

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

September 10, 2013 at 9:32 A.M.

1. [13-29501](#)-B-13 RORY/SHELLY PETERS MOTION TO VALUE COLLATERAL OF
CAH-1 BENEFICIAL FINANCIAL I, INC.
8-13-13 [[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 Beneficial Financial I's ("Beneficial") claim in this case secured by the second deed of trust on real property located at 4709 Medina Way, North Highlands, 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 \$125,000.00 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 \$224,000.00 thus, the value of the collateral available to Beneficial on its second deed of trust is \$0.00.

The court will issue a minute order.

2. [12-28102](#)-B-13 RALPH/SUZANNE EMERSON CONTINUED MOTION TO CONVERT
LR-9 CASE FROM CHAPTER 13 TO CHAPTER
7
6-8-13 [[249](#)]

Tentative Ruling: None.

3. [12-28102](#)-B-13 RALPH/SUZANNE EMERSON CONTINUED MOTION TO CONFIRM
PGM-7 PLAN
4-30-13 [[232](#)]

Tentative Ruling: None.

4. [12-28102](#)-B-13 RALPH/SUZANNE EMERSON CONTINUED COUNTER MOTION TO
PGM-7 DISMISS CASE
5-28-13 [[241](#)]

Tentative Ruling: None.

5. [10-36203](#)-B-13 RICHARD/MALINDA MORRIS MOTION TO MODIFY PLAN
PGM-2 8-6-13 [[61](#)]

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

The motion is granted, and the modified plan filed August 6, 2013 (the "Modified Plan"), is confirmed.

The motion is granted and the Modified Plan is confirmed in the absence of any objection by the trustee or the holder of an allowed unsecured claim. 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 notes, however, that the debtors are "above median" debtors for whom the applicable commitment period under 11 U.S.C. § 1325(b)(4) would be "not less than 5 years." The Modified Plan reduces the plan term from 60 months to 38 months. The Ninth Circuit Court of Appeals on August 29, 2013 filed an opinion in Flores v. Danielson (In re Flores), ___ F.3d ___, 2013 WL 4566428 (9th Cir., Aug. 29, 2013) overruling Maney v. Kagenveama (In re Kagenveama), 541 F.3d 868 (9th Cir. 2008) to the extent that Kagenveama held that there is no applicable commitment period if the debtor has no projected disposable income. Flores holds that the applicable commitment period in 11 U.S.C. § 1325(b)(4) is a temporal requirement that determines the minimum duration that a plan must have to be confirmable under 11 U.S.C. § 1325(b)(1)(B), even if the initial payments required under the plan will be \$0.00. See also Fridley v. Forsythe (In re Fridley), 380 B.R. 538, 5453 (B.A.P. 9th Cir. 2007) ("Subsequent increases in [a debtor's] actual income can be captured for creditors by way of a § 1329 plan modification...."). 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.

The court will issue a minute order.

6. [10-37007](#)-B-13 AARON/JENNIFER MOTION TO MODIFY PLAN
WW-2 BALLESTEROS 7-29-13 [[39](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed July 29, 2013, is denied.

The court will issue a minute order.

7. [13-20207](#)-B-13 CORNELIA CATA
LR-4

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
7-30-13 [[136](#)]

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

Creditor Romel Magno Hamo ("Creditor" or "Hamo") requests an extension of the deadline "to object to [the debtor's] discharge pursuant to 11 U.S.C. § 1328(a)(2) and (4)." Based on the Creditor's reference to § 1328 (a)(2) and (a)(4), the court construes the motion as a request for an extension of the deadline to file a complaint to determine the dischargeability of a debt pursuant to Federal Rule of Bankruptcy Procedure 4007(c).

The debtor's bankruptcy case was commenced by the filing of a voluntary petition on January 8, 2013. On January 17, 2013, the court issued a Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, and Deadlines (Dkt. 9) (the "Notice"), which Notice established April 15, 2013, as the deadline to file a complaint to determine the dischargeability of certain debts (the "Deadline").

On April 15, 2013, the Creditor filed a Motion to Extend Time to Object to Debtor's Discharge (Dkt. 70) (the "First Motion"). The First Motion requested an extension of the Deadline to and including July 30, 2013. The Creditor alleged in the First of Motion that as of April 15, 2013, the debtor had only partially responded to the Creditor's requests for production of documents and that the debtor sought to delay the inspection of real property via a motion for a protective order. The Creditor also alleged that he had "diligently pursued third-party discovery in this case; nine requests have been propounded since February 19, 2013, and the majority have been completed." (Dkt. 70 at 2). The Creditor also alleged that he filed a complaint in Sacramento County Superior Court on November 9, 2012, alleging intentional misrepresentation, concealment, constructive fraud, falsification of timesheets and other causes of action relating to violations of employment law and personal injury.

The debtor did not oppose the First Motion. The court granted the First Motion by order entered May 23, 2013 (Dkt. 107), extending the Deadline to July 30, 2013.

On June 4, 2013, the Creditor filed an ex parte motion for authorization to conduct an examination of the debtor pursuant to Federal Rule of Bankruptcy Procedure 2004 (Dkt. 111) (the "First Rule 2004 Motion"). The Creditor submitted a proposed order with the First Rule 2004 Motion that would have required the debtor to appear for examination on or before June 10, 2013, six days after the date the First Rule 2004 Motion was filed. The debtor filed written opposition to the First Rule 2004 Motion on June 5, 2013 (Dkt. 113). The court's records show that it rejected the proposed order submitted by the Creditor on June 18, 2013, and communicated to the Creditor that the First Rule 2004 Motion should either be set for a hearing on notice, or the Creditor should submit a

proposed order with different dates.

The Creditor filed a second ex parte a motion for authorization to conduct an examination pursuant to Bankruptcy Rule 2004 on July 23, 2013 (Dkt. 133) (the "Second Rule 2004 Motion"). The Second Rule 2004 Motion was granted by order entered August 7, 2013 (Dkt. 147).

In the interim period between the filing of the First Rule 2004 Motion and the Second Rule 2004 Motion the Creditor filed the instant motion for an extension of the Deadline. The Creditor requests an extension of the Deadline to September 30, 2013. The Creditor alleges that despite his diligent efforts the debtor has not submitted to an oral deposition, referring to the filing of both the First Rule 2004 Motion and the Second Rule 2004 Motion. As in the First Motion, the Creditor alleges that the debtor has only partially responded to the Creditor's request for production of documents, and that the creditor has propounded nine third-party discovery requests, the majority of which have been completed. The Creditor argues that based on a "history of significant incomplete, erroneous, problematic filings by the debtor and limited responses to request for production of documents it is necessary to conduct an oral examination of the debtor prior to determining whether to file an objection to her discharge." (Dkt. 136 at 2).

