

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman

Bankruptcy Judge

Sacramento, California

November 12, 2014 at 9:32 A.M.

1. [13-31901](#)-B-13 ELIZABETH ANDRADE
RK-2

MOTION TO MODIFY PLAN
10-3-14 [[60](#)]

Tentative Ruling: The debtor's reply is stricken. The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed October 3, 2014, is denied.

The debtor's reply in support of the motion was filed untimely on November 6, 2014. Any reply in support of the motion was to be filed and served no less than seven days before the date of the hearing, in this case November 5, 2014.

Even if the debtor's reply were not untimely, it would not be persuasive. The debtor argues that she can retroactively change the interest rate to be paid on the secured claim of the Sacramento County Tax Collector (the "Tax Collector") because there is nothing in 11 U.S.C. § 1329 which expressly prohibits such a modification and because the Tax Collector allows for payment of an interest rate of 10% per annum on its secured claims in chapter 13 cases if the debtor files the proof of claim. In this case, the debtor filed the initial proof of claim in favor of the Tax Collector and it was later amended by the Tax Collector itself.

The confirmed plan provided treatment for the Tax Collector's secured claim that included interest of 15% per annum. Confirmation of the plan bound the debtor and the Tax Collector, 11 U.S.C. § 1327(a) and "an order confirming a chapter 13 plan is res judicata as to all justifiable issues which were or could have been decided at the confirmation hearing." In re Evans, 30 B.R. 530, 531 (9th Cir. BAP 1983). One of the issues decided at confirmation of the plan was the amount and interest rate to be paid on the Tax Collector's to satisfy the requirements of 11 U.S.C. § 1325(a)(5). A retroactive change in the interest rate to 10% per annum necessitates reconsideration of the order confirming plan and its decision on the interest rate required to satisfy the requirements of 11 U.S.C. § 1325(a)(5). The debtor has shown no sufficient cause for reconsideration and modification of the interest rate in this instance. Furthermore, the debtor's assertion that the Tax Collector permits payment of 10% per annum if the debtor files the proof of claim is supported only by the declaration of the debtor's counsel (Dkt. 76), which fails to establish the basis of his personal knowledge of that alleged fact.

As for the trustee's objection that the plan fails to provide for a timely filed claim for pre-petition arrears filed by Safe Credit Union ("SCU"), the debtor argues that because the confirmed plan is res

judicata as to the treatment of SCU's secured claim in class 4 of the plan that the debtor need not provide treatment for SCU's claim and that SCU has relief from the automatic stay pursuant to the provisions of section 2.11 of the plan to proceed with foreclosure if it wishes to do so. What the debtor fails to recognize, however, is the feasibility problem that is created by such a situation. The debtor has shown no evidence that she will be able to continue to perform under the plan if she is in default under the obligation owed to SCU on confirmation and at risk of losing her residence to foreclosure. The debtor has not sustained her burden under 11 U.S.C. § 1325(a)(6).

The court will issue a minute order.

2. [13-31901](#)-B-13 ELIZABETH ANDRADE
RK-3

MOTION TO VALUE COLLATERAL OF
THE PARKWAY AT FOLSOM OWNERS'
ASSOCIATION
10-3-14 [[65](#)]

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 Parkway at Folsom Owner's Association's ("Parkway") claim in this case secured by lien for unpaid homeowner's association dues on real property located at 1629 Crowle Court, Folsom, California (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$540,000.00 on the date of the petition. The Property is encumbered by a lien for unpaid real property taxes in the amount of approximately \$65,000.00, a first deed of trust held by Safe Credit Union with a balance of approximately \$545,000.00 and a second deed of trust held by Citibank with a balance of approximately \$16,000. Thus, the value of the collateral available to Parkway on its lien is \$0.00.

The court will issue a minute order.

3. [14-29103](#)-B-13 KASSI MARTINEZ
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-22-14 [[40](#)]

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, 2014, the debtor 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.

4. [14-27204](#)-B-13 JOSE CORONA AND ROSALINA MOTION TO VALUE COLLATERAL OF
TOG-1 AMBRIZ CITIBANK, N.A.
10-14-14 [[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 Citibank, N.A.'s claim in this case secured by the second deed of trust on real property located at 750 Flyway Court, Gridley, 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 Bank, N.A. with a balance of approximately \$201,000.00. Thus, the value of the collateral available to Citibank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

5. [14-27204](#)-B-13 JOSE CORONA AND ROSALINA MOTION TO CONFIRM PLAN
TOG-4 AMBRIZ 9-30-14 [[27](#)]

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

The motion is granted and the amended plan filed October 7, 2014, will be confirmed.

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

6. [14-28607](#)-B-13 MANOUCHEHR RADPOUR MOTION TO CONFIRM PLAN
CAH-2 9-19-14 [[20](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed September 19, 2014, is denied. The trustee's countermotion is conditionally denied, the conditions being that on or before November 26, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that

provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

7. [14-27614](#)-B-13 JASJIT/SHARANJIT BAJWA MOTION TO CONFIRM PLAN
BLG-2 9-19-14 [[29](#)]

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, 2014, will be confirmed.

