



motions to be heard on the same calendar.

The court will issue a minute order.

3. [11-25702](#)-B-13 FRANK/PAULA MARKSMAN MOTION TO INCUR DEBT  
CC-2 11-26-13 [[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.

4. [12-33905](#)-B-13 WILLIE/JUDIE TERRELL MOTION TO APPROVE LOAN  
SDB-5 MODIFICATION  
10-31-13 [[88](#)]-

**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 credit on the terms set forth in the Home Affordable Modification Agreement filed as Exhibit "C" to the motion (Dkt. 91 at 5).

The court will issue a minute order.

5. [13-20207](#)-B-13 CORNELIA CATA OBJECTION TO CLAIM OF FIRST  
JPJ-2 RESPONDER, CLAIM NUMBER 9  
10-7-13 [[181](#)]-

**Disposition Without Oral Argument:** This motion is unopposed. Due to the number of matters on this morning's three related calendars (\_ matters), the court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 9, filed on August 5, 2013, by First Responder in the amount of \$1115.40 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was May 12, 2013, and to file a government claim was July 8, 2013. The Claim was filed on August 5, 2013.

The court will issue a minute order.

6. [13-21407](#)-B-13 CHARLES/SUZANNE ELLIS MOTION TO CONFIRM PLAN  
RAH-5 10-22-13 [[99](#)]

**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 November 5, 2013, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan which is the subject of the instant motion to confirm.. 11 U.S.C. § 1323(b).

The court will issue a minute order.

7. [13-21407](#)-B-13 CHARLES/SUZANNE ELLIS MOTION FOR COMPENSATION BY THE  
SAC-2 LAW OFFICE OF SCOTT A. COBEN &  
ASSOCIATES FOR SCOTT A. COBEN,  
DEBTORS' ATTORNEY(S), FEES:  
\$4,000.00, EXPENSES: \$0.00  
10-30-13 [[110](#)]-

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

Local Bankruptcy Rule 2016-1 governs approval of fixed fees for attorneys for chapter 13 debtors in this district. LBR 2016-1(c) provides that fixed fees in chapter 13 cases are approved as part of the chapter 13 plan confirmation process, provided that the attorney complies with the requirements of LBR 2016-1(c)(1)-(5). The court has yet to confirm a chapter 13 plan in this case. Approval of a fixed fee for the debtors' counsel is premature. Accordingly, the motion is dismissed without prejudice.

The court notes that no Rights and Responsibilities form (Form EDC 3-096) has been filed by the movant. Such a filing is required for approval of a fixed fee arrangement in Chapter 13. The court notes that the motion, the applicant's supporting declaration and the memorandum of points and authorities repeat language contained in the Rights and Responsibilities form, but none of the foregoing documents is executed by the debtors.

The court will issue a minute order.

8. [13-31707](#)-B-13 RONALD/DANA FRANCO MOTION TO CONFIRM PLAN  
SJS-1 10-21-13 [[17](#)]-

**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 21, 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.

9. [13-32507](#)-B-13 RICHARD/EDIE BEJAR  
JPJ-1
- OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-7-13 [[14](#)]

**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 25, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 24, 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.

10. [12-26408](#)-B-13 CAROLYN AMARO  
RK-2
- MOTION TO MODIFY PLAN  
10-28-13 [[36](#)]

**Tentative Ruling:** None.

11. [09-33211](#)-B-13 PATRICIA MCCARTHY  
JVP-2
- MOTION TO MODIFY PLAN  
11-4-13 [[45](#)]-

**Tentative Ruling:** The motion is denied.

Although no party in interest has filed opposition to the motion, the court has an independent duty to ensure that the plan satisfies the requirements of the Bankruptcy Code for confirmation.

In this case, the court finds that the payment provisions of the plan with respect to a proposed lump sum payment to be made to the trustee are impermissibly vague. The plan proposes payments of \$300.00 per month for 60 months to be made by the debtor, with an additional \$3000.00 lump sum

payment to be made to the chapter 13 trustee "as full payment under the plan." However, the plan does not specify when the proposed lump sum payment will be made, and is vague as to whether the lump sum payment is intended to include any of the remaining \$300.00 monthly payments proposed in section 1.01 the plan.

In addition, the debtor has not presented sufficient evidence of her ability to make the payments required by the plan. Specifically, the debtor has not presented evidence of her ability to make the \$3000.00 lump sum payment. Debtor's conclusory statement in her supporting declaration that she "will be able to make payments under the plan" is not sufficient to satisfy her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The court will issue a minute order.

12. [09-30113](#)-B-13 RUSSELL/STEPHANIE SCITERN MOTION TO VACATE DISMISSAL OF  
PLG-2 CASE  
10-25-13 [[62](#)]-  
CASE DISMISSED 9/21/13

**Tentative Ruling:** The trustee's opposition is overruled, and motion is granted in part. The order entered September 23, 2013, dismissing the bankruptcy case is vacated. Except as so ordered, the motion is denied.

Although the motion fails to show excusable neglect, the debtors have shown that they are completely current through the November 25, 2013 payment as of the hearing date.

The court will issue a minute order.

13. [10-30313](#)-B-13 MARISOL GOMEZ MOTION TO MODIFY PLAN  
RLC-1 10-11-13 [[45](#)]-

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed October 11, 2013, is confirmed with the following modifications: 1.) As of October 25, 2013, the debtor has paid a total of \$72,680.49 to the trustee; 2.) The trustee is not required to recover any payments previously made to creditors pursuant to the terms of the previously confirmed plan, including, but not limited to, PNC Mortgage.

The court will issue a minute order.

14. [13-33014](#)-B-13 VERONICA CORMIER AND EUGENE HUBBARD  
JPJ-1  
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE  
11-12-13 [[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 trustee's objections are sustained. Confirmation of the initial plan filed October 8, 2013, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 24, 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.

15. [13-29516](#)-B-13 MICHAEL CHURSENOFF  
RDS-1  
MOTION TO CONFIRM PLAN  
10-22-13 [[36](#)]

**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 22, 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.

16. [13-32316](#)-B-13 JASON SALAS  
RJ-1  
CONTINUED AMENDED MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL  
10-25-13 [[20](#)]

**Tentative Ruling:** This motion continued from November 19, 2013. The court establish briefing schedule. The debtor timely filed a reply. In addition, the parties filed a stipulation purporting to resolve the

motion on December 3, 2013. The court now issues the following tentative ruling.

The stipulation filed December 3, 2013 (Dkt. 33) (the "Stipulation") is approved. Pursuant to the Stipulation, \$24,356.69 of Ally Financial, Inc.'s claim in this case secured by a 2013 Dodge Charger SE (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim. The debtor's motion to value the Collateral is removed from the calendar as resolved by the Stipulation.

The court will issue a minute order.

17. [13-32316](#)-B-13 JASON SALAS CONTINUED OBJECTION TO  
SW-1 CONFIRMATION OF PLAN BY ALLY  
FINANCIAL, INC.  
10-30-13 [[22](#)]

**Tentative Ruling:** The objection is overruled. The initial plan filed September 20, 2013, will be confirmed, with the following modifications included in the order confirming the plan: 1.) The plan payments specified in section 1.01 shall be \$650.00 per month for 24 months, followed by \$800.00 per month for 30 months; 2.) The dividend to be paid to secured creditor Ally Financial, Inc. ("Ally") based on Ally's debts secured by a 2013 Dodge Charger SE through class 2 of the plan shall be \$345.00 per month for 24 months, followed by \$512.00 per month for 30 months.

