

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 5, 2013 at 9:32 A.M.

1. [13-30300](#)-B-13 ROBIN DAHLSTEN MOTION TO CONFIRM PLAN
SJS-1 9-24-13 [[16](#)]

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 24, 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.

2. [11-20401](#)-B-13 CLARENCE/TERESA CRUZ OBJECTION TO CLAIM OF BANK OF
JPJ-1 AMERICA, N.A., CLAIM NUMBER 22
9-16-13 [[50](#)]
WITHDRAWN BY M.P.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 chapter 13 trustee withdrew the objection on October 16, 2013 (Dkt. 56).

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

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 signed October 30, 2013.

4. [12-35604](#)-B-13 LASHUNDA CORMIER AND MOTION TO MODIFY PLAN
PGM-4 ANDRE HOWARD 9-20-13 [[80](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the modified plan filed September 20, 2013, is denied.

The court will issue a minute order.

5. [13-21004](#)-B-13 CARLA FRISBY MOTION TO CONFIRM PLAN
CA-4 9-11-13 [[68](#)]
CASE DISMISSED 9/23/13

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. The bankruptcy case was dismissed by order entered September 23, 2013 (Dkt. 72).

The court will issue a minute order.

6. [11-38607](#)-B-13 TIMOTHY KELLER OBJECTION TO CLAIM OF
JPJ-2 CITIMORTGAGE, INC., CLAIM
NUMBER 15
9-16-13 [[76](#)]

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

The trustee's objection is sustained, and claim No. 15, filed on June 3, 2013, by Citimortgage, Inc. in the amount of \$81,317.77 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was November 30, 2011, and to file a government claim was January 25, 2012. The Claim was filed on June 3, 2013.

The court will issue a minute order.

7. [13-31207](#)-B-13 CLARA DAILEY
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-8-13 [[15](#)]

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 chapter 13 trustee withdrew the objection October 22, 2013 (Dkt. 18).

8. [12-26408](#)-B-13 CAROLYN AMARO
RK-1
MOTION TO MODIFY PLAN
9-20-13 [[28](#)]

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 28, 2013, the debtor filed a modified plan (the "Modified Plan") (Dkt. 39) and a motion to confirm it, setting the matter for hearing on December 10, 2013. The Modified Plan supersedes the modified plan which the debtor seeks to confirm by this motion. 11 U.S.C. § 1329(b)(2).

The court will issue a minute order.

9. [10-33611](#)-B-13 LETICIA SALCEDO
TOG-2
AMENDED MOTION TO MODIFY PLAN
9-18-13 [[44](#)]

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 18, 2013, is confirmed.

The court will issue a minute order.

10. [10-34613](#)-B-13 RUSSELL/JEANINE PETERSON CONTINUED MOTION TO MODIFY PLAN
MHL-11 9-9-13 [[257](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed September 9, 2013, is confirmed with the following modification to the plan's payment provisions: as of October 25, 2013, the debtors of paid a total of \$46,540.00 into the plan. Commencing November 25, 2013, the plan payment shall be \$50 per month for the remaining months of the plan.

The court will issue a minute order.

11. [10-49513](#)-B-13 EDWARD/CONNIE TRACY OBJECTION TO CLAIM OF
JPJ-2 CITIMORTGAGE, INC., CLAIM
NUMBER 10
9-16-13 [[48](#)]

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 trustee withdrew the objection on October 16, 2013.

12. [11-42715](#)-B-13 VIRGINIA PAYTON MOTION TO MODIFY PLAN
MET-2 9-28-13 [[54](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the modified plan filed September 28, 2013, is denied.

The court will issue a minute order.

13. [11-21816](#)-B-13 PATRICK/MADELINE CAHILL MOTION TO VALUE COLLATERAL OF
JT-2 U.S. BANK, N.A.
9-26-13 [[52](#)]

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 U.S. Bank, N.A.'s ("USB") claim in this case secured by the second deed of trust on real property located at 366 Gurdas Court, Yuba City, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

17. [13-31019](#)-B-13 DEBRA FREEMAN
PPR-1

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

Tentative Ruling: The objection is dismissed. Confirmation of the initial chapter 13 plan filed August 21, 2013, is denied.

The objection is dismissed because the objecting party, LaSalle Bank, N.A. "LaSalle" has not shown that it has standing to continue to assert an objection to confirmation in this case. This matter was continued from October 22, 2013, to allow the court to review the claim no. 1 (the "Claim") on the court's claims register, which Claim is based on a loan secured by the first deed of trust on the debtor's residence. LaSalle states in the objection that it is the holder of the Claim.

An inspection of the Claim, however, reveals that LaSalle is not the present holder of the Claim. The creditor asserting the Claim is "U.S. Bank, N.A. successor trustee to Bank of America, N.A., successor in interest to LaSalle Bank, N.A, as trustee, on behalf of the holder of the Washington Mutual Pass-Through Certificates, WMALT Series 2007-OA1." This indicates to the court that if LaSalle was the holder of the Claim on the date the instant objection was filed, ownership of the loan on which the Claim is based has since been transferred to another entity. LaSalle having divested itself of its ownership interest or legal title in the loan underlying the Claim, LaSalle no longer has constitutional standing to bring the motion. See Sprint Commc'ns Co. v. APCC Services, Inc., 554 U.S. 269, 128 S. Ct. 2531, 171 L.Ed.2d 424 (2008). Therefore, the objection is dismissed for lack of subject matter jurisdiction.

