

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

March 4, 2014 at 9:32 A.M.

1. [10-40405](#)-B-13 SHAWN/MADEIRA HEAVENS MOTION TO VALUE COLLATERAL OF
JDP-1 WELLS FARGO BANK, N.A.
2-13-14 [[44](#)]

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

The motion is dismissed without prejudice.

The debtors did not give sufficient notice of the motion. The motion is filed under local bankruptcy rule 9014-1(f)(1), pursuant to which the motion must be filed and served no less than 28 days before the date of the hearing (31 days if the motion is being served by mail; Fed. R. Bankr. P. 9007(f)). In this case the debtors' proof of service (Dkt. 47) shows that the motion was served on February 13, 2014, only 19 days before the date of the hearing. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

2. [13-21407](#)-B-13 CHARLES/SUZANNE ELLIS MOTION FOR COMPENSATION BY THE
SAC-4 LAW OFFICE OF SCOTT A. COBEN &
ASSOCIATES FOR SCOTT A. COBEN,
DEBTORS' ATTORNEY(S), FEES:
\$4,000.00, EXPENSES: \$0.00
1-27-14 [[136](#)]

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. By order entered February 7, 2014 (Dkt. 141), the court approved the "no-look" fee requested by the debtors' counsel in this application.

The court will issue a minute order.

3. [13-26708](#)-B-13 KIRK/CONNIE FREITAS
JPJ-1
OBJECTION TO CLAIM OF DEPT. OF
EDUCATION/SALLIE MAE, CLAIM
NUMBER 19
1-9-14 [[21](#)]

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

The trustee's objection is sustained, and claim No. 19, filed on December 9, 2013, by Department of Education/Sallie Mae in the amount of \$4371.96 (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 October 9, 2013, and to file a government claim was November 12, 2013. The Claim was filed on December 9, 2013.

The court will issue a minute order.

4. [13-35612](#)-B-7 LARRY/DEBRA JACKSON
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
1-31-14 [[19](#)]

CASE CONVERTED TO CHAPTER 7
2/13/14

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 February 13, 2014, the debtors voluntarily converted the case to one under chapter 7.

The court will issue a minute order.

5. [13-23221](#)-B-13 ERIC ALSTRAND AND DEBRA
JPJ-3 BRIOZA
OBJECTION TO CLAIM OF NATIONAL
BUSINESS FACTORS, CLAIM NUMBER
31
1-9-14 [[74](#)]

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

The trustee's objection is sustained, and claim No. 31, filed on November 25, 2013, by National Business Factors in the amount of \$14,307.18 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 17, 2013, and to file a government claim was September 9, 2013. The Claim was filed on November 25, 2013.

The court will issue a minute order.

6. [13-24922](#)-B-13 JAMES BATTLES, JR. MOTION FOR COMPENSATION FOR
MRL-4 MIKALAH RAYMOND LIVIAKIS,
DEBTOR'S ATTORNEY(S), FEES:
\$4,000.00, EXPENSES: \$23.00
2-3-14 [[46](#)]

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

The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$4000.00 in fees and \$23.00 in costs, for a total of \$4023.00, to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtor to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524.

On April 10, 2013, the debtor filed a chapter 13 petition. As part of confirmation of the debtor's chapter 13 plan, the court approved attorney's fees in the amount of \$3500.00 in accordance with the Fed. R. Bankr. P. 2016-1 for the debtor's former counsel, John Harrison Esq. The applicant herein, Mikalah Liviakis, Esq. ("Liviakis"), substituted in as debtor's counsel of record via a motion for substitution of attorney filed January 13, 2014 (Dkt. 26), which was approved by order entered February 7, 2014 (Dkt. 51). Liviakis now seeks approval of additional attorney's fees in the amount of \$4000.00 and expenses in the amount of \$23.00 for services related to a motion for approval of the sale of real property owned by the debtor.

As set forth in the Liviakis' application, the additional fees are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work Liviakis has done in this case is sufficient greater than a "typical" chapter 13 case so as to justify additional compensation under LBR 2016-1(c)(3). In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

The court will issue a minute order.

7. [10-36624](#)-B-13 MARK/ABIGAIL CAREY MOTION TO VALUE COLLATERAL OF
CA-3 CHASE HOME FINANCE
2-6-14 [[53](#)]

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

8. [12-34525](#)-B-13 VICTORIA RAMOS AND LARRY MOTION TO APPROVE LOAN
PGM-4 MALLARI MODIFICATION
2-3-14 [[93](#)]

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 permanent loan modification proposal filed as Exhibit "A" to the motion (Dkt. 96).

The court will issue a minute order.

9. [14-21127](#)-B-13 STEPHEN/ANNETTE EVERHART MOTION TO VALUE COLLATERAL OF
MMM-1 US BANK N.A.
2-18-14 [[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 U.S. Bank, N.A.'s ("USB") claim in this case secured by the second deed of trust on real property located at 10909 Scotsman Way, Rancho Cordova, 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 \$180,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Everhome Mortgage with a balance of approximately \$206,000.00. Thus, the value of the collateral available to USB on its second deed of trust is \$0.00.