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.

18. [13-32716](#)-B-13 NATHANIEL GOORE OBJECTION TO CLAIM OF ARCADE  
DMA-1 LAKE CONDOMINIUM ASSOCIATION,  
CLAIM NUMBER 2  
10-26-13 [[16](#)]-

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

The objection is sustained. Claim no. 2 on the court's claims register (the "Claim"), filed by Arcade Lake Condominium Association (the "Association") in the amount of \$5554.09 is allowed as a secured claim in the amount of \$4038.38, and is allowed as a general unsecured claim for the balance.

The debtor questions the validity of the Claim's assertion of secured status. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie

evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

In this case, the Claim has prima facie validity. It was filed with an itemization of the amounts the claimant asserts are owed by the debtor, and with evidence of perfection of a lien for delinquent homeowner's association assessments in the form of a Notice of Delinquent Assessment recorded in the official records of the Sacramento County Recorder's Office.

The court agrees with the debtor, however, that not all amounts asserted by the Claim are entitled to secured status. The Claim asserts that its secured status extends to amounts owed to both the Association and the Association's costs of collection and to the fees and expenses of Allied Trustee Services ("Allied"), the entity which has filed the Claim on behalf of the Association. In addition, the itemization of the Claim applies payments previously made by the debtor prior to the petition date directly to Allied's fees and expenses. This is inconsistent with California law regarding the rights and remedies of a homeowner's association seeking to enforce a claim for delinquent assessments.

Pursuant to California Civil Code § 1367(b) the amount of an HOA assessment, "plus any costs of collection, late charges and interest assessed in accordance with Section 1366 shall be a lien on the owner's interest in the common interest development from and after the time the Association causes to be recorded with the county recorder . . . notice of delinquent assessment."

Cal. Civ. Code § 1366(e) provides, inter alia, "If an assessment is delinquent the association may recover all of the following:

- (1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.
- (2) A late charge not exceeding 10% of the delinquent assessment or \$10, whichever is greater.
- (3) Interest on all sums imposed in accordance with § 1366, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed 12%."

Cal. Civ. Code § 1367(a) provides that any payments toward a regular or special assessment and any late charges, reasonable costs of collection and interest shall first be applied to the assessments owed, and only after the principal owed is paid in full shall the payments be applied to interest or collection expenses.

In this case, the court agrees with the debtor and the decision of the Bankruptcy Court for the Northern District of California in In re Cisneros, no. 12-10468 (Bankr. N.D. Cal., October 1, 2012) (Jaroslovsky, J.) that the fees and expenses of Allied are not amounts incurred by the Association or costs of the Association such that those amounts are entitled to secured status by virtue of the lien provided for under Cal. Civ. Code § 1367(b). The court also agrees with the debtor that 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 30, 2013, is denied.

The court will issue a minute order.

21. [10-46519](#)-B-13 RANDY/BABETTE WHITE MOTION TO APPROVE LOAN  
WW-4 MODIFICATION  
11-12-13 [[43](#)]-

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

The debtors' proof of service (Dkt. 47) references an attached service list, but no such list is filed with the proof of service. There is therefore no evidence that the motion has been properly served on parties in interest.

The court will issue a minute order.

22. [13-30720](#)-B-13 LEILA MONDARES MOTION TO CONFIRM PLAN  
TJW-3 10-25-13 [[35](#)]-

**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 25, 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.

23. [13-32420](#)-B-13 LOLITA DAVID OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY TRUSTEE JAN P. JOHNSON  
AND/OR MOTION TO DISMISS CASE  
11-7-13 [[17](#)]-

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

The trustee's objection is overruled. The initial plan filed September 23, 2013, will be confirmed.

Elsewhere on this calendar the court has granted the debtor's motion to value the collateral of Citimortgage, Inc. without oral argument. The granting of the motion to value collateral resolves the trustee's objection.

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.

24. [13-32420](#)-B-13 LOLITA DAVID MOTION TO VALUE COLLATERAL OF  
MET-1 CITIMORTGAGE, INC.  
11-9-13 [[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 Citimortgage, Inc.'s claim in this case secured by the second deed of trust on real property located at 1472 Northwood Drive, Fairfield, 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 \$283,400.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Central Mortgage Company with a balance of approximately \$329,000.00. Thus, the value of the collateral available to Citimortgage, Inc. on its second deed of trust is \$0.00.

The court will issue a minute order.

25. [11-29221](#)-B-13 NICHOLAS/APRIL STEELE MOTION TO INCUR DEBT  
JT-5 10-29-13 [[56](#)]-

**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 new debt on the terms set forth in the motion.

The court will issue a minute order.

26. [13-23221](#)-B-13 ERIC ALSTRAND AND DEBRA MOTION TO CONFIRM PLAN  
JDG-3 BRIOZA 10-9-13 [[60](#)]-he

**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 9, 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.

27. [11-48623](#)-B-13 KEVIN/CINDY PEREZ MOTION TO MODIFY PLAN  
CAH-3 11-5-13 [[34](#)]

**Tentative Ruling:** The motion is granted, and the modified plan filed November 5, 2013, is confirmed.

The motion is granted and the modified plan is confirmed in the absence of any objection under 11 U.S.C. § 1325(b)(1)(B) by the trustee or the holder of an allowed unsecured claim. The court notes, however, that the modified plan reduces the total amount to be paid to general unsecured creditors to an amount less than that required by 11 U.S.C. section 1325(b)(1)(B). 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 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. See Hamilton v. Lanning, \_\_\_ U.S. \_\_\_, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

28. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY CONTINUED MOTION TO VALUE  
PGM-7 LAU COLLATERAL OF JPMORGAN CHASE  
BANK, N.A.  
9-3-13 [[90](#)]-

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

The motion is removed from the calendar, as resolved by the stipulation

of the parties filed November 19, 2013 (Dkt. 150) and approved by the court by order signed December 5, 2013.

29. [12-34525](#)-B-13 VICTORIA RAMOS AND LARRY MOTION TO APPROVE LOAN  
PGM-2 MALLARI MODIFICATION  
11-12-13 [[71](#)]-

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

The motion is granted. The debtors are authorized to enter into a trial period for a loan modification on the terms set forth in the trial period offer from Wells Fargo Bank, N.A. filed as Exhibit "A" to the motion. 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 longer-term permanent loan modification in this ruling because the debtors have presented no evidence regarding a permanent modification.

The court will issue a minute order.

30. [12-35129](#)-B-13 ANTHONY TEXIERA MOTION TO CONFIRM PLAN  
SJJ-5 10-16-13 [[123](#)]-

**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 16, 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.

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

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



34. [13-31332](#)-B-13 ROBERT/ALMA WEBER  
SJS-4

COUNTER MOTION TO DISMISS CASE  
11-13-13 [[58](#)]

**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 24, 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.

35. [10-20633](#)-B-13 SHERRY MCDANIEL  
PLG-3

MOTION TO MODIFY PLAN  
10-29-13 [[55](#)]-

**Tentative Ruling:** The trustee's opposition is overruled, the motion is granted and the modified plan filed October 29, 2013 is confirmed with the following modification: 1.) The modified plan's payment provisions are modified to provide that debtor has paid a total of \$26,195.00 into the plan as of November 25, 2013. Commencing December 25, 2013, the debtor shall pay \$520.00 per month for the remaining months of the plan.