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

8. [11-42715](#)-B-13 VIRGINIA PAYTON MOTION TO MODIFY PLAN
MET-4 9-26-14 [[80](#)]

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 26, 2014, is confirmed.

The court will issue a minute order.

9. [14-20016](#)-B-13 ARTHUR/JENNIFER HARRIS OBJECTION TO CLAIM OF ASSET
JPJ-1 ACCEPTANCE, LLC, CLAIM NUMBER
12-1
9-4-14 [[24](#)]

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

The objection is sustained in part. Claim no. 12-1 on the court's claims register (the "Claim") filed by Asset Acceptance, LLC, (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the objection is overruled.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. Based on the account summary attached to the Claim, the claim is based on an account related to an extension of unsecured credit to the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was February 5, 2004. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on February 5, 2004, more than four years before the debtors commenced their chapter 13 bankruptcy case on January 1, 2014. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

10. [14-25916](#)-B-13 JAY/ANGELA SAGARAL
SJS-2

MOTION TO CONFIRM PLAN
9-24-14 [[44](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the amended plan filed September 24, 2014, will be confirmed with the following modification included in the order confirming the plan: Plan payments shall total \$1264.00 through September 25, 2014; thereafter, the debtors shall pay \$485.00 per month for the remainder of the 60-month plan term.

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.

11. [14-25916](#)-B-13 JAY/ANGELA SAGARAL
SJS-2

COUNTER MOTION TO DISMISS CASE
10-29-14 [[50](#)]

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.

12. [09-48517](#)-B-13 DAWN MCMILLAN-COLLIER MOTION TO MODIFY PLAN
JLK-3 9-26-14 [[60](#)]

Tentative Ruling: The motion is granted and the modified plan filed September 26, 2014, is confirmed with the following modification: The dividend to be paid to class 7 unsecured editors pursuant to section 2.15 of the plan shall be no less than 26.4%.

The court will issue a minute order.

13. [14-29019](#)-B-13 KRISTINA SAAR OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-22-14 [[17](#)]

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 31, 2014, the debtor 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.

14. [11-38620](#)-B-13 RANDALL/VICKIE TOMLINSON MOTION TO MODIFY PLAN
CAH-1 9-18-14 [[64](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed September 18, 2014, is confirmed with the following modification: The priority unsecured claim of Donna Tomlinson in the amount of \$122.20 is provided for in class 5.

The court will issue a minute order.

15. [14-25623](#)-B-13 ROMAN FILIMOSHYN OBJECTION TO CLAIM OF DALE
MS-1 DEBAUN, CLAIM NUMBER 3
9-10-14 [[16](#)]

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

The objection is sustained. Claim no. 3 on the court's claims register,

filed by Dale DeBaun in the amount of \$4449.16 on September 4, 2014 (the "Claim") is disallowed as a priority claim and allowed as a general unsecured claim in the amount of \$4449.16, except to the extent already paid by the chapter 13 trustee as a priority unsecured claim in excess of the dividend to general unsecured creditors.

The debtor questions the priority status of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the court construes the claim as a seeking priority status under 11 U.S.C. § 507(a)(4), based on the statement on the proof of claim that it is based on wages and services performed. 11 U.S.C. § 507(a)(4) grants priority status to debts not to exceed \$12,475.00 for wages, salaries or commissions earned within 180 days before the date of the filing or the petition or the date of the cessation of the debtor's business, whichever is earlier. The debtor alleges without dispute and has shown evidence that the Claim is based on a decision and order of the California Labor Commission in favor of the claimant and against the debtor doing business as "AGK Trucking" for unpaid wages, liquidated damages, penalties and interest related to wages and expenses earned and incurred between September 28, 2013, and October 17, 2013. However, that period occurred more than 180 days before the date of the filing of the petition, which was November 29, 2013. The court finds that the debtor's evidence is sufficient to rebut the prima facie validity of the Claim. By failing to respond to the objection, Claimant has failed to carry its burden of proving up the Claim. Accordingly, the objection is sustained and the Claim is disallowed as a priority claim and allowed as a general unsecured claim in the amount of \$4449.16, except to the extent already paid by the chapter 13 trustee as a priority unsecured claim in excess of the dividend to general unsecured creditors.

The court will issue a minute order.

16. [14-28028](#)-B-13 JEFFREY NELSON AND LURDES MOTION TO VALUE COLLATERAL OF
JME-3 ROSALES CAPITAL ONE AUTO FINANCE
10-14-14 [[36](#)]

Tentative Ruling: The objection is continued to a final evidentiary hearing on January 8, 2015, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32. On or before January 2, 2014, each party shall lodge (not file) with the Courtroom Deputy for Department B 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 movant'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 2, 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 Debtors' Motion to Value Collateral of Capital One Auto Finance. 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] - movant's stock number 58093 and respondent's 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.

