

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

May 13, 2014 at 9:32 A.M.

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1. [14-22501](#)-B-13 MICHAEL SCOTT AND OBJECTION TO CONFIRMATION OF
JPJ-1 MICHELLE GUSTAFSON PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-24-14 [[20](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed March 19, 2014, is denied.

The court will issue a minute order.

2. [14-22202](#)-B-13 ROBERT/CAROLLYNN MOTION TO VALUE COLLATERAL OF
SJS-1 PROVENZANO ARMY & AIR FORCE EXCHANGE
SERVICES
4-4-14 [[16](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is dismissed for two reasons. First, the motion was not properly served. The debtors seek to value the collateral of the Army & Air Force Exchange Service ("AAFES"). The debtors served AAFES with the motion in the manner required for service upon a domestic or foreign corporation pursuant to Fed. R. Bankr. P. 7004(b)(3), by mailing a copy of the motion to the attention of AAFES' CEO. However, AAFES is a "nonappropriated fund instrumentality" of the United States Department of Defense. A nonappropriated fund instrumentality ("NAFI") of the United States is one that is entirely self-supporting and does not rely on Congressionally appropriated funds.

NAFI entities are "arms of the [federal] government," Standard Oil Co. v. Johnson, 316 U.S. 481, 485, 62 S.Ct. 1168, 86 L.Ed. 1611 (1942), but their "monies do not come from congressional appropriation but rather primarily from [their] own activities, services, and product sales." Cosme Nieves v. Deshler, 786 F.2d 445, 446 (1st Cir.1986).

American Federation of Government Employees, AFL-CIO, Local 1647 v. Federal Labor Relations Authority, 388 F.3d 405, 409 (3rd. Cir. 2004). The Federal Rules of Bankruptcy Procedure do not prescribe a specific procedure for service of a motion on an instrumentality of the United States. However, the court finds that service on AAFES should be effected in the same manner as service on an agency of the United States as required by Fed. R. Bankr. P. 7004(b)(5). The motion was not served in that manner.

The motion is also dismissed due to the vague description of the collateral to be value as "personal property, including, but not limited to, furniture and electronics." It is impossible for the court and parties in interest to tell, based on this description, precisely what property the debtors seek to value.

The court will issue a minute order.

3. [14-22802](#)-B-13 MICHAEL/GUADALUPE SHANAHAN
JPJ-1
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-24-14 [[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 19, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 27, 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 serves 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. [14-22403](#)-B-13 JESSICA HAMMONDS
LC-1
MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
4-11-14 [[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. \$14,000.00 of Schools Financial Credit Union's claim in this case secured by a 2010 Suzuki Vitara Limited sport-utility vehicle ("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 \$14,000.00 on the date of the petition.

The court will issue a minute order.

5. [11-25906](#)-B-13 DONALD/BRIANA RUDE MOTION TO INCUR DEBT
SJS-8 4-15-14 [[111](#)]

Tentative Ruling: The motion is dismissed.

The motion is not ripe for adjudication. The debtors seek authorization to enter into a loan modification agreement with PNC Bank, ("PNC") holder of the first deed of trust on the debtors' residence. 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 PNC's consent to the modification. The copy of the Loan Modification Agreement filed as Exhibit "B" to the motion is not signed by the debtors or PNC. 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.

PNC'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.

In addition, even if the motion were ripe for adjudication, the court would sustain the chapter 13 trustee's opposition for the reasons set forth therein.

The court will issue a minute order.

6. [14-22606](#)-B-13 JOSEPH/NELLIE VERRETT OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-24-14 [[15](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan

filed March 14, 2014,, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 27, 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.

7. [14-21509](#)-B-13 JUANITA MCKINLEY-LOPES MOTION TO CONFIRM PLAN
DEF-2 3-31-14 [[22](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed March 31, 2014, is denied.

The court will issue a minute order.

8. [14-21509](#)-B-13 JUANITA MCKINLEY-LOPES COUNTER MOTION TO DISMISS CASE
DEF-2 4-29-14 [[29](#)]

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 27, 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.

9. [14-20112](#)-B-13 TONY/CONNIE EVENICH MOTION TO CONFIRM PLAN
JME-1 4-7-14 [[34](#)]
CASE DISMISSED 4/8/14

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 April 8, 2014 (Dkt. 38).

The court will issue a minute order.

10. [11-38213](#)-B-13 LOU SAELOR AND MEY OBJECTION TO DEBTORS' CLAIM OF
JPJ-1 SAEPHAN EXEMPTIONS
4-11-14 [[107](#)]

Tentative Ruling: The objection is dismissed.

The objection is moot. The debtors filed an amended Schedule C on May 1, 2014 (Dkt. 111). The exemptions contained in the amended Schedule C supersede the claims of exemption to which the trustee objects.

The court will issue a minute order.

11. [13-24213](#)-B-13 KAWATHA GETER AND MOTION TO MODIFY PLAN
CA-2 LATANAYA JOHNSON-GETER 3-28-14 [[28](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the modified plan filed March 28, 2014, is denied.

The court will issue a minute order.

12. [11-37114](#)-B-13 MATIAS CARRAZCO AND MOTION TO MODIFY PLAN
MMM-1 CLAUDIA IBARRA CARRAZCO 4-1-14 [[41](#)]

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

The motion is granted, and the modified plan filed April 1, 2014, is confirmed.

