

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

September 2, 2014 at 9:32 A.M.

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1. [13-33803](#)-B-13 MELINDA GUERRERO OBJECTION TO CLAIM OF CAVALRY
JPJ-2 SPV I, LLC, CLAIM NUMBER 14
7-10-14 [[34](#)]

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 May 6, 2014, by Cavalry SPV I, LLC in the amount of \$504.21 (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 5, 2014, and to file a government claim was April 23, 2014. The Claim was filed on May 6, 2014.

The court will issue a minute order.

2. [14-26903](#)-B-13 VERNON/JULIET ATKINS OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-14-14 [[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 June 30, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 16, 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.

3. [14-28103](#)-B-13 LEA CHASE MOTION TO EXTEND AUTOMATIC STAY
SDB-1 8-12-14 [[8](#)]

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

4. [13-24704](#)-B-13 TIMOTHY/KERRI FULTON OBJECTION TO CLAIM OF NEVADA
JPJ-3 COUNTY TAX COLLECTOR, CLAIM
NUMBER 15
7-10-14 [[171](#)]

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

The trustee's objection is sustained, and claim No. 15, filed on November 22, 2013, by the Nevada County Tax Collector in the amount of \$2,324.17 (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 August 14, 2013, and to file a government claim was October 2, 2013. The Claim was filed on November 22, 2013.

The court will issue a minute order.

5. [13-35804](#)-B-13 BRENDA BRUESSARD MOTION TO MODIFY PLAN
SS-1 7-24-14 [[21](#)]

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

The motion is granted and the modified plan filed July 24, 2014 (Dkt. 23) is confirmed.

The motion is granted in the absence of opposition. The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors from 60.00% to 15.00%, and that the total amount to be distributed under the modified plan is less than the amount of the debtor's projected disposable income calculated pursuant to the debtor's sworn Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Dkt. 1 at 43). The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd. 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified

plan would be confirmed in the presence of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

6. [14-26904](#)-B-13 DANIEL WEAVER
JPJ-1
- OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-14-14 [[36](#)]

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 July 1, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 16, 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.

7. [14-27007](#)-B-13 WILLIAM VENTURA
JPJ-1
- OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-14-14 [[33](#)]

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

The objection is continued to September 16, 2014, at 9:32 a.m., to be heard after the hearings on the debtor's motions to value the collateral of Bank of America, N.A. and Loretta Ventura.

The court will issue a minute order.

8. [14-20010](#)-B-13 ALI/KELLY AKYUZ MOTION TO RECONVERT CASE TO
JPJ-1 CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
8-12-14 [[94](#)]

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

9. [14-25014](#)-B-13 PAUL/ALICE SALINAS MOTION TO CONFIRM PLAN
LRR-2 7-8-14 [[41](#)]

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

The motion is dismissed.

The motion is moot. On August 27, 2014, the debtors filed a second amended plan and a motion to confirm it. The amended plan supersedes the plan which is the subject of this motion and to which the opposition of the chapter 13 trustee and Opus Bank are directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

10. [14-25014](#)-B-13 PAUL/ALICE SALINAS COUNTER MOTION TO DISMISS CASE
LRR-2 8-19-14 [[87](#)]

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

The countermotion is dismissed.

The countermotion is moot. On August 27, 2014, the debtors filed an amended plan and motion to confirm. The filing of the amended plan and the motion to confirm provides the relief sought in the countermotion.

The court will issue a minute order.

11. [14-25014](#)-B-13 PAUL/ALICE SALINAS OBJECTION TO HOMESTEAD
KLA-1 EXEMPTION
7-21-14 [[69](#)]

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

The objection is overruled.

The objecting creditor, Opus Bank ("Opus") objects to the debtors' claim of exemption in their residence located 9889 Harvey Road, Galt, California (the "Property") in the amount of \$54,109.00 pursuant to Cal. Civ. Proc. Code § 704.730(a)(2). Opus objects that the claim of exemption is "improper" because it supposedly does not take into account Opus' third priority deed of trust on the Galt Property which allegedly secures an obligation which consumes all of the equity in the Property after the amounts secured by the first and second deeds of trust are taken into account.

