

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

July 8, 2014 at 9:32 A.M.

---

1. [14-24401](#)-B-13 LUCKY SINGLETARY OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON, TRUSTEE  
6-19-14 [[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 trustee's objections are sustained. Confirmation of the initial plan filed April 29, 2014, is denied.

The court will issue a minute order.

2. [13-29504](#)-B-13 JOEY/SHEILA NUQUI OBJECTION TO CLAIM OF SALLIE  
JPJ-2 MAE INC, CLAIM NUMBER 18  
5-8-14 [[85](#)]

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

The trustee's objection is sustained, and claim No. 18, filed on April 1, 2014 by Sallie Mae, Inc. in the amount of \$82,120.66 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was November 20, 2013, and to file a government claim was January 14, 2014. The Claim was filed on April 1, 2014.

The court will issue a minute order.

3. [12-33905](#)-B-13 WILLIE/JUDIE TERRELL MOTION FOR SUBSTITUTION OF  
SDB-6 PARTY  
6-3-14 [[97](#)]

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

The motion is granted to the extent set forth herein. Pursuant to Fed.

R. Bank. P. 1004.1, joint debtor Judie Terrell is authorized to perform the obligations and duties of deceased joint debtor Willie Terrell in this case, in addition to performing her own obligations and duties. Pursuant to Fed. R. Bank. P. 1016, administration of case no. 12-33905-B-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of joint debtor Willie Terrell had not occurred. Except as so ordered, the motion is denied.

The court will issue a minute order.

4. [14-22606](#)-B-13 JOSEPH/NELLIE VERRETT MOTION TO CONFIRM PLAN  
PLG-1 5-23-14 [[24](#)]

**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 23, 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.

5. [13-31707](#)-B-13 RONALD/DANA FRANCO OBJECTION TO CLAIM OF CIG  
JPJ-1 FINANCIAL, CLAIM NUMBER 23  
5-8-14 [[48](#)]

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

The trustee's objection is sustained, and claim No. 23, filed on February 14, 2014, by CIG Financial in the amount of \$5560.91 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was January 15, 2014 and to file a government claim was March 4, 2014. The Claim was filed on February 14, 2014.

The court will issue a minute order.

6. [14-20907](#)-B-13 LESLIE/JULIE WILLIAMS MOTION TO AVOID LIEN OF  
CAH-2 THUNDERBOLT HOLDINGS LTD  
5-22-14 [[35](#)]

**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 Thunderbolt Holdings Ltd., LLC recorded in the official records of Solano County, Document No. 201200110313, is avoided as against the real property located at 514 Fortuna Drive, Suisun City, California.

The subject real property has a value of \$219,132.00 as of the date of the petition. The unavoidable liens total \$154,213.66. The debtors claimed the property as exempt under California Code of Civil Procedure Section 704.730, under which they exempted \$100,000.00. 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.

7. [14-20907](#)-B-13 LESLIE/JULIE WILLIAMS MOTION TO CONFIRM PLAN  
CAH-3 5-22-14 [[41](#)]

**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 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.

8. [13-28709](#)-B-13 BETHANY SANDERS OBJECTION TO CLAIM OF SALLIE  
JPJ-3 MAE INC, CLAIM NUMBER 10  
5-8-14 [[43](#)]

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

The trustee's objection is sustained, and claim No. 10, filed on April 2, 2014, by Sallie Mae, Inc. in the amount of \$24,676.75 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was October 30, 2013, and to file a government claim was December 26, 2013. The Claim was filed on April 2, 2014.

The court will issue a minute order.

9. [14-22013](#)-B-13 FRANCISCO AGREDANO CONTINUED OBJECTION TO  
JPJ-1 ESQUIVIAS AND ROSA GUZMAN 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 June 24 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 22, 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. The motion was continued to allow the debtors to brief the issue of whether a nonmaterial modification to the plan to sufficiently fund AmeriCredit's secured claim was possible, in their response filed on July 1, 2014, the debtors conceded the trustee's objection and admitted that they were in default of their plan payments as of the date of the filing of the response. The debtors' default in plan payments is an additional ground for denial of confirmation. Accordingly, confirmation of the plan is denied.

The court will issue a minute order.

10. [14-25714](#)-B-13 GYORGY/ANGELA GUEVARRA MOTION TO VALUE COLLATERAL OF  
SNM-1 PNC BANK, N.A.  
6-3-14 [[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 PNC Bank, N.A.'s claim in this case secured by the second deed of trust on real property located at 632 Robinson Way, Benecia, 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 \$658,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank United, N.A. with a balance of approximately \$685,371.00. Thus, the value of the collateral available to PNC Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

11. [12-20015](#)-B-13 ROBERT/VERONICA WARDLOW MOTION TO MODIFY PLAN  
MET-5 6-2-14 [[77](#)]

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

The motion is granted, and the modified plan filed June 2, 2014, is confirmed.

The court will issue a minute order.

12. [11-48517](#)-B-13 EDGAR HULL MOTION TO MODIFY PLAN  
CJY-2 5-20-14 [[49](#)]

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

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

The court will issue a minute order.

13. [13-27625](#)-B-13 DANIEL/JONI ENGELAGE OBJECTION TO CLAIM OF SALLIE  
JPJ-2 MAE INC., CLAIM NUMBER 10  
5-8-14 [[32](#)]  
CASE DISMISSED 5/9/14

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

The motion is dismissed.

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 court will issue a minute order.

- Tentative Ruling:** The motion is continued to a final evidentiary hearing on August 6 2014, at 100 a.m. before the Honorable David E. Russell in courtroom 32. The issue to be tried at the evidentiary hearing will be joint debtor Leo Betti's income history during the pendency of the bankruptcy case.

