

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

October 28, 2014 at 9:32 A.M.

1. [09-38703](#)-B-13 DONAVAN/DANICE CONWAY
JPJ-2
OBJECTION TO CLAIM OF OCWEN
LOAN SERVICING, LLC, CLAIM
NUMBER 14
9-4-14 [[46](#)]

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

The trustee's objection is sustained, and claim No. 14, filed on July 30, 2014, by Ocwen Loan Servicing, LLC in the amount of \$239,009.08 (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 December 30, 2009, and to file a government claim was February 27, 2010. The Claim was filed on July 30, 2014.

The court will issue a minute order.

2. [14-29103](#)-B-13 KASSI MARTINEZ CONTINUED MOTION TO VALUE
FF-1 COLLATERAL OF BRIAN H. TURNER
9-19-14 [[11](#)]

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, as resolved by the stipulation of the parties filed on October 17, 2014, and the court's order thereon signed on October 22, 2014, valuing the collateral which the subject of this motion at \$13,400.00.

3. [13-35804](#)-B-13 BRENDA BRUESSARD
JPJ-3
OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, INC. DEPT OF
EDUCATION SERVICING, CLAIM
NUMBER 14
9-4-14 [[42](#)]

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

The trustee's objection is sustained, and claim No. 14, filed on June 17, 2014, by Navient Solutions, Inc./Dept. Of Education Servicing in the amount of \$16,959.82 (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 23, 2014, and to file a government claim was June 16, 2014. The Claim was filed on June 17, 2014.

The court will issue a minute order.

4. [13-35804](#)-B-13 BRENDA BRUESSARD OBJECTION TO CLAIM OF EQUITY
JPJ-4 TRUST COMPANY, CLAIM NUMBER 13
9-4-14 [[38](#)]

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

The trustee's objection is sustained, and claim No. 13, filed on May 19, 2014, by Equity Trust Company in the amount of \$505.00 (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 April 23, 2014, and to file a government claim was June 16, 2014. The Claim was filed on May 19, 2014.

The court will issue a minute order.

5. [14-26904](#)-B-13 DANIEL WEAVER MOTION TO CONFIRM PLAN
SDH-4 9-10-14 [[51](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed September 10, 2014, is denied.

The court will issue a minute order.

6. [14-26904](#)-B-13 DANIEL WEAVER COUNTER MOTION TO DISMISS CASE
SDH-4 10-14-14 [[61](#)]

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 November 20, 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.

7. [10-39713](#)-B-13 TODD KRAMER AND SUSAN MOTION TO VALUE COLLATERAL OF
SAC-2 SAVAGE CITIZENS BANK, N.A.
10-11-14 [[61](#)]

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 Citizens Bank, N.A.'s ("Citizens") claim in this case secured by the second deed of trust on real property located at 3720 Gold Creek Court, West 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 \$375,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$408,000.00. Thus, the value of the collateral available to Citizens on its second deed of trust is \$0.00.

The court will issue a minute order.

8. [14-29215](#)-B-13 JEFFERY/SANDRA THOMAS MOTION TO VALUE COLLATERAL OF
MET-1 BANCO POPULAR NORTH AMERICA
9-27-14 [[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 Banco Popular North America's ("Banco Popular") claim in this case secured by the second deed of trust on real property located at 3509 Serenity Court, Fairfield, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$550,000.00 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 \$666,009.00. Thus, the value of the collateral available to Banco Popular on its second deed of trust is \$0.00.

The court will issue a minute order.

9. [12-26117](#)-B-13 RICHARD/KIM CHAVEZ MOTION TO AUTHORIZE TRIAL
RDS-5 PERIOD FOR MODIFICATION OF
MORTGAGE LOAN
10-2-14 [[76](#)]

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.

10. [14-27917](#)-B-13 GARY DELFINO AND JAQUILINE MOTION TO CONFIRM PLAN
SJS-1 NERUTSA 9-15-14 [[24](#)]

Tentative Ruling: The opposition filed by Wells Fargo Bank, N.A. ("WFB") is overruled. The motion is granted and the amended plan filed September 15, 2014 will be confirmed.

WFB's opposition is overruled because it is unsupported by any evidence that the debtors owed WFB \$5,244.96 in pre-petition arrears as of the date of the filing of the petition. LBR 9014-1(d)(5).

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.

11. [11-39019](#)-B-13 LUIS/ROSALBA MONCAYO MOTION TO SELL
SS-6 10-14-14 [[96](#)]

Tentative Ruling: This is a properly filed motion 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 and denied in part to the extent set forth herein. Pursuant to 11 U.S.C. § 363(b), the debtors are authorized to sell the real property located at 4691 Brookfield Drive, Sacramento, California (the "Property") to MG Capital Investments, Inc. for \$112,500.00. Pursuant to 11 U.S.C. § 363(f)(2), the debtors are authorized to sell the Property free and clear of the liens of Nationstar Mortgage, LLC ("Nationstar"), on the condition that Nationstar will receive through escrow the amounts agreed upon as set forth in Nationstar's letter consenting to the sale filed as Exhibit 2 to the motion. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms to be established by the court at the

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

The court will issue a minute order.

