

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

April 29, 2014 at 9:32 A.M.

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

**Tentative Ruling:** The objection is overruled. The initial plan filed January 13, 2014, will be confirmed.

The objection is overruled based on the debtors' statements in their declaration filed on April 11, 2014 that they filed all past due state and federal tax returns for the past four years and based on the conclusion of the meeting of creditors on April 17, 2014.

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 plan.

2. [12-35604](#)-B-13 LASHUNDA CORMIER MOTION TO MODIFY PLAN  
PGM-5 3-25-14 [[101](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the modified plan filed March 25, 2014, is denied.

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

The court will issue a minute order.

3. [12-35604](#)-B-13 LASHUNDA CORMIER MOTION TO APPROVE LOAN  
PGM-6 MODIFICATION  
3-25-14 [[107](#)]

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

The motion is granted. The debtors are authorized to enter into a trial loan modification agreement with Nationstar Mortgage on the terms set forth in the trial loan modification offer filed as Exhibit "A" to the motion (Dkt. 110). Nothing in this ruling constitutes approval of a final, permanent loan modification.

The court will issue a minute order.

4. [12-25006](#)-B-13 DAVID/EVAY CRENSHAW MOTION TO MODIFY PLAN  
DBJ-2 3-25-14 [[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 March 25, 2014, is confirmed.

The court will issue a minute order.

5. [10-51507](#)-B-13 DOROTHEA HENDRICKS MOTION TO AVOID LIEN OF RHONDA  
ACK-1 M. SILVA  
3-12-14 [[44](#)]

**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. § 522(f)(1)(A) subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Rhonda M. Silva, recorded in the official records of Napa County, Document No. 2008-0013525, is avoided as against the real property located at 3480 Willis Drive, Napa, California.

The subject real property has a value of \$210,000.00 as of the date of the petition. The unavoidable liens total \$422,498.73. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5) under which she exempted \$2000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

6. [14-20507](#)-B-13 BRIAN/KERI CLEMONS  
BB-1

MOTION TO VALUE COLLATERAL OF  
SPECIALIZED LOAN SERVICING  
3-14-14 [[19](#)]

**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 Specialized Loan Servicing's ("Specialized") claim in this case secured by the second deed of trust on real property located at 12538 Lake Boulevard, Reading, 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 \$129,350.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$154,000.00. Thus, the value of the collateral available to Specialized on its second deed of trust is \$0.00.

The court will issue a minute order.

7. [11-24608](#)-B-13 DAVID ROUSE  
SS-2

MOTION TO VALUE COLLATERAL OF  
UNITED GUARANTY RESIDENTIAL  
INSURANCE CO. OF NC  
3-18-14 [[35](#)]

**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 United Guaranty Residential Insurance Company of NC's ("United") claim in this case secured by the second deed of trust on real property located at 4209 Abigail Court, Antelope, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$177,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by American Home Mortgage Servicing with a balance of approximately \$290,000.00. Thus, the value of the collateral available to United on its second deed of trust is \$0.00.

The court will issue a minute order.

8. [14-20108](#)-B-13 BOYET/ANGELINE DINAMARCA MOTION TO CONFIRM PLAN  
SBT-3 3-4-14 [[37](#)]

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

The motion is granted and the amended plan filed March 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.

9. [13-34711](#)-B-13 DAVID/SUSAN YOUNGER MOTION TO CONFIRM PLAN  
CAH-1 2-18-14 [[27](#)]  
CASE DISMISSED 3/20/14

**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 March 20, 2014 (Dkt. 39).

The court will issue a minute order.

10. [14-22013](#)-B-13 FRANCISCO AGREDANO MOTION TO VALUE COLLATERAL OF  
CAH-1 ESQUIVIAS AND ROSA GUZMAN THE GOLDEN 1 CREDIT UNION  
4-14-14 [[27](#)]

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

11. [14-22013](#)-B-13 FRANCISCO AGREDANO MOTION TO VALUE COLLATERAL OF  
CAH-2 ESQUIVIAS AND ROSA GUZMAN AMERICREDIT FINANCIAL SERVICES,  
INC.  
4-14-14 [[32](#)]

**Tentative Ruling:** The motion to value the collateral of Capital One Auto Finance is continued to a final evidentiary hearing on June 12, 2014 at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before June 5, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtors' binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before June 5, 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 Motion to Value Collateral of Americredit Financial Services. 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](http://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.

12. [14-22013](#)-B-13 FRANCISCO AGREDANO OBJECTION TO CONFIRMATION OF  
JHW-1 ESQUIVIAS AND ROSA GUZMAN PLAN BY AMERICREDIT FINANCIAL  
SERVICES, INC.  
4-9-14 [[19](#)]

**Tentative Ruling:** The objection is continued to June 24, 2014 at 9:32 a.m., to be heard after the evidentiary hearing on the debtors' motion to value the objecting creditor's collateral.

The court will issue a minute order.

13. [14-22013](#)-B-13 FRANCISCO AGREDANO OBJECTION TO CONFIRMATION OF  
JPJ-1 ESQUIVIAS AND ROSA GUZMAN PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-8-14 [[16](#)]

**Tentative Ruling:** The objection is continued to June 24, 2014 at 9:32 a.m., to be heard after the evidentiary hearing on the debtors' motion to value the collateral of Americredit Financial Services, Inc.

The court will issue a minute order.

14. [14-22413](#)-B-13 LEONARD/GAIL HUSTON MOTION TO VALUE COLLATERAL OF  
SAC-1 CCO MORTGAGE  
3-19-14 [[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 CCO Mortgage's ("CCO") claim in this case secured by the second deed of trust on real property located at 3373 Golden Nugget Court, Placerville, 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 PNC Mortgage with a balance of approximately \$304,000.00. Thus, the value of the collateral available to CCO on its second deed of trust is \$0.00.

The court will issue a minute order.

