

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

**November 19, 2013 at 9:32 A.M.**

---

1.     [13-29800](#)-B-13     JOSE ARANDA AND FAVIOLA                     MOTION TO CONFIRM PLAN  
CAH-6                     VALENCIA-ARANDA                     9-26-13 [[61](#)]-

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed September 26, 2013, is denied.

The trustee's opposition is sustained for the reasons set forth therein. The court will not grant the motion with modifications included in the order confirming the plan on the terms proposed by the debtors because the debtors' proposed increase in the plan payment constitutes an 11.15% increase in the plan payment, which exceeds this department's 10% threshold for modifications which can be included in an order confirming plan.

The court will issue a minute order.

2.     [13-29800](#)-B-13     JOSE ARANDA AND FAVIOLA                     COUNTER MOTION TO DISMISS CASE  
CAH-6                     VALENCIA-ARANDA                     10-28-13 [[79](#)]-

**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 December 3, 2013, the debtors file 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 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.

3. [13-32000](#)-B-13 LORRIE/LELAND JENNINGS MOTION TO VALUE COLLATERAL OF  
MOH-1 BANK OF AMERICA, NA  
11-5-13 [[18](#)]-

**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.

4. [13-33800](#)-B-13 MARIA MEZ MOTION TO EXTEND AUTOMATIC STAY  
PGM-1 11-5-13 [[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.

5. [13-31703](#)-B-13 GREGORY/LISA HARRIS OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-23-13 [[20](#)]-

**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 November 6, 2013 (Dkt. 23).

6. [13-24704](#)-B-13 TIMOTHY/KERRI FULTON MOTION TO CONFIRM PLAN  
SJJ-10 10-3-13 [[125](#)]-

**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 debtors withdrew the motion on November 13, 2013.

7. [13-24704](#)-B-13 TIMOTHY/KERRI FULTON COUNTER MOTION TO DISMISS CASE  
SJJ-10 11-5-13 [[137](#)]-

**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 December 3, 2013, the debtors file 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 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.

8. [13-29504](#)-B-13 JOEY/SHEILA NUQUI MOTION TO CONFIRM PLAN  
JSN-6 10-7-13 [[62](#)]-

**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 15, 2013 (Dkt. 68), 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.

9. [13-31905](#)-B-13 JOHN/JACLYN LABARBERA MOTION TO VALUE COLLATERAL OF  
BLG-1 PNC BANK, N.A.  
10-1-13 [[22](#)]-

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of PNC Bank, N.A.'s ("PNC") claim in this case secured by the second deed of trust on real property located at 19850 Holstein Lane, Redding, 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 \$332,945.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$402,000.00. Thus, the value of the collateral available to PNC on its second deed of trust is \$0.00.

The court will issue a minute order.

10. [13-31606](#)-B-13 GERALD MCCURDY  
MDE-1

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
9-20-13 [[11](#)]-

**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 3, 2013, is denied.

The court will issue a minute order.

11. [13-31110](#)-B-13 KENNETH/ALLISON TUCKER  
RWH-2

MOTION TO VALUE COLLATERAL OF  
CITI MORTGAGE  
9-30-13 [[26](#)]-

**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 Citimortgage, Inc.'s ("Citimortgage") claim in this case secured by the second deed of trust on real property located at 172 Silberhorn Drive, Folsom, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$393,827.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing with a balance of approximately \$489,000.00. Thus, the value of the collateral available to Citimortgage on its second deed of trust is \$0.00.

The court will issue a minute order.

12. [13-31511](#)-B-13 RAYMOND GIOIOSA  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
10-23-13 [[23](#)]-

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

The trustee's objections are sustained. Confirmation of the initial plan

filed September 13, 2013, is denied.

The court will issue a minute order.

13. [13-31511](#)-B-13 RAYMOND GIOIOSA OBJECTION TO CONFIRMATION OF  
MRG-1 PLAN BY USAA FEDERAL SAVINGS  
BANK  
10-18-13 [[20](#)]-

**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 13, 2013, is denied.

The court will issue a minute order.

14. [13-31911](#)-B-13 JOHN THOMPSON OBJECTION TO CONFIRMATION OF  
JPJ-01 PLAN BY JAN P. JOHNSON, TRUSTEE  
10-29-13 [[21](#)]-  
CASE DISMISSED 11/5/13

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

The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed by order entered November 5, 2013 (Dkt. 29).

The court will issue a minute order.

15. [13-24212](#)-B-13 PETER DELEVATI MOTION TO CONFIRM PLAN  
VS-7 10-8-13 [[68](#)]-

**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 8, 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.

16. [11-32216](#)-B-13 JESUS LOPEZ AND MARIA DE MOTION FOR COMPENSATION BY THE  
JMC-3 GONZALEZ LAW OFFICE OF HILLMAN & LUCAS,  
P.C. FOR JOSEPH M. CANNING,  
DEBTORS' ATTORNEY(S), FEES:  
\$1,014.00, EXPENSES: \$0.00  
10-7-13 [[54](#)]-

**Tentative Ruling:** The motion is denied without prejudice.

The applicant, counsel for the debtors, seeks approval of compensation in the amount of \$1,014.00 in fees and \$0.00 in costs, representing the amount beyond the \$986.00 paid by the debtors to the applicant prior to the filing of the bankruptcy case which comprises as the remainder of the \$2,000.00 total fee agreed to by the debtors prior to the filing of the bankruptcy case.

However, in this case a fixed fee of \$986.00 for the applicant was approved by order entered October 31, 2011, in connection with plan confirmation pursuant to LBR 2016-1(c). LBR 2016-1(c)(3) provides that if the fixed approved under LBR 2016-1(c) is not sufficient to fully and fairly compensate counsel, counsel may apply for additional fees for substantial and unanticipated post-confirmation work.

The motion is denied because the applicant has not submitted any evidence which supports his request for additional fees. The applicant has not submitted any time records or billing statements which shows that the requested fees constitute compensation for substantial and unanticipated post-confirmation work, or even that they constitute reasonable compensation for actual and necessary services. The applicant appears to be requesting approval of the requested fee on a "no-look" basis, without citing any authority allowing the court to do so after the plan has already been confirmed. In addition, even if the court were to approve fees, it is not apparent how those fees will be paid, considering the fact that the confirmed chapter 13 plan specifies an administrative expense dividend of \$0.00.