12. [11-39019](#)-B-13 LUIS/ROSALBA MONCAYO MOTION FOR COMPENSATION FOR
SS-7 SCOTT SHUMAKER, DEBTOR'S
ATTORNEY(S)
10-14-14 [[101](#)]

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.

13. [14-28422](#)-B-13 NYANZA BRYANT OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-29-14 [[17](#)]

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 August 19, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 12, 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.

14. [14-28422](#)-B-13 NYANZA BRYANT OBJECTION TO DEBTOR'S CLAIM OF
JPJ-2 EXEMPTIONS
9-29-14 [[20](#)]

Tentative Ruling: The objection is sustained to the extent set forth herein. The debtor's claim of exemption in a checking account pursuant to Cal. Civ. Proc. Code § 703.140(b)(2) is disallowed. The debtor's claim of exemption in a motor vehicle pursuant to Cal. Civ. Proc. Code § 703.140(b)(2) is disallowed for any amount over \$5,100.00. Except as so ordered, the objection is overruled.

The objection is sustained for the reasons set forth therein.

The court will issue a minute order.

15. [14-20424](#)-B-13 BRANDON/JACQUELINE HEATON OBJECTION TO CLAIM OF AMERICAN
JPJ-2 CONTRACTORS INDEMNITY COMPANY,
CLAIM NUMBER 22
9-4-14 [[21](#)]

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

The trustee's objection is sustained, and claim No. 22, filed on June 23, 2014, by American Contractors Indemnity Company in the amount of \$11,575.50 (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 May 21, 2014, and to file a government claim was July 15, 2014. The Claim was filed on June 23, 2014.

The court will issue a minute order.

16. [13-21525](#)-B-13 LEO/JERI BETTI MOTION TO MODIFY PLAN
DBJ-5 9-23-14 [[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 September 23, 2014 (Dkt. 99), is confirmed.

The court will issue a minute order.

17. [13-31325](#)-B-13 LANCE SMITH AND NICOLE MOTION TO MODIFY PLAN
LDD-14 CRIST-SMITH 9-19-14 [[185](#)]

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

The motion is granted, and the modified plan filed September 19, 2014, is confirmed.

The court will issue a minute order.

18. [14-21025](#)-B-13 GAYLEN/TERRI LUSCH
ULC-3

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 6
9-11-14 [[38](#)]

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

The objection is sustained in part. Claim no. 6 on the court's claims register (the "Claim") filed by Cavalry SPV I, LLC, (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the objection is overruled.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]. However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was January 31, 2009. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on January 31, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy case on February 3, 2014. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

19. [14-21025](#)-B-13 GAYLEN/TERRI LUSCH
ULC-4

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 14
9-12-14 [[44](#)]

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

The objection is sustained in part. Claim no. 15 on the court's claims register (the "Claim") filed by LVNV Funding, LLC, (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the objection is overruled.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]. However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was December 25, 2007. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on December 25, 2007, more than four years before the debtors commenced their chapter 13 bankruptcy case on February 3, 2014. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

20. [14-21025](#)-B-13 GAYLEN/TERRI LUSCH
ULC-5

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 15
9-12-14 [[48](#)]

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

The objection is sustained in part. Claim no. 14 on the court's claims register (the "Claim") filed by LVNV Funding, LLC, (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the objection is overruled.

The debtors question the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]. However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the Claim shows on its face that it is time-barred under California law. Based on the account summary attached to the Claim, the claim is based on an account related to an extension of unsecured credit to the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have

been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was February 16, 2005. Therefore, the debtors have provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on February 16, 2005, more than four years before the debtors commenced their chapter 13 bankruptcy case on February 3, 2014. By failing to respond to the objection, Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

21. [14-28626](#)-B-13 DARREN/SANDRA STOWES
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
10-7-14 [[14](#)]

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 objection under 11 U.S.C. § 1325(a)(4) is overruled without prejudice. The trustee's remaining objections are sustained. Confirmation of the initial plan filed August 26, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 12, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection under 11 U.S.C. § 1325(a)(4) is overruled without prejudice because it is not supported by any evidence. The objection is based on the trustee's assertion that his alleged preliminary investigation of real property located at 12301 Corlett Avenue, Cleveland, Ohio, has a value of \$107,000.00, but the trustee provides no evidence, either in the form of a declaration or otherwise, describing how that investigation was conducted. LBR 9014-1(d)(6).

The court will issue a minute order.

22. [14-28927](#)-B-13 CYNTHIA PEREZ
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON, TRUSTEE
AND/OR MOTION TO DISMISS CASE
10-7-14 [[21](#)]

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

The trustee's objections are dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 12, 2014, the debtor files a motion to confirm the amended plan filed September 18, 2014 (Dkt. 17) (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 objections are moot. The New Plan supersedes the plan to which the trustee's objection is directed. 11 U.S.C. § 1323(b). The trustee's motion to dismiss is conditionally denied because the debtor has not filed a motion to confirm the New Plan.

The court will issue a minute order.