The court will issue a minute order.

10. [12-39730](#)-B-13 RONALD/DEBRA MAHNKE MOTION TO APPROVE LOAN
JB-5 MODIFICATION
1-31-14 [[47](#)]

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 Freddie Mac Standard Modification Agreement filed as Exhibit "A" to the motion (Dkt. 50).

The court will issue a minute order.

11. [13-35130](#)-B-13 JOSE TOLEDO
TOG-2

MOTION TO CONFIRM PLAN
1-20-14 [[22](#)]

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

The motion is granted and the amended plan filed January 20, 2014, will be confirmed.

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

12. [12-32736](#)-B-13 ROBERT BAIRD
DEF-1

MOTION PURCHASE REAL PROPERTY
2-17-14 [[53](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The debtor has not shown that this motion for authorization to purchase real property located at 536 Ridgewood Drive, Vacaville, California (the "Property"), and for authorization to incur debt to purchase the Property is ripe for adjudication. The debtor has not shown that if this motion is granted that an actual financing and sale transaction will take place, as he has shown no evidence that he will actually be able to obtain the financing that he proposes in the motion. The Conditional Pre-Approval Letter (the "Letter") filed by the debtor does not constitute such evidence as it is not a final loan approval and is subject to conditions which debtor has not presented evidence of having met.

The absence of an actual transaction 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. The party asserting the claim, in this case, the debtor, has the burden of producing evidence to establish that the issues are ripe. McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178, 189 (1936); see also Signature Properties Intern. Ltd. Partnership v. City of Edmond, 310 F.3d 1258, 1265 (10th Cir. 2002). With no finalized, actual agreement for the financing of the purchase of the Property, no case or controversy within the meaning of Article III exists.

The court will issue a minute order.

13. [11-25337](#)-B-13 NITESH SHARMA
JPJ-1

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 14
1-9-14 [[61](#)]

Tentative Ruling: the opposition filed by Bank of America, N.A. ("BofA") is overruled. The trustee's objection is sustained, and claim No. 14, filed on April 17, 2012, by BofA in the amount of \$460,297.08 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 6, 2011, and to file a government claim was August 29, 2011. The Claim was filed on April 17, 2012, 286 days after the deadline.

BofA's opposition is not persuasive. In the Ninth Circuit the filing of a claim after the deadline established by Fed. R. Bankr. P. 3002(c) is allowed only in the circumstances described in Fed. R. Bankr. P. 3002(c)(1)-(6). Fed. R. Bankr. P. 9006(b)(3) specifically states that "the court may enlarge the time for taking action under Rules...3002(c)...only to the extent and under the conditions stated in those rules." See In re Coastal Alaska Airlines, Inc., 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("Rule 3002(c) identifies six circumstances where a late filing is allowed."); In re Edelman, 237 B.R. 146, 152 (9th Cir. BAP 1999) (Bankruptcy Rule 3002(c) provides only five exceptions to the ninety day filing period prescribed for the filing of claims). Coastal Alaska's reference to six circumstances under Bankruptcy Rule 3002(c) and Edelman's reference to five circumstances is explained by the 1996 amendments to the Bankruptcy Code, which abrogated allowance of late-filed claims against surplus estate assets in chapter 7 cases. Bankruptcy Rule 3002 therefore "complements the process of allowing claims by setting a bar date by which a claim must be filed in order to be allowed under 11 U.S.C. § 502." In re Osborne, 76 F.3d 306, 309-310 (9th Cir. 1996). BofA's opposition does not set forth any of the exceptions contained in Fed. R. Bankr. P. 3002(c)(1)-(6).

The court will issue a minute order.

14. [11-31037](#)-B-13 CHRISTOPHER/SHELLI BECK
CJY-5

MOTION TO MODIFY PLAN
1-27-14 [[92](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed January 27, 2014 (Dkt. 97) is confirmed.

The trustee's opposition is overruled for the reasons set forth in the debtors' reply.

The court will issue a minute order.

15. [11-49037](#)-B-13 ERICA LANNOM
CAH-2

MOTION TO MODIFY PLAN
1-21-14 [[34](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed January 21, 2014, is denied.

The court will issue a minute order.

16. [13-34539](#)-B-13 DARRELL/SUSAN LANE
RAC-1

MOTION TO MODIFY PLAN
1-24-14 [[20](#)]

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

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

The court will issue a minute order.

17. [14-21240](#)-B-13 DIANE OHARA
PGM-1

MOTION TO EXTEND AUTOMATIC STAY
2-18-14 [[9](#)]

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

18. [10-33341](#)-B-13 SAEED BAGHERI
CAH-6

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
1-17-14 [[83](#)]

Disposition Without Oral Argument: This motion continued from February 18, 2014, to allow the court and the chapter 13 trustee to review the amended Schedules I and J filed by the debtor on February 17, 2014 (Dkt. 91). The trustee withdrew his opposition on February 26, 2014 (Dkt. 96). This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the debtor is authorized to incur new debt on the terms set forth in the loan modification offer filed as an exhibit to the motion (Dkt. 89).

