

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

**June 24, 2014 at 9:32 a.m.**

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| 1. <a href="#">14-24301</a> -B-13    JULIE RAYMOND<br>KK-2 | OBJECTION TO CONFIRMATION OF<br>PLAN BY LOANCARE<br>5-29-14    [ <a href="#">14</a> ] |
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**Tentative Ruling:** The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objection is sustained. Confirmation of the initial plan filed April 26, 2014, is denied.

The creditor's objection is sustained based on the filing of a secured claim (the "Claim") by the creditor on June 20, 2014, in the amount of \$215,472.63, which Claim asserts pre-petition arrears in the amount of \$18,168.81, the same amount asserted by the creditor in the objection. The plan is insufficiently funded to cure the pre-petition arrears as set forth in the Claim.

The court makes no finding regarding the outcome of this objection had the creditor not filed the Claim. However, the court notes that the court's local rules require that every motion be supported by evidence supporting its factual allegations. LBR 9014-1(d)(6). The unsworn statement of the creditor in the objection regarding the amount of pre-petition arrears owed by the debtor is not admissible evidence.

The court will issue a minute order.

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| 2. <a href="#">13-34802</a> -B-13    DARRYL CARTER<br>RJ-2 | MOTION TO CONFIRM PLAN<br>4-22-14    [ <a href="#">51</a> ] |
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**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed April 22, 2014, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using

EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

3. [14-23502](#)-B-13 JANAYE WHIGHAM  
JPJ-1  
CASE DISMISSED 5/29/14
- OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON, TRUSTEE  
5-23-14 [[22](#)]

**Tentative Ruling:** The chapter 13 trustee's objection is dismissed.

The objection is moot. The bankruptcy case was dismissed by order entered May 29, 2014 (Dkt. 27), based on the debtor's failure to pay filing fees.

The court will issue a minute order.

4. [14-24302](#)-B-13 DOUGLAS/MAUREEN RIELLEY  
JPJ-1
- OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE, JAN P. JOHNSON  
AND/OR MOTION TO DISMISS CASE  
5-27-14 [[17](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed April 26, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 8, 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.

5. [14-24302](#)-B-13 DOUGLAS/MAUREEN RIELLEY  
LHL-1
- OBJECTION TO CONFIRMATION OF  
PLAN BY CITIZENS BANK, N.A.  
5-29-14 [[28](#)]

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

The creditor's objection is sustained. Confirmation of the initial plan filed April 26, 2014, is denied.

The court will issue a minute order.

6. [13-35903](#)-B-13 MARK/DEJA HERBERS MOTION TO CONFIRM PLAN  
RWH-2 4-29-14 [[41](#)]

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

The court will issue a minute order.

7. [13-35903](#)-B-13 MARK/DEJA HERBERS COUNTER MOTION TO DISMISS CASE  
RWH-2 6-4-14 [[46](#)]

**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 July 8, 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.

8. [14-25203](#)-B-13 ANDREW/YVONNE GARCIA MOTION TO VALUE COLLATERAL OF  
RK-1 SANTANDER CONSUMER USA, INC.  
5-23-14 [[11](#)]

**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. \$7000.00 of Santander Consumer USA's claim in this case secured by a 2009 Toyota Camry ("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 \$7000.00 on the date of the petition.

The court will issue a minute order.

9. [12-22007](#)-B-13 JEANNINE GRUBB  
SJS-1

MOTION TO MODIFY PLAN  
5-7-14 [[27](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed May 7, 2014, is confirmed.

The chapter 13 trustee objects on the ground that the plan does not specify a specific post-petition arrearage amount to be paid to class 1 secured creditor Ocwen Loan Servicing ("Ocwen"). However, the class 1 table of the modified plan provides for payment of post-petition arrears owed to Ocwen in the amount of \$5,575.12 to be paid via an arrearage dividend of \$278.76 per month.

The court will issue a minute order.

10. [14-22013](#)-B-13 FRANCISCO AGREDANO  
JHW-1 ESQUIVIAS AND ROSA GUZMAN

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
AMERICREDIT FINANCIAL SERVICES,  
INC.  
4-9-14 [[19](#)]

WITHDRAWN BY M.P.

**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 objecting creditor withdrew the objection on June 10, 2014 (Dkt. 68).

11. [14-22013](#)-B-13 FRANCISCO AGREDANO  
JPJ-1 ESQUIVIAS AND ROSA GUZMAN

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
4-8-14 [[16](#)]

**Tentative Ruling:** This objection and motion to dismiss continued from April 29, 2014. The matter remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained in part and overruled in part. Confirmation of the initial plan filed February 28, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 8, 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 trustee objected to confirmation on the ground that the debtors had

not yet successfully valued the collateral of Golden 1 Credit Union ("Golden 1") and AmeriCredit Financial Services, Inc. ("AmeriCredit").

The trustee's objection regarding valuation of Golden 1's collateral is overruled. The debtors' motion to value Golden 1's collateral was granted by order entered May 1, 2014 (Dkt. 50).

The trustee's objection regarding valuation of AmeriCredit's collateral is sustained. Although the debtor and AmeriCredit resolved their dispute over the value of AmeriCredit's collateral via a stipulation (Dkt. 63) which was approved by order entered June 2, 2014 (Dkt. 67), the plan is insufficiently funded to pay the full amount of AmeriCredit's agreed-upon secured claim over the 60-month plan term. Accordingly, confirmation of the plan is denied.

The court will issue a minute order.

12. [14-25014](#)-B-13 PAUL/ALICE SALINAS MOTION TO VALUE COLLATERAL OF  
LRR-1 OPUS BANK  
5-20-14 [[10](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained in part. The opposition filed by Opus Bank ("Opus") is dismissed without prejudice. The motion is denied.

