

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

**December 16, 2014 at 9:32 a.m.**

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1. [14-29104](#)-B-13 WILLIAM DEHOFF OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON  
11-20-14 [[16](#)]

**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 initial plan filed September 24, 2014, is denied.

The court will issue a minute order.

2. [13-31905](#)-B-13 JOHN/JACLYN LABARBERA MOTION TO MODIFY PLAN  
BLG-3 10-28-14 [[68](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed October 28, 2014, is denied.

The trustee's opposition is sustained for the reasons set forth therein. Although the debtors are agreeable to a modification of the plan as proposed by the trustee in connection with his third objection regarding lack of clarity in the plan's payment provisions, there is no evidence on the court's docket that shows that the debtors have resolved the trustee's first objection relating to a delinquency in plan payments. In addition, the trustee's proposed modification relating to his third objection proposes plan payments in the amount of \$2848.00 commencing November 25, 2014, which is inconsistent with the trustee's objection that the total plan payment going forward under the plan should be \$2903.47.

The court will issue a minute order.

3. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO MOTION TO CONFIRM PLAN  
DRE-5 AVINA-SEGURA 10-9-14 [[178](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed October 9, 2014, is denied.

The chapter 13 trustee's opposition is sustained for the reasons set forth therein.

The court will issue a minute order.

4. [14-29108](#)-B-13 ROSEMARIE LANDRY OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-19-14 [[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 September 16, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

5. [14-29108](#)-B-13 ROSEMARIE LANDRY MOTION TO SELL  
MOH-2 11-25-14 [[32](#)]

**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.

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

MOTION TO MODIFY PLAN  
10-23-14 [[143](#)]

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

The motion is granted, and the modified plan filed October 23, 2014, is confirmed.

The court will issue a minute order.

7. [14-30112](#)-B-13 ANTHONY/JANICE BECERRA  
AFL-2

MOTION TO VALUE COLLATERAL OF  
U.S. BANK, N.A.  
11-10-14 [[32](#)]

**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 U.S. Bank, N.A., as trustee for JPMorgan Mortgage Acquisition Corp. 2005-WMC1, Asset-Backed Pass-Through Certificates, Series 2005-WMC1's ("USB") claim in this case secured by the second deed of trust on real property located at 8542 Everglade Drive, 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 \$240,875.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase Mortgage with a balance of approximately \$249,000.00. Thus, the value of the collateral available to USB on its second deed of trust is \$0.00.

The court will issue a minute order.

8. [14-30112](#)-B-13 ANTHONY/JANICE BECERRA  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE JAN P. JOHNSON  
AND/OR MOTION TO DISMISS CASE  
11-20-14 [[37](#)]

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

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

The trustee's objection and motion to dismiss are moot. On November 6, 2014, the debtors filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

9. [14-30112](#)-B-13 ANTHONY/JANICE BECERRA OBJECTION TO CONFIRMATION OF  
MDE-1 PLAN BY CAPITAL ONE, N.A.  
10-22-14 [[14](#)]

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

The creditor's objection is dismissed.

The creditor's objection is moot. On November 6, 2014, the debtors filed an amended plan and a motion to confirm. The amended plan supersedes the plan to which the creditor's objection is directed. 11 U.S.C. § 1323(b).

The court will issue a minute order.

10. [14-22014](#)-B-13 BRANDY COGGINS MOTION TO MODIFY PLAN  
CA-2 10-30-14 [[28](#)]

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

The motion is granted, and the modified plan filed October 30, 2014, is confirmed.

The court will issue a minute order.

11. [14-22014](#)-B-13 BRANDY COGGINS OBJECTION TO CLAIM OF CAVALRY  
JPJ-1 SPV I, LLC, CLAIM NUMBER 6  
10-29-14 [[20](#)]

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

Here, the Claim shows on its face that it is time-barred under California

law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was April 25, 2009. Therefore, the trustee has provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on April 25, 2009, more than four years before the debtor commenced her chapter 13 bankruptcy case on February 28, 2014. By failing to respond to the objection, the 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.

12. [14-22014](#)-B-13 BRANDY COGGINS  
JPJ-2

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 5  
10-29-14 [[24](#)]

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

The objection is sustained in part. Claim no. 5 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 trustee questions the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]. However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was November 9, 2009. Therefore, the trustee has provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on November 9, 2009, more than four years before the debtor commenced her chapter 13 bankruptcy case on February 28, 2014. By failing to respond

to the objection, the 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.

13. [14-30114](#)-B-13 ANDRES/GLORIA ULLOA  
JPJ-1
- OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-20-14 [[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 sustained. Confirmation of the initial plan filed October 9, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

14. [14-30114](#)-B-13 ANDRES/GLORIA ULLOA  
PD-1
- OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
11-17-14 [[17](#)]

**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 objections are sustained. Confirmation of the initial plan filed October 9, 2014, is denied.

The objection is sustained under 11 U.S.C. § 1325(a)(6) since Class 4 treatment includes relief from the automatic stay.

The court will issue a minute order.

15. [14-22718](#)-B-13 KENNETH/SUZANNE GALPIN  
JPJ-1

OBJECTION TO CLAIM OF DISCOVER  
BANK, CLAIM NUMBER 8-1  
10-29-14 [[96](#)]

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

The objection is sustained in part. Claim no. 8-1 on the court's claims register (the "Claim") filed by Discover Bank, (the "Claimant") is disallowed, except to the extent already paid by the chapter 13 trustee. Except as so ordered, the objection is overruled.

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

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was April 16, 2006. Therefore, the trustee has provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on April 16, 2006, more than four years before the debtors commenced their chapter 13 bankruptcy case on March 17, 2014. By failing to respond to the objection, the 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.

