

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

July 22, 2014 at 9:32 A.M.

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1. [14-24302](#)-B-13 DOUGLAS/MAUREEN RIELLEY MOTION TO VALUE SECURED PORTION
JME-1 OF CLAIM OF CCO MORTGAGE CORP.
5-29-14 [[23](#)]

Tentative Ruling: The motion is continued to a final evidentiary hearing on September 8, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before September 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 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 September 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 Debtors' Motion to Value Collateral of Citizens Bank, N.A. 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] - 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.

2. [13-28703](#)-B-13 FRANCIS/HEATHER KOVAC
CA-1 MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CRODDY &
ASSOCIATES, P.C. FOR MICHAEL D.
CRODDY, DEBTOR'S ATTORNEY(S)
7-4-14 [[22](#)]

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

The motion is continued to August 5, 2014, at 9:32 a.m.

On July 8, 2014, the debtors filed a notice (Dkt. 29) which purports to continue the motion to August 5, 2014, at 9:32 a.m. The filing of a notice of continued hearing alone is ineffective to continue the motion; continuances of hearings must be approved by the court. LBR 9014-1(j). In this instance the court treats the notice as a request for a continuance and grants the request.

The court will issue a minute order.

3. [13-31703](#)-B-13 GREGORY/LISA HARRIS
SJS-1 MOTION TO MODIFY PLAN
6-4-14 [[35](#)]

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 4, 2014, is confirmed.

The court will issue a minute order.

4. [14-26904](#)-B-13 DANIEL WEAVER
SDH-1 MOTION TO EXTEND AUTOMATIC STAY
7-7-14 [[10](#)]

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.

5. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO
DRE-4 AVINA-SEGURA MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING, LLC
6-12-14 [[155](#)]

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 Green Tree Servicing, LLC's ("Green A tree") claim in this case secured by the second deed of trust on real property located at 17249 County Road 85B, Es Californiaparto, ("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 \$240,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by w Green Tree ith a balance of approximately \$736,000.00. Thus, the value of the collateral available to Green Tree on its second deed of trust is \$0.00.

The court will issue a minute order.

6. [12-33209](#)-B-13 OSCAR DELGADO
CYB-4

CONTINUED MOTION TO MODIFY PLAN
4-1-14 [[110](#)]

Tentative Ruling: The chapter 13 trustee's second objection regarding feasibility of the plan is sustained. The trustee's remaining objections are overruled. The motion to confirm the modified plan filed April 1, 2014, is denied.

The chapter 13 trustee's opposition regarding the debtor's failure to file amended Schedules I and J on the mandatory forms 6I and 6J is resolved by the debtor's filing of amended Schedules 6I and 6J with his reply on May 22, 2014 (Dkt. 128).

The trustee's opposition regarding the feasibility of the plan and the debtor's ability to pay an increase in the plan payment from \$156.00 per month to \$804.00 per month beginning in November, 2014, is sustained. The court acknowledges that in his declaration in support of the motion the debtor states that he has a second source of income as a contractor, that he will be taking on additional work as a contractor and that he will "do what is necessary" to save his home by remaining in the bankruptcy case. However, the debtor's declaration is not accompanied by any figures or calculations which indicate the amount which debtor expects to receive through contracting, the nature of the contracting, or how debtor will balance contractor work with a full-time job. Nor does the debtor's declaration quantify the "unexpected expenses" related to his home and vehicles which purportedly serve as the basis for delaying the increase in plan payments until November, 2014. The debtor has not sustained his burden of showing that he will be able to make all payments required by the plan. 11 U.S.C. § 1325(a)(6).

The trustee's third objection is resolved by the granting of the debtor's motion for authorization to enter into a structured settlement agreement with Specialized Loan Servicing, LLC/Bank of New York Mellon, which motion has been granted elsewhere on this calendar.

The court will issue a minute order.

7. [12-33209](#)-B-13 OSCAR DELGADO
CYB-5

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
5-9-14 [[117](#)]

Disposition Without Oral Argument: This motion continued from May 27, 2014, to allow the debtor to file supplemental evidence. The debtor filed supplemental evidence and briefing on July 16, 2014. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The debtor is authorized to enter into the Structured Settlement with Specialized Loan Servicing LLC on the terms set forth on the Structured Settlement Acceptance Form filed as Exhibit "C" to the motion.

The court will issue a minute order.

8. [14-25014](#)-B-13 PAUL/ALICE SALINAS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-25-14 [[32](#)]

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 8, 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.

9. [10-20815](#)-B-13 DEONA/MAURICE TOWNSEND
SJS-2

MOTION TO INCUR DEBT
6-11-14 [[36](#)]

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 motion. Except as so ordered, the motion is denied.

The court will issue a minute order.