The court will issue a minute order.

13. [14-21914](#)-B-13 BRIAN/JENNIFER SKINNER MOTION TO VALUE COLLATERAL OF
MMM-1 BANK OF AMERICA, N.A.
4-4-14 [[16](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BofA") claim in this case secured by the second deed of trust on real property located at 7653 Cobert Drive, Rancho Murieta, 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 \$425,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BofA with a balance of approximately \$480,000.00. Thus, the value of the collateral available to BofA on its second deed of trust is \$0.00.

The court will issue a minute order.

14. [10-20815](#)-B-13 DEONA/MAURICE TOWNSEND MOTION TO INCUR DEBT
SJS-1 4-2-14 [[28](#)]

Tentative Ruling: The motion is dismissed.

The motion was not properly served. By this motion the debtor's request authorization to obtain a loan from Greenlight Loans for the purpose of refinancing the loan secured by the first deed of trust on their residence. The motion is governed by the provisions of Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct."

Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor who is refinancing the loan. The court also requires that the debtor give notice of the motion to all other creditors. In this case, the debtors' proof of service (Dkt. 32) shows that they served the motion on the United States trustee and the chapter 13 trustee. However, they did not serve the motion on Greenlight Loans and they did not give all creditors notice of the motion.

The motion is also dismissed because it is not ripe for adjudication. The debtors have not shown that if the motion is granted a loan transaction will actually occur. The debtors' evidence in support of the motion (Dkt. 31) consists of an unsigned copy of a loan application. They have not presented any evidence that they have been approved for a loan or that Greenlight Loans has offered them a loan on the terms set forth in the motion. 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 evidence of a refinancing loan that has actually been approved, there is no case or controversy for the court to decide.

The court will issue a minute order.

15. [10-48015](#)-B-13 RAUL/DIANA BACA MOTION TO INCUR DEBT
DBJ-7 4-11-14 [[86](#)]
WITHDRAWN BY M.P.

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

The motion is removed from the calendar. The debtors withdrew the motion on April 22, 2014 (Dkt. 91).

16. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER CONTINUED MOTION TO CONFIRM
LBG-2 AND JOSEPH ALEXANDER PLAN
1-21-14 [[30](#)]

Tentative Ruling: This matter continued from March 18, 2014. The court now issues the following tentative ruling.

The chapter 13 trustee's second objection regarding the debtors' failure to file an income tax return for the tax year 2012 is overruled. The chapter 13 trustee's remaining objections are sustained. The motion to confirm the amended plan filed January 21, 2014, is denied.

The trustee's objection regarding the debtors' failure to file a federal income tax return for the year 2012 is resolved by the debtors' filing of the return, as evidenced by the Internal Revenue Service's revision of its proof of claim on April 4, 2014, to reflect the filing of the return.

The trustee's objection with respect to the insufficient funding of the plan to pay the claim of the Service within the plan term is sustained because the amended claim of the Service asserts a priority unsecured claim in the amount of \$115,994.62, which exceeds the amount of the claim as estimated by the debtors in the proposed plan.

The trustee's objection to the plan's proposal to pay debtors' counsel the \$73.00 per month administrative expense dividend specified in section 2.07 of the plan, to be held by debtors' counsel pending approval of counsel's application for approval of fees and costs is sustained for the reasons set forth in the trustee's written opposition. The court knowledge is the the debtors' counsel has filed an set for hearing on this calendar a motion for approval of fees and costs; however, the amount of fees and costs requested is less than the amount of the initial pre-petition retainer already held by counsel and can be satisfied from that retainer. Confirming the amended plan as proposed would continue to result in the trustee's payment of the administrative expense dividend to debtors' counsel without that amount being applied to any approved amount of fees and costs.

The court will issue a minute order.

17. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER MOTION FOR COMPENSATION FOR
LBG-3 AND JOSEPH ALEXANDER LUCAS GARCIA, DEBTORS' ATTORNEY
4-2-14 [[52](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330, the application is approved on an interim basis for the period of November 18, 2013, through and including March 25, 2014, in the amount of \$2379.00 in fees and \$74.20 in costs, for a total of \$2453.20 in fees and costs. Applicant is authorized to apply \$2453.20 from the balance in its trust account to the allowed fees and costs. Except as so ordered, the motion is denied.

On March 28, 2013, the debtors filed a chapter 13 petition. The debtors' attorney seeks compensation for services for the period of February 24, 2013 through June 19, 2013, equaling \$3,700.60 in fees and costs. As set forth in the attorney's application, the approved fees are reasonable compensation for actual, necessary and beneficial services, including pre-petition services rendered prior to March 28, 2013. In re Busetta-Silvia, 314 B.R. 218 (B.A.P. 10th Cir. 2004).

The court will issue a minute order.

18. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-24-14 [[25](#)]

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 May 7, 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.

19. [12-28119](#)-B-13 GUSTAVO/SAMANTHA GUZMAN
SS-7

MOTION FOR COMPENSATION FOR
SCOTT SHUMAKER, DEBTORS'
ATTORNEY
4-8-14 [[101](#)]

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

The motion is granted to the extent set forth herein. The application is approved in the amount of \$2,717.50 in fees and \$0.00 in costs, for a total of \$2,717.50, to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524.

On April 26, 2012, the debtors filed a chapter 13 petition. As part of confirmation of the debtor's chapter 13 plan, applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$3,500.00 through the plan. (Dkt. 95). The debtor's attorney now seeks additional compensation, in the amount of \$2,717.50 in fees.