16. [14-26818](#)-B-13 MARIE TABAREZ  
JLK-1

MOTION TO CONFIRM PLAN  
10-17-14 [[32](#)]

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

The motion is granted and the amended plan filed October 17, 2014, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using

EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

17. [14-30018](#)-B-13 EMMANUEL/JENNIFER  
JPJ-1 GACHUPIN  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-20-14 [[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 initial plan filed October 7, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

18. [14-29019](#)-B-13 KRISTINA SAAR  
SJS-1  
MOTION TO CONFIRM PLAN  
10-31-14 [[22](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed October 31, 2014, is denied.

The court will issue a minute order.

19. [14-29019](#)-B-13 KRISTINA SAAR  
SJS-1  
COUNTER MOTION TO DISMISS  
CASE/PROCEEDING  
12-2-14 [[31](#)]

**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 December 30, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens,



properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

20. [13-30620](#)-B-13 DOROTHY MAHER MOTION TO MODIFY PLAN  
HLG-2 10-30-14 [[45](#)]

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

The court will issue a minute order.

21. [10-46323](#)-B-13 JEFFREY/MACKENSEY ROBERTS MOTION TO MODIFY PLAN  
JSO-4 10-29-14 [[68](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed October 29, 2014, is confirmed with the following modifications: 1.) The plan's payment provisions shall state that the debtors have paid a total of \$39,917.08 to the trustee through October, 2014. Commencing November 25, 2014, the debtors shall pay monthly plan payments of \$81.00 per month for the remaining months of the plan. 2.) Class 7 of non-priority unsecured claims shall receive no less than a 36.3% dividend.

The court will issue a minute order.

22. [14-28424](#)-B-13 MICHAEL LU MOTION TO REFINANCE  
SS-2 12-2-14 [[27](#)]

**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.

23. [14-21325](#)-B-13 DENNIS/IRENE SINGH OBJECTION TO CLAIM OF ASSET  
JPJ-2 ACCEPTANCE, LLC, CLAIM NUMBER  
2-1  
10-6-14 [[80](#)]

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

The objection is sustained in part. Claim no. 2-1 on the court's claims register (the "Claim") filed by Asset Acceptance, 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 trustee questions the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]. However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the Claim shows on its face that it is time-barred under California law. The account summary attached to the Claim shows that the claim is based on a credit card debt. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account is four years. A credit card account constitutes a book account. Pursuant to CCP § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. In this case, the account summary attached to the claim shows that the date of the last transaction on the account was April 10, 2005. Therefore, the trustee has provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on April 10, 2005, more than four years before the debtors commenced their chapter 13 bankruptcy case on February 13, 2014. By failing to respond to the objection, the Claimant has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

24. [09-37727](#)-B-13 CATHERINE MARCONI  
BLG-1

MOTION TO APPROVE LOAN  
MODIFICATION  
11-14-14 [[38](#)]

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

The motion is granted. The debtor is authorized to incur new debt on the terms set forth in the Home Affordable Modification Agreement filed as Exhibit "A" to the motion (Dkt. 41).

The court will issue a minute order.

25. [11-26307](#)-B-13 VICTOR/PATRICIA GUZMAN  
JPJ-1

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
11-5-14 [[94](#)]

**Tentative Ruling:** The debtors' opposition is sustained. The motion is denied.

The chapter 13 trustee seeks dismissal of this bankruptcy case, or, alternatively, conversion of the case to one under chapter 7. The trustee argues that grounds for conversion or dismissal exist because the debtors recently settled litigation in an adversary proceeding associated with a prior bankruptcy case and pending prepetition, as a result of which the debtors received a \$42,500.00 settlement payment. Because the debtors claimed \$5,000.00 of the value of the litigation as exempt, the trustee argues that the remaining \$37,500.00 of the settlement payment must be committed to make payments to unsecured creditors under the plan. The trustee argues that the aforementioned \$37,500.00 is non-exempt estate property, and that the debtors' plan, confirmed by order entered May 26, 2011, no longer satisfies the requirements of 11 U.S.C. § 1325(a)(4). The trustee alleges that he requested that the debtors turn over the \$37,500.00, but they refused to do so. The trustee argues that this refusal constitutes a lack of cooperation with the trustee and a "violation" of 11 U.S.C. § 1325(a)(4) which justifies dismissal or conversion as an unreasonable delay that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and a material default by the debtors with respect to a term of a confirmed plan (11 U.S.C. § 1307(c)(6)).

The court does not agree with the trustee. The debtors confirmed a chapter 13 plan on May 26, 2011. The confirmed plan pays no less than a specific percentage to general unsecured creditors, and, pursuant to 11 U.S.C. § 1327(a), bound the debtors and all creditors; it also, pursuant to the plan's terms and 11 U.S.C. § 1327(b), revested all property of the estate in the debtors on confirmation. In addition, the order confirming the plan is a final order that is given preclusive effect. In re Pardee, 193 F.3d 1083, 1087 (9th Cir. 1999). Once the plan was confirmed, it became binding on all parties and "all questions that could have been raised pertaining to the plan are entitled to res judicata effect." Trulis v. Barton, 107 F.3d 685, 691 (9th Cir. 1995). The Ninth Circuit Court of Appeals has "recognized the finality of confirmation orders even if the confirmed bankruptcy plan contains illegal provisions." Pardee, 193 F.3d at 1086. In this case, the issues that could have been raised at the time of plan confirmation and which were necessarily decided by the court in connection with confirmation of the plan included whether the plan satisfied the requirements of 11 U.S.C. § 1325(a)(4). Indeed, the order confirming the plan explicitly states that the court "has determined . . . that the debtor(s) plan satisfies the requirements of 11 U.S.C. § 1325." It does not constitute a breach of the confirmed plan that the debtors have received settlement funds in excess of the exempted value of the prepetition litigation and have refused to turn them over to the trustee. As the debtors point out, the trustee has not pointed to any provision of the confirmed plan which the debtors have breached.

