

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

October 22, 2013 at 9:32 A.M.

1. [11-27501](#)-B-13 ADAM TREMOUREUX AND DONA MOTION TO MODIFY PLAN
ADR-7 LEVY-TREMOUREUX 8-28-13 [[80](#)]
CASE DISMISSED 9/4/13

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 October 9, 2013 (Dkt. 99), the bankruptcy case was dismissed.

The court will issue a minute order.

2. [13-31901](#)-B-13 ELIZABETH ANDRADE MOTION TO VALUE COLLATERAL OF
SLH-1 CITIFINANCIAL, INC.
9-12-13 [[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 Citifinancial, Inc.'s ("Citifinancial") claim in this case secured by the second deed of trust on real property located at 1629 Crowle Court, Folsom, 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 \$540,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by SAFE Credit Union with a balance of approximately \$542,866.00. Thus, the value of the collateral available to Citifinancial on its second deed of trust is \$0.00.

The court will issue a minute order.

3. [13-31302](#)-B-13 ANTHONY/MARLENE BORCHERS MOTION TO VALUE COLLATERAL OF
SJD-1 WELLS FARGO DEALER SERVICES
9-10-13 [[8](#)]

Tentative Ruling: The motion to value Wells Fargo Bank, N.A.'s collateral is continued to a final evidentiary hearing on December 19, 2013, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before December 12, 2013, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before December 12, 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] - 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.

4. [10-20203](#)-B-13 JAMES/OCTAVIA BOHANON MOTION TO DISMISS CASE AND/OR
IRS-1 MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
9-23-13 [[88](#)]

Tentative Ruling: The motion is granted. Pursuant to 11 U.S.C. § 1307(c), the case is dismissed.

The debtors' chapter 13 plan (Dkt. 68), confirmed by order entered October 4, 2010 (Dkt. 84), provides in section 6.02(c) that "[d]ebtor's financial and business affairs shall be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes." The movant, creditor Internal Revenue Service of the United States (the "Service") alleges without dispute that the debtors have failed to fully pay their income tax liabilities for the tax years 2010 through 2012. The foregoing facts constitute a material

default by the debtors with respect to a term of a confirmed plan and cause to convert or dismiss the chapter 13 case pursuant to 11 U.S.C. § 1307(c)(6). In this case, the court dismisses the case, as its review of the debtors' schedules shows that the debtors do not have non-exempt assets that could be administered by a trustee if the case were converted to chapter 7.

The court will issue a minute order.

5. [13-31003](#)-B-13 PAO/MEE LEE MOTION TO VALUE COLLATERAL OF
MOH-1 GMAC MORTGAGE AND/OR GMAC HOME
EQUITY TRUST
10-8-13 [[14](#)]

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.

6. [13-29504](#)-B-13 JOEY/SHEILA NUQUI MOTION TO CONFIRM PLAN
JSN-4 8-30-13 [[44](#)]

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

The motion is dismissed.

The motion is moot. On October 7, 2013, the debtors filed an amended plan (Dkt. 65) and a motion to confirm it (Dkt. 62), setting the matter for hearing on November 19, 2013. The amended plan supersedes the plan which the debtors seek to confirm by the instant motion. 11 U.S.C. § 1323(b).

The court will issue a minute order.

7. [12-33905](#)-B-13 WILLIE/JUDIE TERRELL MOTION TO APPROVE LOAN
KSW-1 MODIFICATION
9-17-13 [[74](#)]

Tentative Ruling: The motion is dismissed without prejudice.

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 JPMorgan Chase Bank, N.A. 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.

8. [13-31606](#)-B-13 GERALD MCCURDY MOTION TO VALUE COLLATERAL OF
MET-1 JPMORGAN CHASE BANK, N.A.
9-29-13 [[17](#)]

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

9. [13-28208](#)-B-13 ATTILA/JULIANNA HRACZKY MOTION TO CONFIRM PLAN
DWC-1 9-9-13 [[35](#)]

Tentative Ruling: The motion is denied.

Although no party in interest has objected, the court has an independent duty to ensure that the plan meets the requirements of the Bankruptcy Code confirmation. In this case, the court finds that the debtors have not sustained their burden under 11 U.S.C. § 1325(a)(6) of showing that they will be able to make all payments under the plan.

Specifically, the plan proposes a more than 100% increase in the amount of the plan payment from \$250 per month to \$550 per month starting in the seventh month. However, the debtors' amended Schedule J filed on July 29, 2013 (Dkt. 18) shows that they have \$252.34 in net monthly income which they can devote to a plan payment. In light of the significant increase in the plan payment, the court finds that the debtors' statement in their supporting declaration (Dkt. 37) that they believe their income "will increase sufficiently over the next six months" is, without more, insufficient to sustain their burden under § 1325(a)(6).

In addition, although the plan states that the lump sum payment to be made in month 60 will be made by a withdrawal from a 401(k) account (if the debtors' income is not sufficient to cover the lump sum), the court notes that the debtors' sworn Schedule B does not list any interest in a 401(k) account; Schedule B lists only an interest in an IRA account with a value of \$24,150.20. The court takes judicial notice of the fact that tax withholding is required for IRA withdrawals. The debtors have not explained how they will be able to fund a plan with property they do not have, or whether they will be able to net \$17,214.78 from the IRA account after tax withholding.

The court will issue a minute order.

Tentative Ruling: The chapter 13 trustee's opposition under 11 U.S.C. § 1325(b)(1)(B) is overruled without prejudice. The remainder of the trustee's opposition is sustained. The motion to confirm the modified plan filed August 30, 2013, is denied.