As set forth in the attorney's application, these fees are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work applicant has done in this case is sufficient greater than a "typical" chapter 13 case so as to justify additional compensation under the Guidelines. In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

The court will issue a minute order.

20. [11-24225](#)-B-13 THOMAS/LAURA EDWARDS
ACW-3

MOTION FOR COMPENSATION FOR
ANDY C. WARSHAW, DEBTORS'
ATTORNEY
3-26-14 [[78](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330, the application is approved on an interim basis in the amount of \$3570.00 in fees and \$60.00 in costs, for a total of \$3630.00. The approved fees and costs shall be paid by the trustee through the chapter 13 plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the motion is denied.

On, February 19, 2011, the debtors filed a chapter 13 petition. The debtors' attorney seeks compensation for services for the period of February 7, 2012, through and including March 14, 2014, equaling \$3630.00 in fees and costs. As set forth in the attorney's application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

21. [14-21325](#)-B-13 DENNIS/IRENE SINGH MOTION TO VALUE COLLATERAL OF
SDH-2 CAPITAL ONE AUTO FINANCE, INC.
4-11-14 [[34](#)]

Tentative Ruling: The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$15,950.00 of Capitol One Auto Finance's claim in this case secured by a 2006 BMW X-3 ("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 \$15,950.00 on the date of the petition.

The court will issue a minute order.

22. [14-22225](#)-B-13 EMMANUEL MURALLO AND OBJECTION TO CONFIRMATION OF
JPJ-1 FRANCIESCA MENDOZA PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
4-24-14 [[16](#)]

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 May 7, 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.

23. [09-46331](#)-B-13 MARK/AMANDA GRYZCKO MOTION TO MODIFY PLAN
WSS-1 3-27-14 [[24](#)]

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 28, 2014, is confirmed.

The court will issue a minute order.

24. [13-30034](#)-B-13 DEBRA BENNIE MOTION TO MODIFY PLAN
RAC-3 3-27-14 [[35](#)]

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 27, 2014, is confirmed.

The court will issue a minute order.

25. [09-25737](#)-B-13 ROLAND/RHONDA COOPER MOTION TO APPROVE LOAN
NLG-1 MODIFICATION
4-3-14 [[57](#)]

Tentative Ruling: The motion is dismissed without prejudice.

11 U.S.C. § 364, entitled "Obtaining Credit," at subsection (c), authorizes "the trustee" to obtain secured credit, subject to certain requirements. Section 364(c) only permits the trustee, and not to any "interested party," to obtain credit. This court interprets 11 U.S.C. § 1303 to mean that the chapter 13 trustee and the chapter 13 debtor concurrently hold the powers granted to a trustee in Chapter 3 of Title 11, made applicable to cases in Chapter 13 by 11 U.S.C. § 103(a). The court reaches this conclusion because section 1303 enumerates certain powers in 11 U.S.C. § 363 as being held by the chapter 13 debtor, "exclusive of the trustee." The court construes that language to mean that the other powers granted to a trustee in Chapter 3 of Title 11 are held concurrently by the chapter 13 trustee and the chapter 13 debtor. See also, Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, 4th Edition, § 92.1, at ¶ 3 [preconfirmation debt] and § 262.1, at ¶ 1 [postconfirmation debt], Sec. Rev. June 9, 2004, www.Ch13online.com. Accordingly, the chapter 13 trustee or the debtor has standing to bring this motion, but creditor Nationstar Mortgage, LLC ("Nationstar") does not have standing to do so.

Nationstar has cited no authority supporting its standing to bring this motion, other than the court's general power under 11 U.S.C. § 105 to issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the Code. That argument is not persuasive. In the exercise of its § 105(a) authority, a bankruptcy court has broad discretion to shape equitable remedies which further Congressional intent. Pacific Shores Dev., LLC v. At Home Corp. (In re At Home Corp.), 392 F.3d 1064, 1070 (9th Cir. 2004) ("[A] bankruptcy court must locate its equitable authority in the Bankruptcy Code."). "[S]tatutory silence alone does not invest a bankruptcy court with equitable powers. Those

powers are limited and do not amount to a 'roving commission to do equity.'" Id. (citation omitted). See also Law v. Siegel, 134 S.Ct. 1188, 1194 (2014) ("It is hornbook law that § 105(a) does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.) (citation omitted).

The court will issue a minute order.

26. [10-28337](#)-B-13 BARBARA MCILVEEN MOTION FOR COMPENSATION FOR
SS-5 SCOTT SHUMAKER, DEBTOR'S
ATTORNEY
4-4-14 [[83](#)]

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

The motion is granted to the extent set forth herein. The application is approved in the amount of \$1910.00 in fees and \$0.00 in costs, for a total of \$1910.00, to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtor to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524.

On March 31, 2010, the debtor filed a chapter 13 petition. As part of confirmation of the debtor's chapter 13 plan, applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. In connection with confirmation of the debtor's chapter 13 plan, this court authorized payment of fees and costs totaling \$3,500.00 through the plan. (Dkt. 48). The debtor's attorney now seeks additional compensation, in the amount of \$1910.00 in fees.

As set forth in the attorney's application, these fees are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work applicant has done in this case is sufficient greater than a "typical" chapter 13 case so as to justify additional compensation under the Guidelines. In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

The court will issue a minute order.