The court is also not persuaded by the trustee's citation to Schwab v. Reilly, 130 S.Ct. 2652 (2010), which the trustee cites for the

proposition a chapter 7 trustee can recover any increased value of property above the exemption claimed by the debtor, even if the trustee did not object to the debtor's valuation or claim of exemption. Schwab was a chapter 7 bankruptcy case and the Supreme Court did not address the binding effect of a confirmed chapter 13 plan or the res judicata effect of a confirmation order.

The court agrees with the debtors that if the trustee wishes to capture the value of the settlement funds for the benefit of creditors, he must either seek reconsideration of the confirmation order, revocation of the confirmation order or modification of the plan. However, nothing in this ruling shall be construed as a finding that any of those avenues will be successful should the trustee decide to pursue it.

The court will issue a minute order.

26. [10-35527](#)-B-13 MICHAEL/VICKI ELSTON  
SS-5

MOTION FOR COMPENSATION FOR  
SCOTT SHUMAKER, DEBTORS'  
ATTORNEY  
11-18-14 [[76](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained in part. The motion is granted in part. The application is approved in the amount of \$1,862.50 in fees as \$100.00 in costs, for a total of \$1,862.50 in fees and costs, to be paid by the trustee through the chapter 13 plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess of the approved fees and costs over the amount paid by the trustee as an administrative expense may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the application is denied.

On November 2, 2012, the debtors filed a chapter 13 petition. As part of confirmation of the debtors' first modified chapter 13 plan the applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). This court authorized payment of fees and costs totaling \$3400.00 through the plan. The applicant now seeks additional compensation in the amount of \$2650.00 in fees and \$200.00 in costs. The chapter 13 trustee opposes the application.

In order to obtain approval of additional compensation, the applicant must show that "no-look" fee approved in connection with confirmation is insufficient to fully and fairly compensate the applicant for the legal services rendered in the case and that the services for which compensation is sought are sufficiently greater than a "typical" chapter 13 case to justify the fee sought. See In re Pedersen, 229 B.R. 445, 448 (Bankr. E.D. Cal. 1999) (J. McManus); LBR 2016-1(c). In evaluating the requested fees and costs, the court assesses them as of the time that the work is done, and does not base its approval on hindsight, i.e. the ultimate success or failure of the task for which the fees were incurred. 11 U.S.C. § 330 "does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably

likely' to benefit the estate at the time the services were rendered." In re Mednet, 251 B.R. 103, 107 (9th Cir. BAP 2005). "While the necessity of services should not be analyzed with 'hindsight bias,' counsel and other professionals must exercise billing judgment by weighing the maximum probable recovery against the probable cost of legal services." In re Real Estate Partners, Inc., 2012 WL 8702859 at \*3, citing In re Circle K Corp., 294 BR. 11, 125 (Bankr.D.Az.2003); Unsecured Creditors' Committee v. Puget Sound Plywood, 924 F.2d 955, 958 (9th Cir.1991).

The court has considered the chapter 13 trustee's opposition and the timesheets and task-based analysis submitted with the application. This matter is complicated somewhat by the applicant's apparent treatment of the "no-look" fee as a retainer that, once exhausted, automatically justifies a motion for additional fees in the full amount of the fees actually incurred by the applicant. Such treatment of the "no-look" fee is expressly disapproved by LBR 2016-1(c)(3). The court notes in this case that the applicant incurred \$2,250.00 in fees and costs for preconfirmation services and general case management services that are typical of a chapter 13 case and covered by the "no-look" fee, leaving \$1,150.00 of the "no-look" fee to still exhausted before the "no-look" fee can be said not to fully and fairly compensate the applicant for the legal services rendered.

From the unexhausted \$1150.00 of the no-look fee, the court deducts \$737.50 in fees and costs for services related to The preparation of a first modified plan and a motion to confirm it. This modified plan was prepared for the purpose of conforming the chapter 13 plan to filed claims. The chapter 13 trustee is correct that this service is contemplated by the "no-look" fee approved in connection with confirmation. This leaves \$412.50 as the unexhausted amount of the no-look fee which must be consumed before the no-look fee can be said not to sufficiently compensate the applicant. In considering the remaining post-confirmation services rendered by the applicant, the court finds the following:

1.) The court allows \$1,950.00 in fees and \$50.00 in costs related to the applicant's efforts in assisting the debtors with obtaining court approval to incur debt for the purpose of purchasing a vehicle. Of the \$2,662.50 in fees and costs incurred in total, the court finds that the applicant's efforts in connection with corresponding with the debtors regarding the necessity of a motion to incur debt, his preparation of an ex parte application to incur debt for submission to the chapter 13 trustee and his attempts to locate an auto dealer which would provide financing terms pending court approval are compensable. The court acknowledges that the debtors' attempts to incur debt to purchase a vehicle were ultimately unsuccessful, but as stated above, whether the fees may be approved is not dependent on the success of the applicant's efforts.

2.) The court does not allow \$662.50 in fees and \$50.00 in costs related to the debtors' efforts to obtain an order shortening time for and the filing and service of a noticed motion to incur debt after the chapter 13 trustee declined to sign off on the debtors' proposed ex parte application to incur debt. After the chapter 13 trustee declined to sign off on the ex parte application, citing the absence of an actual financing agreement for which the court to approve, the applicant should have known that it would be highly unlikely if not impossible to obtain

authorization to incur debt by a noticed motion on shortened time which likewise was not filed with evidence of an actual financing agreement. This department is frequently asked by debtors for such "pre-approval" of financing terms, and always declines to grant such approval, having issued numerous rulings to that effect.

3.) The court allows \$325.00 in fees and \$50.00 in costs related to the applicant's efforts in connection with preparing the instant application for compensation.

4.) The court does not allow preparation and filing of a second modified plan, as the court's docket shows that no such plan was ever filed with the court. The applicant has not demonstrated that this was an actual and necessary expense.