17. [13-29516](#)-B-13 MICHAEL CHURSENOFF
JPJ-1

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
10-1-14 [[88](#)]

Tentative Ruling: The debtor's opposition is overruled. The objection is sustained. The debtor's claims of exemption in the following property (the "Property") listed on amended Schedule C filed on September 23, 2014 (Dkt. 85 at 7) are disallowed:

- 1.) Vanguard IRA account with a balance of \$148,243.63, claimed as exempt under Cal. Civ. Proc. Code § 703.140(b)(10)(E);
- 2.) 2008 Toyota Prius valued at \$6,039.00, claimed as entirely exempt under Cal. Civ. Proc. Code § 703.140 (b)(5);
- 3.) "Inherited checking account" with balance of \$5,560.00 and claimed as exempt under Cal. Civ. Proc. Code § 703.140 (b)(5);
- 4.) "Inherited jewelry" valued at \$300 and claimed as exempt under Cal. Civ. Proc. Code § 703.140 (b)(5);
- 5.) "Inherited personal" property consisting of clothes, books, household goods and a television valued at \$580.00 and claimed as exempt under Cal. Civ. Proc. Code § 703.140 (b)(5).

Except as so ordered, the objection is overruled.

At issue here is the ability of a chapter 13 debtor to claim as exempt property which the debtor acquires after the commencement of the case. In this case the debtor inherited the Property on or about June 12, 2014, following the death of his spouse. The Property became property of the estate when the debtor acquired it pursuant to 11 U.S.C. § 1306(a), which includes in property of the estate property which the debtor acquires after commencement of the case.

Of those courts which have considered the issue, this court agrees with those which hold that a debtor cannot exempt under 11 U.S.C. § 522(b) property acquired after the date of the filing of the petition. See In

re Aristondo, 11-14550PM, 2011 WL 4704218, *2 (Bankr.D.Md. Oct. 4, 2011) (ruling because § 522(b) refers to § 541 and not § 1306, any after-acquired income or earnings could not be subject to a claim of exemption); In re Thurston, No. 99-11836, 2007 WL 1860892 (Bankr.D.Mass. June 27, 2007) (explained debtor had "not pointed to any provision in the Bankruptcy Code for exempting property that becomes property of the estate under section 1306, ..."). 11 U.S.C. § 522(b) references § 541, but it does not reference § 1306. When interpreting a statute, court assumes that Congress carefully selects and intentionally adopts the language used in a statute. Ebben v. C.I.R., 783 F.2d 906, 916 (9th Cir. 1986). "It is not the province of this court . . . to conclude that Congress mistakenly enacted narrow language or absent-mindedly forgot to include language of broader application." Id. One may argue that Congress should have referenced § 1306 in § 522(b), but it did not and the court presumes that the absence of such a reference was intentional.

The court will issue a minute order.

18. [14-28728](#)-B-13 ELENA CASTRO MOTION TO VALUE COLLATERAL OF
MCN-1 JPMORGAN CHASE BANK
9-18-14 [[18](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s ("Chase") claim in this case secured by the second deed of trust on real property located at 691 Buck Avenue, Vacaville, California (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$705,617.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Select Portfolio Servicing with a balance of approximately \$1,060,000.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00.

The court will issue a minute order.

19. [14-29428](#)-B-13 ROSANNE/STEPHEN AVILA MOTION TO VALUE COLLATERAL OF
HDR-1 TRAVIS CREDIT UNION
10-1-14 [[9](#)]

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. \$21,822.00 of Travis Credit Union's claim in this case secured by a 2011 Nissan Titan (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the

Collateral had a value of \$21,822.00 on the date of the petition.

The court will issue a minute order.

20. [14-29428](#)-B-13 ROSANNE/STEPHEN AVILA MOTION TO VALUE COLLATERAL OF
HDR-2 TRAVIS CREDIT UNION
10-1-14 [[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. \$3386.00 of Travis Credit Union's claim in this case secured by a 2003 Jeep Grand Cherokee (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$3386.00 on the date of the petition.

The court will issue a minute order.

21. [14-29428](#)-B-13 ROSANNE/STEPHEN AVILA MOTION TO VALUE COLLATERAL OF
HDR-3 RESORT INVESTMENT CAPITAL, LLC
10-1-14 [[19](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$1000.00 of Resort Investment Capital, LLC's claim in this case secured by a Resort West Vacation Club Bronze Enhanced Membership to the Ridge at Tahoe (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$1000.00 on the date of the petition.

The court will issue a minute order.

22. [14-29131](#)-B-13 JOHN LYONS OBJECTION TO CONFIRMATION OF
BHT-1 PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
10-23-14 [[15](#)]

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 September 11, 2014, is denied.

