

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

October 14, 2014 at 9:32 A.M.

1. [14-28103](#)-B-13 LEA CHASE PD-1 CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
9-11-14 [[24](#)]

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

The objection is removed from the calendar. The creditor withdrew the objection on October 3, 2014 (Dkt. 33).

2. [14-29103](#)-B-13 KASSI MARTINEZ FF-1 MOTION TO VALUE COLLATERAL OF
GM FINANCIAL, LLC
9-19-14 [[11](#)]

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. \$12,376.00 of GM Financial, LLC's claim in this case secured by a 2009 Volkswagen, (VIN WVWML73C19E514530 ("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 \$12,376.00 on the date of the petition.

The court will issue a minute order.

3. [11-26307](#)-B-13 VICTOR/PATRICIA GUZMAN WW-10 CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ONEWEST BANK,
FSB
8-19-14 [[76](#)]

Tentative Ruling: This motion continued from September 16, 2014. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative

ruling on the merits of the motion.

4. [14-25014](#)-B-13 PAUL/ALICE SALINAS MOTION TO CONFIRM PLAN
LRR-3 8-27-14 [[94](#)]
CASE DISMISSED 9/18/14

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

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed by order entered September 18, 2014 (Dkt. 124).

The court will issue a minute order.

5. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER MOTION TO CONFIRM PLAN
LBG-4 AND JOSEPH ALEXANDER 8-19-14 [[100](#)]

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 18, 2014, will be confirmed.

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

6. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER OBJECTION TO CLAIM OF FRANCHISE
LBG-5 AND JOSEPH ALEXANDER TAX BOARD, CLAIM NUMBER 4
8-28-14 [[105](#)]
WITHDRAWN BY M.P.

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

The objection is removed from the calendar. The debtors withdrew the objection on September 30, 2014 (Dkt. 123).

7. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER OBJECTION TO CLAIM OF INTERNAL
LBG-6 AND JOSEPH ALEXANDER REVENUE SERVICE, CLAIM NUMBER 2
8-28-14 [[110](#)]
WITHDRAWN BY M.P.

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

The objection is removed from the calendar. The debtors withdrew the objection on September 30, 2014 (Dkt. 125).

8. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN MOTION TO CONFIRM PLAN
MRL-6 8-25-14 [[77](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion is denied.

The chapter 13 trustee opposes the motion under 11 U.S.C. § 1325(b)(1)(B), on the ground that the debtors' plan does not propose to pay all of their projected disposable income to unsecured creditors over the sixty-month plan term. The debtors' Amended Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income shows that the debtors are "above-median" and that the amount they are presumptively required to pay to unsecured creditors is determined by reference to Form 22C's calculation of monthly disposable income, projected over the term of the plan. In this case, the debtors have listed a negative monthly disposable income of \$-14.77 on Form 22C, which results in a presumption that the debtors need not pay anything to unsecured creditors. However, the trustee objects to the deduction of several expenses on Form 22C, arguing that it was not properly completed and therefore does not accurately represent the presumption of what they must pay.

The debtors do not dispute the trustee's argument that the expense listed at line 47c (future payment on secured claim owed to Internal Revenue Service) is overstated by \$75.37, the expense at line 49 (payments on pre-petition priority claims) is overstated by \$285.47 and the expense at line 50 (chapter 13 administrative expenses) is overstated by \$45.60. Using the trustee's figures for the foregoing expenses increases the debtors' monthly disposable income by \$406.44 to \$391.67.

The debtors do dispute the trustee's argument that they may not claim an "older/high mileage" vehicle expense in the amount of \$200.00 at line 57 of Form 22C. The debtors argue that they are not relying on Chapter 8 Part 5 of the Internal Revenue Manual ("IRM") published by the Internal Revenue Service of the United States to claim this expense (although they claim the exact amount allowed by the IRM as the amount of their expense), but that the older/high mileage vehicle expense is for a "known, actual and necessary expense for Debtors' only means of transportation." However, the court does not consider the statement of joint debtor Suzanne Galpin in her declaration in support of the debtors' reply (Dkt. 88) that the vehicle's "check engine light is on, the check

brake lights is on, the vehicle needs to be smogged, and it needs a tune-up" to be evidence that \$200 per month projected over the life of the plan is a known, actual and necessary expense. The debtors present no evidence as to the actual cost of correction of specific problems.

Even if the debtors had established that the expense was "known, actual and necessary," the fact that an expense is known and actual does not justify claiming it as a "special circumstances" expense under line 57 of Form 22C. Line 57 is designated for expenses "for which there is no reasonable alternative," i.e., the expenses described in 11 U.S.C. § 707(b)(2)(B), which are expenses based on special circumstances such as "a serious medical condition or a call or order to active duty in the Armed Forces." The debtors have not cited any authority for the proposition that owning and operating an older motor vehicle is a special circumstance of that type. Furthermore, the debtors have not presented any evidence that would support the projection of \$12,000.00 in vehicle operating expenses in addition to the \$28,320.00 in vehicle operation expenses already claimed elsewhere on Form 22C. The debtors are not entitled to the "older/high mileage" vehicle expense as an expense for "special circumstances" on Form 22C.