On or before July 30, 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 movant's binder tabs shall be consecutively numbered, commencing at number 1. The respondents' binder tabs shall be consecutively lettered, commencing at letter A. On or before July 30, 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 Chapter 13 Trustee's Motion to Modify 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](http://www.tabbies.com)] - movant's stock number 58093 and respondent's 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.

16. [13-31325](#)-B-13 LANCE SMITH AND NICOLE MOTION TO INCUR DEBT  
LDD-12 CRIST-SMITH 6-16-14 [[135](#)]

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

The motion is dismissed for two reasons. First, the motion is not ripe for adjudication. The debtors have not shown that if the motion is granted a financed vehicle purchase will actually occur, as the copy of the Retail Installment Sale Contract filed as an exhibit to the motion is not signed by a representative of the seller, Elk Grove Ford ("Ford"). As a result, the debtors have not shown evidence of Ford's consent to the transaction. 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 evidence of a financed purchase to which Ford consents, there is no case or controversy for the court to decide.

Ford's consent to the agreement may be manifested in ways other than executing the sale contract. For example, Ford 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 second reason that the motion is dismissed is that it was not properly served on all parties in interest. This motion for authorization to incur debt is governed by the provisions of Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct."

Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor who is extending credit. The court also requires that the debtor give notice of the motion to all other creditors. In this case, the debtor served the chapter 13 trustee, the UST and gave notice of the motion to all other creditors. The debtor did not, however, serve the motion consistent with the provisions of Bankruptcy Rule 7004 on the creditor allegedly extending credit, Ford.

The court will issue a minute order.

17. [14-23825](#)-B-13 DIANNE AKZAM  
DA-1

MOTION TO CONFIRM PLAN  
5-22-14 [[26](#)]

**Tentative Ruling:** The chapter 13 trustee's first ground for opposition is overruled without prejudice. The chapter 13 trustee's second and third grounds for opposition are sustained. The motion to confirm the initial plan filed May 12, 2014, is denied.

The chapter 13 trustee's first ground for opposition is overruled without prejudice because that ground for opposition will be taken up on the chapter 13 trustee's motion to dismiss set for July 22, 2014 at 10:30 a.m.

In addition to the reasons set forth in the trustee's opposition, confirmation of the plan is also denied because the debtor has submitted no evidence in support of the motion to carry her burden that the plan satisfies the requirements for confirmation set forth under 11 U.S.C. § 1325. Local Bankruptcy Rule 9014-1(d)(6) requires that every motion "shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested."

The court will issue a minute order.

18. [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 24, 2014. This motion was properly filed under LBR 9014-1(f)(1). The court issues the following abbreviated ruling.

The Stipulation Resolving the Value of Collateral (the "Stipulation") filed on June 24, 2014 (Dkt. 31), is approved and shall be binding between the parties thereto. The motion is removed from the calendar as resolved by the approved Stipulation.

The court will issue a minute order.

19. [14-24030](#)-B-13 BRANDON CLOGSTON  
RDG-2

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

**Tentative Ruling:** The objection is removed from the calendar as resolved by stipulation. Confirmation of the initial plan filed April 19, 2014, is denied.

Elsewhere on this calendar the court has approved the stipulation of the



objecting creditor and the debtor regarding valuation of the creditor's personal property collateral, which stipulation states that it resolves this objection. However, confirmation of the plan is denied because the plan is not sufficiently funded to pay the full stipulated amount of the creditor's allowed secured claim over the term of the plan based on the payment provisions for the secured claim in class 2 of the plan. The debtor has not sustained his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(5)(B)(ii).

The court will issue a minute order.

20. [10-44131](#)-B-13    RAPHAEL METZGER AND                      MOTION TO MODIFY PLAN  
JPJ-2                      MELANIE MEDINA-METZGER                      6-2-14 [[182](#)]

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

The motion is continued to August 19, 2014, at 9:32 a.m. On or before August 5, 2014, the debtors shall file and serve a supplemental response, if any, to the motion. The trustee shall file and serve a supplemental reply, if any, in support of the motion on or before August 12, 2014.

The court will issue a minute order.

21. [12-40736](#)-B-13    DAVID WESTON                      MOTION FOR COMPENSATION FOR  
PGM-2                      PETER G. MACALUSO, DEBTOR'S  
   ATTORNEY  
   6-4-14 [[55](#)]

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

The motion is continued to August 19, 2014, at 9:32 a.m. On or before July 29, 2014, the applicant shall file and serve on all parties previously served with the motion a declaration, executed the debtor, substantially in the form of the statement of consent required by Form EDC-095 indicating the debtor's consent or objection to the application.

The court will issue a minute order.

22. [10-30137](#)-B-13    TY/REBECCA MATT                      MOTION TO INCUR DEBT  
MG-3                                           6-2-14 [[71](#)]

**Tentative Ruling:** The motion is continued to July 22, 2014, at 9:32 a.m. On or before July 8, 2014, the debtors shall serve the exhibit filed on July 3, 2014 (Dkt. 75) and a notice of the continued hearing on all parties previously served with the motion. The notice of the continued hearing shall state that at the continued hearing the motion will be

heard under LBR 9014-1(f)(2), that no written opposition is required, and that opposition may be presented at the hearing. The debtors shall file a proof of service of the exhibit and the notice of continued hearing on or before July 11, 2014.