23. [14-28728](#)-B-13 ELENA CASTRO
ASW-1

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NA
10-9-14 [[27](#)]

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

The objection is dismissed.

The objection is moot. On October 21, 2014, the debtor filed an amended plan. The amended plan supersedes the plan to which the objection is directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

24. [14-28728](#)-B-13 ELENA CASTRO
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-7-14 [[23](#)]

Tentative Ruling: The trustee's objection is dismissed. The motion to dismiss is conditionally denied, the conditions being that on or before November 12, 2014, the debtor files a motion to confirm the amended plan filed October 21, 2014 (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 is moot. The New Plan supersedes the plan to which the trustee's objection is directed. 11 U.S.C. § 1323(b). The trustee's motion to dismiss is conditionally denied because the debtor has yet to file a motion to confirm the New Plan.

The court will issue a minute order.

25. [14-21229](#)-B-13 WALTER SCHMELTER AND
GG-1 PEGGI MARTIN

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

Tentative Ruling: This matter continued from September 30, 2014. The court has considered the objection, the opposition filed by Ocwen Loan Servicing, LLC ("Ocwen") and all supplemental briefs, including the supplemental brief filed by the debtors on October 23, 2014 (Dkt. 38). The court now issues the following tentative ruling.

The objection is sustained in part. Pursuant to Fed. R. Bankr. P. 3007, Ocwen's claim to \$172.03 in pre-petition arrears set forth in claim no. 3 on the court's claims register filed on April 16, 2014 (Dkt. 3) (the "Claim") is disallowed. Nothing in this ruling shall be construed as a ruling on any change in the amount of the debtors' ongoing monthly obligation to Ocwen now or in the future, as a ruling under Fed. R. Bankr. P. 3002.1(e) with respect to post-petition fees, expenses or charges incurred in connection with the Claim after the date of the filing of the petition, or as a ruling regarding the allowance of fees, costs or charges under 11 U.S.C. § 506(b). The debtors' request for an award of attorney's fees in connection with this matter is denied. Except as so ordered the objection is overruled.

This objection has had a tortured existence, due in no small part to the paucity of any legal analysis in the objection when it was initially filed and served on June 26, 2014. This objection has been continued two time since its initial hearing date on August 19, 2014: once for the

debtors' counsel to support the objection's request for an award of attorney's fees, and a second time to allow the debtors and Ocwen to attempt to resolve the matter through negotiation. The second continuance was granted after the debtors' counsel appeared at the continued hearing on September 30, 2014, and represented that this matter was not a request for a determination of fees, expenses and charges pursuant to Fed. R. Bankr. P. 3002.1(e), but was instead an objection to claim under Fed. R. Bankr. P. 3007. The debtors also represented that the issue central to the resolution of this matter was whether the debtors were current on their mortgage obligation on the date of the filing of the petition. The supplemental brief filed by the debtors on October 23, 2014 confirms the debtors' view of this matter as an objection to claim under Fed. R. Bankr. P. 3007.

Therefore, based on the representations by the debtors at the September 30, 2014, hearing and in their supplemental brief, the court treats this matter as an objection to the Claim under Fed. R. Bankr. P. 3007. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]. However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

In this case the Claim is entitled to prima facie validity. The proof of claim form is accompanied by an Official Form B10A Mortgage Proof of Claim Attachment (the "Attachment"), an escrow account analysis and evidence of perfection of a security interest in the debtors' residence. However, the Claim also shows on its face that the \$172.03 asserted as a pre-petition default is not in fact related to a pre-petition default by the debtors. The court's review of the escrow account analysis attached to the Claim shows that Ocwen calculated the \$172.03 "pre-petition default" as the difference between a projected "low point" of \$567.49 in the escrow account associated with the loan obligation which would occur following payment of insurance and property tax obligations on April 1, 2014 (50 days after the date of the filing of the petition) and a "maximum permitted low point" of \$739.52. The escrow analysis was prepared on February 18, 2014, eight days after the date of the filing of the petition.

Claims in bankruptcy, including claims for pre-petition arrears, are determined as of the date of the filing of the petition. 11 U.S.C. § 502(a). There is no evidence or authority in the record of this case which supports the proposition that post-petition events including an escrow analysis conducted after the petition date which identifies a "low point" below a "permitted low point" in an escrow account which is anticipated to occur 50 days after the petition date creates a pre-petition default under the terms of the loan agreement. The \$172.03 claimed as pre-petition arrears in the Claim is therefore disallowed.

As stated above, however, nothing in this ruling shall be construed as a ruling on any change in the amount of the debtors' ongoing monthly obligation to Ocwen now or in the future, as a ruling under Fed. R. Bankr. P. 3002.1(e) with respect to post-petition fees, expenses or charges incurred in connection with the Claim after the date of the filing of the petition, or as a ruling regarding the collectibility of fees, costs or charges under 11 U.S.C. § 506(b). This ruling only disallows the \$172.03 asserted by Ocwen as pre-petition arrears claim.

