

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

September 30, 2014 at 9:32 A.M.

- 
1. [14-29002](#)-B-13 DENISE KEAR MOTION TO EXTEND AUTOMATIC STAY  
SLH-1 9-11-14 [[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.

2. [13-35903](#)-B-13 MARK/DEJA HERBERS MOTION TO CONFIRM PLAN  
HLG-4 8-8-14 [[68](#)]

**Tentative Ruling:** The motion to confirm the amended plan filed August 8, 2014 (Dkt. 72) is denied.

Although no party in interest has opposed the motion, the court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [ §§ 1328(a)(2) and 523(a)(8) ] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The 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 feasibility of the plan depends on the debtors' ability to make two significant step payments, the first occurring in Month 13 (an increase of \$905.00 per month) and the second occurring in Month 37 (an increase of \$1,980.00 per month). The debtors have failed to provide any explanation in either their motion or declaration (Dkt. 70) as to how they will be able to afford these step payments. 11 U.S.C. § 1325(a)(6). In fact, the debtors state that their projected monthly net income is \$2,595.81 and that they are committing all of their projected monthly net income to the plan. This is consistent with what the debtors have reported on their Schedules I and J (Dkt. 1, pp.34-37). The fact that the debtors are current on their plan payments and they

feel that they will be able to make all plan payments to the trustee is insufficient to establish that they will have the income to make the step payments required to fund the plan. Furthermore, the court acknowledges Line 13 of Schedule I, which states that the debtors anticipate earning additional income to allow them to fund the plan as the payments increase. However, without further explanation or additional evidence, this statement is insufficient to establish an ability to make all payments under the plan. Accordingly, the motion is denied.

The court will issue a minute order.

3. [14-28103](#)-B-13 LEA CHASE  
PD-1

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
9-11-14 [[24](#)]

**Tentative Ruling:** Creditor Bank of America, N.A. ("BANA")'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 debtor's opposition is overruled. BANA's objections are sustained. Confirmation of the plan filed August 8, 2014 (Dkt. 5) (the "Plan") is denied.

The court construes BANA's objection as being brought under 11 U.S.C. §§ 1325(a)(5)(B) and 1322(b)(5). First, BANA objects to confirmation of the Plan on the grounds that it does not provide for the full value of its claim pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii). The Plan currently provides for BANA's claim in Class 1, listing a total arrearage of \$46,841.35 to be paid with a monthly dividend of \$100.00, as well as a monthly contract installment amount of \$1,848.27. BANA alleges, and the debtor concedes, that the pre-petition arrears on BANA's claim are \$47,580.07, or \$738.72 more than what the Plan currently provides for. This is a clear violation of 11 U.S.C. § 1325(a)(5)(B)(ii). The court finds the debtor's opposition to this point unpersuasive. Section 1.02 of the Plan provides for a lump sum payment of \$41,935.00 from the debtor's 401k account by the 58<sup>th</sup> month of the Plan. The debtor argues, and provides evidence, that there are sufficient funds in her 401k account to cover the additional arrearage owed on BANA's claim. Even if the court were to find that this is sufficient evidence to show that BANA's claim will be paid in full over the life of the Plan, the debtor's proposal still violates 11 U.S.C. § 1325(a)(5)(B)(iii)(I). Specifically, it appears that the Plan provides for periodic payments on the arrearage claim, but they are not in equal monthly amounts. Rather, the debtor is proposing a minimal \$100.00 per month until the 58<sup>th</sup> month of the Plan, followed by an enormous lump sum payment. The debtor cites to no authority which states that such Plan treatment is acceptable. In fact, the court reads 11 U.S.C. § 1325(a)(5)(B)(iii) as prohibiting this exact approach - minimal monthly payments followed by a large payment at or near the end of the plan.

Second, while BANA frames its second objection in terms of a violation under 11 U.S.C. § 1325(a)(6), the court construes this as an objection under 11 U.S.C. § 1322(b)(5) as the Plan does not provide for the curing of arrears within a reasonable time. Simply put, the debtor cites to no

authority which stands for the proposition that curing arrears in Month 58 of the Plan, via a lump sum payment, following 57 months of \$100.00 arrearage payments satisfies the "reasonable time" requirement of 11 U.S.C. § 1322(b)(5). Furthermore, the court questions whether the arrearage on BANA's claim is being cured within a reasonable time when the evidence provided by the debtor shows that she has sufficient funds in her 401k account to make the payment much sooner. The debtor provides no explanation as to whether there would be an early withdrawal penalty if she were to remove the funds from her 401k account sooner to satisfy BANA's claim. Accordingly, for the reasons set forth above, BANA's objections are sustained and confirmation of the Plan is denied.

The court will issue a minute order.

4. [14-25204](#)-B-13 KEITH/KARA TREMELLING MOTION TO CONFIRM PLAN  
CAH-3 8-11-14 [[40](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed August 11, 2014 (Dkt. 41) is denied.

The court will issue a minute order.

5. [14-25204](#)-B-13 KEITH/KARA TREMELLING COUNTER MOTION TO DISMISS CASE  
CAH-3 9-16-14 [[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 October 14, 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.

