

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

July 30, 2013 at 9:32 A.M.

1. [13-26602](#)-B-13 DOUGLAS SAKAE AMENDED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR CONDITIONAL
MOTION TO DISMISS CASE
7-10-13 [[46](#)]

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

The trustee's objections and motion to dismiss are dismissed.

The trustee's objections and motion to dismiss are moot. On July 3, 2013, the debtor filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objections are 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.

2. [13-26602](#)-B-13 DOUGLAS SAKAE OBJECTION TO CONFIRMATION OF
KKY-1 PLAN BY OPERATING ENGINEERS
LOCAL UNION #3
7-2-13 [[19](#)]

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

The creditor Operating Engineers Local Union #3 Federal Credit Union's objections are dismissed.

The creditor Operating Engineers Local Union #3 Federal Credit Union's objections are moot. On July 3, 2013, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the creditor Operating Engineers Local Union #3 Federal Credit Union's objections are directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

3. [13-23404](#)-B-13 LETICIA CAMPOS-WATSON MOTION TO CONFIRM PLAN
CAH-1 6-4-13 [[27](#)]

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

The motion is granted, and the amended plan filed June 4, 2013 (Dkt. 21) 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.

4. [13-21407](#)-B-13 CHARLES/SUZANNE ELLIS MOTION TO CONFIRM PLAN
RAH-3 6-4-13 [[69](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed June 4, 2013 (Dkt. 68) is denied.

The court will issue a minute order.

5. [13-21407](#)-B-13 CHARLES/SUZANNE ELLIS COUNTER MOTION TO DISMISS CASE
RAH-3 6-27-13 [[75](#)]

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 August 13, 2013, 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.

6. [11-20508](#)-B-13 DENIS/CORINNE PERRY MOTION TO INCUR DEBT
SAC-1 6-19-13 [[31](#)]
WITHDRAWN BY M.P.

Disposition Without Oral Argument: This matter was withdrawn by the debtors on July 15, 2013 (Dkt. 36) and is removed from the calendar.

7. [10-51809](#)-B-13 JASON/KRYSTIN HOFFMAN OBJECTION TO CLAIM OF
JPJ-1 CITIMORTGAGE INC, CLAIM NUMBER
14
6-11-13 [[44](#)]

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

The trustee's objection is sustained, and claim No. 14, filed on March 28, 2013 by CitiMortgage, Inc., in the amount of \$741,866.50 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was March 30, 2011. The Claim was filed on March 28, 2013.

The court will issue a minute order.

8. [12-33209](#)-B-13 OSCAR DELGADO MOTION TO CONFIRM PLAN
CYB-3 6-10-13 [[90](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the amended plan filed June 10, 2013 (Dkt. 92) will be confirmed with the following modifications: (1) Starting with the July 2013 payment, the Administrative Expenses in Section 2.07 shall be \$24.00 per month and continuing for the next twelve months; followed by payments of \$48.00 for the remaining duration of the plan; (2) As of June 25, 2013, debtor shall have paid in \$2,392.00; followed by payments of \$576.00 for the next twelve months, followed by payments of \$876.60 for the remaining duration of the plan.

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.

9. [13-24710](#)-B-13 DARRELL/BARBARA NEAL CONTINUED MOTION TO VALUE
SJS-1 COLLATERAL OF SANTANDER
CONSUMER USA, INC.
5-24-13 [[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. \$9,000.00 of Santander Consumer's claim secured by a 2008 Nissan Rogue ("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 \$9,000.00 on the date of the petition.

The court will issue a minute order.

10. [13-24710](#)-B-13 DARRELL/BARBARA NEAL MOTION TO CONFIRM PLAN
SJS-2 6-7-13 [[23](#)]

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

The motion is granted, and the amended plan filed June 7, 2013 (Dkt. 27) 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.

11. [12-26311](#)-B-13 BERNALD/RHONDA MOTION TO MODIFY PLAN
SDB-1 LEON-GUERRERO 6-24-13 [[39](#)]

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

The motion is granted, and the modified plan filed June 24, 2013 (Dkt. 41) is confirmed.

The court will issue a minute order.

12. [13-25616](#)-B-13 ALAN/SUSAN MEACHAM MOTION TO RECONSIDER AND/OR
SAS-1 MOTION FOR LEAVE TO FILE A
RESPONSE TO THE DEBTORS' MOTION
TO VALUE COLLATERAL OF PNC
MORTGAGE
6-19-13 [[24](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice due to a procedural defect. The movant either did not sign the motion, notice of hearing, and proof of service or improperly used an "/s/" as a signature, in derogation of LBR 9004-1(c). "Unless the electronically filed document has been scanned and shows the registered user's original signature or bears a software generated electronic signature thereof, an '/s/' and the registered user's name shall be typed in the space where the signature would otherwise appear" (emphasis added)], LBR 9004-1(c)(1)(A), and Fed. R. Bankr. P. 9011(a).