The objection is sustained for the reasons set forth therein. The debtor has not propose treatment for the creditor's secured claim which satisfies the requirements of 11 U.S.C. § 1322(b)(2) or (b)(5) and has not carried his burden of showing that the plan is feasible pursuant to 11 U.S.C. § 1325(a)(6).

The court will issue a minute order.

23. [14-29131](#)-B-13 JOHN LYONS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-23-14 [[19](#)]

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 September 11, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 26, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

24. [14-28933](#)-B-13 ANA RODRIGUEZ
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-22-14 [[22](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed September 3, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 26, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

25. [14-29934](#)-B-13 RYAN/ASHLEY CANADY
RJ-1

MOTION TO VALUE COLLATERAL OF
GOLDEN 1 CREDIT UNION
10-26-14 [[16](#)]

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

The motion is dismissed without prejudice.

The motion was not properly served. By this motion the debtors seek to value the collateral of The Golden 1 Credit Union ("Golden 1"). Golden 1 is a depository institution that is federally insured through the National Credit Union Administration. Fed. R. Bankr. P. 7004(h) requires that service of a summons and complaint on a federally insured depository institution be made on an officer of the institution via certified mail. The debtors' certificate of service (Dkt. 19) does not show that Golden 1 was served via certified mail.

The court will issue a minute order.

26. [14-29934](#)-B-13 RYAN/ASHLEY CANADY
RJ-2

MOTION TO VALUE COLLATERAL OF
TOYOTA MOTOR CREDIT CORPORATION
10-26-14 [[20](#)]

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

The motion is denied without prejudice.

The motion does not give adequate notice to the respondent of the collateral to be valued. The motion refers to a 2006 BMW X3 3.0i SUV as the collateral to be value, which vehicle does not appear on the debtors' schedules as property of the estate. The debtors' supporting declaration does refer to a 2008 Nissan Altima as the collateral to be valued, but the failure of the motion to reference the correct collateral and the inconsistency between the motion and the supporting declaration does not give the respondent creditor sufficient notice of the relief sought by the debtors.

The court will issue a minute order.

27. [14-29036](#)-B-13 FOUAD MIZYED

MOTION TO VALUE COLLATERAL

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 2109 Hillridge Drive, Fairfield, California (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$466,530.00 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 \$547,000.00. 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.

28. [14-29036](#)-B-13 FOUAD MIZYED
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-22-14 [[33](#)]

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 19, 2014, the debtor filed an amended plan and on October 22, 2014 filed a motion to confirm the amended plan. 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.

29. [14-27938](#)-B-13 TERRI COMBS
MC-1

MOTION TO CONFIRM PLAN
9-17-14 [[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 17, 2014, will be confirmed.

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

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

30. [14-26940](#)-B-13 SCOTT/LANAE FRANK MOTION TO CONFIRM PLAN
JSO-2 9-30-14 [[31](#)]

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

The motion is granted and the amended plan filed September 30, 2014, will be confirmed.

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

31. [10-28849](#)-B-13 JEFFREY/AMY BOOTH MOTION TO MODIFY PLAN
ADR-3 9-24-14 [[48](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed September 24, 2014, is denied.

The court will issue a minute order.

32. [11-46849](#)-B-13 MARTHA REDDIC MOTION TO MODIFY PLAN
PGM-2 9-26-14 [[33](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed September 26, 2014, is confirmed.

The trustee's opposition is overruled because the debtor represents in her reply filed November 4, 2014, that she made the delinquent plan payment of \$115.00 on October 29, 2014, and that she is current under the terms of the modified plan.

The court will issue a minute order.

33. [14-27051](#)-B-13 CHRISTINA SONLEITNER
CAH-1

MOTION TO CONFIRM PLAN
9-15-14 [[25](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed September 15, 2014 (Dkt. 29) is denied.

The court will issue a minute order.

34. [14-27051](#)-B-13 CHRISTINA SONLEITNER
CAH-1

COUNTER MOTION TO DISMISS CASE
10-29-14 [[48](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 48) is filed under LBR 9014-1(f)(1)(B). The court issues the following tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before November 26, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

35. [14-27051](#)-B-13 CHRISTINA SONLEITNER
CAH-2

CONTINUED MOTION FOR
DETERMINATION OF VIOLATION OF
THE AUTOMATIC STAY AND/OR
MOTION FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY
9-15-14 [[31](#)]

Tentative Ruling: This matter is continued from October 14, 2014, at 9:32 a.m. with instructions that (1) on or before October 15, 2014, the debtor file and serve a notice of the continued hearing on all parties previously served with the motion, and (2) on or before October 28, 2014, the debtor file and serve on all parties previously served with the motion supplemental briefing and evidence regarding the debtor's actual damages incurred in connection with the violation of the automatic stay described in the motion. The debtor timely filed and served the notice of continued hearing, but failed to file and serve the requested supplemental briefing. The court now issues the following tentative ruling.

The motion is dismissed without prejudice.