However, there is nothing in the Bankruptcy Code or in the California Code of Civil Procedure which requires the debtors, in calculating the amount of their claims of exemption in real property, to claim as exempt only the amount of equity remaining after all unavoidable liens or encumbrances are taken into account. Opus reads too much into Cal. Civ. Proc. Code § 704.850(a), which instructs a levying officer to distribute the proceeds of a forced sale of a homestead first to the discharge of liens and encumbrances and then to the judgment debtor in the amount of any applicable exemption of the proceeds. Cal. Civ. Proc. Code § 704.850(a) does not prescribe a limitation in the amount of the claimed exemption based on that distribution scheme. Similarly, Opus also reads too much into In re Amiri, 184 B.R. 60, 63 (B.A.P. 9th Cir. 1995), which dealt with a lien avoidance issue and not the amount of an exemption and merely stands for the proposition that, under the version of 11 U.S.C. § 522(f) in effect at that time, a judicial lien did not impair the debtors' homestead exemption under California law, regardless of whether there was little or no equity, when debtors had not filed a declaration of homestead. Amiri has nothing to do with the amount of an exemption which a debtor may claim. The court also notes that Amiri's holding is of limited use in the present day at any rate, as the panel itself pointed out that under the recently enacted (at the time) 11 U.S.C. § 522(f)(2), the case would have been decided differently.

The court will issue a minute order.

12. [12-22415](#)-B-13 KATIE EVANS
CAH-2

MOTION TO MODIFY PLAN
7-23-14 [[53](#)]

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

The motion is granted, and the modified plan filed July 23, 2014, is confirmed.

The court will issue a minute order.

13. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER OBJECTION TO CLAIM OF PNC BANK,
JPJ-2 AND JOSEPH ALEXANDER CLAIM NUMBER 7
7-15-14 [[88](#)]

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

The trustee's objection is sustained, and claim No. 7, filed on May 30, 2014, by PNC Bank in the amount of \$139,019.30 (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 2, 2014, and to file a government claim was June 1, 2014. The Claim was filed on May 30, 2014.

The court will issue a minute order.

14. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN MOTION TO CONFIRM PLAN
MRL-5 7-9-14 [[63](#)]

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

The motion is dismissed as moot. On August 25, 2014, the debtors filed an amended plan and a motion to confirm it. The amended plan supersedes the plan which is the subject of this motion. 11 U.S.C. § 1323(b).

The court will issue a minute order.

15. [14-26818](#)-B-13 MARIE TABAREZ OBJECTION TO CONFIRMATION OF
BHT-1 PLAN BY THE GOLDEN 1 CREDIT
UNION
7-17-14 [[12](#)]

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. Confirmation of the initial plan filed June 30, 2014, is denied.

The court will issue a minute order.

16. [14-27120](#)-B-13 BYRON/DAZZA HUGHES
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-14-14 [[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 July 9, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 16, 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.

17. [11-26822](#)-B-13 FRED/DEBORAH MESTAS
SS-3

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
8-1-14 [[61](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Bank, N.A.'s ("WFB") claim in this case secured by the second deed of trust on real property located at 3408 Buccaneer Circle, 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 \$150,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen/City National Bank with a balance of approximately \$303,000.00. Thus, the value of the collateral available to WFB on its second deed of trust is \$0.00.

The court will issue a minute order.

18. [09-33825](#)-B-13 ABEL/TANNIA CHAVEZ
PGM-9

MOTION TO APPROVE LOAN
MODIFICATION
7-31-14 [[142](#)]

Disposition Without Oral Argument: This motion is unopposed. The court

issues the following abbreviated ruling.

The motion is granted. The debtors are authorized to incur new debt on the terms set forth in the Loan Modification Agreement filed as Exhibit "A" to the motion (Dkt. 145 at 4).

The court will issue a minute order.

19. [14-25625](#)-B-13 DOUGLAS THURSTON
JPJ-2
WITHDRAWN BY M.P.
- OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-29-14 [[22](#)]

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 chapter 13 trustee withdrew the objection on August 11, 2014 (Dkt. 34).

20. [10-24133](#)-B-13 RUBIA PACKARD
BLG-2
- MOTION TO INCUR DEBT
8-15-14 [[40](#)]

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.

21. [11-29033](#)-B-13 MERCEDES ALLEN
PGM-3
- MOTION TO MODIFY PLAN
7-21-14 [[48](#)]

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

The motion is granted, and the modified plan filed July 21, 2014, is confirmed.

The court will issue a minute order.

