

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 19, 2014 at 9:32 A.M.

1. [13-35903](#)-B-13 MARK/DEJA HERBERS MOTION TO CONFIRM PLAN
HLG-3 6-25-14 [[51](#)]

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. On August 8, 2014, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan which is the subject of this motion. 11 U.S.C. § 1323(b).

The court will issue a minute order.

2. [13-35903](#)-B-13 MARK/DEJA HERBERS COUNTER MOTION TO DISMISS CASE
HLG-3 8-4-14 [[61](#)]

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

The countermotion is dismissed.

The countermotion is moot. On August 8, 2014, the debtors filed an amended plan and motion to confirm. The motion to confirm provides the relief sought in the motion to dismiss.

The court will issue a minute order.

3. [14-26904](#)-B-13 DANIEL WEAVER MOTION TO VALUE COLLATERAL OF
SDH-2 HSBC MORTGAGE SERVICES, INC.
7-11-14 [[14](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of HSBC Mortgage Services, Inc.'s

("HSBC") claim in this case secured by the second deed of trust on real property located at 148 Sutcliffe Circle, Folsom, 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 \$410,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by GMAC Mortgage with a balance of approximately \$467,000.00. Thus, the value of the collateral available to HSBC on its second deed of trust is \$0.00.

The court will issue a minute order.

4. [14-26904](#)-B-13 DANIEL WEAVER MOTION TO AVOID LIEN OF NEWPORT
SDH-3 CAPITAL RECOVERY GROUP II, LLC
7-11-14 [[18](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Newport Capital Recovery Group II, LLC, recorded in the official records of Sacramento County, Book 20111014, Page 0808, is avoided as against the real property located at 148 Sutcliffe Circle, Folsom, California.

The subject real property has a value of \$410,000.00 as of the date of the petition. The unavoidable liens total approximately \$562,000.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which he exempted \$15,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

5. [14-24805](#)-B-13 IRA ROSS OBJECTION TO DEBTOR'S CLAIM OF
JPJ-1 EXEMPTIONS
7-14-14 [[36](#)]
WITHDRAWN BY M.P.

Tentative Ruling: The objection is removed from the calendar. The trustee withdrew the objection on August 4, 2014 (Dkt. 59).

Tentative Ruling: This motion continued from August 5, 2014. The court issues the following tentative ruling.

The chapter 13 trustee's opposition is overruled. The motion is granted. The debtor is authorized to incur new debt on the terms set forth in the loan modification proposal filed as Exhibit "A" to the motion (Dkt. 47 at 2). Except as so ordered, the motion is denied.

As an initial matter, at the prior hearing on this motion the debtor's counsel appeared and represented that the motion was one seeking only approval of a trial loan modification and not a permanent loan modification. After reviewing the moving papers and the evidence in support of the motion again, the court disagrees with that characterization of the motion. The motion does not request approval of a trial loan modification. The first sentence of the motion (Dkt. 44 at 1, lines 18-20) states that the debtor "requests permission to enter into a loan modification agreement with Lender." The motion goes on to say that the debtor "has completed the trial loan modification payments and has been offered a permanent loan modification." (Dkt. 44 at 1, lines 26-27). In addition, the letter from WFB filed as an exhibit to the motion (Dkt. 47) states that the debtor is "eligible for a loan modification. As previously described, if you comply with the terms of the Trial Period Plan, we will modify your mortgage loan. The modification agreement below reflects the proposed modification." The letter goes on to state that if the terms of the proposed modification agreement are acceptable to the debtor, the debtor must file a motion for approval of the modification agreement with the court and that in the interim period the debtor will "need to continue to make your trial period payments." This is not evidence, as the debtor's counsel represented at the hearing, that the debtor is at the early stage of beginning a trial loan modification. This is evidence, as suggested by the motion, that the debtor has already completed the trial loan modification and is now seeking approval of a permanent loan modification.

However, after further review of the loan modification proposal the court finds that it is sufficient evidence of the lender's consent to the terms proposed therein such that the motion is ripe for adjudication. Accordingly, the motion is granted.

The chapter 13 trustee's opposition is overruled based on the information presented in the debtor's reply and the amended Schedules I and J filed on July 29, 2014 (Dkt. 54).

Them The court will issue a minute order.

7. [14-26616](#)-B-13 EDUARDO ILANO OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-14 [[13](#)]

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. By order signed August 18, 2014, the court dismissed the bankruptcy case at the debtor's request.

The court will issue a minute order.

8. [09-48517](#)-B-13 DAWN MCMILLAN-COLLIER MOTION TO MODIFY PLAN
JLK-2 7-8-14 [[49](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed July 8, 2014, is denied.

The court will issue a minute order.

9. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN MOTION TO AVOID LIEN OF
MRL-4 DISCOVER BANK
7-9-14 [[58](#)]

Tentative Ruling: The motion is denied without prejudice.

The debtors have not satisfied the standard for avoidance of the judicial lien pursuant to 11 U.S.C. § 522(f)(2). The required elements for avoidance of a judicial lien are as follows:

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

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

claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim" (emphasis added). Although the debtors argue that the Claim is "void on its face" for various reasons, none of which are accompanied by citation to any legal authority in violation of LBR 9014-1(d) (5), their response to the trustee's opposition does not constitute an objection to the Claim. Nor is the court aware of any authority for the proposition that the manner in which the Claim is listed on the court's electronic claims register is dispositive of the classification of the claim; as stated in the plan, the proof of claim, not the claims register, controls the classification of the Claim. If the debtors wish to object to the Claim, they are free to do so via a motion properly filed and noticed pursuant to LBR 3007-1.

The chapter 13 trustee's objection regarding overextension of the plan is sustained for the reasons set forth in the trustee's opposition. The debtors' assertion in their response that they have provided for "all proper claims" under the plan is not persuasive, as their plan calculation does not include the aforementioned priority claim filed by the Law Office of Douglas A. McDonald. The debtors' argument that they are mystified by the trustee's exhibit indicating a total plan length of 103 months because the number "103" is not associated with any "unit," is also not persuasive. Whether the term used is "commitment period," "plan length," "plan term," or "duration of payments," the default unit of measurement that is used is months; debtors' counsel is a regular practitioner in this court and the court finds his assertion that he does not understand to what unit of time "total plan length" refers to is not credible.