The court construes the trustee's objection under 11 U.S.C. § 1325(b)(1)(B) as an attempt by the trustee to rebut the presumption of the debtors' current monthly income created by the debtors' Form 22C filed at the inception of this case on March 12, 2010 (Dkt. 1 at 41), in order to show that the debtors have experienced a substantial increase in their income that results in an increase in their monthly disposable income, which in turn justifies an increase in the dividend to general unsecured creditors. However, while the trustee asserts that the debtors must pay no less than \$189,636.00 to general unsecured creditors based on the aforementioned increase in their monthly disposable income, it is unclear to the court whether the trustee's calculation is based on the entire 60-month plan term or whether it is based on a portion of the plan term going forward from a more recent date.

In addition, the court notes that if the trustee wishes to capture increased income received by the debtors for the purpose of distributing it to general unsecured creditors, the vehicle for doing so is a motion by the trustee for modification of the plan pursuant to 11 U.S.C. § 1329. Therefore, the trustee's objection under 12 U.S.C. § 1325(b)(1)(B) is overruled without prejudice to the trustee's filing of a motion to modify the plan, which motion should include a complete Lanning analysis.

The court will issue a minute order.

Tentative Ruling: The motion is granted. Pursuant to 11 U.S.C. § 1307(c), the case is dismissed.

The debtors' chapter 13 plan (Dkt. 27), confirmed by order entered September 8, 2011 (Dkt. 30) provides in section 6.02(c) that "[d]ebtor's financial and business affairs shall be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes." The movant, creditor Internal Revenue Service of the United States (the "Service") alleges without dispute that the debtors have failed to fully pay their income tax liabilities for the tax years 2010 through 2012. The foregoing facts constitute a material default by the debtors with respect to a term of a confirmed plan and cause to convert or dismiss the chapter 13 case pursuant to 11 U.S.C. §

1307(c)(6). In this case, the court dismisses the case, as its review of the debtors' schedules shows that the debtors do not have non-exempt assets that could be administered by a trustee if the case were converted to chapter 7.

The court will issue a minute order.

12. [13-28709](#)-B-13 BETHANY SANDERS MOTION TO CONFIRM PLAN
SJS-1 9-10-13 [[22](#)]

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

The motion is granted and the amended plan filed September 10, 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.

13. [11-24210](#)-B-13 VICTOR/LISA YOUNG MOTION TO MODIFY PLAN
RAC-2 9-17-13 [[41](#)]

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 17, 2013, is confirmed.

The court will issue a minute order.

14. [12-22210](#)-B-13 PETER/JANET BACHELOR MOTION TO MODIFY PLAN
EJS-2 9-6-13 [[36](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed September 6, 2013, is confirmed with the following modifications: 1.) The secured claims of Seterus, Inc., Bank of America and Jay and Carolyn Fisher shall be provided for in class 4 modified plan, with the secured claims to be satisfied from the proceeds of the sale of the real property located at 5944 Oak Avenue, Carmichael, California, which sale was approved by the court by order entered January 17, 2013; and 2.) The plan payment provisions provide that the debtors have paid a total of \$10,800.00 to the trustee through August, 2013, and commencing September 25, 2013, the

18. [13-31019](#)-B-13 DEBRA FREEMAN
PPR-1

OBJECTION TO CONFIRMATION OF
PLAN BY LASALLE BANK, N.A.
10-3-13 [[14](#)]

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 debtor's opposition to the creditor's objection is sustained. The creditor's objection is overruled. The initial plan filed August 21, 2013, will be confirmed.

The creditor's objection is overruled for the reasons set forth in the debtor's written opposition. The creditor has presented no evidence supporting its contention that the debtor owes the creditor in excess of \$47,000.00 in pre-petition arrears.

Nothing in this ruling constitutes a finding that the actual amount of the arrears is \$15,000.00 or that the debtor's assertion and statement in her declaration that she owed \$15,000.00 in pre-petition arrears to the creditor on the date of the filing of the petition would be sufficient evidence to justify disallowance of any timely-filed claim for pre-petition arrears in excess of \$15,000.00 that may be filed by the creditor in this case. As provided for in section 2.04 of the plan, the proof of claim filed by the creditor, 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 of classification of the claim. The claim filing deadline in this case is December 26, 2013.

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 plan.

19. [13-30620](#)-B-13 DOROTHY MAHER
MDE-1

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
9-16-13 [[17](#)]

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

The creditor's objection is dismissed.

The trustee's objection and motion to dismiss are moot. On September 19, 2013, the debtor filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

20. [13-30720](#)-B-13 LEILA MONDARES
JPJ-1
- OBJECTION TO CONFIRMATION OF
PLAN BY CHAPTER 13 TRUSTEE, JAN
P. JOHNSON
9-26-13 [[16](#)]

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 15, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 5, 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 trustee's objections are sustained for the reasons set forth therein. As for the trustee's third objection regarding the debtor's failure to file a spousal waiver of right to claim exemptions pursuant to Cal. Civ. Proc. Code § 703.140(a)(2), the court acknowledges that on October 7, 2013, the debtor filed a Waiver of Exemption by Spouse (Dkt. 22) (the "Waiver"). However, the Waiver is ineffective. Cal. Code Civ. Proc. § 703.140(a)(2) states that both the husband and wife must effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, exemptions other than those provided for under Cal. Code Civ. Proc. § 703.140(b). C.C.P. § 703.140(a)(2). This is supported by the Eastern District of California's official spousal waiver form, Form EDC 3-060, which contains a space for both the debtor and his/her non-filing spouse to sign. Here, the Waiver, which is not on Form EDC 3-060, appears to have been signed only by the debtor's non-filing spouse.