Based on the foregoing, the court finds that \$2275.00 in fees and \$100.00 in costs for a total of \$2375.00 in fees and costs constitutes allowable compensation for the applicant consistent with 11 U.S.C. § 330. To determine the amount to be approved in connection with this application as additional compensation, the court deducts \$412.50 (the unexhausted amount of the no-look fee) from the \$2275.00 in allowed fees, so as to fully exhaust the no-look fee. Therefore, the court allows \$1,862.50 in fees as \$100.00 in costs, for a total of \$1,862.50 in fees and costs as additional compensation in this case.

The court will issue a minute order.

27.	<a href="#">14-31127</a> -B-13	DENNIS/JASMINE EHRENBERGER	MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC. 11-17-14 [ <a href="#">8</a> ]
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**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 Citimortgage, Inc.'s claim in this case secured by the second deed of trust on real property located at 1435 Lorimer Way, Roseville, 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 \$306,000.00 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 \$337,000.00. Thus, the value of the collateral available to Citimortgage, Inc. on its second deed of trust is \$0.00.

The court will issue a minute order.

28. [14-27028](#)-B-13 TONI PAREDERO  
PGM-2

MOTION TO CONFIRM PLAN  
10-28-14 [[52](#)]

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

The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed October 28, 2014, is denied. The countermotion is conditionally denied, the conditions being that on or before December 30, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

29. [14-30028](#)-B-13 BRIAN/KRISTINE HURLEY  
AFL-1

MOTION TO VALUE COLLATERAL OF  
COUNTY OF SACRAMENTO  
11-12-14 [[16](#)]

**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. By this motion the debtors seek to value the collateral the County of Sacramento (the "County"), consisting of their residence located at 7939 Hanson Avenue, Citrus Heights California. Service on a governmental organization such as the County is governed by Bankruptcy Rule 7004(b)(6), which states that service upon a state or municipal corporation or other governmental organization, must be done by mail to the attention of a "person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." FRBP 7004(b)(6). Under Cal. Civ. Proc. Code § 416.50(a), service on a state agency may be done by delivering it to the clerk, secretary, president, presiding officer, or other head of its governing body. The debtor's proof of service shows that the motion was served on the county's Department of Finance to the attention of "Utilities Billing & Services" and on County Counsel. There is no evidence that either of the foregoing is person described in Cal. Civ. Proc. Code § 416.50(a).

The court will issue a minute order.

30. [14-30028](#)-B-13 BRIAN/KRISTINE HURLEY  
AFL-2

MOTION TO VALUE COLLATERAL OF  
REPUBLIC SERVICES, INC.  
11-12-14 [[21](#)]

**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 Republic Services, Inc.'s ("Republic") claim in this case secured by a lien for non-payment of utility services on real property located at 7939 Hanson Avenue, Citrus Heights, 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 \$252,865.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Green Tree Servicing with a balance of approximately \$284,000.00. Thus, the value of the collateral available to Republic on its utility lien is \$0.00.

The court will issue a minute order.

31. [14-30028](#)-B-13 BRIAN/KRISTINE HURLEY  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-20-14 [[27](#)]

**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 regarding the dependency of the plan on a successful motion to value the collateral of Republic Services, Inc. is overruled. The trustee's remaining objections are sustained. Confirmation of the initial plan filed October 7, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's third objection is overruled because elsewhere on this calendar the court has granted the debtors' motion to value the collateral of Republic Services, Inc. the trustee's remaining objections are sustained for the reasons set forth therein.



The court will issue a minute order.

32. [11-44930](#)-B-13 KORY PAYNE AND TERE MOTION TO MODIFY PLAN  
SDB-2 MANUEL 10-23-14 [[52](#)]

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

The motion is granted, and the modified plan filed October 23, 2014, is confirmed.

The court will issue a minute order.

33. [14-30432](#)-B-13 THOMAS ALLIE OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON  
11-25-14 [[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 October 22, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

34. [14-29934](#)-B-13 RYAN/ASHLEY CANADY OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-13-14 [[42](#)]

**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. In this instance the court issues the following abbreviated tentative ruling.

The chapter 13 trustee's objections are overruled. The initial plan filed October 3, 2014 is confirmed with the following modification included in the order confirming the plan: Debtor's attorney will seek the court's approval of his attorney's fees by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016 and 2017.

The chapter 13 trustee's objections regarding the dependency of the plan on successful motions to value the collateral of Golden 1 Credit Union and Toyota Motor Credit are resolved by orders entered November 26, 2014 (Dkt. 53, 54), granting the debtors' motions to value collateral.

The court will issue a minute order.

35. [14-29036](#)-B-13 FOUAD MIZYED MOTION TO CONFIRM PLAN  
AF-2 10-22-14 [[36](#)]

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

The motion is dismissed.

The motion is moot. On December 5, 2014, the debtor filed an amended plan and motion to confirm. The amended plan supersedes the plan which is the subject of this motion. 11 U.S.C. § 1323(b).

The court will issue a minute order.

36. [14-29036](#)-B-13 FOUAD MIZYED COUNTER MOTION TO DISMISS CASE  
AF-2 12-2-14 [[58](#)]

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

The countermotion is dismissed.

The countermotion is moot. On December 5, 2014, the debtor filed an amended plan and motion to confirm, setting the matter for hearing on January 27, 2015. The motion to confirm provides the relief sought in the countermotion. 11 U.S.C. § 1323(b).

The court will issue a minute order.

37. [10-30137](#)-B-13 TY/REBECCA MATT  
MG-4

MOTION TO MODIFY PLAN  
10-12-14 [[86](#)]

**Tentative Ruling:** The motion is granted and the modified plan filed September 15, 2014, is confirmed with the following modification to the plan's payment provisions: As of September 25, 2014, the debtors have paid a total of \$106,177.33 into the plan. No further payments are due. The total plan length is 53 months.

The court will issue a minute order.