The trustee's third objection regarding the debtors' alleged failure to provide the trustee with requested bank statements is overruled, as the debtors have represented in the response that they provided the trustee with the requested documents on August 5, 2014.

The court will issue a minute order.

13. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR COUNTER MOTION TO DISMISS CASE
DAO-10 8-4-14 [[121](#)]

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

Tentative Ruling: The motion is granted and the modified plan filed June 2, 2014 (Dkt. 186), is confirmed with the following modification to the plan's payment provisions: 1.) As of August 12, 2014, the debtors have paid a total of \$111,262.55 into the plan; 2.) Beginning August 25, 2014, the debtors shall pay \$3350.00 per month for the remaining 14 months of the plan; 3.) The dividend to general unsecured creditors shall be no less than 0.04%.

The court will issue a minute order.

15. [10-44131](#)-B-13 RAPHAEL METZGER AND MOTION FOR COMPENSATION FOR
PGM-4 MELANIE MEDINA-METZGER PETER G. MACALUSO, DEBTORS'
ATTORNEY
5-22-14 [[177](#)]

Disposition Without Oral Argument: This matter continued from July 22, 2014. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved in the amount of \$5,865.00 in fees. The applicant is authorized to apply the \$1,000.00 held in trust to the approved amount. The balance shall be paid by the trustee pursuant to the terms of the confirmed chapter 13 plan (Dkt. 60) as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Except as so ordered, the motion is denied.

On September 10, 2010, the debtors filed a chapter 13 petition. In connection with confirmation of the debtors' chapter 13 plan, the approved and authorized payment of fees and costs totaling \$3,500.00 through the plan. The applicant substituted into the case as counsel for the debtors after confirmation of the plan by order entered August 13, 2013 (Dkt. 119). The applicant now seeks compensation in the amount of \$5,865.00 in fees for post-confirmation services rendered between August 2, 2013, and April 15, 2014.

In the absence of opposition from any party in interest, and in light of the supporting declaration of joint debtor Raphael Metzger filed on August 1, 2014 (Dkt. 199), the court finds that the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330; Fed. R. Bankr. P. 2016.

The court will issue a minute order.

16. [14-23633](#)-B-13 LESLIE VAN SYCKEL
SAC-1

MOTION TO CONFIRM PLAN
6-27-14 [[25](#)]

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 27, 2014, will be confirmed.

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

17. [12-40736](#)-B-13 DAVID WESTON
PGM-2

CONTINUED MOTION FOR
COMPENSATION FOR PETER G.
MACALUSO, DEBTOR'S ATTORNEY
6-4-14 [[55](#)]

Disposition Without Oral Argument: This motion continued from July 8, 2014. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved in the amount of \$2,222.00 in fees. The applicant is authorized to apply the \$500.00 held in trust to the approved amount. The balance shall be paid by the trustee pursuant to the terms of the confirmed chapter 13 plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Except as so ordered, the motion is denied.

On November 29, 2012, the debtor filed a chapter 13 petition. In connection with confirmation of the debtor's chapter 13 plan, the court approved and authorized payment of fees and costs totaling \$4,000.00 through the plan. The applicant substituted into the case as counsel for the debtor after confirmation of the plan by order entered October 23, 2013 (Dkt. 46). The applicant now seeks compensation in the amount of \$5,865.00 in fees for post-confirmation services rendered between August 15, 2013, and January 3, 2014.

In the absence of opposition from any party in interest, and in light of the supporting declaration of the debtor filed on July 16, 2014 (Dkt. 62), the court finds that the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330; Fed. R. Bankr. P. 2016.

The court will issue a minute order.

18. [10-53237](#)-B-13 TINA SMITH
PLG-2

MOTION TO MODIFY PLAN
6-27-14 [[43](#)]

Tentative Ruling: The motion is granted and the modified plan filed June 27, 2014 (Dkt. 48) is confirmed with the following modifications to the plan's payment provisions: 1.) The debtor has paid a total of \$14,450.00 into the plan as of July 25, 2014; 2.) Beginning August 25, 2014, the debtor shall pay \$375.00 per month for the remaining 17 months of the plan.

The court will issue a minute order.

19. [14-21229](#)-B-13 WALTER SCHMELTER AND
GG-1 PEGGI MARTIN

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
6-26-14 [[18](#)]

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

The objection is sustained in part. The \$750.00 in fees (the "Fees") set forth on the Notice of Postpetition Mortgage Fees, Expenses and Charges (the "Notice") filed by Ocwen Loan Servicing ("Ocwen") on April 23, 2014, as a supplement to claim number 3 on the court's claims register are disallowed. The debtors' request for an award of attorney's fees is denied.

Fed. R. Bankr. P. 3002.1(a) permits the holder of a claim secured by a security interest in the debtor's principal residence to file and serve on the debtor, debtor's counsel and the trustee a "notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. Said notice is filed as a supplement to the claimant's proof of claim, and is not subject to the evidentiary effect of Fed. R. Bankr. P. 3002(f).

Fed. R. Bankr. P. 3002.1(e) states that the court shall, on motion of the debtor or the trustee within one year after service of a notice filed under Fed. R. Bankr. P. 3002.1(c), "determine whether payment of any claimed fee, expense or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b) (5) of the Code."

11 U.S.C. § 1322(b) (5) allows a debtor to provide for the curing of a default "within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan

is due.”

The court takes judicial notice that the debtors’ confirmed chapter 13 plan in this case (Dkt. 5), confirmed by order entered May 12, 2014 (Dkt. 17) provides for the Ocwen’s claim in class 4, as a claim that matures “after completion of the plan, [is] not in default, and [is] not modified” by the plan (Dkt. 5 at 3). The debtors also allege without dispute and state in their supporting declaration of joint debtor Walter Schmelter that they have and have always been current on their mortgage obligation to Ocwen. The court finds that none of the fees set forth on the Notice are fees which are “required . . . to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code” as the movant’s claim is not being treated in the confirmed plan under 11 U.S.C. § 1322(b)(5). Accordingly, the fees set forth on the Notice are disallowed.

