

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

September 24, 2013 at 9:32 A.M.

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1. [13-29800](#)-B-13 JOSE ARANDA AND FAVIOLA OBJECTION TO CONFIRMATION OF  
VALENCIA-ARANDA PLAN BY THE BANK OF NEW YORK  
MELLON  
8-30-13 [[41](#)]

**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 July 25, 2013, is denied.

The court will issue a minute order.

2. [13-29800](#)-B-13 JOSE ARANDA AND FAVIOLA MOTION TO VALUE COLLATERAL OF  
CAH-1 VALENCIA-ARANDA REAL TIME RESOLUTIONS, 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 Real Time Resolutions, Inc.'s ("Real Time") claim in this case secured by the second deed of trust on real property located at 7116 Koropp Court, 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 \$160,000.00 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 \$164,000.00. Thus, the value of the collateral available to Real Time on its second deed of trust is \$0.00.

The court will issue a minute order.

3. [13-29800](#)-B-13 JOSE ARANDA AND FAVIOLA MOTION TO AVOID LIEN OF LEO  
CAH-2 VALENCIA-ARANDA MARTINEZ  
8-13-13 [[21](#)]

**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 Leo Martinez, recorded in the official records of Sacramento County, Book 20080111, Page 1143, is avoided as against the real property located at 7116 Koropp Court, Sacramento, California.

The subject real property has a value of \$160,000.00 as of the date of the petition. The unavoidable liens total \$241,390.07. 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.

4. [13-29800](#)-B-13 JOSE ARANDA AND FAVIOLA MOTION TO AVOID LIEN OF  
CAH-3 VALENCIA-ARANDA ARAMINTA B. HAWKINS  
8-13-13 [[26](#)]

**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 Araminta B. Hawkins, recorded in the official records of Sacramento County, Book 20090916, Page 0726, is avoided as against the real property located at 7116 Koropp Court, Sacramento, California.

The subject real property has a value of \$160,000.00 as of the date of the petition. The unavoidable liens total \$241,390.07. 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.

5. [13-29800](#)-B-13 JOSE ARANDA AND FAVIOLA MOTION TO AVOID LIEN OF  
CAH-4 VALENCIA-ARANDA EMPLOYMENT GROUP  
8-13-13 [[31](#)]

**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 Employment Group, recorded in the official records of Sacramento County, Book 20120216, Page 0713, is avoided as against the real property located at 7116 Koropp Court, Sacramento, California.

The subject real property has a value of \$160,000.00 as of the date of the petition. The unavoidable liens total \$241,390.07. 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.

6. [13-29504](#)-B-13 JOEY/SHEILA NUQUI OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
8-29-13 [[39](#)]

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

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

The trustee's objection and motion to dismiss are moot. On August 30, 2013, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

7. [13-29504](#)-B-13 JOEY/SHEILA NUQUI  
JSN-1

MOTION TO VALUE COLLATERAL AND  
TO AVOID LIEN OF WELLS FARGO  
BANK, N.A.  
8-21-13 [[22](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Bank, N.A.'s ("Wells Fargo") claim in this case secured by the second deed of trust on real property located at 4730 Hummingbird Court, Fairfield, 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 \$490,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by U.S. Bank Mortgage with a balance of approximately \$542,544.00. Thus, the value of the collateral available to Wells Fargo on its second deed of trust is \$0.00.

The court will issue a minute order.

8. [08-34405](#)-B-13 DENNIS/ROBIN COBB  
MET-10

MOTION TO APPROVE LOAN  
MODIFICATION  
8-25-13 [[149](#)]

**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 credit on the terms set forth in the Non-HAMP Loan Modification Agreement filed as Exhibit "A" to the motion (Dkt. 152 at 2).

The court will issue a minute order.

9. [13-27905](#)-B-13 ANA BREZEDA  
PGM-1

MOTION TO CONFIRM PLAN  
8-2-13 [[31](#)]

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

The motion is granted and the amended plan filed August 2, 2013, will be confirmed.

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

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

10. [13-30905](#)-B-13 DAVID/ELAINE HARRIS MOTION TO VALUE COLLATERAL OF  
DBJ-1 RESURGENT CAPITAL SERVICES L.P.  
8-22-13 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Resurgent Capital Services, L.P.'s ("Resurgent") claim in this case secured by the second deed of trust on real property located at 7393 Capay Avenue, Orland, 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 \$280,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase Home Mortgage with a balance of approximately \$297,000.00 thus, the value of the collateral available to Resurgent on its second deed of trust is \$0.00.

The court will issue a minute order.

11. [13-29706](#)-B-13 FRANK/JOSEPHINE OLIVAS OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-5-13 [[22](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed July 24, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 8, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

**Tentative Ruling:** The chapter 13 trustee's objections that the plan does not satisfy the requirements 11 USC § 1325(b)(1)(B), that the debtor has not filed a detailed itemization of business expenses with her sworn Schedule J and that the debtor has not provided the trustee with a Class 1 Checklist and Authorization to Release Information are sustained. The trustee's remaining objection is overruled. The debtor's evidentiary objection to the declaration of Kari Capella (the "Capella Decl.") is sustained. The opposition filed by creditor Romel Magno Hamo is overruled without prejudice. The motion to confirm the amended plan filed May 1, 2013, is denied.

The trustee's objections that the he plan does not satisfy the requirements 11 USC § 1325(b)(1)(B), that the debtor has not filed a detailed itemization of business expenses with her sworn Schedule J and that the debtor has not provided the trustee with a Class 1 Checklist and Authorization to Release Information are sustained for the reasons set forth in the trustee's written opposition. As for the trustee's remaining objection regarding the dependency of the plan on a motion to value the collateral of Bank of America, N.A., the court granted the debtor's motion to value collateral on July 17, 2013 (although the debtor's attorney has not yet submitted an acceptable form of order).

The debtor's evidentiary objection to the Capella Decl. is sustained. The Capella Decl. is intended to authenticate bank account statements allegedly received by Hamo's counsel in third-party discovery for the purpose of showing that the debtor either failed to disclose certain accounts or that she understated account balances for accounts that she did disclose. Copies of the bank account statements are submitted as exhibits to Hamo's "supplemental" opposition filed on September 10, 2013 (Dkt. 172).

The bank account statements are hearsay. They are an out-of-court statement of Wells Fargo Bank, N.A. being offered in evidence by Hamo to prove the truth of the matters contained in the statements. Fed. R. Evid. 801(a), (c). Evidence like the account statements may be admissible as a record of a regularly conducted activity pursuant to Fed. R. Evid. 803(6) if the requirements of Rule 803(6)(A)-(E) are met. Hamo has not satisfied those requirements. Ms. Capella is not a custodian of the account statements or a qualified witness as that term is defined in Rule 803(6)(D), such that she can establish the conditions of Rule 803(6)(A)-(C) and (E). Ms. Capella is a legal secretary employed by Hamo's counsel. At most, she may have personal knowledge that debtor's counsel propounded third-party discovery on Wells Fargo Bank, N.A. and received the account statements as a response. She does not have personal knowledge sufficient to authenticate the account statements. Accordingly, the debtor's evidentiary objection is sustained and the court will not consider the account statements as evidence in support of Hamo's opposition.