38. [11-21337](#)-B-13 PAUL HARRISON  
SAC-1

MOTION TO VALUE COLLATERAL OF  
U.S. BANK, N.A.  
11-17-14 [[31](#)]

**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 U.S. Bank, N.A.'s ("USB") claim in this case secured by the second deed of trust on real property located at 1404 Foxboro Way, Sacramento, California (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$129,996.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$140,000.00. Thus, the value of the collateral available to USB on its second deed of trust is \$0.00.

The court will issue a minute order.

39. [14-21240](#)-B-13 DIANE OHARA  
JPJ-2

OBJECTION TO CLAIM OF ASSET  
ACCEPTANCE, LLC, CLAIM NUMBER 1  
10-6-14 [[61](#)]

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

The objection is sustained in part. Claim no. 1 on the court's claims register (the "Claim") filed by Asset Acceptance, 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 trustee questions 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 June 5, 2009. Therefore, the trustee has provided sufficient evidence that Claimant's cause of action on its Claim began to accrue on June 5, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy case on February 11, 2014. By failing to respond to the objection, the 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.

40. [10-24641](#)-B-13 VALERIE DUN  
EJS-3

MOTION TO MODIFY PLAN  
11-10-14 [[95](#)]

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

The motion is granted, and the modified plan filed November 10, 2014, is confirmed.

The court will issue a minute order.

41. [14-27542](#)-B-13 CECIL SIMS  
JPJ-3

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
10-28-14 [[29](#)]

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

The motion is continued to January 13, 2015, at 9:32 a.m., to be heard after the hearing on the debtor's motion to confirm the first amended plan filed November 17, 2014.

The court will issue a minute order.

42. [14-28143](#)-B-13 ANNETTE GOTT  
MRL-2

MOTION TO CONFIRM PLAN  
10-28-14 [[44](#)]

**Tentative Ruling:** The court issues no tentative ruling on the merits of the motion. At the hearing the debtor and the trustee shall be prepared to discuss how each party determined the amount to be distributed to unsecured creditors under the plan. Specifically, the chapter 13 trustee shall explain the manner in which he determined that the plan that is the subject of this motion will pay \$44,864.22 to general unsecured creditors, i.e. by a calculation of the actual funding of the plan against filed claims, or by calculating the proposed dividend against estimated claims.

43. [14-28143](#)-B-13 ANNETTE GOTT  
MRL-2

COUNTER MOTION TO DISMISS  
CASE/PROCEEDING  
12-2-14 [[52](#)]

**Tentative Ruling:** None.

44. [14-29444](#)-B-13 THOMAS/KIMBERLY SZARMACH  
JLB-1

MOTION TO VALUE COLLATERAL OF  
BOSCO CREDIT, LLC  
10-21-14 [[14](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bosco Credit, LLC's ("Bosco") claim in this case secured by the second deed of trust on real property located at 2417 Meadow Lane, Placerville, California (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$260,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Bank, N.A. with a balance of approximately \$265,000.00. Thus, the value of the collateral available to Bosco on its second deed of trust is \$0.00.

The court will issue a minute order.

45. [14-29444](#)-B-13 THOMAS/KIMBERLY SZARMACH  
JLB-2

MOTION TO CONFIRM PLAN  
10-29-14 [[24](#)]

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

The motion is granted and the amended plan filed October 29, 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.

46. [14-30344](#)-B-13 DAVID NEWNHAM MOTION TO VALUE COLLATERAL OF  
SLH-1 COMPASS BANK  
11-20-14 [[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 Compass Bank's claim in this case secured by the second deed of trust on real property located at 3907 Bainbridge Drive, North Highlands, 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 \$166,420.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Bank, N.A. with a balance of approximately \$225,000.00. Thus, the value of the collateral available to Compass Bank on its second deed of trust is \$0.00.

The court will issue a minute order.

47. [13-35745](#)-B-13 PATRICIA KLINE CONTINUED MOTION TO CONFIRM  
JLK-3 PLAN  
9-29-14 [[60](#)]

**Disposition Without Oral Argument:** This matter continued from November 25, 2014, to allow the debtor additional time to file supplemental evidence supporting the feasibility of the proposed plan. No supplemental evidence having been filed as of 9:33 a.m. on December 15, 2014, the day before the hearing, the court issues the following ruling.

The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed September 29, 2014, is denied.

The chapter 13 trustee's opposition is sustained because the debtor has not sustained her burden under 11 U.S.C. § 1325(a)(6) of showing that the plan is feasible. The plan depends on the sale of the debtor's vacation property (the "Property") located in San Jose del Cabo, Baja California Sur in January, 2017, the 37th month of the plan, in order to be sufficiently funded. While the debtor has shown evidence in the form of

her sworn schedules that she had equity in the Property that exceeded her scheduled unsecured priority and non-priority debts as of the date of the filing of the petition, she has not shown evidence of the condition of the real estate market in San Jose del Cabo which shows that she will be able to sell the Property in January, 2017, for an amount that will fund the plan as proposed.

The court will issue a minute order.

48. [13-35745](#)-B-13 PATRICIA KLINE CONTINUED COUNTER MOTION TO  
JLK-3 DISMISS CASE  
10-30-14 [[66](#)]

**Disposition Without Oral Argument:** This matter continued from November 25, 2014. The court now issues the following ruling.

The countermotion is conditionally denied, the conditions being that on or before December 30, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

49. [14-30145](#)-B-13 JENNIFER SCHREIBER OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-20-14 [[15](#)]

WITHDRAWN BY M.P.

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

The objection is removed from the calendar. The chapter 13 trustee withdrew the objection on December 1, 2014 (Dkt. 18).

50. [11-24147](#)-B-13 BRYANT/PAULA WYATT MOTION FOR COMPENSATION FOR  
PGM-5 PETER G. MACALUSO, DEBTORS'  
ATTORNEY  
11-18-14 [[100](#)]

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

The application is approved in the amount of \$1200.00 in fees and \$0.00 in costs for a total of \$1200.00, to be paid by the trustee through the

chapter 13 plan plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the application is denied.