With respect to requests for extensions of the deadline to file a non-dischargeability complaint pursuant to Bankruptcy Rule 4007(c),

The moving party has the burden of proof to show cause to extend the time for matters relating to the debtor's discharge. See In re Stonham, 317 B.R. 544, 547 (Bankr.D.Colo.2004) (interpreting the "for cause" exception in Rule 4007(c) which limits the time to file a dischargeability complaint). The same standard has been applied to motions for additional time under Rule 1017(e)(1). Molitor, 395 B.R. at 205. The movant's burden of proof cannot be "satisfied with only a scintilla of evidence." Stonham, 317 B.R. at 547. The movant seeking an extension of time for cause must "establish at least a reasonable degree of due diligence to be accorded the requested extension." Molitor, 395 B.R. at 205 (citing Stonham, 317 B.R. at 547).

The power to extend the 60-day deadlines prescribed in the Rules "rests entirely within the discretion of the bankruptcy judge and should not be granted without a showing of good cause, and without proof that the creditor acted diligently to obtain facts within the bar date ... but was unable to do so." In re Farhid, 171 B.R. 94, 96, (N.D.Cal.1994) (citation omitted). The power is to be exercised cautiously and not where lack of diligence by the creditor appears. Id. at 97 (citations omitted).

In re Bomarito, 448 B.R. 242, 248 (Bankr. E.D. Cal. 2011) (Lee, J.).

The Creditor has not met his burden of proof to show cause for the requested extension of the Deadline. Specifically, the Creditor has not shown the diligence required for an extension. The Creditor alleges that he has propounded requests for production of documents on the debtor and that the debtor's responses were only partial, yet in the nearly seven months since propounding the requests the Creditor has filed no motion pursuant to Bankruptcy Rule 7037 to compel responses from the debtor. With respect to third-party discovery requests, the "majority" of

responses to those requests have apparently been complete since the filing of the First Motion on April 15, 2013, yet the Creditor has not shown that he has to date taken any steps to ensure the completion of the remainder.

The Creditor also waited until April 15, 2013, the date of the expiration of the Deadline as set forth in the notice, to file the First Motion. Although the First Motion did not come on for hearing until May 21, 2013, its pendency did not dissuade the Creditor from continuing to pursue his discovery efforts, yet he waited until June 4, 2013, to file the First Rule 2004 Motion. Following the court's rejection of the proposed order for the First Rule 2004 Motion on June 18, 2013, the Creditor waited until July 23, 2013, only seven days before the expiration of the extended Deadline and more than one month after the court informed the Creditor that the First Rule 2004 Motion would not be granted on the terms he requested, to file the Second Rule 2004 Motion. The foregoing facts are not evidence of diligence. A creditor's failure to pursue discovery diligently is grounds for denial of a motion for an extension. In re Dekelata, 149 B.R. 115 (E.D.Mich.1993); cf. In re Jones, 91 I.B.C.R. 86, 87 (D.Idaho 1991) ("[W]hen a creditor defers filing a complaint or a motion to extend the filing deadline until nearly the last available day under the Rules, the Court is without discretion, and perhaps should be without sympathy, when the last minute plans prove ineffective."). Against the foregoing facts the Creditor's vague allegations regarding "problematic" filings by the debtor do not justify a further extension of the Deadline.

Finally, the court notes the complete absence from the motion of analysis of the standard for obtaining an extension under Bankruptcy Rule 4007(c) or the legal authorities interpreting it. Failure to cite legal authority justifying the relief sought is an additional ground for denial of the motion. LBR 9014-1(d)(5), 1001-1(g).

The court will issue a minute order.

8. [11-20508](#)-B-13 DENIS/CORINNE PERRY MOTION TO INCUR DEBT
SAC-2 8-2-13 [[39](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted. The debtors are authorized to incur debt for the purpose of purchasing real property on the terms set forth in the motion. Except as so ordered, the motion is denied.

The trustee's opposition is overruled because on September 3, 2013, the debtors filed amended Schedules I and J, which schedules show that the debtors have sufficient income to pay the monthly payment on the debt which they seek to incur and to make the monthly chapter 13 plan payment.

The court will issue a minute order.

9. [13-27208](#)-B-13 GARY HARTLEY AND PAMELA MOTION TO CONFIRM PLAN
ERO-2 SCHWENINGER HARTLEY 7-23-13 [[26](#)]

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 23, 2013, will be confirmed.

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

10. [13-27208](#)-B-13 GARY HARTLEY AND PAMELA COUNTER MOTION TO DISMISS CASE
ERO-2 SCHWENINGER HARTLEY 7-29-13 [[33](#)]
WITHDRAWN BY M.P.

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

The countermotion is removed from the calendar. The trustee withdrew the countermotion on August 22, 2013 (Dkt. 41).

11. [13-31110](#)-B-13 KENNETH/ALLISON TUCKER MOTION TO EXTEND AUTOMATIC STAY
RWH-1 8-27-13 [[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.

12. [11-47614](#)-B-13 MARVIN/GENA LEBLANC MOTION TO MODIFY PLAN
PGM-1 7-24-13 [[47](#)]

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

The motion is granted, and the modified plan filed July 24, 2013, is confirmed.

The court will issue a minute order.

Tentative Ruling: The opposition filed by the debtors is sustained. The debtors' evidentiary objection to the supporting declaration of Jaclyn Miller (the "Miller Declaration") (Dkt. 34) is sustained. The motion is denied.

By this motion secured creditor PNC Bank Bank, NA ("PNC") seeks reconsideration of the court's order entered June 17, 2013 (Dkt. 23) (the "Order"), which order valued the debtors' real property located at 949 Cottrell Way, Galt, California (the "Property") at \$195,000.00 and fixed the bank's secured claim based on its second deed of trust in the real property at \$0.00. PNC seeks reconsideration pursuant to Federal Rule of Bankruptcy Procedure 9024, incorporating Federal Rule of Civil Procedure 60. Specifically, PNC alleges that due to an "administrative oversight" PNC was unable to file a timely response to the debtors' motion to value the Property. PNC alleges that the aforementioned administrative oversight constitutes excusable neglect as that term is defined in Fed. R. Civ. P. 60(b).

PNC's sole source of evidence for the alleged administrative oversight is contained in the Miller Declaration. The Miller Declaration states that PNC's delay in responding to the debtors' motion to value the Property was due to an administrative oversight and that the mailing address used by the debtors for the purposes of serving PNC was a "central distribution address," the use of which resulted in "additional administrative delay in directing the pleadings to the proper party." (Dkt. 34 at 2). However, as the debtors point out, Ms. Miller provides no foundation for her knowledge of the foregoing facts. Her declaration merely identifies her as a "bankruptcy specialist" employed by PNC. It does not state how she has personal knowledge of any of the facts which follow in the Miller Declaration. Pursuant to Federal Rule of Evidence 602, "[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony." Fed. R. Evid. 602. The Miller Declaration does not set forth sufficient evidence to support a finding that Ms. Miller has personal knowledge of the matters contained in the declaration.

