

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

November 25, 2014 at 9:32 A.M.

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1. [10-25801](#)-B-13 NOEL/LIDIA GARCIA  
JPJ-2
- OBJECTION TO CLAIM OF NATIONAL  
COLLEGIATE TRUST C/O TOTAL DEBT  
MANAGEMENT, CLAIM NUMBER 10  
10-8-14 [[57](#)]

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

The trustee's objection is sustained, and claim No. 10, filed on February 15, 2011, by National Collegiate Trust c/o Total Debt Management in the amount of \$32,172.37 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 21, 2010, and to file a government claim was September 7, 2010. The Claim was filed on February 15, 2011.

The court will issue a minute order.

2. [14-29103](#)-B-13 KASSI MARTINEZ  
FF-2
- MOTION TO CONFIRM PLAN  
10-7-14 [[21](#)]

**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.

3. [12-33905](#)-B-13 WILLIE/JUDIE TERRELL MOTION TO APPROVE LOAN  
SDB-7 MODIFICATION  
10-23-14 [[104](#)]

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

The motion is granted. The debtors are authorized to incur debt on the terms set forth in the Loan Modification Agreement filed as Exhibit "C" to the motion.

The court will issue a minute order.

4. [13-23906](#)-B-13 LORI PAGE OBJECTION TO CLAIM OF OCWEN  
JPJ-1 LOAN SERVICING, LLC, CLAIM  
NUMBER 11  
10-8-14 [[63](#)]

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

The trustee's objection is sustained, and claim No. 11, filed on August 28, 2014, by Ocwen Loan Servicing, LLC in the amount of \$280,055.64 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 24, 2013, and to file a government claim was September 18, 2013. The Claim was filed on August 28, 2014.

The court will issue a minute order.

5. [14-20907](#)-B-13 LESLIE/JULIE WILLIAMS OBJECTION TO CLAIM OF CAVALRY  
JPJ-1 SPV I, LLC/FIA CARD SERVICE,  
CLAIM NUMBER 8  
10-8-14 [[61](#)]

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

The trustee's objection is sustained, and claim No. 8, filed on June 11, 2014, by Cavalry SPV I, LLC/FIA Card Service in the amount of \$11,967.27 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was June 4, 2014, and to file a government claim was July 30, 2014. The Claim was filed on June 11, 2014.

The court will issue a minute order.

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted and the amended plan filed September 30, 2014, will be confirmed.

Although the trustee's opposition cites 11 U.S.C. § 1325(a)(1), the court presumes that the opposition is based on 11 U.S.C. § 1325(b)(1)(B), given the trustee's assertion that the debtor's projected disposable income is not being applied to make payments to unsecured creditors. The trustee argues that the debtor's projected disposable income is not being applied to make payments to unsecured creditors because the debtor's sworn Schedules I and J filed with the voluntary petition indicate that the debtor has sufficient monthly net income to pay a 29% dividend to general unsecured creditors under the plan, yet the plan proposes only to pay 16% to general unsecured creditors.

However, the trustee has not employed the proper legal analysis for an objection under 11 U.S.C. § 1325(b)(1)(B) for this debtor, who is an "above-median" debtor with a positive monthly disposable income as indicated by his Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Form 22C"). As the court has previously described to parties appearing in this department since 2010, the issue of whether an "above-median" debtor like the debtor here has committed all of his projected disposable income to make payments to unsecured creditors is be subject to this department's interpretation of Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010). Specifically, the court treats the debtor's Form 22C as establishing a presumption of the debtors' projected disposable income. In this case, the debtor's Form 22C shows that he has \$536.85 in monthly disposable income, which establishes a presumption that he must pay \$32,211.00 to general unsecured creditors, or 13.9%. That presumption may be rebutted by a showing of

- 1.) a substantial change in circumstances; and
- 2.) known or virtually certain figures to replace one or more of the income and/or expense figures on Form 22C.

The trustee's argument that Schedules I and J disclose net monthly income that is greater than the debtor's monthly disposable income is not in and of itself evidence which satisfies the foregoing requirements. As the trustee has failed to address or satisfy the appropriate legal standard for determining whether the debtor has satisfied 11 U.S.C. § 1325(b)(1)(B) and the proposed amended plan proposes a 16% dividend to general unsecured creditors which is greater than the presumption established by Form 22C, the trustee's opposition is overruled.

