

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

April 15, 2014 at 9:32 A.M.

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1. [13-35903](#)-B-13 MARK/DEJA HERBERS MOTION TO CONFIRM PLAN
RWH-1 3-4-14 [[25](#)]

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

The court will issue a minute order.

2. [13-35903](#)-B-13 MARK/DEJA HERBERS COUNTER MOTION TO DISMISS CASE
RWH-1 3-27-14 [[32](#)]

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

The countermotion is conditionally denied, the conditions being that on or before April 29, 2014, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

3. [11-44308](#)-B-13 JULIAN/LAURA BUTLER MOTION TO MODIFY PLAN
SAC-10 2-28-14 [[120](#)]

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

The motion is granted, and the modified plan filed February 28, 2014, is confirmed.

The court will issue a minute order.

4. [14-21808](#)-B-13 ALFONSO/MARTA TINOCO
TOG-1

MOTION TO VALUE COLLATERAL OF
SPECIALIZED LOAN SERVICING, LLC
3-10-14 [[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 Specialized Loan Servicing, LLC's ("Specialized") claim in this case secured by the second deed of trust on real property located at 1503 Karen Way, Olivehurst, 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 \$82,328.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing, LLC with a balance of approximately \$187,300.00. Thus, the value of the collateral available to Specialized on its second deed of trust is \$0.00.

The court will issue a minute order.

5. [14-20515](#)-B-13 PHYLLIS MANK
JPJ-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
3-17-14 [[29](#)]

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

The trustee's objection is sustained. The debtor's claims of exemption on Schedule C (Dkt. 11 and 7) are disallowed.

The claims of exemption are disallowed for the reasons set forth in the trustee's objection.

The court will issue a minute order.

6. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR
DAO-3

MOTION TO VALUE COLLATERAL OF
J.P. MORGAN CHASE BANK, N.A.
3-5-14 [[41](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s ("Chase") claim in this case secured by the second deed of trust on real property located at 10318 Chaves Court, Elk Grove, California ("Property") is a secured claim, and the balance of its claim is an

In the absence of opposition, for the purposes of this motion, the Property had a value of \$344,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$415,000.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00.

7. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR MOTION TO AVOID LIEN OF PAYMENT
DAO-4 SOLUTIONS
3-5-14 [[45](#)]

The debtors seek to avoid an alleged judicial lien in favor of Payment Solution to the extent the lien encumbers their claim of exemption in their residence located at 10318 Chaves court, Elk Grove, California (the "Property"). In order to avoid a judicial lien, the debtors must show evidence satisfying the following required elements:

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

The court will issue a minute order.

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

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed at the debtor's request by order entered March 24, 2014 (Dkt. 43).

The court will issue a minute order.

9. [14-21133](#)-B-13 ELMA VIRTUCIO MOTION TO CONFIRM PLAN
BMV-2 2-28-14 [[30](#)]
CASE DISMISSED 3/24/14

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

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed at the debtor's request by order entered March 24, 2014 (Dkt. 43).

The court will issue a minute order.

10. [13-20207](#)-B-13 CORNELIA CATA OBJECTION TO CLAIM OF ROMEL
PGM-7 MAGNO HAMO, CLAIM NUMBER 6
2-18-14 [[217](#)]

Tentative Ruling: The motion is converted to an adversary proceeding. Pursuant to Fed. R. Bankr. P. 9014(c), all of the rules of Part VII shall apply. The clerk shall assign an adversary proceeding number, and docket control number PGM-7 shall no longer be used in reference to this matter. On or before May 2, 2014, the debtor, as plaintiff, shall (1) pay the balance of the adversary proceeding filing fee that is due and (2) shall file an amended complaint that complies with Fed. R. Bankr. P. 7008 and all other applicable rules and that names creditor Romel Magno Hamo as defendant. On or before May 2, 2014, the plaintiff shall serve a summons and the amended complaint. Pursuant to Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a)(3), the defendant shall have to and including the later of May 16, 2014, or the response date set forth in the summons to answer or otherwise respond to the amended complaint. The adversary proceeding will next appear on the status conference calendar date set in the summons.