Aside from the account statements, Hamo argues that the debtor has undervalued real property located at 5422 N. Avenue, Carmichael,

California (the "Carmichael Property"). The Carmichael Property is listed on the debtor's sworn Schedule A with a value of \$300,000.00; Schedule A further indicates that only the debtor is listed as title owner of the property, even though mortgage obligations encumbering the property and which aggregate \$197,305.00 in amount are the obligations of the debtor and her ex-husband. Schedule A states that debtor's "half equity" in the Carmichael Property is \$51,347.54. Hamo argues that because the debtor is the sole title owner of the Carmichael Property, the value of her interest in the property should be \$102,695.00. Hamo argues that the liquidation value of the Carmichael Property after deducting debtor's claim of exemption is \$80,870.00. However, Hamo performs absolutely no further analysis of the significance of the foregoing. If the objection is intended to show that the debtor has not satisfy her burden of showing that the plan complies with § 1325(a)(4), Hamo does not present any analysis which would lead the court to that conclusion. He does not identify the amount of the dividend that the debtor's plan will pay to unsecured creditors and he does not identify the amount of non-exempt property in the estate. He also does not cite § 1325(a)(4). It is not incumbent on the court to go searching through the docket of the case simply because a creditor raises a question or suggests the possibility that the chapter 13 plan may not comply with § 1325(a)(4).

Furthermore, to the extent that Hamo's evidence is intended to support an argument that the plan is not filed in good faith and that the debtor has not satisfied that burden under 11 U.S.C. § 1325(a)(3), he again presents no analysis of the standard under that section. He merely cites the section. An argument that a chapter 13 plan is not proposed in good faith is subject to an analysis of the totality of circumstances of the case, the court notes that the Ninth Circuit Bankruptcy Appellate Panel has identified 11 non-exclusive factors which inform the analysis. See Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988). Hamo does not discuss the foregoing authority, or any authority informing the analysis under § 1325(a)(3). Again, it is not incumbent on the court to search the docket of the case to find evidence to support a creditor's objection, nor is it incumbent on the court to search for legal authority supporting a creditor's objection for the purpose of making the creditor's argument for him. The court's local rules require that all parties submit evidence and cite legal authority supporting their positions. LBR 9014-1(d)(5), (6). Hamo has disregarded that rule. Hamo and his counsel are cautioned that they must in any future objection explain, with citation of authority, how each of his complaints supports an objection under a specific subdivision of § 1325(a).

The court will issue a minute order.

13. [13-27208](#)-B-13 GARY HARTLEY AND PAMELA OBJECTION TO DEBTORS' CLAIM OF  
JPJ-2 SCHWENINGER HARTLEY EXEMPTIONS  
7-23-13 [[30](#)]

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

The objection is moot. The debtors filed an amended Schedule C on July

30, 2013 (Dkt. 35). The claims of exemption in the amended Schedule C supersede the claims of exemption to which the trustee objects.

The court will issue a minute order.

14. [09-36409](#)-B-13 JAMES COOPER MOTION TO MODIFY PLAN  
SDH-2 7-26-13 [[42](#)]

**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 (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 (9<sup>th</sup> Cir. BAP 1993), aff'd. 49 F.3d 1404 (9<sup>th</sup> Cir. 1995). The court notes, however, that the debtor is an "above median" debtor 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 43 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 (9<sup>th</sup> Cir., Aug. 29, 2013) overruling Maney v. Kagenveama (In re Kagenveama), 541 F.3d 868 (9<sup>th</sup> 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. 9<sup>th</sup> 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.

15. [13-24212](#)-B-13 PETER DELEVATI MOTION TO CONFIRM PLAN  
VS-5 7-30-13 [[55](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed July 30, 2013, is denied.

The court will issue a minute order.

16. [13-24212](#)-B-13 PETER DELEVATI  
VS-5

COUNTER MOTION TO DISMISS CASE  
9-3-13 [[61](#)]

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

The countermotion is conditionally denied, the conditions being that on or before October 8, 2013, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

17. [13-28916](#)-B-13 DONALD LEE  
DJC-1

MOTION TO VALUE COLLATERAL OF  
AMERICREDIT  
8-15-13 [[20](#)]

**Tentative Ruling:** The motion is continued to a final evidentiary hearing on November 21, 2013, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before November 14, 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 November 14, 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 Collateral of Americredit. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [[www.tabbies.com](http://www.tabbies.com)] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

18. [13-28916](#)-B-13 DONALD LEE CONTINUED OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
8-5-13 [[16](#)]

**Tentative Ruling:** The objection is continued to December 10, 2013, at 9:32 a.m. to be heard after the evidentiary hearing on the debtor's motion to value the collateral of Americredit.

The court will issue a minute order.

19. [13-29516](#)-B-13 MICHAEL CHURSENOFF OBJECTION TO CONFIRMATION OF  
MAS-1 PLAN BY ETHAN CONRAD  
8-20-13 [[20](#)]

**Tentative Ruling:** The motion is continued to October 22, 2013, at 9:32 a.m. Any supplemental opposition based on the examination of the debtor pursuant to Fed. R. Bankr. P. 2004 by creditor Ethan Conrad shall be filed and served on or before October 8, 2013. Any supplemental reply in support of the motion shall be filed on or before October 15, 2013.

The court will issue a minute order.

20. [13-25820](#)-B-13 ZELIA ANGELE MOTION TO CONFIRM PLAN  
EWV-27 8-12-13 [[31](#)]

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

The motion is granted and the amended plan filed August 12, 2013, will be confirmed.

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

21. [13-29120](#)-B-13 YAZAN IBRAHIM  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
8-29-13 [[20](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed August 22, 2013, is denied.

The court will issue a minute order.

22. [13-29120](#)-B-13 YAZAN IBRAHIM  
PPR-1

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON AND/OR MOTION TO DISMISS  
CASE  
8-29-13 [[23](#)]

**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 that the dividend for payment of pre-petition arrears proposed in the plan is insufficient to cure the pre-petition arrears owed to the creditor is overruled. The creditor's remaining objections are sustained. Confirmation of the initial plan filed July 23, 2013, is denied.

The creditor's objection to the sufficiency of the dividend for repayment of its claim to pre-petition arrears is overruled because the creditor has provided no evidence to support its objection. The creditor fails to provide any evidence regarding the amount of its claim to pre-petition arrears, and merely states that the amount of arrears "will be disclosed in a timely filed Proof of Claim." The dividend for repayment of pre-petition arrears owed to the creditor proposed in the plan is sufficient to pay the prepetition arrears that are listed in the plan.

The creditor's remaining objections are sustained for the reasons set forth in the objection.

The court will issue a minute order.

23. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY MOTION TO CONFIRM PLAN  
PGM-3 LAU 8-13-13 [[58](#)]

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

The court acknowledges that in their written reply the debtors have proposed that the trustee's objection under 11 U.S.C. § 1325(b)(1)(B) be resolved by increasing the monthly plan payment amount starting in September, 2013 and continuing through the end of the plan term. However, the court notes that the debtors have proposed an increase in the plan payment starting September, 2013 from \$1100 per month to \$1240 per month, or a 12.7% increase in the plan payment. This exceeds the 10% threshold established in this department for a non-material modification to plan treatment that could be included in an order confirming plan without further notice to creditors.

The trustee's remaining objections are sustained for the reasons set forth in trustee's objection. The court disagrees with the debtors that the outcome of their pending objections to the claims of several creditors secured by real property has no impact on feasibility of the plan. The court notes that the debtors are objecting to those claims on the ground that the amounts claimed for pre-petition arrears in the claims are incorrect. If the debtors are unsuccessful in their claims objections, the class 4 treatment for the claims proposed in the plan will be inappropriate.

The court will issue a minute order.

24. [12-39430](#)-B-13 ZAKIA SHEHADEH MOTION TO CONFIRM PLAN  
WSS-5 8-7-13 [[130](#)]  
CASE DISMISSED 8/13/13

**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. By order entered August 13, 2013 (Dkt. 141), the bankruptcy case was dismissed.

The court will issue a minute order.

25. [12-38432](#)-B-13 JOHN/NATALIE PICOTTE MOTION TO CONFIRM PLAN  
DMB-9 8-5-13 [[145](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed August 5, 2013, is denied.