As an initial matter, the court notes that the debtors filed a notice of withdrawal of the motion on June 19, 2014. A unilateral withdrawal of the motion is ineffective. This motion is a contested matter under Fed. R. Bankr. P. 9014, and therefore the provisions of Fed. R. Bankr. P. 7041 regarding dismissal of actions are applicable to it. The debtor cannot unilaterally withdraw the motion, as the trustee and Opus have filed written opposition. See Fed. R. Bankr. P. 7041, incorporating Fed. R. Civ. P. 41(a)(1)(A)(i).

The chapter 13 trustee's opposition is sustained to the extent that the trustee objects that the debtors have not provided sufficient evidence with the motion regarding the details of the loan transaction between the debtors, Opus and the debtors' LLC, Alas One Sacramento, LLC ("Alas"). The debtors seek by this motion to value their residence located at 9889 Harvey Road, Galt, California (the "Residence") for the purpose of fixing Opus' claim based on a third deed of trust on the Residence at \$0.00. According to the motion, Opus' claim is based on a business loan. However, as the trustee points out, the debtors' schedules also reference real property located at 11230 Prospect Drive, Sutter Creek, California (the "Commercial Property"), which Commercial Property is secured by approximately \$1.6 million in secured debt and is "held under" Alas. as the trustee points out, it is unclear from the motion, its supporting papers or the schedules whether the Residence is the sole collateral for the obligation owed to Opus or whether the additional collateral secures the obligation, evidence of the value of which has not been presented in connection with the motion. 11 U.S.C. § 506(a) cannot be used as a vehicle to secure a "release price" for one item of a creditor's collateral while leaving the rest encumbered.

Opus' opposition is dismissed without prejudice because Opus' opposition

focuses on the debtors' asserted value of the Residence. The court makes no finding as to the value of the Residence at this time, as it must first be determined what property comprises Opus' collateral and whether that property can be valued under § 506(a).

The court will issue a minute order.

13. [14-21515](#)-B-13 MIGUEL/MAIRA JAQUEZ MOTION TO VALUE COLLATERAL OF  
JME-2 CHASE BANK, N.A.  
5-2-14 [[32](#)]

**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 703 Rideout Way, Marysville, 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 \$86,778.00 on the date of the petition. The Property is encumbered by a first deed of trust held by M&T Bank with a balance of approximately \$124,000.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00.

The court will issue a minute order.

14. [14-21515](#)-B-13 MIGUEL/MAIRA JAQUEZ MOTION TO CONFIRM PLAN  
JME-3 5-15-14 [[38](#)]

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

The motion is granted and the amended plan filed May 13, 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. [11-48517](#)-B-13 EDGAR HULL MOTION TO APPROVE LOAN  
CJY-1 MODIFICATION  
5-20-14 [[44](#)]

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

The motion is not ripe for adjudication. The debtor seeks authorization to enter into a loan modification agreement with Ocwen Loan Servicing, LLC ("Ocwen"), with respect to the loan obligation secured by the first deed of trust on the debtor's residence. However, the debtor has not shown that if the motion is granted that the loan modification will actually occur, as he has not shown sufficient evidence of Ocwen's consent to the modification. The copy of the Loan Modification Agreement filed as a Exhibit "A" to the motion is not signed by either the debtor or, more importantly, Ocwen. As a result, 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, loan modification agreement to which all necessary parties consent, no case or controversy within the meaning of Article III exists.

Ocwen's consent to the loan modification may be manifested in ways other than executing the modification agreement. The creditor may file a response to the motion stating its agreement, or it may appear at the hearing on the motion and state its agreement on the record. Absent such evidence of consent, however, the motion is dismissed without prejudice.

The court will issue a minute order.

16. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN MOTION TO AVOID LIEN OF  
MRL-3 DISCOVER BANK  
5-7-14 [[39](#)]

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

The debtors seek to avoid a judicial lien in favor of Discover Bank to the extent it impairs their claim of exemption in their residence located at 2801 Stone Lane, Placerville, California (the "Property").

The motion is denied without prejudice because the evidence submitted with the motion is inconsistent with the factual assertions contained in the motion. Specifically, the motion alleges that the value of the Property is \$181,000.00 (Dkt. 39 at 2); the court notes that this value is consistent with the value of the Property listed in the debtors' sworn schedules. The declaration of the debtors filed in support of the motion (Dkt. 41) states that the value of the Property is \$131,000.00, without explanation as to the why the value set forth in the schedules is incorrect. If the value of the Property is \$181,000.00, then there is equity in the Property to support a judicial lien after taking into account the debtors' claimed exemption and the balances of the consensual liens encumbering the Property. If the value of the Property is \$131,000.00, there is no equity to support a judicial lien. However, in the absence of evidence of a basis for the asserted change in the debtors' opinion of value between the March 17, 2014, date of the filing of the petition and the date of the filing of the motion, the motion is denied without prejudice.

The court will issue a minute order.

17. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN MOTION TO CONFIRM PLAN  
MRL-2 5-7-14 [[34](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed May 7, 2014, is denied.

The trustee's opposition is sustained for the reasons set forth therein. Elsewhere on this calendar the court has denied without prejudice the debtors' motion to avoid the judicial lien of Discover Bank.

The court will issue a minute order.

18. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN COUNTER MOTION TO DISMISS CASE  
MRL-2 6-4-14 [[47](#)]

**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 July 8, 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.

19. [13-29516](#)-B-13 MICHAEL CHURSENOFF MOTION TO MODIFY PLAN  
MAS-2 5-5-14 [[50](#)]

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

The motion is dismissed without prejudice.

The motion was not properly served. Fed. R. Bankr. P. 2002(b) requires that "all creditors" be given notice of the time for filing objections and the hearing to consider confirmation of a chapter 13 plan. The movant's certificate of service (Dkt. 54) does not show that the movant served all creditors listed on the master address list (Dkt. 4) with the motion. It appears that the creditor served the motion on all parties who filed claims in the case, but the rule is not limited to those parties. As

The court will issue a minute order.