The debtors’ request for an award of attorney’s fees is denied. Even if the court were to find that it was reasonable for the debtors’ counsel to work for 5.1 hours at \$350.00 per hour to prepare a two-page objection which cites no legal authority, the debtors have cited not authority which supports the proposition that they are entitled to an award of fees.

The court will issue a minute order.

20. [11-33137](#)-B-13 DARLENE BURLERSON
PGM-2

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

Disposition Without Oral Argument: This motion continued from July 8, 2014. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved in the amount of \$1,560.00 in fees. The applicant is authorized to apply the \$1,000.00 held in trust to the approved amount. The balance shall be paid by the trustee pursuant to the terms of the confirmed chapter 13 plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Except as so ordered, the motion is denied.

On May 25, 2011, the debtor filed a chapter 13 petition. In connection with confirmation of the debtor’s chapter 13 plan, the court approved and authorized payment of fees and costs totaling \$3,500.00 through the plan. The applicant substituted into the case as counsel for the debtor after confirmation of the plan by order entered November 8, 2013 (Dkt. 56). The applicant now seeks compensation in the amount of \$1,560.00 in fees for post-confirmation services rendered between October 9, 2013, and December 16, 2013.

In the absence of opposition from any party in interest, and in light of the supporting declaration of the debtor filed on July 21, 2014 (Dkt. 69), the court finds that the approved fees and expenses are reasonable

compensation for actual, necessary and beneficial services. 11 U.S.C. § 330; Fed. R. Bankr. P. 2016.

The court will issue a minute order.

21. [13-32540](#)-B-13 CARLOS/VANESSA MORALES OBJECTION TO CLAIM OF VATIV
EJS-10 RECOVERY SOLUTIONS, LLC, CLAIM
NUMBER 9
6-26-14 [[126](#)]

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

The objection is sustained in part. Claim no. 9 on the court's claims register (the "Claim") filed by Vativ Recovery Solutions, LLC, dba SMC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 28, 2009. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on April 28, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

22. [13-32540](#)-B-13 CARLOS/VANESSA MORALES OBJECTION TO CLAIM OF ATLAS
EJS-3 ACQUISITIONS, LLC, CLAIM NUMBER
1
6-26-14 [[96](#)]

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

The objection is sustained in part. Claim no. 1 on the court's claims register (the "Claim") filed by Atlas Acquisitions, LLC (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 October 27, 2008. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on October 27, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

23. [13-32540](#)-B-13 CARLOS/VANESSA MORALES OBJECTION TO CLAIM OF ATLAS
EJS-4 ACQUISITIONS, LLC, CLAIM NUMBER
2
6-26-14 [[101](#)]

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

The objection is sustained in part. Claim no. 2 on the court's claims register (the "Claim") filed by Atlas Acquisitions, LLC, as assignee of World Financial Network National Bank (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 October 18, 2008. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on October 18, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

24. [13-32540](#)-B-13 CARLOS/VANESSA MORALES OBJECTION TO CLAIM OF ATLAS
EJS-5 ACQUISITIONS, LLC, CLAIM NUMBER
3
6-26-14 [[106](#)]

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

The objection is sustained in part. Claim no. 3 on the court's claims register (the "Claim") filed by Atlas Acquisitions, LLC, as assignee of World Financial Network National Bank (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 September 22, 2008. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on

September 22, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

25. [13-32540](#)-B-13 CARLOS/VANESSA MORALES OBJECTION TO CLAIM OF ATLAS
EJS-6 ACQUISITIONS, LLC, CLAIM NUMBER
4
6-26-14 [[111](#)]

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

The objection is sustained in part. Claim no. 4 on the court's claims register (the "Claim") filed by Atlas Acquisitions, LLC, as assignee of World Financial Network National Bank (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 12, 2008. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on December 12, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

26. [13-32540](#)-B-13 CARLOS/VANESSA MORALES
EJS-8

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 6
6-26-14 [[116](#)]

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

The objection is sustained in part. Claim no. 6 on the court's claims register (the "Claim") filed by Cavalry SPV I, LLC, (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 November 15, 2008. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on November 15, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

27. [13-32540](#)-B-13 CARLOS/VANESSA MORALES
EJS-9

OBJECTION TO CLAIM OF CAVALRY
SPV II, LLC, CLAIM NUMBER 7
6-26-14 [[121](#)]

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

The objection is sustained in part. Claim no. 6 on the court's claims register (the "Claim") filed by Cavalry SPV II, LLC, as assignee of GE Money Bank/Walmart (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 October 10, 2008. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on October 10, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

28. [14-21240](#)-B-13 DIANE OHARA MOTION TO CONFIRM PLAN
PGM-3 7-7-14 [[44](#)]

Tentative Ruling: The motion is continued to November 25, 2014, at 9:32 a.m., to allow the debtors additional time to complete the loan modification process and to file and set for hearing a motion for approval of a loan modification agreement.

The court will issue a minute order.

29. [14-21240](#)-B-13 DIANE OHARA COUNTER MOTION TO DISMISS CASE
PGM-3 8-4-14 [[51](#)]

Tentative Ruling: The countermotion is continued to November 25, 2014, at 9:32 a.m.

The court will issue a minute order.

30. [14-26940](#)-B-13 SCOTT/LANAE FRANK MOTION TO VALUE COLLATERAL OF
JSO-1 SG MORTGAGE SECURITIES TRUST
2006-FRE2
7-14-14 [[10](#)]

Disposition Without Oral Argument: This motion is unopposed. The court

issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of SG Mortgage Securities Trust 2006-FRE2's ("SG") claim in this case secured by the second deed of trust on real property located at 19671 Indian Creek Dr., Cottonwood, 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 \$118,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Carrington Mortgage Services with a balance of approximately \$219,000.00. Thus, the value of the collateral available to SG on its second deed of trust is \$0.00.

The court will issue a minute order.

31. [14-24641](#)-B-13 ADREA TARVER MOTION TO CONFIRM PLAN
EWV-47 7-21-14 [[22](#)]

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

The court will issue a minute order.

32. [14-24641](#)-B-13 ADREA TARVER COUNTER MOTION TO CONDITIONALLY
EWV-47 DISMISS CASE
8-4-14 [[29](#)]

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 September 2, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

33. [14-25644](#)-B-13 ANDY/LAIL MARTINEZ
BLG-2

MOTION TO CONFIRM PLAN
7-9-14 [[19](#)]

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

The motion is granted and the amended plan filed July 9, 2014, will be confirmed.