The court will issue a minute order.

13. [08-32417](#)-B-13 DAVID/ANGELA LAVER MOTION TO MODIFY PLAN
DEF-1 6-4-13 [[77](#)]

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

The motion is granted, and the modified plan filed June 4, 2013 (Dkt. 79) is confirmed.

The court will issue a minute order.

14. [12-41818](#)-B-13 ORMIDES HERNANDEZ MOTION TO CONFIRM PLAN
CAH-2 6-10-13 [[39](#)]

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

The motion is granted, and the amended plan filed June 10, 2013 (Dkt. 40) 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.

15. [08-39019](#)-B-13 JULIE EDUL OBJECTION TO CLAIM OF AMERICA'S
JPJ-2 SERVICING, CLAIM NUMBER 11
6-11-13 [[90](#)]

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

The trustee's objection is sustained, and claim No. 11, filed on April 28, 2013 by America's Servicing in the amount of \$65,118.24 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was April 29, 2009. The Claim was filed on April 28, 2013.

The court will issue a minute order.

16. [13-23221](#)-B-13 ERIC ALSTRAND AND DEBRA CONTINUED MOTION TO CONFIRM
JGD-2 BRIOZA PLAN
6-4-13 [[36](#)]

Tentative Ruling: The creditor U.S. Bank National Association's opposition is sustained. The motion to confirm the plan filed June 4, 2013 (Dkt. 39) is denied.

The court will issue a minute order.

17. [13-21922](#)-B-13 GEORGE KNOOP MOTION TO CONFIRM PLAN
DJC-2 6-14-13 [[55](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed June 14, 2013 (Dkt. 61) is denied.

The court will issue a minute order.

18. [13-21922](#)-B-13 GEORGE KNOOP COUNTER MOTION TO DISMISS CASE
DJC-2 7-16-13 [[63](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before August 13, 2013, 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.

19. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY CONTINUED MOTION TO CONFIRM
PGM-2 LAU PLAN
5-17-13 [[31](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed May 17, 2013 (Dkt. 30) is denied.

The court will issue a minute order.

20. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY CONTINUED COUNTER MOTION TO
PGM-2 LAU DISMISS CASE
7-2-13 [[45](#)]

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 August 13, 2013, 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.

21. [13-26023](#)-B-13 GARY/MELISSA BURNS OBJECTION TO CONFIRMATION OF
RDW-1 PLAN BY CREDITOR PATELCO CREDIT
UNION
7-12-13 [[49](#)]

Tentative Ruling: The objection is overruled.

The objection was not timely filed (objections were due by June 13, 2013 - Dkt. 13). Pursuant to FRBP 9006(b)(1), if an objection is made after the expiration of the specified period, the creditor must demonstrate that the failure to act was a result of excusable neglect. The objection fails to address the standard for "excusable neglect." Accordingly, the objection is overruled.

The court will issue a minute order.

22. [11-26424](#)-B-13 AGUSTIN ALONSO DEBTOR'S OBJECTION TO TRUSTEE'S
MOTION TO DISMISS
6-28-13 [[59](#)]

Tentative Ruling: The court construes this motion as one filed 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.

23. [11-26424](#)-B-13 AGUSTIN ALONSO MOTION TO MODIFY PLAN
MMG-2 6-25-13 [[54](#)]

Tentative Ruling: The motion to confirm the modified plan filed on June 25, 2013 (Dkt. 53) is denied without prejudice.

The motion is denied without prejudice because the debtor failed to serve the motion and its supporting papers on all creditors. Fed. R. Bankr. P. 3015(g) and LBR 3015(d)(2).

This motion was initially set on this calendar. The debtor attempted to continue the matter unilaterally from this calendar to the court's September 10, 2013, 9:32 a.m. calendar. Continuances must be approved by the court. LBR 9014-1(j). Simply filing a stipulation and/or an amended notice of hearing is ineffective.

The court will issue a minute order.

24. [10-51025](#)-B-13 RONALD/ANNA MANLEY MOTION TO VALUE COLLATERAL OF
JT-4 HSBC MORTGAGE SERVICES, INC.
6-28-13 [[53](#)]

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 HSBC Mortgage Servicing's claim secured by the second deed of trust on real property located at 947 Coventry Lane, Fairfield, CA 94533 ("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 \$171,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$281,326.00. Thus, the value of the collateral available to HSBC Mortgage Servicing on its second deed of trust is \$0.00.

The court will issue a minute order.

25. [13-21525](#)-B-13 LEO/JERI BETTI MOTION TO CONFIRM PLAN
DBJ-4 5-29-13 [[56](#)]

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

The motion is granted, and the amended plan filed May 29, 2013 (Dkt. 59) 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.