20. [12-41021](#)-B-13 ARLISA PARISH  
WW-7

CONTINUED MOTION TO MODIFY PLAN  
4-25-14 [[105](#)]

**Tentative Ruling:** This motion continued from June 10, 2014, to allow the debtor to file a corrected version of the modified plan which includes the signature of her bankruptcy counsel. The debtor did so timely on June 12, 2014. The court now issues the following tentative ruling.

The chapter 13 trustee's opposition is overruled. The motion is granted and the corrected modified plan filed June 12, 2014 (Dkt. 123) is confirmed.

The trustee's opposition is resolved by the filing of the corrected modified plan on June 12, 2014.

The court will issue a minute order.

21. [14-22225](#)-B-13 EMMANUEL MURALLO AND  
EJS-1 FRANCIESCA MENDOZA

MOTION TO CONFIRM PLAN  
5-7-14 [[19](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted and the amended plan filed May 7, 2014, will be confirmed with the following modification to be included in the order confirming the plan: The plan's additional provisions for distribution of payments shall be modified as follows: 1.) the sentence beginning "The remaining balance" and ending "paid in full" is stricken from the plan and replaced with the following statement "The debtors shall pay an administrative expense dividend of \$200.00 per month until administrative expenses, including the allowed fees and costs of the debtors' attorney, are paid in full."

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.

22. [14-22225](#)-B-13 EMMANUEL MURALLO AND  
EJS-1 FRANCIESCA MENDOZA

COUNTER MOTION TO DISMISS CASE  
6-4-14 [[28](#)]

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

The countermotion is denied.

The court will issue a minute order.

23. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR MOTION TO CONFIRM PLAN  
DAO-9 5-13-14 [[91](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained in part and overruled in part. The motion to confirm the amended plan filed May 13, 2014, is denied.

The trustee's opposition regarding the dependence of the plan on successful motions to value the collateral of Santander Consumer USA and BMW Financial Services is overruled. The debtors' motions to value the collateral of those secured creditors were granted by orders entered June 10, 2014 (Dkt. 108, 110).

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

The court will issue a minute order.

24. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR COUNTER MOTION TO DISMISS CASE  
DAO-9 6-5-14 [[99](#)]

**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 July 8, 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.

25. [14-23729](#)-B-13 REGINALD/ANGELICA PASCUAL OBJECTION TO CONFIRMATION OF  
ASW-1 PLAN BY HSBC BANK USA, N.A.  
6-4-14 [[35](#)]

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

The creditor's objections to confirmation are dismissed. The creditor's request that the case be dismissed and that a bar on the debtors' ability to re-file under any chapter of the Bankruptcy Code is denied without prejudice.

The creditor's objections to confirmation as dismissed because they were not timely filed and served. The Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines entered on May 1, 2014 (Dkt. 18), set a deadline for the filing and service of objections to confirmation of the initial plan of May 29, 2014. The creditor's objections to confirmation were filed and served on June 4, 2014.

As to the creditor's request that the case be dismissed and that the court impose a bar on the debtors' ability to refile, the request is denied without prejudice because the creditor provides no legal authority or analysis supporting the request. LBR 9014-1(d)(5) requires that each motion, opposition and reply shall cite the legal authority relied upon the filing party. It appears from the objection that the creditor seeks dismissal and a bar to refiling based on the debtors' case filing history, possibly on a theory of bad faith. The court does not consider multiple filings alone to constitute evidence of bad faith. See Downey Savings and Loan Ass'n v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir. 1987). It is not incumbent on the court to search through the records of the debtors' prior cases in order to uncover additional facts which would support the creditor's argument.

The court will issue a minute order.

26. [14-23729](#)-B-13 REGINALD/ANGELICA PASCUAL      OBJECTION TO CONFIRMATION OF  
JPJ-1      PLAN BY JAN P. JOHNSON, TRUSTEE  
5-23-14 [[27](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed April 25, 2014, is denied.

The court will issue a minute order.

27. [14-23729](#)-B-13 REGINALD/ANGELICA PASCUAL      OBJECTION TO CONFIRMATION OF  
MRG-1      PLAN BY CAPITAL ONE AUTO  
FINANCE  
5-5-14 [[23](#)]

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

The creditor's objection is sustained. Confirmation of the initial plan filed April 25, 2014, is denied.

The court will issue a minute order.

28. [14-24030](#)-B-13 BRANDON CLOGSTON  
MET-1

CONTINUED MOTION TO VALUE  
COLLATERAL OF SOUTHERN  
CALIFORNIA POSTAL CREDIT UNION  
5-4-14 [[14](#)]

**Tentative Ruling:** This motion continued from June 10, 2014. This motion was properly filed under LBR 9014-1(f)(1). The court issues the following abbreviated ruling.

The written opposition filed by creditor Souther California Postal Credit Union ("SCPCU") is stricken. The motion is denied without prejudice.

SCPCU's written opposition is stricken because it was not timely filed and served. This motion was properly filed under Local Bankruptcy Rule 9014-1(f)(1). LBR 9014-1(f)(1)(B) requires written opposition to a motion filed under LBR 9014-1(f)(1) to be filed and served "at least fourteen (14) days preceding the date or continued date of the hearing." SCPCU's opposition was filed and served only six days before the date of the continued hearing.

Even though SCPCU's opposition is stricken, the motion is nevertheless denied without prejudice because the debtor has not submitted evidence of the "replacement value," as that term is defined by 11 U.S.C. § 506(b), of the 2011 Honda CR-Z (the "Vehicle") which he seeks to value by this motion. "Replacement value" of property acquired for personal, family or household purposes is defined as "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(b). The debtor's supporting declaration (Dkt. 16) indicates that he determined the value of the Vehicle based on a NADA valuation of the Vehicle's "trade-in" value. "Trade-in" value is not the "price a retail merchant would charge" for the Vehicle. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

29. [14-24030](#)-B-13 BRANDON CLOGSTON  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY SOUTHERN CALIFORNIA  
POSTAL CREDIT UNION  
5-12-14 [[19](#)]

**Tentative Ruling:** The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, because the debtor filed written opposition to the objection, the court issues the following tentative ruling.