6. [13-31905](#)-B-13 JOHN/JACLYN LABARBERA OBJECTION TO CLAIM OF RUSHMORE  
JPJ-1 LOAN MANAGEMENT SERVICES,  
LLC/U.S. BANK, CLAIM NUMBER 14  
8-13-14 [[57](#)]

**Tentative Ruling:** Creditor U.S. Bank, N.A., as Legal Title Trustee for Truman 2013 SC4 Title Trust (the "Creditor")'s opposition is overruled. The trustee's objection is sustained, and claim number 14, filed on June 26, 2014, by the Creditor in the amount of \$405,575.38 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was February 12, 2014. The Claim was filed on June 26, 2014.

The Creditor's opposition is not persuasive. First, Ninth Circuit authority holds that a claim is timely filed and allowed for the purposes of a chapter 13 case only if one of the requirements under Federal Rule of Bankruptcy Procedure 3002(c) is satisfied. See In re Coastal Alaska Airlines, Inc., 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990) ("Rule 3002(c) identifies six circumstances where a late filing is allowed"); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999) (Rule 3002(c) provides only five exceptions to the ninety day filing period prescribed for the filing of claims). Coastal Alaska's reference to six circumstances under Federal Rule of Bankruptcy Procedure 3002(c) and Edelman's reference to five circumstances is explained by the 1996 amendments to the Bankruptcy Code, which abrogated allowance of late-filed claims against surplus estate assets in chapter 7 cases. Federal Rule of Bankruptcy Procedure 3002 therefore "complements the process of allowing claims by setting a bar date by which a claim must be filed in order to be allowed under 11 U.S.C. § 502." In re Osborne, 76 F.3d 306, 309-310 (9<sup>th</sup> Cir. 1996). In this case, the Creditor has failed to establish that any of the circumstances under Federal Rule of Bankruptcy Procedure 3002(c) apply, and the court may not otherwise allow the Claim on equitable grounds.

Second, the court is not persuaded that the filing of a proof of claim by the Creditor's predecessor-in-interest in the debtors' prior chapter 13 case creates an informal proof of claim in the instant case. In the Ninth Circuit, to constitute an informal proof of claim a creditor must point to an explicit demand by the creditor which shows the nature and amount of the claim and an intent to hold the debtor liable for it. Sambo's Rests., Inc. v. Wheeler (In re Sambo's Rests., Inc.), 754 F.2d 811, 815 (9<sup>th</sup> Cir. 1985) (emphasis added). Here, the Creditor did not make an explicit demand upon the debtors to hold them liable for the Claim. Rather, an entity other than the Creditor made such a demand in the prior case. This is insufficient to establish an informal proof of claim in the present case.

The court will issue a minute order.

7. [14-24805](#)-B-13 IRA ROSS  
MLA-5

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
8-19-14 [[74](#)]

**Tentative Ruling:** The motion is continued to a final evidentiary hearing on November 17, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32. At the evidentiary hearing, evidence shall be taken on the following issues: (1) the value as of the petition date of the real property located 8334 Lancraft Drive, Sacramento, California 95823 (the "Property"); (2) whether the Property is the debtor's principal residence and, by extension, whether the debtor may modify the respondent's claim pursuant to 11 U.S.C. § 1322(b)(2); (3) the appropriate interest rate for the respondent's secured claim; and (4) whether the debtor has sufficient income to fund the plan pursuant to 11 U.S.C. § 1325(a)(6).

On or before November 10, 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 debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before November 10, 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 Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [[www.tabbies.com](http://www.tabbies.com)] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

8. [14-24805](#)-B-13 IRA ROSS  
MLA-4

MOTION TO CONFIRM PLAN  
8-19-14 [[69](#)]

**Tentative Ruling:** The trustee's opposition is sustained for the reasons set forth therein. Creditor Wells Fargo Bank, N.A. ("WFB")'s opposition is dismissed without prejudice. The motion to confirm the plan filed August 19, 2014 (Dkt. 71) is denied.

The evidentiary hearing on the Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A. on November 17, 2014, at 2:00 p.m. may inform the parties as to many of the issues raised in WFB's objection.

The court will issue a minute order.

9. [14-24805](#)-B-13 IRA ROSS  
MLA-4

COUNTER MOTION TO DISMISS CASE  
9-16-14 [[85](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 85) 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 November 24, 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 acknowledges that the trustee requests a plan filing deadline of October 14, 2014. However, in this instance, because certain issues important to confirmation of a plan in this case have been continued to an evidentiary hearing to be held on November 17, 2014, at 2:00 p.m., the court shall grant the debtor one additional week from the date of the evidentiary hearing to file a plan which reflects the outcome of that proceeding.

The court will issue a minute order.

10. [11-25906](#)-B-13 DONALD/BRIANA RUDE  
SJS-9

MOTION TO INCUR DEBT  
8-26-14 [[126](#)]

**Tentative Ruling:** The motion is dismissed without prejudice. The trustee's opposition is dismissed.

The motion is dismissed without prejudice for the following reasons. First, the motion was not properly served and noticed. A motion for approval of a loan modification agreement is a motion to incur new debt. It is governed by the provisions of Federal Rule of Bankruptcy Procedure 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct." Based on the foregoing, the court requires that the debtor serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to incur debt through a loan modification on the United States trustee, the chapter 13 trustee, and the creditor who is the counterparty to the loan modification. The court also requires that the debtor give notice of the motion to all other creditors. Here, the proof of service (Dkt. 130) indicates that the motion, notice of hearing, and supporting documents were only served on the Office of the United States Trustee, the chapter 13 trustee, the court, parties requesting special notice, Home Comings Financial, and PNC Bank, N.A. ("PNC") at various addresses.