The court will issue a minute order.

17. [12-31816](#)-B-13 STEVEN GEORGE MOTION TO MODIFY PLAN  
RAH-5 9-30-13 [[122](#)]-

**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.

18. [13-28916](#)-B-13 DONALD LEE  
DJC-2

MOTION TO CONFIRM PLAN  
9-30-13 [[44](#)]-

**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, 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.

19. [13-32316](#)-B-13 JASON SALAS  
RJ-1

AMENDED MOTION TO VALUE  
COLLATERAL OF ALLY FINANCIAL  
10-25-13 [[20](#)]-

**Tentative Ruling:** The opposition filed by secured creditor Ally Financial is sustained. The motion is denied. The creditor's request for an award of attorney's fees is denied.

The creditor's opposition is sustained for the reasons set forth therein. The creditor's request for an award of attorney's fees and costs is denied because the creditor has not cited any authority or provided any evidence supporting the request. LBR 9014-1(d)(5), (6).

The court will issue a minute order.

20. [13-32316](#)-B-13 JASON SALAS  
SW-1

OBJECTION TO CONFIRMATION OF  
PLAN BY ALLY FINANCIAL INC.  
10-30-13 [[22](#)]-

**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 second objection is overruled without prejudice. The creditor's remaining objections are sustained. Confirmation of the initial plan filed September 20, 2013, is denied.

The creditor has submitted neither any evidence of the rate of depreciation of the particular vehicle in question nor any explanation of the reasonable investigation leading to its assertion that the proposed monthly payment does not cover the monthly depreciation of the vehicle. The court makes no finding as to the proper amount of the dividend to be paid on the creditor's secured claim through the plan.

The court will issue a minute order.

21. [11-46917](#)-B-13 ROBIN/KATHLEEN PECK MOTION TO SELL  
SAC-5 10-14-13 [[41](#)]-

**Tentative Ruling:** The motion is denied without prejudice.

This motion for authority to sell an easement (the "Easement") on real property located at 1784 Pleasant Valley Rd., Placerville, California (the "Property") to El Dorado County for \$3000, pursuant to a Revised and Restated Easement Acquisition Agreement for Public Purposes (Dkt. 44) (the "Agreement") is denied without prejudice for the following reasons:

1.) The debtors have not presented evidence that a sale of the Easement will actually occur if the motion is granted. The copy of the Agreement filed with the motion is signed by the debtors, but not by the County of El Dorado (the "County"), the proposed buyer.

2.) The recitals in the Agreement refer to an earlier Easement Acquisition Agreement (the "Original Agreement") approved by the County of April 17, 2012, approximately four months after the date of the filing of the petition in this case on November 15, 2011. However, there is no evidence on the court's docket showing that the debtors ever sought approval of the Original Agreement.

3.) The debtors' sworn schedules show that the Property is encumbered by deeds of trust securing loans in favor of Wells Fargo Home Mortgage and Specialized Loan Servicing, LLC. Wells Fargo Bank, N.A. ("WFB") has filed a secured claim in the case (claim no. 8-1) based on the loan secured by the first priority deed of trust. The copy of the deed of trust filed with the WFB's claim states in paragraph 18 on page 10:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.

The debtors have not shown that approval of the Agreement will not negatively affect their confirmed chapter 13 plan or their ability to perform under the confirmed plan, as they have not shown that the holders of the deeds of trust on the Property have consented to the sale of the Easement.

The court will issue a minute order.

22. [11-29219](#)-B-13 SULI MASTORAKOS MOTION TO VALUE COLLATERAL OF  
JT-2 BANK OF AMERICA, N.A.  
10-8-13 [[31](#)]-

**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 6850 Butterball Way, Sacramento, CA ("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 \$85,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BAC Home Loans Servicing, LP with a balance of approximately \$159,000.00 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.

23. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY MOTION TO CONFIRM PLAN  
PGM-8 LAU 10-8-13 [[112](#)]-

**Tentative Ruling:** The motion is properly filed under LBR 9014-1(f)(1). 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 chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed October 8, 2013, is denied. The countermotion is conditionally denied, the conditions being that on or before December 3, 2013, the debtors file 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 serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's opposition is sustained for the reasons set forth therein. The court will issue a minute order.

24. [13-32323](#)-B-13 JENNIFER BOWMAN AMENDED OBJECTION TO  
RCO-1 CONFIRMATION OF PLAN BY  
JPMORGAN CHASE BANK, N.A.  
10-16-13 [[27](#)]-

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

The objection is continued to February 4, 2014, at 9:32 a.m., to be heard after the evidentiary hearing on the debtor's motion to value the objecting creditor's collateral.

25. [13-31024](#)-B-13 MARK/KATHLEEN GARRISON MOTION TO CONFIRM PLAN  
MRL-2 10-7-13 [[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, 2013, will be confirmed.

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

26. [13-30925](#)-B-13 JOAN SWEENEY OBJECTION TO DEBTOR'S CLAIM OF  
JPJ-1 EXEMPTIONS  
10-16-13 [[16](#)]-

**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 November 7, 2013 (Dkt. 28).

27. [13-20226](#)-B-13 SHIRAZ ALI CONTINUED MOTION TO COMPROMISE  
[13-2089](#) LBG-101 CONTROVERSY/APPROVE SETTLEMENT  
PLUMAS BANK V. ALI AGREEMENT WITH PLUMAS BANK  
10-22-13 [[28](#)]-

**Disposition Without Oral Argument:** The this motion continued from November 5, 2013, to allow the parties to file a revised settlement agreement. The parties did so timely on November 13, 2013. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to Fed. R. Bankr. P. 9019, the debtor is authorized to enter into the Settlement Agreement filed as exhibit "A" to the motion on November 13, 2013 (Dkt. 34) and perform according to its terms.

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 amended Settlement Agreement filed as an exhibit to the motion on November 13, 2013 (Dkt. 34).

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 debtor asserts that the compromise is fair and equitable. By entering into the Settlement Agreement, the debtor and the plaintiff liquidate the plaintiff's claim and are spared the time, expense and uncertainty of continued litigation.

