

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

September 16, 2014 at 9:32 A.M.

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1. [14-27204](#)-B-13 JOSE CORONA AND ROSALINA AMBRIZ
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-26-14 [[20](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed July 13, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 30, 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.

2. [14-27106](#)-B-13 MICHAEL DEBERG
JPJ-1
OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-15-14 [[15](#)]

Tentative Ruling: The objection is removed from the calendar. The chapter 13 trustee withdrew the objection on September 3, 2014 (Dkt. 23).

3. [11-26307](#)-B-13 VICTOR/PATRICIA GUZMAN
WW-10
MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ONEWEST BANK,
FSB
8-19-14 [[76](#)]

Tentative Ruling: The motion is continued to October 14, 2014, at 9:32 a.m. On or before September 30, 2014, the debtors shall file with the court and serve on all parties previously served with the motion supplemental evidence regarding the services performed by the debtors' counsel in connection with the claims settled by the compromise that is the subject of this motion sufficient to demonstrate that the fee to be

paid to the debtors' counsel pursuant to the compromise is reasonable and sufficiently greater than a "typical" chapter 13 case so as to justify additional compensation pursuant to In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

On March 14, 2011, the debtors filed a chapter 13 petition. As part of confirmation of the debtor's chapter 13 plan, the debtors' attorney consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$5,000.00 through the plan. By this motion, the debtors request, inter alia, payment of compensation to their counsel in the additional amount of \$42,500.00 for services performed in connection with the claims that are being compromised pursuant to the settlement agreement filed with the motion. As the debtors' attorney consented to compensation in accordance with the Guidelines, requests for additional compensation are subject to the standard set forth in In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The debtors have presented no evidence in support of the payment of fees to their counsel pursuant to the settlement agreement; the unsworn representation in the motion that the fee is a more than 30% discount from the value of actual services performed is insufficient.

The court will issue a minute order.

4. [14-27007](#)-B-13 WILLIAM VENTURA MOTION TO VALUE COLLATERAL OF
DEF-1 BANK OF AMERICA, N.A.
8-13-14 [[19](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BofA") claim in this case secured by the second deed of trust on real property located at 1070 Jackson Gate Road, Jackson, 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 \$395,026.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Green Tree Servicing, LLC with a balance of approximately \$399,000.00. Thus, the value of the collateral available to BofA on its second deed of trust is \$0.00.

The court will issue a minute order.

5. [14-27007](#)-B-13 WILLIAM VENTURA MOTION TO VALUE COLLATERAL OF
DEF-2 LORETTA VENTURA
8-13-14 [[25](#)]

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 Loretta Ventura's claim in this case secured by the third deed of trust on real property located at 1070 Jackson Gate Road, Jackson, California (the "Property") is a secured claim, and the balance of her claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$395,026.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Green Tree Servicing, LLC with a balance of approximately \$399,000.00 and a second deed of trust held by Bank of America, N.A with a balance of approximately \$100,000.00. Thus, the value of the collateral available to Loretta Ventura on her third deed of trust is \$0.00.

The court will issue a minute order.

6. [14-27007](#)-B-13 WILLIAM VENTURA
JPJ-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
8-14-14 [[33](#)]

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

The trustee's objections are overruled. Confirmation of the initial plan filed July 4, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 30, 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 chapter 13 trustee's objections are overruled because elsewhere on this calendar the court has granted the debtor's motions to value the collateral of Bank of America, N.A. and Loretta Ventura without oral argument. However, the court does not confirm the plan because the plan (Dkt. 5) is not signed by either the debtors or their counsel.

The court will issue a minute order.

7. [14-20010](#)-B-13 ALI/KELLY AKYUZ
JPJ-1

CONTINUED MOTION TO RECONVERT
CASE TO CHAPTER 7 AND/OR MOTION
TO DISMISS CASE
8-12-14 [[94](#)]

Tentative Ruling: This matter continued from September 2, 2014. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling on the merits of the motion.

The motion is granted in part. The bankruptcy case is reconverted to one under chapter 7. A chapter 7 trustee shall be appointed.

The court finds that the chapter 13 trustee has established cause for conversion or dismissal of the case pursuant to 11 U.S.C. § 1307(c) for the reasons set forth in the motion. The court reconverts the case to one under chapter 7 based on the representation of the former chapter 7 trustee at the prior hearing and the representation of the United States trustee in her statement of non-opposition filed on September 4, 2014, that there may be non-exempt assets of the estate which can be administered for the benefit of creditors in a chapter 7 proceeding, as well as on the representation of the debtors' counsel at the prior hearing that the debtors would not oppose a reversion to chapter 7.

The court will issue a minute order

8. [14-22013](#)-B-13 FRANCISCO AGREDANO MOTION TO CONFIRM PLAN
CAH-3 ESQUIVIAS AND ROSA GUZMAN 7-13-14 [[82](#)]

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

The court will issue a minute order.