Second, the motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. The debtors have failed to establish that there is an actual, finalized loan modification agreement with PNC for the court to approve.

The absence of an actual agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no actual, finalized agreement to which PNC agrees, no case or controversy within the meaning of Article

III exists.

The court acknowledges the loan modification agreement submitted as Exhibit "B" to the motion (Dkt. 129, pp.6-25). However, the agreement has not been signed by either the debtors or a representative of PNC, and the debtors have provided no other evidence that PNC consents to the terms of the agreement. PNC's consent to the agreement may be manifested in ways other than executing the agreement. For example, PNC may file a response to the motion stating its agreement, or it may appear at the hearing on the motion and state its agreement on the record. Absent such evidence of PNC's consent, however, the motion is not ripe for adjudication.

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

The court will issue a minute order.

11. [12-29506](#)-B-13 LAURA WANDERER  
PGM-1

MOTION TO MODIFY PLAN  
8-13-14 [[27](#)]

**Tentative Ruling:** The motion is granted. The modified plan filed August 13, 2014 is confirmed with the following modification: 1.) As of August 25, 2014, the debtor has paid a total of \$12,695.00 into the plan; 2.) Commencing with the plan payment to September 25, 2014, the debtor shall pay \$485.00 per month for the remaining 33 months of the plan.

The court will issue a minute order.

12. [13-20207](#)-B-13 CORNELIA CATA  
PGM-8

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH ROMEL M. HAMO  
8-18-14 [[233](#)]

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

The motion is granted. Pursuant to Fed. R. Bankr. P. 9019, the debtor is authorized to enter into the Stipulation and Settlement Agreement of Adversary Claims filed as Exhibit 1 to the motion (Dkt. 236). Debtor is authorized to execute all documents necessary to effect the terms of the settlement agreement. Except as so ordered, the motion is denied.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a



compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The debtor asserts that the compromise is fair and equitable. By entering into the compromise, the largest unsecured claim filed against the bankruptcy estate will be reduced by nearly half. The settlement agreement also spares the debtor and the estate the expense of time-consuming and complex litigation. The court finds that the debtor has carried her burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

13. [14-29108](#)-B-13 ROSEMARIE LANDRY MOTION TO EXTEND AUTOMATIC STAY  
MOH-1 9-16-14 [[11](#)]

**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.

14. [14-27510](#)-B-13 PATRICIA DERAS OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON  
9-3-14 [[16](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed July 23, 2014, is denied.

The court will issue a minute order.

15. [13-29516](#)-B-13 MICHAEL CHURSENOFF CONTINUED MOTION TO MODIFY PLAN  
MAS-4 7-22-14 [[70](#)]

**Disposition Without Oral Argument:** This motion continued from September 16, 2014. In light of the movant's Consent to Entry of Order Consistent With Prior Tentative Ruling, etc. filed on September 19, 2014 (Dkt. 83), the court reissues its prior tentative ruling on the merits of the motion.

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 the 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.

16. [14-27616](#)-B-13 TERRY MOON  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-3-14 [[28](#)]

**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 25, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 14, 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.

17. [14-27616](#)-B-13 TERRY MOON  
BHT-1

OBJECTION TO CONFIRMATION OF  
PLAN BY REAL TIME RESOLUTIONS,  
INC.  
9-4-14 [[31](#)]

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

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

The objection is sustained only to the extent that the creditor objects that the plan cannot propose to treat its secured claim as a class 2C claim reduced to \$0.00 based on the value of the creditor's collateral because the debtor has yet to successfully value the collateral by motion. Nothing in this ruling shall be construed as a finding regarding the value of the creditor's collateral.

The court will issue a minute order.

18. [14-27616](#)-B-13 TERRY MOON  
WW-1

MOTION TO VALUE COLLATERAL OF  
SIERRA PACIFIC MORTGAGE  
COMPANY, INC  
8-27-14 [[22](#)]

**Tentative Ruling:** The objection is continued to a final evidentiary hearing on December 4, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32. On or before November 27, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The movant's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before November 27, 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 Debtor's Motion to Value Collateral. In addition to the tabs, the hearing

exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [[www.tabbies.com](http://www.tabbies.com)] - movant's stock number 58093 and respondent's stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

19. [12-26117](#)-B-13 RICHARD/KIM CHAVEZ MOTION AUTHORIZE TRIAL PERIOD  
RDS-4 FOR MODIFICATION OF MORTGAGE  
LOAN  
9-11-14 [[69](#)]

**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 and noticed. The court treats this motion for approval of a trial period modification as a motion to incur debt that is governed by the provisions of Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct." Based on the foregoing, the court requires that the debtor serve (consistent with the provisions of Bankruptcy Rule 7004) motions to incur debt on the United States trustee, the chapter 13 trustee, and the creditor who is extending credit, Nationstar. The court also requires that the debtors give notice of the motion to all other creditors. The debtors' certificate of service in this case (Dkt. 73) does not show that the debtors served Nationstar with the motion and it does not show that they gave notice of the motion to all other creditors.