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.

7. [14-27007](#)-B-13 WILLIAM VENTURA COUNTER MOTION TO DISMISS CASE  
DEF-4 11-10-14 [[61](#)]

**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.

8. [14-28814](#)-B-13 ROSA NARANJO MOTION TO CONFIRM PLAN  
CAH-2 9-25-14 [[22](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained in part. HSBC Bank USA, N.A.'s ("HSBC") opposition is overruled. The motion to confirm the plan filed September 25, 2014 is denied.

The chapter 13 trustee's opposition regarding the debtor's delinquency in plan payments is sustained for the reasons set forth therein. The chapter 13 trustee's opposition regarding the debtor's failure to amend her Statement of Financial Affairs ("SOFA") is sustained to the extent that trustee objects to the debtor's failure to fully complete question 9 on the SOFA with respect to payments relating to debt counseling or bankruptcy. However, to the extent that the trustee objects that the debtor has not amended question 8 regarding losses on the SOFA to disclose the loss of a vehicle which occurred within two years of the date of the filing of the petition, the objection is overruled. Question 8 on the SOFA requires the debtor to list all losses from fire, theft, other casualty or gambling which occurred within one year immediately preceding the commencement of the case, not two years.

HSBC's opposition is overruled because it is unsupported by any evidence that the debtor owed HSBC \$50,270.47 in pre-petition arrears as of the date of the filing of the petition or that the amount of the ongoing contract installment payment owed to HSBC is \$1755.17. LBR 9014-1(d)(5).

The court will issue a minute order.

9. [14-28814](#)-B-13 ROSA NARANJO COUNTER MOTION TO DISMISS CASE  
CAH-2 11-10-14 [[32](#)]

**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 9, 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.

10. [14-29215](#)-B-13 JEFFERY/SANDRA THOMAS  
JPJ-1
- OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-27-14 [[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 14, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 9, 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.

11. [10-50017](#)-B-13 DAVID/MARION GILBERT  
SAC-1
- MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
11-10-14 [[31](#)]

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

12. [14-20919](#)-B-13 JEFFREY/MELANIE PARR  
JPJ-1
- OBJECTION TO CLAIM OF NAVIENT  
SOLUTIONS, INC./DEPT. OF  
EDUCATION SERVICING, CLAIM  
NUMBER 6  
10-8-14 [[30](#)]

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

The trustee's objection is sustained, and claim No. 6, filed on September 4, 2014, by Navient Solutions, Inc./Department of Education Servicing in the amount of \$15,249.86 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was June 4, 2014, and to file a government claim was July 30, 2014. The Claim was filed on September 4, 2014.

The court will issue a minute order.

13. [13-22120](#)-B-13 PHILLIP PRIOR MOTION TO MODIFY PLAN  
SDB-1 10-16-14 [[22](#)]

**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 16, 2014, is confirmed.

The court will issue a minute order.

14. [14-30622](#)-B-13 PATRICK SALIMI MOTION TO EXTEND AUTOMATIC STAY  
PGM-1 11-11-14 [[9](#)]

**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.

15. [14-28424](#)-B-13 MICHAEL LU MOTION TO REFINANCE  
SS-1 11-11-14 [[19](#)]

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

The motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. The debtor has failed to establish that there is an actual, finalized loan modification agreement with Fremont Bank ("Fremont") for the court to approve.

The absence of an actual agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to

decide cases and controversies. With no actual, finalized agreement to which BANA agrees, no case or controversy within the meaning of Article III exists.

The court acknowledges the promissory note and deed of trust submitted as Exhibit "1" to the motion (Dkt. 22). However, neither the note nor the deed of trust is signed by either the borrower or Fremont, and the debtor has provided no other evidence that Fremont consents to the terms of the agreement. Fremont's consent to the agreement may be manifested in ways other than executing the agreement. For example, Fremont may file a response to the motion stating its agreement, or it may appear at the hearing on the motion and state its agreement on the record. Absent such evidence of Fremont's consent, however, the motion is not ripe for adjudication.