The debtor's opposition is sustained. The creditor's objection is overruled. Confirmation of the initial plan filed April 19, 2014 is denied.

The creditor objects to confirmation based on the "hanging paragraph" of 11 U.S.C. § 1325(a), which restricts a debtor from valuing collateral in which a secured creditor holds a purchase money security interest which secures a debt incurred within 910 days of the date of the filing of the petition for the purpose of purchasing a motor vehicle acquired for personal use of the debtor. There is no dispute in this case that the debtor incurred the debt secured by the creditor's collateral within 910 days of the date of the filing of the petition. However, the creditor has failed to present any evidence which shows that it holds a purchase money security interest in the collateral. In fact, although the creditor's objection and supporting declaration refer to a copy of the underlying loan documents and a certificate of title as exhibits to the objection, the court cannot locate any of those documents on the docket. The debtor has shown evidence in support of his reply which shows that the creditor does not have a purchase money security interest in the collateral, as the creditor extended credit to the debtor for the purpose of refinancing a purchase money loan from another lender.

Even though the creditor's objection is overruled, confirmation of the initial plan is denied because elsewhere on this calendar the court has denied the debtor's motion to value the creditor's collateral without prejudice. As a result, the plan is insufficiently funded to pay the full amount of the creditor's filed secured claim in the amount of \$15,753.38 over the 60-month plan term. 11 U.S.C. § 1325(a)(5)(B)(ii).

The court will issue a minute order.

30. [10-44131](#)-B-13 RAPHAEL METZGER AND MOTION FOR COMPENSATION FOR  
PGM-4 MELANIE MEDINA-METZGER PETER G. MACALUSO, DEBTORS'  
ATTORNEY  
5-22-14 [[177](#)]

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

The motion is continued to July 22, 2014, at 9:32 a.m. On or before July 15, 2014, the applicant shall file and serve on all parties previously served with the motion a declaration, executed by each of the joint debtors, substantially in the form of the statement of consent required by Form EDC-095 indicating the debtors' consent or objection to the application.

The court will issue a minute order.

31. [14-23633](#)-B-13 LESLIE VAN SYCKEL  
TWP-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY ROBERT  
FINK AND ASSOCIATES, LLC  
5-15-14 [[18](#)]

**Tentative Ruling:** None.

32. [14-24639](#)-B-13 DALE/LINDA GOODWIN  
CK-1

MOTION TO VALUE COLLATERAL OF  
TRI COUNTIES BANK  
5-29-14 [[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 Tri Counties Bank's claim in this case secured by the second deed of trust on real property located at 20933 Second Street, Cottonwood, 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 \$123,233.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Citimortgage with a balance of approximately \$146,000.00. Thus, the value of the collateral available to Tri Counties Bank on its second deed of trust is \$0.00.

The court will issue a minute order.

33. [14-21240](#)-B-13 DIANE OHARA  
JPJ-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
3-25-14 [[24](#)]

**Tentative Ruling:** This matter continued from April 15, 2014. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained in part and overruled in part. 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 July 8, 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 trustee's objection regarding debtor's delinquency under the plan is overruled because the trustee confirmed at the prior hearing on this matter that the debtor had cured the delinquency and was current in payments under the terms of the plan.

The trustee's objection regarding the necessity of a successful motion to avoid lien of LVNV Funding ("LVNV") is sustained. Although a motion to value the collateral of LVNV was granted by order entered June 10, 2014 (Dkt. 40), and fixing the value of LVNV's collateral at \$450.00, the plan does not provide for payment of a \$450.00 secured claim of LVNV; it provides for a \$0.00 secured claim.

The court will issue a minute order.

34. [11-28441](#)-B-13 ROBERT/DONNA HOLMES MOTION TO VALUE COLLATERAL OF  
SS-2 J.P. MORGAN CHASE BANK, N.A.  
5-16-14 [[48](#)]

**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 10256 Alta Mesa Road, Wilton, 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 \$238,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$289,000.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00.

The court will issue a minute order.

35. [11-33441](#)-B-13 DERRICK GREEN MOTION TO SELL  
CA-3 6-10-14 [[81](#)]

**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 debtor did not give adequate notice of the motion to parties in interest. By this motion the debtor seeks authorization to sell his residence located at 3613 Glacier Park Way, Elk Grove, California (the "Property"). The debtor's operative chapter 13 plan (Dkt. 49) was

confirmed by order entered September 21, 2012. The terms of the debtor's plan impose on the debtor the duties set forth in the court's Local Bankruptcy Rules. LBR 3015-1(i)(5) requires that if the trustee will not give consent to a sale of property outside of the ordinary course of business or if the debtor wishes to sell property on terms and conditions not authorized by LBR 3015-1(i)(1)-(4), that the debtor shall file an appropriate motion, set for hearing on the court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1. Fed. R. Bankr. P. 2002(a)(2) requires, inter alia, that a debtor give the trustee, and all creditors at least 21 days' notice of a proposed sale of property other than in the ordinary course of business. In this case, the debtor filed and served the motion on June 10, 2014, only 14 days before the date of the hearing.

The court will issue a minute order.

36. [13-35745](#)-B-13 PATRICIA KLINE  
JLK-2

MOTION TO CONFIRM PLAN  
5-12-14 [[45](#)]

**Tentative Ruling:** The motion to confirm the amended plan filed May 9, 2014 (Dkt. 44) (the "Plan") 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)).

The debtor has not carried her burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). Here, the debtor's ability to pay all claims in full as stated in the plan depends upon her selling a vacation property in Month 37. However, the debtor has failed to provide any evidence that (1) she will be able to sell the property; or (2) if she can sell the property, then the proceeds received will be sufficient pay all claims in full. 11 U.S.C. § 1325(a)(6). Accordingly, the debtor has failed to carry her burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a), and the motion is denied.