The motion is converted to an adversary proceeding for the purpose of liquidating the defendant's claims against the debtor, so as to determine the amount to be distributed to the defendant pursuant to the debtor's chapter 13 plan.

The court will issue a minute order.

11. [13-30034](#)-B-13 DEBRA BENNIE
RAC-2

MOTION TO AVOID LIEN OF UNIFUND
CCR, LLC
3-7-14 [[30](#)]

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 Unifund CCR, LLC, recorded in the official records of Yolo County, Document No. 2013-002-3543-00, is avoided as against the real property located at 960 Reuter Drive, West Sacramento, California.

The subject real property has a value of \$127,244.00 as of the date of the petition. The unavoidable liens total \$200,128.00. 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.

12. [12-32736](#)-B-13 ROBERT BAIRD
DEF-2

MOTION TO BORROW
3-31-14 [[67](#)]

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

The motion is granted. The debtor is authorized to incur new debt on the terms set forth in the FHA Loan Approval filed as Exhibit "A" to the motion (Dkt. 70 at 3).

The court will issue a minute order.

13. [11-49037](#)-B-13 ERICA LANNOM
CAH-3

MOTION TO MODIFY PLAN
3-6-14 [[44](#)]

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 21, 2014, is confirmed.

The court will issue a minute order.

14. [13-33339](#)-B-13 ANTHONY HOFFMAN MOTION TO CONFIRM PLAN
JSO-6 2-27-14 [[75](#)]

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

The motion is granted and the amended plan filed February 27, 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.

15. [14-21240](#)-B-13 DIANE OHARA OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
3-25-14 [[24](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed February 11, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before April 29, 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.

16. [14-22944](#)-B-13 CHRISTOPHER PETERS MOTION TO EXTEND AUTOMATIC STAY
MG-1 4-1-14 [[12](#)]

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 April 11, 2014 (Dkt. 19), the bankruptcy case was dismissed due to the debtor's failure to comply with the Notice of Incomplete Filing and Notice of Intent to Dismiss Case If Documents Are Not Timely Filed (Dkt. 3).

The court will issue a minute order.

17. [14-22445](#)-B-13 JORGE REYES AND ROSARIO MOTION TO VALUE COLLATERAL OF
TOG-1 SANCHEZ BANK OF AMERICA
3-12-14 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BofA") claim in this case secured by the second deed of trust on real property located at 31 Lochmoor Circle, Sacramento California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$102,398.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Seterus with a balance of approximately \$133,600.00. 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.

18. [12-31346](#)-B-13 RAUL/ROSA YANEZ MOTION TO INCUR DEBT
JE-1 3-28-14 [[43](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The debtors have not shown that this motion for authorization to purchase a vehicle and to incur debt to purchase the vehicle is ripe for adjudication. The debtors have not shown that if this motion is granted that an actual financing and sale transaction will take place, as they have shown no evidence that they will actually be able to obtain the financing that they propose in the motion. The Buyer's Order and Bill of Sale (Dkt. 45 at 4) filed by the debtor does not constitute such evidence as it does not contains details regarding the terms of financing of the purchase price for the vehicle, the identity of the lender or whether the debtors have been approved to obtain financing.

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 evidence of an actual agreement for the financing of the purchase of the vehicle, no case or controversy within the meaning of Article III exists.

The court will issue a minute order.

19. [14-21846](#)-B-13 MARK/COLLEEN MARTIN MOTION TO SELL
SDH-1 3-11-14 [[16](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. By this motion the debtors seek court approval to short sell commercial real property located at 10 North East Street, Suite 104, Woodland, CA 95776 to Richard Currie and Joan Currie for \$180,000.00. However, the debtors have failed to establish that there is an actual short sale for the court to approve because they have provided no evidence that the lienholders have consented to the 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 the "Seller's Estimated Settlement Statement" attached as Exhibit "A" to the motion (Dkt. 19, p.2) (the "Statement"). However, this unsigned document is insufficient evidence that all lienholders who will be accepting less than the full amount they are owed have consented to the short sale. Additionally, joint debtor Colleen Martin ("Mrs. Martin") states in her sworn declaration (Dkt. 18) that "some of the debts are being partially forgiven as long as I do not receive anything out of the sale." It is impossible for the court to tell from the Statement which of the lienholders have agreed to partially forgive the debts they are owed. The court requires consent letters or other concrete evidence from these lienholders demonstrating their willingness to partially forgive the debts in order to allow the short sale to close. The Statement and assertions made by Mrs. Martin are insufficient. Because the debtors have failed to establish that all lienholders have consented to the short sale, there is no actual sale for the court to approve. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