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

34. [14-26446](#)-B-13 TODD/DENISE BEINGESSNER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-14 [[24](#)]

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 August 14, 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.

35. [13-35347](#)-B-13 ANGEL/KARINA GARCIA
JPJ-2

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER 3
7-2-14 [[71](#)]

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

The objection is sustained in part. Claim no. 6 on the court's claims register (the "Claim") filed by Bank of America, N.A. (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 October 10, 2008. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on October 10, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

36. [13-35347](#)-B-13 ANGEL/KARINA GARCIA
JPJ-3

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 11
7-2-14 [[75](#)]

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

The objection is sustained in part. Claim no. 6 on the court's claims register (the "Claim") filed by Cavalry SPV I, LLC, as assignee of Bank of America/FIA Card Services (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. 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 [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 15, 2008. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on December 15, 2008, more than four years before the debtors commenced their chapter 13 bankruptcy case on September 26, 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.

The court will issue a minute order.

37. [11-26648](#)-B-13 CHRISTOPHER MCKENNEY MOTION TO MODIFY PLAN
JPJ-1 6-11-14 [[64](#)]

Tentative Ruling: This matter is continued to September 30, 2014, at 9:32 a.m.

38. [11-26648](#)-B-13 CHRISTOPHER MCKENNEY OBJECTION TO CLAIM OF LISA
JPJ-2 MCKENNEY, CLAIM NUMBER 6
6-11-14 [[60](#)]

Tentative Ruling: The objection is continued to a final evidentiary hearing on September 19, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32. At the evidentiary hearing, evidence shall be taken on the nature and validity of claim number 6, filed by Lisa D. McKenney on July 20, 2011, in the amount of \$277,200.00 (the "Claim") for the purpose of determining what portions of the Claim shall be allowed and disallowed.

On or before September 12, 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 trustee's binder tabs shall be consecutively numbered, commencing at number 1. The debtor's binder tabs shall be consecutively lettered, commencing at letter A. On or before September 12, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Trustee's Objection to Claim of Lisa D. McKenney. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock

number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

39. [11-26648](#)-B-13 CHRISTOPHER MCKENNEY
JPJ-3
- OBJECTION TO CLAIM OF RANDOLPH
BROOKS FEDERAL CREDIT UNION,
CLAIM NUMBER 3
7-1-14 [[70](#)]

Tentative Ruling: The objection is overruled.

By this objection, the trustee seeks disallowance of claim number 3, filed on May 16, 2011, by Randolph Brooks Federal Credit Union (the "Claimant") in the amount of \$16,458.72 (the "Claim"). The trustee alleges and provides evidence that the debtor was also a debtor in a prior chapter 7 proceeding, case number 10-47875-C-7, and that he scheduled a secured debt owing to the Claimant and secured by the same collateral which is the subject of the Claim. The trustee further alleges, and the debtor joins in said allegation (Dkt. 78), that the debtor received a discharge in the prior case and that any liability owing to the Claimant was discharged.

The objection is not well-taken. Although the debtor's personal liability was extinguished in the prior case, a lien on collateral survives the chapter 7 discharge and such lien is sufficient to support a claim in a subsequent bankruptcy case. Johnson v. Home State Bank, 501 U.S. 78, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991). The Claim is properly provided for in Class 3. Accordingly, the objection is overruled.

The court will issue a minute order.

40. [09-36849](#)-B-13 ADOR/DIANE GUZMAN
RK-3
- MOTION TO MODIFY PLAN
7-10-14 [[118](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the modified plan filed July 10, 2014 (Dkt. 121) is confirmed with the following modification: Section 6.01 of the Additional Provisions is modified to state that "As of July 25, 2014, the debtors have paid a total of \$104,039.00 to the trustee. Commencing August 25, 2014, monthly plan payments shall be \$1,300.00 for the remainder of the plan."

The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors from \$97,679.21 to \$95,274.80. 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. [09-36849](#)-B-13 ADOR/DIANE GUZMAN
RK-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BOWMAN AND
ASSOCIATES FOR RICHARD KWUN,
DEBTORS' ATTORNEY(S)
7-10-14 [[123](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330, the application is approved on an interim basis for the period of December 2, 2012, through and including July 10, 2014, in the amount of \$1,530.00 in fees and \$49.49 in costs, for a total of \$1,579.49. The approved fees and costs shall be paid by the trustee through the chapter 13 plan as an administrative expense. Except as so ordered, the motion is denied.

On August 10, 2009, the debtors filed a chapter 13 petition. As part of the confirmation of the debtors' chapter 13 plan, the debtors' former attorney, Julius M. Engel ("Mr. Engel"), consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). This court authorized payment of fees and costs totaling \$3,500.00, \$2,000.00 of which the debtors paid Mr. Engel pre-petition and \$1,500.00 of which would be paid by the trustee through the plan (Dkt. 61).

On December 4, 2012, the debtors filed a motion to substitute the applicant into the case as attorney of record in place of Mr. Engel (Dkt. 83), which was approved by order entered December 12, 2012 (Dkt. 91). Notwithstanding the language in several subsequently confirmed modified plans which states that the applicant shall seek fees pursuant to Local Bankruptcy Rule 2016-1(c), the court finds that the applicant has opted out of this provision since he has (1) failed to file an executed copy of Form EDC 3-096, *Rights and Responsibility of Chapter 13 Debtors and Their Attorneys*, and (2) has brought the instant applicant pursuant to 11 U.S.C. §§ 329 and 330. LBR 2016-1(a).

The applicant now seeks compensation for services rendered and costs incurred for the period of December 2, 2012, through and including July 10, 2014. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services. In re Busetta-Silvia, 314 B.R. 218 (B.A.P. 10th Cir. 2004).

The court will issue a minute order.

42. [14-24049](#)-B-13 KRISTIN AUSTIN MOTION TO CONFIRM PLAN
MWB-1 7-1-14 [[28](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed July 1, 2014 (Dkt. 31) is denied.

The court will issue a minute order.

43. [14-24049](#)-B-13 KRISTIN AUSTIN COUNTER MOTION TO DISMISS CASE
MWB-1 8-4-14 [[37](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 37) 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 September 2, 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.