Accordingly, the court finds that the debtor has carried the burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

28. [13-20226](#)-B-13 SHIRAZ ALI CONTINUED MOTION TO CONFIRM  
LBG-2 PLAN  
9-21-13 [[140](#)]-

**Tentative Ruling:** This motion continued from November 5, 2013, to be heard after the continued hearing on the debtor's motion for approval of a settlement agreement between the debtor and secured creditor Plumas Bank. Elsewhere on this calendar the court has approved the settlement. The court now issues the following tentative ruling.

The chapter 13 trustee's opposition is overruled. The motion is granted and the amended plan filed September 21, 2013 will be confirmed with the following modification to be included in the order confirming the plan: Notwithstanding the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys form filed on September 21, 2013, the court approves, pursuant to LBR 2016-1(c) attorney's fees for the debtor's attorney in the amount of \$4000.00, \$0.00 of which was paid prior to the filing of the petition. The balance of \$4000.00 shall be paid by the trustee from plan payments at the rate specified in the 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 3-081-12 (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.

29. [13-20226](#)-B-13 SHIRAZ ALI  
LBG-2

CONTINUED 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 denied.

The court will issue a minute order.

30. [11-25028](#)-B-13 EARL/RUBY MUSTRA  
RWH-2

MOTION TO MODIFY PLAN  
9-26-13 [[37](#)]-

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

The motion is granted and the Modified Plan is confirmed in the absence of any objection by the trustee or the holder of an allowed unsecured claim. The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9<sup>th</sup> Cir. BAP 1993), aff'd. 49 F.3d 1404 (9<sup>th</sup> Cir. 1995). The court notes, however, that the 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 \$2290.25 in monthly disposable income. Form 22C establishes a presumption that the debtors must pay no less than \$137,415.00 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 100% pursuant to the confirmed plan to 91%, or \$26,925.08, based on the estimate of total unsecured claims set forth in the plan, 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.

31. [13-31829](#)-B-13 RANDY/EILEEN FLATGARD CONTINUED MOTION TO VALUE  
SAC-1 COLLATERAL OF UNION BANK, N.A.  
9-18-13 [[10](#)]-

**Tentative Ruling:** None.

32. [13-31929](#)-B-13 EVANGELINA MANZO OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-23-13 [[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, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 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.

33. [12-22230](#)-B-13 JAMES/REBECCA ROTH MOTION TO MODIFY PLAN  
BLG-2 9-27-13 [[32](#)]-

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

The motion is granted, and the modified plan filed November 8, 2013, is confirmed.

The court will issue a minute order.

34. [13-30333](#)-B-13 MICHAEL/SUZANNE FINCH  
DEF-1

MOTION TO VALUE COLLATERAL OF  
CHASE HOME FINANCE  
10-1-13 [[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 Chase Home Finance's ("Chase") claim in this case secured by the second deed of trust on real property located at 335 Cottonwood Court, Ione, 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 \$165,725.00 on the date of the petition. The Property is encumbered by a lien to secure the payment of property taxes in the amount of \$3500.00 and a first deed of trust held by Citimortgage, Inc. with a balance of approximately \$182,000.00. 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.

35. [13-30333](#)-B-13 MICHAEL/SUZANNE FINCH  
JPJ-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
9-10-13 [[16](#)]-

**Tentative Ruling:** This objection continued from October 8, 2013, to be heard after the hearing on the debtors' motion to value the collateral of Chase Home Finance. The objection remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is overruled. The plan filed August 5, 2013, will be confirmed.

The trustee's objection is overruled because elsewhere on this calendar the court has granted the debtors' motion to value the collateral of Citimortgage, Inc. without oral argument.

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.

36. [13-29735](#)-B-13 IRA ROSS  
MLA-3

MOTION TO CONFIRM PLAN  
10-8-13 [[49](#)]-

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed August 21, 2013, is denied. The opposition filed by secured creditor Wells Fargo Bank, N.A. ("WFB") is overruled without prejudice.

The trustee's opposition is sustained for the reasons set forth therein. The court overrules WFB's opposition without prejudice because confirmation is denied on the trustee's objection and because WFB's opposition depends, in part, on the pending evidentiary hearing on the debtor's motion to value Wells Fargo's collateral currently set for January 23, 2014, at 10:00 a.m.

The court will issue a minute order.

37. [13-29735](#)-B-13 IRA ROSS  
MLA-3

COUNTER MOTION TO DISMISS CASE  
10-23-13 [[75](#)]-

**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 December 3, 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.

38. [13-22236](#)-B-13 ROBERT JARAMILLO  
SAC-2

MOTION TO MODIFY PLAN  
9-26-13 [[35](#)]-

**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, 2013, is confirmed.

The court will issue a minute order.



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.

42. [13-31039](#)-B-13 VICTOR/CYNTHIA LUNA CONTINUED OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
10-4-13 [[22](#)]-

**Tentative Ruling:** The chapter 13 trustee's objection is overruled. The initial plan filed September 5, 2013, will be confirmed with the following modifications included in the order confirming the plan: 1.) Plan payments shall be \$2700 for 1 month, followed by \$2756 per month for 35 months, followed by \$2856 per month for 12 months, followed by \$2956 per month for 12 months; 2.) Class 7 general unsecured claims shall receive no less than a 13.6% dividend; 3.) Property of the estate shall revert in the debtors upon confirmation of the 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 3-081-12 (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.

43. [13-31039](#)-B-13 VICTOR/CYNTHIA LUNA MOTION TO VALUE COLLATERAL OF  
WW-1 CITIFINANCIAL SERVICES, INC.  
10-21-13 [[27](#)]-

**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 OneMain Financial, Inc. ("OneMain") claim in this case secured by the second deed of trust on real property located at 8758 Fallbrook 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 \$200,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$261,000.00. Thus, the value of the collateral available to OneMain on its second deed of trust is \$0.00.

The court will issue a minute order.

44. [13-32239](#)-B-13 RICARDO/SONIA DELAMORA OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-30-13 [[17](#)]-

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

The trustee's objection and countermotion to dismiss are removed from the calendar. The trustee withdrew the objection and countermotion to dismiss on November 8, 2013 (Dkt. 20).

45. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN MOTION TO CONFIRM PLAN  
SAG-3 9-10-13 [[52](#)]-

**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. The certificate of service filed with the motion (Dkt. 54) does not show that the third amended plan which is the subject of this motion was served on any party in interest. In addition, the certificate of service does not show that the chapter 13 trustee was served with the motion.

The court will issue a minute order.

46. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN MOTION TO VALUE COLLATERAL OF  
SAG-4 AMERICAN SERVICING COMPANY  
9-10-13 [[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 Fremont Investment's claim in this case secured by the second deed of trust on real property located at 260 Sumatra Avenue, Sacramento, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$127,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Bank with a balance of approximately \$301,000.00. Thus, the value of the collateral available to Fremont Investment on its second deed of trust is \$0.00.

The court will issue a minute order.

47. [10-25345](#)-B-13 SUZANNE/STEVEN JACK MOTION TO AVOID LIEN OF CHENG  
JAT-1 CHOW AND CHU, INC.  
10-17-13 [[26](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Cheng Chow and Chu, Inc., recorded in the official records of Placer County, Document No. 2010-0007093-00, is avoided as against the real property located at 2400 Buttes View Lane, Auburn, California.

The subject real property has a value of \$215,000.00 as of the date of the petition. The unavoidable liens total \$259,510.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted \$9,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

48. [13-32045](#)-B-13 BRYAN/CASSANDRA NOLL OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-24-13 [[16](#)]

CASE DISMISSED 11/1/13

**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 November 1, 2013 (Dkt. 22).

The court will issue a minute order.

49. [13-33349](#)-B-13 ILIYA PEYCHEV  
MS-1

MOTION TO VALUE COLLATERAL OF  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY  
10-16-13 [[13](#)]

**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 Deutsche Bank National Trust Company's claim secured by the second deed of trust on real property located at 3607 Saint John Road, West Sacramento, CA 95691 ("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 \$363,831.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$458,169.48.00. Thus, the value of the collateral available to Deutsche Bank National Trust Company on its second deed of trust is \$0.00.

The court will issue a minute order.

50. [13-33349](#)-B-13 ILIYA PEYCHEV  
MS-2

MOTION TO VALUE COLLATERAL OF  
CITIBANK, N.A.  
10-16-13 [[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. \$0.00 of CitiBank, N.A.'s claim secured by the third deed of trust on real property located at 3607 Saint John Road, West Sacramento, CA 95691 ("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 \$363,831.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$458,169.48 and a second deed of trust held by Deutsche Bank National Trust Company with a balance of approximately \$62,923.17. Thus, the value of the collateral available to CitiBank, N.A. on its third deed of trust is \$0.00.

The court will issue a minute order.

51. [13-33452](#)-B-13 VLADIMIR IVANOV AND MOTION TO VALUE COLLATERAL OF  
CAH-1 TATYANA IVANOVA JPMORGAN CHASE BANK, N.A.  
10-29-13 [[10](#)]

**Tentative Ruling:** The motion is denied without prejudice.

The motion is denied without prejudice because notice of the hearing on this matter was not properly provided to parties in interest pursuant to the Local Bankruptcy Rules. The movants' notice of hearing (Dkt. 11) takes the form of a motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1), *i.e.*, it states that written opposition to the motion must be filed with the court no less than fourteen (14) days prior to the hearing date. However, the notice of hearing does not comply with Local Bankruptcy Rule 9014-1(f)(1). Local Bankruptcy Rule 9014-1(f)(1) states that "unless a different amount of time is required by the Federal Rules of Bankruptcy Procedure, these Local Rules, or by order of the Court, or the moving party elects to give the notice permitted by LBR 9014-1(f)(2), the moving party shall file and serve the motion at least twenty-eight (28) days prior to the hearing date." LBR 9014-1(f)(1). Since the movants elected to give notice to parties in interest pursuant to Local Bankruptcy Rule 9014-1(f)(1), they were required to provide twenty-eight (28) days' notice. The date of this hearing is November 19, 2013. Twenty-eight days prior to the hearing date was October 22, 2013. Notice of the hearing was filed on October 29, 2013, which is only twenty-one (21) days prior to the hearing date. Therefore, the movants provided insufficient notice of the hearing in this instance.

The court will issue a minute order.

52. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE CONTINUED MOTION TO MODIFY PLAN  
RK-1 8-19-13 [[46](#)]

**Tentative Ruling:** The motion to confirm the modified plan filed August 19, 2013 (the "Plan") (Dkt. 50) is denied.

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

Here, the debtors seek a modification of the Plan to reflect a loan

modification agreement with Bank of America, N.A ("BoA"). The Plan provides for BoA's claim in class 4 with monthly payments of \$2,563.09, which is consistent with what the debtors were paying under to the "trial period plan" (Dkt. 44, p.2) that the court approved by order entered August 7, 2013 (Dkt. 45). Pursuant to the terms of the trial period plan, if the debtors successfully complete all trial period payments, then "any unpaid late fees will be waived, interest and advances that we (BoA) paid on your (the debtors') behalf will be added to your principal balance, and principal reduction will be applied. We will then permanently reduce your principal balance by the amount of \$221,580.00." On October 15, 2013, BAC Home Loan Servicing, LP filed on behalf of BoA a notice of mortgage payment change (the "Notice"). The Notice indicates that the debtors' new total payment will be \$3,454.57, accounting for principal, interest, and escrow. This new payment is \$891.48 higher than the proposed payment to BoA under class 4 of the Plan. The debtors have failed to demonstrate how they will be able to afford the \$891.48 increase in this class 4 payment while paying a sixteen (16) percent dividend to general unsecured creditors and meeting their other obligations under the Plan. Thus, the debtors have not shown that the Plan complies with 11 U.S.C. § 1325(a)(6). The debtors have not carried their burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

53. [10-51953](#)-B-13 PAUL/JENNIFER THOMPSON MOTION TO MODIFY PLAN  
SDB-5 9-11-13 [[60](#)]

**Tentative Ruling:** The motion is granted, and the modified plan filed September 11, 2013 (Dkt. 65) is confirmed with the following modification: (1) Section 6.01 of the Additional Provisions shall state that "debtors have paid \$19,468.00 into the plan through September 2013. Debtors shall pay \$628.00 in October 2013, \$628.00 in November 2013, and then a lump sum payment of \$14,898.00 in December 2013 to complete the plan in its 36th month."