The court construes the debtors' argument in their reply that joint debtor Suzanne Galpin's medical insurance "will be" increasing and that debtors owe \$2,000.00 in medical expenses related to surgery for joint debtor Kenneth Galpin as an argument under Hamilton v. Lanning, 560 U.S. 505, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010) that the presumption of projected disposable income created by Form 22C should be offset by these additional expenses. However, the debtors have not presented sufficient evidence that these expenses represent a substantial change in circumstances and that the expenses are known or virtually certain, as required by Lanning. They have not, for example, provided any evidence as to when Mrs. Galpin's medical insurance expense will increase, nor have they provided evidence as to when Mr. Galpin's expense for surgery was incurred. Furthermore, the debtors have not addressed the impact of these expenses on the feasibility of their plan with any specific calculations, except to assert in a conclusory fashion that despite the increases they will be able to afford the plan payment.

Based on the foregoing, the court calculates the debtors' monthly disposable income at \$591.67 per month. Projected over the sixty-month plan term, the debtors must pay \$35,500.20 to unsecured creditors through the plan. The third amended plan proposes to pay \$21,667.59 to unsecured creditors. The debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(b)(1)(B). Accordingly, the motion is denied.

The court will issue a minute order.

9. [11-42819](#)-B-13 BRYAN/PAMELA FERGUSON
MDE-1

MOTION TO APPROVE LOAN
MODIFICATION
9-5-14 [[93](#)]

Tentative Ruling: The motion is dismissed.

The motion is dismissed for lack of standing. 11 U.S.C. § 364, entitled "Obtaining Credit," at subsection (c), authorizes "the trustee" to obtain

secured credit, subject to certain requirements. The preceding section only permits the trustee, and not to any "interested party" to obtain credit. Accordingly, creditor Nationstar Mortgage does not have standing to bring this motion. The motion fails to cite any authority supporting the motion. Local Bankruptcy Rule 9014-1(d) (5).

The court will issue a minute order.

10. [11-22420](#)-B-13 BENJAMIN/CATHY ESPINOZA MOTION TO VALUE COLLATERAL OF
SDB-4 WELLS FARGO BANK, N.A.
9-9-14 [[63](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Bank, N.A.'s ("WFB") claim in this case secured by the third deed of trust on real property located at 1072 Notre Dame Circle, Vacaville, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$240,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by WFB with a balance of approximately \$267,000.00 and a second deed of trust held by WFB with a balance of approximately \$116,000.00. Thus, the value of the collateral available to WFB on its third deed of trust is \$0.00.

The court will issue a minute order.

11. [11-22420](#)-B-13 BENJAMIN/CATHY ESPINOZA MOTION TO VALUE COLLATERAL OF
SDB-5 WELLS FARGO BANK, N.A.
9-9-14 [[68](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Bank, N.A.'s ("WFB") claim in this case secured by the second deed of trust on real property located at 1072 Notre Dame Circle, Vacaville, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$240,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by WFB with a balance of approximately \$267,000.00. Thus, the value of the collateral available to WFB on its second deed of trust is \$0.00.

The court will issue a minute order.

12. [09-46921](#)-B-13 LINDA REUTER
LKM-1

OBJECTION TO CLAIM OF HOUSEHOLD
FINANCE CORP. OF CALIFORNIA,
CLAIM NUMBER 5-1
8-20-14 [[42](#)]

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

The objection is sustained as set forth herein. Claim no. 5-1 on the court's claims register (the "Claim") filed by Household Finance Corporation is disallowed as a secured claim and allowed as a general unsecured claim in the amount of \$6,796.08, except to the extent already paid by the chapter 13 trustee as a secured claim in excess of the dividend to general unsecured creditors. Except as so ordered, the objection is overruled.

The debtors object to the secured status of the Claim. 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).

In this case the Claim has prima facie validity. The proof of claim filed with the Claim states that it is based on a money judgment, a copy of which is also attached to the Claim. Because the Claim purports to be based on a money judgment, proof of perfection of a security interest is not required to give the Claim prima facie validity, as Fed. R. Bank. P. 3001(d) applies only to "security interests" claim in property of the estate. Pursuant to Fed. R. Bankr. P. 101(50), a security interest is a lien created by agreement, which does not include liens resulting from money judgments.

However, although the Claim has prima facie validity evidence on the face of the Claim itself shows that the Claim is not entitled to secured status. Under California law a judgment lien on real property is created by recording a copy of the abstract of judgment with the county recorder (Cal. Civ. Proc. Code § 697.310) and on personal property by recording a notice of judgment line with the office of the Secretary of State (Cal. Civ. Proc. Code § 697.510). The money judgment filed with the Claim does bear evidence of either type of recording. The debtor also alleged without dispute that her counsel contacted the claimant, whose representatives acknowledged that the Claim was unsecured. The failure of the claimant to respond to the objection with evidence to prove up the secured status of the Claim justifies disallowance of the Claim as a secured claim.

The court will issue a minute order.

Tentative Ruling: The motion is dismissed without prejudice in part and denied in part.