27. [10-30137](#)-B-13 TY/REBECCA MATT MOTION TO INCUR DEBT
MG-2 4-1-14 [[55](#)]

Tentative Ruling: The motion is dismissed.

The motion was not properly served. By this motion the debtor's request authorization to obtain a loan from Sun West Mortgage Company ("Sun West") for the purpose of refinancing the loan secured by the first deed

of trust on their residence. The motion is governed by the provisions of Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct."

Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor who is refinancing the loan. The court also requires that the debtor give notice of the motion to all other creditors. In this case, the debtors' proofs of service (Dkt. 58, 63) show that they served the motion on the United States trustee, the chapter 13 trustee and all creditors. However, they did not serve the motion on Sun West.

The motion is also dismissed because it is not ripe for adjudication. The debtors have not shown that if the motion is granted a loan transaction will actually occur. The debtors' evidence in support of the motion consists of their declaration (Dkt. 57) an unsigned copy of a document setting forth underwriting disposition and conditions (Dkt. 64). They have not presented evidence that they have been approved for a loan on the terms set forth in the motion. 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 evidence of a refinancing loan that has actually been approved, there is no case or controversy for the court to decide.

The court will issue a minute order.

28. [14-22237](#)-B-13 CORY/SIOUX ENOS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-24-14 [[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 5, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 27, 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.

29. [14-23337](#)-B-13 ASHLEY PITNER MOTION TO VALUE COLLATERAL OF
JDP-1 SCHOOLS FINANCIAL CREDIT UNION
4-10-14 [[11](#)]
WITHDRAWN BY M.P.

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

The motion is removed from the calendar. The debtor withdrew the motion on April 28, 2014 (Dkt. 22).

30. [13-36141](#)-B-13 JUN RAMOS MOTION TO CONFIRM PLAN
BG-3 3-17-14 [[32](#)]

Tentative Ruling: The opposition filed by the chapter 13 trustee is sustained. The opposition filed by Wells Fargo Bank, N.A. is sustained. The motion to confirm the amended plan filed March 17, 2014 (Dkt. 35) is denied.

The trustee's opposition is sustained for the reason set forth therein. Although the debtor assures the court that he will be completely current in plan payments on May 9, 2014, there is no evidence that he is current on the court's docket.

Wells Fargo's opposition is also sustained for the reason set forth therein. The plan proposes an increase in plan payments in the amount of \$1300.00 beginning in month 6 of the plan. The debtor's budget as evidenced by Schedules I and J shows that he has only \$2500.00 per month in monthly net income with which to make the proposed plan payment. The court acknowledges the debtor's proposal at section 1.02 of the plan to make additional plan payments from rent from a boarder at the debtor's residence and from his spouse's 401(k) retirement fund. However, the debtor has presented no evidence of his ability to obtain a boarder in an amount needed to bridge the gap between his net monthly income and the increased plan payment due in month 6, and he has not presented evidence that his spouse consents to the use of the 401(k) retirement fund to make plan payments. The debtor has failed to sustain his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The court will issue a minute order.

31. [13-36141](#)-B-13 JUN RAMOS COUNTER MOTION TO DISMISS CASE
BG-3 4-29-14 [[46](#)]

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 27, 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.

32. [13-36141](#)-B-13 JUN RAMOS OBJECTION TO CONFIRMATION OF
RMD-1 PLAN BY WELLS FARGO BANK, N.A.
4-28-14 [[40](#)]

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

This matter is removed from the calendar.

This matter was filed as an opposition to the debtor's motion to confirm the amended plan filed March 17, 2014. Because the objecting creditor filed a notice of hearing with its opposition, the court clerk's office created a separate calendar entry for the opposition. This matter is removed from the calendar because the court has addressed the substance of the creditor's opposition in connection with its ruling on the debtor's motion to confirm the amended plan. For future reference, the court advises the creditor that it is unnecessary to file a separate notice of hearing with an opposition to a motion to confirm an amended plan.

33. [12-37144](#)-B-13 CHARLES/SUSAN MCBRYDE MOTION TO INCUR DEBT
CJY-2 4-22-14 [[34](#)]

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

The motion is continued to May 27, 2014, at 9:32 a.m. On or before May 13, 2014, the debtors shall serve the motion, notice of the continued hearing and all supporting papers on CarMax. On or before May 13, 2014, the debtors shall also serve all other parties previously served with the motion with notice of the continued hearing. The aforementioned notices of the continued hearing shall state that opposition may be presented at the hearing pursuant to LBR 9014-1(f)(2). The debtors shall file proof of service of the foregoing within three court days thereafter.

The motion is continued for two reasons. First, the debtors did not properly serve the motion. This motion to incur debt is governed by the provisions of Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service

is required by 4001(c)(1) and "to such other entities as the court may direct."

Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor from whom they will be obtaining credit. The court also requires that the debtor give notice of the motion to all other creditors. In this case, the debtors' proof of service (Dkt. 38) shows that they served the motion on the United States trustee, the chapter 13 trustee, and all creditors. However, they did not serve the motion on CarMax, the entity from whom they propose to obtain credit.