The court will issue a minute order.



37. [14-25045](#)-B-13 RANDY FOORD  
LRR-1

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
5-19-14 [[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 Wells Fargo Bank, N.A.'s claim secured by the third deed of trust on real property located at 305 California Street, Rio Vista, CA 94571 (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 \$136,000.00 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 \$175,215.00 and a second deed of trust held by the City of Rio Vista with a balance of approximately \$25,000.00. Thus, the value of the collateral available to Wells Fargo Bank, N.A. on its third deed of trust is \$0.00.

The court will issue a minute order.

38. [14-21547](#)-B-13 JENNINE QUIRING  
JPJ-1

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
5-22-14 [[66](#)]

**Tentative Ruling:** The objection is dismissed.

The objection is moot. The debtor filed an amended Schedule C on June 2, 2014 (Dkt. 71). The exemptions contained in the amended Schedule C supersede the claims of exemption to which the trustee objects.

The court will issue a minute order.

39. [14-21547](#)-B-13 JENNINE QUIRING  
RJM-4

CONTINUED MOTION TO CONFIRM  
CHAPTER PLAN  
3-21-14 [[29](#)]

**Tentative Ruling:** This matter is continued from May 27, 2014, at 9:32 a.m. to be heard after the continued meeting of creditors held on June 19, 2014, at 8:30 a.m. The court now issues the following abbreviated tentative ruling.

The trustee's opposition is overruled. The motion is granted, and the plan filed March 21, 2014 (Dkt. 32) will be confirmed.

The sole basis for the trustee's opposition is that he cannot recommend confirmation of the plan prior to a thorough examination of the debtor under oath. The first meeting of creditors in this converted chapter 13

case was set for May 15, 2014, and continued to June 19, 2014. The meeting of creditors was concluded as to the debtor on that date. Accordingly, the trustee's opposition has been resolved and is therefore overruled.

The court will issue a minute order overruling the trustee's opposition 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.

40. [14-25047](#)-B-13 GERALD CAMPBELL MOTION TO VALUE COLLATERAL OF  
PLC-1 SANTANDER CONSUMER USA  
5-28-14 [[14](#)]

**Tentative Ruling:** This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$7,562.00 of Santander Consumer USA's claim secured by a 2010 Chevrolet Cobalt LS Sedan (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$7,562.00 on the date of the petition.

The court will issue a minute order.

41. [14-23552](#)-B-13 SANDRA VERA OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-28-14 [[36](#)]

**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 to confirmation are dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 8, 2014, the debtor files a motion to confirm the amended plan filed May 29, 2014 (Dkt. 41) (the "Amended Plan"), and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the Amended Plan and motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection is moot. The Amended Plan supersedes the plan to which the trustee's objection is directed. 11 U.S.C. § 1323(b). The trustee's motion to dismiss is conditionally denied because the debtor

has yet to file a motion to confirm the Amended Plan.

The court will issue a minute order.

42. [13-35359](#)-B-13 JASEN SMITH  
JPJ-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
1-8-14 [[21](#)]

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

The trustee's fifth, eighth, ninth, tenth, and eleventh objections are sustained. The trustee's remaining objections are overruled. Confirmation of the plan filed December 4, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 8, 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 debtor appeared at the continued meeting of creditors held on January 16, 2014, and the meeting of creditors was concluded as to the debtor on that date. Therefore, the trustee's first objection that the debtor failed to appear at the meeting of creditors is overruled.

The debtor filed the Spousal Waiver of Right to Claim Exemptions Pursuant to C.C.P. § 703.140(a)(2) on both January 29, 2014 (Dkt. 35) and January 31, 2014 (Dkt. 38). Both forms are fully executed and signed by both the debtor and his non-filing spouse. Therefore, the trustee's seventh objection that the debtor failed to file this form is overruled.

The trustee's second, third, fourth, and sixth objections, all of which address documents which the debtor failed to provide the trustee in violation of 11 U.S.C. §§ 521(a) and (e), are overruled. The trustee stated at the hearing on February 4, 2014, that the debtor has provided him with those outstanding documents. As such, these objections are resolved.

The trustee's fifth objection that the plan's feasibility depends on the granting of a motion to value collateral of JPMorgan Chase Bank, N.A. ("Chase") is sustained. Although the parties filed a stipulation to resolve this matter on June 9, 2014, which was approved by order entered June 10, 2014 (Dkt. 71), the terms of the stipulation are inconsistent with the plan's proposed treatment of Chase's claim. The stipulation indicates that, while the parties continue to disagree as to the value of Chase's collateral, Chase does hold a secured claim in an amount greater than \$0.00. The plan proposes to treat Chase's claim in Class 2C with a secured value of \$0.00. The debtor has failed to demonstrate an ability to make all payments under the plan when taking into account the currently undefined secured claim held by Chase. 11 U.S.C. § 1325(a)(6).

Accordingly, this objection is sustained.

The trustee's eighth objection that the monthly plan payments are unclear is sustained for the reasons set forth therein.

The trustee's final three objections under 11 U.S.C. § 1325(a)(5)(A) or (B) are sustained. The court acknowledges the debtor's argument at the hearing on February 4, 2014, that the properties which are subject to the trustee's final three objections (the "Properties") are owned by the debtor's non-filing spouse. However, the debtor has provided no evidence of this outside of his comments at the prior hearing. According to the debtor's most recently filed Schedule D (Dkt. 1, p.14), the debtor has sworn under penalty of perjury that he holds an interest in the Properties. The plan fails to provide treatment for the claims secured by the Properties. As such, the trustee's final three objections are sustained.

The court will issue a minute order.