Although the court has dismissed the objection, the court has an independent duty to ensure that the plan meets the requirements of the Bankruptcy Code for confirmation. The court denies confirmation of the plan because the dividend to be paid on pre-petition arrears through the plan is insufficient to pay over the life of the plan the Claim's assertion of pre-petition arrears in the amount of \$59,030.62. As stated in section 2.04 of the plan, the proof of claim, not the plan or the schedules, determines the amount and classification of a claim absent a successful claim objection, valuation motion or lien avoidance motion.

The court will issue a minute order.

18. [13-30620](#)-B-13 DOROTHY MAHER
HLG-1

MOTION TO CONFIRM PLAN
9-19-13 [[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 19, 2013, will

21. [13-31325](#)-B-13 LANCE SMITH AND NICOLE OBJECTION TO CONFIRMATION OF
JPJ-1 CRIST-SMITH PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-4-13 [[28](#)]

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 28, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 19, 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 serves 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.

22. [13-31325](#)-B-13 LANCE SMITH AND NICOLE OBJECTION TO CONFIRMATION OF
SKI-1 CRIST-SMITH PLAN BY CAB WEST, LLC
9-27-13 [[21](#)]

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

The creditor's objections are sustained. Confirmation of the initial plan filed August 28, 2013, is denied.

The court will issue a minute order.

23. [13-20226](#)-B-13 SHIRAZ ALI MOTION TO COMPROMISE
[13-2089](#) LBG-101 CONTROVERSY/APPROVE SETTLEMENT
PLUMAS BANK V. ALI AGREEMENT WITH PLUMAS BANK
10-22-13 [[28](#)]

Tentative Ruling: The motion is denied without prejudice.

As an initial matter, the motion was not properly filed. A motion for approval of a compromise of a controversy is appropriately filed in the parent bankruptcy case, as the proceeding to which all of the debtor's creditors and the chapter 13 trustee are parties. In addition, even if

the motion were properly filed in the adversary proceeding, all motions filed in adversary proceedings must be filed and served no less than 28 days before the date of the hearing. LBR 9014-1(f)(2)(A). This motion was filed and served fourteen days before the date of the hearing.

However, as the motion was served on all creditors, the court will reach the merits of the motion for approval of the Settlement Agreement filed as an exhibit to the motion (Dkt. 30). On the merits, the motion is denied. The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The court does not approve the compromise in this case due to the provisions in paragraph 3 on pages 3-4 of the Settlement Agreement which provide that in the event the debtor defaults under the terms of his chapter 13 plan or in his monthly payments and obligations to Bank of America, N.A. that plaintiff Plumas Bank ("Plumas") shall have the right to commence foreclosure of the debtor's residence and to commence efforts to collect the debt owed to Plumas by the debtor without any requirement of notice to the debtor or judicial process. The court will not approve the Settlement Agreement where it purports to grant Plumas a blanket exemption from all judicial process. Therefore, the court denies the motion without prejudice to the filing of another motion, filed in the parent bankruptcy case, for approval of a settlement agreement which does not include such a blanket exemption, provided that the parties are interested in entering into such an agreement.

The court will issue a minute order.

24. [13-20226](#)-B-13 SHIRAZ ALI
LBG-2

MOTION TO CONFIRM PLAN
9-21-13 [[140](#)]

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

The chapter 13 trustee's opposition is sustained for the reasons set forth in the trustee's opposition, and in light of the court's denial of the debtor's motion for approval of a settlement agreement between the debtor and Plumas Bank elsewhere on this calendar.

The court will issue a minute order.

25. [13-20226](#)-B-13 SHIRAZ ALI
LBG-2

COUNTER MOTION TO DISMISS CASE
10-15-13 [[149](#)]

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 November 19, 2013, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

26. [10-34427](#)-B-13 PETER/TANIA PERERA
PGM-5

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS'
ATTORNEY(S), FEES: \$1,110.00,
EXPENSES: \$0.00
10-2-13 [[67](#)]

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

The application is approved for \$1,110.00 in fees and \$0.00 in costs for a total of \$1,110.00 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 June 1, 2010, the debtor filed a chapter 13 petition. This court authorized payment of fees and costs totaling \$3,500.00 through confirmation of the chapter 13 plan by order entered October 26, 2010. (Dkt. 28). The debtor's attorney now seeks additional compensation for services rendered between December 5, 2011, and February 21, 2012, in the amount of \$1,110.00 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.