Based on the amended schedules filed by the debtor, the court is

satisfied that the debtor will be able to make the payment required by the modification.

The court will issue a minute order.

19. [10-38945](#)-B-13 DANIEL/CHRISTINA SCALES MOTION TO INCUR DEBT
CA-3 2-11-14 [[56](#)]

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.

20. [10-41245](#)-B-13 FRANK/PAULA GONZALES OBJECTION TO CLAIM OF NAVY
JPJ-1 FEDERAL CREDIT UNION, CLAIM
NUMBER 10
1-9-14 [[61](#)]

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

The trustee's objection is sustained, and claim No. 10, filed on December 13, 2013, by Navy Federal Credit Union in the amount of \$64,515.67 (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 December 22, 2010, and to file a government claim was February 7, 2011. The Claim was filed on December 13, 2013.

The court will issue a minute order.

21. [13-36246](#)-B-13 ATTILA/JULIANNA HRACZKY OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
2-6-14 [[21](#)]

Tentative Ruling: The chapter 13 trustee's objection is sustained. Confirmation of the initial plan filed December 31, 2013, is denied.

The debtors admit in their response to the objection that the plan does not satisfy the requirement of 11 U.S.C. § 1325(a)(4), although their calculation of the amount of non-exempt property in the estate differs from the trustee's calculation. The debtors have proposed to resolve the trustee's objection by increasing their plan payments from \$899.00 per month to \$1049.00 per month, a \$150.00 increase, thereby increasing the amount of the dividend to be paid to unsecured creditors. However, a \$150.00 increase in the plan payment constitutes a 16.7% increase in the

plan payment in this case, which exceeds the 10% threshold established by this department for non-material modifications which can be made without re-noticing the plan for confirmation.

The trustee's objection is sustained based on the debtors' admission that the plan does not comply with 11 U.S.C. § 1325(a)(4). The court makes no finding at this time as to the specific amount of non-exempt property in the estate or the specific amount of property that would be paid on account of unsecured claims if the estate were liquidated under chapter 7.

The court will issue a minute order.

22. [11-33547](#)-B-13 MICHAEL/LOLITA CHANEY MOTION TO MODIFY PLAN
PGM-1 1-20-14 [[41](#)]

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

The motion is granted, and the modified plan filed January 20, 2014, is confirmed.

The court will issue a minute order.

23. [13-35347](#)-B-13 ANGEL/KARINA GARCIA CONTINUED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
1-23-14 [[40](#)]

Tentative Ruling: This objection to confirmation and motion to dismiss continued from February 18, 2014, to allow the debtors to submit supplemental information indicating the consent of secured creditor TD Auto Finance, LLC to the treatment proposed for its secured claim in the plan. The debtors filed supplemental information on February 20, 2014 (Dkt. 59). This matter remains in a preliminary posture pursuant to LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues the following tentative ruling.

The trustee's objections are overruled. The trustee's motion to dismiss is denied. The initial plan filed December 3, 2013, will be confirmed.

The trustee objected to confirmation of the plan based on the plan's dependence on successful motions to value the collateral of Golden 1 Credit Union ("Golden 1") and TD Auto Finance, LLC ("TD"). The debtors motion to value the collateral of Golden 1 was granted by order entered February 20, 2014 (Dkt. 61). The debtors' motion to value the collateral of TD was resolved by stipulation of the debtors and TD (Dkt. 44), which was approved by order entered February 14, 2014 (Dkt. 52). On February

20, 2014, the debtors filed supplemental evidence of TD's consent to the dividend payments proposed in the plan, thereby evidencing TD's acceptance of the plan. 11 U.S.C. § 1325(a)(5)(A).

The court will issue a minute order overruling the trustee's objection and denying his motion to dismiss. 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 plan.

24. [13-28451](#)-B-13 DOUGLAS SCOTT
RPH-3

MOTION TO CONFIRM PLAN
1-21-14 [[74](#)]

Tentative Ruling: The opposition filed by the chapter 13 trustee is sustained. The opposition filed by the Golden 1 Credit Union ("Golden 1") is sustained. The motion is denied.

The trustee's opposition is sustained for the reasons set forth therein. Golden 1's opposition is sustained for the reasons set forth therein.

The court will issue a minute order.

25. [13-28451](#)-B-13 DOUGLAS SCOTT
RPH-3

COUNTER MOTION TO DISMISS CASE
1-30-14 [[79](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before March 18, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

26. [10-45653](#)-B-13 RUBI CODY
PGM-2

MOTION TO MODIFY PLAN
1-20-14 [[38](#)]

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

The motion is granted, and the modified plan filed January 20, 2014, is confirmed.

The court will issue a minute order.