The motion was also not properly served on Fremont. This motion for authority to incur debt is governed by the provisions of Federal Rule of Bankruptcy Procedure 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct." Based on the foregoing, the court requires that the debtor serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to incur debt through a loan modification on the United States Trustee, the chapter 13 trustee, and the creditor who is the counterparty to the loan modification. The court also requires that the debtor give notice of the motion to all other creditors. Here, the proof of service (Dkt. 23) does not show that Fremont was served with the motion.

The court will issue a minute order.

16. [14-28028](#)-B-13 JEFFREY NELSON AND LURDES MOTION TO CONFIRM PLAN  
JME-2 ROSALES 10-14-14 [[33](#)]

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

The motion is continued to March 11, 2015 at 10:00 a.m.

The outcome of this motion is dependent upon the resolution of the debtors' motion to value the collateral of Capital One Auto Finance, which is presently set for a pretrial conference before the Hon. David E. Russell on January 8, 2015.

The court will issue a minute order.

17. [14-29428](#)-B-13 ROSANNE/STEPHEN AVILA  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-27-14 [[32](#)]

**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 November 7, 2014, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

18. [12-22230](#)-B-13 JAMES/REBECCA ROTH  
BLG-4

MOTION TO MODIFY PLAN  
10-16-14 [[62](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed October 16, 2014, is confirmed.

At issue here is whether the debtors have "projected disposable income" which can be devoted to pay the claims unsecured, non-priority creditors in this case. The chapter 13 trustee argues that the debtors have projected disposable income based on the fact that the net monthly income listed on the debtors' Schedule J is greater than the debtors' proposed plan payment. The debtors argue that they do not have projected disposable income because \$1,822.00 of their monthly income is derived from benefits received under the Social Security Act, citing, presumably, In re Welsh, 465 B.R. 843 (9th Cir. BAP 2012), which the court was able to locate despite the debtors' failure to provide a complete case citation in their reply brief.

The court agrees with the debtors. The debtors are "below-median" debtors for the purposes of 11 U.S.C. § 1325(b)(1)(B) whose projected disposable income is calculated by determining their "current monthly income" (as that term is defined by the Bankruptcy Code) and subtracting from it expenses falling under the categories of expenses described in 11 U.S.C. § 1325(b)(2)(A) and (B). Those categories of expenses include "amounts reasonably necessary to be expended . . . for the maintenance or support of the debtor or a dependent of the debtor" for post-petition domestic support obligations, certain charitable contributions not to exceed a certain amount and expenses necessary to continue operation of a business. In addition, "current monthly income," as that term is defined by the Bankruptcy Code, expressly excludes, inter alia, "benefits received under the Social Security Act." 11 U.S.C. § 101(10A)(B).



In this case, the debtors calculated their current monthly income when they completed their Form 22C Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income at the commencement of the case. That calculation excludes the debtors' benefits received under the Social Security Act, and is \$3,945.15. Because the debtors are "below-median" debtors it is appropriate to determine the expenses to be deducted from their current monthly income by reference to Schedule J, which shows that the debtors have \$3337.67 in average monthly expenses. However, the debtors' Schedule J expenses do not include amounts to be paid to secured creditors to retain their home and sole vehicle, which are provided for under the plan, as well as administrative expenses required for administration of their chapter 13 plan. Those expenses total \$1,762.00, or the amount of the plan payment proposed under the modified plan. Once those amounts are added to the \$3,337.67 in expenses listed on the debtors' Schedule J, the debtors' expenses exceed their current monthly income as defined by the Bankruptcy Code. The trustee is incorrect that the debtors have disposable income which can be distributed to unsecured non-priority creditors under the plan. Accordingly, the trustee's opposition is overruled.

The court will issue a minute order.

19. [13-35332](#)-B-13 JAMES/IOLANI NEARY AMENDED MOTION TO MODIFY PLAN  
CRG-3 10-10-14 [[89](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed October 10, 2014, is confirmed with the following modification: The debtors shall directly pay the ongoing monthly contract installment owed to Deutsche Bank National Trust Company ("Deutsche"), holder of claim no. 14 on the court's claims register, for months 1-9 of the plan (January, 2014 to September, 2014). Thereafter, the chapter 13 trustee shall pay Deutsche as set forth in Section 2.08 of the plan for the remainder of the plan term.

The court will issue a minute order.