15. [14-21515](#)-B-13 MIGUEL/MAIRA JAQUEZ MOTION TO VALUE COLLATERAL OF  
JME-1 CHASE BANK, N.A.  
3-28-14 [[19](#)]

**Tentative Ruling:** The motion is denied without prejudice.

First, the motion is incomplete and therefore lacks evidence necessary for the court to render a decision on the motion. Both the motion and the certificate of service filed by the debtors (Dkt. 19, 21) refer to a declaration of the debtors in support of the motion. However, no such declaration appears on the docket. As a result, the debtors' allegations regarding the value of the real property collateral which they seek to value by this motion is unsupported by evidence. LBR 9014-1(d)(6). Second, the motion is filed by an attorney who is not the attorney of record. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

16. [14-21515](#)-B-13 MIGUEL/MAIRA JAQUEZ  
JPJ-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-31-14 [[22](#)]

**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 February 18, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 13, 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.

In addition to the reasons stated in the trustee's objection, confirmation of the plan is also denied because section 2.06 of the plan does not specify the manner in which debtors' attorney will seek court approval of fees.

The court will issue a minute order.

17. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN  
MRL-1  
MOTION TO AVOID LIEN OF  
DISCOVER BANK  
4-6-14 [[15](#)]

**Tentative Ruling:** The motion is dismissed without prejudice.

The motion is not ripe for adjudication. The debtors seek to avoid a judicial lien of Discover Bank to the extent it impairs their claim of exemption in their residence located at 2801 Stone Lane, Placerville, California.

In order to avoid a lien pursuant to 11 U.S.C. § 522(f), the debtors must satisfy the following elements:

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

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

In this case, the debtors have not shown that there is a judicial lien to be avoided. Under California law, a judgment lien on real property is created by recording an abstract of judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code 697.310(a). In this case, the debtors' real property is located in El Dorado County. However, the abstract of judgment filed as an exhibit to the motion relates to a judgment debtor other than the debtors and a judgment creditor other than Discover Bank. In addition, the abstract of judgment was recorded in Sacramento County, not El Dorado County.

The court will issue a minute order.

18. [11-24424](#)-B-13 ENRIQUE ZARAGOZA MOTION TO SELL  
PGM-3 3-27-14 [[55](#)]

**Tentative Ruling:** The motion is granted. Pursuant to 11 U.S.C. § 363(b), the debtor is authorized to sell the real property located at 3330 and 3390 Fruitridge Road, Sacramento, California (the "Property") to Yoshiki Yamanouchi on the terms set forth in the Commercial Property Purchase Agreement and Joint Escrow Instructions filed as Exhibit "B" to the motion (dkt. 58 at 3). The debtor is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

The sale will 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 debtor has made no request for a waiver of F.R.Bankr.P. 6004(h), and the court makes no such waiver.

The court will issue a minute order.

19. [13-27625](#)-B-13 DANIEL/JONI ENGELAGE MOTION TO ALLOW FURTHER  
EJS-1 ADMINISTRATION OF THE CASE  
4-1-14 [[25](#)]

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

Pursuant to Fed. R. Bank. P. 1004.1, joint debtor Joni Engelage is authorized to perform the obligations and duties of deceased joint debtor Daniel Engelage in this case, in addition to performing her own obligations and duties. Pursuant to Fed. R. Bank. P. 1016, administration of case no. 13-27625-B-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of joint debtor Daniel Engelage had not occurred. Except as so ordered, the

motion is denied.

The court will issue a minute order.

20. [14-21325](#)-B-13 DENNIS/IRENE SINGH OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-31-14 [[31](#)]

**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 April 11, 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.

21. [14-21325](#)-B-13 DENNIS/IRENE SINGH OBJECTION TO CONFIRMATION OF  
MRG-1 PLAN BY CREDITOR CAPITAL ONE  
AUTO FINANCE  
3-19-14 [[22](#)]

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

The creditor's objection is dismissed.

The creditor's objection is moot. On April 11, 2014, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the creditor's objection is directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

22. [14-21325](#)-B-13 DENNIS/IRENE SINGH MOTION TO VALUE COLLATERAL OF  
SDH-1 BMW FINANCIAL SERVICES, INC.  
3-21-14 [[27](#)]

**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. \$13,043.00 of BMW Financial Services, Inc.'s claim in this case secured by a 2008 BMW 328i ("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 \$13,043.00 on the date of the petition.

The court will issue a minute order.

23. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR MOTION TO CONFIRM PLAN  
DAO-5 3-15-14 [[53](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The opposition filed by BMW Bank of North America ("BMW") is dismissed. The motion to confirm the amended plan filed March 15, 2014, is denied.

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

BMW's opposition is dismissed because it is not ripe for adjudication. BMW is the holder of an allowed secured claim secured by a vehicle. It has filed a secured claim in this case in the amount of \$17,900.00. The debtors' plan proposes to treat BMW's claim is a secured claim reduced based on the value of collateral, and asserts that the value of BMW's interest in its collateral is \$14,683.00. BMW objects to the debtors' valuation of its collateral.

However, section 2.04 the plan states that the "proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Therefore, the debtors' plan alone cannot effect a valuation of the collateral. The filed amount of BMW's secured claim controls the amount and classification of the claim until such time as the debtors successfully value the collateral via a separate motion to value collateral. The debtors have yet to file such a motion.

The court will issue a minute order.

24. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR COUNTER MOTION TO DISMISS CASE  
DAO-5 4-7-14 [[62](#)]

**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 May 13, 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.

25. [09-41433](#)-B-13 CALVIN/OPHELIA KELLY MOTION TO APPROVE LOAN  
SDB-3 MODIFICATION  
3-25-14 [[55](#)]

**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 motion is dismissed without prejudice.

The motion is not ripe for adjudication. The debtors seek authorization to enter into a loan modification agreement with Specialized Loan Servicing, LLC, ("Specialized") holder of the first deed of trust on the debtors' residence located at 243 Stanford Drive, Vallejo, California. However, the debtors have not shown that if the motion is granted that the loan modification will actually occur, as they have not shown sufficient evidence of Specialized's consent to the modification. The copy of the Loan Modification Agreement filed as Exhibit "A" to the motion is signed by the debtors, but not by Specialized. As a result, 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, loan modification agreement to which all necessary parties consent, no case or controversy within the meaning of Article III exists.

However, Specialized's consent to the loan modification may be manifested in ways other than executing the modification agreement. The creditor may file a response to the motion stating its agreement, or it may appear at the hearing on the motion and state its agreement on the record. Absent such evidence of consent, however, the motion is dismissed without prejudice.