The Miller Declaration is not admissible as evidence of excusable neglect. There being no other evidence of excusable neglect submitted by PNC, the motion is denied.

In addition, even if the Miller Declaration were admitted as evidence, the mere explanation of an "administrative oversight," without further detail, is insufficient to establish excusable neglect justifying reconsideration of the Order. PNC argues that reconsideration of the Order would not prejudice the debtors because the delay between the entry of the Order and the filing of the instant motion is minimal. The prejudice that may or may not be suffered by the debtors as a result of reconsideration is not the only factor to be considered, however. The

court notes that motions for reconsideration relying on inadvertence or excusable neglect are governed by authorities which include, inter alia, the decision of the United States Supreme Court in Pioneer Investment Services, Co. v. New Brunswick Assoc. Ltd. P'ship, 507 U.S. 380 (1993). In Pioneer, the Supreme Court held that a determination of whether neglect which resulted in a late filing was excusable takes account of all relevant circumstances, including the danger of prejudice to the opposing party, the length of delay and its potential impact on judicial proceedings, reason for delay, including whether it was within reasonable control of the movant and whether the movant acted in good faith.

PNC does not address all of the foregoing factors. Conspicuously absent from PNC's analysis is any detail regarding the reason for the delay and whether it was within the reasonable control of PNC. The court is not persuaded by PNC's argument that delay in responding to the debtors' motion was caused by the fact that the motion was served on a mailing address that PNC describes as a "central distribution address." The court notes that the debtors' certificate of service of the motion (Dkt. 11) shows that the debtors served PNC by certified mail and to the attention of an officer at four different addresses. PNC's analysis addresses service with respect to only one address.

The court will issue a minute order.

14. [12-32217](#)-B-13 SU SAETEANG
PGM-3

OBJECTION TO AMENDED PROOF OF
CLAIM #8 OF GREEN TREE
SERVICING, LLC AND LACK OF
NOTICE OF POST-PETITION
MORTGAGE FEES, EXPENSES, AND
CHARGES AND ATTORNEY FEES IN
DEFENSE THEREOF
7-25-13 [[64](#)]

Tentative Ruling: The opposition filed by Green Tree Servicing, LLC ("Green Tree") is sustained in part. The objection is dismissed in part and overruled in part. The debtor's request for an award of attorney's fees is denied. Except as so ordered, the objection is overruled.

To the extent that the objection objects to the first amended proof of claim filed on January 11, 2013, the objection is dismissed because it is moot. Green Tree filed a second amended proof of claim on August 16, 2013, which supersedes the first amended claim to which the debtor objects.

To the extent that the objection can be construed as an objection to the second amended proof of claim, the objection is overruled. The basis asserted by the debtor for any ongoing objection that the debtor has to a claim in favor of Green Tree is that because Green Tree has amended the claim more than once to change the amount of pre-petition arrears its claims that it is now incumbent on Green Tree to provide evidence to "prove up" its claim. The debtor argues that by pointing out the fact that Green Tree has changed the amount it claims for arrears, she has "raised sufficient questions" which shift the burden to Green Tree to

prove the claim.

The debtor is incorrect. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006). Objections to properly filed claims based on "inadequate documentation" are insufficient standing alone to overcome the effect of Fed. R. Bankr. P. 3001(f). In re Heath, 331 B.R. 424 (9th Cir. BAP 2005); In re Campbell-Millman, 336 B.R. 430 (9th Cir. BAP 2005). Similarly, merely "raising questions" about a proof of claim is insufficient to overcome Bankruptcy Rule 3001(f), as the court has previously informed the debtor's counsel in a tentative ruling issued on January 15, 2013, in case number 12-24844-B-13J, In re Sexton. The debtor must come forward with evidence of her own to show that she does not owe some or all of the amount claimed by the claimant. She has not done so here.

In this case, the second amended proof of claim filed by Green Tree has prima facie validity. A copy of the promissory note and deed of trust on which the claim is based, a completed mortgage proof of claim attachment on Official Form B10A and an un-redacted escrow account history are filed with the claim. The claim satisfies the requirements of Fed. R. Bankr. P. 3001(c). The debtor has come forward with no evidence of her own to show that she does not owe the amounts claimed. Furthermore, to the extent the debtor argues that Fed. R. Bankr. P. 3002.1 requires some additional notice to be filed by the claimant, the court notes that Bankruptcy Rule 3002.1 clearly states that it applies to notices of fees, expenses and charges incurred in connection with the claim after the bankruptcy case was filed. Fed. R. Bankr. P. 3002.1(c). The court's inspection of the initial claim by Green Tree as well as the first and second amended claims reveals that all claimed fees, expenses and charges claimed were incurred prior to the date of the filing of the petition.

Finally, as to the debtor's argument that she is entitled to an award of attorney's fees because her objection caused Green Tree to amend the claim, the motion is denied because the debtor has not cited sufficient authority for the proposition that she is entitled to attorney's fees on the facts of this matter. The court acknowledges that Cal. Civ. Code § 1717 provides that

(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Cal. Civ. Code § 1717(a). The court notes that there are numerous decisions in California which interpret the foregoing provision, as well as § 1717(b), which defines the "prevailing party" for the purposes of § 1717(a). The debtor however, has cited none of them. It is not incumbent on the court to search California law for authority to determine whether the debtor is entitled to attorney's fees on the facts

presented here; i.e., whether the debtor is the prevailing party and entitled to an award of fees where her initial objection is based on flawed legal theories but nevertheless prompts the claimant to amend the proof of claim. The debtor's failure to analyze the issue and to cite legal authority supporting her conclusory argument that she is the prevailing party is grounds for denial of the request. LBR 9014-1(d) (5), 1001-1(g).

The court will issue a minute order.

15. [11-26424](#)-B-13 AGUSTIN ALONSO MOTION TO MODIFY PLAN
MMG-4 8-2-13 [[67](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to modify the confirmed chapter 13 plan is denied.

The trustee's opposition is sustained for the reasons set forth in the trustee's written opposition (Dkt. 76).

In addition, the court notes that the motion is incomplete, as the document titled and docketed as the "motion" for this matter (Dkt. 67) is in its substance merely a copy of the notice of hearing (Dkt. 68).

The court will issue a minute order.