22. [10-37135](#)-B-13 ALEKSEI/LARISA BAZANOV
SLH-3
- MOTION TO VALUE COLLATERAL OF
CHASE BANK USA, N.A.
7-24-14 [[49](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Chase Bank USA, N.A. ("Chase") claim in this case secured by the second deed of trust on real property located at 8127 Deer Spring Circle, Antelope, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$117,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Security National Mortgage Company with a balance of approximately \$132,000.00. 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.

23. [11-36244](#)-B-13 CLAUDE NEEDHAM CONTINUED MOTION TO APPROVE
JB-1 SHORT SALE
7-15-14 [[49](#)]

Tentative Ruling: This motion continued from August 5, 2014. It remains in a preliminary posture 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.

24. [14-25045](#)-B-13 RANDY FOORD MOTION TO CONFIRM PLAN
LRR-2 7-7-14 [[33](#)]

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

The motion is granted and the amended plan filed July 7, 2014, 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.

25. [14-24749](#)-B-13 DONNETTE CHATTERS MOTION TO CONFIRM PLAN
JMO-1 7-17-14 [[31](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed July 17, 2014 (Dkt. 34) is denied.

The court will issue a minute order.

26. [14-24749](#)-B-13 DONNETTE CHATTERS
JMO-1

COUNTER MOTION TO DISMISS CASE
8-19-14 [[47](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 46) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before September 16, 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.

27. [09-21751](#)-B-13 KRISTINE BOWEN
PGM-4

MOTION TO REFINANCE
7-31-14 [[103](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. By this motion the debtor seeks court authorization to refinance the loan with JPMorgan Chase Bank, N.A. (the "Lender"), holder of the first deed of trust secured by the debtor's residence located at 718 Meadowhawk Drive, Vacaville, California 96787. However, the debtor has failed to establish that there is an actual, finalized refinancing agreement for the court to approve.

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

Here, the motion is not ripe for adjudication for the following reasons. First, the debtor has provided no evidence that the Lender has consented to the terms of the refinancing agreement. The debtor has filed two exhibits in support of the motion (Dkt. 106). However, neither exhibit has been signed by a representative of the Lender and the debtor has provided no other evidence that the Lender has consented to the terms of the refinancing agreement. The Lender's consent to the refinancing agreement may be manifested in ways other than executing the refinancing agreement. For example, it 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 not ripe for adjudication.

Second, neither the "Good Faith Estimate" (the "GFE") nor the Settlement Statement (HUD-1) (the "Settlement Statement") attached as Exhibits "A" and "B", respectively, demonstrate that there is an actual, finalized refinancing agreement for the court to approve. Specifically, the GFE states that the interest rate offered is available through July 14, 2014, at 2:00 p.m., after which time the interest rate, some of the loan origination charges, and the proposed monthly payment are subject to change. Additionally, the "estimate for all other settlement charges" is available through August 29, 2014, at 2:00 p.m. As of today's date, both deadlines have expired. Furthermore, to the extent the Settlement Statement could even be construed as an actual, final agreement, it contains neither the terms of the refinancing loan nor a signature from a representative of the Lender. Based on the foregoing, the motion is dismissed without prejudice.

The court will issue a minute order.

28. [14-27051](#)-B-13 CHRISTINA SONLEITNER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-14-14 [[16](#)]

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 motion to dismiss is denied. The plan filed July 8, 2014 (Dkt. 7) will be confirmed.

The sole basis for the trustee's objection is that the debtor failed to appear at the duly noticed first meeting of creditors set for August 7, 2014. However, the docket reflects that both the debtor and her counsel appeared at the continued meeting of creditors held on August 28, 2014. The meeting was concluded as to the debtor on that date. Accordingly, the trustee's objection has been resolved and is therefore overruled.

The court will issue a minute order overruled the trustee's objection and denying the motion to dismiss. 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 plan.

29. [14-26054](#)-B-13 RAYMOND MARCHANT
JPJ-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
7-9-14 [[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 overruled. The trustee's motion to dismiss (Dkt. 15) is denied. The plan filed June 6, 2014 (Dkt. 5) will be confirmed.

The trustee objects to confirmation of the plan on the grounds that the plan's feasibility depends on the granting of two motions to value collateral of American General regarding the second and third deeds of trust secured by the debtor's residence. However, both matters were heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment for those claims. Accordingly, the trustee's objections are overruled.