The court will issue a minute order.

26. [13-33334](#)-B-13 STEVEN/SUSANN MCCULLOUGH MOTION TO CONFIRM PLAN  
ACK-1 2-10-14 [[43](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed February 10, 2014, is denied.

The court will issue a minute order.

27. [13-33334](#)-B-13 STEVEN/SUSANN MCCULLOUGH COUNTER MOTION TO DISMISS CASE  
ACK-1 4-15-14 [[49](#)]

**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 May 13, 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. [14-22135](#)-B-13 ZAIAH MCNEAL OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-8-14 [[14](#)]

**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 March 3, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 13, 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.

29. [14-22137](#)-B-13 REMIE FAGOUT MOTION TO VALUE COLLATERAL OF  
SBT-01 WELLS FARGO BANK, N.A.  
3-18-14 [[15](#)]

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

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 2400 Alameda Street, 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 \$168,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Patelco Credit Union with a balance of approximately \$177,000.00. 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.

30. [11-21640](#)-B-13 AZALEE RUTLEDGE MOTION TO MODIFY PLAN  
SJS-24 3-19-14 [[240](#)]  
CASE DISMISSED 3/28/14

**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 March 28, 2014 (Dkt. 251).

The court will issue a minute order.

31. [14-23540](#)-B-13 LISA ILAGA MOTION TO VALUE COLLATERAL OF  
MRL-1 U.S. BANK, N.A.  
4-12-14 [[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.

32. [09-27641](#)-B-13 MARK/PATRICIA SPEED MOTION TO MODIFY PLAN  
DEF-4 3-18-14 [[92](#)]

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

The motion is granted, and the modified plan filed March 18, 2014, is confirmed.

The court will issue a minute order.

33. [13-35745](#)-B-13 PATRICIA KLINE  
JLK-1

MOTION TO CONFIRM PLAN  
3-3-14 [[25](#)]

**Tentative Ruling:** The chapter 13 trustee's objection that the plan does not provide for a \$437.29 secured claim in favor of Wells Fargo Home Mortgage is overruled. The trustee's objection that the plan does not provide treatment for a secured claim in favor of Wells Fargo Bank in the amount of \$212.19 is sustained. The motion to confirm the amended plan filed March 3, 2014 is denied.

As to the trustee's objection that the plan does not provide for a \$437.29 secured claim filed by Wells Fargo Home Mortgage, the court has inspected the claims register in this case and cannot ascertain the basis on which the trustee asserts that the debtor has failed to provide for the secured claim in the aforementioned amount. The claim is filed in the amount of \$213,939.47. The debtor's proposed plan provides for the claim in class 4. Presumably, the trustee objects on the ground that the debtor has failed to provide treatment for pre-petition arrears associated with this claim; however, the claim does not assert that any pre-petition arrears are owed.

The trustee's second objection is sustained based on the plan's failure to provide treatment for the \$212.19 claim to pre-petition arrears set forth in Wells Fargo Bank, N.A.'s filed claim number 6.

The court will issue a minute order.

34. [13-35745](#)-B-13 PATRICIA KLINE  
JLK-1

COUNTER MOTION TO CONDITIONALLY  
DISMISS CASE  
4-4-14 [[37](#)]

**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 May 13, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

35. [13-36246](#)-B-13 ATTILA/JULIANNA HRACZKY MOTION TO CONFIRM PLAN  
MRL-1 3-6-14 [[28](#)]

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

The motion is granted and the amended plan filed March 6, 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.

36. [14-21846](#)-B-13 MARK/COLLEEN MARTIN OBJECTION TO CONFIRMATION OF  
BHT-1 PLAN BY WELLS FARGO BANK, N.A.  
4-8-14 [[27](#)]

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

The creditor's objection is sustained in part as an objection under 11 U.S.C. §§ 1325(a)(1), 1322(b)(2) and 1325(a)(6). Confirmation of the initial plan filed March 6, 2014, is denied. Except as sustained herein, the objection is overruled.

The treatment provided for the creditor's claim does not fall within the exception to § 1322(b)(2) contained in § 1322(b)(5). The debtor proposes to make "adequate protection" payments to the creditor until the property is sold sometime within the next year. In the presence of a creditor objection, such treatment is impermissible under § 1322(b)(2). In addition, the debtor has not shown that the property will be sold within the next year for an amount sufficient to fund the payments required under the plan. Simply providing that the secured creditors will receive relief from the automatic stay if the property is not a permissible substitute for a showing under § 1325(a)(6).

The court will issue a minute order.

37. [09-35241](#)-B-13 ANTHONY DICUS AND LILIA MOTION TO SET ASIDE  
BJK-1 LOPEZ 4-1-14 [[109](#)]

**Tentative Ruling:** The motion is continued to May 27, 2014, at 9:32 a.m. for supplemental briefing on one issue - the movants' standing to bring

this motion. On or before May 13, 2014, the movants shall file and serve supplemental briefing and evidence, if any the movants have, supporting the movants' constitutional and prudential standing to bring the motion. The debtors shall file and serve a reply, if any, on or before May 20, 2014.

The movants assert that as the former and present servicers of the loan secured by the first deed of trust on the debtors' residence they need not prove authority or standing to bring this motion unless their standing is being challenged. The court construes the debtors' opposition to the motion as, inter alia, a direct challenge to the movants' standing. Therefore, the motion is continued to allow for further briefing on the issue of the movants' constitutional and prudential standing to bring the motion. See In re Veal, 450 B.R. 897 (9th Cir. BAP 2011); In re Jackson, 451 B.R. 24 (Bankr. E.D. Cal. 2011)(Holman, J.). The court continues the motion and makes no ruling on its merits at this time, as the standing issue is necessary to the court's jurisdiction to address the merits.

The court will issue a minute order.

