claim. To start, NFCU states that the debtors' expenses appear to be understated, but it does not identify which specific expenses are allegedly understated. Second, it alleges

that the Vehicle is "a rapidly depreciating asset which loses value with continued use and time." While this may be true, NFCU has provided no evidence as to the rate of depreciation of the Vehicle. Finally, the court is not persuaded by NFCU's "risk of default" argument. This objection would not be sustained as an objection under 11 U.S.C. § 1325(a)(6), and does not magically become effective as an objection to the interest rate under Till. If any plan is confirmed, the court will find that "the debtor will be able to make all payments under the plan and to comply with the plan."

NFCU's request that the case be immediately dismissed is denied because it fails to both cite the legal authority upon which it relies for the relief it seeks, LBR 9014-1(d)(5), and analyze the facts of the case within the context of any legal authority.

The court will issue a minute order.

46. [11-35280](#)-B-13 SUN SIN MOTION TO APPROVE LOAN
WW-5 MODIFICATION
2-25-14 [[71](#)]

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

The debtor's motion for authority to incur new debt on the terms set forth in the Loan Modification Agreement submitted as Exhibit "B" to the motion (Dkt. 74, p.4) is granted.

The court will issue a minute order.

47. [12-27181](#)-B-13 MICHAEL PALMER MOTION FOR ORDER ALLOWING
LC-2 DEBTOR TO OBTAIN A REVERSE
MORTGAGE
3-13-14 [[36](#)]

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

48. [13-21575](#)-B-13 AMALIA GRIEGO MOTION TO FILE CLAIM AFTER
WSS-1 CLAIMS BAR DATE
3-6-14 [[42](#)]

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

The motion is denied.

By this motion, creditor Compass Bank ("Compass") seeks leave to file a proof of claim even though the claims bar date has already expired. Compass alleges that cause exists to allow it to file an untimely proof of claim pursuant to Federal Bankruptcy Rule 3002(c) and the equitable powers of the court because it did not receive notice of the bankruptcy filing or the claims bar date until February 27, 2014, far after the June 19, 2013, deadline for non-governmental creditors to file a proof of claim in this case (the "Bar Date").

In the Ninth Circuit, lack of notice of the Bar Date is not sufficient grounds for allowance of a claim filed after the deadline. See In re Coastal Alaska Airlines, Inc., 920 F.2d 1428, 1432-33 (9th Cir. 1990); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999). As stated by the Coastal Alaska court, "[m]ost of the cases allowing late filing of claims involve creditors who did not receive notice of the claims bar deadline. However, we do not believe that those cases can be reconciled with Rule 3002(c)." Coastal Alaska, 920 F.2d at 1432. Instead, Ninth Circuit authority holds that a claim is timely filed and allowed for the purposes of a chapter 13 case only if one of the requirements under Federal Rule of Bankruptcy Procedure 3002(c) is satisfied. Coastal Alaska, 920 F.2d at 1432-33 ("Rule 3002(c) identifies six circumstances where a late filing is allowed."); Edelman, 237 B.R. at 152 (Bankruptcy Rule 3002(c) provides only five exceptions to the ninety day filing period prescribed for the filing of claims). Coastal Alaska's reference to six circumstances under Bankruptcy Rule 3002(c) and Edelman's reference to five circumstances is explained by the 1996 amendments to the Bankruptcy Code, which abrogated allowance of late-filed claims against surplus estate assets in chapter 7 cases. Bankruptcy Rule 3002 therefore "complements the process of allowing claims by setting a bar date by which a claim must be filed in order to be allowed under 11 U.S.C. § 502." In re Osborne, 76 F.3d 306, 309-310 (9th Cir. 1996).

In this case, Compass has failed to establish that any of the circumstances under Bankruptcy Rule 3002(c) apply. As such, the motion is denied.