16. [09-33229](#)-B-13 LARRY/PENNY VAUGHN MOTION FOR COMPENSATION BY THE
PGM-3 LAW OFFICE OF PETER G. MACALUSO
FOR PETER G. MACALUSO, DEBTORS'
ATTORNEY(S), FEES: \$760.00,
EXPENSES: \$0.00
8-8-13 [[68](#)]

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

The application is approved for a total of \$760.00 in fees to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the application is denied.

On June 26, 2009, the debtors filed a chapter 13 petition. As part of confirmation of the debtors' first modified chapter 13 plan, applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$3,500.00 through the plan (Dkt. 45). The debtors' attorney now seeks additional compensation through March 8, 2011, in the amount of \$760.00 in fees and \$0.00 in costs.

As set forth in the attorney's application, these fees are reasonable

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.

20. [13-30637](#)-B-13 STEPHANIE EPPERSON MOTION TO EXTEND AUTOMATIC STAY
DPR-1 8-24-13 [[18](#)]

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. [13-27439](#)-B-13 PAUL/MERLE URCIAGA MOTION TO CONFIRM PLAN
JTN-2 7-23-13 [[35](#)]

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

The motion is continued to September 24, 2013, at 9:32 a.m., to be heard after the hearing on the debtors' motion to value the collateral of Wells Fargo Bank, DCN JTN-2.

The court will issue a minute order.

22. [13-30339](#)-B-13 MICHAEL/JOYCE BONANNO MOTION TO VALUE COLLATERAL OF
CAH-2 COMMUNITY COMMERCE BANK
8-6-13 [[16](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$150,000.00 of Community Commerce Bank's ("CCB") claim in this case secured by the first deed of trust on real property located at 1240 Hidden Ridge Trail, Pilot Hill, 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. Thus, the value of the collateral available to CCB on its deed of trust is \$150,000.00.

The court will issue a minute order.

23. [13-28440](#)-B-13 MARCO/CAROL GOMEZ
CYB-2

MOTION TO VALUE COLLATERAL OF
J.P. MORGAN CHASE BANK, N.A.
8-2-13 [[32](#)]

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 9578 Castlbridge Court, 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 \$228,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$335,000.00 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.

24. [13-28440](#)-B-13 MARCO/CAROL GOMEZ
CYB-3

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
8-2-13 [[27](#)]

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 Capital One Bank (USA), N.A., recorded in the official records of Sacramento County, Book 20100407, Page 0994, is avoided as against the real property located at 9578 Castlebridge Court, Elk Grove, California.

The subject real property has a value of \$228,000.00 as of the date of the petition. The unavoidable liens total \$374,151.46. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the 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.

25. [13-28440](#)-B-13 MARCO/CAROL GOMEZ
CYB-4

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
8-2-13 [[35](#)]

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 Capital One Bank (USA), N.A., recorded in the official records of Sacramento County, Book 20100603, Page 1160, is avoided as against the real property located at 9578 Castlebridge Court, Elk Grove, California.

The subject real property has a value of \$228,000.00 as of the date of the petition. The unavoidable liens total \$374,151.46. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the 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.

26. [10-46453](#)-B-13 SIDNEY/VERONICA DAVIS
PGM-2

OBJECTION TO NOTICE OF MORTGAGE
PAYMENT CHANGE AND/OR MOTION
FOR REFUND OF ESCROW SURPLUS
AND ATTORNEY FEES
7-25-13 [[68](#)]

Tentative Ruling: The objection is overruled.

The debtors object to a Notice of Mortgage Payment Change filed by secured creditor M&T Bank (the "Bank") on December 6, 2012 and request that the bank be ordered to refund an alleged escrow surplus in the amount of \$1841.31 to the debtors.

The debtors' case was commenced on October 4, 2010. The Bank filed a secured claim on November 9, 2010 (Claim no. 2) in the total amount of \$232,695.32, of which \$22,499.24 was claimed as pre-petition arrears. An attachment to the proof of claim indicated that the interest rate on the loan was 7.5% and that the monthly installment payment was \$2200.46 per month.

The debtors' current confirmed chapter 13 plan (Dkt. 37), confirmed by order entered February 24, 2011 (Dkt. 63), provides for the Bank's claim in class 1. The plan provides for a cure of pre-petition arrears owed to the bank in the amount of \$22,499.24 at 0% interest with a monthly dividend of \$390.00. By the court's calculations, this treatment would require 58 months to pay the pre-petition arrears.

In addition, the confirmed plan proposes to cure a post-petition delinquency of two payments in the amount of \$4600.00 at 4.5% interest with a monthly dividend of \$80.00. The court's calculations indicate that this treatment would require more than 60 months to pay the post-petition arrears in full.

On December 6, 2012, the bank filed the Notice of Mortgage Payment Change (the "Notice") to which the debtors now object. The notice stated that the new total payment for the monthly contract installment on the debtors' loan was \$2034.07. The notice further indicated that the change in the payment amount was due to a change in the debtors' escrow account payment from \$394.95 per month to \$379.32 per month. According to the Notice, that was the sole reason for the adjustment to the monthly payment amount.

Attached to the notice was an annual escrow account disclosure statement which indicated, inter alia, that as of the date of the statement (November 15, 2012) the debtors' escrow account had a surplus of \$1841.31. The escrow account disclosure statement states at the bottom that "the escrow overage will be refunded to you under separate cover within the next few weeks, provided that all of your payments are presently up to date. If your payments are not up-to-date at the time of the analysis, you are entitled to have the available surplus refunded to you when your account is current."

The debtors object to the notice because they assert that the escrow account payment adjustment is "wrong." They point out that the attached disclosure statement states that they had an escrow surplus, and that "rather than refunding this fund, as is required pursuant to [the Real Estate Settlement Procedures Act], the claimant is attempting to refund the 'surplus' in monthly amounts of the difference between \$394.95 and \$379.32, or a reduction of \$15.63 per month even though the form itself states that the 'total escrow loss of \$1841.31 will be refunded to you.'" (Dkt. 68 at 2). The debtors allege that the Bank is acting in bad faith and is violating the automatic stay unless a refund is sent immediately.

The debtors' argument hinges on their contention that they are entitled to an immediate refund of the surplus in the escrow account because a refund is required by the Real Estate Settlement Practices Act ("RESPA"), codified at 12 U.S.C. §§ 2601-2617. Section 2605 governs the servicing of mortgage loans and administration of escrow accounts and provides in § 2605(j)(3) that the Bureau of Consumer Financial Protection ("BCFP") shall establish any requirements necessary to carry out the section.

The BCFP regulations are found in Title 24, Part 3500 of the Code of the Federal Regulations. Section 3500.17(f)(2)(i) that "[i]f an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund surplus to the borrower if the surplus is greater than or equal to 50 dollars (\$50). If the surplus is less than 50 dollars (\$50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

Section 3500.17(f)(2)(ii) goes on to state that "[t]hese provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow

account pursuant to the terms of the mortgage loan documents."