Furthermore, as stated by the court in its prior tentative ruling on this matter, the court cannot make a determination of postpetition fees, expenses or charges asserted on the Notice of Postpetition Fees, Expenses and Charges (the "Notice") filed by Ocwen on April 23, 2014, because 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, the prohibition of 11 U.S.C. § 1322(b)(2) notwithstanding, 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).

Finally, the court denies the debtors' request for an award of attorney's fees in connection with this matter under Cal. Civ. Code § 1717 because although the court has made a ruling disallowing Ocwen's claim to prepetition arrears, the debtors' initial argument on this matter was concerned solely with the propriety of the fees asserted in the Notice and did not address the Claim or its contents on which this ruling is based. The debtors have not prevailed on their initial argument; it is only through the court's willingness to bring this matter to a close by considering the debtors' filing as an objection to claim, after rejecting the debtors' initial argument, that there is any ruling in favor of the debtors at all.

The court will issue a minute order.

26. [13-21434](#)-B-13 TERESA RENWICK
LBG-1

MOTION TO DISMISS CASE
9-26-14 [[31](#)]

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. § 1307(b), the bankruptcy case is dismissed.

The court will issue a minute order.

27. [11-31037](#)-B-13 CHRISTOPHER/SHELLI BECK
CJY-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FRIEND YOUNGER,
PC FOR JAMES D. PITNER,
DEBTORS' ATTORNEY(S)
9-22-14 [[116](#)]

Tentative Ruling: The application is denied without prejudice.

As part of confirmation of the debtors' chapter 13 plan, the applicant, counsel for the debtors, consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$3500.00 through the plan. (Dkt. 54). The debtor's attorney now seeks additional compensation, in the amount of \$4052.50 in fees and costs.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation are sufficiently greater than a "typical" chapter 13 case so as to justify additional compensation under the Guidelines. In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The applicant here does not address the foregoing standard. Instead, the applicant merely states that its total fees and costs of \$7552.50 have accrued in the case and that it is seeking approval of compensation for all amounts incurred beyond the initial \$3500.00 "no-look" fee. The applicant does not identify what additional services constitute those beyond a typical chapter 13 to warrant additional compensation. As stated in the Guidelines, "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." It is not incumbent on the court to comb through the docket of the case and the applicant's billing records to determine the scope of services performed in an effort to justify the applicant's request. Accordingly, the applicant is denied without prejudice.

The court will issue a minute order.

28. [14-28637](#)-B-13 RALPH/CHRISTINA CONCHAS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-7-14 [[14](#)]

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 August 26, 2014, is denied. The trustee's motion to dismiss is

conditionally denied, the conditions being that on or before November 12, 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.

29. [14-27638](#)-B-13 DVASHUN RAY AND CASSANDRA MOTION TO CONFIRM PLAN
SLE-1 COFFMAN-RAY 10-14-14 [[31](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The opposition filed by Bank of New York Mellon is overruled without prejudice. The motion to confirm the amended plan filed September 9, 2014, is denied. The trustee's countermotion is conditionally denied, the conditions being that on or before November 12, 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 chapter 13 trustee's opposition is sustained for the reasons set forth therein. The trustee's opposition cannot be resolved via a modification to the plan included in an order confirming the plan because resolving the trustee's opposition would require a 13.89% increase in the plan payment, which is a material modification that requires notice to all parties in interest.

The opposition filed by the Bank of New York Mellon is overruled without prejudice because it is unsupported by timely evidence. The Bank's opposition based on the its contention that it holds a claim for pre-petition mortgage arrears in the amount of \$24,826.65. However, the Bank's assertion is unsupported by a timely declaration or any other evidence. LBR 9014-1(d)(6). The evidentiary record for this matter closed on October 21, 2014. LBR 9014-1(f)(1)(C).

The court will issue a minute order.

30. [14-26647](#)-B-13 RONALD/KELLY BRIGGS MOTION TO CONFIRM PLAN
JLB-2 9-16-14 [[60](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The opposition by MUFG Union Bank, N.A. in its capacity as the holder of the first deed of trust on the debtors' residence is sustained. The opposition of MUFG Union Bank, N.A. in its capacity as the holder of a secured claim based on a judgment obtained in El Dorado County Superior

Court, case number PC20110322 is sustained. The motion to confirm the amended plan filed September 16, 2014, is denied.

The objections are sustained for the reasons set forth therein.

The court will issue a minute order.

31. [14-26647](#)-B-13 RONALD/KELLY BRIGGS COUNTER MOTION TO DISMISS CASE
JLB-2 10-14-14 [[75](#)]

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 November 12, 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.

32. [11-28590](#)-B-13 JOE/CECILIA MODESTO CONTINUED OBJECTION TO NOTICE
CJY-1 OF MORTGAGE PAYMENT CHANGE
8-14-14 [[74](#)]

Tentative Ruling: None.

33. [12-41261](#)-B-13 GRANT/DIANA FLOWERS CONTINUED TRUSTEE'S FINAL
REPORT AND ACCOUNT
8-6-14 [[246](#)]

CASE DISMISSED 5/30/14

Tentative Ruling: This matter is continued from October 14, 2014. The court now issues the following tentative ruling.