10. [13-29516](#)-B-13 MICHAEL CHURSENOFF
MAS-3

MOTION TO MODIFY PLAN
6-24-14 [[59](#)]

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 movant did not give sufficient notice of the motion to parties in interest. LBR 3015-1(d)(2) requires that notice of a motion to modify a plan post-confirmation "shall comply with Fed. R. Bankr. P. 3015(g), which requires twenty-one (21) days' notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). . . . In order to comply with both Fed. R. Bankr. P. 3015(g) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing." LBR 3015-1(d)(2). In this case, the movant's certificate of service (Dkt. 63) shows that the movant served the motion on parties in interest on June 24, 2014, only 28 days before the date of the hearing. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

11. [11-48317](#)-B-13 MICHAEL/LINDA SMYLLIE
DEF-2

MOTION TO MODIFY PLAN
6-2-14 [[47](#)]

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 motion is granted in the absence of objection under 11 U.S.C. § 1325(b)(1)(B) from the trustee or the holder of an allowed unsecured claim. The court notes, however, that the modified plan reduces the dividend to be paid to general unsecured creditors from 53% (\$63,907.72) to 24% (\$29,156.01), an amount below that established by the presumption of the debtors' projected disposable income established by their Form 22C (Dkt. 26). Such modifications require a showing of a substantial change in circumstances and known or virtually certain figures to replace those used in the calculation of the presumptive projected disposable income. See Hamilton v. Lanning, 560 U.S. 505 (2010). The motion does not address the foregoing authority. The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim.

The court will issue a minute order.

12. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER MOTION TO CONFIRM PLAN
LBG-3 AND JOSEPH ALEXANDER 5-30-14 [[77](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed May 30, 2014, is denied.

The court will issue a minute order.

13. [13-35318](#)-B-13 KRISTEN GOODWIN-ALEXANDER COUNTER MOTION TO DISMISS CASE
LBG-3 AND JOSEPH ALEXANDER 6-9-14 [[83](#)]

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 August 5, 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.

14. [14-24120](#)-B-13 LONNIE ROBERTS MOTION TO INCUR DEBT
TJW-1 7-7-14 [[20](#)]

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 reverse mortgage refinance transaction will actually occur, as the copy of the Good Faith Estimateg filed as an exhibit to the motion is not signed by a representative of the refinancing entity, AAG. As a result, the debtors have not shown evidence of AAG'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 reverse mortgage transaction to which AAG consents, there is no case or controversy for the court to decide.

AAG's consent to the transaction may be manifested in ways other than

executing the sale contract. For example, AAG 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, and the UST. The debtors did not give notice of the motion to all creditors, nor did they serve AAG. consistent with the provisions of Bankruptcy Rule 7004.

The court will issue a minute order.

15. [14-25224](#)-B-13 LARRY PERKINS
APN-1

OBJECTION TO CONFIRMATION OF
PLAN BY PARK RIVER OAK ESTATES
HOMEOWNERS ASSOCIATION
6-24-14 [[22](#)]

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

The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed at the request of the debtor by order entered July 15, 2014 (Dkt. 38).

The court will issue a minute order.

16. [14-25224](#)-B-13 LARRY PERKINS
BHT-1

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
6-12-14 [[15](#)]

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

The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed at the request of the debtor by order entered July 15, 2014 (Dkt. 38).

The court will issue a minute order.

17. [14-25224](#)-B-13 LARRY PERKINS
BHT-1
- OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR WILMINGTON
TRUST COMPANY
6-25-14 [[31](#)]

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

The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed at the request of the debtor by order entered July 15, 2014 (Dkt. 38).

The court will issue a minute order.

18. [14-25224](#)-B-13 LARRY PERKINS
JPJ-1
- OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
6-25-14 [[27](#)]

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

The objection and motion to dismiss are dismissed.

The objection and motion to dismiss are moot. The bankruptcy case was dismissed at the request of the debtor by order entered July 15, 2014 (Dkt. 38).

The court will issue a minute order.

19. [12-28725](#)-B-13 RONALD JOHNSON
GG-2
- MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA
5-29-14 [[30](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BofA") claim in this case secured by the third deed of trust on real property located at 3041 Marysville Boulevard, Sacramento, 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 \$70,900.00 on the date of the petition. The Property is encumbered by a first deed of trust held by ASC/America's

Servicing with a balance of approximately \$181,484.02 and a second deed of trust held by BofA with a balance of approximately \$23,814.80. Thus, the value of the collateral available to BofA on its third deed of trust is \$0.00.

The court will issue a minute order.

20. [13-31325](#)-B-13 LANCE SMITH AND NICOLE OBJECTION TO CLAIM OF ASSET
LDD-02 CRIST-SMITH ACCEPTANCE, LLC, CLAIM NUMBER 2
6-5-14 [[73](#)]

Tentative Ruling: The trustee's opposition is sustained. The objection is sustained in part. Claim no. 2 on the court's claims register (the "Claim") filed by Asset Acceptance, LLC ("Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was March 28, 2001. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on March 28, 2001, more than twelve years before the debtors commenced their chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

As for the debtors' request that Asset Acceptance be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling

them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

21.	<u>13-31325</u> -B-13 LDD-03	LANCE SMITH AND NICOLE CRIST-SMITH	OBJECTION TO CLAIM OF QUANTUM3 GROUP, LLC, CLAIM NUMBER 6 6-5-14 [<u>78</u>]
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Tentative Ruling: The opposition filed by Qunatum3 Group LLC and Sadino Funding LLC (collectively, the "Claimant") is sustained. The objection is sustained in part. Claim no. 6 on the court's claims register (the "Claim") filed by the Claimant is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. Based on the account summary attached to the Claim, the claim is based on an account related to an extension of unsecured credit to the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was August 2, 2009. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on August 2, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

As for the debtors' request that the Claimant be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court construes Claimant's opposition as opposition to the debtor's requests for equitable relief and attorneys fees and sustains that opposition for the reasons set forth above.