38. [09-35241](#)-B-13 ANTHONY DICUS AND LILIA LOPEZ MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION  
3-1-14 [[101](#)]

**Tentative Ruling:** The motion is dismissed without prejudice to the debtors' filing of an adversary proceeding.

The motion is dismissed without prejudice because it seeks relief which only may be granted, if at all, via an adversary proceeding. By this motion the debtor's request, inter alia, "an order forever enjoining Respondents and any of their successors or assigns; agents, servants, employees or other, from any continued for further attempts to collect the discharged purported debts either by sending debt collection statements or any other means or manner of debt collection, specifically including attempts to foreclose on Debtors' Property." Federal Rule of Bankruptcy Procedure 7001(7) provides that "a proceeding to obtain an injunction or other equitable relief" is an adversary proceeding.

The motion is also dismissed because respondent Deutsche Bank National Trust Company ("Deutsche Bank") because Deutsche Bank did not receive proper notice of this hearing. The debtors filed this motion on March 1, 2014, with an initial notice of hearing which gave notice of a hearing to be held on April 8, 2014 at 9:32 a.m. (Dkt. 102). According to the certificate of service (Dkt. 106) filed with the motion, the motion, its supporting papers and the initial notice of hearing were properly served on the respondents, including Deutsche Bank pursuant to Fed. R. Bankr. P. 7004.

On March 14, 2014, the debtors filed an amended notice of hearing (Dkt. 107) which re-noticed the hearing on the motion to this calendar. Respondents Ocwen Loan Servicing, LLC and OneWest Bank, FSB (collectively, "OneWest/Ocwen") have filed opposition to the motion and

therefore have submitted themselves to the jurisdiction of the court. As to Deutsche Bank however, the proof of service (Dkt. 108) for the amended notice of hearing indicates that Deutsche Bank was not properly served with the amended notice of hearing. The proof is service indicates that Deutsche Bank, which is a federally insured depository institution, was served only generally and not to the specific attention of any individual at an address in Los Angeles California. Fed. R. Bankr. P. 7004(h) requires service on a federally insured depository institution by certified mail to the attention of an officer of the institution. Deutsche Bank was not properly served with notice of this hearing. Therefore, the motion is dismissed as to Deutsche Bank for the additional reason of improper service.

As to OneWest/Ocwen's argument that the motion fails because a creditor with a valid lien does not violate the discharge injunction if it seeks to foreclose upon the lien, the court agrees with OneWest/Ocwen that, generally, the act of foreclosure of a debtor's right to redemption in real property as recourse for a default under the secured obligation following the debtors' discharge does not violate the discharge injunction. See In re Garske, 287 B.R. 537 (9th Cir. BAP 2002). However, although the act of foreclosure may not violate the discharge injunction, this does not allow a creditor free reign to take whatever measures it deems necessary to effect the foreclosure. Communications with the debtor which may be coercive or harassing in nature may violate the discharge injunction. See In re Ramirez (Ramirez II), 280 B.R. 252 (C.D. Cal. 2002). Therefore, the motion is dismissed without prejudice to the debtors' filing of an adversary proceeding which seeks redress for such a violation, provided that they can do so consistent with their obligations to the court under Fed. R. Bankr. P. 9011.

Finally, the debtors are advised that all motions filed in this court must be assigned a docket control number, as required by LBR 9014-1(c). This is more than a mere technicality; docket control numbers are essential to assisting the court with organizing its docket and preparing for hearings on matters. This is the second time the court has advised the debtors of this requirement, having first informed them in its final ruling on their prior motion for imposition of sanctions issued on February 18, 2014 (Dkt. 98). The debtors are also reminded that failure to comply with the court's local rules is grounds for imposition of sanctions. LBR 1001-1(g).

The court will issue a minute order.

39. [14-21547](#)-B-13 JENNINE QUIRING  
RJM-5

MOTION TO EXTEND AUTOMATIC STAY  
4-11-14 [[48](#)]

**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.

40. [12-30648](#)-B-13 GREGORY/MIJA TRUMBULL  
SDB-3

MOTION TO APPROVE LOAN  
MODIFICATION  
3-20-14 [[40](#)]

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

The debtors' motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Agreement submitted as Exhibit "A" to the motion (Dkt. 43, p.4-6).

The court will issue a minute order.

41. [13-27755](#)-B-13 JAMES/TAMARA HERZOG  
RCO-1

MOTION TO APPROVE LOAN  
MODIFICATION  
4-1-14 [[36](#)]

**Tentative Ruling:** The motion is dismissed.

Creditor Golden 1 Credit Union ("Golden 1") does not have prudential standing to bring this motion. 11 U.S.C. § 364, entitled "Obtaining Credit" at subsection (c), authorizes "the trustee" to obtain secured credit, subject to certain requirements. The preceding section only permits the trustee, not any "interested party," to obtain credit. While the court acknowledges the response filed by the debtors in support of the motion (Dkt. 41), a statement of non-opposition by the debtors does not grant Golden 1 standing to bring this motion under 11 U.S.C. § 364(c). Additionally, standing cannot be conferred upon Golden 1 by operation of 11 U.S.C. § 105(a), as that would specifically conflict with the provisions of 11 U.S.C. § 364(c). Law v. Siegel, 134 S.Ct. 1188, 1194 (2014) ("...in exercising those statutory [11 U.S.C. § 105(a)] and inherent powers, a bankruptcy court may not contravene specific statutory provisions") See also Jamo v. Katahdin Fed. Credit Union (In re Jamo), 283 F.3d 392, 403 (1<sup>st</sup> Cir. 2002) ("But section 105(a) does not provide bankruptcy courts with a roving writ, much less a free hand. The authority bestowed thereunder may be invoked only if, and to the extent that, the equitable remedy dispensed by the court is necessary to preserve an identifiable right conferred elsewhere in the Bankruptcy Code"). Accordingly, the motion is dismissed.

The court notes that, even if Golden 1 had standing to bring the motion, the motion would be dismissed because it was not properly served. A motion for approval of a loan modification agreement is governed by the provisions of Federal Rule of Bankruptcy Procedure 4001(c). Federal Rule of Bankruptcy Procedure 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 Rule of Bankruptcy Procedure 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by Federal Rule of Bankruptcy Procedure 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 movant serves, consistent with the provisions of



43. [10-52759](#)-B-13 FRANCISCO/IRENE OVIEDO  
SS-2

MOTION TO VALUE COLLATERAL OF  
THE BANK OF NEW YORK MELLON  
3-13-14 [[67](#)]

**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 The Bank of New York Mellon FKA The Bank of New York, as successor trustee to JPMorgan Chase Bank, N.A. as trustee on behalf of the certificate holders of the CWHEQ Revolving Home Equity Loan Trust, Series 2006-D (the "Bank")'s claim secured by the second deed of trust on real property located at 5465 Waterville Way, Sacramento, CA 95835 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$205,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BAC Home Loans with a balance of approximately \$263,456.00. Thus, the value of the collateral available to the Bank on its second deed of trust is \$0.00.