9. [14-22013](#)-B-13 FRANCISCO AGREDANO COUNTER MOTION TO DISMISS CASE
CAH-3 ESQUIVIAS AND ROSA GUZMAN 9-2-14 [[89](#)]

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 30, 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.

10. [14-27614](#)-B-13 JASJIT/SHARANJIT BAJWA MOTION TO AVOID LIEN OF CACH,
BLG-1 LLC
8-13-14 [[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 CACH, LLC, recorded in the official records of Solano County, Document No. 20130081944, is avoided as against the real property located at 2213 Silver Fox Circle, Fairfield, California.

The subject real property has a value of \$319,000.00 as of the date of the petition. The unavoidable liens total \$337,077.90. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5) under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

11. [13-29516](#)-B-13 MICHAEL CHURSENOFF
MAS-4

MOTION TO MODIFY PLAN
7-22-14 [[70](#)]

Tentative Ruling: The debtor's opposition is sustained in part. The motion is denied.

The movant, unsecured creditor Ethan Conrad ("Conrad"), requests that the dividend specified to be paid to Class 7 unsecured creditors under the confirmed plan be increased from 40% to 59.35% based on a change in the total amount of filed general unsecured claims which will allow for the payment of a 59.35% dividend without increasing the amount of the debtor's monthly plan payment. Conrad asserts that this is a modification of the type permitted by 11 U.S.C. § 1329(a)(1), which allows the court, at the request of the holder of an allowed unsecured claim, to increase the amount of payments on claims of a particular class provided for by the plan.

Conrad's position lacks merit. Because Conrad does not request that the total amount of the plan payment be changed, the amount of the funds contributed to the plan to be paid to Class 7 unsecured creditors will not change under the proposed modification. Conrad's proposed modification, therefore, does not represent an increase in the amount of payments on claims of a particular class. Conrad overlooks the language in section 2.15 of the confirmed plan which states that class 7 claims will be "no less than a 40.00% dividend." (Dkt. 40 at 4) (emphasis added). That percentage dividend specified in the plan is simply the mathematical result of the amount of aggregate plan payments that is left for general unsecured creditors after payment of higher priority claims pursuant to the distribution scheme established in section 4.02 of the plan calculated as a percentage of the estimated amount of general unsecured claims; it does not impose an upper limit on the distribution to general unsecured creditors, only a lower limit. The modification proposed by Conrad is therefore unnecessary.

Alternatively, the motion is denied due to a procedural defect. LBR 3015-1(d)(2) states that if a plan is modified after confirmation, "the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it." Conrad did not file and serve a modified form chapter 13 plan with the motion. Failure to comply with the court's local rules is grounds for denial of the motion. LBR 1001-1(g).

The court will issue a minute order.

12. [14-25916](#)-B-13 JAY/ANGELA SAGARAL MOTION TO CONFIRM PLAN
SJS-1 8-4-14 [[21](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed August 4, 2014, is denied.

The court will issue a minute order.

13. [14-25916](#)-B-13 JAY/ANGELA SAGARAL COUNTER MOTION TO DISMISS CASE
SJS-1 9-2-14 [[33](#)]

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 30, 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. [14-25817](#)-B-13 SHANE WELLS MOTION TO CONFIRM PLAN
BLG-1 7-23-14 [[17](#)]

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 28, 2012, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and

which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

15. [14-27017](#)-B-13 EVGENY/TATYANA BELYU
PGM-1

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
8-8-14 [[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 Bank of America, N.A.'s ("BofA") claim in this case secured by the second deed of trust on real property located at 9856 Fall Valley Way, 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 \$260,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by SLS/Nationstar with a balance of approximately \$264,000.00. Thus, the value of the collateral available to BofA on its second deed of trust is \$0.00.

The court will issue a minute order.

16. [14-25618](#)-B-13 SHELDON/MELANIE HIRSCH
DJC-10

MOTION TO CONFIRM PLAN
7-30-14 [[94](#)]

Tentative Ruling: The motion is continued to a final evidentiary hearing on November 10, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32. On or before November 3, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The movants' 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 November 3, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Evidentiary Hearing on Motion to Confirm First Amended Plan. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - 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.

With respect to the respondents' opposition, the court construes the respondents' protestations that the debtors must contribute more of their income to make payments to unsecured creditors under the plan as an objection raised under 11 U.S.C. § 1325(b)(1)(B). As it appears that both the debtors and the respondents are unaware of recent case authority interpreting 11 U.S.C. § 1325(b)(1)(B), the parties should be aware that at the evidentiary hearing the issue of whether the debtors have committed all of their projected disposable income to make payments to unsecured creditors will be subject to this department's interpretation of Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010). Specifically, as the debtors here who are "above-median" debtors for the purposes of § 1325(b)(4), the court treats the debtors' Form 22C Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income as establishing a presumption of the debtors' projected disposable income. In this case, as the debtors have a negative monthly disposable income on Form 22C, they are presumably required to pay nothing to general unsecured creditors over the 60-month plan term. That presumption may be rebutted by a showing of a substantial change in circumstances and known or virtually certain figures to replace one or more of the income and/or expense figures on Form 22C which result in a positive monthly disposable income figure on Form 22C. The income and expense figures on Schedules I and J are not relevant to this analysis. The respondents are also advised that the figures for National Standards and Local Standards expenses on Form 22C will be based on the Census Bureau, IRS Data and Administrative Expense Multipliers which can be found on the United States trustee's web site at <http://www.justice.gov/ust/eo/bapcpa/20140501/meanstesting.htm>, subject to any adjustments which are justified under applicable bankruptcy law.