26. [13-27426](#)-B-13 LOYD/GLORIA KOSKI
JPJ-1

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND MOTION TO DISMISS
CASE
7-10-13 [[24](#)]

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 overruled. The trustee's motion to dismiss is denied.

The debtor filed amended Schedule J, with itemized business expenses, on July 9, 2013 (Dkt. 23).

The court will issue a minute order.

27. [13-26128](#)-B-13 TIMOTHY/PAMELA DANIELSON
DEF-2

MOTION TO VALUE COLLATERAL OF
HOUSEHOLD RETAIL SERVICES
6-24-13 [[17](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because the debtors have failed to adequately describe the collateral to be valued. Here, the motion seeks to value "the 2002 Kawasaki described on Schedule B previously filed." However, Schedule B (Dkt. 1 at 15) lists two (2) separate 2002 Kawasakis. The court cannot determine which of the two vehicles is the subject of this motion or if both are the subject of this motion. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

28. [13-27730](#)-B-13 ROBERT/DENISE ROSSI
WW-1

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
6-24-13 [[17](#)]

Tentative Ruling: The motion to value Santander Consumer's collateral is continued to a final evidentiary hearing on August 23, 2013 at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before August 16, 2013, 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 August 16, 2013, 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 the Collateral of Santander Consumer. 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.

29. [11-33834](#)-B-13 JULIO/KATHERINE TINAJERO MOTION TO MODIFY PLAN
DBJ-8 5-30-13 [[138](#)]

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

The motion is granted, and the modified plan filed May 30, 2013 (Dkt. 142) is confirmed.

The court will issue a minute order.

30. [13-24635](#)-B-13 EARL/AUNDREA LEW CONTINUED MOTION TO VALUE
CYB-2 COLLATERAL OF G. KENNETH BELL
5-31-13 [[23](#)]

Tentative Ruling: The motion to value G. Kenneth Bell's collateral is continued to a final evidentiary hearing on August 23, 2013 at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before August 16, 2013, 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 August 16, 2013, 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 the Collateral of G. Kenneth Bell's. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document.

33. [09-46943](#)-B-13 JEFFREY/CLAUDINE NELSON MOTION TO VALUE COLLATERAL OF
JT-5 GE CAPITAL RETAIL BANK
6-28-13 [[65](#)]

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 GE Capital Retail Bank's claim secured by the third deed of trust on real property located at 1963 Sand Dollar Drive, Marysville, CA 95901 ("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 \$182,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BAC Home Loans Servicing with a balance of approximately \$289,392.80. The Property is also encumbered by a second deed of trust held by Bank of America with a balance of approximately \$71,941.72. Thus, the value of the collateral available to GE Capital Retail Bank on its third deed of trust is \$0.00.

The court will issue a minute order.

34. [09-46943](#)-B-13 JEFFREY/CLAUDINE NELSON MOTION TO BORROW
JT-6 7-16-13 [[75](#)]

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

The motion is dismissed without prejudice.

The motion was not properly noticed. The debtors seek court approval to incur debt from JPMorgan Chase Bank, N.A. ("Chase") for the purpose of purchasing a new vehicle from John L. Sullivan Chevrolet. 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 will be extending credit to the debtor (unless service has been waived by the entity extending credit in loan documentation or by appearance at the hearing). The court also requires that the debtor give notice of the motion to all other creditors.

In this case, the debtors did not give notice of the motion to all creditors.

The court will issue a minute order.

35. [11-41143](#)-B-13 HOPE MARTIN MOTION TO APPROVE LOAN
HDR-3 MODIFICATION
6-27-13 [[44](#)]

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

The court will issue a minute order.

36. [13-24143](#)-B-13 ANDREW/CLAUDIA FOLI OBJECTION TO CLAIM OF SUPERIOR
MRL-2 HOUSEWARES, CLAIM NUMBER 5
6-24-13 [[42](#)]

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 as resolved by stipulation, which was approved by court order on July 25, 2013 (Dkt. 55).

37. [13-24744](#)-B-13 JOAQUIN MOQUETTE CONTINUED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
5-30-13 [[28](#)]

Tentative Ruling: The trustee's objections are sustained. Confirmation of the plan filed April 18, 2013 is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before August 13, 2013, 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.

38. [13-26844](#)-B-13 DIOSDADO RODRIGUEZ OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-3-13 [[23](#)]

WITHDRAWN BY M.P.

Disposition Without Oral Argument: This matter was withdrawn by the trustee on July 8, 2013 (Dkt. 26) and is removed from the calendar.

39. [13-24146](#)-B-13 ROBERT/CHERYL CONTINUED OBJECTION TO
JPJ-1 FLORESGUERRA CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
5-7-13 [[21](#)]
- WITHDRAWN BY M.P.