The court will issue a minute order overruling the trustee's objections and denying the motion to dismiss. 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 plan.

30. [14-26054](#)-B-13 RAYMOND MARCHANT
TOG-1

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES
7-31-14 [[20](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated 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 Springleaf Financial Services, formerly known as American General Finance ("Springleaf")'s claim secured by the second deed of trust on real property located at 45 Ramon Drive, Galt, California 95632 (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 \$192,341.00 on the date of the petition. The Property is encumbered by a first deed of trust held by GMAC Mortgage with a balance of approximately \$262,500.00. Thus, the value of the collateral available to Springleaf on its second deed of trust is \$0.00.

The court will issue a minute order.

31. [14-26054](#)-B-13 RAYMOND MARCHANT
TOG-3

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES
7-31-14 [[25](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated 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 Springleaf Financial Services, formerly known as American General Finance ("Springleaf")'s claim secured by the third deed of trust on real property located at 45 Ramon Drive, Galt, California 95632 (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 \$192,341.00 on the date of the petition. The Property is encumbered by a first deed of trust held by GMAC Mortgage with a balance of approximately \$262,500.00 and a second deed of trust held by Springleaf with a balance of approximately \$20,000.00. Thus, the value of the collateral available to Springleaf on its third deed of trust is \$0.00.

The court will issue a minute order.

32. [14-26963](#)-B-13 NORTONIA CROSS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-14-14 [[16](#)]

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 August 28, 2014, the debtor filed an amended plan (Dkt. 24) and a motion to confirm it (Dkt. 21), setting the matter for hearing on October 28, 2014, at 9:32 a.m. 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.

33. [12-38965](#)-B-13 JOSEPH/VICKIE WHITSON
JPJ-3

OBJECTION TO CLAIM OF WELLS
FARGO BANK, N.A., CLAIM NUMBER
27
7-10-14 [[54](#)]

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

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) (emphasis added). Forty-two days prior to today's hearing date was July 22, 2014. According to the proof of service filed August 5, 2014 (Dkt. 95), parties-in-interest were served with the motion, notice of hearing, and other supporting documents on August 5, 2014, which is only twenty-eight days prior to the hearing date. Thus, the debtor has 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 dismiss the motion. LBR 1001-1(g).

The trustee's opposition is dismissed because the motion to which his opposition is directed has been dismissed.

The court will issue a minute order.

37. [14-26775](#)-B-13 EDDIE CABRERA
JPJ-1

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

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

The trustee's objection that the debtor is ineligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 109(h) is sustained. The bankruptcy case is dismissed pursuant to 11 U.S.C. § 1307(c) due to the debtor's ineligibility to be a debtor pursuant to 11 U.S.C. § 109(h). The trustee's remaining objections are dismissed.

Pursuant to 11 U.S.C. § 109(h), "subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis." 11 U.S.C. § 109(h)(1). 11 U.S.C. § 521(b)(1) requires that an individual debtor filed with the court a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor. As the trustee correctly asserts, the debtor has failed to file said certificate with the court. Accordingly, the bankruptcy case is dismissed for

Tentative Ruling: This matter is continued from August 5, 2014, at 9:32 a.m. with a briefing schedule. The trustee timely filed a supplemental brief on August 19, 2014 (Dkt. 32). The debtor failed to file a reply. The court now issues the following abbreviated tentative ruling.

The debtor's opposition is overruled. The motion is granted, and the modified plan filed May 29, 2014 (Dkt. 26) is confirmed.

On this motion, the court requested further briefing on the issue of whether, as the plan proponent and someone statutorily authorized to raise a § 1325(b) objection, the trustee's analysis in support of his motion to modify the confirmed plan in this case should start with the presumption of disposable income created by Form 22C and proceed with a Lanning analysis to alter the presumptive income component, the presumptive expense component, or both. On further review, this was not the right case in which to request the briefing, since the debtor's Form 22C (Dkt. 1, p. 42) shows that the debtor is below median.

Nevertheless, the court has further considered the issue on which further briefing was requested. This department has heretofore declined to follow Sunahara v. Burchard (In re Sunahara), 326 B.R. 768 (9th Cir. BAP 2005), which held that 11 U.S.C. § 1325(b) is not incorporated by 11 U.S.C. § 1329(b)(1) and is therefore inapplicable to post-confirmation plan modifications. This department's view was based on the opening phrase of 11 U.S.C. § 1325(a), which states: "Except as provided in subsection (b)...." That phrase led this department to conclude that § 1329(b)(1)'s incorporation of "the requirements of section 1325(a)" automatically incorporated the provisions of section 1325(b).