The court disagrees with the debtors' argument that they are entitled to an immediate refund of the escrow surplus because the debtors were not current in their payments on the date the escrow account analysis was generated, as they are in default to the Bank on their payments. The fact that the Bankruptcy Code allows the debtors to cure pre-petition arrears through their chapter 13 plan does not make the debtors current. The court acknowledges that the additional provisions of the plan state, inter alia, that "payments received by holders and/or servicers of mortgage claims for ongoing post-petition installment payments shall be applied and credited to the debtors' mortgage account as if the account were current and no pre-petition default existed on the petition date in the order of priority specified in the note and security agreement and applicable nonbankruptcy law." The foregoing provision does not make the debtors current; it merely requires that installment payments made through the plan be applied as if the debtors are current. Therefore, the debtors' argument that the surplus must be immediately refunded to them because RESPA requires it is not persuasive.

The motion is also denied because it is not really an objection to the Notice at all, but is instead a motion by the debtors for 1.) damages for breach of contract and 2.) a request for injunctive relief for breach of contract and RESPA. That relief cannot be obtained by motion. If such relief can be obtained at all, it must be obtained in an adversary proceeding. Fed. R. Bankr. P. 7001(1), (7).

The court will issue a minute order.

27. [11-23553](#)-B-13 ARTHUR/LADANA LUELLEN MOTION TO MODIFY PLAN
SAC-10 7-26-13 [[146](#)]

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 26, 2013, is confirmed.

The court will issue a minute order.

28. [13-27755](#)-B-13 JAMES/TAMARA HERZOG MOTION TO CONFIRM PLAN
JTN-1 7-23-13 [[20](#)]

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 23, 2013, will be confirmed.

The court will issue a minute order granting the motion to confirm.

Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

29. [13-28458](#)-B-13 CHRISTOPHER/GUADALUPE OBJECTION TO CONFIRMATION OF
MDE-1 NASH PLAN BY U.S. BANK, N.A.
7-19-13 [[18](#)]

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

The creditor's objection is sustained. Confirmation of the initial plan filed June 24, 2013, is denied.

The court acknowledges the declaration of joint debtor Christopher Nash in response to the objection, filed on August 22, 2013 (Dkt. 31). The debtor asserts that to his knowledge the loan on which the objecting creditor's claim is based was current as of the date of the filing of the petition. However, a secured claim based on the loan on which the objecting creditor's claim is based was filed in this case on August 20, 2013 (claim no. 12) (the "Claim"). The Claim states a claim for prepetition arrears in the amount of \$6842.01. Section 2.04 of the proposed 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." Until the debtors successfully object to the Claim or the claimant amends the Claim to eliminate the prepetition arrears, the plan is not confirmable because it does not propose any cure of the prepetition arrears. 11 U.S.C. §§ 1322(b)(5), 1325(a)(5).

The court will issue a minute order.

30. [13-28458](#)-B-13 CHRISTOPHER/GUADALUPE OBJECTION TO CONFIRMATION OF
NMB-1 NASH PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
8-15-13 [[26](#)]

Tentative Ruling: The objection is sustained in part. Confirmation of the initial plan filed June 24, 2013, is denied.

To the extent that the objecting creditor, Deutsche National Bank Trust Company, as Indenture Trustee, for New Century Home Equity Loan Trust 2006-1 ("Deutsche") objects that the debtors cannot modify its secured claim based on a deed of trust in real property located at 400 Buckeye

Terrace, Redding, California ("400 Buckeye"), the objection is overruled. The debtors' voluntary petition shows that their street address is 410 Buckeye Terrace, Redding, California, which is echoed by their statement on their sworn Schedule A (Dkt. 1 at 12) that they live in one of the apartments in 410 Buckeye Terrace, Redding, California. Deutsche has presented no evidence other than the debtors' schedules as to the location of their principal residence.

Confirmation is denied, however, because in order to be feasible the plan depends on a successful motion to value Deutsche's collateral. The debtors assert that the court's order entered August 16, 2013 (Dkt. 28) (the "MTV Order") granting their motion to value 400 Buckeye, is enforceable against Deutsche. However, the court notes that the motion to value collateral was not served on Deutsche, but on Carrington Mortgage Services, LLC ("Carrington"), an entity which the debtors acknowledge in their written reply is the servicer of the loan held by Deutsche. Absent any evidence that Carrington was authorized by Deutsche to be Deutsche's agent to respond on its behalf to motions to value collateral, the court finds that the Order is void as to Deutsche, because the motion to value collateral was never served on Deutsche. See In re Tuli, 172 F.3d 707, 712 (9th Cir.1999) ("A judgment entered without personal jurisdiction over the parties is void.").

The court will issue a minute order.

31. [11-29221](#)-B-13 NICHOLAS/APRIL STEELE MOTION TO INCUR DEBT
JT-4 8-14-13 [[48](#)]

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

32. [13-31024](#)-B-13 MARK/KATHLEEN GARRISON MOTION TO VALUE COLLATERAL OF
MRL-1 ONEWEST BANK, FSB
8-22-13 [[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.

33. [13-26225](#)-B-13 MARCOS/JUANA GONZALEZ MOTION TO CONFIRM PLAN
PGM-1 7-30-13 [[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 July 30, 2013 (Dkt. 22)

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.

34. [13-20226](#)-B-13 SHIRAZ ALI MOTION TO CONFIRM PLAN
LBG-1 7-30-13 [[123](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The trustee's opposition is sustained for the reasons set forth therein. The motion to confirm the plan filed July 30, 2013 (Dkt. 127) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 24, 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.

35. [13-26429](#)-B-13 LORENZO/CECILIA LOPEZ MOTION TO CONFIRM PLAN
TOG-2 7-30-13 [[34](#)]

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 30, 2013 (Dkt. 36) 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.

36. [13-26233](#)-B-13 IMELDA DURAN MOTION TO CONFIRM PLAN
PR-1 7-19-13 [[19](#)]

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

The motion is granted, and the amended plan filed June 20, 2013 (Dkt. 18) 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.

37. [11-22331](#)-B-13 TIMOTHY NELSON MOTION TO MODIFY PLAN
CK-1 8-5-13 [[27](#)]

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

The motion is granted, and the modified plan filed August 7, 2013 (Dkt. 33) is confirmed.

The court will issue a minute order.

38. [10-43935](#)-B-13 DANIEL/DONNA STENBACK MOTION TO VALUE COLLATERAL OF
RDS-4 HOUSEHOLD FINANCE CORPORATION
8-10-13 [[66](#)]
WITHDRAWN BY M.P.

Disposition Without Oral Argument: This matter was withdrawn by the debtors on August 27, 2013 (Dkt. 74) and is removed from the calendar.

39. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN MOTION TO VALUE COLLATERAL OF
SAG-1 FREEMONT INVESTMENT
7-19-13 [[19](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is dismissed without prejudice.

The motion was not properly served. A bankruptcy court lacks jurisdiction over a defendant if the defendant was not served properly under Rule 7004. See Scott v. United States (In re Scott), No. NV 09-1273-DHPa (9th Cir. BAP June 21, 2010), citing United States v. Levoy (In re Levoy), 182 B.R. 827, 832 (9th Cir. BAP 1995); Harlow v. Palouse Producers, Inc. (In re Harlow Props., Inc.), 56 B.R. 794, 799 (9th Cir. BAP 1985); see also Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988) (applying Fed. R. Civ. P. 4). Rule 7004 applies in contested matters. See Rule 9014(b).

By this motion the debtors seek to value the collateral of Freemont Investment ("Freemont"), holder of the second deed of trust on real property owned by the debtors located at 260 Sumatra Drive, Sacramento, CA 95838 ("Property"). As a contested matter under Fed. R. Bankr. P. 9014, Freemont, as the party against whom the debtors seek relief, must

be served with the motion in accordance with the rules set forth in Fed. R. Bankr. P. 7004. Here, Freemont was not served with the motion. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

40. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN MOTION TO CONFIRM PLAN
SAG-2 7-24-13 [[25](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The motion is denied without prejudice for procedural defects. First, the motion was not properly served. There is no evidence in the docket that the movants have served this motion on any party in interest in derogation of LBR 3015-1(d)(1). Notice of motions set pursuant to LBR 3015-1(d)(1) must comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' 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 must be served at least forty-two (42) days prior to the hearing. Second, the debtors have not met their burden of proving that their proposed amended Chapter 13 plan satisfies the plan confirmation requirements of 11 U.S.C. § 1325(a). A motion to confirm a Chapter 13 plan must be supported by evidence, usually in the form of a declaration, and the evidence (declaration) must address all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). The debtors' motion to confirm their proposed amended Chapter 13 plan has not been accompanied by a declaration, so they have not satisfied the burden placed upon them by Chinichian.

Additionally, the motion is denied without prejudice because the debtors' proposed amended Chapter 13 plan depends on a successful motion to value the collateral of Freemont Investment ("Freemont") and thereby fix Freemont's secured claim at \$77,000.00. The debtors' motion to value the Freemont's secured claim has been denied without prejudice on procedural grounds elsewhere on this calendar. Therefore, the proposed amended Chapter 13 plan does not provide a permissible treatment for Freemont's secured claim..

The court will issue a minute order.

41. [13-25147](#)-B-13 MATTHEW/MAYRA SPINKS MOTION TO CONFIRM PLAN
PGM-3 7-23-13 [[53](#)]

Tentative Ruling: This matter came on for final hearing on September 10, at 9:32 a.m. Appearances are noted on the record. The following constitutes the court's findings of fact and conclusions of law, pursuant to Federal Rule of Bankruptcy Procedure 7052.

The trustee's opposition is overruled. The motion to confirm the amended plan filed July 23, 2013 (Dkt. 52) (the "Plan") is granted and the Plan will be confirmed with the following modification: The Additional Provisions, § 6.01 are stricken.

Debtors' reply states that section 6.01 was added to the plan in error.

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

42. [13-30947](#)-B-13 GRANT PARKISON MOTION TO VALUE COLLATERAL OF
MOH-1 BANK OF AMERICA, N.A.
8-27-13 [[10](#)]

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.

43. [09-36849](#)-B-13 ADOR/DIANE GUZMAN MOTION TO MODIFY PLAN
RK-2 7-23-13 [[106](#)]

Tentative Ruling: The trustee's opposition is sustained for the reasons set forth in the trustee's written opposition. The motion to confirm the modified plan filed July 23, 2013 (Dkt. 109) is denied.

The court will issue a minute order.

44. [13-22849](#)-B-13 ANDREW LACQUE MOTION TO VALUE COLLATERAL OF
PLG-3 GE CAPITAL RETAIL BANK
8-5-13 [[35](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$8,500.00 of GE Capital Retail Bank's claim secured by a 2010 Yamaha Rider S Blue motorcycle ("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 \$8,500.00 on the date of the petition.

The court will issue a minute order.

45. [11-34150](#)-B-13 ROBERT/ANITA HOLLOWAY MOTION TO APPROVE LOAN
SDB-2 MODIFICATION
8-8-13 [[45](#)]

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

The debtors' motion for authority to incur new debt is granted on the terms set forth in the Home Affordable Modification Agreement submitted as Exhibit A to the motion (Dkt. 48 at 2).

The court will issue a minute order.

46. [13-29750](#)-B-13 JOSE/GUILLERMINA ANAYA MOTION TO VALUE COLLATERAL OF
JT-1 WELLS FARGO BANK, N.A.
7-31-13 [[10](#)]

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 claim secured by the second deed of trust on real property located at 1130 Woodman Way, Dixon, CA 95620 ("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 \$279,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage LLC with a balance of approximately \$333,544.00. Thus, the value of the collateral available to Wells Fargo Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

47. [10-38651](#)-B-13 WILLIAM/APRIL KUHLMAN MOTION TO MODIFY PLAN
PGM-4 8-6-13 [[76](#)]

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

The motion is granted, and the modified plan filed August 6, 2013 (the

"Modified Plan"), is confirmed.

The motion is granted and the Modified Plan filed August 6, 2013 is confirmed in the absence of any objection by the trustee or the holder of an allowed unsecured claim. 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 notes, however, that the debtors are "above median" debtors for whom the applicable commitment period under 11 U.S.C. § 1325(b)(4) would be "not less than 5 years." The Modified Plan reduces the plan term from 60 months to 36 months, with a final lump sum payment of \$3,170.00 to be made on August 25, 2013. The Ninth Circuit Court of Appeals on August 29, 2013 filed an opinion in Flores v. Danielson (In re Flores), 2013 WL 4566428 (9th Cir. 2013) overruling Maney v. Kagenveama (In re Kagenveama), 541 F.3d 868 (9th Cir. 2008), to the extent that Kagenveama held that there is no applicable commitment period if the debtor has no projected disposable income. Flores holds that the applicable commitment period in 11 U.S.C. § 1325(b)(4) is a temporal requirement that determines the minimum duration that a plan must have to be confirmable under 11 U.S.C. § 1325(b)(1)(B), even if the initial payments required under the plan will be \$0.00. See also Fridley v. Forsythe (In re Fridley), 380 B.R. 538, 5453 (B.A.P. 9th Cir. 2007) ("Subsequent increases in [a debtor's] actual income can be captured for creditors by way of a § 1329 plan modification...."). 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.

The court will issue a minute order.