20. [14-22446](#)-B-13 LESLIE SMITH
SJS-1

MOTION TO VALUE COLLATERAL OF
HFC BANK, N.A.
3-13-14 [[10](#)]

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 HFC Bank, N.A.'s claim secured by the second deed of trust on real property located at 184 Chelsea Court, Vacaville, CA 95687 (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 \$313,292.00 on the date of the petition. The Property is encumbered by a first deed of trust held by HFC Bank, N.A. with a balance of approximately \$457,796.00. Thus, the value of the collateral available to HFC Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

21. [12-21947](#)-B-13 ALLAN/NATALIE ANGELMAN
BLG-3

MOTION TO VACATE DISMISSAL OF
CASE
3-28-14 [[65](#)]

CASE DISMISSED 3/7/14

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

22. [13-30947](#)-B-13 GRANT PARKISON
PPR-1

MOTION TO FILE CLAIM AFTER
CLAIMS BAR DATE
3-6-14 [[33](#)]

Tentative Ruling: The court treats this motion as one 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 motion is denied.

By this motion, creditor Bank of America, N.A. ("BofA") seeks court approval to file a proof of claim even though the bar date for non-governmental creditors expired on January 8, 2014 (Dkt. 21) (the "Bar Date"). BofA argues that it would be in the best interest of justice to allow it to file an untimely proof of claim so that it may receive

payments on the amount of its claim as determined by the court's order granting a previously heard motion to value collateral (Dkt. 23) (the "Order"). BofA further claims that there would be no prejudice to either the debtor or the estate by allowing it to file an untimely proof of claim. Finally, BofA asserts that the court should treat the debtor's prior actions in this case as an informal proof of claim filed on its behalf so that its failure to file a formal proof of claim is excused. The court finds these arguments unpersuasive.

To start, Ninth Circuit authority holds that a claim is timely filed and allowed for the purposes of a chapter 13 case only if one of the requirements under Federal Rule of Bankruptcy Procedure 3002(c) is satisfied. 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, 153 (B.A.P. 9th Cir. 1999) (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 Federal Rule of Bankruptcy Procedure 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. Federal Rule of Bankruptcy Procedure 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). In this case, BofA has failed to establish that any of the circumstances under Federal Rule of Bankruptcy Procedure 3002(c) apply. BofA's arguments that it wishes to receive payments pursuant to the Order and that no prejudice will befall either the debtor or the estate if it is allowed to file an untimely proof of claim find no support in Federal Rule of Bankruptcy Procedure 3002(c).

The court finds that the actions taken by the debtor in this case do not give rise to an informal proof of claim filed on behalf of BofA. In the Ninth Circuit, to constitute an informal proof of claim a creditor must point to an explicit demand by the creditor which shows the nature and amount of the claim and an intent to hold the debtor liable for it. Sambo's Rests., Inc. v. Wheeler (In re Sambo's Rests., Inc.), 754 F.2d 811, 815 (9th Cir. 1985) (emphasis added). Here, BofA argues that the debtor and trustee knew of the nature and amount of its claim because the schedules, chapter 13 plan, and motion to value collateral, all of which contain the information that would be required in a proof of claim, were filed prior to the Bar Date. The court disagrees.

The debtor's schedules, the confirmed plan (Dkt. 7), and the motion to value collateral do not give rise to an informal proof of claim because they do not constitute explicit demands by BofA showing the nature and amount of BofA's claim and evidencing an intent by BofA to hold the debtor liable. A proposed payment under a plan cannot substitute for a filed proof of claim in determining the pre-petition debts to receive dividends. 11 U.S.C. § 502(b)(9). Section 2.01 of the confirmed plan, to which BofA is bound, clearly states that "...a claim will not be paid pursuant to this plan unless a timely proof of claim is filed by or on behalf of a creditor, including a secured creditor." Furthermore, an undisputed debt scheduled in a debtor's schedule of liabilities can only constitute prima facie evidence of the validity and amount of the claim of the creditor in chapter 9 or chapter 11 cases, not chapter 13. See Fed. R. Bankr. P. 3003(a), (b)(1).