The court will issue a minute order.

21. [11-24421](#)-B-13 GARETH/CAROL HILBORN
DEF-1
- MOTION TO MODIFY PLAN
9-10-13 [[73](#)]

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 10, 2013, is confirmed.

The court will issue a minute order.

22. [13-27721](#)-B-13 KEVIN/KRISTIN HIGHBAUGH MOTION TO CONFIRM PLAN
BSJ-2 8-27-13 [[34](#)]

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

The motion is granted and the amended plan filed August 27, 2013, will be confirmed.

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

23. [13-30722](#)-B-13 CRAIG/CARLA EDWARDS OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN AND MOTION TO DISMISS CASE
BY CHAPTER 13 TRUSTEE, JAN P.
JOHNSON
9-26-13 [[21](#)]

WITHDRAWN BY M.P.

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

The objection and motion to dismiss are dropped from the calendar. The trustee withdrew the objection and motion to dismiss on October 1, 2013 (Dkt. 27).

24. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY CONTINUED OBJECTION TO CLAIM OF
PGM-4 LAU ONEWEST BANK FSB, CLAIM NUMBER
2 AND/OR MOTION FOR
COMPENSATION FOR PETER G.
MACALUSO, DEBTORS' ATTORNEY(S),
FEE: \$1,500.00, EXPENSES:
\$0.00.
8-16-13 [[65](#)]

Tentative Ruling: The objection is overruled. The debtors' request for an award of attorney's fee is denied.

The court construes the objection as one to the claim for pre-petition arrears in the amount of \$1,537.46, set forth in claim no. 2 on the court's claims register filed by OneWest Bank, FSB (the "Claim"). The claim for arrears is primarily based on an escrow shortage or deficiency in the amount of \$1,331.46. The debtors object to the claim for arrears, on the ground that the claim's alleged failure to include an escrow account analysis, as required by Fed. R. Bankr. P. 3001(c)(2)(C) renders the Claim "defective" and therefore "invalid."

The debtors' argument is not persuasive. 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). Merely "raising questions" about a proof of claim, whether the claim has prima facie validity or not, is insufficient alone to justify disallowance, as the court has previously informed the debtor's counsel in a ruling issued on January 15, 2013, in case number 12-24844-B-13J, In re Sexton.

In this case, the Claim has prima facie validity. The proof of claim is accompanied by an official Mortgage Proof of Claim Attachment, and a copy of the original promissory note and deed of trust which evidence the debtors' obligation to the claimant. Also, contrary to the debtors' assertion, the Claim includes a copy of an escrow account disclosure statement, attached as the last document to the Claim following the deed of trust. The debtors have shown no evidence which shows that the escrow account statement is incorrect. The debtors appear to suggest that the escrow shortage which comprises most of the pre-petition arrears is a fictitious number, as they "raise the question" that the escrow shortage may "merely be a calculated 'escrow shortage" which is not due and payable by the debtors on the date of the filing, i.e. not an 'arrears' as defined by the Bankruptcy Code," but they have presented no evidence at all which would support such an assertion. Nor have the debtors presented any legal authority which holds that the documents filed in support of a proof of claim must be authenticated in order to survive an objection of the type raised here.

In light of the court's prior ruling informing debtors' counsel of the appropriate standard under which objections to claim are evaluated, and in light of the debtors' misrepresentation of the documents attached to the Claim, debtors' counsel is 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).

The court will issue a minute order.

25.	13-22923 -B-13	RUDY HEURTELOU AND WENDY	CONTINUED OBJECTION TO CLAIM OF
	PGM-5	LAU	CITIMORTGAGE, INC., CLAIM
			NUMBER 9 AND/OR MOTION FOR
			COMPENSATION FOR PETER G.
			MACALUSO, DEBTORS' ATTORNEY(S),
			FEE: \$1,500.00, EXPENSES:
			\$0.00.
			8-16-13 [70]

Tentative Ruling: The objection is overruled. The debtors' request for an award of attorney's fee is denied.

The court construes the objection as one to the claim for pre-petition arrears in the amount of \$3,875.74, set forth in claim no. 9 on the court's claims register, filed by Citimortgage, Inc. (the "Claim"). The claim for arrears is based on an escrow shortage or deficiency. The debtors assert that the claim for pre-petition arrears should be disallowed because they entered into a loan modification agreement with the creditor on November 30, 2012, which modification waived \$376.70 in "late charges" and which also fixed the amount of the debtors' unpaid principal and interest at \$209,585.71.

The debtors' argument is not persuasive. 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). Merely "raising questions" about a proof of claim, whether the claim has prima facie validity or not, is insufficient alone to justify disallowance, as the court has previously informed the debtor's counsel in a ruling issued on January 15, 2013, in case number 12-24844-B-13J, In re Sexton.

In this case, the Claim has prima facie validity. The proof of claim is accompanied by an official Mortgage Proof of Claim Attachment, a copy of an escrow account statement, and a copy of loan documents on which the obligation is based. The loan documents include a copy of the original promissory note and the deed of trust. The loan documents also include a copy of the loan modification agreement, contrary to the debtors' assertion that the claimant neglected to file a copy of it.