The court is not aware of any Ninth Circuit Court of Appeals authority squarely on the issue. However, consideration of the trustee's briefing, and review of cases that have been decided since Sunahara [see In re Grutsch, 453 B.R. 420, 424 & n. 14 (Bankr.D.Kan.2011) (collecting cases)], this department has changed its position and now concludes that if the issue were before the Ninth Circuit Court of Appeals, that court would follow the majority view, including Sunahara, and hold (1) that section 1325(b) does not apply to post-confirmation plan modifications, and (2) that the requirements of section 1329(b)(1) are met if the specific requirements of section 1325(a)(1) through (9) are met. Accordingly, this department will now also follow the majority view.

The court will issue a minute order.

Tentative Ruling: Creditor Laborers' Trust Funds ("LTF")'s objection that its claim is not properly provided for in the plan is sustained. LTF's remaining objections, including those from its objection to confirmation filed May 6, 2014 (Dkt. 35) which have been renewed in its present

opposition, are dismissed without prejudice. The motion to confirm the amended plan filed July 8, 2014 (Dkt. 86) (the "Plan") is denied.

LTF filed its amended proof of claim, claim number 6, on August 4, 2014, in the total amount of \$357,124.00. Of that amount, \$170,076.00 is listed as unsecured and entitled to priority, and \$187,048.00 is secured. The Plan currently provides for LTF's secured claim in Class 2.A in the amount of \$1.00 to be paid with a monthly dividend of \$1.00 at 4.25% interest. LTF's unsecured priority claim is provided for in Class 5.6 in the amount of \$1.00 and, according to the language in the Plan, is being listed out of an "abundance of caution." Section 2.04 of the Plan states that "the proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Although the Plan states that part of LTF's claim is being listed out of an abundance of caution, which suggests that the debtor may object to the allowance of LTF's claim, to date the debtor has failed to file an objection to claim. A claim is deemed allowed until an objection is filed. 11 U.S.C. § 502(a). Accordingly, LTF's proof of claim, not the specific provisions of the Plan, controls. The Plan does not permissibly provide for LTF's secured and priority claims.

The court will issue a minute order.

42. [11-26588](#)-B-13 SCOTT/LAURA MADDY
MWB-2

MOTION TO INCUR DEBT
7-30-14 [[35](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. By this motion the debtors seek court authorization to incur new debt from Skyline Financial Corporation aka Skyler David Young (the "Lender") secured by a mortgage on their residence, and to use the proceeds from the loan to pay off the present mortgage held by Bank of America, N.A. However, the debtors have failed to establish that there is an actual, finalized loan agreement with the Lender for the court to approve.

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

Here, the motion is not ripe for adjudication for the following reasons. First, the debtors have provided no evidence that the Lender has consented to the terms of the loan agreement. The court acknowledges the various attachments filed as Exhibits "A-1" through "A-7" (Dkt. 38). However, none of these documents have been signed by a representative of

the Lender and the debtors have provided no other evidence that the Lender has consented to the terms of the loan agreement. The Lender's consent to the loan agreement may be manifested in ways other than executing the loan agreement. For example, it 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 not ripe for adjudication.

Second, the court finds that neither the "Good Faith Estimate" (the "GFE") nor the Federal Truth-In-Lending Disclosure Statement (the "Disclosure Statement") demonstrate that there is an actual, finalized loan agreement for the court to approve. Specifically, the GFE states that the interest rate offered is available through August 4, 2014, after which time the interest rate, some of the loan origination charges, and the proposed monthly payment are subject to change. Additionally, the "estimate for all other settlement charges" is available through June 24, 2014. As of today's date, both deadlines have expired. Furthermore, to the extent the Disclosure Statement could even be construed as an actual, final agreement, it has not been signed. Based on the foregoing, the motion is dismissed without prejudice.

If the matter were ripe for adjudication, the trustee's opposition would be sustained for the reasons set forth therein.

The court will issue a minute order.