The court will issue a minute order.

36. [13-27034](#)-B-13 NANCY LOPEZ  
SJS-2

MOTION TO CONFIRM PLAN  
10-14-13 [[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 October 14, 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.



40. [13-33136](#)-B-13 SOUSANNA KHODJOUMIAN  
JPJ-1

AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
11-22-13 [[23](#)]-

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

The objection is continued to January 7, 2014, at 9:32 a.m., to be heard after the hearing on the debtor's motion to value the collateral of State Farm Bank, FSB.

41. [13-33436](#)-B-13 RAYMOND MILES  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-19-13 [[16](#)]-

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

The trustee's objection is dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 24, 2013, the debtor files a motion to confirm the amended plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection is moot. On November 27, 2013, the debtor filed an amended plan (Dkt. 21). The amended plan supersedes the plan to which the trustee's objection is directed. 11 U.S.C. § 1323(b). The court conditionally denies the trustee's motion to dismiss because the debtor has not yet filed a motion to confirm the amended plan.

The court will issue a minute order.

42. [11-31037](#)-B-13 CHRISTOPHER/SHELLI BECK  
CJY-1

MOTION TO SELL  
11-14-13 [[63](#)]

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

The motion is not ripe for adjudication, and therefore the court lacks subject matter jurisdiction over the matter. The debtors seek court authorization to short sell real property located at 2418 26th Street, Sacramento, California (the "Property") for \$219,000.00. According to

the debtors' sworn schedules, the Property is encumbered by a first deed of trust in favor BAC Home Loans Servicing, LP with a balance of approximately \$244,000.00 and a second deed of trust in favor of Wells Fargo Financial Cards with a balance of approximately \$20,000.00. However, the debtors have not provided proof that the aforementioned lienholders consent to the proposed short sale.

The absence of evidence of lienholder consent to the sale transaction 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 sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court will issue a minute order.

43. [11-33137](#)-B-13 DARLENE BURLESON MOTION TO MODIFY PLAN  
PGM-1 10-29-13 [[49](#)]-

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

The motion is granted, and the modified plan filed October 29, 2013, is confirmed.

The court will issue a minute order.

44. [13-27439](#)-B-13 PAUL/MERLE URCIAGA CONTINUED MOTION TO VALUE  
JTN-1 COLLATERAL OF WELLS FARGO BANK,  
N.A.  
7-3-13 [[14](#)]-

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

The motion is removed from the calendar, as resolved by stipulation filed October 7, 2013 (Dkt. 74) and approved by order entered November 19, 2013 (Dkt. 78).

45. [13-27439](#)-B-13 PAUL/MERLE URCIAGA MOTION TO CONFIRM PLAN  
JTN-3 10-7-13 [[69](#)]-

**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.

46. [13-32239](#)-B-13 RICARDO/SONIA DELAMORA MOTION TO VALUE COLLATERAL OF  
AJP-1 RBS CITIZEN, N.A.  
10-30-13 [[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 RBS Citizen, N.A.'s ("RBS") claim in this case secured by the second deed of trust on real property located at 5460 Havenhurst Circle, Rocklin, 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 \$314,000.00 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 \$348,000.00. Thus, the value of the collateral available to RBS on its second deed of trust is \$0.00.

The court will issue a minute order.

47. [13-32239](#)-B-13 RICARDO/SONIA DELAMORA OBJECTION TO CONFIRMATION OF  
PPR-1 PLAN BY THE BANK OF NEW YORK  
MELLON  
11-13-13 [[23](#)]-

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

The objection is overruled.

The objection was not timely filed. The Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines entered on September 26, 2013 (Dkt. 8) required objections to confirmation of the initial plan to be filed and served by October 31, 2013. This objection was filed on November 13, 2013.

In addition, even if the objection were timely filed, it would not be sustained, because the creditor has presented no evidence in support of its contention that "[t]he arrearage amount provided for in Debtor's Chapter 13 Plan is insufficient to cure the pre-petition arrears owed" to the creditor. Creditor has presented no evidence that it actually holds a claim for pre-petition arrears or the amount of said arrears.

The court will issue a minute order.

48. [13-33339](#)-B-13 ANTHONY HOFFMAN MOTION TO VALUE COLLATERAL OF  
JSO-1 BANK OF AMERICA  
10-29-13 [[14](#)]-

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BofA") claim in this case secured by the second deed of trust on real property located at 2573 Ishi Drive, 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 \$260,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BofA with a balance of approximately \$244,000.00. 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.

49. [13-33339](#)-B-13 ANTHONY HOFFMAN MOTION TO AVOID LIEN OF LAKE  
JSO-2 CALIFORNIA PROPERTY OWNERS  
ASSOCIATION  
10-29-13 [[19](#)]-

**Tentative Ruling:** The motion is denied.

Debtor seeks to avoid a judicial lien in favor of Lake California Property Owners Association to the extent that it impairs his claim of exemption in his residence located at 2573 Ishi Drive, Redding, California (the "Property"). The evidence submitted by the debtor in support of the motion with the however, does not support the existence of a judicial lien on the Property.

Pursuant to Cal. Civ. Proc. Code § 697.310(a), a judgment lien on real property is created by recording an abstract of a money judgment with the County recorder. Pursuant to Cal. Civ. Proc. Code § 697.340, the lien attaches to all interests in real property "in the county where the lien is created." In this case, the abstract of judgment filed as an exhibit to the motion (Dkt. 22 at 3) was recorded in Tehama County, and therefore can only create a lien which attaches to real property located in Tehama County. The court takes judicial notice that the Property is located in Shasta County.

The court will issue a minute order.

50. [13-33339](#)-B-13 ANTHONY HOFFMAN  
JSO-3

MOTION TO AVOID LIEN OF LAKE  
CALIFORNIA PROPERTY OWNERS  
ASSOCIATION  
10-29-13 [[24](#)]

**Tentative Ruling:** The motion is denied.

Debtor seeks to avoid a judicial lien in favor of Lake California Property Owners Association to the extent that it impairs his claim of exemption in his residence located at 2573 Ishi Drive, Redding, California (the "Property"). The evidence submitted by the debtor in support of the motion with the however, does not support the existence of a judicial lien on the Property.

Pursuant to Cal. Civ. Proc. Code § 697.310(a), a judgment lien on real property is created by recording an abstract of a money judgment with the County recorder. Pursuant to Cal. Civ. Proc. Code § 697.340, the lien attaches to all interests in real property "in the county where the lien is created." In this case, the abstract of judgment filed as an exhibit to the motion (Dkt. 22 at 2) was recorded in Tehama County, and therefore can only create a lien which attaches to real property located in Tehama County. The court takes judicial notice that the Property is located in Shasta County.

The court will issue a minute order.

51. [13-33339](#)-B-13 ANTHONY HOFFMAN  
JSO-4

MOTION TO AVOID LIEN OF MIDLAND  
FUNDING, LLC  
10-29-13 [[29](#)]

**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 Midland Funding, LLC, recorded in the official records of Shasta County, Document No. 2013-0024460, is avoided as against the real property located at 2573 Ishi Drive, Redding, California.

The subject real property has a value of \$206,000.00 as of the date of the petition. The unavoidable liens total approximately \$273,500.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which they exempted \$1.00. 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.