The court will issue a minute order.

44. [13-35359](#)-B-13 JASEN SMITH  
PD-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY J.P.  
MORGAN CHASE BANK, N.A.  
12-18-13 [[16](#)]

**Tentative Ruling:** This matter is continued to June 24, 2014, at 9:32 a.m.

45. [13-35359](#)-B-13 JASEN SMITH  
JPJ-1

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

**Tentative Ruling:** This matter is continued to June 24, 2014, at 9:32 a.m.

46. [12-41261](#)-B-13 GRANT/DIANA FLOWERS  
MAS-10

MOTION FOR APPROVAL OF  
STIPULATION AND COMPROMISE OF A  
CONTROVERSY  
4-15-14 [[225](#)]

**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 to approve the stipulation filed February 14, 2014 (Dkt. 206) (the "Stipulation") is denied without prejudice.

The motion is denied without prejudice because it was not properly noticed to all interested parties as is required by Federal Rule of Bankruptcy Procedure 2002(a). On March 11, 2014, the court issued an Order on Stipulation (Dkt. 216) which stated that the court construes the Stipulation as a compromise of a controversy. As such, the court ordered the debtors to file a motion for approval of the Stipulation consistent with the requirements of Federal Rule of Bankruptcy Procedure 9019. Notice of a motion to approve a compromise under Federal Rule of Bankruptcy Procedure 9019 must be provided to all interested parties as provided in Federal Rule of Bankruptcy Procedure 2002(a)(3). Fed. R. Bankr. P. 9019(a). Federal Rule of Bankruptcy Procedure 2002(a)(3) requires that all interested parties be provided no less than twenty-one (21) days' notice of the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Federal Rule of Bankruptcy Procedure 4001(d). Fed. R. Bankr. P. 2002(a)(3). Today's date is April 29, 2014. Twenty-one days prior to today's date was April 8, 2014. The debtors filed, served, and set this motion for hearing on April 15, 2014, which is only fourteen (14) days prior to the hearing. As such, the debtors have failed to comply with the noticing requirements of Federal Rule of Bankruptcy Procedure 2002(a)(3), and the motion is denied without prejudice.

The court will issue a minute order.

47. [12-41261](#)-B-13 GRANT/DIANA FLOWERS  
MAS-9

MOTION TO CONFIRM PLAN  
3-4-14 [[207](#)]

**Tentative Ruling:** Creditor JPMorgan Chase Bank, N.A.'s opposition is sustained. The trustee's opposition is sustained. The motion to confirm the plan filed March 4, 2014 (Dkt. 212) is denied.

The court will issue a minute order.

48. [14-21661](#)-B-13 CHARLES/SUSAN EPSTEIN  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-8-14 [[19](#)]

**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 March 7, 2014 (Dkt. 11) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 13, 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.

49. [11-26163](#)-B-13 ALVIN/URSULA SHANE  
MET-3

MOTION TO MODIFY PLAN  
3-23-14 [[67](#)]

**Tentative Ruling:** The trustee's opposition is overruled. The motion is granted and the modified plan filed March 23, 2014 (Dkt. 71) is confirmed with the following modification: the Additional Provisions for Section 1.01 shall state "as of March 25, 2014, the debtors have paid a total of \$9,170.00 into the plan. Commencing April 25, 2014, the monthly plan payments shall be \$215.00 for the remainder of the plan."

The court will issue a minute order.

50. [11-45064](#)-B-13 ANTONIO/JESSICA ALVAREZ  
SS-3

MOTION TO MODIFY PLAN  
3-10-14 [[46](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed March 10, 2014 (Dkt. 50) is denied.

The court will issue a minute order.

51. [14-21464](#)-B-13 WILLIAM MCDANIELS JR.  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-31-14 [[16](#)]

**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 February 18, 2014 (Dkt. 7) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 13, 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.

52. [14-21466](#)-B-13 ANTHONY/SUZANNE VENTURA  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
3-31-14 [[33](#)]

**Tentative Ruling:** None.

53. [14-20172](#)-B-13 GREGORY BRUTUS  
GB-2

MOTION TO VALUE COLLATERAL OF  
UNIVERSAL ACCEPTANCE CORP.  
3-13-14 [[34](#)]

**Tentative Ruling:** The motion is dismissed without prejudice.

The motion was not properly served. A motion to value collateral is a contested matter pursuant to Federal Rule of Bankruptcy Procedure 9014. As such, the motion must be served on the party against whom relief is sought consistent with the requirements of Federal Rule of Bankruptcy Procedure 7004. Pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion by first class mail to the attention of an officer, a managing or general agent, or to any other agent authorized by law to receive service of process. In this case, the debtor seeks relief against Universal Acceptance Corporation, a corporate lienholder ("UAC"). The proof of service (Dkt. 37) does not indicate that UAC was served in a manner consistent with the requirements of Federal Rule of Bankruptcy Procedure 7004(b)(3). Additionally, the court

notes that the debtor served UAC at "840 West O Street, Ste. 100, Lincoln, NE 68528." This address is inconsistent with the address listed on UAC's proof of claim where notices should be sent. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

54. [14-20172](#)-B-13 GREGORY BRUTUS MOTION TO CONFIRM PLAN  
GB-1 3-13-14 [[38](#)]

**Tentative Ruling:** The motion to confirmed the amended plan filed March 13, 2014 (Dkt. 41) (the "Plan") and the trustee's opposition to the motion (Dkt. 50) are dismissed.

The motion to confirm the Plan and the trustee's opposition to the motion are moot. On April 14, 2014, the debtor filed an amended plan (Dkt. 47) (the "Amended Plan"). The Amended Plan supersedes the Plan, which is the subject of this motion and the trustee's opposition. 11 U.S.C. § 1323(b).