44. [13-28451](#)-B-13 DOUGLAS SCOTT MOTION TO APPROVE LOAN
RPH-5 MODIFICATION
7-21-14 [[130](#)]

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

The debtor's motion for authority to incur new debt is granted on the terms set forth in the Home Affordable Modification Agreement submitted as Exhibit "A" to the motion (Dkt. 133, p.2).

The court will issue a minute order.

45. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE
SDB-5

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DE BIE AND
CROZIER, LLP FOR W. SCOTT DE
BIE, DEBTORS' ATTORNEY(S)
7-17-14 [[103](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330, the application is approved on a first and final basis for the period of April 25, 2014, through and including July 7, 2014, in the amount of \$3,045.00 in fees and \$80.85 in costs, for a total of \$3,125.85. The applicant is authorized to apply \$800.00 from the initial deposit already paid by the debtors to the allowed fees and costs. The balance of the approved fees and costs shall be paid by the trustee through the chapter 13 plan as an administrative expense. Except as so ordered, the motion is denied.

On July 9, 2009, the debtors filed a chapter 13 petition. As part of the confirmation of the debtors' chapter 13 plan, the debtors' former attorney, Steele Lanphier ("Mr. Lanphier"), consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). This court authorized payment of fees and costs totaling \$3,500.00, \$3,500.00 of which the debtors paid Mr. Lanphier pre-petition and \$0.00 of which would be paid by the trustee through the plan (Dkt. 27).

On April 29, 2014, the debtors filed a motion to substitute the applicant into the case as attorney of record (Dkt. 73), which was approved by order entered May 9, 2014 (Dkt. 78). The court finds that the applicant has opted out of the provisions of Local Bankruptcy Rule 2016-1(c) because he has (1) failed to file an executed copy of Form EDC 3-096, *Rights and Responsibility of Chapter 13 Debtors and Their Attorneys*, and (2) has brought the instant applicant pursuant to 11 U.S.C. §§ 329 and 330. LBR 2016-1(a).

The applicant now seeks compensation for services rendered and costs incurred for the period of April 25, 2014, through and including July 7, 2014. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services. In re Busetta-Silvia, 314 B.R. 218 (B.A.P. 10th Cir. 2004).

The court will issue a minute order.

46. [11-41558](#)-B-13 ROSEMARY REYNOLDS
PGM-1

MOTION TO INCUR DEBT
7-15-14 [[21](#)]

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

The debtor's motion for authority to incur new debt is granted in part.

The debtor is authorized to purchase a 2013 Chevrolet Captiva on the terms set forth in the proposed sales contract submitted as Exhibit "B" to the motion (Dkt. 24, p.8). The debtor is not authorized by this ruling to purchase any other vehicle, whether or not it is a "similar make and model." The debtor's request for "nunc pro tunc" approval is denied. Except as so ordered, the motion is denied.

The request for "nunc pro tunc," meaning "now for then," approval is substantively a request for retroactive approval. However, the debtor has submitted no evidence to support this extraordinary relief. Simply stating that "the purchase of the vehicle does not adversely affect creditors because it will not alter the Plan payments nor the terms of the Plan," without more, is insufficient. Furthermore, the debtor has not addressed any applicable legal standard for retroactive relief in this context. The applicable standard for retroactive relief in the context of relief from the automatic stay requires a balancing of the equities. In re Fjeldsted, 293 B.R. 12, 24-25 (9th Cir. BAP 2003) (setting forth twelve factors to consider when deciding whether to annul the automatic stay).

The court will issue a minute order.

47. [14-21661](#)-B-13 CHARLES/SUSAN EPSTEIN MOTION TO CONFIRM PLAN
RS-2 7-8-14 [[52](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed July 8, 2014 (Dkt. 51) 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 debtors have not carried their burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). Here, the debtors state at paragraph 11 of their declaration (Dkt. 54, p.3) that their plan provides for "adequate protection to the holder of the secured claim pending approval of a loan modification. In the event the loan modification is approved or denied, I will amend the Plan accordingly." The plan makes no mention of a pending loan modification agreement and, even if it did, such provision would be rejected because the debtors have provided no evidence that any secured creditor has approved or is currently considering a loan modification agreement. As the plan's feasibility may depend on the approval of a loan modification agreement, this is an independent reason to deny confirmation of the plan. 11 U.S.C. § 1325(a)(6).

The court will issue a minute order.

48. [14-21661](#)-B-13 CHARLES/SUSAN EPSTEIN
RS-2

COUNTER MOTION TO DISMISS CASE
8-4-14 [[57](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 57) 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 September 2, 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.

49. [13-31962](#)-B-13 KEVIN CLARK
MET-1

MOTION TO SELL
7-27-14 [[21](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the debtor is authorized to sell the real property located at 5099 Moss Creek Way, Fairfield, California 94534 (the "Property") to Romie Gil Amposta and Maylin Khuu on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions attached as Exhibit "A" to the motion (Dkt. 24, p.2). The debtor is authorized to pay all liens on the Property through escrow. The debtor is authorized to execute all documents necessary to complete the approved sale. The 14-day period specified in Federal Rule of Bankruptcy Procedure 6004(h) is waived. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The debtor has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

Counsel for the debtor shall submit an order that conforms to the foregoing ruling.

50. [14-25562](#)-B-13 KEITH TIGERT
TJW-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
7-10-14 [[24](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 201 Larkspur Drive, Vacaville, California 95687 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$220,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bayview Loan Services with a balance of approximately \$308,093.00. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

51. [14-26973](#)-B-13 MICHAEL KAHN MOTION TO VALUE COLLATERAL OF
DBJ-1 PNC BANK, N.A.
7-15-14 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of PNC Bank, N.A.'s claim secured by the second deed of trust on real property located at 15 Crow Canyon Court, Chico, California 95928 (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 \$580,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by U.S. Bank, N.A. with a balance of approximately \$604,440.00. Thus, the value of the collateral available to PNC Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

52. [14-26074](#)-B-13 MICHAEL LOZANO MOTION TO VALUE COLLATERAL OF
LBG-1 WELLS FARGO BANK, N.A.
7-10-14 [[15](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion was not properly served. A bankruptcy court lacks jurisdiction over a defendant if the defendant was not served properly under Federal Rule of Bankruptcy Procedure 7004. See Scott v. United States (In re Scott), No. NV 09-1273-DHPa (9th Cir. BAP June 21, 2010), citing United States v. Levoy (In re Levoy), 182 B.R. 827, 832 (9th Cir. BAP 1995); Harlow v. Palouse Producers, Inc. (In re Harlow Props., Inc.), 56 B.R. 794, 799 (9th Cir. BAP 1985); see also Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988) (applying Fed. R. Civ. P. 4). Federal Rule of Bankruptcy Procedure 7004 applies in contested matters. Fed. R. Bankr. P. 9014(b).