52. [13-34339](#)-B-13 STEVEN/ROXIE ALPHA MOTION TO VALUE COLLATERAL OF  
CAH-1 JPMORGAN CHASE BANK, N.A.  
11-8-13 [[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 JPMorgan Chase Bank, N.A.'s (the "Chase") claim in this case secured by the second deed of trust on real property located at 1532 Tres Picos Drive, Yuba City, California (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$225,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage with a balance of approximately \$245,000.00. 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.

53. [11-34340](#)-B-13 RANDALL WELKER MOTION TO MODIFY PLAN  
SAC-2 10-23-13 [[65](#)]

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

The motion is granted, and the modified plan filed October 23, 2013, is confirmed.

The court will issue a minute order.

54. [13-32540](#)-B-13 CARLOS/VANESSA MORALES MOTION TO EXTEND DEADLINE TO  
EJS-2 FILE SCHEDULES OR PROVIDE  
REQUIRED INFORMATION  
11-14-13 [[39](#)]

**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. [11-44241](#)-B-13 RAJINDER SINGH AND  
SLH-4 KULJEET KAUR

MOTION TO AVOID LIEN OF VAN DE  
POL ENTERPRISES, INC.  
10-23-13 [[66](#)]

**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 Van De Pol Enterprises, Inc., recorded in the official records of Sacramento County, Book 20110523, Page 0483, is avoided as against the real property located at 7858 Cook Riolo Road, Antelope, California.

The subject real property has a value of \$332,600.00 as of the date of the petition. The unavoidable liens total \$747,993.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1) under which they exempted \$500.00. 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.

56. [13-30441](#)-B-13 JEFFERY/LORI MCCRARY  
PCP-1

MOTION TO VALUE COLLATERAL OF  
SANTANDER  
10-22-13 [[33](#)]

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

The motion is dismissed.

The motion was not properly served. As a contested matter under Fed. R. Bankr. P. 9014, the motion must be served in accordance with Fed. R. Bankr. P. 7004. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. The debtors' certificate of service (Dkt. 36) does not show that the debtors served the motion and its supporting papers on the respondent creditor, Santander Consumer, in the manner prescribed by Fed. R. Bankr. P. 7004(b)(3).

The court will issue a minute order.

57. [12-24742](#)-B-13 DANTE THOMAS MOTION TO VACATE DISMISSAL OF  
MHL-11 CASE  
11-7-13 [[176](#)]  
CASE DISMISSED 9/30/13

**Tentative Ruling:** The trustee's opposition is sustained for the reasons set forth therein. The motion to vacate the dismissal of this chapter 13 case is denied.

The court will issue a minute order.

58. [13-29942](#)-B-13 CAROL/FREDERICK BLAS MOTION TO CONFIRM PLAN  
JLK-2 10-22-13 [[29](#)]

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

The motion is granted, and the plan filed July 29, 2013 (Dkt.5) 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.

59. [10-25345](#)-B-13 SUZANNE/STEVEN JACK MOTION TO MODIFY PLAN  
JAT-2 10-17-13 [[19](#)]

**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 17, 2013 (Dkt. 22) is confirmed.

The court will issue a minute order.

60. [13-29447](#)-B-13 JOSEPHINE TOLLESON CONTINUED OBJECTION TO  
APN-1 CONFIRMATION OF PLAN BY PNC  
BANK, N.A.  
8-26-13 [[24](#)]

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

61. [13-29747](#)-B-13 YANETA LACEY MOTION TO VALUE COLLATERAL OF  
PGM-2 AUTOVILLE MOTORS  
10-30-13 [[46](#)]

**Tentative Ruling:** None.

62. [13-33349](#)-B-13 ILIYA PEYCHEV OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-21-13 [[29](#)]

**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. On December 4, 2013, the debtor filed an amended plan (the "Amended Plan") (Dkt. 39) and a motion to confirm it, setting the matter for hearing on February 18, 2014. The Amended Plan supersedes the plan that this objection is directed toward. 11 U.S.C. § 1329(b)(2).

The court will issue a minute order.

63. [13-33349](#)-B-13 ILIYA PEYCHEV OBJECTION TO CONFIRMATION OF  
MRG-1 PLAN BY CAPITAL ONE AUTO  
FINANCE  
11-21-13 [[33](#)]

**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. On December 4, 2013, the debtor filed an amended plan (the "Amended Plan") (Dkt. 39) and a motion to confirm it, setting the matter for hearing on February 18, 2014. The Amended Plan supersedes the plan that this objection is directed toward. 11 U.S.C. § 1329(b)(2).

The court will issue a minute order.

64. [11-24450](#)-B-13 ZENNA FISHER MOTION TO MODIFY PLAN  
RIN-2 10-18-13 [[34](#)]

**Tentative Ruling:** None.

65. [13-22852](#)-B-13 DAVID/YOLANDA BENSON MOTION TO CONFIRM PLAN  
PLC-5 10-8-13 [[66](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed October 8, 2013 (Dkt. 69) is denied.

The court will issue a minute order.

66. [13-22852](#)-B-13 DAVID/YOLANDA BENSON COUNTER MOTION TO DISMISS CASE  
PLC-5 11-25-13 [[81](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 81) 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 24, 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.

67. [13-29152](#)-B-13 AIDA DELA CRUZ MOTION TO REOPEN CHAPTER 13  
MWL-4 BANKRUPTCY CASE  
11-18-13 [[74](#)]  
CASE DISMISSED 10/29/13

**Tentative Ruling:** This is a properly filed motion 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 motion is denied without prejudice.

The motion is denied without prejudice because it suffers from the following defects. First, it requests substantive relief beyond simply reopening the chapter 13 case. Local Bankruptcy Rule 5010-1(b) makes clear that "a motion to reopen a case shall contain a statement of the grounds for reopening the case, but shall not contain a request for any other relief." LBR 5010-1(b). Here, the debtor requests that "all the timely filed and properly served motions be restored to calendar for hearing" and that the fee associated with the reopening of the case be waived. A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

Second, the debtor has neither paid the \$235.00 fee due for the filing of a motion to reopen a chapter 13 case nor filed a separate motion for waiver

of the fee. 28 U.S.C. § 1930.

The court will issue a minute order.

68. [13-30052](#)-B-13 KEVIN BRACY  
BLG-2

MOTION TO CONFIRM PLAN  
10-22-13 [[43](#)]

**Tentative Ruling:** Creditor CTCU (the "Creditor")'s opposition is overruled. The motion is granted, and the plan filed October 22, 2013 (Dkt. 48) is confirmed.

The Creditor has already obtained relief from the automatic stay with respect to the collateral securing its claim (Dkt. 52). Section 5.03 of the chapter 13 plan provides that "if the court terminates the automatic stay to permit a Class 1 or 2 secured claim holder to proceed against its collateral, unless the court orders otherwise, Trustee shall make no further payments on account of such secured claim and any portion of such secured claim not previously satisfied under this plan shall be satisfied as a Class 3 claim. Any deficiency remaining after the creditor's disposition of its collateral shall be satisfied as a Class 7 unsecured claim subject to the timely filing of a proof of claim." Nothing in the language of the Additional Provisions section of the plan purports to alter section 5.03. Under the terms of section 5.03, the Creditor's secured claim is provided for as a Class 3 claim, and any deficiency after foreclosure is provided for as a Class 7 claim.

The court will issue a minute order.