Disposition Without Oral Argument: This matter was withdrawn by the trustee on July 8, 2013 (Dkt. 39) and is removed from the calendar.

40. [13-26848](#)-B-13 ERIC/SCHLONDA WILLIAMS AMENDED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR AMENDED MOTION
TO DISMISS CASE
7-10-13 [[21](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed May 20, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before August 13, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

41. [13-26752](#)-B-13 NORMAN/JANET WILL MOTION TO VALUE COLLATERAL OF
MOH-2 U.S. BANK
7-9-13 [[30](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of U.S. Bank, N.A.'s ("USB") claim in this case secured by the second deed of trust on real property located at 489 Larkin Road, Gridley, 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 \$90,000.00 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 \$127,000.00. Thus, the value of the collateral available to USB on its second deed of trust is \$0.00.

The court will issue a minute order.

42. [09-39653](#)-B-13 GEORGE/PAMELA BAXTER
WW-3

MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
6-25-13 [[73](#)]

Tentative Ruling: The motion is dismissed without prejudice.

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

Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor who will be extending credit to the debtor (unless service has been waived by the entity extending credit in loan documentation or by appearance at the hearing). The court also requires that the debtor give notice of the motion to all other creditors.

In this case, although the debtors have given notice of the motion to all creditors, the debtors have not served the entity that will be extending credit to them - BoFA - with the motion pursuant to the requirements of Bankruptcy Rule 7004(h).

The court will issue a minute order.

43. [10-28453](#)-B-13 ELIZABETH GAMBOA
SS-5

MOTION TO VALUE COLLATERAL OF
J.P. MORGAN CHASE BANK, N.A.
6-5-13 [[98](#)]

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 JPMorgan Chase Bank, N.A.'s ("Chase") claim in this case secured by the second deed of trust on real property located at 1804 Glenrose Avenue, Sacramento, 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 \$90,500.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$181,000.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00.

The court will issue a minute order.

44. [10-28453](#)-B-13 ELIZABETH GAMBOA
SS-6

MOTION TO MODIFY PLAN
6-3-13 [[93](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The modified plan filed June 3, 2013, will be confirmed with the following modifications: 1.) As of June 25, 2013, the debtors have paid a total of \$80,280 to the trustee; 2.) Commencing July 25, 2013, the debtors shall pay \$1900.00 per month for the remainder of the plan; and 3.) Pursuant to section 2.06 of modified plan \$1500.00 in attorney's fees shall be paid through the plan.

The motion is granted and the modified plan is confirmed in the absence of any objection under 11 U.S.C. § 1325(b)(1)(B) by the trustee or the holder of an allowed unsecured claim. The court notes, however, that the modified plan reduces the total amount to be paid to general unsecured creditors to an amount less than that required by 11 U.S.C. section 1325(b)(1)(B). The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, ___ U.S. ___, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

45. [13-27153](#)-B-13 RUSSELL/JENNIE KINZ
JPJ-1

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR AMENDED MOTION
TO DISMISS CASE
7-10-13 [[24](#)]

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 May 24, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before August 13, 2013, 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.

46. [13-27153](#)-B-13 RUSSELL/JENNIE KINZ
MBW-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRAVIS CREDIT UNION
7-3-13 [[17](#)]

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

The creditor's objections are sustained in part and overruled in part. Confirmation of the initial plan filed May 24, 2013, is denied.

The creditor's objections that the plan does not provide for payment of the creditor's secured claim in full and that the plan cannot modify the creditor's secured claim pursuant to 11 U.S.C. § 506(a) are sustained for the reasons set forth in the creditor's objections.

The creditor's objections to the plan fails to specify a preconfirmation adequate protection payment pursuant to 11 U.S.C. § 1326(a)(1)(C) is overruled. The plan does provide for a monthly dividend (albeit one that is insufficient to pay the creditor's secured claim in full) to be paid to the creditor prior to confirmation of the plan.

The court will issue a minute order.

47. [11-32262](#)-B-13 KEVIN ANDERSON
JPJ-2

OBJECTION TO CLAIM OF
NATIONSTAR MORTGAGE, CLAIM
NUMBER 12
6-11-13 [[51](#)]

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

The trustee's objection is sustained, and claim No. 12, filed on March 18, 2013, by Nationstar Mortgage in the amount of \$390,615.26 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was September 21, 2011, and to file a government claim was November 14, 2011. The Claim was filed on March 18, 2013.

The court will issue a minute order.

48. [13-23762](#)-B-13 PATRICIA DENTON
CK-2

MOTION TO CONFIRM PLAN
5-31-13 [[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 May 31, 2013, 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 3-081-12 (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.