The court will issue a minute order.

17. [14-24120](#)-B-13 LONNIE ROBERTS
TJW-2

MOTION TO INCUR DEBT
8-26-14 [[31](#)]

Tentative Ruling: This motion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling on the merits of the motion.

The motion is dismissed without prejudice.

The motion is dismissed for two reasons. First, the motion is not ripe for adjudication. The debtor has not shown that if the motion is granted a reverse mortgage refinance transaction will actually occur, as the copy of the Good Faith Estimate 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. Therefore, 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.

Second, the motion was also not properly served on AAG. As the court previously stated in its ruling on the debtor's prior motion, 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."

As the court previously stated in its ruling dismissing the debtor's prior attempt to have the reverse mortgage financing transaction approved (Dkt. 27), 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. AAG may in the same manner waive any service defect. Absent such evidence of AAG's consent and waiver of the service defect, however, the motion is dismissed without prejudice.

Based on the foregoing, the court requires that the debtor 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, AAG. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association such as AAG accomplished by serving the motion to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. The debtor's proofs of service for service on AAG (Dkt. 36, 38) do not show that AAG was served in the foregoing manner.

The court will issue a minute order.

18. [09-36921](#)-B-13 AKBAR MOHAMMADI AND MOTION TO VALUE COLLATERAL OF
SS-5 KEYHAN ONEWEST BANK, F.S. B.
8-12-14 [[55](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of OneWest Bank, FSB's ("OneWest") claim in this case secured by the second deed of trust on real property located at 2264 Gallup Drive, 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 \$320,000.00 on the date of the petition. The

Property is encumbered by a first deed of trust held by JPMorgan Chase Bank, N.A. with a balance of approximately \$452,000.00. Thus, the value of the collateral available to OneWest on its second deed of trust is \$0.00.

The court will issue a minute order.

19. [14-25625](#)-B-13 DOUGLAS THURSTON MOTION TO CONFIRM PLAN
CK-1 8-4-14 [[26](#)]

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

The motion is granted and the amended plan filed August 4, 2014, 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 3-081-12 (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.

20. [14-25625](#)-B-13 DOUGLAS THURSTON MOTION TO AVOID LIEN OF SHEILA
CK-2 FOLEY-GILDEA
8-8-14 [[36](#)]

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

The motion is dismissed without prejudice.

The motion was not properly served. The debtor seeks to avoid a judicial lien in favor of Sheila Foley-Gildea created by the service of an earnings withholding order on the debtor's employer. Due to the nature of the relief sought by the debtor, this matter is a contested matter pursuant to Fed. R. Bankr. P. 9014, and therefore must be served in accordance with Fed. R. Bankr. P. 7004. Fed. R. Bankr. P. 7004(b)(1) requires that service on an individual be accomplished by mailing the motion to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession. In this case it appears that the debtor served the judgment creditor's attorney in the state court action which resulted in the judgment. However, there is no evidence that the judgment creditor's attorney is an agent authorized to receive service of process for the judgment creditor for the purposes of this bankruptcy proceeding.

In addition, the court notes that the motion refers to an "amended Schedule C" filed as an exhibit to the motion. Although a copy of a purportedly amended Schedule C does appear on the docket as an exhibit, it does not appear on the docket as an amended Schedule. Before bringing

this motion again the debtor should file the amended Schedule C so that it appears as a separate docket entry, if he indeed wishes to amend Schedule C.

The court will issue a minute order.

21. [12-22726](#)-B-13 JOSHUA/ROBIN BIDDLECOMB MOTION TO MODIFY PLAN
JSO-3 7-31-14 [[50](#)]

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

The motion is granted, and the modified plan filed July 31, 2014, is confirmed.

The court will issue a minute order.

22. [14-27028](#)-B-13 TONI PAREDERO MOTION TO VALUE COLLATERAL OF
PGM-1 WELLS FARGO BANK, N.A.
8-8-14 [[18](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Bank, N.A.'s ("WFB") claim in this case secured by the second deed of trust on real property located at 2169 Stacia Way, 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 \$200,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Seterus with a balance of approximately \$225,000.00. Thus, the value of the collateral available to WFB on its second deed of trust is \$0.00.

The court will issue a minute order.