Here, the proof of service filed July 10, 2014 (Dkt. 19) indicates that the motion, notice of hearing (Dkt. 16), and supporting documents were served only on the Office of the United States Trustee by regular U.S. Mail. There is no evidence that Wells Fargo Bank, N.A., the respondent in this motion, was served consistent with the requirements of Federal Rule of Bankruptcy Procedure 7004. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

53. [10-51375](#)-B-13 DUSTIN/TERRI HITT MOTION TO MODIFY PLAN
DBJ-4 7-14-14 [[85](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the modified plan filed July 14, 2014 (Dkt. 88) is confirmed with the following modifications: Section 6.01 shall be modified to state the following: (1) The debtors have paid to the trustee a total of \$12,514.00 through June, 2014 (Month 43); (2) Commencing July 2014, monthly plan payments shall be \$138.00 for the remainder of the plan; (3) After July 1, 2014, the trustee shall make no further payments on the secured claim of Santander Consumer USA, secured by a 2005 Ford Expedition.

The court will issue a minute order.

54. [14-25175](#)-B-13 JOHNNIE/KIMBERLY RHYNES MOTION TO CONFIRM PLAN
SNM-4 6-27-14 [[41](#)]

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 August 7, 2014 (Dkt. 52), the court confirmed the plan filed May 16, 2014 (Dkt. 5) and instructed counsel for the debtors to submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12). The debtors already have the relief they seek through this motion.

The court will issue a minute order.

55. [11-30977](#)-B-13 GEORGE/LAVERNE PADILLA MOTION TO VALUE COLLATERAL OF
SDB-7 BANK OF AMERICA, N.A.
7-18-14 [[95](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11

U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 1221 Brighton Drive, Fairfield, California 94533 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$172,000.00 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 \$186,162.93. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

56. [14-20377](#)-B-13 CHRISTOPHER/SHAYNA MOTION TO CONFIRM PLAN
BSJ-3 HOVENCAMP 6-4-14 [[55](#)]

Tentative Ruling: None.

57. [13-34180](#)-B-13 WILLIAM/YVETTE MARTINEZ OBJECTION TO CLAIM OF BANK OF
SJS-3 AMERICA, N.A., CLAIM NUMBER
16-1
7-21-14 [[46](#)]

Tentative Ruling: The stipulation filed August 1, 2014 (Dkt. 51) (the "Stipulation") is approved as an agreement for plan treatment of Bank of America, N.A. ("BANA")'s claim, not as a stand alone plan modification or court authorization to make a post-petition payment on a pre-filing debt and is binding between the parties thereto. The debtors' objection to claim number 16, filed by BANA on June 4, 2014, in the secured amount of \$207,769.34 is removed from calendar as resolved by the Stipulation.

The court will issue a minute order.

58. [09-43281](#)-B-13 FLOYD/KRISTIN SMYTHE CONTINUED MOTION TO SELL
WW-7 7-2-14 [[94](#)]

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.

59. [14-24181](#)-B-13 DANNY RUE
DWR-3

MOTION TO CONFIRM PLAN
7-7-14 [[53](#)]

Tentative Ruling: The trustee's opposition is sustained. Creditor Deutsche Bank National Trust Company's opposition is sustained. The motion to confirm the plan filed July 7, 2014 (Dkt. 56) is denied.

The court will issue a minute order.

60. [14-25888](#)-B-13 KEVIN WILLIAMS
RSG-1

MOTION TO CONFIRM PLAN
7-9-14 [[28](#)]

Tentative Ruling: The motion to confirm the amended plan filed July 9, 2014 (Dkt. 30) is denied.

The motion is denied for several reasons. First, the motion was not properly noticed to all parties-in-interest. To confirm an amended plan, Local Bankruptcy Rule 3015-1(d)(1) states that "notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two (42) days prior to the hearing." LBR 3015-1(d)(1). Forty-two days prior to today's hearing date was July 8, 2014. According to the proof of service filed July 9, 2014 (Dkt. 32), interested parties were served with the motion, notice of hearing, and other supporting documents on July 9, 2014, which is only forty-one (41) days prior to the hearing date. Thus, the debtor has failed to comply with the noticing requirements of Local Bankruptcy Rule 3015-1(d)(1). A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

Second, creditor Lakeview Loan Servicing, LLC ("Lakeview")'s opposition is sustained for the reasons stated therein.

Lakeview's request for attorneys' fees and costs is denied. Lakeview's opposition cites to no authority in support of such a request. LBR 9014-1(d)(5).

The trustee's opposition is overruled. The sole basis for the trustee's opposition is that the feasibility of the plan depends on the granting of a motion to avoid the lien held by Central Refrigerated Service, Inc. However, that motion is granted without oral argument elsewhere on today's calendar.

In addition to the above, 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 states at paragraph 7 of his declaration (Dkt. 31, p.2) that his father has pledged his financial support to the debtor's plan in the amount of \$371.00 per month. This is also reflected at Line 8.h of the debtor's amended Schedule I filed concurrently with the motion (Dkt. 27, p.6). However, the debtor has provided no evidence that his father is both willing and able to make this monthly contribution over the sixty month life of the plan. The feasibility of the plan depends upon his father making this contribution. 11 U.S.C. § 1325(a)(6). Accordingly, the debtor has failed to carry his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

61. [14-25888](#)-B-13 KEVIN WILLIAMS COUNTER MOTION TO DISMISS CASE
RSG-1 8-5-14 [[46](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 46) 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 September 2, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

62. [14-25888](#)-B-13 KEVIN WILLIAMS MOTION TO AVOID LIEN OF CENTRAL
RSG-2 REFRIGERATED SERVICE, INC.
7-9-14 [[33](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Central Refrigerated Service, Inc., recorded in the official records of Yuba County, Document Number 2014R-004761, is avoided as against the real property located at 1439 Paddington Way, Plumas Lake, California 95961

(the "Property").