The trustee's opposition is overruled. The debtors' objection to the trustee's final report and account filed on August 6, 2014 (Dkt. 246) (the "Report") is sustained, and the Report is disapproved. The debtors' request for the trustee to disgorge funds paid out to JPMorgan Chase Bank, N.A. ("Chase") is denied without prejudice. The debtors' request for attorney's fees and costs is denied.

The facts do not appear to be in dispute; rather, the issue is one of chapter 13 plan interpretation. The debtors allege that they filed a

total of five (5) proposed plans in this case, none of which were confirmed. Under the terms of each plan, Chase was to receive adequate assurance payments of \$1,100.00 per month pending a resolution of an application for a loan modification. For Months 1 through 6 (January 2013 through June 2013), as well as Months 15 through 17 (March 2014 through May 2014), the trustee disbursed \$1,100.00 to Chase. However, for Months 7 through 14 (July 2013 through February 2014), the trustee disbursed \$2,960.00 per month to Chase, or \$1,860.00 per month more than the monthly payment for which the debtors' various proposed plans provided.

The payments in months 7 through 14 resulted in an over-disbursement to Chase of \$14,880.00 (\$1,860.00 per month x 8 months). The trustee argues that all disbursements he made in this case to Chase were appropriate. Specifically, he argues that Chase's filing of a Notice of Mortgage Payment Change on June 10, 2013, which increased the debtors' mortgage payment to \$2,960.61, controlled the amount to be distributed to Chase by operation of section 2.08 of the form plan and Federal Rule of Bankruptcy Procedure 3002.1. Because Chase was listed as a Class 1 creditor under every proposed plan filed in this case, the trustee believes that section 2.08 of the form plan controlled the amount to be disbursed. The trustee's position is unavailing.

The evidence presented by both parties is not in conflict. It is clear that Chase was paid \$2,960.00 per month from July 31, 2013, through February 28, 2014. The issue is one of plan interpretation. The debtors filed proposed plans in this case on January 8, 2013 (Dkt. 17), April 9, 2013 (Dkt. 72), June 25, 2013 (Dkt. 99), August 27, 2013 (Dkt. 161), and March 4, 2014 (Dkt. 212) before the case was dismissed by order entered May 30, 2014 (Dkt. 241). In each plan, Chase's claim is listed in Class 1, and the plan refers to the Additional Provisions of the plan for the treatment of the claim. The Additional Provisions of the first two plans state that the debtors filed a request for modification application with Chase and that payments to Chase would be \$1,100.00 per month pending a determination of that application. However, starting with the third plan filed June 25, 2013, the Additional Provisions became far more specific. Section 6.01 of each of the final three plans filed in this case reads as follows: "Notwithstanding the \$39,000.00 petition arrearage and \$2,960.00 monthly contract installment set forth in Class 1, supra, the actual treatment for Chase/WAMU secured claim shall be set forth in these Additional Provisions for this Chapter 13 Plan" (emphasis added). Each plan then goes on to state in section 6.03 that "during loan modification application process, Chase/WAMU shall be paid \$1,100.00 a month as an adequate protection payment for its secured claim, pending determination on the loan modification."

Section 2.08 of the form plan, which applies to Class 1 claims, states in relevant part that the trustee shall maintain all payments falling due after the filing of the case to the holder of each Class 1 claim. If the holder of a Class 1 claim gives Debtor and Trustee notice of a payment change in accordance with Fed. R. Bankr. P. 3002.1(b), Debtor shall adjust the plan payment accordingly. § 2.08(b)(4)(i). The trustee argues that this provision gave him authority to disburse the \$2,960.00 to Chase after it issued its Notice of Mortgage Payment Change on June 10, 2013. The trustee's position is premised on Chase's claim being a Class 1 claim to begin with such that section 2.08 of the form plan is applicable. The court finds that it is not a Class 1 claim in substance, meaning that it was not a claim that would, in accordance with 11 U.S.C. § 1322(b)(5),

receive ongoing monthly contractual payments and repayment of arrears by an additional monthly amount. The actual treatment for Chase's claim was set forth in great detail in the Additional Provisions sections of the various plans filed in this case, and those Additional Provisions authorized monthly payments of \$1,100.00, never a higher amount. A Notice of Mortgage Payment Change does not override the specific provisions of a plan; it only affects the amount of the ongoing monthly contractual payment. The plan never provided for payment of the ongoing monthly contractual payment. Accordingly, the trustee over-disbursed funds to Chase for Months 7 through 14 in the total amount of \$14,880.00.

The court is persuaded by the reasoning set forth in In re Estrada, 322 B.R. 149 (Bankr. E.D. Cal. 2005) (McManus, J.). The circumstances in that case were similar to the instant case in that, through a miscalculation on the part of the trustee, general unsecured creditors received an overpayment. Although much of the opinion discusses the relationship between approval of the trustee's final report and account and the debtors' receipt of a chapter 13 discharge, the manner in which the court addressed a trustee overpayment is instructive. Specifically, the court stated:

If the trustee has been able to pay all dividends promised by the plan, the debtor must have made all plan payments. The final report and account may be approved and the discharge entered.