20. [14-27432](#)-B-13 EDITH MONDRAGON MOTION TO CONFIRM PLAN  
TOG-2 10-11-14 [[23](#)]

**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 11, 2014, 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.

21. [14-29632](#)-B-13 KELLI JAMES  
JPJ-2  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-27-14 [[19](#)]

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

The objection and motion to dismiss are dismissed.

The objection and motion to dismiss are moot. The bankruptcy case was dismissed by order entered November 13, 2014 (Dkt. 24).

The court will issue a minute order.

22. [14-29934](#)-B-13 RYAN/ASHLEY CANADY  
RJ-3  
MOTION TO VALUE COLLATERAL OF  
GOLDEN 1 CREDIT UNION  
11-11-14 [[30](#)]

**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.

23. [14-29934](#)-B-13 RYAN/ASHLEY CANADY  
RJ-4  
MOTION TO VALUE COLLATERAL OF  
TOYOTA MOTOR CREDIT CORPORATION  
11-11-14 [[34](#)]

**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.

24. [14-21240](#)-B-13 DIANE OHARA  
PGM-3  
CONTINUED MOTION TO CONFIRM  
PLAN  
7-7-14 [[44](#)]

**Tentative Ruling:** None.

25. [14-21240](#)-B-13 DIANE OHARA CONTINUED COUNTER MOTION TO  
PGM-3 DISMISS CASE  
8-4-14 [[51](#)]

**Tentative Ruling:** None.

26. [14-29444](#)-B-13 THOMAS/KIMBERLY SZARMACH OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-28-14 [[18](#)]

**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 29, 2014, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

27. [13-35745](#)-B-13 PATRICIA KLINE MOTION TO CONFIRM PLAN  
JLK-3 9-29-14 [[60](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed September 29, 2014, is denied.

The chapter 13 trustee's opposition is sustained because the debtor has not sustained her burden under 11 U.S.C. § 1325(a)(6) of showing that the plan is feasible. The plan depends on the sale of the debtor's vacation property (the "Property") located in San Jose del Cabo, Baja California Sur in January, 2017, the 37th month of the plan, in order to be sufficiently funded. While the debtor has shown evidence in the form of her sworn schedules that she had equity in the Property that exceeded her scheduled unsecured priority and non-priority debts as of the date of the filing of the petition, she has not shown evidence of the condition of the real estate market in San Jose del Cabo which shows that she will be able to sell the Property in January, 2017, for an amount that will fund the plan as proposed.

The court will issue a minute order.

28. [13-35745](#)-B-13 PATRICIA KLINE  
JLK-3

COUNTER MOTION TO DISMISS CASE  
10-30-14 [[66](#)]

**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 9, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

29. [14-29453](#)-B-13 KAREN SCHWEITZER  
BRR-1

OBJECTION BY ANNE ALDERSON TO  
CERTIFICATION BY DEBTOR  
11-13-14 [[28](#)]

**Tentative Ruling:** None.

30. [14-24749](#)-B-13 DONNETTE CHATTERS  
JMO-3

MOTION TO CONFIRM PLAN  
10-20-14 [[66](#)]

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

The motion is continued to January 13, 2015, at 9:32 a.m.

On November 10, 2014, the debtor filed an amended notice of hearing (Dkt. 72) which purports to continue the motion to January 13, 2015, at 9:32 a.m. The filing of an amended notice of hearing alone is ineffective to continue the motion; continuances of hearings must be approved by the court. LBR 9014-1(j). In this instance, the court treats the amended notice of hearing as a request for a continuance and grants the request.

The court will issue a minute order.

31. [14-27051](#)-B-13 CHRISTINA SONLEITNER CONTINUED MOTION TO CONFIRM  
CAH-1 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.

32. [14-27051](#)-B-13 CHRISTINA SONLEITNER CONTINUED COUNTER MOTION TO  
CAH-1 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 December 9, 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.

33. [14-30652](#)-B-13 DEAN MISAJON MOTION TO EXTEND AUTOMATIC STAY  
SLH-1 11-6-14 [[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.

34. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE MOTION TO APPROVE LOAN  
SDB-7 MODIFICATION  
10-28-14 [[140](#)]

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

The debtors' motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Agreement submitted as Exhibit "C" to the motion (Dkt. 143, pp.6-17).