The debtors have not presented evidence which rebuts the prima facie validity of the Claim. The debtors assert that the fact that the loan modification agreement waived \$376.70 in late charges and that it fixed the amount of the unpaid principal and interest at \$209,585.71 as evidence that any escrow shortage or deficiency was "remedied" by the loan modification. However, the debtors have failed to present any evidence which demonstrates that the escrow deficiency which makes up the claim for pre-petition arrears constitutes either a "late charge" or a component of the unpaid principal balance fixed by the loan modification agreement. In fact, the loan modification agreement itself contains a provision in Paragraph 5 which requires the debtor to pay funds to the lender for Escrow Items (as that term is defined therein) in addition to amounts to be paid for principal and interest. In light of the foregoing, and in light of the fact that the escrow account statement itself shows that the debtors made no payments for escrow items for a six-month period between June, 2012, and November, 2012, leading to a negative escrow balance of (\$3,106.03) as of November, 2012, which is not forgiven or cured by the terms of the loan modification agreement, the court finds that the debtors have not rebutted the prima facie validity of the Claim.

The court will issue a minute order.

26. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY CONTINUED OBJECTION TO CLAIM OF
PGM-6 LAU NATIONSTAR MORTGAGE, CLAIM
NUMBER 5 AND/OR MOTION FOR
COMPENSATION FOR PETER G.
MACALUSO, DEBTORS' ATTORNEY(S),
FEE: \$1,500.00, EXPENSES:
\$0.00.
8-16-13 [[76](#)]

Tentative Ruling: The objection is overruled. The debtors' request for an award of attorney's fee is denied.

The court construes the objection as one to the claim for pre-petition arrears in the amount of \$2,421.01, set forth in claim no. 5 on the court's claims register, filed by Nationstar Mortgage (the "Claim"). The claim for arrears is based in part on an escrow shortage or deficiency in the amount of \$1,791.76 and in part on one missed payment of principal and interest in the amount of \$629.25. The debtors object to the claim for arrears on the ground that the claim's alleged failure to include an escrow account analysis, as required by Fed. R. Bankr. P. 3001(c)(2)(C) renders the Claim "defective" and therefore "invalid."

The debtors' argument is not persuasive. 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). Merely "raising questions" about a proof of claim, whether the claim has prima facie validity or not, is insufficient alone to justify disallowance, as the court has previously informed the debtor's counsel in a ruling issued on January 15, 2013, in case number 12-24844-B-13J, In re Sexton.

In this case, the Claim has prima facie validity. The proof of claim is accompanied by an official Mortgage Proof of Claim Attachment, and a copy of the original promissory note and deed of trust which evidence the debtors' obligation to the claimant. Also, contrary to the debtors' assertion, the Claim includes a copy of an escrow account disclosure statement, attached as the last document to the Claim following the deed of trust. The court also notes that the debtors' assertion that the Claim includes only one page of the promissory note is also incorrect; an inspection of the Claim itself reveals that the entire promissory note is attached.

The debtors have not presented evidence which rebuts the prima facie validity of the Claim. They have presented no evidence that the escrow account analysis attached to the Claim is incorrect, or that any figure on the Mortgage Proof of Claim Attachment is incorrect. Their objection is based on the false assertion that the Claim was not filed with sufficient documentation to establish its validity. Nor have the debtors

presented any legal authority which holds that the documents filed in support of a proof of claim must be authenticated in order to survive an objection of the type raised here.

In light of the court's prior ruling informing debtors' counsel of the appropriate standard under which objections to claim are evaluated, and in light of the debtors' misrepresentation of the documents attached to the Claim, debtors' counsel is 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).

The court will issue a minute order.

27. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY CONTINUED MOTION TO VALUE
PGM-7 LAU COLLATERAL OF JPMORGAN CHASE
BANK, N.A.
9-3-13 [[90](#)]

Tentative Ruling: The motion is continued to December 10, 2013, at 9:32 a.m. Respondent creditor JPMorgan Chase Bank, N.A. shall file and serve supplemental evidence, if any, in support of the motion on or before November 26, 2013. The debtors shall file and serve a supplemental reply, if any, on or before December 3, 2013.

The court will issue a minute order.

28. [13-32323](#)-B-13 JENNIFER BOWMAN MOTION TO VALUE COLLATERAL OF
EJS-1 JP MORGAN CHASE BANK
9-24-13 [[8](#)]

Tentative Ruling: The debtor's motion to value the collateral of JPMorgan Chase Bank, N.A. is continued to a final evidentiary hearing on January 22, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before January 15, 2014, 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 January 15, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value the Collateral of JPMorgan Chase 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) - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

29. [13-31024](#)-B-13 MARK/KATHLEEN GARRISON OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-1-13 [[24](#)]

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 October 7, 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.

30. [11-24225](#)-B-13 THOMAS/LAURA EDWARDS MOTION TO SELL
ACW-2 10-8-13 [[68](#)]

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.

31. [13-26128](#)-B-13 TIMOTHY/PAMELA DANIELSON MOTION TO CONFIRM PLAN
DEF-3 9-4-13 [[48](#)]

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

The motion is granted and the amended plan filed September 4, 2013, will be confirmed.

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

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

32. [09-33429](#)-B-13 MARK/GAYLENE LONG MOTION TO VALUE COLLATERAL OF
JT-2 E*TRADE BANK
9-6-13 [[39](#)]

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 E*Trade Bank ("E*Trade")'s claim in this case secured by the second deed of trust on real property located at 735 Scirocco, Yuba city, 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 \$170,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage, Inc. with a balance of approximately \$183,000.00. Thus, the value of the collateral available to E*Trade on its second deed of trust is \$0.00.