69. [13-32555](#)-B-13 JEFFREY WARNES  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-7-13 [[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 objection regarding the motion to value collateral of PNC Bank, N.A. ("PNC") is overruled. The trustee's remaining objections are sustained for the reasons set forth therein. Confirmation of the plan filed September 26, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 24, 2013, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection regarding the motion to value collateral of PNC is overruled because the court heard the matter on November 19, 2013 and resolved it in a manner consistent with the plan's proposed treatment of

PNC's claim.

The court will issue a minute order.

70. [13-32555](#)-B-13 JEFFREY WARNES  
MRG-1
- OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
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 objections are sustained. Confirmation of the plan filed September 26, 2013 (Dkt. 5) is denied.

The court will issue a minute order.

71. [13-31657](#)-B-13 MARLENE/DANIEL CARSON  
JPJ-1
- CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
10-23-13 [[14](#)]

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

The trustee's objection regarding the motion to value collateral of Franklin Credit Management Corporation Bank ("Franklin") is overruled. The trustee's remaining objections are sustained for the reasons set forth therein. Confirmation of the plan filed September 5, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 24, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection regarding the motion to value collateral of Franklin is overruled because the court heard the matter elsewhere on today's calendar and resolved it in a manner consistent with the plan's proposed treatment of Franklin's claim.

The court will issue a minute order.

72. [13-31657](#)-B-13 MARLENE/DANIEL CARSON  
PGM-1

MOTION TO VALUE COLLATERAL OF  
CAL STATE 9 CREDIT UNION  
11-5-13 [[17](#)]

**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 Cal State 9 Credit Union's claim secured by the second deed of trust on real property located at 4601 Sprucewood Court, Sacramento, CA 95823 (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 \$125,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo with a balance of approximately \$168,000.00. Thus, the value of the collateral available to Cal State 9 Credit Union on its second deed of trust is \$0.00.

The court will issue a minute order.

73. [13-32457](#)-B-13 BETTY BOYD  
PPR-1

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
11-15-13 [[21](#)]

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

The creditor's objection is overruled. Confirmation of the plan filed September 24, 2013 (Dkt. 5) is denied.

The objection was not timely filed. Pursuant to Local Bankruptcy Rule 3015-1(c)(4), "an objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a)." LBR 3015-1(c)(4). Here, the first date set for the meeting of creditors was October 31, 2013 (Dkt. 9). Seven days thereafter was November 7, 2013. The creditor filed and served this objection and notice of hearing on November 15, 2013, which is fifteen (15) days after the first date set for the meeting of creditors. Therefore, the objection was not timely filed and is overruled. A failure to comply with the Local Bankruptcy Rules constitutes grounds to overrule the creditor's objection. LBR 1001-1(g).

Although the court has overruled the creditor's objection and there have been no other objections to plan confirmation, the court denies confirmation of the plan in this instance. The court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278

(2010) ("Failure to comply with this [ §§ 1328(a)(2) and 523(a)(8) ] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). Here, the debtor proposes to pay a 100.00% dividend to the general unsecured creditors. The debtor proposes in the Additional Provisions section of the plan to fund this dividend by selling her property located at 1676-1686 5<sup>th</sup> Avenue, Olivehurst, CA prior to Month 36 and committing the required proceeds, "estimated at no less than \$89,924.00," to the plan. However, the debtor has provided no evidence that a sale is possible or, even if a sale is possible within the next three years, that the debtor will be able to net the required funds to provide a 100.00% dividend to the general unsecured creditors. There is no proof that the debtor has even begun marketing the property for sale. Therefore, the debtor has not shown that the plan complies with 11 U.S.C. § 1325(a)(6). The debtor has not carried her burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

74. [13-32859](#)-B-13 VINCENT GUTIERREZ  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-13-13 [[21](#)]

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

The trustee's objection regarding the motion to value collateral of ACI/Chase is overruled. The trustee's objection regarding the debtor's failure to provide certain documents related to his business, For Big Things Limo, is sustained. Confirmation of the plan filed October 1, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 24, 2013, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection regarding the motion to value collateral of ACI/Chase is overruled because the court heard the matter elsewhere on today's calendar and resolved it in a manner consistent with the plan's proposed treatment of ACI/Chase's claim.

The court will issue a minute order.

75. [13-32859](#)-B-13 VINCENT GUTIERREZ MOTION TO VALUE COLLATERAL OF  
PGM-1 JPMORGAN CHASE BANK, N.A.  
11-12-13 [[16](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JP Morgan Chase Bank, N.A.'s claim secured by the second deed of trust on real property located at 2312 Canada Goose Court, Elk Grove, CA 95757 (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 \$400,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by JP Morgan Chase Bank, N.A. with a balance of approximately \$503,762.00. Thus, the value of the collateral available to JP Morgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

76. [11-21660](#)-B-13 FELICIA BUFORD MOTION TO MODIFY PLAN  
RAC-4 10-15-13 [[43](#)]

**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 15, 2013 (Dkt. 46) is confirmed.

The court will issue a minute order.

77. [12-41261](#)-B-13 GRANT/DIANA FLOWERS CONTINUED MOTION TO VALUE  
MAS-8 COLLATERAL OF GLENDA L. WALSH  
8-27-13 [[163](#)]

**Disposition Without Oral Argument:** This matter is removed from the calendar.

Pursuant to the terms of the stipulation filed by the parties on December 6, 2013 (Dkt. 195), approved by order entered December 9, 2013, this matter has been continued to a final evidentiary hearing on January 21, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

78. [09-38469](#)-B-13 TIMOTHY/YVETTE FOREMAN MOTION TO INCUR DEBT  
EJS-6 11-22-13 [[84](#)]

**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.

79. [09-20471](#)-B-13 RACHEL KELLY MOTION TO APPROVE LOAN  
JT-3 MODIFICATION  
10-28-13 [[42](#)]

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

The debtor's motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Agreement submitted as Exhibit A to the motion (Dkt. 45, p.3).

The court will issue a minute order.

80. [12-41272](#)-B-13 REBECCA DOUTHIT MOTION TO MODIFY PLAN  
HLG-1 10-10-13 [[38](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The modified plan filed October 9, 2013 (Dkt. 36) is confirmed with the following modification: The Additional Provisions for Section 1.01 shall state that "as of October 25, 2013, the debtor has paid a total of \$1,584.00 into the plan. Commencing November 25, 2013, the plan payment shall be \$330.00 per month for the remainder of the plan."

The court will issue a minute order.

81. [13-31572](#)-B-13 JOHN/WILMA NORRIS CONTINUED OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
10-9-13 [[17](#)]

**Tentative Ruling:** The trustee's amended objection (Dkt. 31) is overruled. The plan filed September 3, 2013 (Dkt. 5) is confirmed.

The basis for the trustee's amended objection is that the plan's feasibility depends upon the granting of a motion to avoid the lien held by Bureau Investment Group Portfolio No. 15. This motion has been granted elsewhere on today's calendar and the plan's proposed treatment of that claim is consistent with the court's ruling. As such, the amended objection is overruled.

The court will issue a minute order.

82. [13-31572](#)-B-13 JOHN/WILMA NORRIS CONTINUED MOTION TO AVOID LIEN  
SDB-2 OF BUREAU INVESTMENT GROUP  
PORTFOLIO NO. 15  
10-21-13 [[22](#)]

**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 Bureau Investment Group Portfolio No. 15, recorded in the official records of Solano County, Document No. 201300069215, is avoided as against the real property located at 250 Amber Avenue, Vallejo, CA 94589.