The court will issue a minute order.

55. [14-20172](#)-B-13 GREGORY BRUTUS COUNTER MOTION TO DISMISS CASE  
GB-1 4-15-14 [[50](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 50) 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 May 13, 2014, the debtor files and serves a motion to confirm the plan filed April 14, 2014 (Dkt. 47) 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 dismissed as moot the trustee's opposition to the debtor's motion to confirm the amended plan filed March 13, 2014 (Dkt. 41) elsewhere on today's calendar because the debtor filed a subsequent amended plan on April 14, 2014, that superseded it. However, in this instance the court conditionally denies the trustee's motion to dismiss because the debtor is yet to file a motion to confirm the latter amended plan and provide proper service of that plan to all creditors as is required by the Local Bankruptcy Rules.

The court will issue a minute order.

56. [14-21878](#)-B-13 ROBERTO/MARIA LOPEZ  
BHT-1

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, N.A.  
4-10-14 [[20](#)]

**Tentative Ruling:** Creditor U.S. Bank, N.A. ("USB")'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.

USB's objections are overruled. USB's request for judicial notice is denied. The plan filed February 26, 2014 (Dkt. 5) will be confirmed.

USB objects to plan confirmation on the grounds that the plan understates the pre-petition arrears. However, USB has provide no evidence, *i.e.*, a declaration, a filed proof of claim, or other documents demonstrating that any pre-petition arrears are owed. LBR 9014-1(d)(6). The only evidence USB offers consists of the unsworn statements contained in its motion and the various documents of which it has asked the court to take judicial notice (Dkt. 22). However, the contents of the documents are not adjudicative facts of which the court can take judicial notice under Federal Rule of Evidence 201. Furthermore, none of the documents establishes the amount of pre-petition arrears allegedly owed by the debtors. Accordingly, the objection is overruled.

The court will issue a minute order overruling USB's objections. 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.

57. [14-21878](#)-B-13 ROBERTO/MARIA LOPEZ  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-8-14 [[17](#)]

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

The objection and countermotion to dismiss are removed from the calendar. The trustee withdrew the objection and countermotion to dismiss on April 23, 2014 (Dkt. 24).

58. [11-45179](#)-B-13 BUD/AMELITA DOCTORO CONTINUED MOTION TO SELL  
PGM-3 3-11-14 [[62](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated 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 8227 Lyton Way, Elk Grove, CA 95624 (the "Property") for \$332,000.00 to Patrick Aguele on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions attached as Exhibit "B" to the motion (Dkt. 65, 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 will issue a minute order.

59. [13-35281](#)-B-13 DAMIAN AVALOS OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-8-14 [[72](#)]

**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 March 11, 2014 (Dkt. 64) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 13, 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. [10-51983](#)-B-13 MECHELE MITCHELL MOTION TO APPROVE LOAN  
SDB-1 MODIFICATION  
3-18-14 [[24](#)]

**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 debtor seeks court approval to enter into a permanent loan modification agreement (the "Agreement") with Ocwen Loan Servicing, LLC ("Ocwen"). However, the debtor has failed to establish that there is an actual agreement for the court to approve because he has provided no evidence that Ocwen consents to the terms of the Agreement.

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

The court acknowledges that the debtor has attached as Exhibit "A" to the motion a copy of the Agreement (Dkt. 27, p.2-4). However, the Agreement has not been signed by a representative of Ocwen, and the debtor has provided no other evidence that Ocwen consents to the terms of the Agreement. Because the debtor has failed to establish that Ocwen consents to the Agreement, there is no actual agreement for the court to approve. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

61. [14-21487](#)-B-13 AARON/ALICIA TODD  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-31-14 [[23](#)]

**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 first objection that the joint debtor failed to appear at the duly noticed first meeting of creditors is overruled. The trustee's second objection that the debtors have failed to provide him with a copy of the Class 1 Checklist and Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by the Trustee is sustained. Confirmation of the plan filed February 18, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 13, 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 trustee's first objection is overruled because the joint debtor appeared at the continued meeting of creditors held on April 17, 2014, and the meeting was concluded as to the joint debtor on that date. Accordingly, the trustee's first objection has been resolved and is

overruled.

The court will issue a minute order.

62. [13-36190](#)-B-13 TERRY/MELINDA HUNTER MOTION TO CONFIRM PLAN  
MWB-2 3-10-14 [[42](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed March 10, 2014 (Dkt. 45) (the "Plan") is denied.

The basis for the trustee's opposition is that the Plan fails to provide treatment for the priority claim filed by the Internal Revenue Service ("IRS") on March 11, 2014, in the amount of \$2,017.93 (the "Claim"). In their reply, the debtors claim that their attorney is currently in contact with the IRS requesting that it either amend the Claim or enter into a stipulation to resolve the amount it is allegedly owed. The court finds the debtors' position unpersuasive.

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 Claim, not the debtors' Schedule E, controls the amount and classification to be included in the plan. To date, the debtors have failed to file a formal claim objection or take any other action to question the prima facie validity of the Claim. Accordingly, the motion is denied.

The court will issue a minute order.

63. [13-36190](#)-B-13 TERRY/MELINDA HUNTER COUNTER MOTION TO DISMISS CASE  
MWB-2 4-8-14 [[48](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 48) 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 May 13, 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.

64. [14-21592](#)-B-13 NHU HUYNH AND MY LE  
JTN-1

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
3-25-14 [[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 Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 4317 Stromford Way, Mather, CA 95655 (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 \$227,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by HSBC Bank USA, N.A. with a balance of approximately \$234,817.00. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

65. [14-21592](#)-B-13 NHU HUYNH AND MY LE  
JTN-2

MOTION TO AVOID LIEN OF TARGET  
NATIONAL BANK  
3-25-14 [[20](#)]

**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. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Target National Bank, recorded in the official records of Sacramento County, Book No. 20120110, is avoided as against the real property located at 4317 Stromford Way, Mather, CA 95655 (the "Property").