The court will issue a minute order.

54. [11-20655](#)-B-13 SABRINA CRISTO MOTION TO MODIFY PLAN  
PGM-5 10-15-13 [[111](#)]

**Tentative Ruling:** The trustee's objection regarding the proposed length of the plan is sustained. The trustee's objection regarding the plan's proposed treatment of undersecured creditor HSBC/Bass & Associates' ("HSBC") claim is overruled. The modified plan filed October 15, 2013 (the "Plan") (Dkt. 115) is confirmed with the following modifications: (1) Section 1.01 of the Plan shall state "\$23,320.00 through 09/25/2013, \$200.00 X 12 starting 10/25/13"; and (2) Section 1.03 of the Plan shall state that the length of the Plan is forty-four (44) months.

The debtor states in her reply brief (Dkt. 123) that a mathematical error was

made in calculating the length of the Plan. The parties are in agreement that the Plan length should be forty-four, rather than thirty-six, months. Therefore, the trustee's objection regarding the proposed length of the Plan is sustained.

The trustee's objection regarding the Plan's treatment of HSBC's claim is overruled because the Plan's treatment of the claim is consistent with the proof of claim, claim no. 23, filed by HSBC on May 6, 2011. According to its proof of claim, the total amount of HSBC's claim is \$3,773.08 as of the petition date. Of that amount, \$1,022.07 is a secured claim and \$2,751.01 is an unsecured claim. The claim is appropriately provided for in Class 2B of the Plan. As such, the trustee's objection is overruled on this point.

The court will issue a minute order.

55. [13-32555](#)-B-13 JEFFREY WARNES MOTION TO VALUE COLLATERAL OF  
MRL-1 PNC BANK, N.A.  
10-26-13 [[14](#)]

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

56. [13-31657](#)-B-13 MARLENE/DANIEL CARSON OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-23-13 [[14](#)]

**Tentative Ruling:** The trustee's objection to plan confirmation and motion to dismiss filed October 23, 2013 (Dkt. 14) are continued to December 10, 2013 at 9:32 a.m., to be heard after disposition of Debtors' Motion to Value Collateral of Cal State 9 Credit Union.

Counsel for the debtors should not expect future continuances of motions to confirm plans that are set for hearing before the date set for hearing on necessary motions to value collateral. That practice simply wastes the court's time.

The court will issue a minute order.

57. [10-40661](#)-B-13 ROBERT/EVELYN FERREIRA MOTION TO MODIFY PLAN  
MAC-7 10-4-13 [[99](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed October 4, 2013 (Dkt. 104) is denied.

The court will issue a minute order.

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

On or before December 12, 2013, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtors' binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before December 12, 2013, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Collateral of Glenda L. Cibula (Walsh). In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [[www.tabbies.com](http://www.tabbies.com)] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The parties shall at the evidentiary hearing present evidence of the values of both the real property located at 21731 Rolling Hills Drive, Palo Cedro, CA 96073 and the debtors' interest in the viatical settlements/life settlements. A motion to value collateral is made for the purpose of fixing the amount of a secured claim under 11 U.S.C. § 506(a)(1), and the amount of the secured claim must be based on the value of all of the collateral that secures the claim. In other words, a motion to value is not a method for establishing a value, or "release price," for a single piece of collateral among multiple pieces of collateral securing the same claim.

The court will issue a minute order.

59. [13-20461](#)-B-13 JASON/KELLY GREEN  
PGM-6

MOTION TO VALUE COLLATERAL OF  
BENEFICIAL CALIFORNIA,  
INC./BENEFICIAL FINANCIAL I,  
INC.  
10-10-13 [[81](#)]

**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 Beneficial California Inc./Beneficial Financial I Inc.'s claim secured by the second deed of trust on real property located at 4315 Feather Court, Ione, CA 95640 ("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 \$100,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by HSBC Mortgage Services, Inc. with a balance of approximately \$195,367.76.00. Thus, the value of the collateral available to Beneficial California Inc./Beneficial Financial I Inc. on its second deed of trust is \$0.00.

The court will issue a minute order.

60. [13-20461](#)-B-13 JASON/KELLY GREEN  
PGM-5

CONTINUED MOTION TO CONFIRM  
PLAN  
7-10-13 [[70](#)]

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

The motion is granted, and the amended plan filed July 10, 2013 (Dkt. 74) 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.

61. [13-22961](#)-B-13 TUBAYA/DEBORAH CARTER  
PGM-3

MOTION TO APPROVE LOAN  
MODIFICATION  
10-22-13 [[68](#)]

**Tentative Ruling:** The motion is granted in part. The debtors are authorized to enter into the trial period for a loan modification on the terms set forth in the Bank of America trial period offer (the "Offer") filed with the motion as Exhibit "A" (Dkt. 71, p.2). Nothing in this

ruling constitutes an approval of a long-term, permanent modification following the end of the trial period set forth in the Offer.

The court does not approve any long-term, permanent modification in this ruling because the debtors have presented no evidence regarding a permanent modification.

The court will issue a minute order.

62. [13-22961](#)-B-13 TUBAYA/DEBORAH CARTER CONTINUED MOTION TO MODIFY PLAN  
PGM-2 8-23-13 [[51](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The creditor Bank of New York Mellon ("BNYM")'s opposition is sustained. The motion to confirm the modified plan filed August 23, 2013 (Dkt. 55) is denied.

The court will issue a minute order.

63. [13-26464](#)-B-13 DANIEL/DEBORAH LIMPert CONTINUED MOTION TO CONFIRM  
PGM-2 PLAN  
7-10-13 [[30](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the amended plan filed July 10, 2013 (Dkt. 33) is denied.

The court will issue a minute order.

64. [13-26464](#)-B-13 DANIEL/DEBORAH LIMPert CONTINUED COUNTER MOTION TO  
PGM-2 DISMISS CASE  
8-13-13 [[41](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 41) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before December 3, 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.