The court will issue a minute order.

33. [13-31829](#)-B-13 RANDY/EILEEN FLATGARD MOTION TO VALUE COLLATERAL OF
SAC-1 UNION BANK, N.A.
9-18-13 [[10](#)]

Tentative Ruling: The debtor's motion to value the collateral of Union Bank, N.A. is continued to a final evidentiary hearing on January 22, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before January 15, 2014, 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 January 15, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value the Collateral of Union 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] - 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.

34. [10-44131](#)-B-13 RAPHAEL METZGER AND CONTINUED MOTION TO INCUR DEBT
LDD-8 MELANIE MEDINA-METZGER 7-17-13 [[88](#)]

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.

35. [10-44131](#)-B-13 RAPHAEL METZGER AND OBJECTION TO CLAIM OF PRA
PGM-1 MELANIE MEDINA-METZGER RECEIVABLES MANAGEMENT, LLC,
CLAIM NUMBER 2
9-6-13 [[128](#)]

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

The debtors' objection is overruled.

The debtors' objection is overruled because it was not timely filed and served. Pursuant to LBR 3007-1(d)(3), "objections to claims shall be filed and served no later than sixty (60) days after service of the Notice of Filed Claims." LBR 3007-1(d)(3). Here, the Notice of Filed Claims was filed and served on July 21, 2011 (Dkts. 47, 48), and sixty days thereafter was September 19, 2011. This objection was filed on September 6, 2013. Therefore, the objection is untimely.

Generally, a motion may be made after the expiration of the specified period to act if the failure to act was a result of excusable neglect. See FRBP 9006(b)(1), LBR 1001-(b). The objection fails to cite or analyze the issue of excusable neglect. The debtors have not obtained relief from the foregoing deadline. Accordingly, the debtors' objection is overruled.

The court will issue a minute order.

38. [12-38432](#)-B-13 JOHN/NATALIE PICOTTE
DMB-9

CONTINUED MOTION TO CONFIRM
PLAN
8-5-13 [[145](#)]

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

The motion to confirm the amended plan filed August 5, 2013 (Dkt. 150) 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 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 debtors' residence immediately after entry of an order confirming the plan.

The court will issue a minute order.

39. [13-31332](#)-B-13 ROBERT/ALMA WEBER
SJS-1

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
9-11-13 [[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. \$0.00 of JPMorgan Chase Bank, N.A.'s claim secured by the second deed of trust on real property located at 10616 Campana Way, Rancho Cordova, CA 95670 ("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 \$126,917.00 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 \$148,200.00. Thus, the value of the collateral available to JPMorgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

40. [13-29735](#)-B-13 IRA ROSS
JPJ-2
WITHDRAWN BY M.P.
- OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-10-13 [[30](#)]

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

This objection has been withdrawn, and it is dropped from the calendar.

The trustee withdrew this objection on October 9, 2013 (Dkt. 57).

The court will issue a minute order.

41. [13-32737](#)-B-13 CATHERINE PORTER
PGM-1
- MOTION TO EXTEND AUTOMATIC STAY
10-4-13 [[8](#)]

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

42. [13-30339](#)-B-13 MICHAEL/JOYCE BONANNO
CAH-2
- MOTION TO VALUE COLLATERAL OF
COMMUNITY COMMERCE BANK
8-6-13 [[16](#)]

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

The motion is removed from the calendar, as resolved by stipulation approved by the court by order entered October 17, 2013 (Dkt. 89).

43. [11-31040](#)-B-13 ROBERT/PHYLISS MILLER
WW-3

CONTINUED MOTION TO MODIFY PLAN
8-9-13 [[38](#)]

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

The trustee's opposition is overruled. The motion is granted, and the modified plan filed August 9, 2013 (Dkt. 42) is confirmed with the following modifications: (1) Section 6.01, the Additional Provisions, is amended to state that Section 1.01 reads as follows: "Payments into the Plan shall be as follows: A total of \$9,250.00 has been paid into the Plan as of September 25, 2013; commencing October 25, 2013, the Plan payments will be \$75.00 per month for the remaining 32 months of the Plan."

The court will issue a minute order.

44. [13-30441](#)-B-13 JEFFERY/LORI MCCRARY
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-26-13 [[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 plan filed August 7, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 5, 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. [11-37047](#)-B-13 MARY KOSTIEW
LC-3

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
9-12-13 [[46](#)]

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 Financial Bank's claim

secured by the third deed of trust on real property located at 4545 53rd Street, Sacramento, CA 95820 ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$150,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Golden 1 Credit Union with a balance of approximately \$213,978.00 and a second deed of trust held by Golden 1 Credit Union with a balance of approximately \$20,554.00. Thus, the value of the collateral available to Wells Fargo Financial Bank on its third deed of trust is \$0.00.

The court will issue a minute order.

46. [13-28247](#)-B-13 PAUL/ESTHER SILVA MOTION TO CONFIRM PLAN
PLC-3 9-4-13 [[48](#)]

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

The motion is granted, and the amended plan filed September 4, 2013 (Dkt. 42) will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor(s) 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.