23. [10-44131](#)-B-13 RAPHAEL METZGER AND MOTION FOR PROTECTIVE ORDER
PGM-5 MELANIE MEDINA-METZGER 8-18-14 [[207](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied because it is not accompanied by any evidence to support the broad relief that it seeks, in violation of Local Bankruptcy Rule 9014-1(d)(5). The court will not restrict all remote electronic access to the record of this bankruptcy proceeding based on unsworn and vague representations regarding the "nature of the debtor's work and

job," unspecified "financial issues" and "information" which could allegedly be used by criminal organizations operating in Honduras. Those representations do not constitute evidence of a risk of unlawful injury to the debtors for the purposes of 11 U.S.C. § 107(c).

The court will issue a minute order.

24. [10-35624](#)-B-13 ERIK/RENEE SUNDQUIST
EQL-1

MOTION TO SET MATTER FOR
FURTHER PROCEEDINGS
8-14-14 [[48](#)]

CASE CLOSED 12/23/10

Tentative Ruling: The opposition filed by Recontrust Company, N.A. and Bank of America, N.A. ("BofA") is overruled. The motion is granted to the extent set forth herein. The clerk of the bankruptcy court shall open a new adversary proceeding (the "New Adversary") associated with bankruptcy case number 10-35624-B-13J. The clerk shall reproduce the docket of Eastern District Court case number 2:14-cv-01151-TLN-DAD (the "District Court Case") in the New Adversary by obtaining a copy of all pleadings on the docket of the District Court Case and docketing them in the New Adversary. Upon completion of the reproduction of the docket in the New Adversary, the clerk of the court shall notify the plaintiffs' counsel of such completion and enter proof of such notification on the docket. Within ten (10) calendar days after notification of completion of the reproduction of the docket (as reflected on the docket), the plaintiffs shall obtain from the clerk of the court (1) a reissued summons in the New Adversary setting a status conference on one of this department's regularly scheduled status conference calendars and (2) an Order to Confer On Initial Disclosures and Setting Deadlines (the "OTC"). The plaintiffs shall serve the complaint, reissued summons and the OTC pursuant to the requirements of Fed. R. Bankr. P. 7004 and the terms of the OTC. Pursuant to Fed. R. Bankr. P. 7004, incorporating Fed. R. Civ. P. 4(m), the time limit for service of the summons and complaint is extended to and including fourteen (14) days after the date of issuance of the reissued summons. Except as so ordered, the motion is denied.

The court agrees with BofA's argument that LBR 8020-1 is not applicable to this motion, a fact which the debtors acknowledge in their reply. In this instance, the court does not find the erroneous citation to LBR 8020-1 to be fatal to the motion, as it is clear from the moving papers and the reply that the debtors merely ask the court to set further proceedings pursuant to an order from the District Court.

The court does not agree with BofA's argument that the debtors must file a new bankruptcy case in order to pursue an action for damages for violation of the automatic stay based on events which allegedly occurred while the instant bankruptcy case was pending. Dismissal and closure of the case does not affect the viability of such an action arising under the Bankruptcy Code, of which this court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334(b).

The damages action created by 11 U.S.C. § 362(h) for violation of the automatic stay survives closing or dismissal of the bankruptcy case and can be filed as a count in a civil action in federal court under § 1334(b) "arising under" jurisdiction. Price v. Rochford, 947 F.2d 829, 830-31 & n. 1 (7th Cir.1991) ("§ 362(h) creates a cause of action that can be enforced after bankruptcy proceedings have terminated"); Javens v. City of Hazel Park (In re Javens), 107 F.3d 359, 363 n. 2 (6th Cir.1997); Fernandez v. GE Capital Mortgage Servs., Inc. (In re Fernandez), 227 B.R. 174, 179 (9th Cir. BAP 1998); Davis v. Courington (In re Davis), 177 B.R. 907, 910 (9th Cir. BAP 1995).

In re Menk, 241 B.R. 896, 906 (9th Cir. BAP. 1999). In addition, reopening the bankruptcy case is not required for such an action to proceed. "[T]here is no jurisdictional requirement that a closed bankruptcy case be reopened before 'arising under' jurisdiction can be exercised." Menk, 241 B.R. at 906. The court acknowledges that the panel in Menk was speaking of a nondischargeability action with respect to the foregoing, but its description of such an action applies equally well to one for damages for violation of the stay: "Such a proceeding is purely a two-party dispute having no impact on the bankruptcy estate or on other creditors and requiring no trustee." Menk, 241 B.R. at 907.

The court requires the clerk to issue a reissued summons and the OTC and the plaintiffs to serve the complaint, reissued summons and OTC because there is no evidence that the debtors previously served a summons and complaint on the defendants.

The court will issue a minute order.

25. [14-25632](#)-B-13 CASEY/LACEY HUDSON
FHS-1

MOTION TO CONFIRM PLAN
7-30-14 [[22](#)]

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

The motion is granted and the amended plan filed July 30, 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.

26. [14-26236](#)-B-13 CINDY GRAHAM
SJS-1

MOTION TO CONFIRM PLAN
7-25-14 [[18](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed July 25, 2014, is denied.

The court will issue a minute order.

27. [14-26236](#)-B-13 CINDY GRAHAM
SJS-1

COUNTER MOTION TO DISMISS CASE
9-2-14 [[32](#)]

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

The countermotion is conditionally denied, the conditions being that on or before September 30, 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.