The motion is also continued to be heard after the debtors' motion to confirm their modified plan filed April 22, 2014 (Dkt. 30). According to the amended budget filed as an exhibit to this motion (Dkt. 37) if this motion is granted the debtors' net monthly income will be insufficient to make the monthly payment under the current confirmed plan. The court notes that the modified plan reduces the monthly payment to an amount consistent with the budget presented by this motion. Nothing in this ruling shall be construed as a finding that the modified plan will be confirmed.

The court will issue a minute order.

34. [12-41445](#)-B-13 KEVIN/MA NEKA CORNELIUS CONTINUED MOTION TO MODIFY PLAN
PGM-2 2-7-14 [[39](#)]

Tentative Ruling: None.

35. [14-22445](#)-B-13 JORGE REYES AND ROSARIO OBJECTION TO CONFIRMATION OF
JPJ-1 SANCHEZ PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-24-14 [[28](#)]

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

The trustee's first objection is overruled. The trustee's second objection is sustained. Confirmation of the initial plan filed March 11, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 27, 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 chapter 13 trustee's first objection regarding the debtor's failure to file a detailed statement regarding their rental property is overruled because the debtors have supplied such a statement with their written response. The statement provided by the debtors shows that the debtors realize net monthly income in the amount of \$80.80 per month from the rental property.

The trustee's second objection regarding the plan's failure to provide for the secured claim of Nissan Motor Acceptance ("Nissan") is sustained for the reasons set forth in the trustee's objection. The debtors concede that the trustee is correct. The court denies the debtors' request to include a provision in the order confirming the plan which provides for treatment of Nissan's claim in class 4, as such treatment is a material modification of the plan which must be noticed to all creditors.

The court will issue a minute order.

36. [14-22545](#)-B-13 BRIAN GOLDHAMMER
JPJ-1
- OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-24-14 [[33](#)]

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 24, 2014, the debtor filed an amended plan (Dkt. 31) and a motion to confirm it (Dkt. 27), setting the matter for hearing on June 10, 2014, at 9:32 a.m. 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.

37. [14-22545](#)-B-13 BRIAN GOLDHAMMER
RMD-1
- OBJECTION TO CONFIRMATION OF
PLAN BY FREEDOM MORTGAGE
CORPORATION
4-23-14 [[20](#)]

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

The objection is removed from the calendar. The objecting party withdrew the objection on May 2, 2014 (Dkt. 36).

Tentative Ruling: Creditor Wells Fargo Bank, N.A. ("WF")'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 stipulation filed May 9, 2014 (Dkt. 38) (the "Stipulation") is not approved. The debtors' opposition is overruled. WF'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 (Dkt. 15) is denied. Except as sustained herein, the objection is overruled.

The treatment provided for WF's claim does not fall within the exception to § 1322(b)(2) contained in § 1322(b)(5). The debtors propose to make "adequate protection" payments to WF in the form of regular monthly mortgage payments 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 debtors have not shown that the property will be sold within the next year for an amount sufficient to fund the payments required under the plan. The declaration filed by the debtors' attorney, Scott Hughes, on April 14, 2014 (Dkt. 32) simply refers the court to the debtors' valuation of the property in Schedule A (Dkt. 14, p.3). This is insufficient to establish what the property's potential sale value will be. Additionally, simply providing that all lienholders will receive relief from the automatic stay if the property is not sold within one year is not a permissible substitute for a showing under § 1325(a)(6).

The Stipulation is not approved for several reasons. First, the plan provides for a sale of the debtors' residence within one year after confirmation (Dkt. 15, p.6). The Stipulation purports to shorten that time for WF only to February 26, 2015. The change is a material change to the plan that adversely affects, at a minimum, the holder of the second deed of trust on the residence and cannot be accomplished in an order confirming the plan or in a two party stipulation outside the plan. Second, there is no indication that the Stipulation was served on the Chapter 13 trustee or any junior lienholders pursuant to Fed. R. Bankr. P. 4001(d). Finally, Department B does not approve stipulations for relief from automatic stay that provide for future relief without further court order upon the failure of a condition. Department B requires (1) the filing and service on the debtor and all junior lienholders of a declaration stating the failure of the condition and (2) submission of a proposed order granting relief from automatic stay pursuant to the failure of the condition.

The court will issue a minute order.

39. [14-22446](#)-B-13 LESLIE SMITH
JPJ-1

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON ., AMENDED MOTION TO
DISMISS CASE
4-29-14 [[32](#)]

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. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 27, 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.

40. [14-22446](#)-B-13 LESLIE SMITH
PD-1

OBJECTION TO CONFIRMATION OF
PLAN BY BENEFICIAL FINANCIAL I,
INC.
4-17-14 [[25](#)]

Tentative Ruling: Creditor Beneficial Financial I, Inc. ("BFI")'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.

BFI's first three objections under 11 U.S.C. §§ 1325(a)(5)(B)(ii), 1325(a)(6), and 1322(d) are sustained for the reasons set forth therein. Its objection under 11 U.S.C. § 109(e) is denied without prejudice. Confirmation of the plan filed March 11, 2014 (Dkt. 5) is denied.

BFI's objection that the debtor does not meet the eligibility requirements of a chapter 13 debtor pursuant to 11 U.S.C. § 109(e) is denied without prejudice to the filing of a separate, properly noticed motion which seeks dismissal of this bankruptcy case.

The court will issue a minute order.

41. [12-21947](#)-B-13 ALLAN/NATALIE ANGELMAN MOTION TO MODIFY PLAN
BLG-4 3-28-14 [[69](#)]

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 28, 2014 (Dkt. 74) is confirmed.