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

In addition, the court notes that the plan proposes to pay the secured claim of Bank of America, N.A., (the "Claim") based on the loan secured by the first deed of trust in the debtors' residence located at 581 County Road 257, Alturas, California through class 4 for the ongoing contract installment payment and through class 2 for the purpose of curing Bank of America's claim for pre-petition arrears. Bank of New York Mellon, as holder of the Claim, filed an opposition to this motion objecting to the foregoing classifications, but withdrew the opposition on September 18, 2013 (Dkt. 162). However, the court has an independent duty to determine whether the plan satisfies the requirements for confirmation. Here, the Claim is in default, as the debtors owe a pre-petition arrearage to the holder of the claim. The debtors have not shown that the requirements of 11 U.S.C. § 1325(a)(6) are met when the holder of the Claim can foreclose on the debtor's residence immediately after entry of an order confirming the plan.

The court will issue a minute order.

26. [11-23233](#)-B-13 KATHLEEN STANLEY MOTION TO APPROVE LOAN  
SPB-6 MODIFICATION  
8-21-13 [[107](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted. The debtor is authorized to incur credit on the terms set forth in the Home Affordable Modification Agreement filed as Exhibit "1" to the motion (Dkt. 109 at 3).

The debtor has resolved the trustee's objection by filing amended Schedules I and J on September 17, 2013 (Dkt. 117, 118).

The court will issue a minute order.

27. [11-23233](#)-B-13 KATHLEEN STANLEY MOTION TO MODIFY PLAN  
SPB-7 8-21-13 [[103](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed August 21, 2013, is confirmed with the following modification to the plan's payment provisions: The debtor has paid a total of \$104,452.49 to the trustee through August 25, 2013 (month 30). Commencing with the plan payment due on September 25, 2013, the debtor shall pay \$2693.00 per month for the remaining months of the plan (months 31-60).

The court will issue a minute order.

28. [13-30034](#)-B-13 DEBRA BENNIE  
RAC-1

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
8-19-13 [[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 Wells Fargo Bank, N.A.'s ("Wells Fargo") claim in this case secured by the second deed of trust on real property located at 960 Reuter Drive, West 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 \$127,244.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo with a balance of approximately \$200,128.00 thus, the value of the collateral available to Wells Fargo on its second deed of trust is \$0.00.

The court will issue a minute order.

29. [12-40936](#)-B-13 MATT LUGO  
EJS-2

MOTION TO MODIFY PLAN  
8-7-13 [[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, is confirmed.

The court will issue a minute order.

30. [13-20339](#)-B-13 CONRAD ELLERBY  
MET-7

MOTION TO SELL  
8-24-13 [[100](#)]

**Tentative Ruling:** The motion is granted. Pursuant to 11 U.S.C. § 363(b), the debtor is authorized to sell the real property located at 1007 Humphrey Drive, Suisun, California (the "Property") to LeRoy Williams and Jessica Williams for \$240,000.00 on the terms set forth in the Residential Purchase Agreement and Joint Escrow Instructions filed as Exhibit "A" to the motion (Dkt. 104 at 2). The 14-day stay of Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing on the motion.

The court does not authorize a sale free and clear of the lien of

Mortgage Investors Corp., ("Mortgage Investors") the holder of the first deed of trust on the Property. A sale free and clear of Mortgage Investors' lien is not necessary in this case, as the debtor states in the motion that Mortgage Investors' claim shall be paid through escrow at closing.

The court will issue a minute order.

31. [13-27439](#)-B-13 PAUL/MERLE URCIAGA CONTINUED MOTION TO VALUE  
JTN-1 COLLATERAL OF WELLS FARGO BANK,  
N.A.  
7-3-13 [[14](#)]

**Tentative Ruling:** The motion to value Wells Fargo Bank, N.A.'s collateral is continued to a final evidentiary hearing on November 20, 2013 at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before November 13, 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 November 13, 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 Collateral of Wells Fargo Bank, N.A.. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [[www.tabbies.com](http://www.tabbies.com)] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) - for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

32. [13-27439](#)-B-13 PAUL/MERLE URCIAGA CONTINUED MOTION TO CONFIRM  
JTN-2 PLAN  
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 December 10, 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.

33. [13-27639](#)-B-13 TKEBUCHAVA MERI OBJECTION TO DEBTOR'S CLAIM OF  
JPJ-2 EXEMPTIONS  
8-15-13 [[57](#)]

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

The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed by order entered September 13, 2013 (Dkt. 72) for failure to pay filing fee installments.

The court will issue a minute order.

34. [11-31040](#)-B-13 ROBERT/PHYLISS MILLER MOTION TO MODIFY PLAN  
WW-3 8-9-13 [[38](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed August 9, 2013 (Dkt. 42) is denied.

The court will issue a minute order.

35. [13-23146](#)-B-13 PATRICK SALIMI MOTION TO CONFIRM PLAN  
PGM-3 8-12-13 [[55](#)]

**Tentative Ruling:** The trustee's opposition is sustained for the reasons set forth therein. The motion to confirm the plan filed August 12, 2013 (Dkt. 60) is denied.

The court will issue a minute order.

36. [13-23146](#)-B-13 PATRICK SALIMI COUNTER MOTION TO DISMISS CASE  
PGM-3 9-9-13 [[66](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 66) 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 October 8, 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.

37. [12-40247](#)-B-13 CHRISTOPHER/TRACY VASQUEZ MOTION TO SELL  
WW-1 8-27-13 [[28](#)]

**Tentative Ruling:** The motion is granted. Pursuant to 11 U.S.C. § 363(b), the debtors are authorized to sell the real property located at 630 Purple Martin Drive, Vacaville, CA 95687 (the "Property") to Jesse White and Kathleen Baziuk-White for \$450,000.00 on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions filed as Exhibit "A" to the motion (Dkt. 31 at 2-17). The 14-day stay of Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The court will issue a minute order.

38. [13-29447](#)-B-13 JOSEPHINE TOLLESON OBJECTION TO CONFIRMATION OF  
APN-1 PLAN BY PNC BANK, N.A.  
8-26-13 [[24](#)]

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

This matter is continued to October 8, 2013 at 9:32 a.m. to be heard after the debtor's motion to value the real property located at 1392 Freswick Drive, Folsom, CA.

The court will issue a minute order.

39. [13-29747](#)-B-13 YANETA LACEY OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON  
9-5-13 [[15](#)]

**Tentative Ruling:** The trustee'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 trustee's objections are sustained. Confirmation of the plan filed July 25, 2013 (Dkt. 5) is denied.

The court will issue a minute order.

40. [13-26848](#)-B-13 ERIC/SCHLONDA WILLIAMS COUNTER MOTION TO DISMISS CASE  
DAO-1 9-6-13 [[33](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 33) 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 October 8, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

41. [13-26848](#)-B-13 ERIC/SCHLONDA WILLIAMS MOTION TO CONFIRM PLAN  
DAO-1 7-29-13 [[25](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed July 29, 2013 (Dkt. 28) is denied.

The court will issue a minute order.

42. [10-40349](#)-B-13 CLYDE/VICTORIA HAGOOD MOTION TO APPROVE LOAN  
BLG-1 MODIFICATION  
8-22-13 [[47](#)]

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

The motion is granted. The debtors are authorized to enter into the loan modification with JPMorgan Chase Bank, N.A. on the terms set forth in the Home Affordable Modification Agreement submitted as Exhibit A to the motion (Dkt. 50, p.3).

The court will issue a minute order.