On February 18, 2011, the debtors filed a chapter 13 petition. As part of confirmation of the debtors' first modified chapter 13 plan the applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$3,500.00 through the plan. The applicant now seeks additional compensation in the amount of \$1200.00 in fees and \$0.00 in costs.

As set forth in the attorney's application, these fees and costs are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work applicant has done in this case is 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 court will issue a minute order.

51. [12-39447](#)-B-13 CLINTON/JEANA PALMER MOTION TO MODIFY PLAN  
ACW-2 10-30-14 [[52](#)]

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

The court will issue a minute order.

52. [12-39447](#)-B-13 CLINTON/JEANA PALMER MOTION FOR COMPENSATION FOR  
ACW-3 ANDY C. WARSHAW, DEBTORS'  
ATTORNEY  
10-29-14 [[47](#)]

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

The application is approved in the amount of \$1850.00 in fees and \$0.00 in costs for a total of \$1850.00, to be paid by the trustee through the chapter 13 plan plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the application is denied.

On November 2, 2012, the debtors filed a chapter 13 petition. As part of confirmation of the debtors' first modified chapter 13 plan the applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of



fees and costs totaling \$4000.00 through the plan. The applicant now seeks additional compensation in the amount of \$1850.00 in fees and \$0.00 in costs.

As set forth in the attorney's application, these fees and costs are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work applicant has done in this case is 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 court will issue a minute order.

53. [11-26648](#)-B-13 CHRISTOPHER MCKENNEY CONTINUED MOTION TO MODIFY PLAN  
JPJ-1 6-11-14 [[64](#)]  
CASE DISMISSED 11/24/14

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

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed by order entered November 24, 2014 (Dkt. 97).

The court will issue a minute order.

54. [11-26648](#)-B-13 CHRISTOPHER MCKENNEY CONTINUED OBJECTION TO CLAIM OF  
JPJ-2 LISA MCKENNEY, CLAIM NUMBER 6  
6-11-14 [[60](#)]  
CASE DISMISSED 11/24/14

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

The objection is dismissed.

The objection is moot. The bankruptcy case was dismissed by order entered November 24, 2014 (Dkt. 97).

The court will issue a minute order.

55. [14-24049](#)-B-13 KRISTIN AUSTIN  
MWB-4

MOTION TO ASSUME PROMISSORY  
NOTE  
10-28-14 [[71](#)]

**Tentative Ruling:** The motion is granted to the extent set forth herein. To the extent that the debtor seeks to assume the promissory note and deed of trust obligation pursuant secured by real property located at 1556 St. Andrews Drive, Redding, California, the motion is denied. To the extent that by the motion the debtor seeks to incur debt pursuant to 11 U.S.C. § 364, the debtor is authorized to incur debt by entering into and performing in accordance with the Assumption of Liability Agreement filed as Exhibit "B" to the motion (Dkt. 74 at 5). Except as so ordered, the motion is denied.

The court treats the motion as one to incur debt under 11 U.S.C. § 364 rather than one to assume an executory contract under 11 U.S.C. § 365 because a promissory note and deed of trust obligation of the type that is the subject of this motion does not qualify as an "executory contract" for the purposes of § 365:

Although Congress did not define the term "executory contract", the Ninth Circuit has held that for § 365 purposes, a contract is executory where the obligations of both parties are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other. In re Pacific Express, Inc., 780 F.2d 1482, 1487 (9th Cir.1986). . . . An obligation to convey title or to surrender a promissory note upon satisfaction of the underlying debt is insufficient to render an agreement executory. See, e.g., Horton v. Rehbein (In re Rehbein), 60 B.R. 436, 440-41 (Bankr. 9th Cir.1986); In re Rojas, 10 B.R. 353, 355 (Bankr. 9th Cir.1981); In re Adolphsen, 38 B.R. at 778.

In re Lemons & Associates Inc., 67 B.R. 198, 216 (Bankr. D. Nev. 1986)

The court will issue a minute order.

56. [14-24049](#)-B-13 KRISTIN AUSTIN  
MWB-3

MOTION TO INCUR DEBT  
10-28-14 [[66](#)]

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

The motion is dismissed without prejudice for the following reasons. First, the motion was not properly served. A motion to incur new debt 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 debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to incur debt on the United

States Trustee, the chapter 13 trustee, and the creditor extending credit to the debtor. The court also requires that the debtors give notice of the motion to all other creditors. Here, the proof of service (Dkt. 70) indicates that the motion, notice of hearing, and supporting documents were served on the chapter 13 trustee, the United States trustee and all creditors, but there is no evidence on the docket that the motion was served on the individual allegedly extending credit, the debtor's ex-husband Robert Austin.

Second, the motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. The debtor has failed to establish that there is an actual, finalized promissory note and deed of trust in favor of Robert Austin for the court to approve. Instead, the debtor merely requests that she be allowed to borrow an amount "not exceeding \$25,000.00" from Mr. Austin. 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 Mr. Austin agrees, no case or controversy within the meaning of Article III exists.

Mr. Austin's consent to the agreement may be manifested in ways other than executing the agreement. For example, Mr. Austin may file a response to the motion stating his agreement, or he may appear at the hearing on the motion and state his agreement on the record. Absent such evidence of Mr. Austin's consent, however, the motion is not ripe for adjudication.

Third, the debtor represents in her motion to assume a promissory note and deed of trust obligation elsewhere on this calendar that the title owner to the real property located at 1556 St. Andrews Drive, Redding, California (the "Property") is the Estate of Pauline Hatch. In the present motion the debtor states that she intends to secure the loan from Mr. Austin with a second-priority deed of trust on the Property, but she has not explained how she can encumber a Property she does not own.

The court will issue a minute order.

57. [14-24049](#)-B-13 KRISTIN AUSTIN  
MWB-5

MOTION TO CONFIRM PLAN  
10-27-14 [[59](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed October 27, 2014, is denied.

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

The court will issue a minute order.