27. [13-35955](#)-B-13 CHARLES/LISA GOERLICH MOTION TO AVOID LIEN OF CAPITAL
RAC-2 ONE BANK (USA), N.A.
1-23-14 [[18](#)]

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 Capital One Bank, N.A. recorded in the official records of Sacramento County, Book 20131009 Page 0984, is avoided as against the real property located at 7316 Gail Way, Fair Oaks, California.

The subject real property has a value of \$304,150.00 as of the date of the petition. The unavoidable liens total \$444,363.00 the debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5) 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.

28. [13-27958](#)-B-13 PENNY PARKER OBJECTION TO CLAIM OF DEUTSCHE
ULC-4 BANK NATIONAL TRUST COMPANY,
CLAIM NUMBER 2
1-17-14 [[53](#)]

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

In the absence of opposition, the debtor's objection is sustained, and claim No. 2, filed on January 14, 2014, by Deutsche Bank National Trust Company in the amount of \$378,715.05 (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 October 16, 2013, and to file a government claim was December 9, 2013. The Claim was filed on January 4, 2014.

Nothing in this ruling shall be construed as a finding that the creditor is not permitted to amend the proof of claim filed on its behalf by the debtor. In re Kolstad, 928 F.2d 171, 175 (5th Cir. 1992), cert. denied, 502 U.S. 958 (1991) ("[W]e perceive no convincing reason why amendments should be allowed to timely creditor claims but not to timely claims filed by debtors to obtain an advantage for themselves vis-a-vis nondischargeable creditors.") In this instance, the Claim was not filed

as an amendment to Claim No. 1 filed by the debtor on November 14, 2013 on behalf of Ocwen Loan Servicing LLC.

The court will issue a minute order.

29. [11-24660](#)-B-13 JOHN/DONNA GIFFORD
BLG-3

MOTION TO SELL
1-31-14 [[43](#)]

Tentative Ruling: The motion is denied without prejudice.

The debtors seek authorization pursuant to 11 U.S.C. § 363(b) to sell personal property of the estate consisting of a 1998 Saturn SL2 (the "Saturn") to Jackie Griess ("Jackie"), the niece of joint debtor Donna Gifford ("Donna"), for \$0.00. The debtors allege that the vehicle was purchased by Donna's father, Dennis Griess ("Dennis") for Jackie in or around January, 2013, and that Donna was placed on title to the Saturn, thereby acquiring an interest in it, on or about February 10, 2013. The debtors assert that Dennis had an agreement with Jackie whereby Jackie would pay back Dennis for the vehicle via a \$500.00 initial payment, followed by payments of \$225.00 per month until the total purchase price of \$2577.00 was paid in full. Dennis recently passed away, leaving Donna the sole titleholder to the vehicle. The debtors allege that as of the date of the motion, Jackie had paid \$2300.00 to Dennis. The debtors assert that they wish to honor the agreement between Dennis and Jackie by "selling" the Saturn to Jackie for the \$2300.00 already paid to Dennis, resulting in \$0.00 being paid to the estate for the "sale" of the Saturn. The debtors allege that the Saturn has a value of \$1055.00. The debtors have not claimed the Saturn as exempt.

The debtors have not shown that the sale of the Saturn is in the best interests of the estate or its creditors. As property acquired after the commencement of the case, the Saturn is property of the estate pursuant to 11 U.S.C. § 1306(a)(1). The debtors have not claimed the Saturn as exempt. The debtors have shown no justification for giving away an asset of the estate worth \$1055.00 in order to honor Dennis's agreement when the confirmed plan (Dkt. 22) is a 0% plan. Furthermore, pursuant to 11 U.S.C. § 544(a), as of the commencement of the bankruptcy case, the debtors obtained certain rights and powers to avoid transfers of property of the debtors, which property now includes the Saturn. The debtors have not addressed § 544(a) in the motion, and they have not shown that "honoring" the agreement between Dennis and Jackie by allowing the Saturn to be transferred to Jackie for no benefit to the estate is in the best interests of creditors and the estate. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

Tentative Ruling: The trustee's objection that the plan fails to comply with Section 4.02 of the mandatory form plan is sustained. The trustee's objection alleging bad faith under 11 U.S.C. § 1325(a)(3) is overruled without prejudice. The trustee's objection that the feasibility of the plan depends on the granting of a motion to value collateral of RC Willey Home Furniture ("RC") is overruled. The motion to confirm the amended plan filed December 17, 2013 (Dkt. 22) denied.

Regarding the trustee's first objection, the court acknowledges the debtors' attempt to stretch out administrative expenses in Section 2.07 from "\$1,333.34 per month for Months 1 through 3" to "\$1,000.00 per month for Months 1 through 4" in order to ensure compliance with Section 4.02. However, the court cannot accept this proposal. A modification to Section 2.07 requires notice to all holders of administrative expense claims and an opportunity for those parties to object. Although the court's review of the docket and claims register does not reveal any administrative expense claims other than the trustee's fees and the debtors' counsel's fees, the debtors still cannot unilaterally modify Section 2.07 without the trustee's consent. The debtors have provided no evidence that the trustee consents to the modification to Section 2.07. As such, the objection is sustained.