If the trustee has not paid claims in accordance with the plan, either the debtor did not make all plan payments necessary to fund the promised dividends, or the debtor made the necessary plan payments but the trustee failed to disburse them in accordance with the plan. In the former case, it is premature to enter a discharge or approve the final report and account. In the latter, the debtor is entitled to a discharge even though approval of a final report and account must await the trustee's corrective action.

This might require, in instances where the trustee has failed to disburse funds on hand to creditors, that he distribute those funds. In a case where the trustee pays a dividend in excess of what the plan requires, the trustee must recover the overpayment and then redistribute it to the correct creditor(s) or refund it to the debtor. If the trustee cannot recover the overpayment, he may have to dig into his own pocket and make good the misdirected plan dividend. See Nash v. Kester (In re Nash), 765 F.2d 1410, 1415 (9th Cir.1985).

In re Estrada, 322 B.R. at 151 (emphasis added).

The court in Estrada went on to conclude that the trustee's final report and account could not be approved until the overpayment to creditors was corrected by the trustee.

In this instance, the court does not order the trustee to "dig into his own pocket" because the only matters before the court are an objection to the trustee's final report and a request for disgorgement. The Report is disapproved based on the foregoing. However, the debtors' request for disgorgement of funds from the trustee is a request to recover money or property which requires an adversary proceeding. Fed. R. Bankr. P. 7001(1). In such a proceeding, the trustee will have an opportunity to present any defenses, immunities or other legal issues to which he is

entitled.

The debtors' request for attorney's fees and costs is denied because they cite to no authority for such a request. LBR 9014-1(d)(5).

The court will issue a minute order.

34. [10-50157](#)-B-13 RICKY/BENIE FELIX MOTION TO MODIFY PLAN
WW-2 9-19-14 [[33](#)]

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

The motion is granted, and the modified plan filed September 19, 2014 (Dkt. 35) is confirmed.

The court will issue a minute order.

35. [10-50157](#)-B-13 RICKY/BENIE FELIX MOTION TO DISMISS BENIE FELIX
WW-3 9-19-14 [[41](#)]

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

The court construes debtor Ricky Felix ("Mr. Felix")'s request to dismiss this case as to joint debtor Benie Gapultos Felix ("Mrs. Felix") as a motion for substitution of a deceased party, and grants the motion to the extent set forth herein. Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, debtor Mr. Felix is authorized to perform the obligations and duties of deceased joint debtor Mrs. Felix in this case, in addition to performing his own obligations and duties. Pursuant to Federal Rule of Bankruptcy Procedure 1016, administration of case number 10-50157-B-13J shall proceed and be concluded in the same manner, so far as possible, as though the death of joint debtor Mrs. Felix had not occurred. Except as so ordered, the motion is denied.

The court will issue a minute order.

36. [11-49557](#)-B-13 GREGORY MELLOR AND SAMYA MOTION TO MODIFY PLAN
EJS-2 HADDAD 9-26-14 [[32](#)]

Tentative Ruling: The motion is denied without prejudice.

The movants did not give sufficient notice of the motion to parties-in-interest. Local Bankruptcy Rule 3015-1(d)(2) requires that a motion to modify a plan post-confirmation "shall comply with Fed. R. Bankr. P. 3015(g), which requires twenty-one (21) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that

opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 3015(g) and LBR 9014-1(f)(1), parties-in-interest shall be served at least thirty-five (35) days prior to the hearing." LBR 3015-1(d)(2). Here, the certificate of service (Dkt. 37) shows that the movants served the motion, notice of hearing, and supporting documents on parties-in-interest on September 26, 2014, which is only thirty-two (32) days before the date of the hearing. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

37. [11-41558](#)-B-13 ROSEMARY REYNOLDS
PGM-2

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S
ATTORNEY
9-22-14 [[32](#)]

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 April 25, 2014, through and including August 19, 2014, in the total amount of \$1,290.00 in fees and expenses. 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 September 2, 2011, the debtor commenced the above-captioned case by filing a voluntary petition under chapter 13 (Dkt. 1). The debtor's former counsel, Deborah Rivas ("Ms. Rivas"), opted into the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The order confirming the plan filed November 14, 2011 (Dkt. 13) disclosed that Ms. Rivas was paid \$1,650.00 in fees prior to the filing of the petition and that \$1,850.00 would be paid by the chapter 13 trustee through the confirmed plan. Since that time, counsel for the debtor has changed several times. First, on January 3, 2013, the debtor filed a motion to substitute Guillermo F. Geisse ("Mr. Geisse") into the case as attorney of record in place of Ms. Rivas (Dkt. 16), which was granted by order entered January 17, 2013 (Dkt. 17). Second, on November 1, 2013, a change in designation of counsel for service was filed which removed Mr. Geisse from the case and replaced him with Keith R. Wood ("Mr. Wood"), an associate who worked at the same firm as Mr. Geisse.