The court will issue a minute order.

22. [13-31325](#)-B-13 LANCE SMITH AND NICOLE
LDD-04 CRIST-SMITH OBJECTION TO CLAIM OF CAPITAL
SYSTEMS, LLC, CLAIM NUMBER 7
6-5-14 [[83](#)]

Tentative Ruling: The objection is sustained in part. Claim no. 7 on the court's claims register (the "Claim") filed by Jefferson Capital Systems LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. Based on the account summary attached to the Claim, the claim is based on an account related to an extension of unsecured credit to the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was February 13, 2007. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on February 13, 2007, more than six years before the debtors commenced their chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent

already paid by the trustee.

As for the debtors' request that the Claimant be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

23. [13-31325](#)-B-13 LANCE SMITH AND NICOLE
LDD-05 CRIST-SMITH
OBJECTION TO CLAIM OF ASSET
ACCEPTANCE, LLC, CLAIM NUMBER
10
6-5-14 [\[88\]](#)

Tentative Ruling: The objection is sustained in part. Claim no. 10 on the court's claims register (the "Claim") filed by the Asset Acceptance LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was April 11, 2001. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on April 11, 2001, more than twelve years before the debtors commenced their

chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

As for the debtors' request that the Claimant be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

24.	<u>13-31325</u> -B-13 LANCE SMITH AND NICOLE LDD-06 CRIST-SMITH	OBJECTION TO CLAIM OF ALTAIR OH XIII, LLX, CLAIM NUMBER 12 6-5-14 [<u>93</u>]
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Tentative Ruling: The chapter 13 trustee's opposition is sustained. The objection is sustained in part. Claim no. 12 on the court's claims register (the "Claim") filed by the Altair OH XIII, LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached

to the claim shows that the date of the last transaction on the account was December 27, 2004. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on December 27, 2004, more than eight years before the debtors commenced their chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

As for the debtors' request that the Claimant be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

25. [13-31325](#)-B-13 LANCE SMITH AND NICOLE OBJECTION TO CLAIM OF ALTAIR OH
LDD-07 CRIST-SMITH XIII, LLC, CLAIM NUMBER 15
6-6-14 [[98](#)]

Tentative Ruling: The objection is sustained in part. Claim no. 15 on the court's claims register (the "Claim") filed by the Altair OH XIII, LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

In this case, the Claim is on its face a duplicate of Claim no. 14, also filed by the Claimant. Claim no. 14 and the Claim are filed in the same amount and reference the same account number. Therefore, the Claim is disallowed as duplicative of claim no. 14.

As for the debtors' request that the Claimant be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive

relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an awards of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

26.	<u>13-31325</u> -B-13	LANCE SMITH AND NICOLE CRIST-SMITH	OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM NUMBER 17 6-6-14 [<u>103</u>]
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Tentative Ruling: The objection is sustained in part. Claim no. 17 on the court's claims register (the "Claim") filed by Jefferson Capital Systems, LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was May 30, 2009. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on May 30, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

As for the debtors' request that the Claimant be "precluded" from filing

"any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

27.	<u>13-31325</u> -B-13 LANCE SMITH AND NICOLE LDD-09 CRIST-SMITH	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 20 6-6-14 [<u>108</u>]
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Tentative Ruling: The chapter 13 trustee's opposition is sustained. The objection is sustained in part. Claim no. 20 on the court's claims register (the "Claim") filed LVNV Funding, LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was March 1, 2005. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on March 1, 2005, more than eight years before the debtors commenced their chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the

objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

As for the debtors' request that the Claimant be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

28.	13-31325 -B-13 LANCE SMITH AND NICOLE LDD-10 CRIST-SMITH	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 21 6-6-14 [113]
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Tentative Ruling: The objection is sustained in part. Claim no. 21 on the court's claims register (the "Claim") filed LVNV Funding, LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was April 22, 2005. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on April 22, 2005, more than eight years before the debtors commenced their

chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

As for the debtors' request that the Claimant be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

29.	13-31325 -B-13 LANCE SMITH AND NICOLE LDD-11 CRIST-SMITH	OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 26 6-6-14 [118]
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Tentative Ruling: The objection is sustained in part. Claim no. 26 on the court's claims register (the "Claim") filed LVNV Funding, LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the debtors' remaining requests for relief set forth in the objection are denied.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 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.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was April 26, 2005. Therefore, the debtors have provided sufficient

evidence that Claimant's cause of action on its Claim began to accrue on April 26, 2005, more than eight years before the debtors commenced their chapter 13 bankruptcy case on August 28, 2013. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

As for the debtors' request that the Claimant be "precluded" from filing "any" amended, modified or substituted claim in the bankruptcy case, it is denied. The debtors cite no legal authority entitling them to such relief. Furthermore, the request is essentially one for injunctive relief that can be granted, if at all, only via an adversary proceeding. Fed. R. Bankr. P. 7001.