47. [11-46548](#)-B-13 CHANTE/EDIE TURNBOW MOTION FOR COMPENSATION BY THE
TBH-2 LAW OFFICE OF THOMAS HJERPE FOR
THOMAS B. HJERPE, DEBTORS'
ATTORNEY(S), FEE: \$2,575.00,
EXPENSES: \$0.00.
9-6-13 [[65](#)]

Disposition Without Oral Argument: The 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, the application is approved on an interim basis for the period of April 11, 2012, through August 26, 2012, in the amount of \$2,575.00 in fees and \$0.00 in costs, for a total of \$2,575.00, 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. Except as so ordered, the motion is denied.

On November 9, 2011, the debtors filed a chapter 13 petition. No fees or costs were approved upon confirmation of the plan. The debtors' attorney now seeks compensation for services for the period of April 11, 2012, through August 26, 2012, equaling \$2,575.00 in fees and costs. As set forth in the application, the approved fees are reasonable compensation

for actual, necessary and beneficial services.

The court will issue a minute order.

48. [13-30350](#)-B-13 ANTONIO RODRIGUEZ MOTION TO VALUE COLLATERAL OF
EB-1 ARGENT MORTGAGE COMPANY, LLC
9-3-13 [[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 Argent Mortgage Company, LLC's claim secured by the second deed of trust on real property located at 433 Pinedale Avenue, Sacramento, CA 95838 ("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 \$81,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Select Portfolio Servicing, Inc. with a balance of approximately \$93,980.75. Thus, the value of the collateral available to Argent Mortgage Company, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

49. [11-45651](#)-B-13 DANIEL CAMERENA AND LORI OBJECTION TO NOTICE OF
PGM-5 CAMARENA POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
9-6-13 [[76](#)]
CASE DISMISSED 9/4/13

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 4, 2013 (Dkt. 74).

The court will issue a minute order.

50. [11-46458](#)-B-13 RIGO/SOPHIA TREVINO MOTION TO VACATE DISMISSAL OF
ADR-3 CASE
10-2-13 [[76](#)]
CASE DISMISSED 9/21/13

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.

51. [13-28458](#)-B-13 CHRISTOPHER/GUADALUPE
CK-2 NASH

MOTION TO VALUE COLLATERAL OF
DEUTSCHE BANK NATIONAL TRUST
COMPANY
9-23-13 [[47](#)]

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. \$182,000.00 of Deutsche Bank National Trust Company ("Deutsche")'s claim secured by the deed of trust on real property located at 400 Buckeye Terrace, Redding, CA 96003 ("Property") is a secured claim, and the balance of its 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 Property had a value of \$182,000.00 on the date of the petition. The Property is encumbered by a deed of trust held by Carrington Mortgage Service, which is servicing the lien for Deutsche, with a balance of approximately \$354,516.53. Thus, the value of the collateral available to Deutsche on its deed of trust is \$182,000.00.

The court will issue a minute order.

52. [13-30259](#)-B-13 GAIL REAL
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-26-13 [[23](#)]

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 August 13, 2013 (Dkt. 10) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 5, 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.

53. [11-28661](#)-B-13 ROBERT RECH AND DIANE MOTION TO SPLIT/SEVER CHAPTER
DBJ-2 EKLUND 13 CASE
9-16-13 [[83](#)]

Tentative Ruling: None.

54. [12-41261](#)-B-13 GRANT/DIANA FLOWERS MOTION TO CONFIRM PLAN
MAS-7 8-27-13 [[156](#)]

Tentative Ruling: This matter is continued to January 7, 2014 at 9:32 a.m.

55. [12-41261](#)-B-13 GRANT/DIANA FLOWERS MOTION TO VALUE COLLATERAL OF
MAS-8 GLENDA L. WALSH
8-27-13 [[163](#)]

Tentative Ruling: The motion is continued to a final evidentiary hearing on December 19, 2013, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before December 12, 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 debtors' binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before December 12, 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 Glenda L. Cibula (Walsh). In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The parties shall at the evidentiary hearing present evidence of the values of both the real property located at 21731 Rolling Hills Drive, Palo Cedro, CA

96073 and the debtors' interest in the viatical settlements/life settlements. A motion to value collateral is made for the purpose of fixing the amount of a secured claim under 11 U.S.C. § 506(a)(1), and the amount of the secured claim must be based on the value of all of the collateral that secures the claim. In other words, a motion to value is not a method for establishing a value, or "release price," for a single piece of collateral among multiple pieces of collateral securing the same claim.

The court will issue a minute order.

56. [13-20461](#)-B-13 JASON/KELLY GREEN CONTINUED MOTION TO CONFIRM
PGM-5 PLAN
7-10-13 [[70](#)]

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

This matter is continued to November 19, 2013 at 9:32 a.m., to be heard after disposition of Debtors' Motion to Value Collateral of Beneficial California, Inc./Beneficial I, Inc.

57. [13-25063](#)-B-13 THOMAS/DEBORAH ROSS CONTINUED AMENDED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR AMENDED MOTION
TO DISMISS CASE
7-2-13 [[48](#)]

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

The trustee's objection regarding the plan's feasibility depending upon the granting of the motion to value collateral of Green Tree Servicing ("GTS") is dismissed. The trustee's objection regarding the plan's feasibility depending upon the granting of the motion to value collateral of Wells Fargo Dealer Services ("WFDS") is sustained. Confirmation of the plan filed April 12, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 5, 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 trustee's objection regarding the plan's feasibility depending upon the granting of the motion to value collateral of GTS is moot. This motion was granted by order entered on August 16, 2013 (Dkt. 66), and the order is consistent with the plan's current treatment of GTS's claim. The motion to value collateral of WFDS, which was set for an evidentiary hearing on October 11, 2013, has been resolved by a stipulation between the parties (Dkt. 71) approved by the court on October 9, 2013 (Dkt. 73).