28. [14-28337](#)-B-13 JUDE/TIMEA WATERBURY
EJS-1

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
8-19-14 [[8](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Real Time Resolutions, Inc.'s ("Real Time") claim in this case secured by the second deed of trust on real property located at 6925 Wave Crest Way, 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 \$383,905.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Residential Credit Solutions with a balance of approximately \$474,000.00. Thus, the value of the collateral available to Real Time on its second deed of trust is \$0.00.

The court will issue a minute order.

29. [14-26940](#)-B-13 SCOTT/LANAE FRANK
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-20-14 [[22](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed July 2, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 30, 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.

30. [14-28143](#)-B-13 ANNETTE GOTT
MRL-1

MOTION TO VALUE COLLATERAL OF
CITIBANK, N.A.
8-18-14 [[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 Citibank, N.A.'s claim in this case secured by the second deed of trust on real property located at 2920 Ponderosa Road, Shingle Springs, 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 \$440,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase with a balance of approximately \$457,000.00. Thus, the value of the collateral available to Citibank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

31. [14-27394](#)-B-13 JOHN ANDERSON AMENDED OBJECTION TO
FRI-1 CONFIRMATION OF PLAN BY LAUREN
ANDERSON
9-2-14 [[29](#)]

LAUREN ANDERSON VS.

Tentative Ruling: Creditor Lauren Anderson's objections are dismissed.

The docket does not reflect any service of the objections. The Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines (Dkt. 9) required filing and service of objections to confirmation of the debtor's plan by August 28, 2014.

The court will issue a minute order.

32. [14-27394](#)-B-13 JOHN ANDERSON OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON
8-28-14 [[21](#)]

Tentative Ruling: The trustee's objections are governed by the procedures of 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.

33. [14-27394](#)-B-13 JOHN ANDERSON OBJECTION TO DEBTOR'S CLAIM OF
JPJ-2 EXEMPTIONS
8-28-14 [[18](#)]

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.

34. [14-27394](#)-B-13 JOHN ANDERSON MOTION FOR REVIEW OF FEES
UST-1 8-28-14 [[15](#)]

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.

35. [13-33068](#)-B-13 CHARLES/BRENDA HAWORTH
CAH-1

MOTION FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY
8-9-14 [[32](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion fails to state a claim under 11 U.S.C. § 362(k). By this motion, the debtors seek an order that creditor PNC Mortgage (the "Creditor") has willfully violated the automatic stay through various post-petition collection activities. The debtors further request a continued hearing for the purpose of determining actual damages under 11 U.S.C. §§ 362(a) and (k). 11 U.S.C. § 362(k) provides that "except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1) (emphasis added). The debtors have failed to allege all elements of 11 U.S.C. § 362(k). Specifically, although the debtors go to great lengths in their motion, declaration, and supporting documentation attempting to show that the Creditor has willfully violated the automatic stay, they at no point allege that they were injured in any way by the Creditor's alleged post-petition collection efforts. By the very language of the statute, the court cannot make a determination as to any actual damages if the debtors do not first establish that they were injured by the Creditor's alleged conduct.

Should the debtors choose to re-file this motion, they are instructed to include in their allegations the specific injury(s) allegedly suffered as a result of the Creditor's conduct, the actual damages which resulted, and citations to appropriate Ninth Circuit authorities in support of their damages request.

The court will issue a minute order.

36. [14-25046](#)-B-13 WOODY/WENDY HESTER
CK-1

MOTION TO CONFIRM PLAN
8-4-14 [[23](#)]

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

The motion is granted, and the amended plan filed August 4, 2014 (Dkt. 27) 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.

37. [10-46151](#)-B-13 WAYNE/RAYNETTA MATTHEWS
SDB-4

MOTION TO VALUE COLLATERAL OF
VERIPRO SOLUTIONS, INC.
8-12-14 [[65](#)]

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 Veripro Solutions, Inc., a subsidiary of Nationstar Mortgage, LLC ("Veripro")'s claim secured by the second deed of trust on real property located at 313 Mayfield Circle, Suisun City, California 94585 (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 \$180,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage, LLC, transferee of Bank of America, N.A., with a balance of approximately \$432,000.00. Thus, the value of the collateral available to Veripro on its second deed of trust is \$0.00.

The court will issue a minute order.

38. [13-28451](#)-B-13 DOUGLAS SCOTT
RPH-6

MOTION TO CONFIRM PLAN
7-21-14 [[135](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed July 21, 2014 (Dkt. 139) 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 feasibility of the debtor's plan depends on loan modification agreements with Golden 1 Credit Union, which holds both the first and second deeds of trust secured by the debtor's residence. The debtor asserts that he has been approved for a permanent loan modification for the first deed of trust and a trial loan modification for the second deed of trust. The court acknowledges that it approved a permanent loan modification for the first deed of trust by order entered August 22, 2014 (Dkt. 144). However, the debtor has never sought court approval of a trial loan modification agreement for the second deed of

trust. While the e-mail exchanges that the debtor has attached (Dkt. 138) may establish that Golden 1 Credit Union has approved him for a trial loan modification for the second deed of trust, this is insufficient for the purposes of the bankruptcy case. Trial loan modifications, like permanent loan modifications, are subject to court approval. This requires a properly filed and served, consistent with the applicable requirements of the Local Bankruptcy Rules and Federal Rules of Bankruptcy Procedure, motion for approval of a trial loan modification agreement which includes a signed copy of the actual trial loan modification. Accordingly, the debtor has failed to comply with all requirements of 11 U.S.C. § 1325(a), and the motion is denied.