43. [13-22852](#)-B-13 DAVID/YOLANDA BENSON  
PLC-3

MOTION TO CONFIRM PLAN  
7-29-13 [[50](#)]

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

The oppositions of the Chapter 13 trustee and creditor U.S. Bank, N.A. ("U.S. Bank") are sustained. The motion to confirm the second amended plan filed July 29, 2013 (Dkt. 53) is denied.

The court awards no fees and costs to U.S. Bank because it has not established that the value of its collateral exceeds the amount of its claim. 11 U.S.C. § 506(b).

The court will issue a minute order.

44. [13-22852](#)-B-13 DAVID/YOLANDA BENSON  
PLC-3

COUNTER MOTION TO DISMISS CASE  
9-4-13 [[58](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 58) 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 October 8, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

45. [13-29152](#)-B-13 AIDA DELA CRUZ  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
8-29-13 [[34](#)]

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

The trustee's objections are sustained. Confirmation of the plan filed July 24, 2013 (Dkt. 13) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 8, 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.

46. [13-30052](#)-B-13 KEVIN BRACY MOTION TO VALUE COLLATERAL OF  
BLG-1 SELF HELP FEDERAL CREDIT UNION  
8-22-13 [[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. \$19,570.00.00 of Self Help Federal Credit Union's claim secured by a 2007 BMW 750I ("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 \$19,570.00 on the date of the petition.

The court will issue a minute order.

47. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE MOTION TO MODIFY PLAN  
RK-1 8-19-13 [[46](#)]

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

The motion to confirm the modified plan filed August 19, 2013 (Dkt. 50) is denied.

The motion to confirm the modified plan is denied because the debtors have not carried their burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). The court also has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Here, the feasibility of the debtors' proposed modified plan depends on monthly installments to Bank of America, N.A. ("Bank of America") in connection with a loan modification agreement (Dkt. 44, p. 2) that the court approved on August 7, 2013 (Dkt. 45). However, the approved loan modification agreement is a

"trial period plan." Pursuant to the terms of this agreement, the debtors are to remit monthly installment payments of \$2,563.09 to Bank of America on first day of August, September, and October 2013. The loan modification becomes permanent only if the debtors timely complete the trial period plan payments and continue to meet the eligibility requirements of Bank of America's loan modification program. As of the date of this hearing, it is impossible for the court to determine whether the debtors will qualify for a permanent loan modification. For example, the debtors have provided no evidence of payments made to Bank of America. Therefore, the debtors have not shown that the plan complies with 11 U.S.C. § 1325(a)(6). The debtors have not carried their burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

48. [13-27153](#)-B-13 RUSSELL/JENNIE KINZ MOTION TO CONFIRM PLAN  
MET-1 8-10-13 [[31](#)]

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

The Chapter 13 trustee's opposition is overruled. The motion to confirm the amended plan filed August 10, 2013 (Dkt. 34) (the "Plan") is granted and the Plan will be confirmed with the following modifications: (1) the secured claim of Wells Fargo Bank (\$162.00) will be paid directly by the debtors; and (2) the administrative expense payment in § 2.07 is \$325.00 per month.

The debtors' reply provides evidence that a pre-petition arrearage owed to creditor Wells Fargo Bank, N.A. in the amount of \$162.00 was submitted on September 13, 2013 (Dkt. 39, p. 2-3). The \$70.00 per month reduction in administrative expenses in § 2.07 of the amended plan reduces the aggregate monthly payments below the debtors' proposed monthly payments.

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

49. [13-27153](#)-B-13 RUSSELL/JENNIE KINZ COUNTER MOTION TO DISMISS CASE  
MET-1 9-6-13 [[36](#)]

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

The countermotion is denied.

The court has granted debtors' motion to confirm the amended plan filed August 10, 2013 (Dkt. 34) elsewhere on this morning's calendar.

The court will issue a minute order.

50. [13-29153](#)-B-13 YEVGENIY ZHILOVSKIY OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON  
8-29-13 [[31](#)]

**Tentative Ruling:** The trustee'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 trustee's objections are sustained. Confirmation of the initial plan filed July 23, 2013 (Dkt. 12) is denied.

The court will issue a minute order.

51. [13-29153](#)-B-13 YEVGENIY ZHILOVSKIY OBJECTION TO CONFIRMATION OF  
KK-1 PLAN BY BANK OF AMERICA, N.A.  
8-23-13 [[27](#)]

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

The creditor's objections are overruled without prejudice.

The creditor has not filed a proof of claim and has failed to file any evidence, i.e., a declaration and exhibits, in support of its objections, in derogation of LBR 9014-1(d)(6). A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to overrule the objection. LBR 1001-1(g).

The court will issue a minute order.

52. [13-29153](#)-B-13 YEVGENIY ZHILOVSKIY OBJECTION TO CONFIRMATION OF  
MDE-1 PLAN BY NATIONSTAR MORTGAGE,  
LLC  
7-31-13 [[23](#)]

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

The creditor's objections are sustained in part and overruled in part. Confirmation of the initial plan filed July 23, 2013 (Dkt. 12) is denied.

The creditor's objection regarding the debtor's ability to make all plan payments is sustained. The debtor's plan proposes to pay \$100.00 per month for thirty-six (36) months (Dkt. 12, p.1). According to the debtor's schedules

filed July 23, 2013 (Dkt. 13, p.19-20), the debtor has a monthly net income of \$100.46. The debtor has not proven how he will be able to make plan payments after curing the arrears owed to the creditor, which the creditor states is approximately \$57,511.84.

The creditor's objection regarding the plan's failure to provide for the claim or arrears on the claim is overruled without prejudice. The creditor has not filed a proof of claim and has failed to file any evidence, i.e., a declaration and exhibits, in support of its objections, in derogation of LBR 9014-1(d)(6). A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to overrule the objection. LBR 1001-1(g).

The court will issue a minute order.

53. [13-29065](#)-B-13 ROBERT STANLEY CONTINUED OBJECTION TO  
JPJ-1 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 October 8, 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.

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

**Tentative Ruling:** The objection is deemed withdrawn and is removed from the calendar.

The debtor and objecting creditor Wells Fargo Bank, N.A. ("Wells Fargo") entered into a stipulation to value the real property located at 251 Inverness Drive, Vallejo, CA 94589. The stipulation was approved by the court by order entered on September 21, 2013, and the plan treatment is consistent with the terms of the stipulation.

55. [13-29066](#)-B-13 LEE OWENS  
MET-1

CONTINUED MOTION TO VALUE  
COLLATERAL OF WELLS FARGO HOME  
MORTGAGE  
7-24-13 [[14](#)]

**Tentative Ruling:** The motion is removed from the calendar.

The debtor and movant Wells Fargo Bank, N.A. ("Wells Fargo") entered into a stipulation to value the real property located at 251 Inverness Drive, Vallejo, CA 94589. The stipulation was approved by the court by order entered on September 21, 2013. The stipulation resolves this motion.

56. [13-29166](#)-B-13 JAMES/SHELLY ARCHER  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
8-29-13 [[20](#)]

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

The trustee's objections are sustained. Confirmation of the plan filed July 24, 2013 (Dkt. 12) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 8, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

57. [13-22367](#)-B-13 DANIEL DEREPIENTIGNY  
JPJ-2

MOTION TO CONVERT CASE FROM  
CHAPTER 13 TO CHAPTER 7 AND/OR  
MOTION TO DISMISS CASE  
8-20-13 [[46](#)]

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

The trustee's motion is granted, and the instant case is converted to a case under chapter 7.