The Property had a value of \$230,000.00 as of the date of the petition. The unavoidable liens total \$217,839.06. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which he exempted \$12,160.94. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

63. [14-23090](#)-B-13 RUBY DULAY MOTION TO CONFIRM PLAN
BSJ-1 6-23-14 [[25](#)]

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

The motion is granted, and the plan filed April 9, 2014 (Dkt. 12) will be confirmed.

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

64. [11-29591](#)-B-13 BRIAN SAECHAO MOTION TO COMPROMISE
PLC-4 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FEDERAL NATIONAL
MORTGAGE ASSOCIATION AND
SETERUS, INC.
7-23-14 [[46](#)]

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.

65. [14-22553](#)-B-13 JEFFREY HAMILTON CONTINUED MOTION TO VALUE
FHS-1 COLLATERAL OF ROCKY GENTNER AND
DEBORAH GENTNER
5-13-14 [[24](#)]

Tentative Ruling: Creditors Rocky Gentner and Deborah Gentner

(collectively, the "Creditors")'s opposition is sustained. The motion is denied.

By this motion, the debtor seeks to value his residence located at 514 Hamilton Way, Oroville, California 95966 (the "Property") for the purpose of fixing the secured portion of the Creditors' claim secured by a second deed of trust on the Property at \$0.00. The Creditors oppose the motion based on (1) their valuation of the Property; and (2) their valuation of the first deed of trust held by Ocwen Loan Servicing, LLC/JPMorgan Chase Bank, N.A. ("Chase").

The issue of the value of the Property was continued to an evidentiary hearing held on August 4, 2014, at 2:00 p.m. before the Honorable David E. Russell. The court at the evidentiary hearing found that the value of the Property as of the petition date was \$230,000.00.

The outstanding issue pertains to the valuation of the first deed of trust held by Chase. The Creditors assert that the value of Chase's deed of trust is \$194,832.00 based on their interpretation of a provision of the Home Affordable Modification Agreement entered into between the debtor and Chase (Dkt. 28, p.5-13) (the "Agreement"). Under the terms of the Agreement, the new principal balance on the note is \$279,275.31. The provision relevant to the Creditors' opposition is found at Paragraph 3.C, which states as follows: "\$112,525.31 of the New Principal Balance shall be deferred (the "Deferred Principal Balance")...The Deferred Principal Balance is eligible for forgiveness. Provided I am not in default on my new payments such that the equivalent of three full monthly payments are due and unpaid on the last day of any month, on each of the first, second and third anniversaries of April 1, 2012, the Lender shall reduce the Deferred Principal Balance on my Note in installments equal to one-third of the Deferred Principal Balance Reduction Amount" (Dkt. 28, p.6). Based on the foregoing language, the Creditors assert that the Deferred Principal Balance should have been reduced by one-third on April 1, 2013, as well as April 1, 2014, as it is not possible for the debtor to have been three months in arrears on April 1, 2014, with the bankruptcy petition having been filed on March 13, 2014.

For the purposes of this motion, Chase's claim per the Agreement was \$279,275.31. The Deferred Principal Balance was \$112,525.31. One-third of the Deferred Principal Balance is approximately \$37,508.44, which would be the approximate amount of each principal reduction. According to the Mortgage Account Statement attached to the motion as Exhibit "A" (Dkt. 28, p.3) (the "Statement"), the principal balance as of the date of the Statement (March 17, 2014, or four days after the petition date) was \$156,895.84. The principal balance per the Statement includes a Deferred Principal balance of \$75,016.87. According to the Statement, therefore, one principal reduction had occurred in the amount of \$37,508.44 ($\$112,525.31 - \$75,016.87 = \$37,508.44$). The court can also infer from the Statement that principal reductions (presumably through loan payments) of \$84,871.03 ($\$279,275.31 - \$194,404.20 = \$84,871.03$) occurred between the time of the Agreement and the date of the Statement. Even if the court were to eliminate the principal reduction based on the Agreement, the loan balance as of the petition date was less than \$200,000.00 (approximately \$194,404.28, calculated by adding \$156,895.84 and \$37,508.44). This leaves equity of \$35,595.72 after accounting for the \$230,000.00 valuation of the Property. As the Property is the debtor's principal residence and the Creditors' claim is not completely undersecured, the motion is denied as it violates 11 U.S.C. § 1322(b)(2).

Zimmer v. PSB Lending Corporation (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002); In re Lam, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997).

The court will issue a minute order.

66. [14-22553](#)-B-13 JEFFREY HAMILTON CONTINUED OBJECTION TO
HLC-1 CONFIRMATION OF PLAN BY ROCKY
GENTNER AND DEBORAH GENTNER
5-15-14 [[30](#)]

Tentative Ruling: The debtor's opposition is sustained in part and overruled in part. Creditors Rocky Gentner and Deborah Gentner (collectively, the "Creditors")'s first objection that the plan provides impermissible treatment for their secured claim is sustained. The Creditors' objection that the plan's failure to address potential tax implications for the debt forgiveness provided in a loan modification for the first deed of trust, which may cause a feasibility issue under 11 U.S.C. § 1325(a)(6), is overruled. Confirmation of the plan filed March 27, 2014 (Dkt. 10) is denied.

The Creditors' first objection relates to their valuations of both the property securing their second deed of trust and the amount of the first deed of trust held by Ocwen Loan Servicing, LLC/JPMorgan Chase Bank, N.A. ("Chase"). Elsewhere on today's calendar, the court denied the debtor's motion to value collateral which would have fixed the secured amount of the Creditors' claim at \$0.00 as it found that there is equity available in the subject property (the debtor's principal residence) to support the Creditors' claim. By proposing to pay the Creditors \$0.00 on their secured claim in Class 2.C, the plan provides an impermissible modification to their secured claim. Accordingly, the Creditors' first objection is sustained.

The Creditors' second objection is overruled because the Creditors have not provided any authority or analysis showing that there will be a discharge of indebtedness tax liability for the debtor. See 26 U.S.C. § 108(a)(1). The failure to address hypothetical tax implications, if any, does not create a feasibility issue for purposes of 11 U.S.C. § 1325(a)(6).