The court will issue a minute order.

42. [13-28247](#)-B-13 PAUL/ESTHER SILVA MOTION TO MODIFY PLAN
PLC-4 3-31-14 [[63](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed March 31, 2014 (Dkt. 66) is denied.

The court will issue a minute order.

43. [11-39148](#)-B-13 DAVID/DOROTHY JONES MOTION TO APPROVE LOAN
SDB-6 MODIFICATION
4-7-14 [[61](#)]

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 May 6, 2014 (Dkt. 66).

44. [12-30648](#)-B-13 GREGORY/MIJA TRUMBULL MOTION TO MODIFY PLAN
SDB-2 3-20-14 [[33](#)]

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 20, 2014 (Dkt. 37) is confirmed.

The court will issue a minute order.

45. [10-29449](#)-B-13 KEITH/LAURETTA ARMSTRONG
CLH-6

MOTION TO MODIFY PLAN
4-7-14 [[85](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted and the modified plan filed April 7, 2014 (Dkt. 88) 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 \$84,341.00 into the plan. Commencing April 25, 2014, the monthly plan payments shall be \$520.00 for the remainder of the plan."

The trustee's first objection is overruled because the debtors filed amended Schedules I and J on April 17, 2014 (Dkt. 95), utilizing Official Forms B 6I and 6J. The trustee's second objection is overruled because the aforementioned modifying language, to which the debtors have no opposition (Dkt. 97), resolves the objection.

The court will issue a minute order.

46. [13-28451](#)-B-13 DOUGLAS SCOTT
RPH-3

MOTION TO CONFIRM PLAN
3-18-14 [[97](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the amended plan filed March 18, 2014 (Dkt. 100) is denied.

The court is not persuaded by the supplemental declaration (Dkt. 110) and related exhibits (Dkt. 111) filed by the debtor on May 6, 2014. First, regarding the trustee's objection that the debtor is delinquent in the amount of \$1,502.50, or two (2) plan payments, the debtor provides no evidence outside of the statements in his supplemental declaration that he is or will be current on plan payments as of the date of this hearing. Simply stating that he will be caught up on plan payments by the hearing date, without more, is insufficient. Additionally, it is difficult for the court to conclude that the debtor will be able to cure the plan payment delinquency because he admits in his supplemental declaration that he is currently experiencing difficulties with his income. Specifically, he states that (1) he works in a commission-based business that has been slow for the past couple of months, and (2) his seasonal employment at a ski resort has ended early (Dkt. 110, p.2, lines 4-7). The debtor provides no explanation as to how he will be able to cure the plan payment delinquency, let alone fund the proposed plan. As such, the trustee's objection under 11 U.S.C. § 1325(a)(6) is sustained.

Second, the trustee's objection that the plan's feasibility depends on the debtor receiving loan modifications with Golden 1 Credit Union ("Golden 1") for the first and second deeds of trust secured by the debtor's residence is sustained because, to date, the debtor has failed to either obtain court approval of loan modifications or even file motions for said approval. Regarding the first deed of trust, the debtor

states in his supplemental declaration that he obtained approval of a trial period loan modification beginning November 1, 2013. He attaches as Exhibit "1" a copy of the trial loan modification approval letter which shows that trial payments were to have been completed by January 1, 2014 (Dkt. 111, p.3). The debtor asserts that he has completed all payments under this trial period, but admits that Golden 1 is still processing the final loan modification documents for transmittal to the court for approval. The debtor's position is unpersuasive for two reasons. To start, as stated above there is no evidence on the docket that the debtor ever filed a motion for court approval of the trial loan modification with Golden 1, the agreement for which was apparently made at some point prior to November 1, 2013 (Dkt. 111, p.3). The debtor was never given court authority to enter into this agreement; rather, it appears from the evidence provided that the debtor simply bypassed the court altogether on this matter. Additionally, the debtor has provided no evidence that Golden 1 is even considering granting him a permanent loan modification and, even if it does, he is yet to file a properly noticed motion for approval of said loan modification. Furthermore, the court notes that it has reason to doubt that Golden 1 is considering approval of a permanent loan modification. As Golden 1 stated in its opposition (Dkt. 82) to the debtor's last motion to confirm filed January 21, 2014 (Dkt. 74), which the court sustained by order entered March 7, 2014 (Dkt. 92), its approval of a permanent loan modification for the first deed of trust is contingent upon the debtor removing a \$179,938.30 secured tax lien held by the Internal Revenue Service from his residence's chain of title by the end of the trial period (Dkt. 82, p.3, para.10). The debtor fails to address this issue in the present motion or any of its supporting documents. Although he contends that Golden 1 is currently preparing the final loan modification documents for the first deed of trust, without actually reviewing those documents the court cannot conclude that the debtor has or will be able to obtain a permanent loan modification.

The loan modification for the second deed of trust suffers from similar defects. The debtor has failed to file a properly noticed motion for approval of the trial loan modification for the second deed of trust which was allegedly entered into on April 15, 2014 (Dkt. 110, p.1, lines 27-28). Additionally, the e-mail conversations attached as Exhibit "2" (Dkt. 111, p.5-6) are insufficient evidence of Golden 1's consent to a trial loan modification.

The court will issue a minute order.