The motion is continued to ensure that parties in interest to the motion receive adequate notice of the complete motion. The proof of service initially filed with the motion on June 2, 2014 (Dkt. 74), refers to an exhibit in support of the motion. However, no exhibit was filed with the motion on June 2, 2014. On July 3, 2014 the debtors filed an exhibit (Dkt. 75) consisting of an underwriting disposition and conditions (the "Disposition") from the proposed lender from which the debtors seek to incur debt, Sun West Mortgage Company, Inc. ("Sun West"). The Disposition is signed by a representative of Sun West, and indicates that approval for the proposed borrowing expires on July 31, 2014. However, the Disposition bears a "print date" of July 1, 2014, making it impossible for the debtors to have served the Disposition on parties in interest at the time of the filing and service of the motion on June 2, 2014, and the debtors did not file a proof of service with the Disposition on July 3, 2014. The court does not consider the motion to be made or complete until all of the papers in support of the motion have been filed and served on parties in interest. In this case, the Disposition is essential to the motion, as it is evidence that the motion is ripe for adjudication. Therefore, the motion is continued to July 22, 2014.

The court will issue a minute order.

23. [11-33137](#)-B-13 DARLENE BURLESON  
PGM-2

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTOR'S  
ATTORNEY  
6-4-14 [[62](#)]

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

The motion is continued to August 19, 2014, at 9:32 a.m. On or before July 29, 2014, the applicant shall file and serve on all parties previously served with the motion a declaration, executed the debtor, substantially in the form of the statement of consent required by Form EDC-095 indicating the debtor's consent or objection to the application.

The court will issue a minute order.

24. [14-23337](#)-B-13 ASHLEY PITNER  
JDP-2

MOTION TO CONFIRM PLAN  
5-14-14 [[28](#)]

**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 14, 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.

25. [12-26138](#)-B-13 MOLLIE PEARSON MOTION TO MODIFY PLAN  
SDB-3 5-22-14 [[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 May 22, 2014, is confirmed.

The court will issue a minute order.

26. [14-24740](#)-B-13 CHARLES DOWTIN OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-11-14 [[14](#)]  
  
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 trustee withdrew the objection on June 18, 2014 (Dkt. 23).

27. [14-24740](#)-B-13 CHARLES DOWTIN OBJECTION TO DEBTOR'S CLAIM OF  
JPJ-2 EXEMPTIONS  
6-11-14 [[17](#)]  
  
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 trustee withdrew the objection on June 18, 2014 (Dkt. 25).

28. [14-24641](#)-B-13 ADREA TARVER  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-11-14 [[15](#)]

**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 May 1, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 22, 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.

29. [12-24844](#)-B-13 ERICA SEXTON  
PGM-6

MOTION TO APPROVE LOAN  
MODIFICATION  
6-2-14 [[102](#)]

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

The motion is granted. The debtor is authorized to enter into a trial period loan modification on the terms set forth in the trial period loan modification offer filed as Exhibit "A" to the motion (Dkt. 105). Nothing in this ruling constitutes approval of a permanent loan modification agreement. Except as so ordered, the motion is denied.

The court will issue a minute order.

30. [14-24844](#)-B-13 LOUIS NEMAN  
LBG-1

MOTION TO VALUE COLLATERAL OF  
E-TRADE BANK  
5-28-14 [[14](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of E-Trade Bank's claim in this case secured by the second deed of trust on real property located at 4125 Sunflower Drive, Redding, 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 \$253,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Retail Credit Solutions with a balance of approximately \$257,000.00. Thus, the value of the collateral available to E-Trade Bank on its second deed of trust is \$0.00.

The court will issue a minute order.

31. [14-21846](#)-B-13 MARK/COLLEEN MARTIN MOTION TO CONFIRM PLAN  
SDH-2 5-27-14 [[45](#)]

**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 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.

32. [12-37347](#)-B-13 LEONARD/PAMELA ANDERSON OBJECTION TO CLAIM OF U.S.  
JPJ-1 DEPARTMENT OF JUSTICE, CLAIM  
NUMBER 12  
5-8-14 [[37](#)]

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

The trustee's objection is sustained, and claim No. 12, filed on April 10, 2014, by the United States Department of Justice in the amount of \$14,046.42 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was February 6, 2013, and to file a government claim was March 26, 2013. The Claim was filed on April 10, 2014.

The court will issue a minute order.

33. [13-25147](#)-B-13 MATTHEW/MAYRA SPINKS MOTION TO MODIFY PLAN  
PGM-4 5-30-14 [[101](#)]

**Tentative Ruling:** The motion is continued to October 14, 2014, at 9:32

a.m., to allow the debtors time to complete the loan modification process described in the additional provisions of the modified plan.

The court will issue a minute order.

34. [11-39148](#)-B-13 DAVID/DOROTHY JONES MOTION TO APPROVE LOAN  
SDB-7 MODIFICATION  
5-16-14 [[69](#)]

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

The motion is granted. The debtors are authorized to incur debt on the terms set forth in the Loan Modification Agreement filed as Exhibit "A" to the motion (Dkt. 72). Except as so ordered, the motion is denied.

The court will issue a minute order.

35. [14-24049](#)-B-13 KRISTIN AUSTIN OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY TRUSTEE JAN P. JOHNSON  
AND/OR MOTION TO DISMISS CASE  
6-19-14 [[25](#)]

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

The trustee's objection and motion to dismiss are dismissed.

The trustee's objection and motion to dismiss are moot. On July 1, 2014, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

36. [13-31950](#)-B-13 MARIA DE LA CRUZ OBJECTION TO CLAIM OF PREMIER  
JPJ-1 BANK CARD/CHARTER, CLAIM NUMBER  
5  
5-8-14 [[22](#)]

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

The trustee's objection is sustained, and claim No. 5, filed on April 23, 2014, by Premier Bank Card/Charter in the amount of \$512.52 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government

claim was January 15, 2014, and to file a government claim was March 10, 2014. The Claim was filed on April 23, 2014.