The debtors' request that the debt underlying the claim "be canceled and forever discharged whether or not the debtors receive their discharge order in this case," again, the debtors cite no legal authority entitling them to such relief. And again, the request is essentially one for injunctive relief enjoining future attempts to collect the underlying debt which can only be granted, if at all, via an adversary proceeding.

Finally, the debtors' request for an award of attorney's fees is also denied because they cite no legal authority entitling them to an award of attorney's fees. The objection is also not supported by any evidence substantiating the reasonableness of the requested fee award.

The court will issue a minute order.

30. [14-26025](#)-B-13 THOMAS/TONYA ROGERS MOTION TO VALUE COLLATERAL OF
PLC-1 ALLY
6-10-14 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$7500.00 of Ally Bank's claim in this case secured by a 2006 Dodge Ram truck (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 \$7500.00 on the date of the petition.

The court will issue a minute order.

31. [14-26025](#)-B-13 THOMAS/TONYA ROGERS MOTION TO VALUE COLLATERAL OF
PLC-2 WELLS FARGO DEALER SERVICES
6-10-14 [[12](#)]

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

The motion is removed from the calendar. By order signed July 18, 2014, the court approved a stipulation between the debtors and Wells Fargo Bank, N.A., dba Wells Fargo Auto Finance which resolves the motion.

32. [14-26025](#)-B-13 THOMAS/TONYA ROGERS
PLC-3

MOTION TO VALUE COLLATERAL OF
NATIONSTAR MORTGAGE, LLC
6-10-14 [[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 Nationstar Mortgage, LLC's ("Nationstar") claim in this case secured by the second deed of trust on real property located at 2824 Dinwiddie Way, Elk Grove, 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 \$275,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Seterus with a balance of approximately \$292,000.00. Thus, the value of the collateral available to Nationstar on its second deed of trust is \$0.00.

The court will issue a minute order.

33. [14-26025](#)-B-13 THOMAS/TONYA ROGERS
PLC-4

MOTION TO VALUE COLLATERAL OF
COMMUNITY WEST BANK
6-10-14 [[20](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Community West Bank's claim in this case secured by the third deed of trust on real property located at 2824 Dinwiddie Way, Elk Grove, 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 \$275,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Seterus with a balance of approximately \$292,000.00 in the second deed of trust held by Nationstar Mortgage, LLC with a balance of approximately \$53,000.00. Thus, the value of the collateral available to Community West Bank on its third deed of trust is \$0.00.

The court will issue a minute order.

34. [12-24928](#)-B-13 REY CONSTANTE AND ANA
SAC-1 MARTINEZ-CONSTANTE

MOTION TO MODIFY PLAN
5-27-14 [[21](#)]

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 (the "Modified Plan"), is confirmed.

The motion is granted and the Modified Plan is confirmed in the absence of any objection by the trustee or the holder of an allowed unsecured claim. The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court notes, however, that the debtors are "below median" debtors for whom the applicable commitment period under 11 U.S.C. § 1325(b)(4) would be three years if the plan does not pay general unsecured creditors in full. The Modified Plan reduces the plan term from 36 months to 28 months. The Ninth Circuit Court of Appeals in Flores v. Danielson (In re Flores), 735 F.3d 855 (9th Cir. 2013) held that the applicable commitment period in 11 U.S.C. § 1325(b)(4) is a temporal requirement that determines the minimum duration that a plan must have to be confirmable under 11 U.S.C. § 1325(b)(1)(B), even if the initial payments required under the plan will be \$0.00. See also Fridley v. Forsythe (In re Fridley), 380 B.R. 538, 5453 (B.A.P. 9th Cir. 2007) ("Subsequent increases in [a debtor's] actual income can be captured for creditors by way of a § 1329 plan modification...."). The court expresses no opinion whether the Modified Plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim.

The court will issue a minute order.

35. [11-28430](#)-B-13 ARCHIE TERRY III
SAC-1

MOTION TO MODIFY PLAN
6-5-14 [[28](#)]

Tentative Ruling: The motion is denied without prejudice.

By this motion the debtor seeks confirmation of a modified plan (Dkt. 31) which provides for payment of a one-time lump sum of \$19,500.00 on or before July 25, 2014, which is intended to complete the plan in 38 months rather than 60 months, as provided for under the confirmed plan.

Although no party in interest has filed opposition to the motion, the court has an independent duty to ensure that the modified plan meets the requirements of the Bankruptcy Code for confirmation. The motion is denied without prejudice because the debtor has not carried his burden under 11 U.S.C. § 1325(a)(6) of showing that the modified plan is feasible. The debtor asserts in his supporting declaration (Dkt. 30) that the lump sum required to complete the plan will be "pulled

from" his non-filing spouse's "457 plan," which presumably refers to a deferred compensation plan established by 26 U.S.C. § 457. Although the debtor proposes to fund the modified plan with funds derived from his spouse's deferred compensation plan, the debtor has provided no evidence that his spouse consents to said use of the funds. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

36. [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: This objection continued from July 8, 2014. The court issues the following tentative ruling.