BofA's reliance on In re Holm, 931 F.2d 620, 623 (9th Cir. 1991) is ineffective as it does nothing more than stand for the same basic principle cited above in Sambo's Rests., Inc. In Holm, a chapter 11 case, the Ninth Circuit found that a judgment creditor's filing of a disclosure statement prior to the bar date in a chapter 11 debtor's case satisfied the requirements for an informal proof of claim. The obvious difference between Holm and the present case is that, unlike the judgment creditor in Holm, BofA took no action prior to the Bar Date that constitutes an explicit demand showing the nature and amount of its claim or evidencing an intent to hold the debtor liable. Simply citing to actions taken by the debtor or trustee in this case, without more, is insufficient to create an informal proof of claim.

The court will issue a minute order.

23. [10-51953](#)-B-13 PAUL/JENNIFER THOMPSON MOTION TO VALUE COLLATERAL OF
SDB-6 BANK OF AMERICA, N.A.
3-6-14 [[74](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 1125 Hopkins Drive, Dixon, CA 95620 (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 \$220,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage, LLC with a balance of approximately \$399,744.03. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

24. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL MOTION TO VALUE COLLATERAL OF
RGJ-1 WELLS FARGO
3-4-14 [[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 Wells Fargo Bank, N.A.'s claim secured by the second deed of trust on real property located at 108 Belvedere Court, Vallejo, CA 94589 (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 \$170,000.00 on the date of the petition. The

Property is encumbered by a first deed of trust held by Seterus Mortgage with a balance of approximately \$183,336.00. Thus, the value of the collateral available to Wells Fargo Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

25. [10-32861](#)-B-13 ESMERALDA WYMORE MOTION TO INCUR DEBT
JLB-11 3-27-14 [[144](#)]

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.

26. [13-36065](#)-B-13 ARIE/KATHLEEN VAN DEN CONTINUED MOTION TO SELL
SLH-1 AKKER 3-11-14 [[28](#)]

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.

27. [14-20568](#)-B-13 NATALIYA SHAYNYUK OBJECTION TO DEBTOR'S CLAIM OF
JPJ-3 EXEMPTIONS
3-17-14 [[39](#)]
CASE DISMISSED 3/17/14

Tentative Ruling: The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed by order entered March 17, 2014 (Dkt. 37).

The court will issue a minute order.

28. [10-40069](#)-B-13 CAROLYN WILLIAMS MOTION TO MODIFY PLAN
MET-9 3-2-14 [[110](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed March 2, 2014 (Dkt. 115) is denied.

The trustee's objection that the plan's feasibility depends on the debtor receiving a permanent loan modification with Wells Fargo Home Mortgage is sustained because, to date, the debtor has failed to either obtain court approval of a permanent loan modification or even file a motion for said

approval. The debtor acknowledges in her motion that she is yet to even receive the final loan modification documents. The court notes that there is no evidence on the docket that the debtor ever filed a motion for court approval of the trial loan modification with Wells Fargo Home Mortgage, the agreement for which was apparently made on October 1, 2013 (Dkt. 113, p.2). The debtor was never given court authority to enter into this agreement; rather, it appears from the evidence provided that the debtor simply bypassed the court altogether and went directly to the trustee with the information regarding the trial period payments. Additionally, the debtor did not seek court approval prior to March 2, 2014 of a modified plan to reflect the decrease in plan payments that resulted from paying the Wells Fargo Home Mortgage Class 2 claim outside of the plan during the trial period. The letter dated November 25, 2013 from debtor's counsel to the trustee's office (Dkt. 113, p.7) is not a plan modification, which requires a motion to modify a chapter 13 plan that has been properly filed, served, and set for hearing pursuant to the Local Bankruptcy Rules and the Federal Rules of Bankruptcy Procedure.