The trustee's objection that the plan has not been proposed in good faith is overruled without prejudice for two reasons. First, the trustee has failed to cite to or analyze any Ninth Circuit authorities relevant to the bad faith analysis under 11 U.S.C. § 1325(a)(3). "Bad faith" under 11 U.S.C. § 1325(a)(3) is determined based on an examination of the totality of the circumstances. Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988) (citing Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir.1982)). Second, the court finds that the debtors have met their burden of establishing that the plan has been filed in good faith. See In re Barnes, 32 F.3d 405, 407 (9th Cir. 1994); Chinichian v. Campolongo, 784 F.2d 1440 1443-44 (9th Cir. 1986). On January 23, 2014, the debtors filed an amended voluntary petition (Dkt. 48) which discloses all the debtors' prior filings over the past eight years. This remedies the only basis for the trustee's allegation of bad faith. Additionally, the debtors have stated at Paragraph 4(c) of their sworn declaration (Dkt. 35, p.2) that they have proposed the plan in good faith and without any intent to deceive or misrepresent. Therefore, this objection is overruled without prejudice.

Finally, the motion to value collateral of RC was heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment of RC's claim. Therefore, this objection is overruled.

The court will issue a minute order.

31. [13-34760](#)-B-13 BRANDO/MYLENE CAYABYAB
CAH-4

CONTINUED COUNTER MOTION TO
DISMISS CASE
1-16-14 [[40](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 40) 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 March 18, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

32. [13-34760](#)-B-13 BRANDO/MYLENE CAYABYAB
CAH-5

MOTION TO VALUE COLLATERAL OF
RC WILLEY HOME FURNISHINGS
1-23-14 [[49](#)]

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. \$300.00 of RC Willey Home Furnishings's claim secured by a refrigerator and television (collectively, 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 \$300.00 on the date of the petition.

The court will issue a minute order.

33. [10-32861](#)-B-13 ESMERALDA WYMORE
JLB-10

MOTION TO INCUR DEBT
1-16-14 [[127](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. By this motion the debtor seeks court approval to purchase a 2012 Dodge Avenger from Enterprise Car Sales ("Enterprise"). However, the debtor has failed to establish that there is an actual agreement or transaction with Enterprise for the court to approve.

The absence of an actual agreement or transaction 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 agreement for the proposed vehicle loan, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges that the debtor has attached as Exhibit "A" to the motion (Dkt. 130, p.2) a copy of the proposed vehicle loan with Enterprise (the "Agreement"). However, the Agreement is insufficient for two reasons. First, it has not been signed by either the debtor or a representative of Enterprise, and the debtor has failed to provide any other evidence that Enterprise consents to the terms set forth in the Agreement. Second, the Agreement states at the bottom that "this is a non-binding proposal. All sales subject to credit approval." Based on this language, the debtor has not shown that, if this motion is granted, an actual financing and sale transaction will take place on the terms set forth in the Agreement. Therefore, the motion is dismissed without prejudice.

The court will issue a minute order.

34. [10-32861](#)-B-13 ESMERALDA WYMORE MOTION TO APPROVE LOAN
JLB-8 MODIFICATION
1-16-14 [[117](#)]

Tentative Ruling: The motion is granted in part. The debtor is authorized to enter into a trial period plan for a loan modification on the terms set forth in the offer letter from America's Servicing Company (the "Offer") filed with the motion as Exhibit "A" (Dkt. 120, p.2-8). Nothing in this ruling constitutes an approval of a long-term, permanent modification following the end of the trial period set forth in the Offer.

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

The court will issue a minute order.

35. [10-32861](#)-B-13 ESMERALDA WYMORE MOTION TO MODIFY PLAN
JLB-9 1-16-14 [[122](#)]

Tentative Ruling: The motion to confirm the modified plan filed January 16, 2014 (Dkt. 133) is denied.

Although no party in interest has opposed the motion, the court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and

523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). Here, the debtor's monthly net income (Dkt. 132, p.6) and proposed plan payments are contingent upon her gaining approval of a vehicle loan with Enterprise Car Services ("Enterprise") with a monthly payment of \$314.26. That matter was heard elsewhere on today's calendar and dismissed without prejudice due to the debtor's failure to provide the court with evidence of a final agreement with Enterprise. Without proof of a final agreement, the monthly payment for the replacement vehicle could be significantly higher than \$314.26. If no new loan is obtained, the debtor has failed to show that the plan is feasible with a vehicle that has broken down several times despite repeated maintenance work. The debtor has failed to establish that she has sufficient income to make the proposed plan payments without a vehicle to replace her current one. 11 U.S.C. § 1325(a)(6). As such, she 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.