The court will issue a minute order.

37. [13-28451](#)-B-13 DOUGLAS SCOTT  
RPH-3

CONTINUED MOTION TO CONFIRM  
PLAN  
3-18-14 [[97](#)]

**Tentative Ruling:** This motion continued from June 10, 2014, to be heard with the debtor's motion for approval of a loan modification agreement with Golden 1 Credit Union. The court now issues the following tentative ruling.

The chapter 13 trustee's opposition is sustained in part and overruled in part. The motion to confirm the amended plan filed March 18, 2014, is denied.

The chapter 13 trustee's opposition regarding the debtor's default in plan payments is overruled. The trustee acknowledged at the prior hearing on May 13, 2014, that the debtor was current under the terms of the amended plan.

The chapter 13 trustee's opposition regarding the necessity of a successful loan modification agreement with Golden 1 Credit Union to the feasibility of the plan is sustained. Elsewhere on this calendar the court has dismissed the debtor's motion for approval of the loan modification agreement without prejudice.

The court will issue a minute order.

38. [13-28451](#)-B-13 DOUGLAS SCOTT  
RPH-4

MOTION TO APPROVE LOAN  
MODIFICATION  
6-5-14 [[118](#)]

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

The motion is dismissed for two reasons. First, the motion is not ripe for adjudication. The debtor has not shown that if the motion is granted a loan modification will actually occur, as the copy of the loan modification agreement filed as an exhibit to the motion is not signed by either the debtor or by a representative of the creditor, Golden 1 Credit Union ("Golden 1"). As a result, the debtor has not shown evidence of Golden 1's consent to the loan modification. 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 evidence of a loan modification to which Golden 1 consents, there is no case or controversy for the court to decide.

Golden 1's consent to the agreement may be manifested in ways other than executing the agreement. For example, Golden 1 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 motion is also dismissed without prejudice because there is no evidence on the court's docket that the motion was served on any party in interest. No certificate of service of the motion appears on the docket. 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 will issue a minute order.

39. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE MOTION TO APPROVE LOAN  
SDB-3 MODIFICATION  
6-10-14 [[92](#)]

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

The debtor's motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Agreement submitted as Exhibit "C" to the motion (Dkt. 95, p.6).

The court will issue a minute order.

40. [14-24353](#)-B-13 VASUDEVA BENARD MOTION TO VALUE COLLATERAL OF  
PGM-2 SCHOOLS FINANCIAL CREDIT UNION  
6-9-14 [[21](#)]

**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 Schools Financial Credit Union's claim secured by the second deed of trust on real property located at 3209 Alder Hill Court, Antelope, CA 95843 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.



In the absence of opposition, for the purposes of this motion, the Property had a value of \$225,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Deutsche Bank National Trust Company with a balance of approximately \$280,516.21. Thus, the value of the collateral available to Schools Financial Credit Union on its second deed of trust is \$0.00.

The court will issue a minute order.

41. [11-20655](#)-B-13 SABRINA CRISTO  
PGM-6

MOTION TO MODIFY PLAN  
5-30-14 [[133](#)]

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

The motion is granted, and the modified plan filed May 30, 2014 (Dkt. 137) is confirmed.

The court will issue a minute order.

42. [14-24356](#)-B-13 DAVID/HOLLY HARPER

OBJECTION TO CONFIRMATION OF  
PLAN BY AURORA SCHOOLS FEDERAL  
CREDIT UNION  
6-6-14 [[25](#)]

**Tentative Ruling:** Creditor Aurora Schools Federal Credit Union ("Aurora")'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 debtors' opposition is sustained in part and overruled in part as set forth below. Aurora's objection that the debtors have claimed unreasonably high expenses in their schedules in an attempt to reduce their monthly disposable income is overruled without prejudice. Aurora's remaining objections are sustained. Confirmation of the plan filed May 10, 2014 (Dkt. 11) (the "Plan") is denied.

Aurora asserts that it is the holder of two judgment liens: (1) a \$16,019.93 judgment lien secured by the debtors' residence located at 3501 Sun Maiden Way, Antelope, CA 95843 (the "Sacramento County Lien"); and (2) a \$25,857.10 judgment lien secured by the debtors' rental property located at 5923 East Dakota Avenue, Fresno, CA 93726 (the "Fresno County Lien"). The Plan currently provides for a single judgment lien held by Aurora in the amount of \$25,882.00 in Class 2.B.1 to be avoided. Although the Plan does not specify which lien is provided for in Class 2.B.1, the parties appear to be in agreement that the Plan is referring to the Sacramento County Lien.

Aurora's objections under 11 U.S.C. § 1325(a)(5), as well as its objection that the Plan is not feasible in light of its judgment liens, are sustained. To start, the court acknowledges that the debtors have

filed a motion to avoid the Sacramento County Lien. However, that motion was heard elsewhere on today's calendar and denied without prejudice for the reasons stated in that ruling. Regarding the Fresno County Lien, the debtors' argument that they were unaware of the lien's existence is insufficient. While the debtors are within their right to file an adversary proceeding to have the Fresno County Lien avoided as a preference, they are yet to do so. The court cannot accept the debtors' proposal to pay the trustee \$462.00 per month for the Fresno County Lien while the issue is resolved either by an adversary proceeding or settlement. This proposal has not been included in the Plan, and the debtors have not explained how this proposal does not constitute a material modification to the Plan to which all creditors would be entitled notice and an opportunity to object.