The court will issue a minute order.

39. [13-28451](#)-B-13 DOUGLAS SCOTT
RPH-6

COUNTER MOTION TO DISMISS CASE
9-2-14 [[145](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 145) 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 30, 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.

40. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE
SDB-4

MOTION TO VALUE COLLATERAL OF
ALLIANCE BANCORP TRUST 2007-SI
MORTGAGE BACKED PASS THROUGH
CERTIFICATE SERIES 2007-S1
8-8-14 [[111](#)]

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 Alliance Bancorp Trust 2007-SI Mortgage Backed Pass Through Certificate Series 2007-S1 (the "Creditor")'s claim secured by the second deed of trust on real property located at 460 Topsail Drive, Vallejo, California 94591 (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 \$460,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. formerly known as Countrywide Home Loans with a balance of approximately \$576,966.00. Thus, the value of the collateral available

to the Creditor on its second deed of trust is \$0.00.

The court will issue a minute order.

41. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL MOTION TO CONFIRM PLAN
RGJ-34 8-4-14 [[60](#)]

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

The motion is granted, and the amended plan filed August 4, 2014 (Dkt. 62) 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.

42. [14-24356](#)-B-13 DAVID/HOLLY HARPER MOTION TO VALUE COLLATERAL OF
CLH-4 AURORA SCHOOLS CREDIT UNION
8-15-14 [[47](#)]

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 Aurora Schools Federal Credit Union, recorded in the official records of Sacramento County, Book Number 20140411, is avoided as against the real property located at 3501 Sun Maiden Way, Antelope, California 95843 (the "Property").

The Property had a value of \$224,000.00 as of the date of the petition. The unavoidable liens total \$160,516.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 704.730(a)(2), under which they exempted \$75,000.00. 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 debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

43. [10-32861](#)-B-13 ESMERALDA WYMORE
JLB-12

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

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed May 28, 2014 (Dkt. 156) is denied.

The court will issue a minute order.

44. [10-32861](#)-B-13 ESMERALDA WYMORE
JLB-13

MOTION TO EXTEND TIME
8-27-14 [[168](#)]

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 dismissed without prejudice.

The motion is very confusing. It first asks for "an Order Extending Loan Modification Trial Period Plan." (Dkt. 168, p. 1, lines 16-18). It also asks that "the Court approve extending the loan modification trial period plan until such time as debtor is approved by lender for permanent modification." (Dkt. 168, p. 2, lines 17-18). The terms of the trial loan modification agreement (Dkt. 168, pp. 3-8) state that the trial period may be extended beyond the dates specified in the agreement pending lender approval of a permanent loan modification. Further court approval of these contractual terms is not required as the court has already approved the trial loan modification agreement by order entered March 7, 2014 (Dkt. 141). If the motion seeks a mandatory injunction requiring America's Servicing Company to extend the trial loan modification period, such relief may be obtained, if at all, only by adversary proceeding. Fed. R. Bankr. P. 7001(7). If the motion seeks court approval of an extension agreement other than the provision to which reference is made above, no evidence of such an agreement has been submitted, and the motion is therefore not ripe for adjudication. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

45. [14-25562](#)-B-13 KEITH TIGERT
TJW-2

MOTION TO CONFIRM PLAN
7-27-14 [[28](#)]

Tentative Ruling: The trustee's opposition is sustained for the reasons set forth therein. Creditor Bayview Loan Servicing, LLC ("Bayview")'s objection that the plan is not feasible is sustained. Bayview's motion to dismiss the case with prejudice pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(5) is denied without prejudice. Bayview's request for attorneys' fees and costs is denied. The motion to confirm the amended plan filed July 7, 2014 (Dkt. 20) is denied.

The court finds that Bayview has failed to establish cause to dismiss the

case under either 11 U.S.C. § 1307(c)(1) or 11 U.S.C. § 1307(c)(5). Bayview's sole basis for dismissal of the case is that the debtor lacks sufficient funding to support the plan and, by extension, the plan is not feasible. To start, Bayview fails to explain what, if any, prejudice has occurred to creditors as a result of the debtor failing to confirm his first amended plan. Second, the debtor has not made a request for additional time to file another plan, and therefore no such request has been denied by the court. This is the debtor's first amended plan. Simply failing to confirm a first amended plan on feasibility grounds, without more, is insufficient cause to warrant the extraordinary relief of dismissal with prejudice. Accordingly, Bayview's motion to dismiss is denied without prejudice.