The motion fails to state a claim under 11 U.S.C. § 362(k). By this motion, the debtor seeks a determination that creditor 1-800 Loan Mart (the "Creditor") willfully violated 11 U.S.C. § 362(a). The debtor further requests a continued hearing to allow for the filing of evidence of actual damages suffered pursuant to 11 U.S.C. § 362(k) as a result of the Creditor's alleged automatic stay violation. 11 U.S.C. § 362(k)

provides that "except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1) (emphasis added). The debtor has failed to allege all elements of 11 U.S.C. § 362(k). Specifically, although the debtor goes to great lengths in her motion, declaration, and supporting documentation attempting to establish that the Creditor willfully violated the automatic stay through post-petition collection efforts, she at no point alleges that she was injured in any way by the Creditor's actions aside from the statement that she "suffered emotional distress and anguish from this harassment." This statement alone is insufficient to establish actual damages under 11 U.S.C. § 362(k) as defined by applicable Ninth Circuit authorities.

To obtain damages for emotional distress, the individual must provide clear evidence to establish that significant harm occurred as a result of the violation. The individual must "(1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process)." Supporting evidence would be (1) corroborating medical evidence, (2) the testimony of non-experts such as family members, friends or co-workers who testify to manifestations of mental anguish that clear establish that significant emotional harm occurred. See Dawson v. Washington Mutual Bank, F.A. (In re Dawson), 390 F.3d 1139, 1147, 1148 (9th Cir. 2004).

At the request of the debtor, the court continued the matter and requested supplemental briefing on the issue of actual damages. Having failed to comply with this request, however, the court finds that the debtor has failed to state a claim under 11 U.S.C. § 362(k). Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

36. [11-22683](#)-B-13 EDWARD/CONNIE RORMAN
SLE-1

MOTION FOR EXEMPTION FROM
FINANCIAL MANAGEMENT COURSE
10-1-14 [[59](#)]

Tentative Ruling: This motion is unopposed. In this instances, the court issues a tentative ruling.

The court construes joint debtor Connie D. Rorman ("Mrs. Rorman")'s request to exempt debtor Edward Rorman ("Mr. Rorman") from the requirement of completing a post-petition financial instructional course as a motion for substitution of a deceased party, and grants the motion to the extent set forth herein. Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, joint debtor Mrs. Rorman is authorized to perform the obligations and duties of deceased debtor Mr. Rorman in this case, in addition to performing her own obligations and duties. Pursuant to the foregoing authority granted to Mrs. Rorman, the Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management filed June 6, 2014 (Dkt. 50) is deemed the certificate of Mr. Rorman as well as Mrs. Rorman. Pursuant to Federal Rule of Bankruptcy Procedure 1016, administration of case number 11-

22683-B-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of debtor Mr. Rorman had not occurred. Except as so ordered, the motion is denied.

The court will issue a minute order.

37. [14-29055](#)-B-13 APRIL WARD MOTION TO CONFIRM PLAN
AAM-1 9-27-14 [[32](#)]

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

The motion is removed from the calendar.

The debtor filed a withdrawal of the motion on November 2, 2014 (Dkt. 40). On November 5, 2014, the debtor filed an amended plan (Dkt. 49) and a motion to confirm it (Dkt. 45), setting the matter for hearing on January 13, 2015, at 9:32 a.m.

38. [14-29055](#)-B-13 APRIL WARD COUNTER MOTION TO DISMISS CASE
AAM-1 10-29-14 [[38](#)]

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

The trustee's motion to dismiss is dismissed.

The motion to dismiss is moot. On November 5, 2014, the debtor filed an amended plan (Dkt. 49) and a motion to confirm it (Dkt. 45), setting the matter for hearing on January 13, 2015, at 9:32 a.m. The motion to confirm provides the relief sought in the motion to dismiss.

The court will issue a minute order.

39. [11-38258](#)-B-13 CHRISTOPHER/AMY PIERCE MOTION TO MODIFY PLAN
CA-1 9-25-14 [[55](#)]

Tentative Ruling: The motion to confirm the modified plan filed September 25, 2014 (Dkt. 58) (the "Plan") is denied.

Although no party in interest has opposed the motion, 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)).

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 debtors state in both their motion and attached declaration that the joint debtor recently lost her job and found a new job which requires her to obtain her own vehicle. The debtors further state that the Plan addresses this change. However, the court's review of the Plan does not reveal any specific treatment for a claim secured by a new vehicle. Furthermore, the debtors acknowledge at Line 24 of amended Schedule J filed September 25, 2014 (Dkt. 60, p.7) that the amount listed on amended Schedule J for their vehicle and vehicle insurance payments are only estimates. The debtors further state that they will be filing a motion to incur new debt, but as of today's hearing date they have failed to do so. The feasibility of the Plan appears to depend on a successful motion to incur new debt that has not been filed, served, and set for hearing. 11 U.S.C. § 1325(a)(6). Accordingly, the motion is denied.

The court will issue a minute order.