Section 2.04 of the form plan provides 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." Here, Aurora holds two judgment liens secured by real property. On June 3, 2014, it filed separate proofs of claim which include abstracts of judgment and proof of their recordation with the Sacramento County Recorder and Fresno County Recorder, respectively. The Plan does not provide for the Fresno County Lien, and the debtors' attempt to avoid the Sacramento County Lien was unsuccessful. Accordingly, as Aurora correctly points out in its objection, Aurora is the holder of two allowed secured claims whose amount and/or classification have not been altered by any actions taken by the debtors in this case. Therefore, Aurora's objections under 11 U.S.C. § 1325(a)(5), as well as its objection that the Plan is not feasible in light of its secured claims, are sustained. The debtors' opposition to these objections is overruled.

Aurora's objection regarding the debtors' claimed expenses on their Schedule J (Dkt. 10, p.18-20) is overruled without prejudice because the debtors have provided a sufficient explanation in both their opposition and supporting declaration (Dkt. 33) as to how the expenses listed by Aurora in its objection are not unreasonable. Aurora provides no explanation in its objection as to why it finds the expenses to be unreasonably high, aside from pointing out that the debtors do not have any minor dependents. Accordingly, the debtors' opposition to this objection is sustained, and the objection is overruled without prejudice.

The court will issue a minute order.

43. [14-24356](#)-B-13 DAVID/HOLLY HARPER  
CLH-1

MOTION TO AVOID LIEN OF AURORA  
SCHOOLS CREDIT UNION  
6-2-14 [[19](#)]

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

By this motion, the debtors seek to avoid a judicial lien allegedly held by Aurora Schools Credit Union ("Aurora") as it encumbers their claim of exemption in their residence located at 3501 Sun Maiden Way, Antelope, CA 95843 (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 court acknowledges the debtors' request for judicial notice of the Notice of Involuntary Lien Dated April 15, 2014 (Dkt. 22, p.3-4) (the "Notice"). First, the court declines to take judicial notice of the Notice. The court can only take judicial notice of adjudicative facts, as defined in Federal Rule of Evidence 201. Second, the Notice is insufficient evidence that Aurora holds any specific judicial lien encumbering the Property. The Notice, which has not been signed by a representative of the Sacramento County Recorder's Office, merely states that "a document which may be an involuntary lien has been recorded against you..." This is insufficient to establish the existence of a specific judicial lien held by Aurora which may be avoided. The court can only order the avoidance of a specific lien. Accordingly, the motion is denied without prejudice to the extent it seeks relief pursuant to 11 U.S.C. § 522(f).

Additionally, the motion is denied without prejudice to the extent it seeks relief under 11 U.S.C. § 547 because such an avoidance cannot be accomplished by motion. An adversary proceeding is required. Fed. R. Bankr. P. 7001(2).

The court will issue a minute order.

44. [14-24656](#)-B-13 TONYA LOVE  
SDB-1

MOTION TO VALUE COLLATERAL OF  
LVNV  
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. \$1,837.00 of LVNV c/o Simm Associates, Inc.'s claim secured by a 1999 Ford Taurus (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 \$1,837.00 on the date of the petition.

The court will issue a minute order.

45. [14-24059](#)-B-13 ANGELITA GOTO  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-11-14 [[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 objections are sustained. Confirmation of the plan filed May 5, 2014 (Dkt. 10) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 22, 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.

46. [09-39967](#)-B-13 TIMOTHY WALTERS AND MARCY  
JPJ-1 COLBY-WALTERS

OBJECTION TO CLAIM OF JPMORGAN  
CHASE BANK, CLAIM NUMBER 1  
5-8-14 [[54](#)]

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

The trustee's objection is sustained, and claim no. 1, filed on October 21, 2009, by JPMorgan Chase Bank, N.A. ("Chase") in the amount of \$105,310.26 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

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

The trustee alleges without dispute and has provided evidence that the Claim is a duplicate of claim no. 8, which was filed on December 31, 2009, by Ocwen/Litton Loan Servicing in the amount of \$104,327.51. The trustee's evidence has rebutted the prima facie validity of the Claim and, by failing to respond to the objection, Chase has failed to carry its burden of proving the Claim's validity.

The court will issue a minute order.

47. [09-38969](#)-B-13 EDWIN/SYBIL JAMES  
SDB-6

MOTION TO VALUE COLLATERAL OF  
U.S. BANK, N.A.  
5-15-14 [[93](#)]

**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, National Association, as Trustee for Master Asset Backed Securities Trust 2006-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1 ("U.S. Bank")'s claim secured by the second deed of trust on real property located at 1925 Rollingswood Drive, Fairfield, CA 94532 (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 \$420,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing, LLC, transferee of Chase Home Finance, LLC, with a balance of approximately \$532,703.01. Thus, the value of the collateral available to U.S. Bank on its second deed of trust is \$0.00.

The court will issue a minute order.

48. [13-23272](#)-B-13 MICHAEL BENSON  
SDB-3

MOTION TO MODIFY PLAN  
5-28-14 [[43](#)]

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

The motion is granted, and the modified plan filed May 28, 2014 (Dkt. 48) is confirmed.

The court will issue a minute order.

49. [14-20172](#)-B-13 GREGORY BRUTUS  
GB-3

MOTION TO CONFIRM PLAN  
5-12-14 [[68](#)]

**Tentative Ruling:** The motion to confirm the amended plan filed May 12, 2014 (Dkt. 71) (the "Plan") and the trustee's opposition to the motion (Dkt. 74) are dismissed.