43. [13-35359](#)-B-13 JASEN SMITH  
PD-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY J.P.  
MORGAN CHASE BANK, N.A.  
12-18-13 [[16](#)]

**Tentative Ruling:** Creditor JPMorgan Chase Bank, N.A. ("Chase")'s amended objections (Dkt. 27) are sustained. Confirmation of the plan filed December 4, 2013 (Dkt. 5) is denied.

Chase's first two objections are based on its disputed valuation of its collateral. Chase argues that, based on an appraisal it obtained from a licensed real estate appraiser, there is \$63,524.00 in equity available for its second deed of trust after taking into account the value of the first deed of trust. Accordingly, it disputes the plan's proposed treatment of its claim in Class 2C with a secured value of \$0.00. The debtor filed a motion to value collateral of Chase on January 29, 2014 (Dkt. 30), which was set for an evidentiary hearing following an objection by Chase. However, the parties filed a stipulation to resolve the matter on June 9, 2014 (Dkt. 69), which was approved by order entered June 10, 2014 (Dkt. 71). Pursuant to the terms of the stipulation, the parties continue to disagree as to the value of Chase's collateral but stipulate that Chase does hold a secured claim in an amount greater than \$0.00. Because this is inconsistent with the plan's proposed treatment of Chase's claim, Chase's first two objections are sustained.

Chase's final two objections are sustained for the reasons set forth therein. Although the stipulation purports to resolve the motion to value collateral of Chase, it is silent as to how Chase's pre-petition arrears are to be treated. According to Chase's proof of claim, claim no. 1, filed on December 13, 2013, Chase claims pre-petition arrears in the amount of \$3,633.63. Section 2.04 of the form plan states that "the proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Because the stipulation does not affect the amount of pre-petition arrears, Section 2.04 of the form plan

provides that the amount of pre-petition arrears listed in Chase's proof of claim controls. The plan fails to provide for (and therefore fails to provide a prompt cure of) the pre-petition arrears on Chase's claim. Accordingly, Chase's final two objections are sustained.

The court will issue a minute order.

44. [14-21661](#)-B-13 CHARLES/SUSAN EPSTEIN  
RS-1

MOTION TO CONFIRM PLAN  
5-14-14 [[30](#)]

**Tentative Ruling:** The motion to confirm the amended plan filed May 14, 2014 (Dkt. 34) is denied.

The motion is denied because it was not properly noticed to all parties-in-interest. To confirm an amended plan, Local Bankruptcy Rule 3015-1(d)(1) states that "notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two (42) days prior to the hearing." LBR 3015-1(d)(1). Forty-two days prior to today's hearing date was May 13, 2014. According to the proof of service filed May 14, 2014 (Dkt. 35), interested parties were served with the motion, notice of hearing, and other supporting documents on May 14, 2014, which is only forty-one (41) days prior to the hearing date. Thus, the debtors have failed to comply with the noticing requirements of Local Bankruptcy Rule 3015-1(d)(1). A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

Alternatively, the oppositions filed by Ford Motor Credit Company LLC ("Ford") and the chapter 13 trustee are sustained.

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

Ford argues that the rate of interest on its secured claim should be adjusted upward from 3.25% by two percentage points pursuant to Till v. SCS Credit Corp., 124 S. Ct. 1951 (2004) because (1) its collateral is a rapidly depreciating asset which loses value with continued use and time; and (2) the plan extends repayment on Ford's claim by approximately twenty-four months beyond the terms of the original contract, which exposes Ford to additional risk of default. For the purposes of determining the appropriate interest rate to be paid on a secured claim that can be modified, the Supreme Court's decision in Till v. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787 (2004) directs this court to conduct a present value calculation as of the effective date of the plan by starting with the risk free rate and adjusting upward for appropriate risk factors. The form plan provides that the plan is "effective from the date it is confirmed." The court takes judicial notice pursuant to Federal Rule of Evidence 201 that the current prime rate is 3.25%. Starting from the prime rate and adjusting upward places the evidentiary burden "squarely on the creditors." Till, 541 U.S. at 479. Because Till directs this court to begin its analysis with the prime rate, the plan's proposed rate of 2.90%, which is less than the prime rate, violates 11 U.S.C. § 1325(a)(5)(B)(ii).

Although the court is sustaining Ford's objection in part, it declines to adopt Ford's proposed upward adjustment in interest rate because Ford has failed to meet its evidentiary burden justifying an upward adjustment. First, Ford alleges that its collateral is "a rapidly depreciating asset which loses value with continued use and time." While this may be true, Ford has provided no evidence as to the rate of depreciation of its collateral. Second, the court is not persuaded by Ford's "risk of default" argument. This objection would not be sustained as an objection under 11 U.S.C. § 1325(a)(6), and does not magically become effective as an objection to the interest rate under Till. If any plan is confirmed, the court will find that "the debtor will be able to make all payments under the plan and to comply with the plan."

The court will issue a minute order.

45. [14-21661](#)-B-13 CHARLES/SUSAN EPSTEIN COUNTER MOTION TO DISMISS CASE  
RS-1 6-10-14 [[43](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 43) 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 July 8, 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.

46. [11-36163](#)-B-13 KYLE PURVIS MOTION TO INCUR DEBT  
JSO-6 5-23-14 [[89](#)]

**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 debtor seeks court approval to incur new debt to purchase a new 2012 Nissan Maxima from Crown Motors ("Crown"). However, the debtor has failed to establish that there is an actual debt agreement for the court to approve because he has provided no evidence that Crown has consented to such an 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 to

which Crown agrees, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges that the debtor has attached as Exhibit "E" to the motion (Dkt. 92, p.12-14) a copy of the Retail Installment Sale Contract with Crown. However, although the name "Crown Motors" has been typed into the agreement in several places, the agreement has not been signed by a representative of Crown. The debtor has failed to establish that Crown consents to the terms of the agreement.

Crown's consent to the agreement may be manifested in ways other than executing the agreement. For example, Crown may file a response to the motion stating its agreement, or it may appear at the hearing on the motion and state its agreement on the record. Absent such evidence of consent, however, the motion is dismissed without prejudice.