The court will issue a minute order.

**Tentative Ruling:** The trustee's opposition is overruled. The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the total amount of \$671.00 in fees and expenses for the period of September 24, 2014, through and including October 28, 2014. The approved fees and expenses shall be payable to the Liviakis Law Firm as a chapter 13 administrative expense, and the debtors are permitted to pay the approved fees and expenses directly. Except as so ordered, the motion is denied.

On July 29, 2011, the debtors commenced the above-captioned case by filing a voluntary petition under chapter 13 (Dkt. 1). The debtors' former counsel, Scott CoBen ("Mr. CoBen"), opted into the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The order confirming plan filed October 31, 2011 (Dkt. 37) disclosed that Mr. CoBen was paid \$1,600.00 in fees prior to the filing of the petition and that \$1,900.00 would be paid by the chapter 13 trustee through the confirmed plan.

On July 23, 2014, the debtors filed a motion to substitute the applicant into the case as attorney of record in place of Mr. CoBen (Dkt. 45), which was approved by order entered August 6, 2014 (Dkt. 50). The applicant has opted out of the Guidelines since he has (1) failed to file an executed copy of Form EDC 3-096, *Rights and Responsibility of Chapter 13 Debtors and Their Attorneys*, and (2) has brought the instant applicant pursuant to 11 U.S.C. § 330. LBR 2016-1(a).

The applicant now seeks compensation for services rendered and costs incurred during the period of September 24, 2014, through and including October 28, 2014. The court construes the applicant's motion as a request for first and final compensation because he acknowledges in both the motion and attached declaration that this is likely to be his final application and that further services are not anticipated. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services. In re Busetta-Silvia, 314 B.R. 218 (B.A.P. 10th Cir. 2004).

The court acknowledges the trustee's assertion that the estate does not currently possess funds sufficient to pay the applicant's requested fees. However, as the applicant correctly points out, the requested fees and expenses may be authorized, and pursuant to LBR 2016-1(b), the debtors are permitted to pay the allowed fees and costs directly.

The court will issue a minute order.

36. [14-23378](#)-B-13 CHRISTINE KELLERMANN  
PGM-3

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF PETER G.  
MACALUSO, DEBTOR'S ATTORNEY  
10-27-14 [[55](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the total amount of \$4,000.00 in fees and expenses for the period of December 21, 2013, through and including September 5, 2014. The applicant is authorized to apply the retainer balance of \$1,025.00 received by the applicant pre-petition to the allowed fees and expenses. The balance of the allowed fees and expenses, or \$2,975.00, shall be paid by the chapter 13 trustee through the chapter 13 plan as an administrative expense to the extent such funds are available. Except as so ordered, the motion is denied.

On April 1, 2014, the debtor commenced the above-captioned case by filing a voluntary petition under chapter 13 (Dkt. 1). The court finds that the applicant opted out of the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). Although (1) the applicant and debtor executed Form EDC 3-096, *Right and Responsibilities of Chapter 13 Debtors and Their Attorneys* (Dkt. 7), and (2) the confirmed chapter 13 plan (Dkt. 5) states that the applicant shall comply with Local Bankruptcy Rule 2016-1(c), the order confirming plan filed September 5, 2014 (Dkt. 54) does not contain a provision approving attorney compensation through the plan. Accordingly, no attorney's fees or costs were approved in connection with plan confirmation in this case.

The applicant now seeks first and final compensation for services rendered and costs incurred for the period of December 21, 2013, through and including September 5, 2014, which are the beginning and end dates of the attorney services which have been included as part of the applicant's motion (Dkt. 58). As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services. In re Busetta-Silvia, 314 B.R. 218 (B.A.P. 10th Cir. 2004).

The court will issue a minute order.

37. [11-21697](#)-B-13 EDWARD/SYLVIA GOMEZ  
PGM-6

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTORS'  
ATTORNEY  
10-23-14 [[82](#)]

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

The motion is granted to the extent set forth herein. The application is approved in the total amount of \$1,200.00 in fees and expenses, to be paid by the trustee through the plan as an administrative expense to the

extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524.