Although the court is bound to follow the precedent established by the Ninth Circuit Court of Appeals, it makes no ruling at this time as to whether the debt owed to Compass will be discharged upon completion of the case. Such a ruling would require an adversary proceeding for declaratory relief, which would be appropriate if the debtor completes her plan and receives a discharge. Section 1328(a) of the Bankruptcy Code provides, in relevant part, that upon completion of all payments under the plan, the court shall grant the debtor a discharge of "all debts provided by the plan or disallowed under section 502 of this title." 11 U.S.C. § 1328(a). A chapter 13 creditor's claim is not discharged if the creditor did not receive proper notice of the case. See United States v. Hairopoulos (In re Hairopoulos), 118 F.3d 1240, 1244 (8th Cir. 1997) ("[A] claim cannot be considered to have been provided for by the plan if a creditor does not receive proper notice of the proceedings") citing In re Greenburgh, 151 B.R. 709, 716 (Bankr. E.D. Pa. 1993); In re Ryan, 78 B.R. 175, 183 (Bankr. E.D. Tenn. 1987); In re Cash, 51 B.R. 927, 929 (Bankr. N.D. Ala. 1985). "Both statutory and constitutional implications arise when a creditor fails to receive adequate notice of the bankruptcy proceedings...The constitutional component of notice is based upon a recognition that creditors have a right to adequate notice and the opportunity to participate in a meaningful way in the course of bankruptcy proceedings." Hairopoulos,

The trustee's objection that the debtor's Statement of Financial Affairs ("SOFA") fails to accurately report the amount the debtor paid to his attorney in a prior bankruptcy case is overruled. The trustee's remaining objections are sustained. Confirmation of the plan filed January 16, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 15, 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.

Regarding the trustee's objection under 11 U.S.C. § 1325(b)(1)(B), the court acknowledges that the debtor filed an amended Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Form 22C") on March 26, 2014 (Dkt. 27) which has now been completely filled out to address one of the trustee's concerns. However, the objection is still sustained as the court finds that the debtor is not applying his projected monthly disposable income to pay general unsecured creditors in this case. The court interprets the decision of the Supreme Court in Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) as standing for the proposition that Form 22C establishes a presumption of an above-median debtor's monthly disposable income, and, thus, a presumption as to the amount that the debtor is required to pay to general unsecured creditors. Here, Line 59 of Form 22C states that the debtor has \$4,379.90 in monthly disposable income, which creates a presumption that he has up to \$262,794.00 in monthly disposable income that could be paid to general unsecured creditors over the sixty month life of the plan. The plan currently proposes a 0.00% dividend to general unsecured creditors. As such, the plan violates 11 U.S.C. § 1325(b)(1)(B), and the trustee's objection is sustained.

The trustee's objection regarding the information provided by the debtor on his SOFA is overruled because the debtor filed an amended SOFA on March 27, 2014 (Dkt. 28) which accurately discloses at Item 9 the amount the debtor paid to Sagaria Law, P.C. in a prior bankruptcy case.

The court will issue a minute order.

52. [11-28289](#)-B-13 THOMAS/KIMBERLY SZARMACH MOTION TO MODIFY PLAN
JLB-6 2-13-14 [[97](#)]

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 26, 2014 (Dkt. 106).

53. [14-21989](#)-B-13 AARON HALL
MOH-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, NA
3-18-14 [[11](#)]

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

54. [13-27992](#)-B-13 SUSAN MAGLIANO-BASSOFF
SNM-3

OBJECTION TO CLAIM OF WELLS
FARGO BANK, N.A., CLAIM NUMBER
6
2-7-14 [[41](#)]

Tentative Ruling: The objection is overruled.

By this objection the debtor seeks disallowance of the arrearage listed on Claim No. 6, filed by Wells Fargo Bank, N.A. ("WF") on October 7, 2013, in the amount of \$3,643.75. The debtor contends that she was current on her payments to WF as of the petition date and, therefore, no arrearage is owed. The court finds this argument unpersuasive.

The debtor commenced this case by filing a voluntary chapter 13 petition on June 13, 2013 (Dkt. 1). The debtor has provided evidence that she made a post-petition payment to WF on June 15, 2013, in the amount of \$3,643.75 and that, under the terms of the agreement with WF, WF has agreed not to impose any late charges if payments are received by the end of the calendar day on the fifteenth of every month. However, the debtor fails to realize that claims are determined as of the petition date. 11 U.S.C. § 502(b). Even if the payment was within the contractual grace period, it was due on June 1, 2013. The contractual grace period does not affect the due date. Therefore, it was a pre-petition arrearage as of June 13, 2013. Post-petition events, *i.e.*, the curing of pre-petition arrears, are not grounds for claim objections.

An appropriate way to deal with this situation is an additional provision in the plan that provides for one specific direct payment to the creditor to cure the pre-petition arrears.

The court will issue a minute order.