40. [14-27570](#)-B-13 DANIEL/DENISE STYRING MOTION TO CONFIRM PLAN
SJS-1 10-1-14 [[27](#)]

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

The motion is granted, and the amended plan filed October 1, 2014 (Dkt. 29) 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.

41. [14-22173](#)-B-13 YOLANDA SWARTOUT MOTION TO CONFIRM PLAN
NBC-2 10-15-14 [[49](#)]

Tentative Ruling: The motion to confirm the amended plan filed October 15, 2014 (Dkt. 51) is denied.

The motion is procedurally defective. Pursuant to Local Bankruptcy Rule 3015-1(d)(1), notice of a motion to confirm an amended plan "shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two (42) days prior to the hearing." LBR 3015-1(d)(1). The motion fails to comply with the foregoing for the following reasons. First, the

motion, notice of hearing, and supporting documents were served on all creditors on October 15, 2014, which is only twenty-eight days prior to today's hearing date. Second, the notice of hearing (Dkt. 50) states that opposition to the confirmation of the plan shall be made orally at the hearing. This instruction does not comply with Local Bankruptcy Rule 9014-1(f)(1), which requires that interested parties be given notice that written opposition to the motion is due no later than fourteen days prior to the hearing date.

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

The court will issue a minute order.

42. [14-22173](#)-B-13 YOLANDA SWARTOUT COUNTER MOTION TO DISMISS CASE
NBC-2 10-29-14 [[55](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 55) is filed under LBR 9014-1(f)(1)(B). The court issues the following tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before November 26, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

43. [14-28075](#)-B-13 RICHARD TOGNOLI MOTION TO CONFIRM PLAN
NF-2 9-24-14 [[34](#)]

Tentative Ruling: The trustee's objection that the feasibility of the plan depends on the granting of a motion to value collateral for Tri Counties Bank ("TCB") is overruled. The trustee's remaining objections are sustained for the reasons set forth therein. TCB's opposition is sustained for the reasons set forth therein. The motion to confirm the amended plan filed September 24, 2014 (Dkt. 37) is denied.

The debtor's motion to value collateral of TCB was heard on October 28, 2014, at 9:32 a.m. and granted by order entered October 31, 2014 (Dkt. 64) in a manner consistent with the plan's proposed treatment for TCB's claim. Accordingly, the trustee's objection on this ground is overruled.

The court will issue a minute order.

44. [14-28075](#)-B-13 RICHARD TOGNOLI
NF-2

COUNTER MOTION TO DISMISS CASE
10-21-14 [[54](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 54) is filed under LBR 9014-1(f)(1)(B). The court issues the following tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before November 26, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

45. [14-28475](#)-B-13 ROBERT/MOIRA TRABERT
ALG-2

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER 3
AND/OR MOTION TO ESTIMATE CLAIM
9-23-14 [[27](#)]

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

The objection is dismissed without prejudice.

The objection is moot. Since the filing of this objection, claimant Internal Revenue Service twice amended its claim on October 15, 2014, and October 21, 2014. The amended claims supersede the claim to which the debtors object.

The court will issue a minute order.

46. [13-35777](#)-B-13 SIDNE ALLINGER
LBG-6

MOTION TO MODIFY PLAN
10-2-14 [[78](#)]

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

The motion is granted, and the modified plan filed October 2, 2014 (Dkt. 81) is confirmed.

The court will issue a minute order.

47. [14-27780](#)-B-13 EDWARD MEDINA
HDR-3

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
9-23-14 [[35](#)]

Tentative Ruling: The motion is denied without prejudice.

The debtor has failed to establish the existence of a judicial lien in this instance. The required elements for avoidance of a judicial lien are as follows:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

Under California law, a judgment lien on real property is created by the recording of an abstract of a money judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code § 697.310(a). The court acknowledges that the debtor has attached as Exhibit "B" to the motion the abstract of judgment in favor of the respondent (Dkt. 38, p.5). However, although the debtor asserts in his attached declaration that the abstract of judgment was recorded in Yolo County, he provides no copy of a recorded abstract. Absent such evidence, the debtor has failed to establish the existence of a judicial lien under California law. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

48. [14-27780](#)-B-13 EDWARD MEDINA
HDR-2

MOTION TO CONFIRM PLAN
9-23-14 [[29](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed September 23, 2014 (Dkt. 33) is denied.

In addition to the trustee's objections, 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)).

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."). Here, the feasibility of the plan depends upon the granting of a motion to avoid the judicial lien held by Capital One Bank (USA), N.A., currently listed in Class 2C.1 of the plan. Although that matter was heard elsewhere on today's calendar, it was denied for the debtor's failure to provide evidence that the lien was properly recorded in accordance with California law. Accordingly, the debtor has failed to establish the plan confirmation requirements of 11 U.S.C. § 1325(a), and the motion is denied.

The court will issue a minute order.