The court will issue a minute order.

47. [11-48264](#)-B-13 BRIAN/KAREN CESAR MOTION TO MODIFY PLAN  
CAH-1 4-23-14 [[54](#)]

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

The motion is granted, and the modified plan filed April 23, 2014 (Dkt. 56) is confirmed.

The court will issue a minute order.

48. [10-40069](#)-B-13 CAROLYN WILLIAMS MOTION TO APPROVE LOAN  
MET-10 MODIFICATION  
5-25-14 [[123](#)]

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

The motion was not properly served. A motion for approval of a loan modification agreement is governed by the provisions of Federal Rule of Bankruptcy Procedure 4001(c). Federal Rule of Bankruptcy Procedure 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Fed. R. Bankr. P. 4001(c)(1)(C). Federal Rule of Bankruptcy Procedure 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by Federal Rule of Bankruptcy Procedure 4001(c)(1) and "to such other entities as the court may direct." Fed. R. Bankr. P. 4001(c)(3). Based on the foregoing, the court requires that the movant serves, consistent with the provisions of Federal Rule of Bankruptcy Procedure 7004, a motion for approval of a loan modification agreement on the United States Trustee, the chapter 13 trustee, and the creditor who will be extending credit to the debtor (unless service has been waived by the creditor in the loan documentation or by appearance at the hearing). The court also requires that the movant gives notice of the motion to all



other creditors. Here, the proof of service (Dkt. 128) indicates that only Wells Fargo, the United States Trustee, and the chapter 13 trustee were served with the motion, notice of hearing, and supporting documents. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

49. [10-40069](#)-B-13 CAROLYN WILLIAMS CONTINUED 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 first objection that the plan's feasibility depends on the debtor obtaining a loan modification with Wells Fargo Home Mortgage is sustained because that matter was heard elsewhere on today's calendar and dismissed without prejudice.

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.

50. [11-31375](#)-B-13 MCKEEVER/SHELIA MURRAY MOTION TO APPROVE LOAN  
SLH-2 MODIFICATION  
5-6-14 [[57](#)]

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

The debtor's motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Proposal submitted as Exhibit "A" to the motion (Dkt. 60, p.3-4).

The court will issue a minute order.

51. [11-31375](#)-B-13 MCKEEVER/SHELIA MURRAY MOTION TO MODIFY PLAN  
SLH-3 5-6-14 [[62](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed May 6, 2014 (Dkt. 68) is denied.

The court will issue a minute order.



52. [14-25175](#)-B-13 JOHNNIE/KIMBERLY RHYNES MOTION TO VALUE COLLATERAL OF  
SNM-1 BUCKS FINANCIAL, LLC  
5-19-14 [[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 Bucks Financial, LLC, as successor in interest to National City Bank, its assignees and/or successors in interest (the "Lienholder")'s claim secured by the second deed of trust on real property located at 2014 Crawford Court, Fairfield, CA 94533 (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 \$224,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Seterus, Inc. with a balance of approximately \$265,045.00. Thus, the value of the collateral available to the Lienholder on its second deed of trust is \$0.00.

The court will issue a minute order.

53. [14-25175](#)-B-13 JOHNNIE/KIMBERLY RHYNES MOTION TO AVOID LIEN OF KELKRIS  
SNM-2 ASSOCIATES, INC.  
5-19-14 [[15](#)]

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

By this motion, the debtors seek to avoid a judicial lien allegedly held by Kelkris Associates, Inc. dba Credit Bureau Associates ("Kelkris") as it encumbers their claim of exemption in their residence located at 2014 Crawford Court, Fairfield, CA 94533 (the "Property"). To avoid a nonconsensual judicial lien, the debtors must satisfy the following elements:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table). In this case, the debtors have not shown the existence of a judicial lien encumbering the Property. Under California law, a judgment lien on real property is created by the recording of an abstract of a money judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code § 697.310(a). Here, the only evidence that the abstract of judgment was

recorded with the county recorder is an unsigned screen shot attached to Exhibit "1" and labeled as "Document Details" (Dkt. 18, p.3). This is insufficient evidence that Kelkris holds a judicial lien encumbering the Property. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

54. [14-23378](#)-B-13 CHRISTINE KELLERMANN CONTINUED OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
5-7-14 [[26](#)]

**Tentative Ruling:** This matter is continued to July 8, 2014, at 9:32 a.m. to be heard after disposition of Trustee's Objection to Debtor's Claim of Exemptions.

55. [13-29479](#)-B-13 DAVID/MARY FRENCH MOTION TO MODIFY PLAN  
SDH-1 5-2-14 [[19](#)]

**Tentative Ruling:** The trustee's opposition is overruled. The motion is granted, and the modified plan filed May 2, 2014 (Dkt. 21) is confirmed.

The trustee opposes the motion on the grounds that the plan provides for an impermissible modification of the secured claim of U.S. Bank, the holder of the second deed of trust on the debtors' principal residence. 11 U.S.C. § 1322(b)(2). The Additional Provisions of the plan provide for treatment of U.S. Bank's secured claim pending the outcome of loan modification application, including a proposed monthly adequate protection payment. The trustee asserts that the debtors have provided no evidence that U.S. Bank has consented to or is considering a loan modification. The debtors acknowledge in their reply declaration (Dkt. 33) that they do not currently have a loan modification agreement with U.S. Bank, and the various attachments (Dkt. 34) demonstrate that negotiations are ongoing. The trustee's objection would normally be sustained. However, in this instance the plan (Dkt. 8) was confirmed by order entered October 3, 2013 (Dkt. 15). The confirmed plan provides for the same treatment of U.S. Bank's claim as the proposed plan provides. Confirmation of the plan bound the debtor and U.S. Bank. 11 U.S.C. § 1327(a). "[A]n order confirming a chapter 13 plan is res judicata as to all justifiable issues which were or could have been decided at the confirmation hearing." In re Evans, 30 B.R. 530, 531 (9<sup>th</sup> Cir. BAP 1983). One of the issues decided at confirmation of the plan was the permissible treatment for U.S. Bank's claim.