27. [13-31829](#)-B-13 RANDY/EILEEN FLATGARD
SAC-1

CONTINUED MOTION TO VALUE
COLLATERAL OF UNION BANK, N.A.
9-18-13 [[10](#)]

Tentative Ruling: The opposition filed by Union Bank, N.A. ("Union Bank") is overruled. The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Union Bank's claim in this case secured by the second deed of trust on real property located at 6218 Salmon Way, Pollock Pines, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim. The stipulation between the debtors and Union Bank filed on October 22, 2013 (Dkt. 27) (the "Stipulation") is disapproved.

For the purposes of this motion, the Property had a value of \$185,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by JPMorgan Chase Bank, N.A.'s ("Chase") with a balance of approximately \$207,000.00. Thus, the value of the collateral available to Union Bank on its second deed of trust is \$0.00.

The Stipulation is disapproved due to the presence of paragraph on page 7 of the Stipulation, which provides, in relevant part, that the terms of the Stipulation "may not be modified, altered, or change by the debtors' chapter 13 plan, any confirmation order thereon, and any subsequently filed amended chapter 13 plan of reorganization and confirmation order thereon without the express written consent of creditor. The terms of this stipulation shall be incorporated into the debtors' plan and/or any subsequently filed amended chapter 13 plan of reorganization." (Dkt. 27 at 3). In addition to being essentially a "private plan" between Union Bank and the debtor outside of the notice requirements of Fed. R. Bankr. P. 2002 and 3015, the Stipulation purports to supersede any inconsistent plan which may be filed by the chapter 13 trustee or a creditor in the case.

Although not approved, the Stipulation concedes the value of the Property for the purposes of the motion. Therefore, the motion is granted.

The court will issue a minute order.

28. [12-28631](#)-B-13 KEVIN/INEZ SCOTT
PLC-8

MOTION TO MODIFY PLAN
9-13-13 [[76](#)]

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

The motion is granted, and the modified plan filed September 13, 2013 (the "Modified Plan") is confirmed.

The motion is granted and the Modified Plan is confirmed in the absence of any objection by the trustee or the holder of an allowed unsecured claim. The court may not raise a section 1325(b) objection sua sponte.

Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd. 49 F.3d 1404 (9th Cir. 1995). The court notes, however, that the debtors are "above median" debtors for whom the applicable commitment period under 11 U.S.C. § 1325(b)(4) would be not less than 5 years and who are required by § 1325(b)(1)(B) to apply all of the projected disposable income to be received in the applicable commitment period to make payments to unsecured creditors under the plan. In this case the debtors' Form 22C indicates that the debtors have \$191.79 in monthly disposable income. Form 22C establishes a presumption that the debtors must pay no less than \$11,507.40 to unsecured creditors over the life of the plan, based on this department's interpretation of the United States Supreme Court's decision in Hamilton v. Lanning, ___ U.S. ___, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010). The Modified Plan proposes to reduce the dividend to be paid to unsecured creditors from 41% pursuant to the confirmed plan to 0%, or \$0.00, without an analysis of the standard established by Lanning for rebutting the presumption created by Form 22C. The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim.

The court will issue a minute order.

29. [13-22032](#)-B-13 SALVADOR OSUNA MOTION TO CONFIRM PLAN
PGM-4 9-11-13 [[91](#)]

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 11, 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.

30. [13-31332](#)-B-13 ROBERT/ALMA WEBER OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-9-13 [[41](#)]

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 14, 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.

31. [13-29735](#)-B-13 IRA ROSS
MLA-2

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
10-8-13 [[45](#)]

Tentative Ruling: The debtor's motion to value the collateral of Wells Fargo Bank, N.A. is continued to a final evidentiary hearing on January 23, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before January 16, 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 16, 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 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.

32. [12-40936](#)-B-13 MATT LUGO
JPJ-1

OBJECTION TO CLAIM OF UNITED
STUDENT AID FUNDS, CLAIM NUMBER
12
9-16-13 [[35](#)]

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

The trustee's objection is sustained, and claim No. 12, filed on July 11, 2013, by United Student Aid Funds in the amount of \$7203.84 (the

"Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was April 3, 2013, and to file a government claim was June 3, 2013. The Claim was filed on July 11, 2013.

The court will issue a minute order.

33. [13-29036](#)-B-13 ANTHONY CURRINGTON MOTION TO CONFIRM PLAN
PJM-2 9-20-13 [[67](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the amended plan filed September 20, 2013, will be confirmed.

The trustee's opposition is overruled for the reasons set forth in the debtor's written reply. By order signed November 1, 2013, the court approved the stipulation between the Internal Revenue Service and the debtor filed on September 20, 2013 (Dkt. 65).

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.

34. [13-29036](#)-B-13 ANTHONY CURRINGTON COUNTER MOTION TO DISMISS CASE
PJM-2 10-21-13 [[74](#)]

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 denied.

The court will issue a minute order.

35. [10-27037](#)-B-13 TANYA STILLWELL-BISHOP MOTION FOR COMPENSATION BY THE
PGM-3 LAW OFFICE OF PETER G. MACALUSO
FOR PETER G. MACALUSO, DEBTOR'S
ATTORNEY(S), FEES: \$500.00,
EXPENSES: \$0.00
9-30-13 [[68](#)]

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

issues the following abbreviated ruling.