47. [13-22852](#)-B-13 DAVID/YOLANDA BENSON MOTION TO SELL
PLC-7 3-31-14 [[102](#)]

Tentative Ruling: The motion is dismissed without prejudice. Creditor U.S. Bank, N.A. ("USB")'s opposition (Dkt. 113) is dismissed.

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 9079 Clydesdale Court, Elk Grove, CA 95624 to Gyan Kalwani for \$285,000.00. However, the debtors have failed to establish that there is an actual short sale for the court to approve to which all lienholders consent.

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.

Here, the motion is dismissed without prejudice for two reasons. First, the debtors have failed to file with the court a copy of the proposed purchase agreement. Simply filing a consent letter from the lienholder is insufficient evidence that there is an actual short sale that will occur if the court grants the motion. Second, although the court acknowledges the consent letter from lienholder America's Servicing Company ("ASC") attached as Exhibit "A" to the motion (Dkt. 104), the court notes that the letter specifically states that the acceptable sales proceeds were scheduled for settlement on or before March 13, 2014. Today's date is May 13, 2014. The debtors have provided no evidence that ASC has consented to an extension of this deadline outside of the statements in their declaration (Dkt. 105, p.2, lines 7-10). Because the debtors have failed to show that ASC consents to the short sale, there is no actual short sale for the court to approve. Accordingly, the motion is dismissed without prejudice.

USB's opposition is dismissed because the court lacks jurisdiction over the motion to which the opposition is directed.

The court will issue a minute order.

48. [13-22852](#)-B-13 DAVID/YOLANDA BENSON MOTION TO CONFIRM PLAN
PLC-8 3-31-14 [[107](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following tentative ruling.

The motion is granted, and the amended plan filed March 31, 2014 (Dkt. 110) will be confirmed with the following modification in the order confirming the plan: The confirmation or ratification of prior payments by the trustee will have no preclusive effect in connection with any objection that may be made to the trustee's final report and account.

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.

49. [11-28056](#)-B-13 DONALD MUHAMMAD AND LANA MOTION TO VALUE COLLATERAL OF
LC-2 FRIERSON SOVEREIGN BANK, N.A.
4-2-14 [[42](#)]

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 Santander Bank, N.A. (formerly known as Sovereign Bank, N.A.)'s claim secured by the second deed of trust on real property located at 1107 Granada Street, Vallejo, CA 94591 (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 \$275,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Everhome Mortgage Company with a balance of approximately \$408,199.00. Thus, the value of the collateral available to Santander Bank, N.A. (formerly known as Sovereign Bank, N.A.) on its second deed of trust is \$0.00.

The court will issue a minute order.

50. [10-44061](#)-B-13 MICHAEL/JEANNE CAREY MOTION TO MODIFY PLAN
PLG-3 4-1-14 [[66](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed April 1, 2014 (Dkt. 70) (the "Plan") is denied.

The trustee opposes confirmation on the grounds that he cannot fully comply with § 2.08(b) of the Plan because the Plan fails to specify a cure of the post-petition arrearage owed to creditor Wells Fargo Bank, N.A. for a missed payment in the month of January 2014, including a specific post-petition arrearage amount, interest rate, and monthly dividend. The debtors propose to resolve this issue by increasing the monthly plan payments for the months of May 2014 and June 2014 from \$2,492.00 to \$3,186.49. The court cannot accept the debtors' proposal for two reasons.

First, the proposed increase in monthly plan payments for May 2014 and June 2014 is \$694.49, which is a 27.8% increase in the monthly plan payment. This exceeds the 10% threshold established in this department for a non-material modification to plan treatment that could be included in an order confirming plan without further notice to creditors. The proof of service (Dkt. 81) of the debtors' supplemental declaration (Dkt. 80), which sets forth the above proposal, indicates that only the trustee was provided electronic notice of the supplemental declaration.

Second, the debtors have failed to establish that they will be able to afford the increased plan payments for May 2014 and June 2014 while still complying with all other requirements of the Plan. 11 U.S.C. §

1325(a)(6). According to the debtors' amended Schedules I and J filed May 1, 2014 (Dkt. 83), they have \$2,514.42 in monthly net income to make the proposed payment of \$3,186.49. As such, the debtors have failed to establish all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met.").

The court will issue a minute order.

51. [14-23663](#)-B-13 MICHAEL/KATHRYN ZINK MOTION TO VALUE COLLATERAL OF
SDH-1 ONEMAIN FINANCIAL, INC.
4-10-14 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$9,500.00 of OneMain Financial, Inc.'s claim secured by a 2006 Ford F-150 pickup truck (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$9,500.00 on the date of the petition.

The court will issue a minute order.

52. [14-23165](#)-B-13 JOSE VERDUSCO MOTION TO VALUE COLLATERAL OF
TOG-1 WELLS FARGO BANK, N.A.
4-4-14 [[15](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following tentative 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 claim secured by the second deed of trust on real property located at 433 North Roberta Way, Marysville, CA 95901 (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 \$91,594.00 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 \$92,700.00. Thus, the value of the collateral available to Wells Fargo Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

53. [10-44369](#)-B-13 DEVIN/DENIECE PEPPERS
WW-4

MOTION TO MODIFY PLAN
3-31-14 [[47](#)]

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 31, 2014 (Dkt. 51) is confirmed; provided that the confirmation or ratification of prior payments by the trustee will have no preclusive effect in connection with any objection that may be made to the trustee's final report and account.

The court will issue a minute order.