49. [14-27780](#)-B-13 EDWARD MEDINA COUNTER MOTION TO DISMISS CASE
HDR-2 10-29-14 [[45](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 45) is filed under LBR 9014-1(f)(1)(B). The court issues the following tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before November 26, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

50. [11-38384](#)-B-13 ROHN WEST AND ELIZABETH MOTION TO VALUE COLLATERAL OF
CA-2 CRANE-WEST CITIMORTGAGE, INC.
10-20-14 [[45](#)]

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. [12-33384](#)-B-13 CHRISTOPHER BARMBY AND MOTION TO MODIFY PLAN
CJY-4 MADELYNN MCCLAIN 9-26-14 [[56](#)]

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 26, 2014 (Dkt. 60) is confirmed.

The court grants the motion in the absence of opposition. The court

notes that the modified plan reduces the total amount to be paid to general unsecured creditors to an amount no less than approximately \$35,058.31. The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

52. [14-28784](#)-B-13 TERRANCE/TERESA PARKHURST MOTION TO VALUE COLLATERAL OF
RAC-1 21ST MORTGAGE CORPORATION
10-1-14 [[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 21st Mortgage Corporation's claim secured by the second deed of trust on real property located at 274 Cascade Street, Woodland, California 95695 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$260,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage with a balance of approximately \$295,894.86. Thus, the value of the collateral available to 21st Mortgage Corporation on its second deed of trust is \$0.00.

The court will issue a minute order.

53. [14-28787](#)-B-13 SOHAIL MALIK CONTINUED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON
10-7-14 [[19](#)]

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

The trustee's objections are sustained. Confirmation of the plan filed August 29, 2014 (Dkt. 6) is denied.

The court will issue a minute order.

54. [11-20388](#)-B-13 KELIKUPA/CASSY MATU
CAH-5

MOTION TO INCUR DEBT
10-24-14 [[104](#)]

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.

55. [08-30673](#)-B-13 RAYMOND MORENO
PGM-2

MOTION FOR CONTEMPT AND/OR
MOTION FOR VIOLATION OF 11
U.S.C. 1328
10-14-14 [[49](#)]

Tentative Ruling: The Internal Revenue Service's opposition is sustained in part, and the motion is converted to an adversary proceeding. Pursuant to Fed. R. Bankr. P. 9014(c), all of the rules of Part VII shall apply. The clerk of the court shall assign an adversary proceeding number to this matter. On or before December 3, 2014, debtor Raymond Moreno, as plaintiff, shall (1) pay any adversary proceeding filing fee that is due and (2) file an amended complaint that complies with Fed. R. Bankr. P. 7008 and all other applicable rules and that names the IRS as defendant. On or before December 3, 2014, plaintiff shall properly serve a summons and the amended complaint. Pursuant to Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a)(3), the defendant shall have to and including the later of December 17, 2014, or the response date set forth in the summons to answer or otherwise respond to the amended complaint. The adversary proceeding will next appear on the status conference calendar date set in the summons. If no amended complaint is timely filed (with payment of any filing fee that is due), this adversary proceeding will be dismissed with prejudice without further notice or hearing. The remaining objections raised in the IRS's opposition are overruled without prejudice to raising them again in response to the amended complaint.

This motion is converted to an adversary proceeding because it includes requests for relief that can only be obtained, if at all, by adversary proceeding.

The court will issue a minute order.

56. [14-28089](#)-B-13 DAVID/SHARON SHEPHERD
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-15-14 [[25](#)]

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 21, 2014 (Dkt. 11) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 26, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

57. [13-36190](#)-B-13 TERRY/MELINDA HUNTER
JPJ-2

OBJECTION TO CLAIM OF ASSET
ACCEPTANCE, LLC, CLAIM NUMBER 2
9-4-14 [[77](#)]

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

The trustee's objection is sustained, and claim number 2, filed on January 16, 2014, by Asset Acceptance LLC (the "Creditor") in the amount of \$644.14 (the "Claim"), is disallowed in its entirety.

The trustee questions the validity and nature of the Claim. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 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).

Here, the Claim shows on its face that it is time-barred under California law. Based on the account summary attached to the Claim, the Claim is based on an account related to money loaned to the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account, an account stated based upon an account in writing, and a balance due upon a mutual, open and current account is four (4) years. In this case, the account summary attached to the Claim shows that the date of the last transaction on the account was October 8, 2008, and the charge off date was May 31, 2009. Therefore, the trustee has provided sufficient evidence that the Creditor's cause of action on its Claim began to accrue on October 8, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy on December 31, 2013. By failing to respond to the objection, the Creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in its entirety.

The court acknowledges that the Creditor filed a notice of withdrawal of the Claim on October 23, 2014. However, the Creditor cannot unilaterally withdraw the Claim after an objection is filed except after a hearing and notice to the trustee. Fed. R. Bankr. P. 3006.

The court will issue a minute order.