The court will issue a minute order.

20. [14-27917](#)-B-13 GARY DELFINO AND JAQUILINE OBJECTION TO CONFIRMATION OF  
JPJ-1 NERUTSA PLAN BY JAN P. JOHNSON, CHAPTER  
13 TRUSTEE AND/OR MOTION TO  
DISMISS CASE  
9-11-14 [[17](#)]

**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 court will issue a minute order.

- 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 chapter 13 trustee's first objection regarding the debtors' failure to attend the initial meeting of creditors on September 4, 2014, is overruled because the debtors attended the continued meeting of creditors on September 18, 2014, and the meeting was concluded. The trustee's second objection regarding the dependence of the chapter 13 plan on a successful motion to value the collateral of Capital One Auto Finance is sustained for the reason set forth therein.

The court will issue a minute order.

- Tentative Ruling:** This objection continued from August 19, 2014. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court

issues the following abbreviated tentative ruling.

The trustee's objections is sustained. Confirmation of the initial plan filed June 16, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 14, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection under 11 U.S.C. § 1325(a)(4) is sustained based on the trustee's representation in his reply brief filed on September 17, 2014 (Dkt. 23) that he received a copy of an appraisal of the real property located at 273 Bieber Drive, San Jose, California (the "Property") which states that the value of the Property is \$575,200.00. Deducting the liquidation costs set forth in the debtor's response filed on August 14, 2014 (Dkt. 19) from that value, without taking into account any homestead exemption asserted by the debtor, yields \$134,295.00 in non-exempt equity in the estate. The debtor's chapter 13 plan proposes to pay only \$5,737.50 to unsecured creditors.

The court does not take into account any homestead exemption asserted by the debtor because the debtor has not claimed any homestead exemption in the property on her sworn Schedule C. Nothing in this ruling shall be construed as a finding as to whether or not the debtor is in fact entitled to a homestead exemption in the Property.

The court will issue a minute order.

23.	<a href="#">14-21229</a> -B-13 GG-1	WALTER SCHMELTER AND PEGGI MARTIN	CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 6-26-14 [ <a href="#">18</a> ]
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**Tentative Ruling:** This matter continued from August 19, 2014. The court established a briefing schedule. The court now issues the following tentative ruling on the merits of the motion.

The objection is overruled. The debtors' request for an award of attorney's fees is denied.

As an initial matter, the opposition to the motion filed by Ocwen Loan Servicing, LLC ("Ocwen") on September 16, 2014 was not filed late. LBR 9014-1(f)(1)(B) provides that "[o]pposition . . . shall be served and filed . . . at least fourteen (14) days preceding the date or continued date of the hearing" on a motion. The court did not close the record at the August 19, 2014, hearing. Therefore, Ocwen was permitted to file opposition to the motion prior to the continued date of the hearing.

Ocwen's ability to file opposition was not curtailed by the briefing

schedule established by the court at the August 19, 2014 hearing. The court continued this objection from that date for the purpose of allowing the debtors' counsel to brief the issue of the debtors' entitlement to an award of attorney's fees, after having issued a tentative ruling (which did not become final) on the August 19, 2014 calendar which sustained the debtors' objection to 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.

On further review of Fed. R. Bankr. P. 3002.1, the rule under which the objection is ostensibly brought (as the objection cites no legal authority and Fed. R. Bankr. P. 3002.1 is the rule generally applicable to objections to notices filed on Form B10 Supplement 2 - Notice of Postpetition Mortgage Fees, Expenses and Charges), the court denies the motion because Fed. R. Bankr. P. 3002.1(a) states that the provisions of Bankruptcy Rule 3002.1 apply in chapter 13 cases "to claims that are (1) secured by a security interest in the debtors' principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtors' plan." 11 U.S.C. § 1322(b)(5) contains an exception to 11 U.S.C. § 1322(b)(2), which prohibits modification of a claim secured only by a security interest in real property that is the debtor's principal residence. 11 U.S.C. § 1322(b)(5) allows, notwithstanding, the prohibition of 11 U.S.C. § 1322(b)(2) the chapter 13 plan to modify debts on which the last payment is due after the date on which the final payment under the plan is due, to cure defaults within a reasonable time and to maintain regular monthly payment while the chapter 13 case is pending.

The court takes judicial notice that in this case the claim on which the Notice is based is not provided for under 11 U.S.C. § 1322(b)(5) in the debtors' confirmed chapter 13 plan. The plan (Dkt. 5) provides for the claim as a class 4 claim that is "not in default" pursuant to terms of section 2.11 of the plan. Fed. R. Bankr. P. 3002.1 does not apply to the claim on which the Notice is based; Ocwen was actually not required to file the Notice at all, but the fact that Ocwen did file the Notice does not give the debtors prudential standing to object to it under Fed. R. Bankr. P. 3002.1(e).

Because the objection is overruled, the debtors have not prevailed on the motion, and the debtors' request for an award of attorney's fees as the prevailing party in this matter is denied.

Nothing in this ruling shall be construed as a finding that Ocwen is entitled to post-petition attorney's fees pursuant to 11 U.S.C. § 506(b), as Ocwen's entitlement to fees, costs or charges pursuant to § 506(b) is not the subject of this objection and is not before the court. However, the court does agree with Ocwen that Ocwen is not required to file a separate application for approval of fees under 11 U.S.C. § 506(b). See In re Atwood, 293 B.R. 227 (9th Cir. BAP 2003). An amendment of Ocwen's claim is the more appropriate vehicle for claiming fees, costs or charges under 11 U.S.C. § 506(b).