65. [13-33165](#)-B-13 ERIC/LAURA MCBRIDE  
EJS-1

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
10-11-13 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 7418 Claypool Way, Citrus Heights, CA 95610 (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 \$250,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$326,249.00. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

66. [13-29066](#)-B-13 LEE OWENS  
MET-2

MOTION TO CONFIRM PLAN  
9-22-13 [[50](#)]

**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 22, 2013 (Dkt. 53) will be confirmed.

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

67. [09-30068](#)-B-13 PATRICIA ALDRIDGE  
CA-3

MOTION TO INCUR DEBT  
10-31-13 [[52](#)]

**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.

68. [13-33068](#)-B-13 CHARLES/BRENDA HAWORTH MOTION TO VALUE COLLATERAL OF  
JT-1 PNC BANK, N.A.  
10-22-13 [[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. \$0.00 of PNC Bank, N.A.'s claim secured by the second deed of trust on real property located at 9989 La Porte Road, Challenge, CA 95925 (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 \$245,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Bank, N.A. with a balance of approximately \$280,000.00. Thus, the value of the collateral available to PNC Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

69. [09-26471](#)-B-13 RICHARD/JOYE BOTHUN MOTION TO SELL  
JDM-5 10-25-13 [[64](#)]

**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.

70. [12-31472](#)-B-13 CARLOS BRATHWAITE MOTION TO MODIFY PLAN  
SJS-2 10-8-13 [[48](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed October 8, 2013 (Dkt. 51) is denied.

The court will issue a minute order.

71. [13-31572](#)-B-13 JOHN/WILMA NORRIS MOTION TO AVOID LIEN OF BUREAU  
SDB-2 INVESTMENT GROUP PORTFOLIO NO.  
15  
10-21-13 [[22](#)]

**Tentative Ruling:** The motion is denied without prejudice.

Pursuant to the applicable provisions of 11 U.S.C. Section 522(f)(1)(A),

the debtors may avoid the fixing of a judicial lien on an interest of the debtors in property to the extent that such lien impairs an exemption to which the debtors would have been entitled under subsection (b) of this section. Section 697.310 of the California Code of Civil Procedure provides, in pertinent part, that a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder. A judgment lien on real property attaches to all interests in real property in the county where the lien is created. See California Code of Civil Procedure Section 697.340(a).

Here, the debtors have attached as Exhibit C to the motion (Dkt. 26, p.5) a copy of an abstract of judgment in favor of judgment creditor Bureau Investment Group Portfolio No. 15 issued on May 21, 2013 (the "Abstract"). The debtors claim that the judgment was recorded on July 11, 2013 in the Official Records of the Solano County Recorder's Office, Document No. 201300069215, and impairs their claimed exemption in real property located at 250 Amber Avenue, Vallejo, CA 94589. However, the Abstract bears no evidence of recording in the Official Records of the Solano County Recorder's Office. The debtors have neither established that the judgment creditor recorded an abstract of judgment in Solano County nor demonstrated that the judgment creditor's lien has attached to the aforementioned real property. As a result, the debtors have not shown that there is a fixed lien of the judgment creditor which impairs an exemption to which the debtors would be entitled.

The court will issue a minute order.

72. [13-31572](#)-B-13 JOHN/WILMA NORRIS  
JPJ-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
10-9-13 [[17](#)]

**Tentative Ruling:** The trustee's amended objection to confirmation and motion to dismiss (Dkt. 31) 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 amended objection is sustained. Confirmation of the plan filed September 3, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 3, 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.

73. [13-33272](#)-B-13 RICHARD/KARIN DUFF MOTION TO VALUE COLLATERAL OF  
MET-1 WELLS FARGO BANK, N.A.  
10-29-13 [[14](#)]

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

74. [11-29876](#)-B-13 DAVID/EMMA PLANK MOTION TO VALUE COLLATERAL OF  
JT-4 JPMORGAN CHASE BANK, N.A.  
10-8-13 [[54](#)]

**Tentative Ruling:** The motion is dismissed without prejudice.

The motion was not properly served. A bankruptcy court lacks jurisdiction over a defendant if the defendant was not served properly under Fed. R. Bankr. P. 7004. See Scott v. United States (In re Scott), No. NV 09-1273-DHPa (9th Cir. BAP June 21, 2010), citing United States v. Levoy (In re Levoy), 182 B.R. 827, 832 (9th Cir. BAP 1995); Harlow v. Palouse Producers, Inc. (In re Harlow Props., Inc.), 56 B.R. 794, 799 (9th Cir. BAP 1985); see also Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988) (applying Fed. R. Civ. P. 4). Fed. R. Bankr. P. 7004 applies in contested matters. See Fed. R. Bankr. P. 9014(b).

By this motion the debtors seek to value the collateral of JPMorgan Chase Bank, N.A. ("Chase"), holder of the second deed of trust on the real property located at 929 Fairway Drive, Ione, CA 95640 (the "Property"). As a contested matter under Fed. R. Bankr. P. 9014, Chase, as the party against whom the debtors seek relief, must be served with the motion in accordance with the rules set forth in Fed. R. Bankr. P. 7004. In this instance, the proof of service filed by the debtors on October 8, 2013 (Dkt. 58) is defective. It fails to list the specific entities and addresses to whom notice of this hearing was sent. Instead, the proof of service contains various images and documents that presumably should have been attached as an exhibit. There is no evidence that Chase or any other party in interest was ever served with or given notice of the motion. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

75. [13-32976](#)-B-13 FRANK/CRYSTAL BARGIEL MOTION TO VALUE COLLATERAL OF  
CAH-1 OCWEN LOAN SERVICING, LLC  
10-15-13 [[15](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11

U.S.C. § 506(a), is granted. \$0.00 of Ocwen Loan Servicing, LLC's claim secured by the second deed of trust on real property located at 7034 Salmon River Drive, Sacramento, CA 95842 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$120,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing, LLC with a balance of approximately \$128,217.00. Thus, the value of the collateral available to Ocwen Loan Servicing, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

76. [13-32976](#)-B-13 FRANK/CRYSTAL BARGIEL MOTION TO VALUE COLLATERAL OF  
CAH-2 GE CAPITAL RETAIL BANK  
10-15-13 [[19](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$2,000.00 of GE Capital Retail Bank's claim secured by a 2007 Kawasku Prairie 360 (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 \$2,000.00 on the date of the petition.