On January 24, 2011, the debtors filed a chapter 13 petition (Dkt. 1). As part of confirmation of the debtors' chapter 13 plan, the applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). This court authorized payment of fees and expenses totaling \$3,500.00, \$950.00 of which was paid pre-petition, through the plan. (Dkt. 37). The applicant now seeks additional compensation in the total amount of \$1,200.00 in fees and expenses.

As set forth in the application, these fees are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work the applicant has done in this case is sufficiently greater than a "typical" chapter 13 case so as to justify additional compensation under the Guidelines. In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

The court will issue a minute order.

38.	<a href="#">13-28856</a> -B-13	JENNIFER AMADI	OBJECTION TO CLAIM OF U.S. DEPARTMENT OF HUD, CLAIM NUMBER 16 10-8-14 [ <a href="#">34</a> ]
	JPJ-1		

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

The trustee's objection is sustained, and claim number 16, filed on August 28, 2014, by the U.S. Department of HUD c/o Deval LLC in the amount of \$15,057.07 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a governmental claim was December 30, 2013. The Claim was filed on August 28, 2014.

The court will issue a minute order.

39.	<a href="#">11-23857</a> -B-13	ROBIN GORDON	MOTION TO APPROVE LOAN MODIFICATION 10-31-14 [ <a href="#">100</a> ]
	NUU-4		

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

Pursuant to Local Bankruptcy Rule 9014-1(f)(2), when fewer than twenty-eight (28) days' notice of a hearing is given, the moving party shall inform parties-in-interest that no written opposition to the motion is required and that any opposition shall be presented at the hearing on the motion. LBR 9014-1(f)(2)(C). Here, the proof of service (Dkt. 104) indicates that the motion, notice of hearing, and supporting documents



were served on all parties-in-interest on October 31, 2014, which was only twenty-five (25) days prior to today's date. However, the notice of hearing (Dkt. 101) uses language specific to motions brought on at least twenty-eight (28) days' notice under Local Bankruptcy Rule 9014-1(f)(1), i.e., that written opposition was due no less than fourteen (14) days preceding today's date. This means that any party in interest wishing to oppose this motion would have had no more than eleven (11) days to file such opposition. Accordingly, the motion is denied without prejudice for insufficient notice.

The court will issue a minute order.

40. [09-46493](#)-B-13 JEFFREY/VIRGINIA HENLEY MOTION TO INCUR DEBT  
CJY-5 11-5-14 [[53](#)]

**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.

41. [14-30557](#)-B-13 NIKOLAY/LILIYA DROBKOV MOTION TO VALUE COLLATERAL OF  
MS-1 CHASE BANK, N.A.  
10-27-14 [[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. \$0.00 of JPMorgan Chase Bank, N.A.'s claim secured by the second deed of trust on real property located at 3396 Verdeca Way, Rancho Cordova, California 95670 (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 \$285,209.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Seterus, Inc. with a balance of approximately \$291,132.18. Thus, the value of the collateral available to JPMorgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

42. [14-29260](#)-B-13 RICARDO RIVERA  
JPJ-2

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-27-14 [[26](#)]

**Tentative Ruling:** The trustee's objections and motion to dismiss are dismissed.

The trustee's objections and motion to dismiss are moot. The bankruptcy case was dismissed by order entered November 13, 2014 (Dkt. 35).

The court will issue a minute order.

43. [14-29260](#)-B-13 RICARDO RIVERA  
JPJ-3

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
10-27-14 [[30](#)]

**Tentative Ruling:** The trustee's objection is dismissed.

The trustee's objection is moot. The bankruptcy case was dismissed by order entered November 13, 2014 (Dkt. 35).

The court will issue a minute order.

44. [09-27463](#)-B-13 JOHN/CAROL DUNN  
CLH-1

MOTION TO ALLOW FURTHER  
ADMINISTRATION OF THE CASE  
10-28-14 [[42](#)]

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

The court construes joint debtor Carol Sue Dunn ("Mrs. Dunn")'s request to allow further administration of this case 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, Mrs. Dunn is authorized to perform the obligations and duties of deceased debtor John Ronald Dunn ("Mr. Dunn") in this case, in addition to performing her own obligations and duties. Pursuant to Federal Rule of Bankruptcy Procedure 1016, administration of case number 09-27463-B-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of Mr. Dunn had not occurred. Except as so ordered, the motion is denied.

The court will issue a minute order.