Regarding the trustee's objection that the plan fails to provide for the secured claim filed by Solano County Tax Collector, the court acknowledges that the claim was paid in full under an earlier, confirmed version of the plan and that the parties are in agreement as to the language that could be included in an order confirming plan to preserve the prior plan treatment and remedy the objection. However, there is no order confirming plan on this motion because the trustee's first objection has been sustained. Accordingly, the second objection is also sustained.

The court will issue a minute order.

29. [11-25374](#)-B-13 YIA VUE
DBJ-5

MOTION TO MODIFY PLAN
2-25-14 [[62](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted and the modified plan filed February 25, 2014 (Dkt. 66) is confirmed with the following modification: Section 7.02 shall state "The debtor has paid a total of \$101,038.10 to the trustee through February 2014. Commencing March 2014, the monthly plan payments shall be \$1,492.74 for the remainder of the plan."

The court will issue a minute order.

30. [13-21474](#)-B-13 SHIRLEY STEWART
MET-3

OBJECTION TO CLAIM OF CREDIT
BUREAU ASSOCIATES
2-17-14 [[57](#)]

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

The debtor's objection is sustained. Claim no. 11 on the court's claims

register, filed on June 7, 2013 (the "Claim") by Credit Bureau Associates (the "Claimant") is disallowed, except to the extent already paid by the trustee pursuant to the terms of the confirmed plan.

The debtor questions the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 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 alleges without dispute that the Claim is time-barred under California law. Pursuant to California Code of Civil Procedure Section 337, the statute of limitations on an action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in California Code of Civil Procedure 336(a), is four years. Cal. Code Civ. P. § 337. The Claim itself states that the basis for the Claim is "money loaned/services performed," that these services were completed on November 21, 2005 (more than eight (8) years prior to the petition date), and that the date of last payment by the debtor to the Claimant occurred on January 18, 2008 (more than five (5) years prior to the petition date). The Claim itself provides sufficient evidence that the Claimant's cause of action on its Claim began to accrue more than four years ago. By failing to respond to the objection, the Claimant has failed to carry its burden of proving up the Claim. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

31. [13-21474](#)-B-13 SHIRLEY STEWART
MET-4

OBJECTION TO CLAIM OF GALAXY
ASSET PURCHASING, LLC
2-17-14 [[61](#)]

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

The debtor's objection is sustained. Claim no. 7 on the court's claims register, filed on April 24, 2013 (the "Claim") by Quantum3 Group, LLC as agent for Galaxy Asset Purchasing, LLC (the "Claimant") is disallowed, except to the extent already paid by the trustee pursuant to the terms of the confirmed plan.

The debtor questions the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 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 alleges without dispute that the Claim is time-barred under California law. Pursuant to the California Code of Civil Procedure Section 337, the statute of limitations on an action upon any contract,

obligation or liability founded upon an instrument in writing, except as provided in California Code of Civil Procedure 336(a), is four years. Cal. Code Civ. P. § 337. The Claim itself states that the basis for the Claim is "unsecured debt." The itemization of the Claim indicates that the debtor opened a credit account with the Claimant on May 1, 1994. The date of the last transaction on the account occurred on May 1, 1994. The date of last payment by the debtor to the Claimant occurred on July 2, 1999. Finally, the charge off date on the account was May 28, 1999. The Claim itself provides sufficient evidence that the Claimant's cause of action on its Claim began to accrue more than four years ago. By failing to respond to the objection, the Claimant has failed to carry its burden of proving up the Claim. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

32. [13-21474](#)-B-13 SHIRLEY STEWART
MET-5

MOTION TO MODIFY PLAN AND/OR
MOTION FOR ORDER ALLOWING
PAYMENT OF LATE FILED CLAIM
2-17-14 [[65](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed February 17, 2014 (Dkt. 69) is denied. The debtor's request that the court authorize the trustee to make distributions to unsecured creditor FedLoan Servicing ("FLS") is denied.

The trustee's opposition, which addresses only the motion to confirm the modified plan, is sustained for the reasons set forth therein.

The debtor's request to allow payment of the untimely claim filed by FLS is denied because she cites to no legal authority either supporting the proposition that an unsecured creditor who files an untimely proof of claim should still receive payments or explaining why this matter is not governed by In re Coastal Alaska Airlines, Inc., 920 F.2d 1428, 1432-33 (9th Cir. 1990) and In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999). LBR 9014-1(d) (5).