The court will issue a minute order.

67. [14-22553](#)-B-13 JEFFREY HAMILTON MOTION TO EXTEND DEADLINE TO
HLC-2 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
7-7-14 [[54](#)]

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

The motion is granted. Pursuant to Federal Rules of Bankruptcy Procedure

4004(b)(1) and 4007(c), the deadline for creditors Rocky Gentner and Deborah Gentner (collectively, the "Creditors") to file an objection to the debtor's discharge under 11 U.S.C. § 727 or to object to the dischargeability of certain debts under 11 U.S.C. § 523 is extended through and including September 5, 2014.

The Creditors request an extension of the deadline to file an objection to the debtor's discharge under 11 U.S.C. § 727 or to the dischargeability of certain debts under 11 U.S.C. § 523. When a request for an enlargement of the time to file a complaint objecting to the discharge or dischargeability of certain debts is made before the time has expired, as it was here, the court may enlarge the time for cause shown. Fed. R. Bankr. P. 4004(b) and 4007(c). Here, the Creditors allege without dispute that the court has previously granted their requests for the debtor to appear at a Rule 2004 examination and to produce certain documents. However, the debtor has twice requested additional time to produce said documents and has also once requested a postponement of the examination. The Creditors further allege without dispute that they accommodated the debtor's requests for extensions of time provided that he agree to extend their time to object to the dischargeability of certain debts by sixty (60) days. Although the debtor produced the required documents on July 1, 2014, the Creditors did not have sufficient time to review them, conduct a Rule 2004 examination, and determine whether or not to file an adversary complaint. The foregoing constitutes "cause" for purposes of Federal Rules of Bankruptcy Procedure 4004(b)(1) and 4007(c).

The court will issue a minute order.

68. [13-29992](#)-B-13 JUAN COLEMAN MOTION TO MODIFY PLAN
SNM-5 7-10-14 [[78](#)]

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 August 8, 2014 (Dkt. 94).

69. [13-31095](#)-B-13 GEOFFREY GREITZER CONTINUED MOTION TO CONFIRM
DBJ-3 PLAN
2-18-14 [[84](#)]

Tentative Ruling: The trustee's opposition is sustained. Creditor ATL Holdings, LLC ("ATL")'s opposition is overruled. The motion to confirm the amended plan filed February 18, 2014 (Dkt. 85) is denied.

The sole basis for the trustee's opposition is that the plan is overextended by twelve months as a result of the timely filed proof of claim filed by Butte County Tax Collector ("Butte County"). Although the debtor filed an objection to Butte County's claim, the objection was overruled elsewhere on today's calendar. Accordingly, the trustee's opposition is sustained.

ATL has raised various objections regarding the debtor's ability to comply with 11 U.S.C. § 1325(a)(6). This entire matter was continued so that an evidentiary hearing could be held on the issues raised by ATL in its opposition. The evidentiary hearing was held on July 9, 2014, at 2:00 p.m. before the Honorable David E. Russell. By order entered July 10, 2014 (Dkt. 134), it was determined that the debtor has complied with 11 U.S.C. § 1325(a)(6) and is able to make the plan payments proposed. Accordingly, ATL's opposition is overruled.

The court will issue a minute order.

70. [13-31095](#)-B-13 GEOFFREY GREITZER CONTINUED COUNTER MOTION TO
DBJ-3 DISMISS CASE
3-27-14 [[92](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 92) 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 September 2, 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.

71. [13-31095](#)-B-13 GEOFFREY GREITZER OBJECTION TO CLAIM OF BUTTE
DBJ-4 COUNTY TREASURER-TAX COLLECTOR,
CLAIM NUMBER 7-1
7-3-14 [[126](#)]

Tentative Ruling: The objection is overruled.

The debtor objects to claim number 7, filed by Butte County Treasurer-Tax Collector ("Butte County") on February 7, 2014, in amount of \$71,381.76 (the "Claim"). The debtor alleges that the Claim is based on three separate properties he owns. He further alleges that two of these properties are being surrendered through the amended plan filed February 18, 2014 (Dkt. 85). He therefore asserts that the Claim should be paid through the plan in the amount of \$33,765.85 for the taxes owed on the property that he is not surrendering, 7067 Skyway, Paradise, California 95969 (the "Property").

The debtor is correct that surrender is a legally sufficient way to satisfy a secured claim. However, according to Section 6.02 of the plan, the following secured claims are being satisfied by surrender of unspecified collateral: (1) Anderson Trust; (2) Gary Postolka; (3) Sandee Williams; and (4) Mark Habib. The plan does not explicitly provide for

surrender of the Property to Butte County as required by 11 U.S.C. § 1325(a)(5)(C). The court will not include in an order confirming the plan the surrender of two out of three properties that are the basis of the Butte County Claim.

The court will issue a minute order.

72. [14-24798](#)-B-13 TONY/CONNIE EVENICH MOTION TO CONFIRM PLAN
JME-1 6-25-14 [[20](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed June 25, 2014 (Dkt. 23) is denied.

The court will issue a minute order.

73. [14-24798](#)-B-13 TONY/CONNIE EVENICH COUNTER MOTION TO DISMISS CASE
JME-1 8-4-14 [[35](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 35) 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 September 2, 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.

74. [13-36199](#)-B-13 DAVID MOORE AND SHANA MOTION TO CONFIRM PLAN
PGM-2 MANGAL-MOORE 7-7-14 [[49](#)]

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

The motion is granted, and the amended plan filed July 7, 2014 (Dkt. 53) 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.

75. [14-27099](#)-B-13 JOHN/CYNTHIA MOORE
RI-2

MOTION TO VALUE COLLATERAL OF
SPRINGLEAF FINANCIAL SERVICES,
INC.
7-10-14 [[15](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Springleaf Financial Services, Inc.'s claim secured by the second deed of trust on real property located at 5137 Marysville Boulevard, Sacramento, California 95838 (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 \$60,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Barbara Marcotte with a balance of approximately \$69,652.42. Thus, the value of the collateral available to Springleaf Financial Services, Inc. on its second deed of trust is \$0.00.

The court will issue a minute order.