36. [13-33765](#)-B-13 RACHELLE HICKS
JPJ-2

MOTION TO CONVERT CASE TO
CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
2-3-14 [[49](#)]

Tentative Ruling: The debtor's opposition is overruled. The trustee's motion is granted, and the case is converted to one under chapter 7 pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

11 U.S.C. § 1307(c) enumerates eleven non-exclusive grounds which may constitute "cause" for conversion or dismissal of a chapter 13 case. § 1307(c) establishes a two-step analysis for dealing with questions of conversion and dismissal. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" In re Nelson, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) The bankruptcy court is given discretion to convert or dismiss based on unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). A debtor's "unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for (conversion or) dismissal under § 1307(c)(1)." In re Ellsworth, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). In determining "cause" under § 1307(c), the court may analyze the entire record. In re de la Salle, 461 B.R. 593, 605 (B.A.P. 9th Cir. 2011).

Here, the trustee seeks dismissal or conversion of the case to one under chapter 7, alleging that the debtor has failed to make any plan payments since the filing of her voluntary chapter 13 petition on October 25, 2013. As a result, the debtor is currently delinquent in the amount of \$9,095.00, with an additional payment of \$3,185.00 coming due prior to today's hearing date.

The court finds the debtor's opposition unpersuasive. The debtor asserts

that a payment was made to the chapter 13 trustee at some point prior to February 18, 2014, via a Wells Fargo transfer, but she has provided no evidence of said transfer. LBR 9014-1(d)(6). Although the debtor contends that she will be filing, serving, and setting for hearing a new chapter 13 plan and motion to confirm it, she has failed to do so. The trustee states in his reply that, despite the debtor's argument to the contrary, his records do not indicate receipt of any payments. Without any supporting evidence, the debtor's opposition is overruled.

The court finds that the trustee has established "cause" to dismiss or convert this case pursuant to 11 U.S.C. §§ 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failure to commence making timely payments as required by 11 U.S.C. § 1326(a). In this instance, the court converts the case to chapter 7 as it appears from both a review of the debtor's schedules and consideration of the trustee's unopposed assertions regarding the amount of non-exempt property in the estate that the debtor has significant non-exempt assets that could be administered by a chapter 7 trustee.

The court will issue a minute order.

37. [13-25566](#)-B-13 MARCO CHAVEZ AND FEBE VELASQUEZ
JPJ-2
OBJECTION TO CLAIM OF OLD REPUBLIC SURETY C/O JOMAX RECOVERY SERVICES, CLAIM NUMBER 11
1-9-14 [[48](#)]

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

The trustee's objection is sustained, and claim no. 11, filed on September 30, 2013, by Old Republic Surety c/o Jomax Recovery Services in the amount of \$9,250.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

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

The court will issue a minute order.

38. [13-25569](#)-B-13 LINDA GARCIA
JPJ-2
OBJECTION TO CLAIM OF DEPT OF EDUCATION/SALLIE MAE, CLAIM NUMBER 4
1-9-14 [[33](#)]

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

The trustee's objection is sustained, and claim no. 4, filed on October 22, 2013, by the Department of Education/Sallie Mae in the amount of \$8,490.63 (the "Claim"), is disallowed except to the extent previously

paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was August 28, 2013. The last date to file a governmental claim was October 21, 2013. The Claim was filed on October 22, 2013.

The court will issue a minute order.

39. [13-35570](#)-B-13 FRANK LILLY OBJECTION TO DEBTOR'S CLAIM OF
JPJ-2 EXEMPTIONS
1-23-14 [[22](#)]

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

The objection is removed from the calendar. The trustee withdrew the objection on February 24, 2014 (Dkt. 33).

40. [13-31175](#)-B-13 JOHN DRISCOLL AND JANICE MOTION TO CONFIRM PLAN
RAH-3 KOPP
1-21-14 [[69](#)]

Tentative Ruling: The trustee's opposition is sustained. Tri Counties Bank's opposition is sustained. The motion to confirm the plan filed January 21, 2014 (Dkt. 74) is denied.

The court will issue a minute order.

41. [13-31175](#)-B-13 JOHN DRISCOLL AND JANICE COUNTER MOTION TO CONDITIONALLY
RAH-3 KOPP DISMISS CASE
2-10-14 [[77](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 77) 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 March 18, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

42. [12-27181](#)-B-13 MICHAEL PALMER
LC-1

CONTINUED MOTION FOR ORDER
ALLOWING DEBTOR TO OBTAIN A
REVERSE MORTGAGE
1-9-14 [[27](#)]

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

The motion is removed from the calendar. The debtor withdrew the motion on February 24, 2014 (Dkt. 33).

43. [12-38281](#)-B-13 MARY TOFFLEMIRE
JPJ-3

OBJECTION TO CLAIM OF DJR
GRP/PAYDAY LOAN, CLAIM NUMBER
22
1-9-14 [[57](#)]

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

The trustee's objection is sustained, and claim no. 22, filed on November 25, 2013, by DJR Group/Payday Loan c/o Williamson and Brown LLC in the amount of \$610.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was March 6, 2013. The Claim was filed on November 25, 2013.