The application is approved for \$500.00 in fees and \$0.00 in costs for a total of \$500.00, 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 22, 2010, the debtor filed a chapter 13 petition. This court authorized payment of fees and costs totaling \$3,500.00 through confirmation of the chapter 13 plan by order entered September 8, 2010. (Dkt. 46). The debtor's attorney now seeks additional compensation for services rendered between June 12, 2013, and August 19, 2013, in the amount of \$500.00 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.

36. [11-25337](#)-B-13 NITESH SHARMA
JT-3

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
9-26-13 [[52](#)]

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. ("BofA")'s claim in this case secured by the second deed of trust on real property located at 7537 Muirfield 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 \$220,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BofA with a balance of approximately \$460,000.00. Thus, the value of the collateral available to BofA on its second deed of trust is \$0.00.

The court will issue a minute order.

37. [13-31039](#)-B-13 VICTOR/CYNTHIA LUNA
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-4-13 [[22](#)]

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

The objection is continued to November 19, 2013, at 9:32 a.m., to be heard after the hearing on the debtors' motion to value the collateral of One Main.

38. [11-21640](#)-B-13 AZALEE RUTLEDGE
JPJ-4

OBJECTION TO CLAIM OF FRANCHISE
TAX BOARD, CLAIM NUMBER 20
9-16-13 [[205](#)]

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

The trustee's objection is sustained, and claim No. 20, filed on July 30, 2013, by the Franchise Tax Board in the amount of \$3059.75 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was May 18, 2011, and to file a government claim was July 20, 2011. The Claim was filed on July 30, 2013.

The court will issue a minute order.

39. [11-21640](#)-B-13 AZALEE RUTLEDGE
SJS-22

MOTION TO MODIFY PLAN
9-27-13 [[209](#)]

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 27, 2013, is confirmed.

The court will issue a minute order.

40. [12-24742](#)-B-13 DANTE THOMAS
MHL-10
CASE DISMISSED 9/30/13

MOTION TO PLAN
9-23-13 [[166](#)]

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 30, 2013 (Dkt. 171).

The court will issue a minute order.

41. [13-29942](#)-B-13 CAROL/FREDERICK BLAS
JLK-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA
10-7-13 [[20](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BoFA") claim in this case secured by the second deed of trust on real property located at 10944 Alpine Fir Road, Truckee, 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 \$396,827.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Central Mortgage Company with a balance of approximately \$419,000.00. Thus, the value of the collateral available to BoFA on its second deed of trust is \$0.00.

The court will issue a minute order.

42. [12-41343](#)-B-13 RANDALL FRANK
ET-4

MOTION TO MODIFY PLAN
9-24-13 [[59](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the modified plan filed September 24, 2013, is denied.

The trustee's opposition is sustained based on the reasons set forth therein. The court cannot resolve the trustee's objection that the plan payment does not equal the aggregate of all required fees, dividends and installment payments in the order confirming plan, as an increase in the plan payment from \$1049.00 to \$1188.00 exceeds this department's 10% threshold for a non-material modification.

The court will issue a minute order.

43. [12-41445](#)-B-13 KEVIN/MA NEKA CORNELIUS MOTION TO MODIFY PLAN
PGM-1 9-27-13 [[26](#)]

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 27, 2013 (Dkt. 25) is confirmed.

The court will issue a minute order.

44. [11-39246](#)-B-13 ROWENA WALKER MOTION TO MODIFY PLAN
CAH-3 9-30-13 [[65](#)]

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 30, 2013 (Dkt. 69) is confirmed.

The court will issue a minute order.

45. [11-27548](#)-B-13 STEVE TOTAH OBJECTION TO CLAIM OF
JPJ-1 CITIMORTGAGE, INC., CLAIM
NUMBER 9
9-16-13 [[29](#)]

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

The trustee's objection is sustained, and claim no. 9, filed on July 10, 2013 by CitiMortgage, Inc. in the amount of \$222,963.58 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was August 3, 2011. The Claim was filed on July 10, 2013.

The court will issue a minute order.

46. [11-25750](#)-B-13 DOINA JOITA
JT-2

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
9-27-13 [[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 Bank of America, N.A. ("BoA")'s claim secured by the second deed of trust on real property located at 4170 Rose Avenue, Olivehurst, CA 95961 ("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 \$92,500.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of New York Mellon with a balance of approximately \$135,113.00. Thus, the value of the collateral available to BoA on its second deed of trust is \$0.00.

The court will issue a minute order.

47. [13-28451](#)-B-13 DOUGLAS SCOTT
RPH-1

MOTION TO CONFIRM PLAN
9-11-13 [[38](#)]

Tentative Ruling: The trustee's opposition is sustained in part and overruled in part. The motion to confirm the plan filed September 11, 2013 (Dkt. 41) (the "Plan") is denied.