The motion was not properly served. Federal Rule of Bankruptcy Procedure 2002(b) requires that the trustee and all creditors be given not less than twenty-eight days' notice by mail of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan. Fed. R. Bankr. P. 2002(b). Here, the debtor has filed two separate proofs of service: one which shows service of the Plan on certain creditors (Dkt. 72), and one which shows service of the motion, notice of

hearing, and supporting declaration on those same creditors (Dkt. 73). However, not all creditors were properly served as required by Federal Rule of Bankruptcy Procedure 2002(b) and the applicable provisions of Federal Rule of Bankruptcy Procedure 7004. Accordingly, the motion is dismissed.

The trustee's opposition is dismissed because the motion to which his opposition is directed has been dismissed.

The court will issue a minute order.

50. [14-20172](#)-B-13 GREGORY BRUTUS COUNTER MOTION TO DISMISS CASE  
GB-3 6-25-14 [[74](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 74) 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 22, 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.

51. [14-20172](#)-B-13 GREGORY BRUTUS MOTION TO VALUE COLLATERAL OF  
GB-4 UNIVERSAL ACCEPTANCE CORP.  
5-12-14 [[64](#)]

**Tentative Ruling:** The motion to value collateral of Universal Acceptance Corporation ("UAC") is denied without prejudice.

By this motion, the debtor seeks to value a 2004 Ford Taurus (the "Collateral") for the purpose of fixing UAC's secured claim at \$2,138.00. However, the motion does not address the "hanging paragraph" of 11 U.S.C. § 1325(a). A debtor cannot value collateral under 11 U.S.C. § 506 for purposes of plan treatment if the collateral and the debt secured by the collateral are of the kinds described in the "hanging paragraph" of 11 U.S.C. § 1325(a). The "hanging paragraph" states, in relevant part, "for purposes of paragraph (5) [of § 1325(a)], section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor..." 11 U.S.C. § 1325(a).

According to UAC's proof of claim, claim no. 5, filed on February 26, 2014, the basis for its claim is a "910 car loan." By failing to address the "hanging paragraph" issues, the motion fails to show that the movant is legally entitled to value the Collateral. A party is not entitled to

judgment simply because no one opposes. All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88, (B.A.P. 9<sup>th</sup> Cir. 2007) ("...default does not entitle a plaintiff to judgment as a matter of right or as a matter of law.").

The court will issue a minute order.

52. [13-20173](#)-B-13 MALAYKONE SAKULSINGHDUSIT MOTION TO MODIFY PLAN  
JPJ-1 5-29-14 [[22](#)]

**Tentative Ruling:** The debtor's opposition is overruled. The motion is granted, and the modified plan filed May 29, 2014 (Dkt. 26) is confirmed.

The court will issue a minute order.

53. [13-21474](#)-B-13 SHIRLEY STEWART OBJECTION TO CLAIM OF DEPT. OF  
JPJ-2 EDUCATION/FED LOAN SERVICING,  
CLAIM NUMBER 17  
5-8-14 [[90](#)]

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

The trustee's objection is sustained, and claim no. 17, filed on September 23, 2013, by the Department of Education/FedLoan Servicing in the amount of \$13,812.14 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was June 12, 2013. The last date to file a governmental claim was August 2, 2013. The Claim was filed on September 23, 2013.

The court will issue a minute order.

54. [13-21575](#)-B-13 AMALIA GRIEGO OBJECTION TO CLAIM OF COMPASS  
JPJ-2 BANK, CLAIM NUMBER 9  
5-8-14 [[54](#)]

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

The trustee's objection is sustained, and claim no. 9, filed on March 6, 2014, by Compass Bank in the amount of \$324,288.42 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was June 19, 2013. The Claim was filed on March 6, 2014.

The court will issue a minute order.



55. [14-22576](#)-B-13 RICK MCGLUMPHY  
SDH-1

MOTION TO CONFIRM PLAN  
5-14-14 [[22](#)]

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

The motion is granted, and the amended plan filed May 14, 2014 (Dkt. 24) 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.

56. [13-35777](#)-B-13 SIDNE ALLINGER  
LBG-3

MOTION TO MODIFY PLAN  
5-7-14 [[43](#)]

**Tentative Ruling:** The trustee's first objection that the plan length will exceed sixty months is sustained. The trustee's second objection that the plan fails to comply with 11 U.S.C. § 1325(a)(6) is overruled. The motion to confirm the modified plan filed May 7, 2014 (Dkt. 42) is denied.

Regarding the trustee's first objection, the trustee argues that the overextension of the plan is due to the fact that the Franchise Tax Board ("FTB") filed a priority claim in the amount of \$10,827.78. The plan does not explicitly provide for the FTB's priority claim, yet the debtor argues that the claim is for a dischargeable debt as the audit assessment was for the years of 2005 and 2007. The court is not persuaded. The FTB filed a proof of claim in this case, claim no. 4, on January 21, 2014, in the total amount of \$19,937.02, \$10,827.78 of which is claimed to enjoy priority. The amendment to the proof of claim filed on March 24, 2014, still indicates that \$10,827.78 is an unsecured priority claim. Pursuant to 11 U.S.C. § 502(a) the claim is deemed allowed until an objection is filed. Pursuant to § 2.04 of the form plan, "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." The debtor has taken no action in this case to affect the amount or classification of the FTB's priority claim. The trustee has provided evidence that the priority claim causes an overextension of the plan (Dkt. 50). Accordingly, the trustee's first objection is sustained.