44. [13-26083](#)-B-13 GREGORIO RODRIGUEZ LONA
JPJ-2 AND EULALIA RODRIGUEZ

OBJECTION TO CLAIM OF PALISADES
ACQUISITION XVII, CLAIM NUMBER
12
1-9-14 [[55](#)]

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

The trustee's objection is sustained, and claim no. 12, filed on September 18, 2013, by Palisades Acquisition XVII c/o Vativ Recovery Solutions LLC in the amount of \$1,157.95 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was September 4, 2013. The Claim was filed on September 18, 2013.

45. [13-32286](#)-B-13 MARCOS SMITH
WW-2

CONTINUED MOTION TO CONFIRM
PLAN
12-23-13 [[30](#)]

Tentative Ruling: Creditor Victor Correia ("Mr. Correia")'s objections are overruled. The motion is granted, and the amended plan filed December 23, 2013 (Dkt. 33) will be confirmed.

Mr. Correia's objections under 11 U.S.C. § 1325(b)(1)(B) are irrelevant because the plan proposes to pay all claims, including Mr. Correia's in Class 6, in full. That treatment would satisfy the requirements of 11 U.S.C. § 1325(b)(1)(A), which is an alternative to 11 U.S.C. § 1325(b)(1)(B).

Mr. Correia's objections that either the plan or this case was filed in bad faith are overruled because he has failed to cite to or analyze the relevant Ninth Circuit authorities for analyzing bad faith. "To determine bad faith a bankruptcy judge must review the 'totality of the circumstances.' A judge should ask whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner.'" In re Eisen, 14 F.3d at 470; see also Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 93 (9th Cir. BAP 1988) *citing* Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir. 1982). Simply stating that he is not receiving payments and that a case filed over five years ago failed in the fifty-ninth month of the plan, without more, is insufficient.

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

46. [12-34289](#)-B-13 ALBERT/JUANITA FAHNESTOCK
ACK-1

MOTION TO INCUR DEBT
1-24-14 [[52](#)]

Tentative Ruling: The motion is dismissed without prejudice. The trustee's opposition is dismissed.

The motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. By this motion the debtors seek court approval to purchase a 2013 Chevrolet Traverse with financing provided by Prestige Financial ("Prestige"). However, the debtors have failed to establish that Prestige consents to the terms of the proposed financing agreement.

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

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

Here, the court acknowledges that the debtors have attached as Exhibit "A" to the motion (Dkt. 55, p.3) a copy of the proposed financing agreement with Prestige (the "Agreement"). However, the Agreement is insufficient for two reasons. First, it has not been signed by either the debtors or a representative of Prestige, and the debtors have failed to provide any other evidence that Prestige consents to the terms set forth in the Agreement. Second, the debtors have failed to satisfy all of the conditions required in the financing agreement for Prestige's approval. The Agreement sets forth several "stipulations" that must be satisfied by February 5, 2014, the expiration date set forth in the "comments" field. The first stipulation is "authorization to purchase auto from the Bankruptcy judge or Trustee." Today's date is March 4, 2014. The debtors have missed the February 5, 2014 deadline to gain bankruptcy court approval of the Agreement. The debtors have provided no evidence that Prestige has consented to an extension of the expiration date.

The trustee's opposition is dismissed because the court lacks jurisdiction over the motion to which the opposition is directed.

The court will issue a minute order.

47. [13-36190](#)-B-13 TERRY/MELINDA HUNTER
MWB-1

MOTION TO VALUE COLLATERAL OF
PNC BANK, N.A.
1-30-14 [[25](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of PNC Bank, N.A.'s claim secured by the second deed of trust on real property located at 4635 Orkney Place, Shasta Lake, CA 96019 (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 \$129,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Bank, N.A. with a balance of approximately \$133,000.00. Thus, the value of the collateral available to PNC Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

48. [13-34891](#)-B-13 MICHAEL/KATHERINE MOTION TO VALUE COLLATERAL OF
NBC-1 HOLLIDAY HSBC MORTGAGE SERVICES
1-10-14 [[14](#)]

Tentative Ruling: This matter is continued to March 18, 2014, at 9:32 a.m.

The court is in receipt of the stipulation filed February 17, 2014. The parties are instructed to submit a form of proposed order approving the stipulation and stating that the stipulation is binding between the parties thereto.

The court will issue a minute order.

49. [13-36091](#)-B-13 JAMES/MOLLY ALEXANDER OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON
2-6-14 [[18](#)]

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 December 27, 2013 (Dkt. 5) is denied.

The court will issue a minute order.

50. [13-35493](#)-B-13 RICHARD/OTTOMESE RICE MOTION TO VALUE COLLATERAL OF
CAH-1 THE BANK OF NEW YORK MELLON
1-27-14 [[25](#)]

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 the Bank of New York Mellon f/k/a the Bank of New York as successor Indenture trustee to JPMorgan Chase Bank, N.A. for CWHEQ Revolving Home Equity Loan Trust, Series 2007-B (the "Creditor")'s claim secured by the second deed of trust on real property located at 7805 Hartwick Way, Sacramento, CA 95828 (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 \$110,000.00 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 \$133,085.00. Thus, the value of the collateral available to the Creditor on its second deed of trust is

\$0.00.