Bayview's request for attorneys' fees and costs is denied because it has not shown that the value of its collateral exceeds the amount of its debt, it cites to no authority in support of such a request and it has submitted no evidence in support of such a request. 11 U.S.C. § 506(b); LBR 9014-1(d)(5) and (6).

The court will issue a minute order.

46. [14-25562](#)-B-13 KEITH TIGERT
TJW-2

COUNTER MOTION TO DISMISS CASE
9-2-14 [[51](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 51) 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 30, 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.

47. [14-26376](#)-B-13 CANDIDA HANSELL
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON, TRUSTEE
8-19-14 [[38](#)]

CASE DISMISSED 8/22/14

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

The trustee's objections are dismissed.

The trustee's objections are moot. The bankruptcy case was dismissed by order entered August 22, 2014 (Dkt. 43).

The court will issue a minute order.

48. [13-35777](#)-B-13 SIDNE ALLINGER
LBG-5

MOTION TO MODIFY PLAN
7-17-14 [[66](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed May 7, 2014 (Dkt. 42) is denied.

The court will issue a minute order.

49. [14-27780](#)-B-13 EDWARD MEDINA
HDR-1

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
8-7-14 [[8](#)]

Tentative Ruling: The motion is denied without prejudice.

The debtor has not satisfied the standard for the avoidance of a 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).

Here, although the debtor asserts in his motion and supporting declaration that he has claimed a \$1.00 exemption in the subject real property pursuant to Cal. Code Civ. P. § 703.140(b)(5), Schedule C (Dkt. 11, pp.10-11) does not show any claim of exemption in the property. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

50. [14-28782](#)-B-13 EDDIE DANIELS IRVING
CAH-1

MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING, LLC
9-2-14 [[8](#)]

Disposition Without Oral Argument: Oral argument will not assist the court in resolving this matter.

The motion is denied without prejudice.

Pursuant to Local Bankruptcy Rule 9014-1(f)(2), when fewer than twenty-eight (28) days' notice of a hearing is given, the debtor shall inform parties-in-interest that no written opposition to the motion is required and that any opposition shall be presented at the hearing on the motion.

LBR 9014-1(f)(2)(C). Here, the proof of service (Dkt. 12) indicates that the motion, notice of hearing, and supporting documents were served on the chapter 13 trustee, the Office of the United States Trustee, and the respondent on September 2, 2014, which was only fourteen (14) days prior to today's date. However, the notice of hearing (Dkt. 9) uses language specific to motions brought on at least twenty-eight (28) days' notice under Local Bankruptcy Rule 9014-1(f)(1), i.e., that written opposition was due no less than fourteen (14) days preceding today's date. This means that any party in interest wishing to oppose this motion would have been required to file written opposition the same day it was served. Accordingly, the motion is denied without prejudice for insufficient notice.

The court will issue a minute order.

51. [14-27085](#)-B-13 GARY/JUDY DUERNER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-26-14 [[31](#)]

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

The trustee's objections are sustained. Confirmation of the plan filed July 23, 2014 (Dkt. 13) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before September 30, 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.

52. [14-27085](#)-B-13 GARY/JUDY DUERNER
SW-2

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
8-28-14 [[34](#)]

Tentative Ruling: Creditor U.S. Bank, N.A. as trustee for holders of Banc of America Funding 2007-C Trust (the "Creditor")'s objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The Creditor's objection that the plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3) is overruled. The Creditor's remaining objections are sustained for the reasons set forth therein. The Creditor's request for attorneys' fees and costs is denied. Confirmation of the plan filed July 23, 2014 (Dkt. 13) is denied.

As the Creditor correctly asserts in its objection, the Ninth Circuit's Bankruptcy Appellate Panel has developed a test that requires consideration of the "totality of the circumstances" in determining whether a chapter 13 plan has been filed in good faith. Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988) (citing Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir.1982)). In making a good faith determination under a totality of the circumstances, the court in In re Warren set forth a non-exhaustive list of eleven factors for courts to consider. Here, the Creditor argues that the plan has been filed in bad faith because this is the sixth bankruptcy filing by the debtors since March 25, 2008, four of which were dismissed. The Creditor asserts that the debtors have filed for bankruptcy multiple times solely for the purpose of preventing it from exercising its rights under applicable nonbankruptcy law to obtain possession of its collateral. The Creditor further argues that the debtors have filed adversary proceedings against it in the past bankruptcy proceedings while consistently raising the same issue of standing. The court finds that the foregoing is insufficient to establish that the plan has not been filed in good faith under 11 U.S.C. § 1325(a)(3). While these facts may support two of the factors set forth in In re Warren (the frequency with which the debtors have sought bankruptcy relief, and the motivation and sincerity of the debtors in seeking chapter 13 relief), no other factors of the test are analyzed. Furthermore, multiple filings alone do not amount to bad faith. Downey Savings and Loan Ass'n. v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir. 1987). Accordingly, the Creditor's objection under 11 U.S.C. § 1325(a)(3) is overruled.