11 U.S.C. § 1307(c) enumerates eleven non-exclusive grounds which may constitute "cause" for conversion or dismissal of a chapter 13 case. § 1307(c) establishes a two-step analysis for dealing with questions of conversion and dismissal. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" In re Nelson, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) The bankruptcy court is given discretion to convert or dismiss based on unreasonable delay by the debtor that is

prejudicial to creditors. 11 U.S.C. § 1307(c)(1). A debtor's "unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for (conversion or) dismissal under § 1307(c)(1)." In re Ellsworth, 455 B.R. 904, 915 (B.A.P. 9<sup>th</sup> Cir. 2011). In determining "cause" under § 1307(c), the court may analyze the entire record. In re de la Salle, 461 B.R. 593, 605 (B.A.P. 9<sup>th</sup> Cir. 2011).

Here, after analyzing the record and considering the contentions raised in the trustee's motion and the debtor's opposition, the court finds that "cause" exists to convert the case to one under chapter 7 due to unreasonable delay by the debtor that is prejudicial to creditors. The debtor's initial chapter 13 plan was filed on March 22, 2013. (Dkt. 18) Confirmation was denied by civil minute order on July 19, 2013 (Dkt. 38). Since that time, the only activity by the debtor in this case has been the written opposition to this motion that he filed on September 10, 2013 (Dkt. 50). That is over two months of inactivity as of the date of this hearing. The debtor has provided no evidence that he is making efforts to file an amended plan that satisfies the plan confirmation requirements of 11 U.S.C. § 1325(a). The debtor's only response to this motion is the statement that he has not been able to file an amended plan "due to the work necessary to compile information for his 'somewhat complex tax return' and provide it to his tax preparer."

Furthermore, the debtor continues to dispute the amount of the priority claim held by the Internal Revenue Service ("IRS") despite the fact that he has never filed an official claim objection in this matter. The IRS filed its proof of claim on March 19, 2013 in the amount of \$88,208.32. § 2.04 of the chapter 13 plan states that the proof of claim, not the 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. Despite this language, the debtor's initial plan (Dkt. 18, p.30) and Schedule E (Dkt. 18, p.11), both of which were filed three days after the IRS's proof of claim was filed, listed the claim's value at \$44,018.00. The first objection raised by the trustee in his opposition to confirmation of the debtor's initial plan (Dkt. 33) was that the plan understated the priority amount owed to the IRS in Class 5. In denying confirmation of the initial plan, the court sustained the trustee's opposition in its entirety. In spite of this order, the debtor has once again raised the issue in his opposition to this motion, mistakenly stating that the amount of the IRS's proof of claim is \$43,354.50 and arguing that his 2012 tax bill will be less than \$10,000.00. The debtor has never filed an official claim objection. The debtor is simply recycling the same argument and causing unreasonable delay that is prejudicial to creditors.

The court is equally disturbed by that fact that the debtor is yet to even file his 2012 tax return. A chapter 13 plan cannot be confirmed if the debtor has not filed all applicable Federal, State, and local tax returns. 11 U.S.C. § 1325(a)(9). Additionally, a debtor is required to file with the appropriate tax authorities all tax returns for all taxable periods ending during the four-year period ending on the date of the filing of the petition no later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a). 11 U.S.C. § 1308(a). The first date scheduled for the section 341 meeting of creditors was April 4, 2013 (Dkt. 9). Therefore, the debtor needed to have filed his 2012 tax return no later than April 3,

2013. This was over five months ago, and constitutes an unreasonable delay that is prejudicial to creditors.

Finally, the debtor's opposition provides no evidence, through either a declaration, exhibit, or other attachment, that the debtor is even close to being able to file a confirmable plan. The debtor states that a local real estate broker will perform a comparative market analysis to increase the value of his home, but there is no proof that he has even hired a real estate broker for the task. Similarly, he states that he is compiling information to provide to his tax preparer in order to complete his 2012 taxes. He has not provided the court with even a rough time line of when he will be able to complete this process.

Since "cause" has been established, a choice must now be made between conversion and dismissal. The trustee has made a showing that there is potentially significant non-exempt property in the estate. Therefore, the court finds that conversion, rather than dismissal, is in the best interests of creditors and the estate.

The court notes that, even if the trustee's motion were not granted, the debtor's opposition would not be sustained due to procedural errors. There is no proof on the docket that the debtor's opposition was ever served on any party in interest as is required by Local Bankruptcy Rule 9014-1(e). For counsel's future reference, a failure to comply with the Local Bankruptcy Rules constitutes grounds to dismiss any action, as well as gives the court the authority to impose other sanctions including, without limitation, imposition of monetary sanctions or attorneys' fees and costs. LBR 1001-1(g).

The chapter 13 trustee shall submit electronically, with no duplicate paper copy, an order that conforms to the court's ruling.

58. [11-35968](#)-B-13 JAMES/ELIZABETH WILSON MOTION TO MODIFY PLAN  
WW-2 8-9-13 [[28](#)]

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

The motion to confirm the modified plan filed August 9, 2013 (Dkt. 32) is denied.

The motion to confirm the modified plan is denied because the debtors have not carried their burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). The court also has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The debtors' proposal to treat the secured claim of BAC Home Loans

Servicing ("BAC") in class 3, which proposes a surrender of their residence to BAC, does not reflect the debtors' present intentions. As the debtors state in their motion (Dkt. 28, p.1-2) and declaration (Dkt. 30, p.2), they do not believe that they can afford to make ongoing monthly payments while complying with their chapter 13 plan and other regular living expenses. Additionally, joint debtor James Wilson has taken a job in Stockton, CA and the debtors wish to sell their home in order to relocate closer to his place of employment. The problem with the debtors' proposed treatment of BAC's claim is that the debtors do not truly intend to surrender their residence to BAC, at least not as "surrender" is defined for bankruptcy purposes.

In a chapter 13 case in which the debtors sought to partially satisfy the secured claim of the Internal Revenue Service (the "Service") by surrendering to the Service personal property that the Service was barred from levying upon by the Internal Revenue Code, the Fourth Circuit Court of Appeals in In re White, 487 F.3d 199 (4th Cir. 2007) stated:

Although "surrender" is not defined in the Bankruptcy Code, see generally 11 U.S.C.A. § 101 (West 2004 & Supp.2006), the word's general meaning is not a mystery. The operative phrase in § 1325(a)(5)(C), "surrenders the property securing such claim to such holder," makes it clear enough that the "surrender" spoken of entails the secured creditor ultimately holding all rights, including the right of possession, in the property securing the claim. Thus, one prominent bankruptcy treatise has defined "surrender" in the § 1325(a) context as the "relinquishment of any rights in the collateral," including the right to possess the collateral. 8 Collier on Bankruptcy ¶ 1325.06[4] (Alan N. Resnick & Henry J. Sommer eds., 15th ed.2005). This definition has been formulated by a number of bankruptcy courts called on to construe § 1325(a)(5)(C). See, e.g., Hosp. Auth. Credit Union v. Smith (In re Smith), 207 B.R. 26, 30 (Bankr.N.D.Ga.1997) (concluding that § 1325(a)(5)(C) makes plain that "a debtor must at least tender possession or control of the collateral to the creditor"); In re Stone, 166 B.R. 621, 623 (Bankr.S.D.Tex.1993) (holding that "the term 'surrender' [under § 1325(a)(5)(C)] was contemplated by Congress to be a return of property and a relinquishing of possession or control to the holder of the claim"). Other legal and non-legal definitions of "surrender" also focus on the complete relinquishment of rights, see Black's Law Dictionary 1484 (8th ed.2005) (defining "surrender" as "yielding to another's power or control" and "giving up of a right or claim"), Merriam-Webster's Collegiate Dictionary 1258 (11th ed.2003) (defining "surrender" as "the action of yielding one's person or giving up the possession of something esp. into the power of another"), including relinquishment of the right to possession, see, e.g., Black's Law Dictionary 1484-85 (defining "surrender" in the landlord-tenant context as the tenant's "relinquishment of possession before the lease has expired"), U.C.C. § 3-604(a) (2002) (stating that one way for an instrument-holder to discharge the obligation of a party to the instrument is "surrender," i.e., physical delivery or turn over, of the instrument to the obligated party). At the most basic level, then, the word "surrender" means the relinquishment of all rights in property, including the possessory right, even if such relinquishment does not always require immediate physical delivery of the property to another.