58. [13-36190](#)-B-13 TERRY/MELINDA HUNTER
JPJ-3

OBJECTION TO CLAIM OF ASSET
ACCEPTANCE, LLC, CLAIM NUMBER 1
9-4-14 [[73](#)]

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

The trustee's objection is sustained, and claim number 1, filed on January 16, 2014, by Asset Acceptance LLC (the "Creditor") in the amount of \$12,077.03 (the "Claim"), is disallowed in its entirety.

The trustee questions the validity and nature of the Claim. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 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).

Here, the Claim shows on its face that it is time-barred under California law. Based on the account summary attached to the Claim, the Claim is based on an account related to money loaned to the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account, an account stated based upon an account in writing, and a balance due upon a mutual, open and current account is four (4) years. In this case, the account summary attached to the Claim shows that the date of the last transaction on the account was February 11, 2008, and the charge off date was September 30, 2008. Therefore, the trustee has provided sufficient evidence that the Creditor's cause of action on its Claim began to accrue on February 11, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy on December 31, 2013. By failing to respond to the objection, the Creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in its entirety.

The court acknowledges that the Creditor filed a notice of withdrawal of the Claim on October 23, 2014. However, the Creditor cannot unilaterally withdraw the Claim after an objection is filed except after a hearing and notice to the trustee. Fed. R. Bankr. P. 3006.

The court will issue a minute order.

59. [13-36190](#)-B-13 TERRY/MELINDA HUNTER
JPJ-4

OBJECTION TO CLAIM OF AMERICAN
EXPRESS CENTURION BANK, CLAIM
NUMBER 7
9-4-14 [[69](#)]

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

The trustee's objection is sustained, and claim number 7, filed on May 2, 2014, by American Express Centurion Bank (the "Creditor") in the amount of \$12,247.12 (the "Claim"), is disallowed in its entirety.

The trustee questions the validity and nature of the Claim. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 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).

Here, the Claim shows on its face that it is time-barred under California law. Based on the account summary attached to the Claim, the Claim is based on a credit card account. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account, an account stated based upon an account in writing, and a balance due upon a mutual, open and current account is four (4) years. In this case, the account summary attached to the Claim shows that the date of the last transaction on the account was February 2008, and the charge off date was September 2008. Therefore, the trustee has provided sufficient evidence that the Creditor's cause of action on its Claim began to accrue in February 2008, more than four years before the debtors commenced their chapter 13 bankruptcy on December 31, 2013. By failing to respond to the objection, the Creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in its entirety.

The court will issue a minute order.

60.	13-36199 -B-13 DAVID MOORE AND SHANA JPJ-2 MANGAL-MOORE	OBJECTION TO CLAIM OF EAST BAY FUNDING, LLC, CLAIM NUMBER 11 9-4-14 [60]
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Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim number 11, filed on May 6, 2014, by East Bay Funding LLC (the "Creditor") in the amount of \$34,768.15 (the "Claim"), is disallowed in its entirety.

The trustee questions the validity and nature of the Claim. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 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).

Here, the Claim shows on its face that it is time-barred under California law. Based on the account summary attached to the Claim, the Claim is based on a bank card and bill of sale. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account, an account stated based upon an account in writing, and a balance due upon a mutual, open and current account is four (4) years. Additionally, the statute of limitations on an action

upon any contract, obligation, or liability founded upon an instruct in writing is also four years. In this case, the account summary attached to the Claim shows that the date of the last transaction on the account was August 24, 2009. Therefore, the trustee has provided sufficient evidence that the Creditor's cause of action on its Claim began to accrue on August 24, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy on December 31, 2013. By failing to respond to the objection, the Creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in its entirety.

The court will issue a minute order.

61. [11-29591](#)-B-13 BRIAN SAECHAO
PLC-3

MOTION TO VALUE COLLATERAL OF
OLD REPUBLIC INSURANCE COMPANY
10-3-14 [[55](#)]

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 Old Republic Insurance Company's claim secured by the second deed of trust on real property located at 9716 Palazzo Court, Elk Grove, California 95624 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$227,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BAC Home Loans Servicing with a balance of approximately \$354,738.00. Thus, the value of the collateral available to Old Republic Insurance Company on its second deed of trust is \$0.00.

The court will issue a minute order.

62. [12-39793](#)-B-13 ROBERT COONS
BSJ-2

MOTION TO MODIFY PLAN
9-26-14 [[59](#)]

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 26, 2014 (Dkt. 60) is confirmed.

The court will issue a minute order.

63. [14-23396](#)-B-13 JOSEPH/ARDELYN FLORES
SJS-3

MOTION TO CONFIRM PLAN
9-26-14 [[39](#)]

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 26, 2014 (Dkt. 43) 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. [13-33598](#)-B-13 PAMELA JOSEPH
PGM-1

MOTION TO MODIFY PLAN
9-25-14 [[30](#)]

Tentative Ruling: This matter is continued to February 10, 2015, at 9:32 a.m.