48. [09-39653](#)-B-13 GEORGE/PAMELA BAXTER MOTION TO APPROVE LOAN
WW-4 MODIFICATION
8-9-13 [[81](#)]

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

The debtor's motion for authority to incur new debt is granted on the terms set forth in the Freddie Mac Loan Modification Agreement submitted as Exhibit B to the motion (Dkt. 84 at 4).

The court will issue a minute order.

49. [13-27759](#)-B-13 MICHAEL/CHERYL BROKER MOTION TO CONFIRM PLAN
CAH-2 7-19-13 [[26](#)]

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 19, 2013 (Dkt. 30) 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.

50. [13-26764](#)-B-13 FLOYD/DAWN WEBB
PGM-1

MOTION TO CONFIRM PLAN
7-24-13 [[23](#)]

Tentative Ruling: The creditor Bank of America, N.A.'s ("BofA") opposition is overruled in part and sustained in part. The motion to confirm the amended plan filed July 24, 2013 (Dkt. 27), is denied.

BofA's objection as to the proposed plan failing to cure post-petition arrears within a reasonable time is overruled. BofA cites to no legal authority in support of its argument that a reasonable cure time is calculated differently for pre-petition arrears and post-petition arrears.

BofA's objection as to Debtors' being unable to fund the proposed plan due to them having missed two monthly mortgage payments is overruled. Debtors state in their declaration filed in support of their motion that Ms. Floyd is beginning a new job in July to allow them to afford plan payments.

However, BofA's objection as to the additional provision delaying distribution on its pre-petition arrears claim for 12 months is sustained. The plan essentially calls for periodic payments, the first 12 of which are \$0.00 and that remainder of which are \$325.00. Under 11 U.S.C. § 1325(a)(5)(B)(iii)(I), a plan that proposes periodic payments with respect to an allowed secured claim must be in equal monthly amounts. This department construes Debtor's plan as proposing two different monthly payment amounts (\$0.00 for months 1-12 and \$325.00 for the remaining months of the plan). These are not equal monthly amounts.

The court will issue a minute order.

51. [13-28765](#)-B-13 JAMES/NICOLE GANNON
RAC-1

MOTION TO VALUE COLLATERAL OF
SPECIALIZED LOAN SERVICING, LLC
8-1-13 [[15](#)]

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 ("SLS") claim secured by the second deed of trust on real property located at 1059 McRae Way, Roseville, California ("Property") is a secured claim in this case, 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 \$236,665.00 on the date of the petition. The

Property is encumbered by a first deed of trust held by Ocwen Loan Servicing with a balance of approximately \$372,023.00. Thus, the value of the collateral available to SLS on its second deed of trust is \$0.00.

The court will issue a minute order.

52. [13-29065](#)-B-13 ROBERT STANLEY
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
8-21-13 [[15](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed July 7, 2013 (Dkt. 5), is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 24, 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 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.

53. [13-29066](#)-B-13 LEE OWENS
MET-1
CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO HOME
MORTGAGE
7-24-13 [[14](#)]

Tentative Ruling: This matter is continued to September 24, 2013 at 9:32 a.m. to allow Debtor and/or Wells Fargo time to submit an order to the court to approve the stipulation between the parties filed August 26, 2013 (Dkt. 36).

54. [13-29066](#)-B-13 LEE OWENS
MDE-1
OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
8-16-13 [[23](#)]

Tentative Ruling: This matter is continued to September 24, 2013 at 9:32 a.m.

55. [13-29066](#)-B-13 LEE OWENS OBJECTION TO CONFIRMATION OF
MDE-2 PLAN BY WELLS FARGO BANK, N.A.
8-20-13 [[26](#)]

Tentative Ruling: The creditor Wells Fargo Bank, N.A.'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 July 7, 2013 (Dkt. 5), is denied.

The court will issue a minute order.

56. [13-23067](#)-B-13 RON/ROCHELLE WALKER MOTION TO CONFIRM PLAN
DEF-2 7-30-13 [[40](#)]

Tentative Ruling: None.

57. [12-36168](#)-B-13 BRIAN/NANCY OKAMOTO MOTION TO MODIFY PLAN
WW-5 7-29-13 [[85](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the modified plan filed July 29, 2013 (Dkt. 89) is confirmed with the following modifications: Payments into the plan shall be as follows: \$495.00 per month for 10 months (\$4,950.00 paid into the Plan as of July 25, 2013); any missed payments through and including July 25, 2013 are excused; \$600.00 per month for 11 months beginning August 25, 2013; \$900.00 per month for 24 months beginning July 25, 2014; and \$1,415.00 per month for 15 months beginning July 25, 2016.

The tentative ruling will not become the court's ruling on this matter unless the debtors (1) appear at the hearing (personally or through counsel) and accept the tentative ruling, or (2) authorize the trustee to represent to the court that the debtors accept the tentative ruling.

The court will issue a minute order.

58. [13-28072](#)-B-13 ALAN LUDINGTON CONTINUED OBJECTION TO
ASW-1 CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
7-10-13 [[16](#)]

Disposition Without Oral Argument: The objection is deemed withdrawn, and

the matter is removed from the calendar.

The court will issue a minute order.

59. [13-27674](#)-B-13 STEVEN/LINDA MAYNERICH MOTION TO CONFIRM PLAN
JT-2 7-26-13 [[25](#)]

Disposition Without Oral Argument: The motion is granted, and the amended plan filed July 26, 2013 (Dkt. 28) 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.

60. [11-24977](#)-B-13 JOSE PICHARDO MOTION FOR COMPENSATION BY THE
RK-2 LAW OFFICE OF RICHARD KWUN FOR
RICHARD KWUN, DEBTOR'S
ATTORNEY(S), FEES: \$1,240.00,
EXPENSES: \$17.76
8-6-13 [[52](#)]

Tentative Ruling: The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330, the application is approved on an interim basis for the period October 18, 2012, through September 10, 2013, in the amount of \$1,240.00 in fees and \$17.76 in costs, for a total of \$1,257.76. The approved fees and costs shall be paid by the trustee through the chapter 13 plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtor to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the motion is denied.

On February 28, 2011, the debtor filed a chapter 13 petition. As part of confirmation of the debtor's original chapter 13 plan, Debtor's former counsel consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$3,500.00 through the plan. On November 14, 2012, the court granted a motion for substitution of attorney (Dkt. 44). The debtor's current attorney now seeks additional compensation, in the amount of \$1,240.00 in fees and \$17.76.

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

The court will issue a minute order.