The court will issue a minute order.

77. [13-31277](#)-B-13 MICHAEL/PAULA RHOADES MOTION TO CONFIRM PLAN  
PLC-1 9-24-13 [[19](#)]

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

The motion is dismissed.

The motion is moot. On October 7, 2013, the debtors filed an amended plan (the "Amended Plan") (Dkt. 24) and a motion to confirm it, setting the matter for hearing elsewhere on today's calendar. The Amended Plan supersedes the plan which the debtors seek to confirm by this motion. 11 U.S.C. § 1329(b)(2).

The court will issue a minute order.

**Tentative Ruling:** The motion is continued to a final evidentiary hearing on January 21, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before January 14, 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 debtors' binder tabs shall be consecutively numbered, commencing at number 1. The respondents' binder tabs shall be consecutively lettered, commencing at letter A. On or before January 14, 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 Valuation of Real Property Located at 9344 Crowell Drive, Elk Grove, CA 95624. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [[www.tabbies.com](http://www.tabbies.com)] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

For debtors' counsel's future reference, Local Bankruptcy Rule 9014-1(f)(1)(C) states that "the moving party may, at least seven (7) days prior to the date of the hearing, serve and file with the Court a written reply to any written opposition filed by a responding party." LBR 9014-1(f)(1)(C). The hearing date on this motion was set for November 19, 2013. Seven days prior to the hearing date was November 12, 2013. The debtors filed their reply briefs on November 13, 2013, which is only six (6) days prior to the hearing date. A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to strike the debtors' replies. LBR 1001-1(g). Despite this defect, the court has determined that an evidentiary hearing is appropriate in this instance because both opposing parties have raised a valuation issue pertaining to the subject property that differs from the figures presented by the debtors in their schedules and motion.

The court will issue a minute order.

79. [13-31277](#)-B-13 MICHAEL/PAULA RHOADES COUNTER MOTION TO DISMISS CASE  
PLC-3 11-4-13 [[38](#)]

**Tentative Ruling:** This matter is continued to February 4, 2014 at 9:32 a.m.

80. [10-50579](#)-B-13 JOSHUA/TAMATHA BINGHAM MOTION TO INCUR DEBT  
CA-2 10-31-13 [[41](#)]

**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.

81. [13-33879](#)-B-13 CHRISTINE MCDONOUGH MOTION TO VALUE COLLATERAL OF  
MRL-1 CITIBANK, N.A. AND OF CASTLE  
CREDIT CORPORATION  
10-30-13 [[10](#)]

**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.

82. [11-29281](#)-B-13 ROBERT/SHIRLEY GREEN MOTION TO MODIFY PLAN  
SDB-4 10-3-13 [[57](#)]

**Tentative Ruling:** The motion is granted, and the modified plan filed October 3, 2013 (Dkt. 62) is confirmed with the following modification: Section 6.02 of the Additional Provisions section is stricken.

Section 6.02 of the Additional Provisions section (the "Provision") states that "The Internal Revenue Service shall be allowed to file claims for income taxes owed for 2011 and 2012..." By this language, it appears that the debtors are seeking to grant the Internal Revenue Service ("IRS") authority to file proofs of claim related to prior tax returns filed by the debtors. However, "a proof of claim filed by a governmental unit for a claim resulting from a tax return filed under section 1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return." FRBP 3002(c). 180 days after the order for relief in this case was October 11, 2011. The debtors have not provided evidence of when they filed their tax returns for 2011 and 2012. Furthermore, the IRS has not

filed a motion to extend the time to file a proof of claim pursuant to Fed. R. Bankr. P. 3002(c). As such, the debtors cannot use the Additional Provisions section of their plan to give the IRS the authority to file an untimely proof of claim in this case. The plan does not comply with 11 U.S.C. § 1325(a)(1) when the Provision appears to modify an applicable Code section, and the Provision is hereby stricken.

The court will issue a minute order.

83. [12-36083](#)-B-13 KURRAN/RHONDA BOGLIN CONTINUED MOTION TO MODIFY PLAN  
PGM-2 8-30-13 [[60](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed August 30, 2013 (Dkt. 59) is denied.

The trustee states that the modified plan will take more than sixty (60) months to complete due to the fact that a priority tax claim in the amount of \$2,553.80 is currently scheduled in the amount of \$1.00. The debtors seek to remedy this by withdrawing the proof of claim it filed on behalf of the Franchise Tax Board ("FTB") on July 15, 2013 in the amount of \$3,000.00. Pursuant to Fed. R. Bankr. P. 3006, "a creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule..." Fed. R. Bankr. P. 3006. The rule does not give the debtors the express authority to withdraw the FTB's proof of claim, regardless of the fact that they filed the proof of claim on the FTB's behalf. Therefore, the debtors' purported withdrawal of the FTB claim is ineffective.

The trustee's remaining grounds for opposition are sustained for the reasons stated in the trustee's opposition.

The court will issue a minute order.

84. [13-31685](#)-B-13 MARIO ALBERTO DIAZ OBJECTION TO CONFIRMATION OF  
ET-1 MARTINEZ PLAN BY HOUSING GROUP FUND  
CORPORATION  
10-30-13 [[19](#)]

**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 September 19, 2013 (Dkt. 11) is denied.

The court will issue a minute order.

85. [13-31685](#)-B-13 MARIO ALBERTO DIAZ  
JPJ-1 MARTINEZ

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-30-13 [[24](#)]

**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 September 19, 2013 (Dkt. 11) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 3, 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.

86. [12-31686](#)-B-13 GEORGE PAGE  
CA-3

MOTION TO SELL AND/OR MOTION TO  
INCUR DEBT  
11-5-13 [[39](#)]

**Tentative Ruling:** These are properly filed motions 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 motions are denied without prejudice.