The trustee's objection that the Golden One claims should not be provided for in Class 4 is sustained. To the extent that the trustee's objection argues that the Golden One claims may only be provided for in Class 1, without alteration to the form plan, the objection is overruled. Cohen v. Lopez (In re Lopez), 372 B.R. 40 (9th Cir. BAP 2007), aff'd. 550 F.3d 1202 (9th Cir. 2008) allows the debtor to cure arrears through the plan while making ongoing payments directly to Golden One. Thus, alteration of the provisions of section 2.08(b) of the Plan in the manner proposed by the debtor is permissible, and that alteration would be sufficient without providing for the Golden One claims in Class 4.

Additionally, the motion is denied because the Plan depends on a successful motion to value the collateral of the Internal Revenue Service (the "Service"), thereby fixing the Service's secured claim at \$0.00. The debtor has not filed a motion to value the Service's collateral. Therefore, the proposed amended Chapter 13 plan does not provide a permissible treatment for the Service's secured claim (amended Claim 1 filed October 18, 2013).

The court will issue a minute order.

48. [13-28451](#)-B-13 DOUGLAS SCOTT
RPH-1

COUNTER MOTION TO DISMISS CASE
10-22-13 [[45](#)]

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 November 19, 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.

49. [13-22852](#)-B-13 DAVID/YOLANDA BENSON
PLC-4

MOTION TO SELL
10-8-13 [[71](#)]

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 9079 Clydesdale Court, Elk Grove, CA 95624 ("Property"). The debtors, however, have failed to submit evidence that there is an actual short sale can occur after court approval.

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.

Here, both the motion and declaration have made it clear that the debtors currently do not have a short sale agreement in place with any buyer. In fact, the debtors have provided no evidence that they have even begun short sale negotiations. America's Servicing Company ("ASC") is yet to even review a short sale offer since it has stated that it refuses to do so without prior court approval. Although the debtors have attached a letter from ASC approving a short sale in principle, this is not "proof" of ASC's consent to the short sale. The letter fails to identify a particular buyer or any specific terms of a short sale agreement, and is not even signed by a representative of ASC. The debtors are simply seeking a court order "pre-approving" a short sale to which the necessary creditors may or may not agree. The court has no jurisdiction to issue such an order in the absence of an actual case or controversy.

54. [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](#)]

Disposition Without Oral Argument: The court issues the following abbreviated ruling.

The objection and motion to dismiss have been withdrawn and are dropped from the calendar. The plan filed April 12, 2013 (Dkt. 5) will be confirmed with modifications necessary to conform the plan to the terms of the stipulation (Dkt. 71) entered into between the debtors and Wells Fargo Bank, N.A., approved by order entered on October 9, 2013 (Dkt. 73); provided that such modifications shall not increase the plan payment by 10% or more.

The trustee withdrew the objection and motion to dismiss on October 28, 2013 (Dkt. 79).

The court will issue a minute order.

55. [12-38965](#)-B-13 JOSEPH/VICKIE WHITSON OBJECTION TO CLAIM OF MERCHANTS
JPJ-2 CREDIT ASSOCIATION, CLAIM
NUMBER 25
9-16-13 [[46](#)]

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

The trustee's objection is sustained, and claim no. 25, filed on March 11, 2013 by Merchants Credit Association in the amount of \$1,867.94 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was March 6, 2013. The Claim was filed on March 11, 2013.

The court will issue a minute order.

56. [13-30265](#)-B-13 SCOTT/KARYN MERTZ MOTION TO CONFIRM PLAN
SCL-1 9-19-13 [[20](#)]

Tentative Ruling: The trustee's objection is dismissed. The motion is granted, and the amended plan filed October 31, 2013 (Dkt. 33) will be confirmed.

The trustee's objection is dismissed as moot. On October 31, 2013, the debtor filed an amended plan. The amended plan supersedes the plan to which the trustee's objection is directed. 11 U.S.C. § 1323(b).

Additionally, the sole change in the amended plan resolves all issues raised by the trustee in his written opposition to the prior plan.

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

57. [13-30265](#)-B-13 SCOTT/KARYN MERTZ MOTION TO VALUE COLLATERAL OF
SCL-2 HSBC BANK NEVADA, N.A.
9-19-13 [[24](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of HSBC Bank Nevada, National Association's claim secured by the second deed of trust on real property located at 608 Gregory Court, Roseville, CA 95661 ("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 \$205,500.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase Home Finance LLC with a balance of approximately \$222,030.14. Thus, the value of the collateral available to HSBC Bank Nevada, National Association on its second deed of trust is \$0.00.

The court will issue a minute order.

58. [09-38469](#)-B-13 TIMOTHY/YVETTE FOREMAN MOTION TO INCUR DEBT
EJS-5 10-22-13 [[72](#)]

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.

59. [11-24670](#)-B-13 BENITO/CAROLINA SORIANO OBJECTION TO CLAIM OF
JPJ-1 CITIMORTGAGE, INC., CLAIM
NUMBER 26
9-16-13 [[42](#)]

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

63. [13-24473](#)-B-13 ROBERT/CONNIE COLLINS
SJS-4

MOTION TO CONFIRM PLAN
9-24-13 [[72](#)]

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 24, 2013 (Dkt. 76) will be confirmed.