61. [13-28080](#)-B-13 LINDA YANG
GG-1

MOTION TO VALUE COLLATERAL OF
PROVIDENT FUNDING ASSOCIATES,
L.P.
7-12-13 [[16](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Provident Funding Associates' ("PFA") claim secured by the second deed of trust on real property located at 6121 Wild Eagle Court, Elk Grove, California ("Property") is a secured claim in this case, 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 \$248,510.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$348,311.00. Thus, the value of the collateral available to PFA on its second deed of trust is \$0.00.

The court will issue a minute order.

62. [12-40183](#)-B-13 RAYMOND GIN
MAC-4

CONTINUED MOTION TO CONFIRM
PLAN
7-10-13 [[64](#)]

Tentative Ruling: None.

63. [13-26083](#)-B-13 GREGORIO RODRIGUEZ LONA
PR-2 AND EULALIA RODRIGUEZ

MOTION TO CONFIRM PLAN
7-24-13 [[38](#)]

Disposition Without Oral Argument: The motion is granted, and the amended plan filed June 21, 2013 (Dkt. 30) will be confirmed.

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

64. [13-27583](#)-B-13 ANDREW LUU
RK-2

MOTION TO CONFIRM PLAN
7-23-13 [[25](#)]

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

The trustee's opposition is dismissed.

The trustee's opposition is moot. On September 6, 2013, the debtor filed an amended plan (Dkt. 48) and motion to confirm (Dkt. 46). The amended plan supersedes the plan to which the trustee's opposition is directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

65. [13-27583](#)-B-13 ANDREW LUU
RK-2

COUNTER MOTION TO DISMISS CASE
8-26-13 [[34](#)]

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

The trustee's counter motion to dismiss is dismissed.

The trustee's counter motion to dismiss is moot. On September 6, 2013, the debtor filed an amended plan (Dkt. 48) and motion to confirm (Dkt. 46). The motion to confirm provides the relief sought in the counter motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

66. [12-33384](#)-B-13 CHRISTOPHER BARMBY AND
CJY-2 MADELYNN MCCLAIN

OBJECTION TO CLAIM OF JP MORGAN
CHASE BANK, N.A., CLAIM NUMBER
8
7-19-13 [[34](#)]

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

This matter is removed from this calendar.

This matter has previously been continued to September 24, 2013 pursuant to stipulation of the parties (Dkt. 39), which was approved by court order signed September 4, 2013 (Dkt. 40).

67. [13-27485](#)-B-13 JOHN/JENNIFER REED
SLH-2

MOTION TO AVOID LIEN OF CACH,
LLC
7-23-13 [[29](#)]

Disposition Without Oral Argument: The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Cach, LLC, recorded in the official records of El Dorado County, Document No. 2012-0060767-00, is avoided as against the real property located at 3229 Life Way, Placerville, CA 95667.

The subject real property has a value of \$100,600.00 as of the date of the petition. The unavoidable liens total \$216,733.08. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which they exempted \$100.00. 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.

68. [13-27485](#)-B-13 JOHN/JENNIFER REED
SLH-3

MOTION TO CONFIRM PLAN
7-23-13 [[24](#)]

Disposition Without Oral Argument: The motion is granted, and the amended plan filed July 23, 2013 (Dkt. 23) 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.

69. [13-27587](#)-B-13 CHARI GOLDSTEIN
MMP-2

MOTION TO VALUE COLLATERAL OF
POINTE BENICIA CONDOMINIUM
ASSOCIATION
8-10-13 [[29](#)]

Tentative Ruling: The debtor's Motion to Value her residence for the purpose of "stripping the lien" of Pointe Benicia Condominium Association, is continued to a final evidentiary hearing on December 18, 2013 at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before December 11, 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 December 11, 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. 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.

70. [13-26689](#)-B-13 KAMAL SHEHADEH MOTION TO VALUE COLLATERAL OF
CAH-6 HSBC MORTGAGE CORP., USA
7-31-13 [[66](#)]

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 Corp, USA's ("HSBC") claim secured by the second deed of trust on real property located at 6841 Woodchase Drive in Granite Bay, California ("Property") is a secured claim in this case, 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 \$700,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by JPMorgan Chase Bank with a balance of approximately \$789,559.49. 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.

71. [11-34690](#)-B-13 TERRY/EARMA JOHNSON
RAC-3

MOTION TO SUBSTITUTE CO-DEBTOR
IN PLACE OF DEBTOR
8-2-13 [[81](#)]

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

The motion is granted in part. Pursuant to Fed. R. Bank. P. 1004.1, co-debtor Earma Jean Johnson is authorized to perform the obligations and duties of deceased debtor Terry Lee Johnson in this case, in addition to performing her own obligations and duties. Except as so ordered, the motion is denied.

Pursuant to Fed. R. Bank. P. 1016, administration of case no. 11-34690-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of the debtor Terry Lee Johnson had not occurred. Fed. R. Bank. P. 7025 is applicable only in adversary proceedings and contested matters.

The court will issue a minute order.

72. [11-34690](#)-B-13 TERRY/EARMA JOHNSON
RAC-4

MOTION TO APPROVE LOAN
MODIFICATION
8-2-13 [[87](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion was not properly served. 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 for a loan modification on the chapter 13 trustee, and the creditor who will be modifying the debtor's loan (unless service has been waived by the entity modifying the loan 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 modifying their loan - BofA - with the motion pursuant to the requirements of Bankruptcy Rule 7004(h). The court also notes that Debtors have provided no proof that BofA consents to the loan modification. Although Debtors have submitted a copy of the loan modification agreement, it is not

signed by Debtors or BofA (Dkt. 90).

The court will issue a minute order.

73. [09-40899](#)-B-13 ALFREDO GALANG AND MOTION FOR ENTRY OF DISCHARGE
RWF-6 MERCEDES SISON FOR ALFREDO N. GALANG, JR. ONLY
8-5-13 [[87](#)]

Tentative Ruling: The motion is granted in part. Pursuant to Fed. R. Bank. P. 1004.1, co-debtor Mercedes Sison is authorized to perform the obligations and duties of deceased debtor Alfredo Galang in this case, including execution of the certificate pursuant to 11 U.S.C. § 1328, in addition to performing her own obligations and duties. Except as so ordered, the motion is denied.

Pursuant to Fed. R. Bank. P. 1016, administration of case no. 09-40899-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of the debtor Alfredo Galang had not occurred.

The court will issue a minute order.

74. [13-28799](#)-B-13 ALBERT/KAREN JURASIN MOTION TO VALUE COLLATERAL OF
SJS-1 BANK OF AMERICA, N.A.
8-1-13 [[18](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BofA") claim secured by the second deed of trust on real property located at 6629 Trilby Court, Citrus Heights, California ("Property") is a secured claim in this case, 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 \$203,588.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Green Tree Servicer, LLC with a balance of approximately \$266,193.00. Thus, the value of the collateral available to BofA on its second deed of trust is \$0.00.

The court will issue a minute order.