The Property had a value of \$227,000.00 as of the date of the petition. The unavoidable liens total \$293,710.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1) under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

66. [13-21170](#)-B-13 DAVID LESH  
MAS-1

MOTION TO MODIFY SECURED CLAIM  
AMOUNT TO INCLUDE POST-PETITION  
ATTORNEY'S FEES AND COSTS  
3-25-14 [[83](#)]

**Tentative Ruling:** None.

67. [13-36091](#)-B-13 JAMES/MOLLY ALEXANDER  
JPJ-2

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
3-19-14 [[24](#)]

**Tentative Ruling:** The motion is granted, and the case is converted to one under chapter 7 pursuant to 11 U.S.C. §§ 1307(c)(1).

11 U.S.C. § 1307(c) enumerates eleven non-exclusive grounds which may constitute "cause" for conversion or dismissal of a chapter 13 case. § 1307(c) establishes a two-step analysis for dealing with questions of conversion and dismissal. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" In re Nelson, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) The bankruptcy court is given discretion to convert or dismiss based on unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). A debtor's "unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for (conversion or) dismissal under § 1307(c)(1)." In re Ellsworth, 455 B.R. 904, 915 (B.A.P. 9<sup>th</sup> Cir. 2011). In determining "cause" under § 1307(c), the court may analyze the entire record. In re de la Salle, 461 B.R. 593, 605 (B.A.P. 9<sup>th</sup> Cir. 2011).

Here, the trustee seeks dismissal or conversion of the case to one under chapter 7, alleging without dispute that the debtors failed to take any action to confirm a plan after the trustee's objection to the initial plan filed December 27, 2013 (Dkt. 5) was sustained by order entered March 7, 2014 (Dkt. 23). The trustee believes that conversion of the case to one under chapter 7 is in the best interests of the estate and its creditors because his preliminary investigation has revealed significant non-exempt property which could be available for distribution to creditors in a chapter 7 case.

In the absence of opposition, the court finds that the trustee has established "cause" to dismiss or convert this case pursuant to 11 U.S.C. §§ 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors. In this instance, the court converts the case to chapter 7 as it appears from both a review of the debtors' schedules and consideration of the trustee's unopposed assertions regarding the amount of non-exempt property in the estate that the debtors have significant non-exempt assets that could be administered by a chapter 7 trustee.

The court will issue a minute order.

68. [13-33793](#)-B-13 CHRIS/ADELE JOHNSON MOTION TO INCUR DEBT  
RWH-2 4-11-14 [[44](#)]

**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.

69. [12-40994](#)-B-13 MICHAEL LITTLE MOTION TO DISMISS CASE  
SW-2 3-19-14 [[240](#)]

**Tentative Ruling:** The debtor's opposition is overruled. The motion is granted in part, and the case is dismissed pursuant to 11 U.S.C. § 1307(c)(1).

By this motion, creditor Sterling Bank and Trust, FSB ("Sterling") seeks dismissal of the case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(3) because (1) the debtor's case has been pending for over fifteen (15) months without a confirmed plan resulting in unreasonable delay that is prejudicial to creditors, and (2) the debtor has failed to tender to the trustee the correct amount allegedly owed to Sterling for post-petition mortgage payments.

11 U.S.C. § 1307(c) enumerates eleven non-exclusive grounds which may constitute "cause" for conversion or dismissal of a chapter 13 case. § 1307(c) establishes a two-step analysis for dealing with questions of conversion and dismissal. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" In re Nelson, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) The bankruptcy court is given discretion to convert or dismiss based on unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). A debtor's "unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for (conversion or) dismissal under § 1307(c)(1)." In re Ellsworth, 455 B.R. 904, 915 (B.A.P. 9<sup>th</sup> Cir. 2011). In determining "cause" under § 1307(c), the court may analyze the entire record. In re de la Salle, 461 B.R. 593, 605 (B.A.P. 9<sup>th</sup> Cir. 2011).

The motion is granted under 11 U.S.C. § 1307(c)(1) for the reasons set forth therein. The debtor commenced this case by filing a voluntary chapter 13 petition on December 5, 2012 (Dkt. 1). As of the date of this hearing, the case has been pending for over sixteen (16) months. The court's review of the docket indicates that the debtor has filed a total of eight (8) proposed plans, including the seventh amended plan (Dkt. 248) which is set for a confirmation hearing on May 27, 2014. To date, the debtor has failed to confirm a plan. As Sterling correctly points, several of the previous amended plans have been identical. Aside from changing the dates, the fourth (Dkt. 173), fifth (Dkt. 209), and sixth

(Dkt. 230) amended plans are identical in every way. In response to the motions to confirm these plans, Sterling filed a nearly identical opposition each time (Dkts. 189, 217, and 235). Astonishingly, the debtor filed nearly identical replies to these oppositions (Dkts. 193, 221, and 237) despite the fact that the court repeatedly sustained Sterling's objections. Regarding the seventh amended plan, which the debtor claims is confirmable, the court notes that, each time it denied confirmation of the debtor's three prior plans, one of the bases for denial of confirmation was the debtor's failure to provide sufficient evidence of an ability to obtain refinancing in years four and five of the plan in order to pay off loans owed to Rush Funding, LLC and Sterling, respectively. The seventh amended plan contains the same refinancing language in Section 6.03 yet, as was the case with the prior amended plans, the debtor's only evidence of an ability to obtain refinancing are the statements he has made in his supporting declaration (Dkt. 247). In addition to the foregoing, the court notes that on April 4, 2014, the trustee filed a motion to dismiss the case for unreasonable delay that is prejudicial to creditors and for failure to make plan payments (Dkt. 250). That matter is set for hearing on May 13, 2014, at 10:30 a.m.

The court finds that Sterling has established "cause" to dismiss or convert this case pursuant to 11 U.S.C. §§ 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. In this instance, the court dismisses the case as it appears from a review of the debtor's schedules that the debtor does not have significant non-exempt assets that could be administered by a chapter 7 trustee.

To the extent Sterling seeks relief pursuant to 11 U.S.C. § 1307(c)(3), the motion is denied. 11 U.S.C. § 1307(c)(3) allows the court to either dismiss the case or convert it to one under chapter 7 for "failure to file a plan timely under section 1321 of this title." 11 U.S.C. § 1307(c)(3). Sterling's allegation that the debtor is paying an incorrect amount to the trustee for the post-petition mortgage payment owed to Sterling, in contravention of the Notice of Mortgage Payment Change (the "Notice") it claims to have provided to the debtor and trustee on January 14, 2014, in no way supports a finding under 11 U.S.C. § 1307(c)(3). Additionally, the court notes that Sterling filed a notice of withdrawal of the Notice on April 22, 2014.