The court will issue a minute order.

51. [13-35493](#)-B-13 RICHARD/OTTOMESE RICE CONTINUED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
1-23-14 [[22](#)]

Tentative Ruling: The trustee's objection 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 countermotion to dismiss is denied. The plan filed December 16, 2013 (Dkt. 10) is confirmed.

The sole objection raised by the trustee is that the plan depends on the granting of a motion to value collateral of Specialized Loan Servicing ("SLS") for the second deed of trust on the debtors' residence. That motion was heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment of SLS's claim. Therefore, the objection is overruled.

The court will issue a minute order overruling the trustee's objection and denying the countermotion to dismiss. 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.

52. [13-35895](#)-B-13 NICOLE BERT CONTINUED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
1-29-14 [[32](#)]

Tentative Ruling: This matter is continued to April 29, 2014, at 9:32 a.m.

53. [13-35895](#)-B-13 NICOLE BERT OBJECTION TO DEBTOR'S CLAIM OF
JPJ-2 EXEMPTIONS
2-6-14 [[40](#)]

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.

54. [13-35895](#)-B-13 NICOLE BERT
MRG-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY USAA
FEDERAL SAVINGS BANK
1-17-14 [[17](#)]

Tentative Ruling: This matter is continued to April 29, 2014, at 9:32 a.m.

55. [13-35895](#)-B-13 NICOLE BERT
PGM-1

MOTION TO VALUE COLLATERAL OF
USAA FEDERAL SAVINGS BANK
1-28-14 [[22](#)]

Tentative Ruling: The motion to value collateral of USAA Federal Savings Bank is continued to a final evidentiary hearing on April 22, 2014, at 2:00 p.m. before the Honorable Jane D. McKeag in courtroom 32.

On or before April 15, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before April 15, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Collateral of USAA Federal Savings Bank. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

56. [13-35895](#)-B-13 NICOLE BERT
PGM-2

MOTION TO VALUE COLLATERAL OF
DARRAQ FAMILY TRUST/EVELYN
RODIES TRUST
1-28-14 [[27](#)]

Tentative Ruling: This matter is continued to April 29, 2014, at 9:32 a.m.

57. [13-33696](#)-B-13 MARIO CARRASCO
RI-2

MOTION TO CONFIRM PLAN
1-14-14 [[38](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed January 14, 2014 (Dkt. 36) is denied.

The court will issue a minute order.

58. [13-33696](#)-B-13 MARIO CARRASCO
RI-2

COUNTER MOTION TO DISMISS CASE
2-10-14 [[44](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 44) 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 March 18, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

59. [11-21697](#)-B-13 EDWARD/SYLIVIA GOMEZ
PGM-4

MOTION TO INCUR DEBT
2-3-14 [[66](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. By this motion the debtors seek court approval to purchase a 2013 Mazda "or vehicle of comparable value" from Enterprise Car Sales ("Enterprise"). However, the debtors have failed to establish that there is an actual agreement or transaction with Enterprise for the court to approve.

The absence of an actual agreement or transaction 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 agreement for the proposed vehicle loan, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges that the debtors have attached as Exhibit "A" to the motion (Dkt. 69, p.2) a copy of the proposed vehicle loan with Enterprise (the "Agreement"). However, the Agreement is insufficient for several reasons. First, it has not been signed by either the debtors or a representative of Enterprise, and the debtors have failed to provide any other evidence that Enterprise consents to the terms set forth in the Agreement. Second, the Agreement states at the bottom that "this is a non-binding proposal. All sales subject to credit approval." Based on this language, the debtors have not shown that, if this motion is granted, an actual financing and sale transaction will take place on the terms set forth in the Agreement. The language set forth in the motion and debtors' declaration (Dkt. 68) only confirms this. The motion seeks court approval to purchase a 2013 Mazda or "vehicle of comparable value" in an amount "not more than \$16,516.22 over 60 months, with payment of no more than \$307.17 per month at no more than 9.99% interest." This suggests to the court that the debtors are uncertain as to what the final terms of a potential financing agreement may look like. Additionally, the debtors state in their declaration that they "wish to purchase a vehicle of similar make, model and value" if the Mazda 2013 becomes unavailable. If the debtors are worried about the Mazda 2013 becoming unavailable, it means that they have no agreement in place to purchase one. Without a final, signed agreement between the parties, the motion lacks justiciability and is dismissed without prejudice.

The court will issue a minute order.

60. [13-34699](#)-B-13 DESIREE SAMPLE
JPJ-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON
12-23-13 [[27](#)]

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

The objection is removed from the calendar. The trustee withdrew the objection on February 21, 2014 (Dkt. 44).