Pursuant to the terms of the stipulation, the value of WFDS's collateral is \$19,618.23. Although the stipulation resolves this motion to value collateral, it does not resolve it in a fashion that is consistent with the plan treatment currently proposed. The plan states that the value of WFDS's interest in its collateral is \$17,000.00, which is \$2,618.23 less than the stipulated value. Therefore, the trustee's objection is sustained as to the motion to value collateral of WFDS.

The court will issue a minute order.

58. [13-25063](#)-B-13 THOMAS/DEBORAH ROSS CONTINUED OBJECTION TO
SW-1 CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
5-7-13 [[15](#)]

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

This objection has been withdrawn, and it is dropped from the calendar.

The moving party withdrew this objection on October 10, 2013 (Dkt. 74).

The court will issue a minute order.

59. [12-38764](#)-B-13 PHILIP/LORETTA BENSON MOTION TO SELL
WW-2 9-24-13 [[45](#)]

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

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The debtors seek court approval to short sell real property located at 142 Fox Hollow Circle, Vacaville, CA 95687 ("Property") to Jia Liu Desmond Ho for \$369,000.00 in cash. In this case, Nationstar Mortgage holds a senior lien against the Property in the amount of \$598,000.00 and PNC Bank holds a junior lien in the amount of \$46,000.00. The debtors have not provided proof that both lienholders consent to the proposed short sale.

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

The court acknowledges that the debtors filed approval letters from Nationstar Mortgage (Dkt. 48, p.2) and PNC Bank (Dkt. 48, p.6). However, according to Nationstar Mortgage's letter, its approval is contingent upon the closing occurring on or before September 27, 2013 at 12:00 p.m. It is now October 22, 2013. There is no evidence before this court that a sale closed prior to the September 27 deadline, or that Nationstar Mortgage has consented to an extension of the deadline. As such, the debtors have failed to provide proof that both lienholders have consented to the proposed short sale.

The court will issue a minute order.

60. [11-46672](#)-B-13 ROSA FERREIRA MOTION TO MODIFY PLAN
CAH-1 8-30-13 [[37](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed August 30, 2013 (Dkt. 40) is denied.

The court will issue a minute order.

61. [13-21872](#)-B-13 FLOYD/PAMELA GREEN MOTION TO MODIFY PLAN
JB-1 9-11-13 [[23](#)]

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 11, 2013 (Dkt. 22) is confirmed.

The court will issue a minute order.

62. [10-25273](#)-B-13 JAMESETTA CHRISTIAN MOTION FOR COMPENSATION FOR
PGM-6 PETER G. MACALUSO, DEBTOR'S
ATTORNEY(S), FEES: \$1,000.00,
EXPENSES: \$0.00
9-23-13 [[122](#)]

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

The application is approved for \$1,000.00 in fees and \$0.00 in costs for a total of \$1,000.00 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 March 4, 2010, the debtor filed a chapter 13 petition (Dkt. 1). As

part of confirmation of the debtor's third modified chapter 13 plan (Dkt. 109), 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 \$3,000.00 through the plan. (Dkt. 109, at p. 1). The debtor's attorney now seeks additional compensation from January 27, 2010 through September 18, 2012, in the amount of \$1,000.00 in fees and \$0.00 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.

63. [10-52477](#)-B-13 THOMAS/DELLA WILLIAMS MOTION FOR COMPENSATION FOR
RK-2 RICHARD KWUN, DEBTORS'
ATTORNEY(S), FEES: \$1,180.00,
EXPENSES: \$52.92
9-20-13 [[99](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330, the application is approved on an interim basis for the period of October 19, 2012, through August 31, 2013, in the amount of \$1,180.00 in fees and \$52.92 in costs, for a total of \$1,232.92, to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the application is denied.

On December 13, 2010, the debtors filed a chapter 13 petition (Dkt. 1). The debtors' initial counsel, Julius Engel, opted into the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases, and received \$5,000.00 prior to the filing of the petition and \$0.00 through the plan. The applicant substituted into the case by order entered on November 14, 2012 (Dkt. 75). The applicant now seeks compensation for services rendered and costs incurred during the period of October 19, 2012 through August 31, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

64. [11-32578](#)-B-13 GABRIEL MONARREZ
MAC-9

MOTION TO MODIFY PLAN
8-29-13 [[102](#)]

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

The motion to confirm the modified plan filed August 29, 2013 (Dkt. 107) is denied.

The motion to confirm the modified plan is denied because the debtor has not carried his 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 debtor's proposed modified plan depends on monthly installments to GMAC Mortgage ("GMAC") in connection with a loan modification agreement (Dkt. 94) that the court approved on June 11, 2013 (Dkt. 97). However, the approved loan modification agreement is a "trial period plan." Pursuant to the terms of this agreement, the debtor was to remit monthly installment payments of \$1,118.81 to GMAC on the first day of May, June, and July 2013. The agreement also states that, upon successful completion of all the requirements of the trial period plan, GMAC "will then be required to re-evaluate [the debtor's] eligibility for a Permanent Modification" (Dkt. 94, p.3). The court cannot approve the debtor's request for a modification to the current chapter 13 plan because he has failed to present any evidence that he has successfully completed the requirements of the trial period plan or that GMAC has granted him a permanent loan modification. Therefore, the debtor has not shown that the plan complies with 11 U.S.C. § 1325(a)(6). The debtor has not carried his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

65. [13-27583](#)-B-13 ANDREW LUU
RK-3

MOTION TO CONFIRM PLAN
9-6-13 [[46](#)]

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

The motion is granted, and the amended plan filed September 6, 2013 (Dkt. 48) 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.