The Creditor's request for attorneys' fees and costs is denied because it has not shown that the value of its collateral exceeds the amount of its debt, it cites to no authority in support of such a request and it has submitted no evidence in support of such a request. 11 U.S.C. § 506(b); LBR 9014-1(d)(5) and (6).

The court will issue a minute order.

53. [14-27085](#)-B-13 GARY/JUDY DUERNER
SW-3

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
8-28-14 [[38](#)]

Tentative Ruling: Creditor U.S. Bank, N.A. as trustee for holders of Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-C (the "Creditor")'s objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The Creditor's objection that the plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3) is overruled. The Creditor's remaining objections are sustained for the reasons set forth therein. The Creditor's request for attorneys' fees and costs is denied. Confirmation of the plan filed July 23, 2014 (Dkt. 13) is denied.

As the Creditor correctly asserts in its objection, the Ninth Circuit's Bankruptcy Appellate Panel has developed a test that requires consideration of the "totality of the circumstances" in determining

whether a chapter 13 plan has been filed in good faith. Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988) (citing Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir.1982)). In making a good faith determination under a totality of the circumstances, the court in In re Warren set forth a non-exhaustive list of eleven factors for courts to consider. Here, the Creditor argues that the plan has been filed in bad faith because this is the sixth bankruptcy filing by the debtors since March 25, 2008, four of which were dismissed. The Creditor asserts that the debtors have filed for bankruptcy multiple times solely for the purpose of preventing it from exercising its rights under applicable nonbankruptcy law to obtain possession of its collateral. The Creditor further argues that the debtors have filed adversary proceedings against it in the past bankruptcy proceedings while consistently raising the same issue of standing. The court finds that the foregoing is insufficient to establish that the plan has not been filed in good faith under 11 U.S.C. § 1325(a)(3). While these facts may support two of the factors set forth in In re Warren (the frequency with which the debtors have sought bankruptcy relief, and the motivation and sincerity of the debtors in seeking chapter 13 relief), no other factors of the test are analyzed. Furthermore, multiple filings alone do not amount to bad faith. Downey Savings and Loan Ass'n. v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir. 1987). Accordingly, the Creditor's objection under 11 U.S.C. § 1325(a)(3) is overruled.

The Creditor's request for attorneys' fees and costs is denied because it has not shown that the value of its collateral exceeds the amount of its debt, it cites to no authority in support of such a request and it has submitted no evidence in support of such a request. 11 U.S.C. § 506(b); LBR 9014-1(d)(5) and (6).

The court will issue a minute order.

54.	14-27087 -B-13 SUKHDIP JOHAL JPJ-1	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 8-26-14 [21]
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Tentative Ruling: The trustee's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the plan filed July 22, 2014 (Dkt. 14) is denied.

The court will issue a minute order.

55.	13-33189 -B-13 DANIEL/LORI CAMARENA PGM-5	MOTION TO MODIFY PLAN 8-11-14 [63]
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Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed August 11, 2014 (Dkt. 67) is confirmed.

The court will issue a minute order.

56. [13-29992](#)-B-13 JUAN COLEMAN MOTION TO MODIFY PLAN
SNM-6 8-8-14 [[88](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed August 8, 2014 (Dkt. 89) is denied.

The court will issue a minute order.

57. [14-28692](#)-B-13 CAROL SCHROEDER MOTION TO VALUE COLLATERAL OF
SLH-1 JPMORGAN CHASE BANK, N.A.
8-30-14 [[8](#)]

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. [14-28692](#)-B-13 CAROL SCHROEDER MOTION TO EXTEND AUTOMATIC STAY
SLH-2 8-30-14 [[12](#)]

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. [11-22595](#)-B-13 JOANNE BRONSON MOTION TO MODIFY PLAN
JDM-2 7-23-14 [[41](#)]

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

60. [14-28475](#)-B-13 ROBERT/MOIRA TRABERT MOTION TO IMPOSE AUTOMATIC STAY
MLA-1 O.S.T.
9-3-14 [[14](#)]

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

The motion is denied.

The motion is denied for failure to comply with the Order Shortening Time for Hearing on Motion to Extend Automatic Stay filed September 5, 2014 (Dkt. 20) (the "Order"). Pursuant to the Order, the debtors were instructed to do the following: (1) on or before September 5, 2014 at 5:00 p.m., serve a copy of the Order on all parties previously served with the instant motion in a manner which would ensure delivery no later than 5:00 p.m. on September 8, 2014; and (2) file a certificate of service with the court no later than 5:00 p.m. on September 9, 2014. The debtors failed to comply with the foregoing. Accordingly, the motion is denied.

The court notes that the motion is filed as debtors' motion to impose the automatic stay pursuant to § 362(c)(4)(B). However, the debtors have had one prior case, case number 14-26948, pending and dismissed within the one year period prior to the filing of this case. Accordingly, the motion is deemed a motion to extend the automatic stay under § 362(c)(3)(B).

The court will issue a minute order.