The motion is dismissed without prejudice because it is not ripe for adjudication. By this motion the debtor seeks authorization to sell real property located at 7301 Gladwin Way, Elk Grove, California (the "Property"). The Property is allegedly encumbered by three deeds of trust in favor of Seterus, Inc. ("Seterus"), Plumas Bank ("Plumas") and Virendra Singh ("Singh"). The motion appears to propose full payment of the loan obligation owed to Seterus, a portion of the obligation owed to Plumas and a portion of the obligation owed to Singh in satisfaction of their respective liens; in effect, the debtor proposes a short sale of the Property. However, while Plumas has filed a statement of non-opposition to the motion indicating its consent to accepting less than what is owed on its loan, the debtor has not presented any evidence that Singh consents to accepting \$2,000.00 in satisfaction of his lien. As a result, the debtor has not shown that if the motion is granted a sale of the Property on the terms described in the motion will actually occur. Therefore, the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no evidence of a short sale transaction to which Singh consents, there is no case or controversy for the court to decide.

The debtor's request to sell free and clear of the Singh claim pursuant to 11 U.S.C. § 363(f)(2) or (5) is unavailing because, as set forth above, the debtor has not presented any evidence that Singh consents to accepting \$2,000.00 in satisfaction of his lien and the debtor has failed to specify any authority for the proposition that "an equitable proceeding would award the proceeds to the voluntary secured creditor first, the second secured creditor second and leave the remainder of their claims as either unsecured or secured against other real or personal property."

The motion is also dismissed because it appears to be incomplete. The motion references a HUD settlement statement filed as an exhibit to the motion, but no such exhibit appears on the docket.

Finally, the debtor's request for authorization to employ Ancy Nechikat as realtor is denied. The debtor has failed to cite any authority showing that court approval of employment of a professional for a chapter 13 debtor is necessary or authorized by the Bankruptcy Code. See, e.g., Holland v. EMC Mortgage Corporation (In re Holland), 374 B.R. 409 (Bankr. D. Mass. 2007), In re Powell, 314 B.R. 567, 569-570 (Bankr. N.D. Tex. 2004), In re Gutierrez, 309 B.R. 488, 500-501 (Bankr. W.D. Tex. 2004).

The court will issue a minute order.

14. [14-27028](#)-B-13 TONI PAREDERO
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-24-14 [[40](#)]

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, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 28, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

15. [14-28028](#)-B-13 JEFFREY NELSON AND LURDES
JME-1 ROSALES

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE AUTO FINANCE
9-26-14 [[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.

16. [10-44131](#)-B-13 RAPHAEL METZGER AND
PGM-5 MELANIE MEDINA-METZGER

CONTINUED MOTION FOR PROTECTIVE
ORDER
8-18-14 [[207](#)]

Disposition Without Oral Argument: Further oral argument will not assist the court in resolving this matter.

The motion is denied without prejudice.

The motion is denied because it is not accompanied by any evidence to support the broad relief that it seeks, in violation of Local Bankruptcy Rule 9014-1(d)(5). The court will not restrict all remote electronic access to the record of this bankruptcy proceeding based on unsworn and vague representations regarding the "nature of the debtor's work and job," unspecified "financial issues" and "information" which could allegedly be used by criminal organizations operating in Honduras. Those representations do not constitute evidence of a risk of unlawful injury to the debtors for the purposes of 11 U.S.C. § 107(c). The court

The motion is also denied because at the hearing on September 16, 2014 the court directed the debtors to give written notice of the continuance to all parties previously served with the motion. There is no evidence on the court's docket that the debtors have done so.

17. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR MOTION TO SET ASIDE DISMISSAL
DAO-11 OF CASE
9-24-14 [[142](#)]
CASE DISMISSED 9/22/14

18. [13-35332](#)-B-13 JAMES/IOLANI NEARY MOTION TO MODIFY PLAN
CRG-3 9-8-14 [80]

The court will issue a minute order.

19. [14-27836](#)-B-13 JOHN/ALICE MASIA MOTION TO VALUE COLLATERAL OF
ET-1 JPMORGAN CHASE BANK, N.A.
9-4-14 [19]

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s ("Chase") claim in this case secured by the second deed of trust on real property located at 3547 David Way, Sacramento, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$262,634.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$299,000.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00.

The court will issue a minute order.

20. [13-32239](#)-B-13 RICARDO/SONIA DELAMORA
AJP-2

MOTION TO INCUR DEBT
9-17-14 [[44](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is dismissed for three reasons. First, the motion is not ripe for adjudication. The debtors have not shown that if the motion is granted a vehicle purchase transaction will actually occur, as the copy of the Sales Quote filed as an exhibit to the debtors' supporting declaration is not signed by a representative of the selling entity, AutoSense Auto Exchange ("AutoSense"). As a result, the debtors have not shown evidence of AutoSense's consent to the transaction. Therefore, the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no evidence of a sale transaction to which AutoSense consents, there is no case or controversy for the court to decide.

Second, the motion was not properly served. This motion for authorization to incur debt is governed by the provisions of Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct." Based on the foregoing, the court requires that the debtor serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor who is extending credit, AutoSense. The debtor's proof of service (Dkt. 47) does not show service on AutoSense.

Third, the motion appears to be incomplete or missing information. The motion (Dkt. 44) and the notice of hearing (Dkt. 45) appear to be identical documents with changed titles. As a result, the motion does not contain any request for relief or cite any legal authority entitling the debtors to that relief, in violation of LBR 9014-1(d)(6). Failure to comply with the court's local rules is grounds for dismissal or denial of the motion. LBR 1001-1(g).