49. [09-30065](#)-B-13 JOSEPH/MARCIA HAGER MOTION TO VALUE COLLATERAL OF
JT-2 HSBC MORTGAGE SERVICES, INC.
6-28-13 [[37](#)]

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 HSBC Mortgage Services, Inc.'s ("HSBC") claim in this case secured by the second deed of trust on real property located at 2792 Catania Way, Sacramento, 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 \$242,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wachovia Mortgage with a balance of approximately \$319,000.00. Thus, the value of the collateral available to HSBC on its second deed of trust is \$0.00.

The court will issue a minute order.

50. [12-20268](#)-B-13 JUSTINO TUAZON AND MARIA OBJECTION TO CLAIM OF SALLIE
JPJ-2 BELTRAN TUAZON MAE, CLAIM NUMBER 32
6-11-13 [[80](#)]

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

The trustee's objection is sustained, and claim No. 32, filed on February 2, 2013, by Sallie Mae in the amount of \$5648.98 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was May 9, 2012, and to file a government claim was July 5, 2012. The Claim was filed on February 2, 2013.

The court will issue a minute order.

51. [13-26171](#)-B-13 BILLY/JERILYN DORTCH CONTINUED OBJECTION TO
ASW-1 CONFIRMATION OF PLAN BY THE
BANK OF NEW YORK MELLON
6-14-13 [[25](#)]

Tentative Ruling: The objection is removed from the calendar. The objecting creditor withdrew the objection on July 25, 2013 (Dkt. 46).

52. [13-26171](#)-B-13 BILLY/JERILYN DORTCH CONTINUED MOTION TO VALUE
BHS-1 COLLATERAL OF HSBC MORTGAGE
SERVICES, INC.
5-7-13 [[8](#)]

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

The motion is removed from the calendar, as resolved by stipulation approved by amended order entered July 26, 2013 (Dkt. 48).

53. [11-26978](#)-B-13 STEVEN/DIXIE COOKSEY CONTINUED MOTION TO MODIFY PLAN
BSJ-2 5-29-13 [[62](#)]

Tentative Ruling: None.

54. [13-26480](#)-B-13 THOMAS DEARAGONAISE AND AMENDED OBJECTION TO
JPJ-1 EMANUELA CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR AMENDED MOTION
TO DISMISS CASE
7-10-13 [[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 May 24, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before August 13, 2013, 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.

55. [13-26082](#)-B-13 LINDA DIXON
SJJ-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF STEPHEN J.
JOHNSON, DEBTOR'S ATTORNEY(S),
FEE: \$5,399.00, EXPENSES:
\$0.00.
6-28-13 [[27](#)]

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. Pursuant to 11 U.S.C. § 330, the application is approved on an interim basis in the amount of \$5,399.00 in fees and \$0.00 in costs, for a total of \$5,399.00, for the period March 7, 2013, through June 11, 2013. Applicant is authorized to apply \$2,679.00 from the balance in his trust account to the allowed fees and costs. The balance of the approved fees and costs shall be paid by the trustee through the plan as an administrative expense. Except as so ordered, the motion is denied.

On May 1, 2012, the debtor filed a chapter 13 petition. The debtor's attorney seeks compensation for services for the period of March 7, 2013, through June 11, 2013, equaling \$5399.00 in fees and \$0.00 in costs. In the absence of any objection, the court finds that the approved fees are reasonable compensation for actual, necessary and beneficial services, including pre-petition services rendered between March 7, 2013, and May 1, 2013. In re Busetta-Silvia, 314 B.R. 218 (B.A.P. 10th Cir. 2004).

The requested fees are approved by the court in absence of any objection by parties in interest. In reviewing the application, the court noticed several instances of charges for work performed by "legal staff." The court expresses no opinion as to whether these charges would be compensable in the face of an objection. See In re U.S. Trustee, 32 F.3d 1370, 1374 (9th Cir. 1994) (11 U.S.C. § 330 does not contemplate reimbursement for "normal overhead expenses" such as "clerical duties, including letter writing, phone answering, leaving messages, balancing the bank statement, and writing checks.").

The court will issue a minute order.

56. [12-35583](#)-B-13 VICTOR/ROSAISELA LLAMAS
JPJ-3

OBJECTION TO CLAIM OF PG&E
COMPANY, CLAIM NUMBER 16
6-11-13 [[93](#)]

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

The trustee's objection is sustained, and claim No. 16, filed on March 22, 2013, by PG&E Company in the amount of \$608.78 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was January 2, 2013, and to file a government claim was February 25, 2013. The Claim was filed on March 22, 2013.

The court will issue a minute order.