58. [14-24049](#)-B-13 KRISTIN AUSTIN  
MWB-5

COUNTER MOTION TO DISMISS CASE  
11-17-14 [[76](#)]

**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 December 30, 2014, the debtor files a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

59. [14-22472](#)-B-13 TIMOTHY KRUSE  
CA-1

CONTINUED MOTION TO CONFIRM  
PLAN  
7-8-14 [[84](#)]

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

This matter is continued to January 27, 2015, at 9:32 a.m. to allow the parties time to complete settlement negotiations.

60. [12-37750](#)-B-13 ANGELA CARNEVALE  
EJS-5

MOTION TO MODIFY PLAN  
11-7-14 [[74](#)]

**Tentative Ruling:** The trustee's opposition is overruled. The motion is granted, and the modified plan filed November 7, 2014 (Dkt. 77) is confirmed with the following modification: Section 6.01 of the Additional Provisions shall be modified to state that "Through November 2014, the debtor has paid a total of \$12,200.00 to the trustee. Commencing December 2014, monthly plan payments shall be \$700.00 for the remainder of the plan."

The court will issue a minute order.

61. [13-23951](#)-B-13 JOSEPH/ALONA PANG  
TJW-1

MOTION TO SELL  
12-2-14 [[23](#)]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such

opposition, the court issues the following tentative ruling.

The motion is dismissed without prejudice.

The court construes the motion to seek court approval of a short sale. The motion is dismissed because it is not ripe for adjudication and therefore the court lacks jurisdiction over the matter. Specifically, the debtors have provided no evidence of an actual short sale which the court may approve.

The absence of an actual short sale 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 short sale, no case or controversy within the meaning of Article III exists.

Here, the debtors provide no evidence of the existence of a short sale. The debtors state in both the motion and supporting declaration that they have contacted a real estate broker who will present a short sale to the lenders and that the lenders "might" release as much as \$3,000.00 for moving expenses to the debtors. The debtors further state that the sale will result from a voluntary subordination of all lien holders and that the debtors do not expect an actual profit from the short sale. None of the foregoing is sufficient to establish that there is an actual, finalized short sale for the court to approve because the debtors have failed to file a copy of a signed purchase agreement or any evidence of lender consent. It appears that the debtors are seeking pre-approval of a short sale, which the court will not do.

Even if the motion were ripe for adjudication, it would be denied because insufficient notice was provided for a motion to sell. At least twenty-one (21) days' notice to parties-in-interest is required. Fed. R. Bankr. P. 2002(a)(2). Only fourteen days' notice was provided.

The court will issue a minute order.

62. [11-35553](#)-B-13 DONALD/JANET KENNEDY  
SS-2

MOTION TO VALUE COLLATERAL OF  
ANSON ST, LLC  
11-5-14 [[53](#)]

**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 Anson Street, LLC's claim secured by the second deed of trust on real property located at 6618 Melbourne Way, Citrus Heights, California 95621 (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 \$155,000.00 on the date of the petition. The

Property is encumbered by a first deed of trust held by Wells Fargo Bank, N.A. with a balance of approximately \$285,175.37. Thus, the value of the collateral available to Anson Street, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

63. [14-29653](#)-B-13 LEONARD HOFILINA MC-1 MOTION TO VALUE COLLATERAL OF STERLING JEWELERS INC. DBA KAY JEWELERS 11-13-14 [[25](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$2,607.00 of Sterling Jewelers, Inc. dba Kay Jewelers' claim secured by a fourteen karat white gold three-stone ring, a fourteen karat white gold anniversary band, a bracelet with charms, a ten karat white gold ring with pink sapphire stone, and a necklace with pink sapphire stone (collectively, the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$2,607.00 on the date of the petition.

The court will issue a minute order.

64. [14-29653](#)-B-13 LEONARD HOFILENA JPJ-1 OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-13-14 [[16](#)]

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

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

The trustee's objection and motion to dismiss are moot. On November 13, 2014, the debtor filed an amended plan (Dkt. 31) and a motion to confirm it (Dkt. 30), setting the matter for hearing on January 13, 2015, at 9:32 a.m. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

65. [14-29753](#)-B-13 THOMAS/BECKY BOYES  
LBG-1

MOTION TO VALUE COLLATERAL OF  
WHEELS FINANCIAL GROUP  
12-2-14 [[24](#)]

**Tentative Ruling:** The motion is dismissed.

The motion suffers from the following defects. First, it provides insufficient notice to parties-in-interest. Pursuant to Local Bankruptcy Rule 9014-1(f)(2), when fewer than twenty-eight (28) days' notice of a hearing is given, the moving party shall inform parties-in-interest that no written opposition to the motion is required and that any opposition shall be presented at the hearing on the motion. LBR 9014-1(f)(2)(C). Here, the proof of service (Dkt. 28) indicates that the motion, notice of hearing, and supporting documents were served on December 2, 2014, which was only fourteen (14) days prior to today's date. However, the notice of hearing (Dkt. 25) uses language specific to motions brought on at least twenty-eight (28) days' notice under Local Bankruptcy Rule 9014-1(f)(1), i.e., that written opposition was due no less than fourteen (14) days preceding today's date. This means that any party wishing to oppose this motion would have had no time to file such opposition.

Even if notice were proper in this instance, the motion would be denied. By this motion the debtors seek to value a 1999 Chevrolet Suburban (the "Collateral") pursuant to 11 U.S.C. § 506(a) and (d). They claim that Wheels Financial Group dba Loan Mart (the "Creditor") holds a purchase money security interest in the Collateral created by a purchase agreement entered into on or about November 21, 2013. According to the attachment to the Creditor's proof of claim filed in this case, the debtors are correct that the loan was entered into on November 21, 2013. However, they are incorrect in their assertion that the debt was incurred at least 910 days before the filing of the petition in this case. This case was commenced on September 30, 2014. 910 preceding that date was April 3, 2012. Accordingly, the debt to the Creditor was incurred within the 910-day period. Pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a), the debtors may not use 11 U.S.C. § 506 to value the Collateral.