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

64. [13-31175](#)-B-13 JOHN DRISCOLL AND JANICE
JJW-1 KOPP

OBJECTION TO CONFIRMATION OF
PLAN BY SIERRA CENTRAL CREDIT
UNION
10-10-13 [[18](#)]

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

The creditor's objection that the plan's proposed interest rate of 0.00% on its secured claim violates 11 U.S.C. § 1325(a)(5)(B)(ii) is sustained. The creditor's remaining objections are overruled without prejudice. Confirmation of initial plan filed August 25, 2013 (Dkt. 5) is denied.

For the purposes of determining the appropriate interest rate to be paid on a secured claim that can be modified, the Supreme Court's decision in Till et ux. v. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787 (2004) directs this court to conduct a present value calculation as of the effective date of the plan by starting with the risk free rate and adjusting upward for appropriate risk factors. The form plan provides that the plan is "effective from the date it is confirmed." The court takes judicial notice pursuant to Federal Rule of Evidence 201 that the current prime rate is 3.25%. Because Till directs this court to begin its analysis with the prime rate, the plan's proposed rate of 0.00%, which is less than the prime rate, violates 11 U.S.C. § 1325(a)(5)(B)(ii).

The creditor has failed to justify the proposed interest rate of 4.25%. Till directs the court to approve an upward adjustment of the interest rate only upon a showing of "appropriate risk factors." Appropriate risk factors include the "circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." Till, 541 U.S. at 479. Till places the burden on the creditor to show that an upward adjustment is necessary. Id. The creditor does not address any of the foregoing factors.

The court will issue a minute order.

65. [13-31175](#)-B-13 JOHN DRISCOLL AND JANICE OBJECTION TO CONFIRMATION OF
JPJ-1 KOPP PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-9-13 [[15](#)]

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

The trustee's objections are sustained. Confirmation of the plan filed August 25, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 19, 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.

66. [13-31175](#)-B-13 JOHN DRISCOLL AND JANICE OBJECTION TO CONFIRMATION OF
PJR-1 KOPP PLAN BY TRI COUNTIES BANK
10-10-13 [[23](#)]

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

The creditor's objections are sustained. Confirmation of the plan filed August 25, 2013 (Dkt. 5) is denied.

For the creditor's future reference, the court notes that the creditor failed to timely file with the court the certificate/proof of service of its objection. Pursuant to Local Bankruptcy Rule 3015-1(c)(4), an objection to plan confirmation "shall comply with LBR 9014-1(a)-(e)..." LBR 3015(c)(4). Local Bankruptcy Rule 9014-1(e)(2) requires that "a proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed." LBR 9014-1(e)(2). Here, all documents pertaining to this objection were filed with the court on October 10, 2013. Three days thereafter was October 13, 2013. The creditor filed the certificate/proof of service on October 14, 2013. Therefore, the certificate/proof of service was not timely filed. A failure to comply with the requirements of the Local Bankruptcy Rules may constitute grounds to overrule objections in the future. LBR 1001-1(g).

The court will issue a minute order.

67. [13-32281](#)-B-13 DON/SANDRA BABCOCK
MTM-1

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL
9-27-13 [[16](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Springleaf Financial's claim secured by the second deed of trust on real property located at 205 Patricia Lane, Sutter Creek, CA 95685 ("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 \$180,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen with a balance of approximately \$325,000.00. Thus, the value of the collateral available to Springleaf Financial on its second deed of trust is \$0.00.

The court will issue a minute order.

68. [13-28182](#)-B-13 STEVEN MJEHOVICH
SJS-2

MOTION TO CONFIRM PLAN
9-24-13 [[40](#)]

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 24, 2013 (Dkt. 43) will be confirmed.

The motion is granted and the amended plan filed September 24, 2013 is confirmed in the absence of any objection by the trustee or the holder of an allowed unsecured claim. The court may not raise a section 1325(b) objection *sua sponte*. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), *aff'd*, 49 F.3d 1404 (9th Cir. 1995). However, this department interprets the decision of the Supreme Court in Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) as adopting the rule that Form 22C establishes a presumption of a debtor's monthly disposable income, and, thus, a presumption as to the amount that the debtor is required to pay to unsecured creditors. In this instance, the debtor is an "above median" debtor with positive monthly disposable income of \$2,735.07. Despite reporting positive monthly disposable income, the amended plan proposes to pay a 0% dividend to allowed unsecured claims in Class 7. The court expresses no opinion whether the amended plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim.

The court will issue a minute order 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.