57. [13-26083](#)-B-13 GREGORIO RODRIGUEZ LONA MOTION TO VALUE COLLATERAL OF
PR-1 AND EULALIA RODRIGUEZ SPECIALIZED LOAN SERVICING, LLP
6-17-13 [[25](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Specialized Loan Servicing, LLC's ("Specialized") claim in this case secured by the second deed of trust on real property located at 9325 La Tonis Way, Elk Grove, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$226,750.00 on the date of the petition. The Property is encumbered by a first deed of trust held by U.S. Bank, N.A. with a balance of approximately \$430,000.00. 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.

58. [12-27385](#)-B-13 SCOTT/JANE SHUMAKER MOTION TO DISMISS CASE
MWR-1 6-28-13 [[51](#)]

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 movant withdrew the motion on July 17, 2013 (Dkt. 55).

59. [13-26589](#)-B-13 JUDITH GLADISH MOTION TO VALUE COLLATERAL OF
SDB-1 CITIBANK, N.A.
6-18-13 [[17](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Citibank, N.A.'s claim in this case secured by the second deed of trust on real property located at 755 Alwin Drive, Dixon, 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 \$350,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Citibank, N.A. with a balance of approximately \$398,000.00. Thus, the value of the collateral available to Citibank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

60. [13-26689](#)-B-13 KAMAL SHEHADEH
CAH-3

MOTION TO VALUE COLLATERAL OF
HSBC MORTGAGE CORP, USA
6-19-13 [[28](#)]

Tentative Ruling: The motion is denied.

The debtor seeks to value real property located at 9095 Auburn Folsom Road, Granite Bay, California, (the "Property") for the purpose of fixing the secured claim of HSBC Mortgage Services Corporation, USA, at \$0.00. However, the debtor's sworn Schedule A in this case (Dkt. 27 at 1) does not list any interest of the debtor in the Property and his sworn Schedule D (Dkt. 27 at 8) does not list any debt secured by the Property. The court takes judicial notice that in a status conference report filed on September 25, 2012, in his prior chapter 11 case, number 12-22796-B-11, the debtor stated that his sister-in-law owned the Property and that he lived in it. The debtor also stated in the aforementioned status conference report that his sister-in-law was living in the debtor's real property located at 6841 Woodchase Drive, Granite Bay, California, and that "the house payments are almost equal in amount, so the amounts set-off each other." The debtor can only value collateral that is property of the estate. 11 U.S.C. § 506(a).

The court will issue a minute order.

61. [13-26689](#)-B-13 KAMAL SHEHADEH
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-3-13 [[44](#)]

WITHDRAWN BY M.P.

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

The objection is removed from the calendar. The trustee withdrew the objection on July 10, 2013 (Dkt. 49).

62. [13-27992](#)-B-13 SUSAN MAGLIANO-BASSOFF
SNM-1

MOTION TO VALUE COLLATERAL
AND/OR TO AVOID LIEN OF FIRST
NORTHERN BANK OF DIXON
6-28-13 [[14](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of First Northern Bank of Dixon's ("FNBD") claim in this case secured by the second deed of trust on real property located at 3500 Pleasants Trail, Vacaville, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the

Property had a value of \$607,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Bank with a balance of approximately \$659,999.00. Thus, the value of the collateral available to FNBD on its second deed of trust is \$0.00.

The court will issue a minute order.

63. [13-27992](#)-B-13 SUSAN MAGLIANO-BASSOFF MOTION TO AVOID LIEN OF JOHN A.
SNM-2 DERONDE, JR.
6-28-13 [[19](#)]

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 John A. DeRonde, Jr., recorded in the official records of Solano County, Document No. 201000085060, is avoided as against the real property located at 3500 Pleasants Trail, Vacaville, California.

The subject real property has a value of \$607,000.00 as of the date of the petition. The unavoidable liens total \$759,995.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which she 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 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.

64. [12-40994](#)-B-13 MICHAEL LITTLE MOTION TO CONFIRM PLAN
DBJ-4 5-31-13 [[110](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The opposition filed by Rush Funding, LLC is sustained. The motion is denied.

The court agrees with the trustee that the debtor appears not to be eligible to be a debtor in chapter 13 pursuant to 11 U.S.C. § 109(e). The debtor's originally filed schedules (Dkt. 1) show that he exceeds the unsecured debt limit for a debtor in chapter 13. See In re Scovis, 249 F.3d 975, 982 (9th Cir. 2001) (Eligibility is determined from the debtor's originally filed schedules, checking only to see if the schedules were made in good faith.) However, the court does not dismiss this case because the trustee's opposition contains no request for dismissal of the case. Accordingly, the debtor has had no formal notice of any request to dismiss the case based on ineligibility. Chapter 13 eligibility requirements are not jurisdictional. See In re Wenberg, 94 B.R. 631 (9th Cir. BAP 1988).