On April 30, 2014, the debtor filed a motion to substitute the applicant into the case as attorney of record in place of Mr. Wood (Dkt. 19), which was approved by order entered June 30, 2014 (Dkt. 20). 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 first and final compensation for services rendered and costs incurred for the period of April 25, 2014, through and including August 19, 2014, which are the beginning and end dates of the

attorney services which have been included as part of the applicant's motion. As set forth in the application, the approved fees and expenses 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.

38. [13-32859](#)-B-13 VINCENT GUTIERREZ MOTION TO MODIFY PLAN
PGM-2 9-15-14 [[38](#)]

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

The motion is granted, and the modified plan filed September 15, 2014 (Dkt. 42) is confirmed.

The court will issue a minute order.

39. [10-35261](#)-B-13 CAMEO CALHOUN MOTION TO MODIFY PLAN
PGM-3 9-23-14 [[78](#)]

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

The motion is granted, and the modified plan filed September 23, 2014 (Dkt. 82) is confirmed.

The court will issue a minute order.

40. [10-44061](#)-B-13 MICHAEL/JEANNE CAREY MOTION TO MODIFY PLAN
PLG-4 9-19-14 [[91](#)]

Tentative Ruling: The trustee opposition is overruled. The motion is granted, and the modified plan filed September 19, 2014 (Dkt. 95) is confirmed with the following modifications: the Additional Provisions shall be modified to state that commencing in month 50 (November 2014), the \$1,388.98 post-petition arrearage owed to class 1 creditor Wells Fargo shall be paid at a monthly dividend of \$231.50 for six months at 0.00% interest. The foregoing shall be paid in addition to the ongoing plan payment of \$2,492.00.

The court will issue a minute order.

41. [13-35848](#)-B-13 JERRY DE VORE AND LESLIE OBJECTION TO CLAIM OF BECKET
JPJ-3 JEAN FURNAS AND LEE LLP, CLAIM NUMBER 10
9-4-14 [[35](#)]

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

The trustee's objection is sustained, and claim number 10, filed on July 15, 2014, by Becket and Lee LLP/American Express Bank, FSB in the amount of \$4,300.47 (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 May 14, 2014. The Claim was filed on July 15, 2014.

The court will issue a minute order.

42. [14-26963](#)-B-13 NORTONIA CROSS MOTION TO CONFIRM PLAN
JTN-1 8-28-14 [[21](#)]

Tentative Ruling: None.

43. [14-26963](#)-B-13 NORTONIA CROSS COUNTER MOTION TO DISMISS CASE
JTN-1 10-14-14 [[30](#)]

Tentative Ruling: None.

44. [14-28371](#)-B-13 REGINALD/ANGELICA PASCUAL OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON
10-7-14 [[35](#)]

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 September 4, 2014 (Dkt. 15) is denied.

The court will issue a minute order.

45. [14-28371](#)-B-13 REGINALD/ANGELICA PASCUAL OBJECTION TO CONFIRMATION OF
MDE-1 PLAN BY CAPITAL ONE, N.A.
9-11-14 [[20](#)]

Tentative Ruling: Creditor Capital One, N.A. (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 objections are sustained. Confirmation of the plan filed September 4, 2014 (Dkt. 15) is denied. The Creditor's request that the case be dismissed is denied without prejudice to the filing of an independent motion to dismiss.

The court will issue a minute order.

46. [12-42172](#)-B-13 DAVID/ROSA MARTINEZ MOTION TO INCUR DEBT
CAH-1 10-7-14 [[43](#)]

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

47. [14-28075](#)-B-13 RICHARD TOGNOLI MOTION TO VALUE COLLATERAL OF
NF-1 TRI COUNTIES BANK
9-11-14 [[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 Tri Counties Bank ("TCB")'s claim in this case secured by the third deed of trust on real property located at 15933 Country Living Lane, Forest Ranch, California 95942 (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 \$230,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Green Tree with a balance of approximately \$116,228.70 and a second deed of trust held by TCB with a balance of approximately \$114,892.00. Thus, the value of the collateral available to TCB on its third deed of trust is \$0.00.

The court will issue a minute order.

48. [14-28475](#)-B-13 ROBERT/MOIRA TRABERT
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-1-14 [[32](#)]

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 August 21, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 12, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

49. [14-20376](#)-B-13 ALAN/THERESA BALES
JPJ-2

OBJECTION TO CLAIM OF CREDIT
BUREAU ASSOCIATES, CLAIM NUMBER
9
9-4-14 [[17](#)]

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 June 5, 2014, by Credit Bureau Associates in the amount of \$19,846.83 (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 May 21, 2014. The Claim was filed on June 5, 2014.

The court will issue a minute order.

50. [14-27181](#)-B-13 DONALD TAGGART
FF-2

MOTION TO CONFIRM PLAN
9-16-14 [[27](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed September 16, 2014 (Dkt. 28) is denied.

Also, 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)).