The court will issue a minute order.

21. [14-28143](#)-B-13 ANNETTE GOTT
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-24-14 [[29](#)]

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 11, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 28, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The debtor's opposition to the trustee's objection regarding the dividend to be paid to general unsecured creditors is not persuasive because the debtor has not presented any evidence supporting her allegation that "[u]nder the current Plan, unsecured creditors will receive approximately \$80,000.00." If this allegation were true, the trustee's objection would lack merit, as the plan specifies a percentage dividend of "no less than" 9.5% on general unsecured claims estimated at \$326,750.66. However, as there is no evidence as to the amount which would actually be paid to unsecured creditors under the plan, the objection is sustained.

The court will issue a minute order.

22. [14-28143](#)-B-13 ANNETTE GOTT
PD-1

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
9-25-14 [[32](#)]

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

The creditor's objection is sustained. Confirmation of the initial plan filed August 11, 2014, is denied.

The debtor's response to the objection is not persuasive. The debtor's assertion that the creditor does not hold a claim for arrears which existed prior to the date of the petition based on her conclusory statement that she is current on her mortgage does not establish that the debtor was current on the obligation on the date of the filing of the petition, which is the relevant date for the allowance of claims. The debtor does not provide any evidence as to the date on which her July, 2014 payment was made. The debtor's response also does not address the creditor's assertion that its pre-petition claim consists of late charges as well as a missed payment.

In addition, the debtor's assertion that "there is plenty of money available in Debtor's plan to pay for arrears or late fees, if any exist," is completely unsupported by any evidence. It is not incumbent on the court or any other party to calculate disbursements under the plan

based solely on the debtor's unsupported representations.

The court will issue a minute order.

23. [12-24844](#)-B-13 ERICA SEXTON MOTION TO APPROVE LOAN
PGM-7 MODIFICATION
9-16-14 [[109](#)]

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

The motion is granted. The debtor is authorized to incur debt on the terms set forth in the Loan Modification Agreement filed as Exhibit "A" to the motion (Dkt. 112).

The court will issue a minute order.

24. [13-25147](#)-B-13 MATTHEW/MAYRA SPINKS CONTINUED MOTION TO MODIFY PLAN
PGM-4 5-30-14 [[101](#)]

Tentative Ruling: None.

25. [14-24049](#)-B-13 KRISTIN AUSTIN MOTION TO CONFIRM PLAN
MWB-2 8-26-14 [[45](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed August 26, 2014, is denied.

The chapter 13 trustee's opposition is sustained for the reasons set forth therein.

The court will issue a minute order.

26. [14-24049](#)-B-13 KRISTIN AUSTIN COUNTER MOTION TO DISMISS CASE
MWB-2 9-19-14 [[51](#)]

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 28, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without

limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

27. [14-24749](#)-B-13 DONNETTE CHATTERS MOTION TO CONFIRM PLAN
JMO-2 9-8-14 [[54](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed September 8, 2014, is denied.

The court will issue a minute order.

28. [14-24749](#)-B-13 DONNETTE CHATTERS COUNTER MOTION TO DISMISS CASE
JMO-2 9-30-14 [[59](#)]

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 28, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

29. [14-27051](#)-B-13 CHRISTINA SONLEITNER MOTION FOR DETERMINATION OF
CAH-2 VIOLATION OF THE AUTOMATIC STAY
AND/OR MOTION FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY
9-15-14 [[31](#)]

Tentative Ruling: The motion is continued to November 12, 2014, at 9:32 a.m. On or before October 15, 2014, the debtor shall file and serve a notice of the continued hearing on all parties previously served with the motion. On or before October 28, 2014, the debtor shall file and serve on all parties previously served with the motion supplemental briefing

and evidence regarding the debtor's actual damages incurred in connection with the violation of the automatic stay described in the motion. Any response thereto shall be filed and served on or before November 4, 2014. Proofs of service of the foregoing shall be filed within three days after the date of service LBR 9014-1(e) (3).

The court will issue a minute order.

30. [11-26152](#)-B-13 BUOI NGUYEN
CLH-5

MOTION TO MODIFY PLAN
9-3-14 [[77](#)]

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

The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed September 3, 2014, is confirmed with the following notification to the plan's payment provisions: As of September 25, 2014, the debtor has paid a total of \$22,954.00 into the plan; thereafter, the debtor shall pay \$82.00 per month commencing October 25, 2014, and continuing for the remaining term of the plan.

The court will issue a minute order.

31. [12-37853](#)-B-13 CELIA NEGRON
PLC-3

MOTION TO MODIFY PLAN
9-5-14 [[86](#)]

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

The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed September 5, 2014, is confirmed with the following notification to the plan's payment provisions: As of September 25, 2014, the debtor has paid a total of \$48,040.51 into the plan; thereafter, the debtor shall pay \$1460.00 per month commencing October 25, 2014, and continuing for the remaining term of the plan.

The court will issue a minute order.