The court denies the motion rather than continue it to a date after the

22C. Only a showing of a substantial change in circumstances and known or virtually certain figures to replace those in Form 22C can rebut that presumption. Hamilton v. Lanning, 560 U.S. ____, 130 S.Ct. 2464 (2010). The trustee has not analyzed the requirements of Lanning in connection with this objection.

The trustee's objection under § 1325(b)(1)(B) that the debtors have incorrectly calculated their current monthly income on Form 22C because they have not included a bonus received by Mr. Wailes on March 13, 2013 is overruled. The debtors are correct that the bonus was not received within the time period used to calculate current monthly income set forth in 11 U.S.C. § 101(10A)(A) and need not be included in the calculation of currently monthly income.

The trustee's objection under § 1325(b)(1)(B) regarding the debtors' deduction of \$1,100.00 as a "reasonably necessary" expense for health insurance at line 39, when they actually pay approximately \$100.00 per month out-of-pocket is sustained. The court agrees with the decision of the bankruptcy court for the Northern District of New York in In re Pagan, 443 B.R. 1 (Bankr. NDNY, 2010) which addressed this issue under a similar set of facts. In Pagan, a debtor argued that she could combine her actual out-of-pocket expense for health insurance premiums and the amount of her employer's contribution to her health care at line 39. The Pagan court disagreed:

The relevant language at Line 39 has changed since Form 22C's first iteration after BAPCPA's effective date. The original Form 22C instructed the debtor to list the "average monthly amounts that you actually expend ..." at Line 39. See 2008 Collier Pamphlet Edition Bankruptcy Rules, Part 2 at F-147. After the change to the form, the language at Line 39 is explicitly consistent with the statute, including expenses "that are reasonably necessary for yourself, your spouse, or your dependents." 2009 Collier Pamphlet Edition Bankruptcy Rules, Part 2 at F-125. The Trustee notes the change in the language (Dkt. No. 30), but does not agree with the Debtor's interpretation that it was intended to permit the deduction of the entire health insurance premium, including the employer-paid portion, to align with the language in Section 707(b). To support its interpretation, the Debtor cites to the treatise, Keith M. Lundin, Chapter 13 Bankruptcy, 3rd Edition at Section 380.1 (2000 and Supp. 2007-1). However, the Lundin treatise does not make any mention of whether an employer's contribution to a health insurance premium may be included at Line 39. The Lundin treatise notes that the change in language "expands the allowance at Line 39 to include spouses and dependents—an important improvement over the [original] form. The deduction for a spouse's health insurance, disability insurance or health savings account is allowed by the statute and appropriate at Line 39 without regard to whether the spouse is a joint debtor." Lundin, Section 380.1 at 380-22. It is the Debtor's position that the analysis should not consider who makes the payments. The Debtor considers it irrelevant whether a debtor supplies the total cost of insuring the family or benefits from an employer's contribution toward the health insurance expense.

The court rejects the Debtor's interpretation. To accept the Debtor's analysis and allow the deduction of an employer's contribution to a health insurance premium without otherwise accounting for that employee benefit as income would, in this

court's opinion, improperly allow debtors to significantly reduce their disposable income contrary to the intent of the statute.

Pagan, 443 B.R. at 4.

Furthermore, the court interprets the phrase "reasonably necessary health insurance expenses" in 11 U.S.C. § 707 to mean expenses which are reasonably necessary for people like the debtors. The debtors could not, for example, claim health insurance expenses for people who are substantially older than they are. Here, the debtors are "employees in the medical and health insurance fields," who have health insurance through an insurance group which is paid for largely by their employers, yet they claim an expense at line 39 that would be the equivalent of the expense of persons who did not have employer-provided insurance benefits and were not members of an insurance group.

The trustee's objection under § 1325(b)(1)(B) regarding the debtors' inclusion of voluntary 401(k) contributions in the amount of \$559.96 at line 55 of Form 22C is sustained. The court agrees with the decision of the Bankruptcy Appellate Panel of this circuit in Parks v. Drummond (In re Parks), 475 B.R. 703, 706 (9th Cir. BAP 2012). The authorities cited by the debtors are not binding on this court.

In light of the foregoing, the court reduces the \$7,883.05 of total adjustments to determine disposable income at line 58 of Form 22C to \$6,323.09. Subtracting that figure from \$6,941.07 of current monthly income from the income side of Form 22C results in \$617.98 of monthly disposable income. As a result, the debtors must propose a sixty-month plan and must pay no less than \$37,078.80 to general unsecured creditors through the plan. The proposed plan has a term of only 36 months and would pay \$1,708.35 to general unsecured creditors. Accordingly, the motion is denied.

The court will issue a minute order.

68. [13-24396](#)-B-13 JOHN/MARY JO WAILES
NBC-2

COUNTER MOTION TO DISMISS CASE
7-8-13 [[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 August 13, 2013, 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.