The trustee's second objection is overruled because the debtor has provided evidence (Dkt. 52) that the Internal Revenue Service has consented to receive a monthly payment of \$30.00 per month outside of the plan. 11 U.S.C. § 1322(a)(2). The agreed treatment is consistent with the plan's proposed treatment in Class 4.

The court will issue a minute order.



57. [14-23378](#)-B-13 CHRISTINE KELLERMANN  
JPJ-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
5-7-14 [[26](#)]

**Tentative Ruling:** The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). This matter is continued from June 24, 2014, to be heard after disposition of the trustee's objections to the debtor's claims of exemption. As the motion remains in a preliminary procedural posture, opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's first two objections that feasibility of the plan depends on the granting of motions to value collateral of Specialized Loan Servicing and CitiFinancial, Inc. are overruled. The trustee's third objection under 11 U.S.C. § 521(a)(3) is overruled. The trustee's fourth objection that the plan fails to comply with 11 U.S.C. § 1325(a)(4) is sustained. Confirmation of the plan filed April 1, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 22, 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 first two objections are overruled because both motions to value collateral were heard on a prior calendar and resolved in a manner consistent with the plan's proposed treatment of those claims.

The trustee's third objection is overruled because on July 3, 2014, the debtor filed an amended Schedule J (Dkt. 49, p.6) which has removed from Line 16 any amount attributable to taxes. The trustee's objection that taxes and insurance payments for the debtor's property in Washington were double-listed on Schedule J appears to have been resolved by the filing of amended Schedule J.

The trustee's objection under 11 U.S.C. § 1325(a)(4) is sustained. In a prior tentative ruling, the court overruled this objection because it was unclear as to how the trustee calculated the amount of non-exempt property in the estate. However, on June 17, 2014, the trustee filed in support of his objections to the debtor's claims of exemption a declaration (Dkt. 47) which fully explains how he has concluded that there is \$5,192.75 in non-exempt assets in the estate. Although his figures depend on the court sustaining his objections, the court has sustained those objections and disallowed the subject claims of exemption elsewhere on today's calendar. As the plan proposes a 0.00% dividend to general unsecured creditors, the trustee's objection under 11 U.S.C. § 1325(a)(4) is sustained.

The court will issue a minute order.

58. [14-23378](#)-B-13 CHRISTINE KELLERMANN  
JPJ-3  
OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
5-28-14 [[34](#)]

**Tentative Ruling:** The trustee's objections are sustained. The debtor's claims of exemption on Schedule C (Dkt. 25, p.7) in the following assets are disallowed: (1) checking, savings, and money market bank accounts with Golden One Credit Union, as well as cash on hand, pursuant to Cal. Code Civ. P. § 704.070; (2) a computer pursuant to Cal. Code Civ. P. § 704.080; and (3) a 1971 VW Bus and 2003 Hyundai pursuant to Cal. Code Civ. P. § 704.010 (collectively, the "Assets").

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

The court will issue a minute order.

59. [13-20379](#)-B-13 ANTONIO MONTES  
JPJ-1  
MOTION TO MODIFY PLAN  
6-2-14 [[45](#)]

**Tentative Ruling:** The motion is continued to August 5, 2014, at 9:32 a.m. On or before July 22, 2014, the debtor shall file and serve a supplemental response, if any, to the motion. The trustee shall file and serve a supplemental reply, if any, in support of the motion on or before July 29, 2014.

The court will issue a minute order.

60. [09-43281](#)-B-13 FLOYD/KRISTIN SMYTHE  
WW-6  
MOTION TO MODIFY PLAN  
5-30-14 [[84](#)]

**Tentative Ruling:** The trustee's opposition is overruled. The motion is granted, and the modified plan filed May 30, 2014 (Dkt. 86) is confirmed with the following modification: the Additional Provisions for Section 1.01 shall state that the "Debtors have paid \$9,075.00 into the plan as of May 25, 2014. The plan payment for months 1 through 56 was \$162.00 (all missed payments up to and including May 25, 2014 are hereby excused). Commencing June 25, 2014, the plan payment shall be \$30.00 per month for the remainder of the plan."

The court will issue a minute order.

61. [14-24181](#)-B-13 DANNY RUE  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-11-14 [[46](#)]

**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 May 7, 2014 (Dkt. 19) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before July 22, 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. [14-24181](#)-B-13 DANNY RUE  
PD-1

OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
6-10-14 [[40](#)]

**Tentative Ruling:** Creditor Deutsche Bank National Trust Company ("Deutsche")'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.

Deutsche's objections are sustained. Confirmation of the plan filed May 7, 2014 (Dkt. 19) is denied.

The court will issue a minute order.

63. [10-51983](#)-B-13 MECHELE MITCHELL  
SDB-2

MOTION TO APPROVE LOAN  
MODIFICATION  
5-15-14 [[32](#)]

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

The debtor's motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Agreement submitted as Exhibit "A" to the motion (Dkt. 35, p.2-4).

The court will issue a minute order.

64. [14-23684](#)-B-13 FLORENCE LADI  
JPJ-2

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
6-2-14 [[20](#)]

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

The trustee objects to the debtor's claim of exemption in costume jewelry (the "Property"), claiming that she is not entitled to claim the Property as exempt under Cal. Code Civ. P. § 703.140(b)(3). The trustee refers to Cal. Code Civ. P. § 703.140(b)(3) as the "vehicle exemption." This is not true. Pursuant to Cal. Code Civ. P. § 703.140, "(b) the following exemptions may be elected as provided in subdivision (a)...(3) the debtor's interest, not to exceed six hundred dollars (\$600) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor." Cal. Code Civ. P. § 703.140(b)(3) (emphasis added). Here, the debtor has claimed a \$500.00 exemption in the Property pursuant to Cal. Code Civ. P. § 703.140(b)(3) (Dkt. 15). The trustee has failed to provide any explanation as to how this constitutes an improper claim of exemption. The trustee has failed to satisfy his burden of proving that the exemption was not properly claimed. Fed. R. Bankr. P. 4003(c). Accordingly, the objection is overruled.