43. [14-27788](#)-B-13 KRISTEEN MONROY AMENDED MOTION TO VALUE
RK-1 COLLATERAL OF WELLS FARGO BANK,
N.A.
8-13-14 [[16](#)]

Tentative Ruling: The stipulation filed August 22, 2014 (Dkt. 29) (the "Stipulation") is approved and binding between the parties thereto. Approval of the Stipulation is neither a plan modification nor authorization to provide for the Wells Fargo Bank, N.A. ("WFB") claim outside the plan. Pursuant to the terms of the Stipulation, the opposition filed by WFB is deemed withdrawn. The matter is removed from the calendar as resolved by the Stipulation.

The court will issue a minute order.

44. [12-31391](#)-B-13 STEVE/EDIE SZEKULA MOTION TO MODIFY PLAN
PLC-3 7-28-14 [[57](#)]

Tentative Ruling: The motion to confirm the modified plan filed July 28, 2014 (Dkt. 58) (the "Plan") is dismissed without prejudice.

The motion was not properly served. In order to confirm a chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, Local Bankruptcy Rule 3015-1(d)(2) requires that parties-in-interest be served at least thirty-five (35) days prior to the hearing. Although the debtors complied with the timeliness requirement, the proof of service filed July

46. [14-26647](#)-B-13 RONALD/KELLY BRIGGS
DL-1

OBJECTION TO CONFIRMATION OF
PLAN BY BARNETT & ASSOCIATES
ACCOUNTANCY CORPORATION PROFIT
SHARING PLAN, ET AL.
8-13-14 [[28](#)]

Tentative Ruling: Creditor Barnett & Associates Accountancy Corporation Profit Sharing Plan, Kelly P. Houston & Roger L. Haran Family Trust, Brian W. Neff Retirement Plan, and Gregory T. Smith Revocable Trust (the "Creditor")'s objection that the plan does not provide for the full value of its claim pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii) is sustained. The Creditor's objection that the plan was not filed in good faith as required by 11 U.S.C. § 1325(a)(3) is overruled. Confirmation of the plan filed July 9, 2014 (Dkt. 11) (the "Plan") is denied.

The Creditor filed its proof of claim, claim number 2, on August 13, 2014, in the secured amount of \$60,268.06, secured by real property located at 7290 Green Valley Road, Placerville, California (the "Property"). The Plan provides for the claim in Class 4, which is modified by section 6.01 of the Additional Provisions to state that the debtors intend to sell the Property to pay the Creditor's claim in full at some unspecified time during the plan's 60 month commitment period. As the Creditor correctly points out, its claim has been mis-classified in Class 4. Pursuant to the promissory note attached to its proof of claim, the maturity date on the note was August 1, 2014. Class 4 is reserved for claims which "mature after the completion of this plan, are not in default, and are not modified by this plan." The claim should be provided for in Class 2 and include an interest rate on the monthly payment. The second issue, as noted by the court elsewhere on today's calendar, is that the debtors provide no evidence that they will be able to sell the Property for a price sufficient to fully pay the claim within a reasonable time. There is no explanation provided in the Plan as to when the Property will be sold or even marketed for sale. The court notes that elsewhere on today's calendar the debtors were given authorization to employ a realtor to sell property located at 1024 Wallace Road, Placerville, California, but not to sell the Property. Accordingly, the Creditor's objection under 11 U.S.C. § 1325(a)(5)(B)(ii) is sustained.

The Creditor's objection under 11 U.S.C. § 1325(a)(3) is overruled. As the Creditor correctly cites in its objection, the Ninth Circuit's Bankruptcy Appellate Panel has developed a test that requires consideration of the "totality of the circumstances" in determining whether a chapter 13 plan has been filed in good faith. Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988) *citing* Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir.1982). In reaching this determination, the court should look to a non-exhaustive list of factors, all of which the Creditor has cited. In this instance, however, the court is not persuaded that the Plan has not been proposed in good faith and not by any means forbidden by law. The Creditor's arguments all fall within two of the non-exhaustive factors set forth in In re Warren. First, it argues that there are a series of inaccuracies presented in the Plan. Specifically, that its claim has been mis-classified in Class 4 and that the Additional

Provisions provide for a sale of real property (in an unclear manner) yet the debtors have failed to provide evidence of a sale within a reasonable time. Second, that its claim is listed in Class 4 yet is potentially being modified by the Additional Provisions.