69. [10-39497](#)-B-13 GARY BOOK
SJJ-1

MOTION FOR COMPENSATION FOR
STEPHEN J. JOHNSON, DEBTOR'S
ATTORNEY(S), FEES: \$1,500.00,
EXPENSES: \$0.00
6-27-13 [[20](#)]

Tentative Ruling: The application is denied without prejudice.

The application is denied because the applicant has shown no evidence that the fees for which he seeks approval constitute "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a). There are no timesheets filed with the application, nor is there any description in the application itself of the services rendered by the applicant for which approval of fees is sought. It appears that the applicant is attempting to obtain approval of the fees on a "no-look" basis, but the fixed "no-look" fee allowed by Local Bankruptcy Rule 2016-1 can only be approved in connection with confirmation of the chapter 13 plan. A chapter 13 plan was confirmed in this case by order entered July 13, 2011 (Dkt. 19), more than two years before the date of this hearing. The order confirming the plan does not contain any provision approving attorney's fees for the applicant. To obtain approval of fees, applicant must now comply with 11 U.S.C. §§ 330 and Fed. R. Bankr. P. 2016. For the reasons stated above, the instant application does not meet those requirements.

The court will issue a minute order.

70. [10-41997](#)-B-13 ROBERT/MARCY WILKERSON
SDB-3

MOTION TO INCUR DEBT
6-18-13 [[42](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe for adjudication. By this motion the debtors seek authorization from the court to incur debt for the purposes of purchasing a new tractor-trailer vehicle to be used in the debtors' business. However, the debtors have not shown that if this motion is granted an actual sale transaction will take place. There is no copy of a purchase contract filed with the motion, nor is there any evidence that the debtors will actually be able to obtain the financing that they propose in the motion. The debtors essentially seek an order "pre-approving" the purchase, the terms of which may or may not be agreed to by a seller or entity extending credit.

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

The court will issue a minute order.

71. [11-49197](#)-B-13 JOHN RAYL
SDH-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SCOTT D. HUGHES
FOR SCOTT D. HUGHES, DEBTOR'S
ATTORNEY(S), FEES: \$2,875.00,
EXPENSES: \$37.50
6-14-13 [[97](#)]

Tentative Ruling: The application is denied without prejudice.

This motion for approval of additional attorney's fees is denied because the applicant has not directed the court's or creditors' or the trustee's attention to the specific time entries which form the basis for the request for additional fees. Under LBR 2016-1(c)(3), the "no look" fee will generally compensate the attorney fairly for "all preconfirmation services and most postconfirmation services" and should not serve as a "retainer that, once exhausted, automatically justifies a motion for additional fees." Simply attaching time records that include all services performed in the case and including a brief narrative description of the activities that form the basis of the request for additional fees does not allow the court, creditors or the trustee to assess the reasonableness of the time actually claimed to be the basis of the additional fee request. Considering the fact that the additional fees requested are equal to the difference between the approved "no-look" fee and the full amount of services rendered in this case at the applicant's hourly rate, it appears that the applicant is treating the "no-look" fee as a retainer.

The court will issue a minute order.

72. [13-25398](#)-B-13 LUCIA CHURCHES
SJJ-1

MOTION TO CONFIRM PLAN
6-7-13 [[30](#)]

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

The court will issue a minute order.

73. [13-25398](#)-B-13 LUCIA CHURCHES
SJJ-1

COUNTER MOTION TO DISMISS CASE
7-16-13 [[42](#)]

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 August 13, 2013, 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.

74. [13-24099](#)-B-13 ARVIN/JENNIFER CAYANAN MOTION TO CONFIRM PLAN
EWV-25 6-25-13 [[26](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed June 25, 2013, is denied.

The motion is also denied because the debtors did not give sufficient notice of the motion to parties in interest. Pursuant to Federal Rule of Bankruptcy Procedure 2002(b)(2) and Local Bankruptcy Rule 2016-1(d)(1), a motion to confirm an amended plan (i.e. a "modified plan proposed prior to confirmation") must be served on parties in interest at least 42 days prior to the hearing. The instant motion was filed and served only 35 days before the date of the hearing.

The court will issue a minute order.

75. [13-24099](#)-B-13 ARVIN/JENNIFER CAYANAN COUNTER MOTION TO DISMISS CASE
EWV-25 6-27-13 [[34](#)]

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 August 13, 2013, 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.

76. [13-29036](#)-B-13 ANTHONY CURRINGTON MOTION FOR CHANGE OF VENUE
PJM-1 7-16-13 [[31](#)]

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.

77. [10-40661](#)-B-13 ROBERT/EVELYN FERREIRA MOTION TO SELL O.S.T.
MAC-6 7-17-13 [[80](#)]

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.