45. [12-22665](#)-B-13 TOM/SANDRA DAWSON  
JPJ-1  
OBJECTION TO CLAIM OF ASSET  
ACCEPTANCE, LLC, CLAIM NUMBER 8  
10-8-14 [[51](#)]

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

The trustee's objection is sustained, and claim number 8, filed on June 20, 2012, by Asset Acceptance LLC in the amount of \$1,252.33 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was June 13, 2012. The Claim was filed on June 20, 2012.

The court will issue a minute order.

46. [14-29665](#)-B-13 SCOTT BARBER  
ULC-1  
WITHDRAWN BY M.P.  
MOTION TO CONFIRM PLAN  
10-7-14 [[16](#)]

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

The motion is removed from the calendar. The debtor withdrew the motion on November 6, 2014 (Dkt. 30).

47. [12-36168](#)-B-13 BRIAN/NANCY OKAMOTO  
WW-7  
MOTION TO MODIFY PLAN  
10-9-14 [[118](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed October 9, 2014 (Dkt. 121) is denied.

The court will issue a minute order.

48. [14-20870](#)-B-13 AARON ROBERSON  
JPJ-2  
OBJECTION TO CLAIM OF CALVARY  
SPV I LLC/GE RETAIL  
BANK/WALMART, CLAIM NUMBER 11  
10-8-14 [[25](#)]

**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 June 11, 2014, by Cavalry SPV I, LLC as assignee of GE Retail Bank/Walmart in the amount of \$591.63 (the "Claim"), is disallowed except to the extent

previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was June 4, 2014. The Claim was filed on June 11, 2014.

The court will issue a minute order.

49. [14-30071](#)-B-13 ALICE RANSOM MRL-1 MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 10-20-14 [[15](#)]

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

The motion is removed from the calendar. The debtor withdrew the motion on November 18, 2014 (Dkt. 27).

50. [14-28073](#)-B-13 LUIS BOLANOS LOSADA MOTION TO CONFIRM PLAN 10-9-14 [[28](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed September 17, 2014 (Dkt. 22) is denied.

Additionally, 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 debtor attempts to establish the requirements under 11 U.S.C. § 1325(a) through unsworn statements in the motion itself. He provides no evidence, i.e., a debtor declaration, indicating that the proposed plan complies with all subsections of 11 U.S.C. § 1325(a). Accordingly, the motion is denied.

The court will issue a minute order.

51. [14-28073](#)-B-13 LUIS BOLANOS LOSADA

COUNTER MOTION TO DISMISS CASE  
11-10-14 [[31](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 31) 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 December 9, 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.

52. [14-29375](#)-B-13 JAMES FETTY  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
10-28-14 [[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 September 19, 2014 (Dkt. 8) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 9, 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.

53. [13-34180](#)-B-13 WILLIAM/YVETTE MARTINEZ  
JPJ-2

OBJECTION TO CLAIM OF BANK OF  
AMERICA, N.A./CA STATE  
TEACHERS' RETIREMENT SYS, CLAIM  
NUMBER 17  
10-8-14 [[55](#)]

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

The trustee's objection is sustained, and claim number 17, filed on

September 16, 2014, by Bank of America, N.A./California State Teachers' Retirement System in the amount of \$44,540.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was March 12, 2014. The Claim was filed on September 16, 2014.

The court will issue a minute order.

54. [14-30588](#)-B-13 JON/LORRI FEENSTRA MOTION TO VALUE COLLATERAL OF  
MMM-1 AEGIS HOME EQUITY  
11-6-14 [[11](#)]

**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. [14-28089](#)-B-13 DAVID/SHARON SHEPHERD OBJECTION TO DEBTORS' CLAIM OF  
JPJ-2 EXEMPTIONS  
10-22-14 [[29](#)]

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

The objections are dismissed.

The objections are moot. On November 10, 2014, the debtors filed an amended Schedule C (Dkt. 32) ("Amended Schedule C"). The exemptions set forth in Amended Schedule C supersede the exemptions to which the trustee's objections are directed.

The court will issue a minute order.

56. [14-30945](#)-B-13 JOYCE ATKINS MOTION TO EXTEND STAY O.S.T.  
MRL-1 11-19-14 [[17](#)]

**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.