66. [13-26689](#)-B-13 KAMAL SHEHADEH MOTION TO CONFIRM PLAN
CAH-6 8-27-13 [[83](#)]

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 signed October 18, 2013.

The court will issue a minute order.

67. [13-31289](#)-B-13 GREGORY/JANET BLAND MOTION TO VALUE COLLATERAL OF
SAC-1 BANK OF AMERICA, N.A.
9-17-13 [[14](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 581 Skyline Drive, Placerville, CA 95667 ("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 \$197,000.00 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 \$216,568.00. 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.

68. [11-34690](#)-B-13 TERRY/EARMA JOHNSON MOTION TO APPROVE LOAN
RAC-5 MODIFICATION
9-11-13 [[96](#)]

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 Bank of America, N.A. on the terms set forth in the Home Affordable Modification Agreement submitted as Exhibit A to the motion (Dkt. 99).

The court will issue a minute order.

69. [13-29992](#)-B-13 JUAN COLEMAN
RCO-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
9-12-13 [[16](#)]

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 for the reasons set forth therein. Confirmation of the plan filed July 30, 2013 (Dkt. 5) is denied.

The court acknowledges that counsel for the debtor cited to two cases at the hearing on October 8, 2013: (1) In re Bollinger, 2011 WL 3882275 (Bankr. D. Oregon 2011), and (2) In re Davis, 343 B.R. 326 (Bankr. M.D. Fla. 2006) in support of the step payments the current plan proposes to make on secured creditor Bank of America, N.A. ("BoA")'s claim. The court finds neither case persuasive or controlling. First, Bollinger is not applicable to this matter. The court in Bollinger held that "the plain language of 11 U.S.C. § 1325(a)(5)(B)(iii)(I) requires repayment plans to secured creditors to provide for equal periodic payments, which necessarily excludes balloon payments." In re Bollinger, 2011 WL 3882275 *4. Here, the plan proposes to pay BoA "\$121.12 beginning month 16, then \$163.82 beginning month 17, then \$321.13 beginning month 37 until paid in full" (Dkt. 5, p.2). Unlike in Bollinger, a balloon payment is not being offered under the terms of the plan. The debtor's position is actually weakened by Bollinger, as the court there stated that periodic payments must be made in equal amounts, something this plan fails to accomplish. Second, the court in Davis held that, pursuant to 11 U.S.C. § 1322(e), "equal monthly payments are not required as the claim at issue is one in which arrears on long term debt are being cured." In re Davis, 343 B.R. at 328. Davis does little to forward the debtor's argument in this matter as the court declined to determine what qualifies as "equal monthly payments" Id. Regardless, Davis is not controlling authority and the court declines to follow its reasoning as it is inconsistent with this court's understanding of the language of 11 U.S.C. § 1325(a)(5)(B)(iii)(I) and § 2.08(a) of the chapter 13 form plan, which require that monthly installment payments be in equal amounts. The plan's treatment of the arrears owed to BoA in Class 1 fails to accomplish this.

Even if the court were to accept the step payments proposed by the debtor, the debtor has failed to address the other concerns raised by BoA in its objection, which the court has sustained for the reason set forth in the objection. As such, the plan cannot be confirmed.

The court awards no fees and costs to BoA 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.

70. [12-39793](#)-B-13 ROBERT COONS MOTION TO MODIFY PLAN
BSJ-1 9-3-13 [[49](#)]

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 3, 2013 (Dkt. 48) is confirmed.

The court will issue a minute order.

71. [11-34695](#)-B-13 KEVIN/JOY LEWIS MOTION TO MODIFY PLAN
WW-2 9-5-13 [[33](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed September 5, 2013 (Dkt. 34) is denied.

The debtors state in their reply to the trustee's opposition that they are current under the proposed modified plan. However, they do not provide any evidence to support that assertion. Simply stating that "Debtors are current under the First Modified Plan" is insufficient.

The court will issue a minute order.

72. [08-36297](#)-B-13 ANDREW ELLENBERGER MOTION TO APPROVE LOAN
TBH-2 MODIFICATION
9-30-13 [[123](#)]

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

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The debtor seeks court approval of a loan modification agreement entered into with Wells Fargo Home Mortgage ("WFHM"). WFHM is the holder of the first deed of trust on the real property located at 4300 Red Bluff Street, Shasta Lake, CA 96019. The debtor has not provided proof that WFHM has consented to the proposed loan modification.

The absence of an actual compromise or 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 finalized, actual compromise or agreement to which the lienholder agrees, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges that the debtor has attached as Exhibit A to the motion a copy of the proposed loan modification agreement (Dkt. 126). However, the agreement has not been signed by a representative of WFHM (Dkt. 126, p.7). The debtor has provided no other evidence that WFHM has consented to the proposed loan modification. Absent proof of WFHM's consent to the agreement, there is no actual compromise or agreement for the court to approve.

The court will issue a minute order.

73. [12-28241](#)-B-13 LISA JOINER
CA-4

MOTION TO APPROVE SHORT SALE
O.S.T.
10-11-13 [[39](#)]

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.