The court will issue a minute order.

56. [11-21980](#)-B-13 GARY/JANICE HANSEN  
SS-2

MOTION TO VALUE COLLATERAL OF  
ONEWEST BANK, N.A.  
5-19-14 [[35](#)]

**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 OneWest Bank, N.A.'s claim secured by the second deed of trust on real property located at 1606 Gannon Drive, Sacramento, CA 95825 (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 \$283,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by OneWest Bank, N.A. with a balance of approximately \$295,700.11. Thus, the value of the collateral available to OneWest Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

57. [14-23880](#)-B-13 DANIEL/EMILIA POPA  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-27-14 [[17](#)]

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

The trustee's objections are sustained. The motion to dismiss is removed from the calendar. Confirmation of the plan filed April 16, 2014 (Dkt. 5) is denied.

The trustee withdrew the motion to dismiss on June 5, 2014 (Dkt. 24).

The court will issue a minute order.

58. [14-23347](#)-B-13 AARON/THERESA PELICAN  
DL-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
SACRAMENTO MUNICIPAL UTILITY  
DISTRICT  
5-21-14 [[25](#)]

**Tentative Ruling:** None.

59. [13-35281](#)-B-7 DAMIAN AVALOS  
PGM-1

MOTION TO CONFIRM PLAN  
5-12-14 [[82](#)]

**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 reconverted to one under chapter 7 on June 10, 2014 (Dkt. 96).

The court will issue a minute order.

60. [14-22283](#)-B-13 MARIE WILLIAMS  
JMC-1

MOTION TO CONFIRM PLAN  
5-5-14 [[41](#)]

**Tentative Ruling:** The trustee's first two objections are sustained. The trustee's third objection that the feasibility of the plan depends on the granting of a motion to value collateral for WFS Financial is overruled. The motion to confirm the plan filed May 5, 2014 (Dkt. 37) is denied.

The trustee's third objection is overruled because the motion to value collateral came on for hearing on June 10, 2014, at 9:32 a.m. and was granted by order entered June 10, 2014 (Dkt. 66) in a manner consistent with the plan's proposed treatment for that claim.

The court will issue a minute order.

61. [14-22283](#)-B-13 MARIE WILLIAMS  
JMC-1

COUNTER MOTION TO DISMISS CASE  
6-5-14 [[60](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 60) 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 July 8, 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.

62. [14-22472](#)-B-13 TIMOTHY KRUSE  
WRR-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY THE  
LABORERS TRUST FUNDS  
5-6-14 [[35](#)]

**Tentative Ruling:** None.

63. [14-23487](#)-B-13 ROBERT COVERT  
DJC-1

MOTION TO CONFIRM PLAN  
5-5-14 [[15](#)]

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

The motion is granted, and the amended plan filed May 5, 2014 (Dkt. 18) will be confirmed.

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

64. [14-23487](#)-B-13 ROBERT COVERT  
DJC-2

OBJECTION TO CLAIM OF IDAHO  
DEPARTMENT OF LABOR, CLAIM  
NUMBER 2  
5-6-14 [[20](#)]

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

The objection is dismissed without prejudice.

The objection is moot. Claimant Idaho Department of Labor amended the claim to which the debtor objects on June 12, 2014. The amended claim supersedes the claim to which the debtor objects.

The court will issue a minute order.

65. [13-36190](#)-B-13 TERRY/MELINDA HUNTER  
MWB-3

MOTION TO CONFIRM PLAN  
5-5-14 [[57](#)]

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

The motion is granted, and the amended plan filed May 5, 2014 (Dkt. 60) will be confirmed.

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

66. [12-31391](#)-B-13 STEVE/EDIE SZEKULA MOTION TO VALUE COLLATERAL OF  
PLC-2 U.S. BANK, N.A.  
5-12-14 [[43](#)]

**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., as Indenture Trustee of the GMACM Home Equity Loan Trust 2007 - HE1 (the "Lienholder")'s claim secured by the second deed of trust on real property located at 7924 Alpine View Drive, Roseville, CA 95747 (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 \$230,400.00 on the date of the petition. The Property is encumbered by a first deed of trust held by GMAC Mortgage LLC with a balance of approximately \$387,379.00. Thus, the value of the collateral available to the Lienholder on its second deed of trust is \$0.00.

The court will issue a minute order.

67. [13-31095](#)-B-13 GEOFFREY GREITZER CONTINUED COUNTER MOTION TO  
DBJ-3 DISMISS CASE  
3-27-14 [[92](#)]  
ORDER CONTINUING TO 7/22/14  
AT 10:30 A.M.

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

This matter is removed from this calendar. It was continued to July 22, 2014, at 10:30 a.m. pursuant to order entered June 5, 2014 (Dkt. 119) approving the stipulation of the parties for the continuance (Dkt. 116).

68. [13-35895](#)-B-13 NICOLE BERT  
PGM-3

MOTION TO CONFIRM PLAN  
5-12-14 [[77](#)]

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

The motion is granted, and the amended plan filed May 12, 2014 (Dkt. 78) will be confirmed.

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

69. [14-23496](#)-B-13 KAREN WHIGHAM  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON, TRUSTEE  
5-23-14 [[21](#)]

CASE DISMISSED 6/10/14

**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 objection is dismissed.

The objection is moot. By order entered June 10, 2014 (Dkt. 31), the bankruptcy case was dismissed.

The court will issue a minute order.

70. [13-36199](#)-B-13 DAVID MOORE AND SHANA  
JPJ-1 MANGAL-MOORE

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
2-20-14 [[20](#)]

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

The trustee's objections are sustained. Confirmation of the plan filed January 10, 2014 (Dkt. 12) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 8, 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.