Here, the debtors intend to surrender the property only if they are

unsuccessful in marketing the property. Surrender is not their present intention. This is not the "surrender" of their residence as defined for bankruptcy purposes. Thus, the debtors have failed to carry their burden under § 1325(a)(5).

In addition, a plan that does not reflect the debtors' present intentions is not one that is proposed in good faith. In determining whether a chapter 13 plan is proposed in good faith, the court should examine the debtors' intentions and the legal effect of confirmation in light of the spirit and purposes of chapter 13. See In re Warren, 89 B.R. 87, 93 (9th Cir. BAP 1988) (citing Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1444 (9th Cir.1986)). A chapter 13 plan in which the debtors propose a surrender of real property that is not actually a surrender consistent with § 1325(a)(5)(C) due to the debtors' intention to surrender the property only if they are unsuccessful in marketing it is not one that is proposed in good faith. The debtors have failed to carry their burden under § 1325(a)(3).

The court will issue a minute order.

59. [08-35569](#)-B-13 RODNEY/MARY HUSTON  
BLG-4

MOTION TO MODIFY PLAN  
7-30-13 [[93](#)]

**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 30, 2013 (the "Modified Plan"), is confirmed.

The motion is granted and the Modified Plan filed July 30, 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 (9<sup>th</sup> Cir. BAP 1993), aff'd, 49 F.3d 1404 (9<sup>th</sup> 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 56 months, with a final payment of \$692.00 to be made in June 2013. The Ninth Circuit Court of Appeals on August 29, 2013 filed an opinion in Flores v. Danielson (In re Flores), 2013 WL 4566428 (9<sup>th</sup> Cir. 2013) overruling Maney v. Kagenveama (In re Kagenveama), 541 F.3d 868 (9<sup>th</sup> 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. 9<sup>th</sup> 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.

60. [10-40069](#)-B-13 CAROLYN WILLIAMS  
MET-8

MOTION TO MODIFY PLAN  
8-11-13 [[93](#)]

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

Creditor Deutsche Bank National Trust Company ("Deutsche")'s opposition is overruled. The motion is granted, and the modified plan filed August 11, 2013 (Dkt. 98) is confirmed with the following modification: The treatment of Deutsche in Class 1 is stricken.

The motion to confirm the modified plan is granted, with the following modification: (1) the notations in Class 1 are hereby stricken.

The debtor states that the secured claim of Deutsche is a Class 1 claim. The modified plan proposes to make ongoing payments to Deutsche outside of the plan in Class 4. It further proposes to pay post-petition arrears on the claim through the plan in Class 2. This structure of claim treatment, ongoing payments made by the debtor and arrearages cured through the plan, is authorized in the Ninth Circuit. The Ninth Circuit Bankruptcy Appellate Panel in In re Lopez held that it is legally permissible for debtors to make ongoing post-petition mortgage payments directly while curing pre-petition defaults through the plan, assuming all confirmation requirements are met. Cohen v. Lopez (In re Lopez), 372 B.R. 40 (9th Cir. BAP 2007), aff'd. 550 F.3d 1202 (9th Cir. 2008).

The debtor has satisfied the plan confirmation requirements of 11 U.S.C. § 1325(a). Deutsche states that it is unsure of how to proceed with its claim in the event of a post-confirmation default. The court notes that "creditor confusion" is not listed among the plan confirmation requirements of § 1325(a).

The court will issue a minute order.

61. [11-20870](#)-B-13 STEVE/DONNA ZEIS  
MWB-3

MOTION TO MODIFY PLAN  
8-14-13 [[64](#)]

**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 14, 2013 (Dkt. 67) is confirmed.

The court will issue a minute order.

62. [13-29672](#)-B-13 MICHAEL ROSS  
RAC-1

MOTION TO VALUE COLLATERAL OF  
INTERNAL REVENUE SERVICE  
8-20-13 [[14](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$5,292.63.00 of the Internal Revenue Service's claim secured by all property listed on Schedule B (Dkt. 1, p. 10-14) of the debtor's Chapter 13 voluntary petition ("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 \$5,292.63.00 on the date of the petition.

The court neither makes nor implies any ruling as to the priority, if any, of the Internal Revenue Service's unsecured claim.

The court will issue a minute order.

63. [13-30372](#)-B-13 LORI ALVARADO  
WW-1

MOTION TO VALUE COLLATERAL OF  
WESTLAKE SERVICES, LLC  
8-27-13 [[16](#)]

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

The opposition of secured creditor Westlake Services, LLC ("Westlake") is sustained and the motion is denied.

Westlake's opposition is sustained for the reasons set forth therein. The debtor is prohibited from valuing Westlake's collateral for the purpose of fixing the amount of its secured claim by the "hanging paragraph" of 11 U.S.C. § 1325(a).

The court will issue a minute order.

64. [10-47173](#)-B-13 DANIEL SOLTERO AND  
WW-5 PATRICIA TORRES

MOTION TO APPROVE LOAN  
MODIFICATION  
8-20-13 [[52](#)]

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

The motion is dismissed because it is moot. Debtors seek approval from the court to enter into a permanent loan modification with Bank of

America, N.A. as to real property located at 9224 Egret Drive, Elk Grove, CA 95624. On December 10, 2012, the court granted a similar motion (Dkt. 49). Debtors already have the relief they now seek. Moreover, the court notes that the loan modification agreement submitted with this motion (Dkt. 55 at 2) is not signed by any of the parties. There is no case or controversy before the court.

The court will issue a minute order.

65. [13-24473](#)-B-13 ROBERT/CONNIE COLLINS MOTION TO CONFIRM PLAN  
SJS-3 8-6-13 [[66](#)]

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

Although no party in interest has filed opposition to the motion, the court has an independent duty to ensure that the plan satisfies the requirements of the Bankruptcy Code for confirmation. In this case, the plan erroneously states that the secured claim in the amount of \$1454.36 in favor of AAFES/Mil Star/Exchange ("AAFES") is secured by personal property consisting of a personal computer, an iPad and a camera, when in fact the secured claim secured by that personal property is actually in the amount of \$5258.50. After reviewing the docket in this matter, it appears that the secured claim in favor of AAFES in the amount of \$1454.36 is secured solely by an iPad, which iPad is erroneously listed in class 2 of the plan as securing the AAEFS claim in the amount of \$5258.50. The erroneous listing of the collateral securing AAFES' secured claim does not give adequate notice to a AAFES of the proposed treatment for its secured claims. Accordingly, the motion is denied.

The court will issue a minute order.

66. [13-30374](#)-B-13 MIKE/SHERRY WILLIAMS MOTION TO VALUE COLLATERAL OF  
CAH-1 SANTANDER CONSUMER USA, INC.  
8-14-13 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$7,000.00 of Santander Consumer USA, Inc.'s claim secured by a 2005 Nissan Maxima (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim. Except as so ordered, the motion is denied.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$7,000.00 on the date of the petition.

The court will issue a minute order.

67. [11-23075](#)-B-13 RUBEN/YANET MEZA MOTION TO VALUE COLLATERAL OF  
SDB-2 JP MORGAN CHASE BANK, N.A.  
8-23-13 [[50](#)]

**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., successor in interest from the FDIC as receiver for Washington Mutual Bank's ("Chase") claim secured by the second deed of trust on real property located at 3431 Nut Tree Rd., Vacaville, California, 95687 ("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 \$196,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Deutsche Bank National Trust Company, as Indenture Trustee for Argent Securities Inc., Asset-Backed Pass Through Certificates, Series 2005-W1 c/o America Home Mortgage Servicing, Inc., with a balance of approximately \$249,973.12. 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.