The court will issue a minute order.

24. [13-35431](#)-B-13 DOUGLAS/DEBRA HODGES  
JPJ-1

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC/HSBC BANK NV, CLAIM  
NUMBER 15  
8-13-14 [[19](#)]

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

The trustee's objection is sustained, and claim No. 15, filed on May 6, 2014, by Cavalry SPV I, LLC/HSBC Bank NV in the amount of \$535.29 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was April 2, 2014, and to file a government claim was June 4, 2014. The Claim was filed on May 6, 2014.

The court will issue a minute order.

25. [14-27432](#)-B-13 EDITH MONDRAGON  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
9-3-14 [[16](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed July 21, 2014, is denied.

The court will issue a minute order.

26. [12-37233](#)-B-13 BERIO/ANN MELO  
PGM-2

MOTION TO MODIFY PLAN  
8-21-14 [[60](#)]

**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 21, 2014, is confirmed.

The court will issue a minute order.



27. [14-28933](#)-B-13 ANA RODRIGUEZ MOTION TO IMPOSE AUTOMATIC STAY  
PGM-1 9-11-14 [[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.

28. [13-27034](#)-B-13 NANCY LOPEZ MOTION TO MODIFY PLAN  
SJS-3 8-26-14 [[56](#)]

**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 26, 2014, is confirmed.

The court will issue a minute order.

29. [11-33137](#)-B-13 DARLENE BURLESON OBJECTION TO CLAIM OF BARRETT  
JPJ-3 CHASE HOA, CLAIM NUMBER 11  
8-13-14 [[70](#)]

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

The trustee's objection is sustained, and claim No. 11, filed on July 21, 2014, by Barrett Chase HOA c/o Tolley Community Management in the amount of \$421.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was September 28, 2011, and to file a government claim was November 21, 2011. The Claim was filed on July 21, 2014.

The court will issue a minute order.

30. [14-27938](#)-B-13 TERRI COMBS OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-10-14 [[18](#)]

**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 moot. On September 17, 2014, the debtor 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.

31. [14-27542](#)-B-13 CECIL SIMS OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P JOHNSON  
9-3-14 [[16](#)]

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

The trustee's objections are sustained. Confirmation of the initial plan filed July 24, 2014, is denied.

The court will issue a minute order.

32. 14-26446-B-13 TODD/DENISE BEINGESSNER MOTION TO CONFIRM PLAN  
SJS-3 8-14-14 [38]

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

The motion is granted and the amended plan filed August 14, 2014, will be confirmed.

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

33. [11-30977](#)-B-13 GEORGE/LAVERNE PADILLA MOTION TO CONFIRM FINAL CURE OF  
SDB-8 MORTGAGE DEFAULT  
8-25-14 [[106](#)]

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

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

Federal Rule of Bankruptcy Procedure 3002.1(h), the court finds that as of June 3, 2014, the date of completion of the confirmed chapter 13 plan, (1) the debtors have made all required plan payments to the trustee and (2) the trustee has made payments to secured creditor Nationstar Mortgage, LLC. ("Nationstar") that have cured the pre-petition default owed to Nationstar and have paid all ongoing monthly post-petition payments to Nationstar that came due during the term of the confirmed plan. Except as so ordered, the motion is denied.

The court will issue a minute order.

34. [11-26648](#)-B-13 CHRISTOPHER MCKENNEY CONTINUED MOTION TO MODIFY PLAN  
JPJ-1 6-11-14 [[64](#)]

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

This matter is continued to December 16, 2014, at 9:32 a.m. to be heard after disposition of Trustee's Objection to Claim of Lisa McKenney.

35. [12-37750](#)-B-13 ANGELA CARNEVALE MOTION TO MODIFY PLAN  
EJS-3 8-25-14 [[58](#)]

**Tentative Ruling:** The motion to confirm the modified plan filed August 25, 2014 (Dkt. 62) is denied.

Although no party in interest has opposed the motion, the court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The debtor has not carried her burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). Here, neither the motion nor the attached declaration (Dkt. 60) address all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Both documents only state that the debtor has the ability to pay 100.00% of all claims with just her income over a sixty month period based on the attached amended Schedules I and J (Dkt. 61), thus eliminating the need to sell her residence. This is insufficient under the standard set forth in Chinichian v. Campolongo. Accordingly, the motion is denied.

The court will issue a minute order.

36. [09-21751](#)-B-13 KRISTINE BOWEN  
PGM-4  
WITHDRAWN BY M.P.

CONTINUED MOTION TO REFINANCE  
7-31-14 [[103](#)]

**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 September 10, 2014 (Dkt. 116).

37. [09-21751](#)-B-13 KRISTINE BOWEN  
PGM-5

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH THOMAS FEUTZ AND  
RICHARD GREGORY EYERHALDE  
8-18-14 [[110](#)]

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

The motion is granted, and the debtor is authorized to enter into and perform in accordance with the terms set forth in the Settlement Agreement attached as Exhibit "1" to the motion (Dkt. 113, pp.2-5) (the "Agreement"). Except as so ordered, the motion is denied.