32. [14-22553](#)-B-13 JEFFREY HAMILTON
HLC-3

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
9-5-14 [[73](#)]

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

The motion is granted. Pursuant to Fed. R. Bankr. P. 4004(b) and

4007(c), the deadline for the movants to file an objection to the debtor's discharge under 11 U.S.C. § 727 or to object to the dischargeability of certain debts under 11 U.S.C. § 523 is extended through and including November 4, 2014.

The court will issue a minute order.

33. [12-41261](#)-B-13 GRANT/DIANA FLOWERS TRUSTEE'S FINAL REPORT AND
ACCOUNT
8-6-14 [[246](#)]
CASE DISMISSED 5/30/14

Tentative Ruling: None.

34. [11-28590](#)-B-13 JOE/CECILIA MODESTO OBJECTION TO NOTICE OF MORTGAGE
CJY-1 PAYMENT CHANGE
8-14-14 [[74](#)]

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

This matter is continued to October 28, 2014, at 9:32 a.m.

35. [14-27394](#)-B-13 JOHN ANDERSON CONTINUED AMENDED OBJECTION TO
FRI-1 CONFIRMATION OF PLAN BY LAUREN
ANDERSON
9-2-14 [[29](#)]

Tentative Ruling: Creditor Lauren Anderson (the "Creditor")'s objections are dismissed.

The Creditor's objections are moot. On September 16, 2014, the debtor filed an amended plan (Dkt. 33) (the "Amended Plan"). The Amended Plan supersedes the plan to which the Creditor's objections are directed. 11 U.S.C. § 1323(b). The court acknowledges the amended objection to confirmation filed by the Creditor on September 22, 2014 (Dkt. 41) (the "Amended Objection"). To the extent the Amended Objection is directed at the debtor's original plan, it too is dismissed as moot due to the filing of the Amended Plan. However, the court acknowledges in this instance that the debtor is yet to set a hearing date for confirmation of the Amended Plan, and the Amended Objection could be directed at perceived defects in the Amended Plan. Elsewhere on today's calendar, the debtor has been instructed to set the Amended Plan for hearing on or before October 28, 2014. If the Creditor wishes for the court to consider the arguments it has raised in the Amended Objection, it must file it as a formal opposition in accordance with Local Bankruptcy Rule 9014-

1(f)(1)(B) after the debtor complies with the court's plan filing instructions.

The court will issue a minute order.

36. [14-27394](#)-B-13 JOHN ANDERSON
JPJ-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON
8-28-14 [[21](#)]

Tentative Ruling: This matter is continued from September 16, 2014, at 9:32 a.m. The court acknowledges the supplemental opposition filed by the trustee on October 7, 2014 (Dkt. 46) which includes a motion to dismiss the case. The court construes the entire matter as being governed by the procedures of LBR 9014-1(f)(2). Accordingly, opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections to confirmation of the plan filed July 18, 2014 (Dkt. 5) (the "Original Plan") are dismissed. The objection set forth in the trustee's supplemental opposition is dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 28, 2014, the debtor files a motion to confirm the amended plan filed September 16, 2014 (Dkt. 33) (the "Amended Plan") and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the Amended 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 trustee's objections to the Original Plan are moot because the Original Plan is superseded by the filing of the Amended Plan. 11 U.S.C. § 1323(b). Furthermore, the trustee acknowledges in his supplemental opposition that his concerns have been resolved due to the filing of the Amended Plan. The objection raised by the trustee in his supplemental opposition is dismissed because the court will not consider its merits on this calendar. Rather, the trustee is instructed to file an appropriate opposition to the debtor's motion to confirm the Amended Plan once it has been properly set for hearing. In this instance, the motion to dismiss is conditionally denied because, although the debtor filed the Amended Plan, as the trustee correctly points out the debtor is yet to set the matter for a confirmation hearing in a manner which provides proper notice and service to all interested parties. The court notes that debtor's counsel asserted at the hearing on September 16, 2014, that a motion to confirm was going to be filed by the end of that week. That did not occur.

The court will issue a minute order.

37. [14-27394](#)-B-13 JOHN ANDERSON
JPJ-2

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
8-28-14 [[18](#)]

Tentative Ruling: This objection is continued from September 16, 2014, at 9:32 a.m. The objection was properly filed under LBR 9014-1(f)(2) and remains in that procedural posture. Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The objection is dismissed.

The objection is moot. On September 16, 2014, the debtor filed an amended Schedule C (Dkt. 32) ("Amended Schedule C"). The exemptions set forth in Amended Schedule C supersede the exemptions to which the trustee's objection is directed.

The court will issue a minute order.

38. [14-28075](#)-B-13 RICHARD TOGNOLI
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-17-14 [[22](#)]

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

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

The trustee's objections and motion to dismiss are moot. On September 24, 2014, the debtor filed an amended plan (Dkt. 37) and a motion to confirm it (Dkt. 34), setting the matter for hearing on November 12, 2014, at 9:32 a.m. The amended plan supersedes the plan to which the trustee's objections are directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

39. [14-28075](#)-B-13 RICHARD TOGNOLI
PD-1

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
9-18-14 [[25](#)]

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

Creditor Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF11, Mortgage Pass-Through

Certificates, Series 2006 FF11 (the "Creditor")'s objection is dismissed.