The motion to sell is denied without prejudice because it fails to provide proper notice to parties in interest as is required by the Federal Rules of Bankruptcy Procedure. By this motion the debtor seeks to sell his residence located at 401 Conway Drive, Rio Vista, CA 94571 (the "Property") to Lydia Carriere for \$235,000.00. Fed. R. Bankr. P. 2002(a)(2) requires that "a proposed use, sale, or lease of property of the estate other than in the ordinary course of business" must provide twenty-one (21) days' notice to the trustee and all creditors. FRBP 2002(a)(2). The date of this hearing is November 19, 2013. Twenty-one days prior to the hearing date was October 29, 2013. Parties in interest were served with notice of the hearing on November 5, 2013, which is only fourteen days prior to the hearing date. As such, proper notice was not provided and the motion is denied without prejudice.

The court notes that the motion describes the Property as unencumbered while Schedule D (Dkt. 1, p.17) shows a mechanic's lien on the Property in favor of Sunbusters Patio Cover Co., Inc.

The debtor also seeks court approval to incur new debt by purchasing real property located at 368 Mountain View Drive, Kalispell, MT 59901 from the Malson Revocable Trust and/or Ray E. Malson. The debtor states that he

will be able to afford this purchase by using the proceeds from the sale of his home in Rio Vista, CA. As such, the debtor's ability to incur this debt depends upon the court's approval of the sale of his home. As noted above, the court denies the debtor's request to sell his home on procedural grounds. As such, the motion to incur new debt is also denied.

The court will issue a minute order.

87. [13-32286](#)-B-13 MARCOS SMITH OBJECTION TO CONFIRMATION OF  
PGM-1 PLAN BY VICTOR CORREIA  
10-31-13 [[19](#)]

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

The creditor's objection that the chapter 13 plan is not feasible is sustained. The creditor's 11 U.S.C. § 1325(b) objections are dismissed without prejudice. Confirmation of the plan filed September 19, 2013 (Dkt. 5) is denied.

The 11 U.S.C. § 1325(b) objections are dismissed without prejudice because unsecured creditor Victor Correia ("Mr. Correia") does not have standing to raise these objections. 11 U.S.C. § 1325(b)(1) states that the trustee or the holder of an allowed unsecured claim may raise a § 1325(b) objection to plan confirmation. Pursuant to 11 U.S.C. § 502(a), "a claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest...objects." 11 U.S.C. § 502(a). To date, Mr. Correia has not filed a proof of claim pursuant to 11 U.S.C. § 501(a). Additionally, no party has filed a proof of claim on Mr. Correia's behalf pursuant to 11 U.S.C. §§ 501(b) or (c). Therefore, Mr. Correia is not the holder of an allowed unsecured claim and does not have standing to raise these objections.

Alternatively, the 11 U.S.C. § 1325(b) objections would be dismissed without prejudice for lack of standing because the objection refers to Mr. Correia as "the holder of a secured claim." As stated above, only the trustee and the holder of an allowed unsecured claim have standing to raise a 11 U.S.C. § 1325(b) objection.

The court will issue a minute order.

88. [13-31989](#)-B-13 MARK VASQUEZ OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-23-13 [[18](#)]

**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 court will issue a minute order.

91. [12-40994](#)-B-13 MICHAEL LITTLE OBJECTION TO CLAIM OF  
DBJ-6 CITIMORTGAGE, INC., CLAIM  
NUMBER 20-1  
10-4-13 [[177](#)]

**Tentative Ruling:** The debtor's objection as to the secured status of claim no 20-1 is sustained. Claim no. 20-1, filed on June 7, 2013 by CitiMortgage, Inc. in the amount of \$38,806.56 (the "Claim"), is disallowed in its entirety 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 10, 2013 (Dkt. 11). The Claim was filed on June 7, 2013.

The court will issue a minute order.

92. [10-20799](#)-B-13 JOHN/LAVADA WILLIAMS AMENDED OBJECTION TO CLAIM OF  
MWB-3 SHASTA COUNTY TAX COLLECTOR,  
CLAIM NUMBER 6-1  
9-13-13 [[103](#)]

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

The moving party withdrew this objection on November 7, 2013 (Dkt. 108), and it is dropped from the calendar.

The court will issue a minute order.

93. [10-48499](#)-B-13 ARACELI NEDOMA MOTION TO SELL  
PGM-1 10-16-13 [[37](#)]

**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 to short sell real property located at 5512 Deepdale Way, Elk Grove, CA 95758 (the "Property") for \$220,000.00. In this case, Ocwen Loan Servicing, LLC ("Ocwen") holds a first deed of trust against the Property in the amount of \$386,051.76. CitiMortgage, Inc. ("Citi") holds a second deed of trust against the Property in the amount of \$72,656.55. The debtor has not provided proof that these lienholders consent to the proposed short sale.

The absence of an actual compromise or sale for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between

himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court acknowledges that the debtor has filed approval letters from both lienholders (Dkt. 40, p.21-26). However, neither letter demonstrates consent to the short sale. First, the letter from Ocwen states that "we received your short sale application, and are currently reviewing your eligibility for our short sale program. Please note that this letter confirms receipt of your request, but is not an approval." Thus, Ocwen explicitly states in its letter that it has not yet given its consent to the short sale. Second, the letter from Citi states that it approves the short sale, but the amount of proceeds it agrees to accept through the short sale "is valid through October 25, 2013." It is now November 19, 2013. The debtor has not provided any proof that Citi has consented to an extension of the deadline. As such, the debtor has failed to provide proof that either lienholder has consented to the proposed short sale, and there is not an actual short sale for the court to approve.

The court will issue a minute order.

94. [11-26199](#)-B-13 PEAIR TAITT AND SILVIA MOTION TO MODIFY PLAN  
SS-4 TORRES 9-27-13 [[68](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed September 27, 2013 (Dkt. 71) is denied.

The court will issue a minute order.

95. [11-26199](#)-B-13 PEAIR TAITT AND SILVIA MOTION TO VALUE COLLATERAL OF  
SS-5 TORRES U.S. BANK, N.A.  
9-27-13 [[73](#)]

**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 2936 Menke Court, Live Oak, CA 95953 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$120,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Guild Mortgage with a balance of approximately \$154,880.27.00. 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.

96. [13-33765](#)-B-13 RACHELLE HICKS  
SJS-1

DEBTOR'S MOTION TO EXTEND  
AUTOMATIC STAY O.S.T.  
11-8-13 [[16](#)]

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