69. [09-45383](#)-B-13 CARL MILLER
LC-2

MOTION TO VALUE COLLATERAL OF
U.S. BANK, N.A.
9-10-13 [[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 U.S. Bank, N.A.'s claim secured by the second deed of trust on real property located at 2280 Hurley Way #22, Sacramento, CA 95825 ("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 \$155,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by U.S. Bank, N.A. with a balance of approximately \$184,000.00. Thus, the value of the collateral available to U.S. Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

70. [10-51785](#)-B-13 DANIEL/PAULA SETTLE
JDM-5

MOTION TO MODIFY PLAN
9-16-13 [[86](#)]

Tentative Ruling: The creditor's opposition is overruled. The motion is granted, and the modified plan filed September 16, 2013 (Dkt. 90) is confirmed with the following modification: (1) the amount of pre-petition arrears owed to Wells Fargo Home Mortgage/Residence in Class 1 shall state "\$29,590.00 paid through 08/30/13, \$32,279.68 to be paid through the remainder of the plan."

The creditor's first objection under 11 U.S.C. § 1325(a)(5)(ii) is overruled because the debtors have provided evidence, *i.e.*, a copy of the trustee's Claim Summary Report, demonstrating that the amount of pre-petition arrears owed to the creditor is consistent with what is stated in its proof of claim filed on January 18, 2011. The debtors listed the amount of pre-petition arrears remaining to be paid through the plan, rather than the total amount owed as of the petition date, in Class 1. The aforementioned language remedies this objection.

The creditor's second objection under 11 U.S.C. § 1322(d) is overruled because the court's calculations indicate that the creditor will receive the full value of its claim within the sixty month life of the plan. According to the trustee's Claim Summary Report attached as an exhibit to the debtors' reply brief (Dkt. 97, p.3), as of October 21, 2013, the remaining balance of the pre-petition arrears owed to the creditor was \$32,065.64. Including the payment due on October 25, 2013, the debtors are to make twenty-eight monthly payments

of \$1,152.85, resulting in a total payment on pre-petition arrears to the creditor of \$32,279.80 for the remainder of the plan. The modified plan's proposed treatment will cure pre-petition arrears owed to the creditor within the maximum period of sixty months. Therefore, the modified plan does not violate 11 U.S.C. § 1322(d).

The court will issue a minute order.

71. [13-31486](#)-B-13 CHARLES/CARMEN PUENTES MOTION TO VALUE COLLATERAL OF
RAC-1 WELLS FARGO BANK, N.A.
9-27-13 [[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 Wells Fargo Bank, N.A.'s claim secured by the second deed of trust on real property located at 8149 Dillard Road, Wilton, CA 95693 ("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 \$360,837.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$578,674.00. 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.

72. [13-31487](#)-B-13 KEVIN/CATHERINE BUTLER MOTION TO VALUE COLLATERAL OF
RAC-1 RBS CITIZENS, N.A.
9-25-13 [[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 RBS Citizens, N.A.'s claim secured by the second deed of trust on real property located at 2248 Beckett Drive, El Dorado Hills, CA 95762 ("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 \$555,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Caliber Home Loans, Inc. with a balance of approximately \$606,982.32. Thus, the value of the collateral available to RBS Citizens, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

73. [11-30689](#)-B-13 RAEANN LUKAS OBJECTION TO CLAIM OF
JPJ-1 CITIMORTGAGE, INC., CLAIM
NUMBER 19
9-16-13 [[46](#)]

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

The trustee's objection is sustained, and claim no. 19, filed on July 10, 2013 by CitiMortgage, Inc. in the amount of \$62,093.56 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was August 31, 2011. The Claim was filed on July 10, 2013.

The court will issue a minute order.

74. [13-28458](#)-B-13 CHRISTOPHER/GUADALUPE MOTION TO CONFIRM PLAN
CK-3 NASH 9-23-13 [[42](#)]

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

This motion was withdrawn on November 1, 2013 (Dkt. 64), and it is dropped from the calendar.

The court will issue a minute order.

75. [13-33189](#)-B-13 DANIEL CAMERENA AND LORI MOTION TO EXTEND AUTOMATIC STAY
PGM-1 CAMARENA 10-21-13 [[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.

76. [11-44792](#)-B-13 CELESTE ROBERTS MOTION TO APPROVE LOAN
CAH-7 MODIFICATION
10-1-13 [[90](#)]

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 permanent loan

late filing is allowed."); In re Edelman, 237 B.R. 146, 152 (9th Cir. BAP 1999) (Bankruptcy Rule 3002(c) provides only five exceptions to the ninety day filing period prescribed for the filing of claims). Coastal Alaska's reference to six circumstances under Bankruptcy Rule 3002(c) and Edelman's reference to five circumstances is explained by the 1996 amendments to the Bankruptcy Code, which abrogated allowance of late-filed claims against surplus estate assets in chapter 7 cases. Bankruptcy Rule 3002 therefore "complements the process of allowing claims by setting a bar date by which a claim must be filed in order to be allowed under 11 U.S.C. § 502." In re Osborne, 76 F.3d 306, 309-310 (9th Cir. 1996).

In this case, the debtors have failed to establish that any of the circumstances under Bankruptcy Rule 3002(c) apply. Accordingly, the Claim is disallowed as untimely, except to the extent already paid by the chapter 13 trustee.

The court will issue a minute order.