68. [13-20576](#)-B-13 GALEN/CHRISTINE CHANEY MOTION TO CONFIRM PLAN  
RDS-4 8-9-13 [[84](#)]

**Tentative Ruling:** The motion is continued to December 10, 2013, at 9:32 a.m.

To the motion is continued for the purpose of allowing the debtors to complete the trial loan modification period described in the additional provisions of the plan and to seek court approval of a permanent loan modification following the conclusion of the trial period.

The court will issue a minute order.

69. [12-40278](#)-B-13 FRED/JENNIFER RAMOS MOTION TO CONFIRM PLAN  
PLG-4 8-12-13 [[77](#)]

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

The trustee's opposition is sustained. The motion to confirm the amended plan filed August 15, 2013 (Dkt. 84), is denied. The counter motion is conditionally denied, the conditions being that on or before October 8, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

70. [13-26379](#)-B-13 NESTOR/BLESILDA VALLARTA MOTION TO CONFIRM PLAN  
RHM-1 7-29-13 [[26](#)]

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

The trustee's opposition is sustained. The motion to confirm the amended plan filed July 29, 2013 (Dkt. 25), is denied. The counter motion is conditionally denied, the conditions being that on or before October 8, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

71. [13-29880](#)-B-13 ANATOLIY RUB OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-5-13 [[18](#)]  
WITHDRAWN BY M.P.

**Disposition Without Oral Argument:** The objection and the motion to dismiss have been withdrawn (Dkt. 23) and are removed from the calendar.

72. [12-41182](#)-B-13 MARIA ABELAYE MOTION TO APPROVE LOAN  
CAH-1 MODIFICATION  
8-15-13 [[22](#)]

**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.

73. [13-28182](#)-B-13 STEVEN MJEHOVICH MOTION TO CONFIRM PLAN  
SJS-1 8-2-13 [[23](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the amended plan filed August 2, 2013 (Dkt. 26), is denied.

The court will issue a minute order.

74. [13-28182](#)-B-13 STEVEN MJEHOVICH COUNTER MOTION TO DISMISS CASE  
SJS-1 9-3-13 [[35](#)]

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

The countermotion is conditionally denied, the conditions being that on or before October 8, 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.

75. [12-40183](#)-B-13 RAYMOND GIN CONTINUED MOTION TO CONFIRM  
MAC-4 PLAN  
7-10-13 [[64](#)]

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

Although no party in interest is filed opposition to the motion to confirm the plan, the court has an independent duty to ensure that the plan satisfies the requirements of the Bankruptcy Code confirmation. In this case, the plan fails to provide for the ongoing monthly contract installment payment for the loan secured by the first deed of trust in their residence located at 8248 Sunset Downs Drive, Elk Grove, California. The debtors' sworn schedules indicate that the holder of the secured claim is GMAC Mortgage. While the plan provides treatment for arrears claims in favor of GMAC Mortgage in class 2, it does not provide any treatment for the ongoing monthly contract installment payment, which in previous plans proposed by the debtors has been listed in class 4.

The court will issue a minute order.

76. [12-33384](#)-B-13 CHRISTOPHER BARMBY AND CONTINUED OBJECTION TO CLAIM OF  
CJY-2 MADELYNN MCCLAIN 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 continued to October 8, 2013 at 9:32 a.m. Claimant JPMorgan Chase Bank, N.A.'s ("Chase") opposition to be filed and served by September 24, 2013.

The court acknowledges that the parties filed a stipulation to continue the hearing (Dkt. 42), requesting that the hearing on this matter be continued a second time to October 8, 2013, and that Chase have until September 24, 2013 to file its opposition. Simply filing a stipulation to continue a hearing date and opposition due date is not sufficient to obtain a continuance of any matter. Continuances must be approved by the court. LBR 9014-1(j). No proposed order approving the stipulation was submitted to the court. In this instance, the court treats the stipulation as a request for a continuance and grants it.

77. [11-41986](#)-B-13 KATHY VASEY CONTINUED MOTION TO ALLOW AN  
PGM-4 INFORMAL PROOF OF CLAIM OF  
SANTANDER CONSUMER USA/CITIBANK  
7-23-13 [[76](#)]

**Tentative Ruling:** This matter continued from August 27, 2013 to allow Debtor time to submit evidence, specifically a billing statement, in support of her motion. Debtor has not submitted further evidence.

The trustee's opposition is sustained. The motion is denied without prejudice.

Debtor has failed to meet her burden for showing that Santander Consumer USA/Citibank ("Santander") should be allowed an informal proof of claim.

To constitute an informal proof of claim a creditor, or in this case Debtor, must point to an explicit demand by the creditor which shows the nature and amount of the claim and an intent to hold the debtor liable for it. Sambo's Rests., Inc. v. Wheeler (In re Sambo's Rests., Inc.), 754 F.2d 811, 815 (9<sup>th</sup> Cir. 1985). The demand constituting the informal proof of claim need not appear in the bankruptcy court's docket. Id.; County of Orange v. Merrill Lynch & Co., Inc. (In re County of Orange), 191 B.R. 1005, 1022 (Bankr. C.D. Cal. 1996).

Here, Debtor refers to a billing statement dated August 1, 2011, that was sent by Santander. Debtor asserts in the motion that the billing statement is attached as exhibit "d" (Dkt. 78 at 4) but no exhibits were filed with the motion. No copy of the billing statement that the debtor alleges to constitute the informal claim was provided either with the motion or the debtor's reply. Therefore, Debtor has failed to provide admissible evidence that supports the relief she seeks.

The court will issue a minute order.

78. [13-27587](#)-B-13 CHARI GOLDSTEIN MOTION TO CONFIRM PLAN  
MMP-1 8-10-13 [[25](#)]

**Tentative Ruling:** The trustee's opposition and creditor Pointe Benicia Condominium Association's opposition are sustained. The motion to confirm the amended plan filed August 10, 2013, is denied.

The court will issue a minute order.

79. [13-27587](#)-B-13 CHARI GOLDSTEIN COUNTER MOTION TO DISMISS CASE  
MMP-1 9-10-13 [[47](#)]

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

The countermotion is conditionally denied, the conditions being that on or before October 8, 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.

80. [13-29691](#)-B-13 SARITA HAYES MOTION TO VALUE COLLATERAL OF  
BLG-1 BANK OF AMERICA, N.A.  
8-8-13 [[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 Bank of America, N.A.'s ("BofA") claim secured by the second deed of trust on real property located at 3701 Lissetta Ave, Sacramento, 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 \$84,977.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BofA with a balance of approximately \$115,595.98. 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.

81. [13-29691](#)-B-13 SARITA HAYES MOTION TO VALUE COLLATERAL OF  
BLG-2 BANK OF AMERICA, N.A.  
8-8-13 [[19](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BofA") claim secured by the second deed of trust on real property located at 1942 Courtside Drive, Grand Prairie, Texas ("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 \$74,500.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage with a balance of approximately \$77,053.75. 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.

82. [13-30391](#)-B-13 JOANNE VONDRACEK CONTINUED MOTION TO EXTEND  
JAT-1 AUTOMATIC STAY  
8-7-13 [[8](#)]

**Tentative Ruling:** None.

83. [13-30391](#)-B-13 JOANNE VONDRACEK MOTION TO VALUE COLLATERAL OF  
JAT-2 OWEN HOLLINGWORTH  
8-20-13 [[24](#)]

**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 Owen Hollingworth's claim secured by the second deed of trust on real property located at 14755 Via De

Maia, Magalia, 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 \$185,000.00 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 \$423,599.00. Thus, the value of the collateral available to Owen Hollingworth on his second deed of trust is \$0.00.