The subject real property has a value of \$230,000.00 as of the date of the petition. The unavoidable liens total \$397,474.11. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted \$100.00. 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.

83. [13-32173](#)-B-13 LAWRENCE/NANCY ARENS OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON, TRUSTEE  
11-7-13 [[19](#)]

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

The trustee's objections are sustained. Confirmation of the plan filed October 1, 2013 (Dkt. 10) is denied.

The court will issue a minute order.

84. [13-33373](#)-B-13 GUADALUPE DEL TORO OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-21-13 [[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 trustee's objections are sustained. Confirmation of the plan filed October 16, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 24, 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.

85. [13-33373](#)-B-13 GUADALUPE DEL TORO  
KK-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY RESURGENT CAPITAL  
SERVICES  
11-21-13 [[14](#)]

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

The creditor's objection is sustained. Confirmation of the plan filed October 16, 2013 (Dkt. 5) is denied.

The court will issue a minute order.

86. [12-20174](#)-B-13 DEBRA LAWSON  
PGM-2  
MOTION TO MODIFY PLAN  
10-31-13 [[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 October 31, 2013 (Dkt. 41) is confirmed.

The court will issue a minute order.

87. [12-40376](#)-B-13 LONNIE HILLYARD  
RAC-1  
MOTION TO MODIFY PLAN  
10-22-13 [[40](#)]

**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 22, 2013 (Dkt. 39) is confirmed.

The court will issue a minute order.

88. [13-20576](#)-B-13 GALEN/CHRISTINE CHANEY CONTINUED MOTION TO CONFIRM  
RDS-4 PLAN  
8-9-13 [[84](#)]

**Tentative Ruling:** The motion to confirm the amended plan filed August 9, 2013 (Dkt. 88) is denied.

The motion to confirm the amended 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 feasibility of the debtors' plan depends upon the debtors obtaining a permanent loan modification with Wells Fargo Home Mortgage ("WFHM"). Although the debtors never filed a separate motion for approval of a trial loan modification with WFHM, they state in their motion that they were approved for a three-month trial period plan commencing September 2013. Pursuant to the terms of the trial loan modification attached as Exhibit "C" to the motion (Dkt. 87, p.6), the debtors were to remit monthly payments of \$2,168.13 on September 1, 2013, October 1, 2013, and November 1, 2013. The court continued the matter from September 24, 2013 to today's calendar to give the debtors time to complete the trial period. However, the court was clear in its prior tentative ruling that, upon completion of the trial period, the debtors were to obtain court approval of a permanent loan modification by filing a separate motion. The debtors have failed to do so. The debtors have provided no other evidence that they were able to complete the trial plan payments as scheduled or that WFHM has approved a permanent loan modification on terms consistent with the proposed plan's treatment of the claim. The court will not simply rubberstamp the plan without first scrutinizing and approving a permanent loan modification agreement. Therefore, 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.

89. [13-32976](#)-B-13 FRANK/CRYSTAL BARGIEL MOTION TO CONFIRM PLAN  
CAH-3 10-18-13 [[24](#)]

**Tentative Ruling:** The court approves the stipulation entered into between the debtors and Chico Auto Finance, Inc. (Dkt. 33) (the "Stipulation"). The motion is granted, and the amended plan filed October 18, 2013 (Dkt. 28) is confirmed with the following modification: (1) the claim of Chico Auto Finance, Inc., located in Class 2A2, shall state that the "amount claimed by creditor" is \$10,367.07, the "interest rate" is 7.00%, and the "monthly dividend" is \$205.28.

The modification to the plan reflects the terms of the Stipulation. The court confirms the plan with the modification because the \$18.24 increase in monthly payments falls within this department's 10% threshold for a non-material modification.

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

90. [09-33777](#)-B-13 JIMMY/LAVINA SMALLING MOTION TO MODIFY PLAN  
SAC-1 10-21-13 [[34](#)]

**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 21, 2013 (Dkt. 36) is confirmed.

The court will issue a minute order.

91. [11-32578](#)-B-13 GABRIEL MONARREZ CONTINUED MOTION TO MODIFY PLAN  
MAC-9 8-29-13 [[102](#)]

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

The motion to confirm the modified plan is denied because the debtor has not carried his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). The court also has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§

1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all.”); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)).

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

The court will issue a minute order.

92. [13-33378](#)-B-13 AGUSTIN ALONSO MOTION TO VALUE COLLATERAL OF  
HLG-1 REAL TIME RESOLUTIONS, INC.  
10-23-13 [[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 Real Time Resolutions, Inc.’s claim secured by the second deed of trust on real property located at 1599 Hickory Lane, Olivehurst, CA 95961 (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 \$75,417.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Deutsche Bank National Trust Company with a balance of approximately \$194,967.02.00. Thus, the value of the collateral available to Real Time Resolutions, Inc. on its second deed of trust is \$0.00.

The court will issue a minute order.

93. [13-25079](#)-B-13 MEGAN/ADAM ENOS MOTION TO CONFIRM PLAN  
MRL-3 10-21-13 [[74](#)]

**Tentative Ruling:** The motion is denied.

The debtors seek confirmation of the second amended plan filed August 15, 2013 (Dkt. 53). However, the court heard this matter on October 8, 2013, sustaining the trustee's opposition and denying confirmation of the plan by order entered October 11, 2013 (Dkt. 72). By this motion, the debtors appear to be attempting to confirm an already denied plan by simply modifying the language in the motion to confirm it. This is an inappropriate procedure. The Local Bankruptcy Rules make clear that "if the debtor[s] modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor[s] shall file and serve the modified chapter 13 plan together with a motion to confirm it." LBR 3015-1(d)(1). Additionally, the court notes that the order conditionally denying the trustee's motion to dismiss this case (Dkt. 73) states that the debtors were to file a new plan on or before October 22, 2013. The debtors have failed to file a third amended plan with this motion. As such, the motion is dismissed.

The court notes that, even if it were to accept the procedure utilized by the debtors in this instance, the motion would be denied. In the minute order denying the second amended plan (Dkt. 69), the court noted that the debtors' plan was denied because they (1) failed to file an appraisal or other evidence in support of their valuation of the real property located at 7200 Dieppe Way, Sacramento, CA 95842; and (2) did not provide evidence that they had cured the delinquencies under the plan. Here, while the court acknowledges that the debtors have supplemented this motion with a declaration from their real estate appraiser (Dkt. 77), the debtors have still failed to provide evidence their the delinquencies have been cured.

The court will issue a minute order.

94. [13-26379](#)-B-13 NESTOR/BLESILDA VALLARTA MOTION TO CONFIRM PLAN  
RHM-2 10-25-13 [\[40\]](#)

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

The motion is denied without prejudice because it was not properly noticed to all parties-in-interest. To confirm an amended plan, Local Bankruptcy Rule 3015-1(d)(1) states that "notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two (42) days prior to the hearing." LBR 3015-1(d)(1). Forty-two days prior to today's hearing date was October 29, 2013. Here, the debtors have filed two separate certificates/proofs of service of the motion and notice of the hearing. The first, filed October 25, 2013 and dated October 28, 2013 (Dkt. 44), was timely filed and served but failed to notice all parties-in-interest as is required by Local Bankruptcy Rule 3015-1(d)(1). The second, filed November 1, 2013 and dated October 31, 2013 (Dkt. 48), notices all parties-in-interest but does not do so in a timely fashion. October 31, 2013 was only forty (40) days prior to the hearing date. Thus, the debtors have failed to comply with the noticing requirements of Local Bankruptcy Rule 3015-1(d)(1). A failure to comply

with the Local Bankruptcy Rules constitutes grounds to deny the motion.  
LBR 1001-1(g).