The court has great latitude in approving settlement agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The debtor alleges without dispute that the Agreement is fair and equitable and in the best interests of the estate and its creditors. The Agreement will resolve a dispute between the debtor and creditors Thomas Feutz and Richard Gregory (collectively, the "Creditors") pertaining to their claim which arose from a judgment issued by the Napa County Superior Court. The dispute has resulted in the pendency of two individual adversary proceedings involving the parties. Not only will the Agreement resolve the Creditors' claim, but it will also result in the dismissal with prejudice of the adversary proceedings. The debtor believes that the Agreement will avoid further time and expense involved in litigating the underlying issues. In the absence of opposition, the court finds that the Agreement is a reasonable exercise of the debtor's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the debtor has carried her burden of persuading the court that the Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

38. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE MOTION TO APPROVE LOAN  
SDB-6 MODIFICATION  
8-28-14 [[121](#)]

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

The motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. By this motion, the debtors seek approval of revisions to a previously approved permanent loan modification with Bank of America, N.A. ("BANA"). However, the debtors have failed to establish that there is an actual, finalized loan modification agreement for the court to approve.

The absence of an actual agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no actual, finalized agreement to which BANA agrees, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges the loan modification agreement attached as Exhibit "C" to the motion (Dkt. 124, pp.6-16) (the "Agreement"). The court further acknowledges that it previously approved a permanent loan modification agreement with BANA by order entered July 14, 2014 (Dkt. 100). However, the Agreement cannot be approved because it has not been signed by a representative of BANA and the debtors have provided no other evidence that BANA consents to the Agreement. The court cannot impute BANA's consent to the Agreement simply because it consented to the previous loan modification agreement which did not contain the proposed revisions.

BANA's consent to the Agreement may be manifested in ways other than executing the Agreement. For example, it may file a response to the motion stating its agreement, or it may appear at the hearing on the motion and state its agreement on the record. Absent such evidence of consent, however, the motion is not ripe for adjudication. The signature of the notary public at the end of the Agreement is insufficient. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

39. [11-22353](#)-B-13 LEE/CYNTHIA LANDINI MOTION TO MODIFY PLAN  
BLG-5 7-25-14 [[96](#)]

**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 25, 2014 (Dkt. 98) is confirmed.

The court will issue a minute order.

40. [13-35755](#)-B-13 PATRICK TORREY  
JPJ-1  
OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC/HSBC BANK NV, CLAIM  
NUMBER 7  
8-13-14 [[23](#)]

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

The trustee's objection is sustained, and claim number 7, filed on May 6, 2014, by Cavalry SPV I, LLC as assignee of HSBC Bank Nevada in the amount of \$889.33 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was April 23, 2014. The Claim was filed on May 6, 2014.

The court will issue a minute order.

41. [13-34857](#)-B-13 SYLVIA ALKILANY  
JPJ-2  
OBJECTION TO CLAIM OF  
AMERICREDIT FINANCIAL SERVICES,  
INC., CLAIM NUMBER 7  
8-13-14 [[72](#)]

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

The trustee's objection is sustained, and claim number 7, filed on March 28, 2014, by Americredit Financial Services, Inc. in the amount of \$15,113.85 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was March 19, 2014. The Claim was filed on March 28, 2014.

The court will issue a minute order.

42. [14-27661](#)-B-13 MICHAEL/JURHEE POLLARD  
JPJ-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-10-14 [[14](#)]

**Tentative Ruling:** The trustee's objection 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 objection is sustained. Confirmation of the plan filed July 28, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 14, 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.

43. [11-28662](#)-B-13 GLENN/JEANETTE SHAFFNER MOTION FOR SUBSTITUTION OF  
CAH-1 DECEASED PARTY  
8-25-14 [[43](#)]

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

The motion is granted to the extent set forth herein. Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, debtor Glenn Allen Shaffner, Jr. is authorized to perform the obligations and duties of deceased joint debtor Jeanette Lois Shaffner in this case, in addition to performing his own obligations and duties. Pursuant to Federal Rule of Bankruptcy Procedure 1016, administration of case number 11-28662-B-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of joint debtor Jeanette Lois Shaffner had not occurred. Except as so ordered, the motion is denied.

The court will issue a minute order.

44. [10-25665](#)-B-13 RICHARD BARBER MOTION FOR COMPENSATION FOR  
TBH-1 THOMAS B. HJERPE, DEBTOR'S  
ATTORNEY  
8-19-14 [[106](#)]

**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 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis for the period of February 18, 2013, through and including July 25, 2014, in the amount of \$1,630.00 in fees and \$0.00 in expenses, for a total of \$1,630.00. The approved fees and expenses shall be paid by the chapter 13 trustee through the chapter 13 plan as an administrative expense to the extent such funds are available. Except as so ordered, the motion is denied.

On March 9, 2010, the debtor filed a chapter 13 petition (Dkt. 1). The debtor's former counsel, Frederick E. Clement ("Mr. Clement"), opted out



of the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). Pursuant to the Disclosure of Compensation of Attorney for Debtor filed April 5, 2010 (Dkt. 13, p.29), Mr. Clement disclosed that he received a \$3,500.00 pre-petition retainer from the debtor. By order entered January 13, 2012 (Dkt. 100), the court approved for Mr. Clement on a final basis fees in the amount of \$3,450.00 and expenses in the amount of \$494.48 to be paid first from the pre-petition retainer, with the balance to be paid as a chapter 13 administrative expense.