In re Warren instructs this court to make a determination as to the good faith nature of the Plan by examining all militating factors "Where there is an objection, more than a bare presentation of the plan and provision for payment thereunder is requisite." In re Warren, 89 B.R. at 92. Furthermore, "a good faith test...should examine the intentions of the debtor and the legal effect of the confirmation of a Chapter 13 plan in light of the spirit and purposes of Chapter 13." Id. at 93 (citing Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1444 (9th Cir. 1986)). Based on the foregoing, the simple facts that the Creditor's claim is mis-classified in Class 4, as impermissibly modified by the Additional Provisions, are insufficient to show that the Plan has been filed in bad faith. Furthermore, only truly analyzing two factors of a non-exhaustive list of factors is insufficient. In examining the intentions of the debtors in this case, it is clear that they intend to sell the Property to pay the Creditor's claim in full. They have simply failed to provide sufficient evidence, or any evidence at all, as to how and when they will be able to accomplish this goal to support a finding that the debtors "will be able to make all payments under the plan." This does not give rise to a finding that the Plan was filed in bad faith. Accordingly, the Creditor's objection under 11 U.S.C. § 1325(a)(3) is overruled.

The court will issue a minute order.

47. [14-26647](#)-B-13 RONALD/KELLY BRIGGS MOTION TO EMPLOY LYONS REAL
JLB-1 ESTATE AS REALTOR
7-31-14 [[18](#)]

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. § 327(a) and Fed. R. Bankr. P. 2014, the debtors are authorized to employ Marilyn Goff ("Goff") of Lyons Real Estate as realtor on the terms and conditions set forth in both the motion and attached Residential Listing Agreement (Dkt. 21, p.5). Goff's fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Nothing in this order constitutes approval of a final sale to any particular entity, as such relief requires a motion to sell which complies with the applicable requirements of the Bankruptcy Code, Local Bankruptcy Rules, and Federal Rules of Bankruptcy Procedure. Except as so ordered, the motion is denied.

The court finds that Goff is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court will issue a minute order.

48. [14-26647](#)-B-13 RONALD/KELLY BRIGGS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-15-14 [[36](#)]

Tentative Ruling: The trustee's amended objections and motion to dismiss (Dkt. 40) are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's first objection that the joint debtor failed to file an amended Statement of Social Security Number(s) is overruled. The trustee's sixth objection that the plan proposes an impermissible modification to the secured claim of Union Bank based on a purported loan modification agreement is overruled. The trustee's remaining objections are sustained for the reasons set forth therein. Confirmation of the plan filed July 9, 2014 (Dkt. 11) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 16, 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.

On August 28, 2014, the debtors filed an amended Statement of Social Security Number(s) (Dkt. 42), amended petition (Dkt. 43), and notice of amended Statement of Social Security Number(s) (Dkt. 44) to correct the discrepancy the trustee notes in his first objection. Accordingly, the trustee's first objection is overruled.

The trustee asserts in his sixth objection that the plan does not comply with 11 U.S.C. § 1322(b)(2) in that it proposes an impermissible modification of the secured claim of Union Bank, holder of the first deed of trust on the debtors' principal residence. The basis for the trustee's argument is the existence of a purported loan modification agreement between the debtors and Union Bank to which Union Bank has neither consented to nor is considering. However, the plan makes no reference to any efforts on the part of the debtors to obtain a loan modification agreement with Union Bank. Section 6.01 of the Additional Provisions speaks to the debtors' intent to sell Union Bank's collateral and pay off the secured claim, but makes no mention of a loan modification agreement. Accordingly, the trustee's sixth objection is overruled.

The court will issue a minute order.

49. [14-27099](#)-B-13 JOHN/CYNTHIA MOORE
FWK-1

OBJECTION TO CONFIRMATION OF
PLAN BY BARBARA MARCOTTE
8-14-14 [[33](#)]

Tentative Ruling: Creditor Barbara Marcotte (the "Creditor")'s objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be

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 first meeting of creditors was held on August 7, 2014, and continued to August 28, 2014. The docket reflects that both debtors appeared at the continued meeting of creditors. Accordingly, the trustee's first objection is overruled.

The debtors filed a motion to value collateral of Springfield on July 10, 2014 (Dkt. 15), which was granted by order entered August 22, 2014 (Dkt. 47) in a manner consistent with the plan's proposed treatment for Springfield's claim. Accordingly, the trustee's second objection is overruled.

The court will issue a minute order.