The court will issue a minute order.

95. [13-31884](#)-B-13 AURORA BERNARDINO MOTION TO CONFIRM PLAN  
CAH-2 10-8-13 [[24](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed October 7, 2013 (Dkt. 22) is denied.

The court will issue a minute order.

96. [13-31884](#)-B-13 AURORA BERNARDINO COUNTER MOTION TO DISMISS CASE  
CAH-2 11-15-13 [[38](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 38) 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 24, 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.

97. [09-33585](#)-B-13 BASIL/RUTH RICHARDS OBJECTION TO CLAIM OF ACS/US  
JPJ-1 BANK/BHEA/ECMC, CLAIM NUMBER 15  
10-7-13 [[50](#)]

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

The trustee's objection is sustained, and claim no. 15, filed on June 28, 2011 by ACS/U.S. Bank/BHEA/ECMC in the amount of \$67,442.44 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was November 4, 2009. The Claim was filed on June 28, 2011.

The court will issue a minute order.

98. [13-32386](#)-B-13 JOSE ALBERTO  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-7-13 [[21](#)]

**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. On October 30, 2013, the debtor filed an amended plan (the "Amended Plan") (Dkt. 16) and a motion to confirm it, setting the matter for hearing elsewhere on today's calendar. The Amended Plan supersedes the plan that the trustee objects to. 11 U.S.C. § 1329(b)(2).

The court will issue a minute order.

99. [13-32386](#)-B-13 JOSE ALBERTO  
TJW-1

MOTION TO CONFIRM PLAN  
10-30-13 [[17](#)]

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

The motion is denied without prejudice because it fails to comply with the Local Bankruptcy Rules' noticing requirements for confirming an amended chapter 13 plan. To confirm an amended plan, Local Bankruptcy Rule 3015-1(d)(1) states that "notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two (42) days prior to the hearing." LBR 3015-1(d)(1). The debtor's notice of hearing fails to comply with Local Bankruptcy Rule 3015-1(d)(1) in two respects. First, it does not conform to Local Bankruptcy Rule 9014-1(f)(1). A motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1) must be set on twenty-eight days' notice and state that "opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations. Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions." LBR 9014-1(f)(1)(B). Here, the debtor's notice of hearing on the motion (Dkt. 18) states that "no written opposition is required. However, if written opposition is filed, copies of said opposition must be served...no later than 5 calendar days prior to the hearing." This language does not conform to the requirements of Local Bankruptcy Rule 9014-1(f)(1).

Second, the debtor has failed to provide forty-two days' notice to parties-in-interest. Forty-two days prior to today's hearing date was October 29, 2013. The debtor served the motion and notice of the hearing on parties-in-interest on October 30, 2013, which is only forty-one days prior to the hearing.

For the reasons set forth above, the motion is denied without prejudice.

The court will issue a minute order.

100. [09-20589](#)-B-13 SHANNON PEARSON MOTION TO MODIFY PLAN  
MWB-3 10-30-13 [[48](#)]

**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 28, 2013 (Dkt. 47) is confirmed.

The court will issue a minute order.

101. [13-33189](#)-B-13 DANIEL/LORI CAMARENA OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-19-13 [[35](#)]

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

The trustee's objection regarding the debtors' projected monthly disposable income reported on their Form 22C is overruled. The trustee's objection regarding the motion to value collateral of Wells Fargo Auto Finance is sustained. Confirmation of the plan filed October 10, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 24, 2013, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection to the projected monthly disposable income reported on the debtors' Form 22C is overruled because the debtors filed an amended Form 22C on November 22, 2013 (Dkt. 38) which reports a monthly disposable income of (\$353.06). The court interprets the decision of the Supreme Court in Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) as standing for the proposition that Form 22C establishes a presumption of a debtor's monthly disposable income, and, thus, a presumption as to the amount that the debtor is required to pay to general unsecured creditors. Here, the debtors' amended Form 22C

states that they have negative monthly disposable income, which creates the presumption that they have \$0.00 to pay to general unsecured creditors. This is consistent with the plan's treatment of the Class 7 claims. By failing to respond to the debtors' filing of amended Form 22C, the trustee has failed to rebut the presumption established by Hamilton. Therefore, the trustee's objection is overruled on this point.

The trustee's objection regarding the motion to value collateral of Wells Fargo Auto Finance is sustained because, contrary to the debtors' assertion in their response brief, a motion to value this collateral has not been filed, served, and set for hearing on January 7, 2014. The feasibility of the plan depends upon a successful motion to value this creditor's collateral consistent with the plan's treatment of the claim listed in Class 2B.

The court will issue a minute order.

102. [09-27391](#)-B-13 CHRISTOPHER/KELLI DAHL MOTION TO OBTAIN CREDIT  
MET-4 11-25-13 [[77](#)]

**Tentative Ruling:** This is a properly filed motion 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 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 incur new debt of approximately \$320,000.00 from FirstPriority to purchase a residence located at 1008 Loretelli Drive, Modesto, CA. 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 debtors have attached as Exhibit "B" to the motion a copy of the debt agreement with FirstPriority (Dkt. 80, p.10). However, the document provided by the debtors is completely illegible and does not appear to have been signed by a representative of FirstPriority. Not only is it impossible for the court to verify the terms of the proposed debt agreement, but the apparent lack of consent from FirstPriority means that there is no actual case or controversy for the court to approve. Thus, the motion is dismissed without prejudice as being not ripe.

The court will issue a minute order.

103. [13-29992](#)-B-13 JUAN COLEMAN  
SNM-1

MOTION TO CONFIRM PLAN  
10-22-13 [[22](#)]

**Tentative Ruling:** The trustee's opposition is overruled. The motion is granted, and the amended plan filed October 22, 2013 (Dkt. 21) will be confirmed with the following modification: Section 2.07 shall state that the monthly dividend for administrative expenses is \$41.67.

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.

104. [13-30394](#)-B-13 GEORGE VELA  
AF-1

MOTION TO CONFIRM PLAN  
10-9-13 [[38](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed September 19, 2013 (Dkt. 30) is denied.

The court will issue a minute order.

105. [13-30394](#)-B-13 GEORGE VELA  
AF-1

COUNTER MOTION TO CONDITIONALLY  
DISMISS CASE  
11-15-13 [[47](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 47) 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 24, 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.

106. [13-33696](#)-B-13 MARIO CARRASCO  
RI-1

MOTION TO VALUE COLLATERAL OF  
BANK OF NEW YORK MELLON  
11-12-13 [[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 Bank of New York Mellon's claim secured by the second deed of trust on real property located at 8701 Merribrook Drive, Sacramento, CA 95826 (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 \$236,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage with a balance of approximately \$257,481.00. Thus, the value of the collateral available to Bank of New York Mellon on its second deed of trust is \$0.00.

The court will issue a minute order.