78. [12-40994](#)-B-13 MICHAEL LITTLE
DBJ-5

MOTION TO CONFIRM PLAN
9-18-13 [[169](#)]

Tentative Ruling: The trustee's first objection regarding the terms for payment of Class 1 claims is overruled. The trustee's remaining objections are sustained. The creditor's objections are sustained. The motion to confirm the plan filed September 18, 2013 (Dkt. 173) is denied.

The trustee's first objection is overruled because the debtor and creditor Rush Funding, LLC ("Rush") entered into a stipulation (Dkt. 161), approved by order entered August 26, 2013 (Dkt. 162), whereby the parties agreed that Rush would be paid interest only on its secured claim in the monthly amount of \$366.67 with the principal balance due and payable on or before the completion of the fourth year of the plan. The plan's treatment of Rush's Class 1 claim is consistent with this stipulation.

Additionally, the motion to confirm the 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 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 balloon payments to Rush in year four and to creditor Sterling Bank and Trust ("SBT") in year five. The debtor has failed to show that he will be able to make all payments under the plan and comply with the plan. 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.

79. [10-50295](#)-B-13 DARRIN/SANDRA ROSEMONT OBJECTION TO CLAIM OF
JPJ-2 CITIMORTGAGE, INC., CLAIM
NUMBER 9
9-16-13 [[37](#)]

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

The trustee's objection is sustained, and claim no. 9, filed on June 3, 2013 by CitiMortgage, Inc. in the amount of \$30,181.02 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was March 16, 2011. The Claim was filed on June 3, 2013.

The court will issue a minute order.

80. [13-31095](#)-B-13 GEOFFREY GREITZER OBJECTION TO CONFIRMATION OF
DAM-1 PLAN BY ATL HOLDINGS, LLC
10-16-13 [[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.

Creditor ATL Holdings, LLC ("ATL")'s first objection regarding the valuation of the commercial real property located at 7067 Skyway, Paradise, CA 95969 is overruled without prejudice. ATL's remaining objections are sustained for the reasons set forth therein. The motion to confirm the plan filed August 23, 2013 (Dkt. 5) is denied.

ATL's first objection is overruled without prejudice because its resolution depends on the outcome of the evidentiary hearing on the motion to value collateral of ATL set to be heard on January 23, 2014.

The court will issue a minute order.

81. [13-31095](#)-B-13 GEOFFREY GREITZER OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-16-13 [[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 objection regarding the debtor's failure to turn over business documents is sustained. The trustee's objection regarding the plan's feasibility depending upon the outcome of the motion to value collateral of ATL Holdings, LLC is overruled without prejudice. Confirmation of the plan filed August 23, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 19, 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 first objection regarding the debtor's failure to provide certain business documents is sustained because, although the debtor states in his response to the objection that he turned over the documents, the debtor has provided no evidence for the court to confirm this. The docket does not reflect any additional documents filed, and the trustee has not confirmed that he received them.

The trustee's second objection is overruled without prejudice.

The court concludes that, regardless of the outcome of the evidentiary hearing on the motion to value collateral of ATL Holdings, LLC, the debtor has insufficient income to fund this plan. The court 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)). In this instance, the Internal Revenue Service ("IRS") filed a proof of claim on September 27, 2013, in the amount of \$50,039.07. Of that amount, \$22,290.00 is secured. The current plan does not provide for payment of the secured portion of the IRS's claim. Additionally, the debtor states on his Schedule I (Dkt. 1, p.31) that he receives \$1,500.00 as a "monthly contribution from fiancée," but has provided no evidence that this will be a reliable source of income over the sixty-month term of the plan. Because the court finds that the debtor has failed to show that he has sufficient income to fund the plan, the plan does not comply with 11 U.S.C. § 1325(a)(6). Therefore, 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.

82. [11-48199](#)-B-13 MARK/JODIE KRAMER
JPJ-3

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 15
9-16-13 [[86](#)]

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

The trustee's objection is sustained, and claim no. 15, filed on May 13, 2013 by Bank of America, N.A. in the amount of \$240,867.63 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was April 11, 2012. The Claim was filed on May 13, 2013.

The court will issue a minute order.

83. [13-28799](#)-B-13 ALBERT/KAREN JURASIN MOTION TO CONFIRM PLAN
SJS-2 9-24-13 [[42](#)]

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 24, 2013 (Dkt. 45) will be confirmed.

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

84. [09-21751](#)-B-13 KRISTINE BOWEN MOTION TO AVOID LIEN OF COUNTY
PGM-3 OF NAPA
10-7-13 [[57](#)]

Tentative Ruling: The motion is continued to a final evidentiary hearing on January 23, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before January 16, 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 16, 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 Avoid Lien of County of Napa. 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.

of The parties shall at the evidentiary hearing present evidence of (1) the value the real property located at 718 Meadowhawk Drive, Vacaville, CA 95682 (the "Property"); (2) whether the debtor's claimed exemption in the Property was one to which the debtor "would have been entitled;" and (3) whether the debtor's request for relief is barred by the doctrine of laches.

The court will issue a minute order.