54. [14-22173](#)-B-13 YOLANDA SWARTOUT
NBC-1

MOTION TO VALUE COLLATERAL OF
JP MORGAN CHASE BANK, N.A.
3-26-14 [[16](#)]

Tentative Ruling: The motion to value collateral of U.S. Bank, N.A. is continued to a final evidentiary hearing on July 11, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before July 4, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before July 4, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Collateral of U.S. Bank, N.A. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

55. [14-20875](#)-B-13 SANDRA CRAZE
HLG-1

MOTION TO VALUE COLLATERAL OF
PNC BANK, N.A.
4-14-14 [[22](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of PNC Bank, N.A.'s claim secured by the second deed of trust on real property located at 5645 Vall Court, Carmichael, CA 95608 (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 \$161,791.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing with a balance of approximately \$169,553.75. Thus, the value of the collateral available to PNC Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

56. [14-20276](#)-B-13 JOY MOORE
RWH-2

MOTION TO CONFIRM PLAN
3-19-14 [[28](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the amended plan filed March 13, 2014 (Dkt. 25) will be confirmed with the following modification: the Additional Provisions for Section 1.01 shall state that "as of April 25, 2014, the debtor has paid a total of \$3,617.95 into the plan. Commencing May 25, 2014, the debtor shall pay \$1,312.00 for 13 months, \$1,358.00 for 32 months, and \$1,425.00 for 12 months."

The court will issue a minute order overruling the trustee's opposition and 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.

57. [14-20276](#)-B-13 JOY MOORE
RWH-3

MOTION TO VALUE COLLATERAL OF
CHASE
4-9-14 [[39](#)]

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

60. [14-20377](#)-B-13 CHRISTOPHER/SHAYNA MOTION TO CONFIRM PLAN
BSJ-2 HOVENCAMP 4-15-14 [[38](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because it was not properly noticed to all parties-in-interest. To confirm an amended plan, Local Bankruptcy Rule 3015-1(d)(1) states that "notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two (42) days prior to the hearing." LBR 3015-1(d)(1). Forty-two days prior to today's hearing date was April 1, 2014. According to the proof of service filed April 17, 2014 (Dkt. 47), interested parties were served with the motion, notice of hearing, and other supporting documents on April 17, 2014, which is only twenty-six (26) days prior to the hearing date. Thus, the debtors have failed to comply with the noticing requirements of Local Bankruptcy Rule 3015-1(d)(1). A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

61. [10-38980](#)-B-13 LEE SCHALL MOTION TO VALUE COLLATERAL OF
CA-6 BAC HOME LOAN SERVICING, L.P.
4-27-14 [[108](#)]

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.

62. [10-38980](#)-B-13 LEE SCHALL MOTION TO VALUE COLLATERAL OF
CA-7 DYCK O'NEIL
4-27-14 [[113](#)]

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

63. [14-20180](#)-B-13 ROSA/CARLOS HERRERA
MHL-2

MOTION TO CONFIRM PLAN
4-1-14 [[32](#)]

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

The motion is granted, and the amended plan filed April 1, 2014 (Dkt. 35) 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.

64. [14-22283](#)-B-13 MARIE WILLIAMS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-24-14 [[34](#)]

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 dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before May 27, 2014, the debtor files all motions necessary to confirm the amended plan filed May 5, 2014 (Dkt. 37) (the "Amended Plan"), including without limitation motions to value collateral and motions to avoid liens, properly serves the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection is moot. On May 5, 2014, the debtor filed the Amended Plan and a motion to confirm it (Dkt. 41), setting the matter for hearing on June 24, 2014, at 9:32 a.m. The Amended Plan supersedes the plan to which the trustee's objection is directed. 11 U.S.C. § 1323(b). The trustee's motion to dismiss is conditionally denied because, although the debtor filed the Amended Plan, she is yet to properly file, serve, and set for hearing all motions necessary to confirm it.

The court will issue a minute order.

65. [14-22283](#)-B-13 MARIE WILLIAMS SW-1 OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 4-7-14 [[25](#)]

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

Creditor Wells Fargo Bank, N.A. ("WF")'s objection is dismissed.

WF's objection is moot. On May 5, 2014, the debtor filed an amended plan (Dkt. 37) and a motion to confirm it (Dkt. 41), setting the matter for hearing on June 24, 2014, at 9:32 a.m. The amended plan supersedes the plan to which WF's objection is directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

66. [13-32386](#)-B-13 JOSE ALBERTO TJW-2 MOTION TO DISMISS CASE 4-25-14 [[37](#)]

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

67. [13-34190](#)-B-13 LAURA SEAY SJS-2 MOTION TO CONFIRM PLAN 3-20-14 [[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 20, 2014 (Dkt. 41) 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.

68. [14-22192](#)-B-13 MARK/JHOANNA SERRANO JPJ-1 OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE 4-24-14 [[18](#)]

Tentative Ruling: The trustee's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the

terms set forth in the Fannie Mae Loan Modification Agreement filed as Exhibit "1" to the motion (Dkt. 42). Pursuant to Fed. R. Bankr. P. 9014(c) and 7021 and the debtors' "joinder" filed May 1, 2014 (Dkt. 44), the court adds the debtors to the motion as moving parties.

The court will issue a minute order.

72. [14-24181](#)-B-13 DANNY RUE
DWR-1

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
5-1-14 [[11](#)]

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