The objection is removed from the calendar as resolved by stipulation. The initial plan filed April 19, 2014, will be confirmed with the following modifications included in the order confirming the plan: 1.) Plan payments shall be \$400.00 per month for 3 months, followed by payments of \$432.00 per month for 57 months; and 2.) the secured claim of Southern California Postal Credit Union ("SCPCU") shall be provided for in class 2 in the amount of \$14,300.00 at 4.5% per annum, to be paid with a monthly dividend of \$267.00 per month.

The objection was continued to allow the debtor to provide supplemental briefing on the issue of whether a non-material modification could be made to the plan such that the secured claim of SCPCU could be paid in full. After reviewing the debtor's supplemental brief, the court agrees with the debtor that a non-material modification may be made, but disagrees with the debtor's calculations, based on the following:

The debtor stipulated with Southern California Postal Credit Union ("SCPCU") to value SCPCU's collateral at \$14,300.00, and to pay SCPCU's allowed secured claim through class 2 of the plan. The plan proposes to pay 4.5% per annum on SCPCU's secured claim, a term which was not addressed by the stipulation. The court's amortization calculation of SCPCU's allowed secured claim at \$14,300.00, paid over 60 months at 4.5% per annum with a dividend of \$220.00, shows that the class 2 treatment proposed in the plan is underfunded by \$3140.39. In order to pay SCPCU's class 2 secured claim in full over 60 months at 4.5% per annum, the court's calculations show that the debtor must increase the dividend to be paid on the claim to \$266.60 per month. The difference between the total amount to be paid on SCPCU's claim presently proposed in the plan of \$13,200.00 (\$220.00 x 60 months) and the amount of \$15,996.00 (\$266.60 x 60 months) that must be paid in order to pay SCPCU's claim in full is \$2,796.00.

The debtor proposes to fund this difference in two ways: first, through savings on a priority claim filed in an amount lower than estimated in the plan and second by an increase in the monthly plan payment in months 4-60 of the plan. The debtor asserts in his supplemental brief that the Internal Revenue Service filed a priority claim in an amount \$1027.70 less than the amount estimated in the plan. While the court is not aware

of any authority which allows specific application of the difference between the filed amount of a claim and the amount of the claim estimated in the plan to another claim or claims, the court does recognize that because the IRS's claim was filed in an amount less than anticipated there will be more funding available under the plan to pay other claims. By the court's calculations, taking into account the additional funding available to the plan as a result of the lower than anticipated IRS claim, the debtor must also provide an additional \$1,768.30 in additional funding through increased plan payments in months 4-60. The court's calculations show that the debtor must therefore increase the plan payment by at least \$32.00 per month in order to fund the plan and pay SCPCU's secured claim in full. Because an increase of \$32.00 per month represents a 8.00% increase in the monthly plan payment, the court considers it a non-material modification that may be made in the order confirming the plan.

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

37. [10-44131](#)-B-13 RAPHAEL METZGER AND CONTINUED MOTION FOR
PGM-4 MELANIE MEDINA-METZGER COMPENSATION FOR PETER G.
MACALUSO, DEBTORS' ATTORNEY
5-22-14 [[177](#)]

Tentative Ruling: None.

38. [11-48435](#)-B-13 DAVID SHESTAK MOTION TO DISMISS CASE
USA-1 6-17-14 [[57](#)]

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

Creditor Internal Revenue Service (the "IRS")'s motion is granted. The case is dismissed.

The debtor's chapter 13 plan (Dkt. 30), confirmed by order entered June 22, 2012 (Dkt. 54), provides in section 6.02(c) that the "[d]ebtor's financial and business affairs shall be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes." The IRS alleges without dispute and provides evidence that the debtor has failed to pay post-petition tax liabilities totaling \$17,561.90 for the tax years 2011, 2012, and 2013. Additionally, the debtor has not made any estimated tax payments for the current year 2014. The foregoing facts constitute a material default by the debtor with respect to a term of a confirmed plan and cause to convert or dismiss the chapter 13 case pursuant to 11 U.S.C. § 1307(c)(6). Additionally, the IRS has established cause to convert or

dismiss the chapter 13 case pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors.

In this instance, the court dismisses the case, as its review of the debtor's schedules shows that the debtor does not have significant non-exempt assets that could be administered by a trustee if the case were converted to chapter 7.

The court will issue a minute order.

39. [10-30137](#)-B-13 TY/REBECCA MATT
MG-3

CONTINUED MOTION TO INCUR DEBT
6-2-14 [[71](#)]

Tentative Ruling: This matter is continued from July 8, 2014, at 9:32 a.m. with instructions that the debtors serve the exhibit filed on July 3, 2014 (Dkt. 75) and a notice of the continued hearing on all creditors on or before July 8, 2014. The debtors were further instructed that the notice of continued hearing was to state that the motion will now be heard under the procedures set forth in Local Bankruptcy Rule 9014-1(f)(2). Additionally, the debtors were required to file a proof of service of the exhibit and notice of continued hearing on or before July 11, 2014. The debtors have timely accomplished the foregoing directives. As this is now a properly filed motion under Local Bankruptcy Rule 9014-1(f)(2), any opposition to the motion may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

In the absence of opposition, the debtors' motion for authority to incur new debt is granted on the terms set forth in the SunWest Mortgage Company, Inc. Underwriting Disposition and Conditions filed with the motion as Exhibit "A" (Dkt. 75, p.2-4).