On January 20, 2012, the debtor filed a motion to substitute the applicant into the case as attorney of record in place of Mr. Clement (Dkt. 101), which was approved by order entered January 27, 2012 (Dkt. 102). The applicant has opted out of the Guidelines 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 February 18, 2013, through and including July 25, 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.

45. [14-28069](#)-B-13 JUNE/MILAGROS FABILLARAN  
JPJ-1  
WITHDRAWN BY M.P.
- OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-10-14 [[19](#)]

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

This matter is removed from the calendar. The trustee withdrew the objection and motion to dismiss on September 17, 2014 (Dkt. 22).

46. [14-27570](#)-B-13 DANIEL/DENISE STYRING  
JPJ-1
- OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-3-14 [[18](#)]

**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 24, 2014 (Dkt. 6) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 14,

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.

47. [14-28572](#)-B-13 DENNIS MCMICKLE MOTION TO AVOID LIEN OF  
FF-1 CITIBANK  
9-4-14 [[13](#)]

**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.

48. [14-28073](#)-B-13 LUIS BOLANOS LOSADA OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-10-14 [[18](#)]

**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 dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 14, 2014, the debtor files a motion to confirm the amended plan filed September 17, 2014 (Dkt. 22) (the "Amended Plan") and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the Amended Plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objections are moot. The Amended Plan supersedes the plan to which the trustee's objections are directed. 11 U.S.C. § 1323(b). However, the motion to dismiss is conditionally denied because, although the debtor filed the Amended Plan, he is yet to set the matter for a confirmation hearing in a manner which provides proper notice and service to all parties-in-interest.

The court will issue a minute order.

**Tentative Ruling:** This matter is continued to October 14, 2014, at 9:32 a.m. to be heard after disposition of Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A.

The court notes that 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."). 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)).

Here, in addition to the granting of the motion to value collateral of Wells Fargo Bank, N.A., the feasibility of the plan depends upon a monthly contribution from the debtor's life partner. According to Schedule I (Dkt. 1, pp.22-23), the debtor's life partner already makes a monthly contribution to the debtor's income of \$1,600.00. Even with this contribution, however, the debtor states in his declaration (Dkt. 27, p.2) that his monthly disposable income is only \$3,100.87, which is \$199.13 less than what is needed to make the proposed plan payment of \$3,300.00. The debtor asserts at paragraph (c) of his declaration that his life partner has offered to increase his monthly contribution from \$1,600.00 to \$1,800.00, although the debtor hopes to increase his own income sufficiently so that the life partner's \$200.00 increase in contribution is unnecessary. The court finds the debtor's statements in his declaration to be insufficient to establish that he has sufficient income to fund the proposed plan. The debtor may wish to file with the court, no later than seven (7) days in advance of the continued hearing date, additional evidence which establishes that (1) the debtor's life partner is both willing and able to contribute not only the \$1,600.00 as set forth in Schedule I but also the additional \$200.00, if necessary, over the sixty month life of the plan; or (2) the debtor's monthly income will be increasing sufficiently to eliminate the necessity of an additional \$200.00 monthly contribution from his life partner. A failure to comply with the foregoing may result in denial of the motion on October 14, 2014, regardless of whether or not the court grants the motion to value collateral of Wells Fargo Bank, N.A.

The court will issue a minute order.

50. [14-25477](#)-B-13 TERRI BANKS  
PLC-2

MOTION TO VALUE COLLATERAL OF  
JPMORGAN CHASE BANK, N.A.  
8-7-14 [[36](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s claim secured by the second deed of trust on real property located at 7748 Dixie Lou Street, Sacramento, California 95832 (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 \$194,559.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing LLC with a balance of approximately \$202,591.00. Thus, the value of the collateral available to JPMorgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

51. [14-25477](#)-B-13 TERRI BANKS  
PLC-3

MOTION TO CONFIRM PLAN  
8-7-14 [[32](#)]

**Tentative Ruling:** The motion is dismissed. The trustee's opposition is dismissed.

The motion and trustee's opposition are moot. On August 11, 2014, the debtor filed a first amended plan (Dkt. 41) (the "Amended Plan"). The Amended Plan supersedes the plan that the debtor seeks to confirm through this motion, and to which the trustee's opposition is directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

52. [14-25477](#)-B-13 TERRI BANKS  
PLC-3

COUNTER MOTION TO DISMISS CASE  
8-27-14 [[42](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 42) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before October 14, 2014, the debtor files a motion to confirm the amended plan filed August 11, 2014 (Dkt. 41) (the "Amended Plan") and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the Amended Plan and 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.

In this instance, the court conditionally denies the trustee's counter-motion because, although the debtor filed the Amended Plan, she is yet to set the matter for a confirmation hearing in a manner which provides proper notice and service to all parties-in-interest.

The court will issue a minute order.