The court will issue a minute order.

70. [13-35895](#)-B-13 NICOLE BERT  
JPJ-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
1-29-14 [[32](#)]

**Tentative Ruling:** The trustee's first objection that the feasibility of the plan depends on the granting of a motion to value collateral of USAA Federal Savings Bank ("USAA") is sustained. The trustee's second objection that the feasibility of the plan depends on the granting of a motion to value collateral of Darraq Family Trust/Evelyn Rodies Trust (the "Trust") is overruled. Confirmation of the plan filed December 20, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is

conditionally denied, the conditions being that on or before May 13, 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 first objection, the court acknowledges that USAA and the debtor entered into a stipulation to resolve the motion to value collateral on April 14, 2014 (the "Stipulation"). However, under the terms of the Stipulation, USAA is to have an allowed secured claim in the amount of \$20,000.00 to be paid through the plan at 4.00% interest. The terms of the Stipulation are inconsistent with the plan's proposed treatment of USAA's claim, which is currently provided for in Class 2C with a value of \$0.00. As such, the trustee's first objection is sustained.

The trustee's second objection is overruled because the motion to value collateral of the Trust was resolved elsewhere on today's calendar in a manner consistent with the plan's proposed treatment of the Trust's claim.

The court will issue a minute order.

71. [13-35895](#)-B-13 NICOLE BERT  
MRG-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY USAA  
FEDERAL SAVINGS BANK  
1-17-14 [[17](#)]

**Tentative Ruling:** Creditor USAA Federal Savings Bank ("USAA")'s objection is sustained in part. Confirmation of the plan filed December 20, 2013 (Dkt. 5) is denied.

USAA holds the second deed of trust secured by the real property located at 18135 Bourbon Street, Jackson, CA 95642 (the "Property"). It filed its secured proof of claim, claim no. 3, on January 15, 2014, in the amount of \$52,671.94, which included an arrearage of \$922.86. The plan currently provides for USAA's claim in Class 2C with a value of \$0.00. USAA raises two primary objections to plan confirmation. First, it claims that the plan fails to provide for the curing of the \$922.86 arrearage in violation of 11 U.S.C. § 1322(b)(5). Second, it asserts that the value of the Property is less than the allowed amount of its claim and that no motion to value collateral had been filed.

The court continued this matter to today's calendar to be heard after disposition of the debtor's motion to value collateral of USAA (Dkt. 22), which was set for an evidentiary hearing to be held on April 22, 2014, at 2:00 p.m. before the Honorable Jane Dickson McKeag. However, the parties entered into a stipulation to resolve the motion to value collateral on April 14, 2014 (Dkt. 63) (the "Stipulation"), which was approved as modified by order entered April 18, 2014 (Dkt. 65). Pursuant to the terms of the approved Stipulation, USAA shall have a secured claim in the amount of \$20,000.00 to be paid through the plan at a rate of 4.00% interest. The difference between USAA's total claim and the valuation of

Property shall be allowed as an unsecured claim which shall be paid through the plan pro rata with all other unsecured claims.

The objection is sustained in part because, although the parties resolved the motion to value collateral, the terms of the Stipulation are inconsistent with the plan's proposed treatment of USAA's secured claim. The plan does not propose a legally permissible treatment for the USAA's secured claim. Accordingly, confirmation of the plan is denied.

The court will issue a minute order.

72. [13-35895](#)-B-13 NICOLE BERT CONTINUED MOTION TO VALUE  
PGM-2 COLLATERAL OF DARRAQ FAMILY  
TRUST/EVELYN RODIES TRUST  
1-28-14 [[27](#)]

**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 Darraq Family Trust/Evelyn Rodies Trust (the "Trust")'s claim secured by the third deed of trust on real property located at 18135 Bourbon Street, Jackson, CA 95642 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

Bank of America, N.A. ("BA") is the holder of the first deed of trust on the Property. The motion alleges without dispute that the amount secured by BA's first deed of trust is approximately \$195,880.00 (Dkt. 27, p.1, lines 25-26). USAA Federal Savings Bank ("USAA") is the holder of the second deed of trust on the Property. USAA and the debtor entered into a stipulation (Dkt. 63) whereby the secured portion of USAA's claim secured by the second deed of trust is \$20,000.00, with the balance of its claim being unsecured. Thus, the value of the collateral available to the Trust on its third deed of trust is \$0.00.

The court will issue a minute order.

73. [13-33696](#)-B-13 MARIO CARRASCO MOTION TO CONFIRM PLAN  
RI-3 3-17-14 [[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 March 17, 2014 (Dkt. 50) will be confirmed.

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

include a specific reference to the filing date of the amended plan.

74. [10-53197](#)-B-13 DARRELL/JENNIFER MOORE MOTION TO MODIFY PLAN  
RPH-4 3-6-14 [[117](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed March 6, 2014 (Dkt. 116) is denied.

The trustee's opposition is sustained for the reasons set forth therein. In addition to those reasons, the court notes that it has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). Here, 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."). 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 plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

75. [13-36199](#)-B-13 DAVID MOORE AND SHANA MANGAL-MOORE OBJECTION TO CLAIM OF TOYOTA MOTOR CREDIT CORPORATION, CLAIM NUMBER 1 AND/OR MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY  
PGM-1 3-11-14 [[24](#)]

**Tentative Ruling:** The motion is continued to a final evidentiary hearing on June 12, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32. The parties shall arrive at the hearing prepared to present evidence on the amount of Toyota Motor Credit Corporation ("Toyota")'s secured claim.

On or before June 5, 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. Toyota's binder tabs shall be consecutively lettered, commencing at letter A. On or before June 5, 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' Objection to Claim Number 1. 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](http://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.

76.	<a href="#">13-36199</a> -B-13	DAVID MOORE AND SHANA MANGAL-MOORE	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-20-14 [ <a href="#">20</a> ]
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**Tentative Ruling:** This matter is continued to June 24, 2014, at 9:32 a.m.