107. [13-32298](#)-B-13 WILLIAM/DEBORAH JENSEN MOTION TO VALUE COLLATERAL OF  
DRE-1 TRAVIS CREDIT UNION  
10-30-13 [[14](#)]

**Tentative Ruling:** The court approves the stipulation between the debtors and Travis Credit Union (Dkt. 19) (the "Stipulation"). Pursuant to the terms of the Stipulation, the motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$7,400.00 of Travis Credit Union's claim secured by a 2007 Ford Mustang (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 \$7,400.00 on the date of the petition.

The court will issue a minute order.

108. [09-38199](#)-B-13 MARCIA RUDE MOTION TO MODIFY PLAN  
MOH-2 11-4-13 [[42](#)]

**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 December 6, 2013, the debtor filed a modified plan (the "Modified Plan") (Dkt. 56) and a motion to confirm it, setting the matter for hearing on January 21, 2014. The Modified Plan supersedes the plan which the debtor seeks to confirm by this motion. 11 U.S.C. § 1329(b) (2).

The court will issue a minute order.

109. [13-32897](#)-B-13 RICHARD GIANGRASSO  
IRS-1

OBJECTION TO CONFIRMATION OF  
PLAN BY INTERNAL REVENUE  
SERVICE  
11-14-13 [[15](#)]

**Tentative Ruling:** None.

110. [11-24286](#)-B-13 CHARANJIT/MOHINDER SAHOTA  
CAH-20

MOTION FOR COMPENSATION FOR C.  
ANTHONY HUGHES, DEBTORS'  
ATTORNEY(S), FEES: \$2,185.00,  
EXPENSES: \$0.00  
10-25-13 [[171](#)]

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

The application is approved for \$2,185.00 in fees and \$0.00 in costs for a total of \$2,185.00 to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the application is denied.

On February 21, 2011, the debtors filed a chapter 13 petition (Dkt. 1). As part of confirmation of the debtors' second amended chapter 13 plan (Dkt. 170), the applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$1,200.00 through the plan. (Dkt. 170, at p.1). The applicant now seeks additional compensation from February 15, 2011 through November 15, 2012, in the amount of \$2,185.00 in fees and \$0.00 in costs.

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

The court will issue a minute order.

111. [13-26082](#)-B-13 LINDA DIXON  
SJJ-3

OBJECTION TO CLAIM OF AUBURN  
INVESTORS, LLC, CLAIM NUMBER 3  
11-5-13 [[63](#)]

**Tentative Ruling:** The objection is overruled without prejudice.

The objection is overruled without prejudice because the debtor has failed to provide any evidence or authority in support of her objection to this claim. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the debtor has failed to satisfy the foregoing standard. The debtor argues that the Financing Statement associated with this claim is vague, and goes on to attack it on several grounds. However, the only real evidence offered by the debtor is an exhibit (Dkt. 66) which includes the proof of claim filed by the creditor. Without more, this is insufficient to rebut the presumption that this is a valid proof of claim.

The court will issue a minute order.

112. [13-26082](#)-B-13 LINDA DIXON  
WSS-2

MOTION TO RECONSIDER ORDER ON  
MOTION FOR RELIEF  
10-4-13 [[58](#)]

**Tentative Ruling:** Creditor Auburn Investors, LLC ("Auburn")'s opposition is overruled. The motion to reconsider the order granting Auburn relief from the automatic stay is granted, and the order (Dkt. 57) is hereby voided. The motion for relief from automatic stay (WSS-2 - Dkt 43) is dismissed without prejudice for improper service. Except as so order, the motion is denied.

On August 12, 2013, Auburn filed a motion for relief from the automatic stay with respect to "[a]ll personal property (fixtures and equipment) used in the business on the property commonly known as 210-212 Palm Avenue, Auburn, California 95603." The debtor did not file a response to the motion. By order entered September 13, 2031 (Dkt. 57), the court granted the motion and modified the automatic stay as to the debtor and the estate. The debtor now requests reconsideration of this order, claiming that neither she nor her attorney were properly service with the motion or notice of hearing.

Rule 4001 states that "a motion for relief from an automatic stay provided by the Code...shall be made in accordance with Rule 9014." Fed. R. Bankr. P. 4001(a)(1). Rule 9014 adopts the service requirements of Rule 7004. Fed. R. Bankr. P. 9014(b). Rule 7004 states that "if the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F. R. Civ. P." Fed. R. Bankr. P. 7004(g). The various methods of service listed in F. R. Civ. P. 5(b) include electronic service "if the person consented in writing..." F. R. Civ. P. 5(b)(2)(E). Local Bankruptcy Rule 7005-1 complements F. R. Civ. P. 5(b) by allowing for attorneys to consent to service by electronic means. LBR 7005-1(a). However, attorneys also have the option of opting out of receiving electronic service. LBR 7005-1(b). If an attorney either opts out of receiving electronic service or simply does not register for electronic service, the Local Bankruptcy Rules require that

the individual be served "in the conventional manner as provided for in Fed. R. Civ. P. 5(b)(2)." LBR 7005-1(d)(2).

According to the docket, the debtor has been represented by two attorneys in this chapter 13 case: Mr. Lucas B. Garcia ("Mr. Garcia") and Mr. Stephen J. Johnson ("Mr. Johnson"). As such, Rule 7004(g) directed Auburn to serve the motion for relief from the automatic stay on the debtor's attorneys. The proof of service filed with the motion for relief from the automatic stay (Dkt. 49) states that electronic service of the motion and notice of hearing was provided to the United States Trustee, Chapter 13 Trustee Jan P. Johnson, and Mr. Johnson. The proof of service does not specify an e-mail address used to serve Mr. Johnson with the documents. Mr. Garcia is not listed on the proof of service and is therefore presumed to have not been served with the motion or notice of hearing. Auburn states in its response brief to the instant motion (Dkt. 74) that Mr. Johnson was served at the e-mail address "[steve@mkjlex.com](mailto:steve@mkjlex.com)," whereas the debtor contends in her reply brief (Dkt. 78) that no such e-mail address is associated with her attorney's firm and that the firm does not consent to electronic servicing.

As evidence of it providing proper electronic service to Mr. Johnson, Auburn has attached as an exhibit to its opposition a screenshot of the "Roster of Users Consenting to Service by Electronic Means" (the "Roster"), dated October 7, 2013 at 3:22 p.m. (Dkt. 76). The evidence provided by Auburn is both misleading and incorrect. When an attorney search is performed via the court's website, the Roster provides the name of the firm that each attorney last registered as his or her place of employment. This information was omitted from Auburn's exhibit. According to the Roster, the "Stephen Johnson" who is registered to receive electronic service at the e-mail address "[steve@mkjlex.com](mailto:steve@mkjlex.com)" is actually "Stephen F. Johnson," an attorney employed at the law firm of Mannon, King and Johnson located in Ukiah, CA. The "Stephen Johnson" associated with the present chapter 13 bankruptcy case is "Stephen J. Johnson." The latter Mr. Johnson, according to the Roster, is not registered to receive electronic service.

Therefore, Auburn has provided no evidence that the debtor's attorneys were served with the motion for relief from the automatic stay. As such, the judgment granting Auburn relief from the automatic stay is void. Fed. R. Civ. P. 60(b), incorporated by Fed. R. Bankr. P. 9024, allows this court to grant the debtor relief "from a final judgment, order, or proceeding for the following reasons: ... (4) the judgment is void." F. R. Civ. P. 60(b)(4). Accordingly, the debtor's motion for reconsideration is granted.

The court will issue a minute order.