53. [14-28177](#)-B-13 PAUL/LEE BOULOS MOTION TO VALUE COLLATERAL OF  
CAH-1 NATIONSTAR MORTGAGE, LLC  
8-15-14 [[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 Nationstar Mortgage, LLC's claim secured by the second deed of trust on real property located at 1175 Silver Spur Way, Olivehurst, California 95961 (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 \$221,000.00 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 \$252,225.00. Thus, the value of the collateral available to Nationstar Mortgage, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

54. [14-27780](#)-B-13 EDWARD MEDINA OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-10-14 [[20](#)]

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

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

The trustee's objections and motion to dismiss are moot. On September 23, 2014, the debtor filed an amended plan (Dkt. 33) and a motion to confirm it (Dkt. 29), setting the matter for hearing on November 12, 2014, at 9:32 a.m. The amended plan supersedes the plan to which the trustee's objections are 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.

55. [14-27386](#)-B-13 DOUGLAS WADLEY  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
9-11-14 [[26](#)]

**Tentative Ruling:** The trustee's objection 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 debtor's opposition is overruled. The trustee's objection is sustained. Confirmation of the plan filed August 1, 2014 (Dkt. 13) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before October 14, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The debtor has provided no evidence, outside of the unsworn assertions in his opposition, that he has provided the trustee with the required documents necessary to comply with Local Bankruptcy Rule 3015-1(c)(3) and 11 U.S.C. § 521(a)(3). Accordingly, his opposition is overruled.

The court will issue a minute order.

56. [14-27386](#)-B-13 DOUGLAS WADLEY  
MDE-1

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
8-29-14 [[23](#)]

**Tentative Ruling:** Creditor Wells Fargo Bank, N.A. ("WFB")'s objection is governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

WFB's objection is sustained. WFB's request that the case be dismissed is denied without prejudice to the filing of an independent motion to dismiss. Confirmation of the plan filed August 1, 2014 (Dkt. 13) is denied.

The court will issue a minute order.

57. [13-33189](#)-B-13 DANIEL/LORI CAMARENA  
JPJ-2

OBJECTION TO CLAIM OF WELLS  
FARGO BANK, N.A., CLAIM NUMBER  
12  
8-13-14 [[70](#)]

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

The trustee's objection is sustained, and claim number 12, filed on June 26, 2014, by Wells Fargo Bank, N.A. in the amount of \$187,455.30, as well as the amendment thereto filed on August 11, 2014 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was February 12, 2014. The Claim was filed on June 26, 2014, and amended on August 11, 2014.

The court will issue a minute order.

58. [13-34891](#)-B-13 MICHAEL/KATHERINE  
JPJ-1 HOLLIDAY

OBJECTION TO CLAIM OF ROSE  
HABLITZEL EA, CLAIM NUMBER 19  
8-13-14 [[47](#)]

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

The trustee's objection is sustained, and claim number 19, filed on June 9, 2014, by Rose Hablitzel, EA in the amount of \$1,285.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was April 9, 2014. The Claim was filed on June 9, 2014.

The court will issue a minute order.

59. [13-34891](#)-B-13 MICHAEL/KATHERINE  
JPJ-2 HOLLIDAY

OBJECTION TO CLAIM OF NAVIENT  
SOLUTIONS INC/DEPT OF  
EDUCATION, CLAIM NUMBER 20  
8-13-14 [[51](#)]

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

The trustee's objection is sustained, and claim number 20, filed on June 17, 2014, by Navient Solutions, Inc. on behalf of the Department of Education in the amount of \$25,022.72 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

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



claim was April 9, 2014. The last date to file a governmental claim was May 21, 2014. The Claim was filed on June 17, 2014.

The court will issue a minute order.

60. [13-27992](#)-B-13 SUSAN MAGLIANO-BASSOFF MOTION BY STEPHEN N. MURPHY TO  
SNM-4 WITHDRAW AS ATTORNEY  
9-8-14 [[50](#)]

**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.

61. [11-22595](#)-B-13 JOANNE BRONSON CONTINUED MOTION TO MODIFY PLAN  
JDM-2 7-23-14 [[41](#)]

**Tentative Ruling:** None.

62. [11-32395](#)-B-13 DONALD/DYANNA DAVIS MOTION TO MODIFY PLAN  
THS-5 8-8-14 [[154](#)]

**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 8, 2014 (Dkt. 155) is confirmed.

The court will issue a minute order.

63. [14-26097](#)-B-13 SHADI RAM AND DALVIR KAUR MOTION TO CONFIRM PLAN  
MET-1 8-19-14 [[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 August 19, 2014 (Dkt. 21) 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.

64. [13-34699](#)-B-13 DESIREE SAMPLE OBJECTION TO CLAIM OF PREMIER  
JPJ-2 BANKCARD/CHARTER, CLAIM NUMBER  
8  
8-13-14 [[51](#)]

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

The trustee's objection is sustained, and claim number 8, filed on April 23, 2014, by Premier Bankcard/Charter in the amount of \$589.32 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was March 19, 2014. The Claim was filed on April 23, 2014.

The court will issue a minute order.

65. [13-34699](#)-B-13 DESIREE SAMPLE OBJECTION TO CLAIM OF PREMIER  
JPJ-3 BANKCARD/CHARTER, CLAIM NUMBER  
9  
8-13-14 [[55](#)]

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

The trustee's objection is sustained, and claim number 9, filed on April 23, 2014, by Premier Bankcard/Charter in the amount of \$528.00 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was March 19, 2014. The Claim was filed on April 23, 2014.

The court will issue a minute order.