The court will issue a minute order.

40. [12-37144](#)-B-13 CHARLES/SUSAN MCBRYDE
CJY-3

MOTION TO MODIFY PLAN
6-9-14 [[53](#)]

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 9, 2014 (Dkt. 57) is confirmed.

The motion is granted in the absence of opposition. The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors to approximately \$39,343.00 (51% on Class 7 claims of \$77,142.70), which is less than \$43,298.00 (the amount that the plan would have to pay to unsecured creditors if there were a section 1325(b) objection. The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd. 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence

of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

41. [14-25644](#)-B-13 ANDY/LAIL MARTINEZ MOTION TO VALUE COLLATERAL OF
BLG-1 NATIONSTAR MORTGAGE, LLC
6-17-14 [[12](#)]

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 Nationstar Mortgage, LLC's claim secured by the second deed of trust on real property located at 8925 Laguna Place Way, Elk Grove, CA 95758 (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 \$175,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage, LLC with a balance of approximately \$182,194.81. Thus, the value of the collateral available to Nationstar Mortgage, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

42. [12-41445](#)-B-13 KEVIN/MA NEKA CORNELIUS CONTINUED MOTION TO MODIFY PLAN
PGM-2 2-7-14 [[39](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed February 7, 2014 (Dkt. 43) is denied.

The court will issue a minute order.

43. [14-25045](#)-B-13 RANDY FOORD OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN AND MOTION TO DISMISS CASE
6-25-14 [[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 7, 2014, the debtor filed an amended plan (Dkt. 36) and a motion to confirm it (Dkt. 33), setting the matter for hearing on September 2, 2014, at 9:32 a.m. 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.

44. [14-22446](#)-B-13 LESLIE SMITH
SJS-3

MOTION TO CONFIRM PLAN
6-2-14 [[44](#)]

Tentative Ruling: The trustee's opposition is sustained. Creditor Beneficial Financial I Inc. ("BFI")'s objection under 11 U.S.C. § 109(e) is overruled without prejudice. BFI's remaining objections are sustained. The motion to confirm the amended plan filed June 2, 2014 (Dkt. 47) is denied.

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

BFI's objection under 11 U.S.C. § 109(e) that the debtor lacks regular monthly income necessary for a feasible chapter 13 plan is overruled without prejudice to the filing of a separate motion to dismiss the case. BFI's remaining objections are sustained for the reasons set forth therein.

In addition to the foregoing objections, 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 states in her declaration (Dkt. 46) that her current average monthly income is \$2,200.00 and her average monthly expenses are \$1,365.50, leaving monthly net disposable income of \$834.50 to make a proposed plan payment of \$3,870.00. This leaves the debtor \$3,035.50 short. The debtor proposes to make up this difference in the following ways. First, she states that she has been interviewing with reputable companies for a salaried position with "some success." She anticipates procuring employment by June 15, 2014, with an average monthly net income of approximately \$4,500.00. Second, her daughter will continue contributing \$350.00 per month for the remainder of the bankruptcy. Third, the debtor will work odd and weekend jobs to make up any difference. The court cannot accept these proposals as the debtor has provided no evidence that any of this will occur. Notwithstanding the feasibility issues already raised by BFI, there is no proof that (1) the debtor will be able to garner employment at the salary she suggests, (2) her daughter will continue contributing the same amount of money each month for the remainder of the plan, and (3) that the debtor will be able to procure additional part-time work to make up any shortfall. The

prospect of all three of these events occurring is tenuous at best. 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.

45. [14-22446](#)-B-13 LESLIE SMITH
SJS-3

MOTION TO DISMISS CASE
6-30-14 [[55](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 55) 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 August 5, 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. [14-24749](#)-B-13 DONNETTE CHATTERS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
6-25-14 [[27](#)]

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 17, 2014, the debtor filed an amended plan (Dkt. 34) and a motion to confirm it (Dkt. 31), setting the matter for hearing on September 2, 2014, at 1:30 p.m. 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 notes that the notice of hearing on the motion to confirm the first amended plan states that the hearing will take place at 1:30 p.m. The court's regular chapter 13 calendar is heard at 9:32 a.m., not 1:30 p.m. The debtor is instructed to file and properly serve an amended notice of hearing stating the correct time for the hearing on the motion.

The court will issue a minute order.

47. [13-30350](#)-B-13 ANTONIO RODRIGUEZ
EB-2

MOTION TO MODIFY PLAN
5-27-14 [[42](#)]

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. 45) is confirmed.

The court will issue a minute order.

48. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE
SDB-2

MOTION TO MODIFY PLAN
6-10-14 [[85](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the modified plan filed June 10, 2014 (Dkt. 90) is confirmed with the following modification: Class 2B.1 shall be amended to add "Wells Fargo Financial California, Inc./2004 Nissan Armada" to the "Class 2 Creditor's name and description of collateral" box. All other terms of Class 2B.1 shall remain unchanged.

The court will issue a minute order.

49. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL
RGJ-3

MOTION TO CONFIRM PLAN
6-10-14 [[47](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed June 10, 2014 (Dkt. 51) is denied.

The court will issue a minute order.

50. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL
RGJ-3

COUNTER MOTION TO DISMISS CASE
6-30-14 [[53](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 53) 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 August 5, 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.

51. [14-23055](#)-B-13 GUSTAVO TAPIA
TOG-2

MOTION TO CONFIRM PLAN
6-10-14 [[29](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the amended plan filed June 10, 2014 (Dkt. 32) will be confirmed.

The trustee's sole objection to plan confirmation is that the debtor failed to comply with the trustee's request to amend the Statement of Financial Affairs to accurately reflect the amount of income the debtor received from his business in 2013. However, as the debtor notes in his untimely reply filed on July 19, 2014 (Dkt. 38), on July 14, 2014, he filed an amended Statement of Financial Affairs (Dkt. 36) which has amended Question One to reflect his 2013 income. This resolves the trustee's objection.

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.

52. [14-23055](#)-B-13 GUSTAVO TAPIA
TOG-2

COUNTER MOTION TO DISMISS CASE
7-7-14 [[34](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 34) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court will issue a minute order.

53. [11-24357](#)-B-13 MICHAEL/CHRISTYNA
SAC-4 THOMPSON

MOTION TO APPROVE LOAN
MODIFICATION
6-18-14 [[67](#)]

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 filed on June 18, 2014 (Dkt. 71) shows that on June 18, 2014, the notice of hearing, motion, and supporting documents were served on the Office of the United States Trustee, the chapter 13 trustee, the debtors, the lending creditor at multiple addresses, and three other creditors. Although the proof of service references an attached list, the court sees no such attachment. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

54. [10-32861](#)-B-13 ESMERALDA WYMORE
JLB-12

MOTION TO MODIFY PLAN
5-28-14 [[152](#)]

Tentative Ruling: The debtor's motion to continue is granted. This matter is continued to September 16, 2014, at 9:32 a.m. to allow the debtor to file and properly serve a motion for approval of a permanent loan modification agreement with America's Servicing Company (the "Motion"). The debtor is instructed to set the Motion for hearing on an appropriate chapter 13 calendar (while providing proper notice to all creditors) so that it is heard and decided on or before September 16, 2014.

The court will issue a minute order.

55. [14-23462](#)-B-13 MIKKY TALLMAN
SJS-1

MOTION TO CONFIRM PLAN
6-10-14 [[22](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed June 10, 2014 (Dkt. 26) is denied.

The court will issue a minute order.

56. [14-23462](#)-B-13 MIKKY TALLMAN
SJS-1

COUNTER MOTION TO DISMISS CASE
7-8-14 [[31](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 31) 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 August 5, 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.

57. [11-36163](#)-B-13 KYLE PURVIS
JSO-7

MOTION TO INCUR DEBT
7-3-14 [[100](#)]

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.

58. [12-30764](#)-B-13 GARY/LAVONNE HAYWORTH
SDB-4

MOTION TO SELL
6-26-14 [[49](#)]

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.

The motion is denied without prejudice.

By this motion, the debtors seek court authorization to sell real property located at 7320 Rancho Verde Lane, Loomis, CA 95650 for \$700,000.00. The court acknowledges that the debtors have attached as Exhibit "B" a copy of the California Residential Purchase Agreement and Joint Escrow Instructions (Dkt. 52, p.4-21) (the "Agreement"). However, the Agreement is not legible. Accordingly, the motion is denied without prejudice to the filing of a motion which contains a legible copy of the Agreement.

The court will issue a minute order.

59. [14-21464](#)-B-13 WILLIAM MCDANIELS JR.
RJ-2

MOTION TO CONFIRM PLAN
6-10-14 [[36](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed June 10, 2014 (Dkt. 38) is denied.

Additionally, 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 his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). Here, the debtor proposes to increase the plan payment from \$750.00 per month to \$1,400.00 starting in Month 37. However, the debtor has provided no explanation in either the motion or supporting declaration as to how he will be able to afford such an increase. According to Amended Schedule J filed June 10, 2014 (Dkt. 40), the debtor's monthly net income is \$750.00. The debtor states in his declaration that "the proposed payments are also the most that I will be able to pay" (Dkt. 39, p.2, lines 16-17). 11 U.S.C. § 1325(a)(6). Accordingly, the debtor has failed to establish all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

60. [14-21464](#)-B-13 WILLIAM MCDANIELS JR.
RJ-2

COUNTER MOTION TO DISMISS CASE
6-30-14 [[42](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 42) 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 August 5, 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.

61. [13-33165](#)-B-13 ERIC/LAURA MCBRIDE
EJS-3

MOTION TO MODIFY PLAN
6-9-14 [[40](#)]

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

The motion is granted, and the modified plan filed June 9, 2014 (Dkt. 42) is confirmed.

The motion is granted in the absence of opposition. The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors from 47.00% to 13.00%. The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

62. [14-23165](#)-B-13 JOSE VERDUSCO
TOG-2

MOTION TO CONFIRM PLAN
6-10-14 [[30](#)]

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

The motion is granted, and the amended plan filed June 10, 2014 (Dkt. 33) 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.