The Creditor's objection is moot. On September 24, 2014, the debtor filed an amended plan (Dkt. 37) and a motion to confirm it (Dkt. 34), setting the matter for hearing on November 12, 2014, at 9:32 a.m. The amended plan supersedes the plan to which the Creditor's objection is directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

40. [14-28075](#)-B-13 RICHARD TOGNOLI OBJECTION TO CONFIRMATION OF
PJR-1 PLAN BY TRI COUNTIES BANK
9-18-14 [[29](#)]

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

Creditor Tri Counties Bank (the "Creditor")'s objections are dismissed.

The Creditor's objections are moot. On September 24, 2014, the debtor filed an amended plan (Dkt. 37) and a motion to confirm it (Dkt. 34), setting the matter for hearing on November 12, 2014, at 9:32 a.m. The amended plan supersedes the plan to which the Creditor's objections are directed. 11 U.S.C. § 1323(b).

For the Creditor's future reference, an objection to confirmation of a debtor's original plan must comply with Local Bankruptcy Rules 9014-1(a)-(e), (f)(2), and (g)-(1). The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary. LBR 3015-1(c)(4). Here, the notice of hearing filed by the Creditor (Dkt. 30) does not comply with the foregoing as it requires written opposition on or before September 30, 2014. A failure to comply with the Local Bankruptcy Rules constitutes grounds to overrule future objections. LBR 1001-1(g).

The court will issue a minute order.

41. [12-34355](#)-B-13 OSCAR VILLEGAS AND MARIA MOTION TO MODIFY PLAN
SS-1 CASTANON 9-4-14 [[73](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed September 4, 2014 (Dkt. 77) is denied.

The court will issue a minute order.

42. [12-34355](#)-B-13 OSCAR VILLEGAS AND MARIA MOTION FOR COMPENSATION FOR
SS-2 CASTANON SCOTT SHUMAKER, DEBTORS'
ATTORNEY
9-4-14 [[79](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis for the period of June 9, 2014, through and including September 4, 2014, in the total amount of \$2,552.50 in fees and expenses. The approved fees and expenses shall be paid by the chapter 13 trustee through the chapter 13 plan as an administrative expense to the extent such funds are available. Except as so ordered, the motion is denied.

On August 3, 2012, the debtors commenced the above-captioned case by filing a voluntary petition under chapter 13 (Dkt. 1). The debtors' former counsel, John R. Harrison ("Mr. Harrison"), opted into the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The order confirming the plan filed January 2, 2013 (Dkt. 62), disclosed that Mr. Harrison was paid \$2,500.00 in fees prior to the filing of the petition and that \$0.00 would be paid by the chapter 13 trustee through the confirmed plan.

On July 7, 2014, the debtors filed a motion to substitute the applicant into the case as attorney of record in place of Mr. Harrison (Dkt. 70), which was approved by order entered July 26, 2014 (Dkt. 72). The applicant has opted out of the Guidelines since he has (1) failed to file an executed copy of Form EDC 3-096, *Rights and Responsibility of Chapter 13 Debtors and Their Attorneys*, and (2) has brought the instant applicant pursuant to 11 U.S.C. §§ 329 and 330. LBR 2016-1(a).

The applicant now seeks compensation for services rendered and costs incurred for the period of June 9, 2014, through and including September 4, 2014. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services. In re Busetta-Silvia, 314 B.R. 218 (B.A.P. 10th Cir. 2004).

The court will issue a minute order.

43. [14-24356](#)-B-13 DAVID/HOLLY HARPER MOTION TO CONFIRM PLAN
CLH-3 8-15-14 [[51](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the amended plan filed August 15, 2014 (Dkt. 54) is denied.

The projected length of the plan and amount to be distributed to creditors under the plan appear to be contingent on (1) the debtors successfully seeking disallowance of the properly filed proof of claim of Altair OH XIII, LLC (the objection to which has not been filed, served,

and set for hearing as of the date of this ruling), and (2) the debtors successfully prosecuting an adversary proceeding against Aurora Schools Credit Union regarding a preferential avoidance of its judgment lien on the debtors' real property in Fresno County (which was filed on August 19, 2014, but in which the defendant is yet to file an answer).

The court will issue a minute order.

44. [14-27958](#)-B-13 ROBERT LEACH
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON, TRUSTEE
9-24-14 [[22](#)]

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

The trustee's objections are dismissed.

The trustee's objections are moot. The bankruptcy case was dismissed by order entered October 2, 2014 (Dkt. 31).

The court will issue a minute order.

45. [14-21661](#)-B-13 CHARLES/SUSAN EPSTEIN
RS-3

MOTION TO CONFIRM PLAN
9-2-14 [[65](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed July 8, 2014 (Dkt. 51) is denied.

The court will issue a minute order.