In this instance, the court will not include the trustee's proposed language in an order confirming plan because the debtor has not shown that the plan would be feasible even if such language were included. Specifically, the feasibility of the plan depends on the debtor's ability to sell rental property on or before month 10 in order to pay all claims in full. As the trustee alludes to in his opposition, the debtor will need to pay at least \$57,000.00 from the sale of the property in order to pay all claims in full within ten months. The debtor has failed to demonstrate that he will be able to make this payment. The case is currently in its third month, but it appears based on the debtor's assertions in both his motion and declaration that he is yet to market the property for sale. This leaves him seven months to both market and sell the property. The mere fact that the debtor is "confident" that the property will sell prior to month 10 of the plan, without more, is insufficient. Accordingly, the debtor has failed to comply with 11 U.S.C. § 1325(a)(6), and the motion is denied.

The court will issue a minute order.

51. [14-28782](#)-B-13 EDDIE DANIELS IRVING
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-7-14 [[24](#)]

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 August 29, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 12, 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.

52. [14-28787](#)-B-13 SOHAIL MALIK
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-7-14 [[19](#)]

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

This matter is continued to November 12, 2014, at 9:32 a.m.

53. [14-27788](#)-B-13 KRISTEEN MONROY
RK-2

MOTION TO CONFIRM PLAN
9-10-14 [[35](#)]

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

The motion is granted, and the amended plan filed September 10, 2014 (Dkt. 37) will be confirmed.

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

54. [14-20389](#)-B-13 ROBERT/DONNA YOUNG
JPJ-2

OBJECTION TO CLAIM OF WESTERN
DENTAL SERVICES, CLAIM NUMBER
15
9-4-14 [[21](#)]

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

The trustee's objection is sustained, and claim number 15, filed on March 6, 2014, by Western Dental Services ("WDS") in the amount of \$829.95 (the "Claim"), is disallowed in its entirety.

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

The trustee alleges without dispute and has provided evidence that the Claim is a duplicate of claim number 11, which was filed on February 14, 2014, by Aargon Agency as Agent for Western Dental Services, Inc., in the amount of \$829.95. The trustee's evidence has rebutted the prima facie

validity of the Claim and, by failing to respond to the objection, WDS has failed to carry its burden of proving the Claim's validity.

The court will issue a minute order.

55. [13-36190](#)-B-13 TERRY/MELINDA HUNTER MOTION TO MODIFY PLAN
MWB-4 9-16-14 [[81](#)]

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

The motion is granted, and the modified plan filed September 16, 2014 (Dkt. 84) is confirmed.

The court will issue a minute order.

56. [13-36091](#)-B-13 JAMES/MOLLY ALEXANDER MOTION TO CONFIRM PLAN
LBG-4 9-12-14 [[88](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the amended plan filed September 12, 2014 (Dkt. 89) will be confirmed with the following modification in the order confirming plan: the Additional Provisions for Section 1.01 shall be modified to state that "As of September 25, 2014, the debtors have paid a total of \$2,594.75 into the plan. Commencing October 25, 2014, the plan payment shall be \$1,250.00 for 58 months."

The court will issue a minute order overruling the trustee's opposition and 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.

57. [13-36091](#)-B-13 JAMES/MOLLY ALEXANDER COUNTER MOTION TO DISMISS CASE
LBG-4 10-14-14 [[96](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 96) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court will issue a minute order.

58. [14-28492](#)-B-13 MICHAEL/RENAE CHANDLER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-7-14 [[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 third objection that the debtors failed to amend their voluntary petition in order to disclose a prior bankruptcy filing is overruled. The trustee's remaining objections are sustained for the reasons set forth therein. Confirmation of the plan filed September 3, 2014 (Dkt. 10) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before November 12, 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.

On October 7, 2014, the debtors filed an amended voluntary petition (Dkt. 17) which discloses a prior bankruptcy filing in 2012 as the trustee requested. Accordingly, the trustee's objection on this point has been resolved and is therefore overruled.

The court will issue a minute order.

59. [10-51893](#)-B-13 DAVID/MACO OFFORD
JPJ-1

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
9-24-14 [[42](#)]

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

The objection is sustained to the extent set forth herein. The debtors' claim of exemption in "Old Republic Class Action Lawsuit Erickson v. Old Republic Title Company Claim Number: ORH12-10000669-8 Settlement for earned but unpaid overtime wages" pursuant to 15 U.S.C. § 1673 is disallowed. Except as so ordered, the objection is overruled.

The objection is sustained for the reasons set forth therein.

The court will issue a minute order.

60. [14-28594](#)-B-13 BROOKE PHAYER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-7-14 [[24](#)]

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 September 8, 2014 (Dkt. 13) is denied.

The court will issue a minute order.

61. [12-32199](#)-B-13 BEVAN PERRITON AND AMY
CYB-4 SUE BESTE-FONG

MOTION TO MODIFY PLAN
9-5-14 [[59](#)]

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

The motion is granted, and the modified plan filed September 5, 2014 (Dkt. 61) is confirmed.

The court will issue a minute order.

62. [14-27099](#)-B-13 JOHN/CYNTHIA MOORE
RI-3
CASE DISMISSED 10/15/14

MOTION TO CONFIRM PLAN
9-6-14 [[60](#)]

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

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed by order entered October 15, 2014 (Dkt. 98).

The court will issue a minute order.