The court will issue a minute order.

33. [14-20377](#)-B-13 CHRISTOPHER/SHAYNA
BSJ-1 HOVENCAMP

MOTION TO VALUE COLLATERAL OF
TOYOTA MOTOR CREDIT CORPORATION
3-7-14 [[28](#)]

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. \$12,930.47 of Toyota Motor Credit Corporation's ("TMCC") claim secured by a 2011 Toyota Corolla (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 \$10,500.00 on the date of the petition; however, the secured claim cannot be reduced to that amount because of the "hanging paragraph" at the end of 11 U.S.C. § 1325(a). The secured claim can only be reduced to the amount that represents the purchase money security interest that is protected by the "hanging paragraph." Here, \$3,929.00 of TMCC's debt secured by the Collateral represents "negative equity" from a prior vehicle rolled into the debt. That negative equity amount is not part of the purchase money security interest protected by the "hanging paragraph." In re Penrod, 392 B.R. 835 (9th Cir. BAP 2008).

The court will issue a minute order.

34. [11-45179](#)-B-13 BUD/AMELITA DOCTOLERO MOTION TO SELL
PGM-3 3-11-14 [[62](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. By this motion the debtors seek court approval to short sell real property located at 8227 Lyton Way, Elk Grove, CA 95624 to Patrick Aguele for \$332,000.00. However, the debtors have failed to establish that there is an actual short sale for the court to approve because they have provided no evidence that the lienholders have consented to the 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 Exhibits "C" and "D" to the motion copies of the approval letters from Everhome Mortgage ("EM") and CCO Mortgage ("CCO"), respectively (Dkt. 65, p.19-28). However, the letter from EM clearly indicates that its consent to the short sale is contingent upon the closing occurring on or before March 14, 2014. Today's date is April 15, 2014. The debtors have provided no evidence that EM has consented to an extension of this deadline. Although no such conditional language is present in CCO's letter, the court cannot approve the short sale until all lienholders consent. Because the debtors have failed to show that EM consents to the short sale, there is no actual sale for the court to approve. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

35. [13-31095](#)-B-13 GEOFFREY GREITZER
DBJ-3

MOTION TO CONFIRM PLAN
2-18-14 [[84](#)]

Tentative Ruling: The motion is continued to a final evidentiary hearing on June 10, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32. At the evidentiary hearing, the court will address only the issues raised by ATL Holdings, LLC ("ATL") in its written opposition (Dkt. 95). The debtor and ATL shall arrive at the hearing prepared to present evidence on whether the debtor's plan satisfies 11 U.S.C. § 1325(a)(6), which will include, without limitation, evidence of (1) the total monthly income the debtor receives from the operation of his business, (2) the debtor's current monthly expenses (including all expenses relating to property taxes owed on each property owned by the debtor), and (3) the debtor's fiancée's commitment and ability to contribute \$1,500.00 to the debtor's income every month for the remaining life of the plan.

On or before June 3, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtors' binder tabs shall be consecutively numbered, commencing at number 1. ATL's binder tabs shall be consecutively lettered, commencing at letter A. On or before June 3, 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 Confirm Second Amended Plan. 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.

36. [13-31095](#)-B-13 GEOFFREY GREITZER
DBJ-3

COUNTER MOTION TO DISMISS CASE
3-27-14 [[92](#)]

Tentative Ruling: This matter is continued to June 24, 2014, at 9:32 a.m.

37. [11-30734](#)-B-13 DONALD/VALERIE BARBITTA
CA-2

DEBTORS' MOTION TO SELL OLD
HOME AND PURCHASE NEW HOME
O.S.T.
4-8-14 [[50](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3) (motions set on shortened time). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed without prejudice.

The motion is dismissed without prejudice because there is no evidence that the debtors complied with the requirements of the order shortening time docketed April 10, 2014 (Dkt. 55) (the "Order"). Specifically, the debtors failed to timely (1) serve a copy of the Order on all parties previously served with the debtors' motion to sell and incur debt (Dkt. 50), (2) file and serve the supplemental briefing and evidence enumerated in the Order, and (3) file a certificate of service with the court.

The court will issue a minute order.