46. [14-21661](#)-B-13 CHARLES/SUSAN EPSTEIN
RS-3

COUNTER MOTION TO DISMISS CASE
9-29-14 [[70](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 70) 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 28, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

47. [14-26065](#)-B-13 WILLIAM MARTIN AND MOTION TO VALUE COLLATERAL OF
DEF-1 MELANIE LAIRD-MARTIN CITY OF JACKSON
8-19-14 [[29](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion was not properly served. By this motion, the debtors seek to value the second deed of trust held by the City of Jackson, California (the "City") and secured by the real property located at 1601 Tunnel Hill Drive, Jackson, California 95642 for the purpose of fixing the secured portion of the City's claim at \$0.00. As a contested matter under Federal Rule of Bankruptcy Procedure 9014, the City, as the party against whom relief is sought, must be served in accordance with Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 9014(b). Federal Rule of Bankruptcy Procedure 7004(b)(6) provides that service upon a state or municipal corporation or other governmental organization thereof subject to suit is accomplished "by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6). California Code of Civil Procedure section 416.50 prescribes the manner in which service of summons upon a public entity is accomplished. Specifically, "a summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body" Cal. Code Civ. P. § 416.50(a). For purposes of Cal. Code Civ. P. § 416.50(a) a "public entity" includes municipalities. Cal. Code Civ. P. § 416.50(b).

The debtors failed to satisfy the foregoing. The proof of service (Dkt. 33) shows that the City was served via first class mail to the following address: "City of Jackson, 33 Broadway, Jackson, CA 95642." Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

48. [14-26065](#)-B-13 WILLIAM MARTIN AND MOTION TO CONFIRM PLAN
DEF-2 MELANIE LAIRD-MARTIN 8-19-14 [[35](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed August 19, 2014 (Dkt. 38) is denied.

The court will issue a minute order.

49. [14-26065](#)-B-13 WILLIAM MARTIN AND COUNTER MOTION TO DISMISS CASE
DEF-2 MELANIE LAIRD-MARTIN 9-30-14 [[42](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 42) 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 28, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

50. [14-28067](#)-B-13 SIONE/HETA FINAU OBJECTION TO CONFIRMATION OF
PD-1 PLAN BY U.S. BANK TRUST, N.A.
9-18-14 [[20](#)]

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

Creditor U.S. Bank Trust, N.A. as Trustee for LSF8 Master Participation Trust, by Caliber Home Loans, Inc., as its attorney in fact (the "Creditor")'s objection is overruled.

The Creditor's objection was not timely filed. Pursuant to the Notice of Commencement of Case Under Chapter 13, Meeting of Creditors & Deadlines filed August 14, 2014 (Dkt. 10) (the "Notice"), objections to confirmation of the original plan were required to be filed and served by September 11, 2014. The Creditor's objection was not filed until September 18, 2014. According to the proofs of service filed September 18, 2014 (Dkts. 23 & 25), all documents, including the amended notice of hearing, were not served until September 17, 2014. Accordingly, the Creditor's objection is overruled.

The court will issue a minute order.

51. [14-20172](#)-B-13 GREGORY BRUTUS MOTION TO CONFIRM PLAN
WW-3 9-12-14 [[106](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the amended plan filed July 18, 2014 (Dkt. 91) will be confirmed.

The sole issue raised by the trustee is that the debtor is delinquent to the trustee in the amount of \$307.00, or one (1) plan payment. However, the debtor asserts and provides evidence that the delinquency was cured on October 3, 2014. Accordingly, the trustee's opposition is overruled.

The court notes that the motion, notice of hearing, and supporting documents were not filed until September 12, 2014, or thirty-two (32) days prior to the hearing date. The court acknowledges the explanation for this defect which was provided by debtor's counsel in his declaration (Dkt. 109), but such explanation does not excuse the debtor from compliance with the Local Bankruptcy Rules, including Local Bankruptcy Rule 3015-1(d)(1). In this instance, however, because the proof of service filed September 2, 2014 (Dkt. 103) shows that all parties-in-interest were served and given proper notice of the motion, the court overlooks the procedural defect. However, a failure to comply with the Local Bankruptcy Rules may result in denial of future motions. LBR 1001-1(g).

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

52. [14-20172](#)-B-13 GREGORY BRUTUS
WW-3

COUNTER MOTION TO DISMISS CASE
9-29-14 [[110](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 110) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court will issue a minute order.

53. [14-26074](#)-B-13 MICHAEL LOZANO
LBG-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
9-4-14 [[38](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Bank, N.A.'s claim secured by the second deed of trust on real property located at 5040 Deloris Road, Shingle Springs, California 95682 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$195,803.00 on the date of the petition. The

Property is encumbered by a first deed of trust held by Ocwen Loan Servicing LLC with a balance of approximately \$248,000.00. Thus, the value of the collateral available to Wells Fargo Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

54. [14-26074](#)-B-13 MICHAEL LOZANO
LBG-2

CONTINUED AMENDED MOTION TO
CONFIRM PLAN
8-14-14 [[30](#)]

Tentative Ruling: This matter is continued from September 30, 2014, at 9:32 a.m. to be heard after disposition of Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A., and with instructions that the debtor file additional evidence establishing that the plan complies with 11 U.S.C. § 1325(a)(6). The court now issues the following abbreviated tentative ruling.

The trustee's opposition is overruled. The motion is granted, and the amended plan filed August 14, 2014 (Dkt. 31) will be confirmed.

The sole basis for the trustee's opposition is that the feasibility of the plan depends on the granting of a motion to value collateral of Wells Fargo Bank, N.A. However, the court disposed of that matter without oral argument elsewhere on today's calendar in a manner consistent with the plan's proposed treatment for Wells Fargo Bank, N.A.'s claim. Accordingly, the trustee's opposition is overruled.