The court will issue a minute order.

84. [13-30892](#)-B-13 JOHN/CHRISTINA HENRICH MOTION TO VALUE COLLATERAL OF  
CAH-1 RBS CITIZENS, N.A.  
8-20-13 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of RBS Citizens, N.A.'s ("RBS") claim secured by the second deed of trust on real property located at 7111 Pine Cone Drive in Pollock Pines, 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 \$165,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Green Tree Servicing with a balance of approximately \$235,751.00. Thus, the value of the collateral available to RBS on its second deed of trust is \$0.00.

The court will issue a minute order.

85. [13-28694](#)-B-13 BRANDEN BELL MOTION TO CONFIRM PLAN  
WW-1 8-9-13 [[21](#)]

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

This matter is continued to October 8, 2013 at 9:32 a.m., to be heard after disposition of Debtor's Motion to Value the Internal Revenue Services' tax lien.

86. [12-35196](#)-B-13 VOLKER/SANDRA MOTION TO DISMISS CASE  
RAH-5 SCHREZENMEIER 8-29-13 [[74](#)]



order overruling GMAC's objection to Debtors' initial plan.) (Dkt. 76 at 119). Ultimately, on June 28, 2013, GMAC amended the Notice to remove the \$400.00 attorney's fee. Debtors filed this objection on August 1, 2013.

Arguments:

The court notes that Debtors' objection is confusing, to say the least. Nonetheless, the court construes the argument set forth in the objection to be that the attorney's fees listed in the Attachment should be disallowed unless GMAC can provide proof to justify the fees. The debtors are 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 debtors must come forward with evidence of their own to show that they do not owe some or all of the amount claimed by the claimant. Debtors have not done so here. The court notes that Debtors' counsel is well aware of the burden required to rebut the prima facie evidence. (See Case no. 12-32217, Dkt. 84.)

In this case, the proof of claim filed by GMAC 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 escrow account analysis are filed with the claim. The claim satisfies the requirements of Fed. R. Bankr. P. 3001(c). The debtors have come forward with no evidence of their own to show that they does not owe the amount claimed. Furthermore, to the extent the debtors argue 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 claim by GMAC reveals that all claimed fees, expenses and charges claimed were incurred prior to the date of the filing of the petition.

The court also construes the objection to include an argument that the postpetition attorney's fees of \$400.00 in the Notice should be disallowed. This objection, however, is moot since GMAC amended the Notice to remove the \$400.00 fee. The court notes that Debtors' counsel was listed on GMAC's proof of service of the amended Notice which was mailed on June 28, 2013. The court seriously questions Debtors' counsel's motives in bringing this objection in light of the fact that it was filed over a month after GMAC amended the Notice. Debtors' counsel is strongly reminded of this court's sanctioning power under Fed. R. Bankr. P. 9011(c)(1)(B) for violations of Fed. R. Bankr. P. 9011(b)(1) (filing a written motion or other paper to harass or to cause unnecessary delay or

needless increase in the cost of litigation).

Debtors' request for attorney's fees is denied as to any fees incurred for filing the objection to the postpetition attorney's fees in the Notice since this objection has been moot for some time. Debtors' request for attorney's fees not related to the above-referenced filing are denied without prejudice because Debtors fail to cite the legal authority upon which they rely for the relief they seek [LBR 9014-1(d)(5)] and analyze the facts of the case within the context of any legal authority.

The court will issue a minute order.

88. [12-39396](#)-B-13 CASWELL/DOROTHY JOHNSON CONTINUED MOTION TO MODIFY PLAN  
PGM-3 7-19-13 [[69](#)]

**Tentative Ruling:** This matter continued from August 27, 2013 to be heard after Debtor's Objection to Claim of GMAC Mortgage, LLC. The court has dismissed the Objection to Claim elsewhere on this morning's calendar.

The trustee's opposition is sustained. The motion to confirm the modified plan filed July 19, 2013 (Dkt. 68), is denied.

The court notes that neither the Internal Revenue Service ("IRS") nor Debtor has filed a proof of claim that includes a tax liability for tax year 2012. The IRS has not amended its proof of claim, Claim no. 21, to include this liability.

The court will issue a minute order.

89. [13-24396](#)-B-13 JOHN/MARY JO WAILES MOTION TO CONFIRM PLAN  
NBC-3 8-9-13 [[58](#)]

**Disposition Without Oral Argument:** The motion is granted, and the amended plan filed August 9, 2013 (Dkt. 62) 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.

90. [08-36297](#)-B-13 ANDREW ELLENBERGER MOTION TO APPROVE LOAN  
TBH-1 MODIFICATION  
9-9-13 [[115](#)]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such

opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed without prejudice.

The motion was not properly served. The debtor seeks court approval of a loan modification agreement with Wells Fargo. 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 - Wells Fargo - with the motion pursuant to the requirements of Bankruptcy Rule 7004(h) (which requires that service on an insured depository institution be made by certified mail addressed to an officer of the institution, unless certain exceptions apply). The court also notes that Debtor has provided no proof that Wells Fargo consents to the loan modification. Although Debtor has submitted a copy of the loan modification agreement, it is not signed by Debtor or Wells Fargo (Dkt. 117 at 2).

The court will issue a minute order.

91. [11-49197](#)-B-13 JOHN RAYL  
SDH-7

MOTION FOR COMPENSATION FOR  
SCOTT D. HUGHES, DEBTOR'S  
ATTORNEY(S), FEES: \$2,875.00,  
EXPENSES: \$37.50  
8-19-13 [[106](#)]

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

The application is approved for \$2,875.00 in fees and \$37.50 in costs for a total of \$2,912.50 to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtor 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 December 20, 2011, the debtor filed a chapter 13 petition (Dkt. 1). As part of confirmation of the debtors' third modified chapter 13 plan (Dkt. 81), 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. 81, at p. 1). The debtors' attorney now seeks additional compensation from February 12, 2012 through June 11, 2013, in the amount of \$2,875.00 in fees and \$37.50 in costs.

As set forth in the attorney's application, these fees and costs 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.

92. [13-25398](#)-B-13 LUCIA CHURCHES MOTION TO CONFIRM PLAN  
SJJ-2 8-2-13 [[50](#)]

**Disposition Without Oral Argument:** The motion is granted, and the amended plan filed August 2, 2013 (Dkt. 54) 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.

93. [10-22199](#)-B-13 JOSE MACIAS MOTION TO MODIFY PLAN  
BLG-1 7-25-13 [[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 25, 2013 (Dkt. 53) is confirmed.

The court will issue a minute order.

94. [13-24099](#)-B-13 ARVIN/JENNIFER CAYANAN MOTION TO CONFIRM PLAN  
EWV-26 8-9-13 [[42](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the amended plan filed August 9, 2013 (Dkt. 43), is denied.

The court will issue a minute order.

95. [13-24099](#)-B-13 ARVIN/JENNIFER CAYANAN COUNTER MOTION TO DISMISS CASE  
EWV-26 8-28-13 [[48](#)]

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

The countermotion is conditionally denied, the conditions being that on or before October 8, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

96. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY COUNTER MOTION TO DISMISS CASE  
PGM-3 LAU 9-16-13 [[99](#)]

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

The countermotion is conditionally denied, the conditions being that on or before October 8, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

97. [13-31332](#)-B-13 ROBERT/ALMA WEBER MOTION TO EXTEND AUTOMATIC STAY  
SJS-2 O.S.T.  
9-12-13 [[18](#)]

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