The court will issue a minute order.

65. [14-21466](#)-B-13 ANTHONY/SUZANNE VENTURA  
JPJ-2

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
5-28-14 [[59](#)]

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

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

Here, the trustee seeks dismissal or conversion of the case to one under chapter 7, alleging that the debtors have taken no action to confirm a plan in this case since their initial plan was denied confirmation by order entered May 1, 2014 (Dkt. 55). Accordingly, the trustee asserts that the debtors have failed to prosecute the case causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court finds that the trustee has established "cause" to dismiss or convert this case pursuant to 11 U.S.C. §§ 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors. In this instance, the court converts the case to one under chapter 7 based on the trustee's representations regarding his investigation into the debtors' assets.

The debtors' opposition is not persuasive because they have provided no evidence outside of the statements in their opposition and attached declaration that potential judgments from their state court lawsuits will not yield a significant distribution to unsecured creditors in a chapter 7 case.

In addition, the debtors have not satisfactorily explained their failure to disclose in their schedules causes of action which they are prosecuting pro se. Their only response is that they believe prosecuting the claims would be burdensome to the chapter 7 estate and they believe that they could exempt all of the assets. Those determinations by the debtors are not justification for failure to disclose the assets.

The court will issue a minute order.

66. [10-51785](#)-B-13 DANIEL/PAULA SETTLE  
JDM-7

MOTION TO APPROVE LOAN  
MODIFICATION  
5-27-14 [[115](#)]

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

The motion is granted in part. The debtors are authorized to enter into the trial period for a loan modification on the terms set forth in the Loan Modification Agreement filed with the motion as Exhibit "A" (Dkt. 118, p.2-5) (the "Agreement"). Nothing in this ruling constitutes an approval of a long-term, permanent modification following the end of the trial period set forth in the Agreement.

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

The court will issue a minute order.

67. [10-51785](#)-B-13 DANIEL/PAULA SETTLE  
JDM-8

MOTION TO MODIFY PLAN  
5-27-14 [[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 May 27, 2014 (Dkt. 121) is confirmed.

The court will issue a minute order.

68. [09-34791](#)-B-13 GARY/TRACI MAMISHIAN  
CAH-1

MOTION TO VALUE COLLATERAL OF  
CITIBANK, N.A.  
6-23-14 [[52](#)]

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

69. [14-23491](#)-B-13 VIRGINIA LAROT  
MAC-1

MOTION TO CONFIRM PLAN  
5-23-14 [[19](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed May 23, 2014 (Dkt. 22) is denied.

The court will issue a minute order.

70. [14-23491](#)-B-13 VIRGINIA LAROT  
MAC-1

COUNTER MOTION TO CONDITIONALLY  
DISMISS CASE  
6-23-14 [[27](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 27) 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 22, 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.

**Tentative Ruling:** The motion to confirm the modified plan filed May 14, 2014 (Dkt. 28) is denied without prejudice.

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 debtors have not carried their burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). Here, the debtors propose plan payments of \$3,100.00 for one month, then \$750.00 per month for six months, and then \$1,908.00 per month for the remainder of the plan. The debtors have failed to provide evidence that they will be able to afford the increased plan payment starting in month 8. According to the debtors' most recently filed Schedules I and J (Dkt. 27), the debtors' monthly net income is \$750.55. As reflected on Schedule J and more fully explained in the motion and supporting declaration, joint debtor Suzanne Clark ("Mrs. Clark") recently lost her main source of income, which has dropped the debtors' combined monthly income by \$6,024.96. The debtors have provided no evidence that Mrs. Clark will be able to find gainful employment by Month 7 in order to increase the plan payment by \$1,158.00. 11 U.S.C. § 1325(a)(6). Accordingly, the debtors have failed to carry their 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.

**Tentative Ruling:** The motion is continued to a final evidentiary hearing on August 8, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32. At the evidentiary hearing, the trustee shall be required to establish (1) a substantial change in the debtors' circumstances on the income side of their Form 22C (Dkt. 24), and (2) actual or virtually certain replacement income figures in order to justify a variance from the presumption created by the debtors' Form 22C that they have no monthly disposable income that can be devoted to paying general unsecured creditors in this case. Hamilton v. Lanning, 560 U.S. 505 (2010).

On or before August 1, 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. The respondents' binder tabs shall be consecutively lettered, commencing at letter A. On or before August 1, 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 Trustee's Motion to Modify Chapter 13 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](http://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.

73.	<a href="#">14-24798</a> -B-13 TONY/CONNIE EVENICH JPJ-1	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 6-11-14 [ <a href="#">14</a> ]
-----	---	--

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

The trustee's objections are dismissed.

The trustee's objections are moot. On June 25, 2014, the debtors filed an amended plan (Dkt. 23) and a motion to confirm it (Dkt. 20), setting the matter for hearing on August 19, 2014, at 9:32 a.m. The amended plan supersedes the plan to which the trustee's objections are directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

74.	<a href="#">14-24798</a> -B-13 TONY/CONNIE EVENICH JPJ-2	OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 6-11-14 [ <a href="#">17</a> ]
-----	---	--

**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.