The court has reviewed the supplemental declaration of the debtor's live-in domestic partner, Clint Olson, filed October 7, 2014 (Dkt. 48), and is satisfied by the statements made therein that the debtor will have sufficient income to fund the plan.

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

55. [12-36576](#)-B-13 SCOTT/PATRICIA MERRITT
SLH-2

MOTION TO APPROVE LOAN
MODIFICATION
9-30-14 [[33](#)]

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.

56. [11-48377](#)-B-13 WILMERPAUL/LIZA AWAYAN MOTION TO INCUR DEBT
CYB-2 9-30-14 [[31](#)]

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

57. [12-33384](#)-B-13 CHRISTOPHER BARMBY AND MOTION TO INCUR DEBT
CJY-3 MADELYNN MCCLAIN 9-26-14 [[51](#)]

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.

58. [10-43089](#)-B-13 ANDRE/SCOT COX MOTION TO APPROVE LOAN
RLC-2 MODIFICATION
9-12-14 [[41](#)]

Tentative Ruling: The motion is dismissed without prejudice. The trustee's opposition is dismissed.

The motion is dismissed without prejudice for the following reasons. First, the motion was not properly served and noticed. A motion for approval of a loan modification agreement is a motion to incur new debt. It is governed by the provisions of Federal Rule of Bankruptcy Procedure 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct." Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to incur debt through a loan modification on the United States Trustee, the chapter 13 trustee, and the creditor who is the counterparty to the loan modification. The court also requires that the debtors give notice of the motion to all other creditors. Here, the proof of service (Dkt. 45) indicates that the motion, notice of hearing, and supporting documents were only served electronically on the United States Trustee, the chapter 13 trustee, and two creditors.

Second, the motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. The debtors have failed to establish that there is an actual, finalized loan modification agreement with Bank of America, N.A. ("BANA") for the court to approve.

The absence of an actual agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S.

490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no actual, finalized agreement to which BANA agrees, no case or controversy within the meaning of Article III exists.

The court acknowledges the loan modification agreement submitted as Exhibit "1" to the motion (Dkt. 44, pp.3-14). However, the agreement has not been signed by a representative of BANA, and the debtors have provided no other evidence that BANA consents to the terms of the agreement. BANA's consent to the agreement may be manifested in ways other than executing the agreement. For example, BANA may file a response to the motion stating its agreement, or it may appear at the hearing on the motion and state its agreement on the record. Absent such evidence of BANA's consent, however, the motion is not ripe for adjudication.

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

The court will issue a minute order.

59. [14-27690](#)-B-13 ARMANDO GALLEGOS AND SAN MOTION TO VALUE COLLATERAL OF
TOG-1 LOPEZ BANK OF AMERICA, N.A.
8-26-14 [[20](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 713 Hardy Drive, West Sacramento, California 95605 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$120,133.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Shellpoint Mortgage Services with a balance of approximately \$220,493.00. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

60. [10-35891](#)-B-13 CYNTHIA FRABLE MOTION TO MODIFY PLAN
PGM-5 9-3-14 [[117](#)]

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

The motion is removed from the calendar. The debtor withdrew the motion on October 3, 2014 (Dkt. 128).

61. [14-21394](#)-B-13 PATRICK/SUZANNE CLARK
SDB-2

MOTION TO MODIFY PLAN
9-2-14 [[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 September 2, 2014 (Dkt. 47) is confirmed.

The court grants the motion in the absence of opposition. The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors to an amount no less than \$27,107.02. The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd. 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

62. [13-31095](#)-B-13 GEOFFREY GREITZER
DBJ-5

MOTION TO CONFIRM PLAN
8-26-14 [[150](#)]

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 26, 2014 (Dkt. 151) 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.

63. [14-27895](#)-B-13 JACOB LARSON
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-24-14 [[27](#)]

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 debtor's opposition is sustained in part and overruled in part. The trustee's first objection that the plan fails to comply with section 4.02 of the mandatory form plan is sustained. The trustee's second objection that the debtor failed to submit proof of his social security number to the trustee is overruled. Confirmation of the plan filed August 13, 2014 (Dkt. 10) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 28, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

Although the debtor asserts that the trustee has in his possession a copy of a proposed order confirming plan which demonstrates that the plan complies with section 4.02, he provides no evidence of this.

The trustee's second objection is overruled. The court's review of the docket indicates that the continued meeting of creditors was continued to September 25, 2014, and concluded as to the debtor on that date. The court presumes from the conclusion of the meeting of creditors that the trustee has received the outstanding information.

The court will issue a minute order.

64. [14-28197](#)-B-13 MATTIE MULDROW
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-24-14 [[14](#)]

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

The trustee's objections are dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 28, 2014, the debtor files a motion to confirm the amended plan filed October 2, 2014 (Dkt. 21) (the "Amended Plan") and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the Amended 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 trustee's objections are moot. The Amended Plan supersedes the plan to which the trustee's objections are directed. 11 U.S.C. § 1323(b). However, the motion to dismiss is conditionally denied because, although the debtor filed the Amended Plan, she is yet to set the matter for a confirmation hearing in a manner which provides proper notice and service to all parties-in-interest.

The court will issue a minute order.