63. [14-25175](#)-B-13 JOHNNIE/KIMBERLY RHYNES
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-25-14 [[31](#)]

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

This matter is continued to August 5, 2014, at 9:32 a.m. to be heard after disposition of Debtors' Motion to Avoid Lien of Kelkris Associates,

Inc.

64. [14-25477](#)-B-13 TERRI BANKS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-30-14 [[16](#)]

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

The trustee's second objection that the debtor failed to appear at the duly noticed meeting of creditors is overruled. The trustee's remaining objections are sustained. Confirmation of the plan filed May 23, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before August 5, 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 first meeting of creditors held on June 26, 2014, was continued to July 10, 2014. The debtor appeared at the continued meeting of creditors, and the meeting was concluded as to the debtor on that date. Accordingly, the trustee's second objection has been resolved and is therefore overruled.

The court will issue a minute order.

65. [14-24181](#)-B-13 DANNY RUE
DWR-2

MOTION TO VALUE COLLATERAL OF
ANANA BLISS REVOCABLE
6-3-14 [[36](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of the Anana Bliss Revocable Living Trust's claim secured by the second deed of trust on real property located at 4831 Cibola Way, Sacramento, CA 95820 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$75,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by America's Servicing Company with a balance of approximately \$179,158.00. Thus, the value of the collateral available to the Anana Bliss Revocable Living Trust on its second deed of trust is \$0.00.

The court will issue a minute order.

66. [12-31682](#)-B-13 GREGORY/PATRICIA ROWEN MOTION TO VALUE COLLATERAL OF
CA-2 BANK OF AMERICA, N.A.
7-8-14 [[43](#)]

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.

67. [09-20083](#)-B-13 GARY/IRIS CUDD MOTION TO VALUE COLLATERAL OF
CA-6 JPMORGAN CHASE BANK
7-8-14 [[108](#)]

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.

68. [14-25084](#)-B-13 GAJENDRA/MUNA ADHIKARI OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-23-14 [[16](#)]

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

The debtors' opposition is overruled. The trustee's objections are sustained. Confirmation of the plan filed May 14, 2014 (Dkt. 5) is denied. The bankruptcy case is dismissed.

The case is dismissed because the debtors are not eligible to be debtors under chapter 13 pursuant to 11 U.S.C. § 109(e). This section provides that "...an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$383,175 and noncontingent, liquidated, secured debts of less than \$1,149,525 may be a debtor under chapter 13 of this title." 11 U.S.C. § 109(e). According to the debtors' schedules, as of the petition date they owed \$31,130.75 in secured debt and \$443,168.29 in unsecured debt. The debtors' aggregate level of unsecured debt as of the petition date exceeds the threshold set forth in the Bankruptcy Code. Accordingly, the debtors are ineligible to be chapter 13 debtors by operation of 11 U.S.C. § 109(e), and the case is dismissed.

The court acknowledges that the debtors are in the process of seeking approval from the Internal Revenue Service (the "IRS") to reduce its proof of claim to an amount that would allow the debtors to proceed under chapter 13. However, the debtors have provided no evidence that the IRS has consented to this. Accordingly, the debtors' opposition is overruled.

The court will issue a minute order.

69. [13-34891](#)-B-13 MICHAEL/KATHERINE MOTION TO CONFIRM PLAN
NBC-2 HOLLIDAY 6-2-14 [[37](#)]

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

The motion is granted, and the amended plan filed June 2, 2014 (Dkt. 38) 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.

70. [13-29992](#)-B-13 JUAN COLEMAN MOTION TO MODIFY PLAN
SNM-4 6-10-14 [[67](#)]

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

The motion is removed from the calendar. The debtor withdrew the motion on July 10, 2014 (Dkt. 76).

71. [14-23093](#)-B-13 JANA BURNS MOTION TO CONFIRM PLAN
DRE-1 6-10-14 [[27](#)]
CASE DISMISSED 6/30/14

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

The motion is dismissed.

The motion is moot. By order entered June 30, 2014 (Dkt. 34), the bankruptcy case was dismissed.

The court will issue a minute order.

72. [11-34498](#)-B-13 ROY/JEANETTE HARRIS
CAH-7

OBJECTION TO CLAIM OF MONIQUE
MARGAUX, CLAIM NUMBER 7-2
5-29-14 [[64](#)]

Tentative Ruling: The debtors' objection is sustained in part. Claim no. 7-2 on the court's claims register, filed on December 6, 2011, in the secured amount of \$118,974.00 (the "Claim") by Monique Margaux (the "Claimant") is disallowed as a secured claim and allowed as a general unsecured claim. Except as so ordered, the objection is overruled.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the debtors allege without dispute that the Claim inaccurately states that it is secured by any property owned by the debtors. The Claim states that it is secured by real estate of an unknown value. However, the debtors allege without dispute that they have received no documents from the recorder's office indicating that an abstract of judgment or other document has been recorded against them. The foregoing justifies disallowing the Claim as a secured claim, but does not justify disallowing the Claim in its entirety.

The court will issue a minute order.

73. [11-34498](#)-B-13 ROY/JEANETTE HARRIS
CAH-8

MOTION TO MODIFY PLAN
5-29-14 [[69](#)]

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 29, 2014 (Dkt. 73) is confirmed.

The motion is granted in the absence of opposition. The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors from 20.00% to 0.00%. The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.