The court will issue a minute order.

66. [14-29753](#)-B-13 THOMAS/BECKY BOYES  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-13-14 [[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 debtors' opposition is overruled. The trustee's objections are sustained. Confirmation of the plan filed September 30, 2014 (Dkt. 5), is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a

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

The motion to value collateral of Wheels Financial Group dba Loan Mart was denied elsewhere on this calendar. As to the trustee's remaining objections, the debtors provide no evidence, other than the unsworn statements set forth in their opposition, that they are current under their plan and that they have provided the trustee with the Class 1 Checklist and Authorization to Release Information to Trustee Regarding Secured Claims Being Paid by the Trustee.

The court will issue a minute order.

67. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL  
JPJ-2

OBJECTION TO CLAIM OF  
DEPARTMENT STORES NATIONAL  
BANK/MACY'S, CLAIM NUMBER 4-2  
10-6-14 [[74](#)]

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

The trustee's objection is sustained, and claim number 4-2, filed on February 27, 2014, by Department Stores National Bank/Macy's (the "Creditor") in the amount of \$212.36 (the "Claim"), is disallowed in its entirety.

The trustee questions the validity and nature of the Claim. 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).

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 a credit card account held by the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account, an account stated based upon an account in writing, and a balance due upon a mutual, open and current account is four (4) years. In this case, the account summary attached to the Claim shows that the date of the last payment on the account was August 3, 2009. Therefore, the trustee has provided sufficient evidence that the Creditor's cause of action on its Claim began to accrue on August 3, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy on January 30, 2014. By failing to respond to the objection, the Creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in its entirety.



The court will issue a minute order.

68. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL  
JPJ-3

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 14-1  
10-6-14 [[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 14-1, filed on June 3, 2014, by Cavalry SPV I, LLC as assignee of GE Capital Corporation (the "Creditor") in the amount of \$9,960.30 (the "Claim"), is disallowed in its entirety.

The trustee questions the validity and nature of the Claim. 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).

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 a credit card account held by the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account, an account stated based upon an account in writing, and a balance due upon a mutual, open and current account is four (4) years. In this case, the account summary attached to the Claim shows that the date of the last payment on the account was October 28, 2009. Therefore, the trustee has provided sufficient evidence that the Creditor's cause of action on its Claim began to accrue on October 28, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy on January 30, 2014. By failing to respond to the objection, the Creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in its entirety.

The court will issue a minute order.

69. [14-29055](#)-B-13 APRIL WARD  
JPJ-2

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-3-14 [[42](#)]

**Tentative Ruling:** The trustee's objection is sustained for the reasons set forth therein. The debtor's claims of exemption in household goods and furnishings, wearing apparel, furs and jewelry, and automobiles, all claimed as exempt under Cal. Code Civ. P. § 703.140(b) and more fully described on Schedule C (Dkt. 1, p.13) and in the objection, are

disallowed.

The court acknowledges the Mutual Waiver of Right to Claim State Exemptions filed by the debtor on November 10, 2014 (Dkt. 55) (the "Waiver"). However, the Waiver was not filed using Official Form EDC 3-060 as required in the Eastern District. Accordingly, the trustee's objection is sustained.

The court will issue a minute order.

70. [13-28856](#)-B-13 JENNIFER AMADI MOTION TO SELL  
SDB-1 11-13-14 [[38](#)]

**Tentative Ruling:** The conditional non-opposition of Wells Fargo Bank, N.A. is overruled. The trustee's conditional non-opposition is overruled. The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the debtor is authorized to sell the estate's interest in real property located at 1888 Glenmark Way, Roseville, California 95747 (APN 479-412-008-000) (the "Property") to Kenika Ng and Ashley Ng for \$320,000.00 on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions and Counter Offer No. 2 attached to the motion as Exhibit "B" (Dkt. 41, pp.3-15). The debtor is authorized to pay all liens on the Property through escrow. The debtor is authorized to execute all documents necessary to complete the approved sale. Pursuant to the debtor's reply, the debtor is instructed to turn over to the trustee any non-exempt funds from the net sale proceeds to be administered in furtherance of the debtor's chapter 13 plan. Except as so ordered, the motion is denied.

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

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

71. [11-49557](#)-B-13 GREGORY MELLOR AND SAMYA MOTION TO MODIFY PLAN  
EJS-3 HADDAD 10-29-14 [[43](#)]

**Tentative Ruling:** The trustee's opposition is overruled. The motion is granted, and the modified plan filed October 29, 2014 (Dkt. 47) is confirmed with the following modification: Section 6.01 of the Additional Provisions shall be modified to state that "The debtors have paid a total of \$179,428.35 to the trustee through November 25, 2014. Commencing December 25, 2014, monthly plan payments shall be \$5,352.00 for the remainder of the plan."

The court will issue a minute order.

72. [14-30057](#)-B-13 ANDREW HANZO  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-25-14 [[34](#)]

**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 December 30, 2014, the debtor files a motion to confirm the second amended plan filed November 18, 2014 (Dkt. 32) (the "Amended Plan") (which appears identical to the first amended plan filed November 17, 2014 (Dkt. 26) that was also never set for hearing) 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). The trustee's motion to dismiss is conditionally denied because the debtor has not filed a motion to confirm the Amended Plan.

The court will issue a minute order.

73. [14-30357](#)-B-13 LEANNE DELICE  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
11-25-14 [[14](#)]

**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 October 17, 2014 (Dkt. 5) is denied.

The court will issue a minute order.

74. [14-30557](#)-B-13 NIKOLAY/LILIYA DROBKOV  
MS-2

MOTION TO CONFIRM PLAN  
10-27-14 [[15](#)]

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

issues the following abbreviated ruling.

The motion is granted, and the amended plan filed October 27, 2014 (Dkt. 19), 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.

75. [11-38258](#)-B-13 CHRISTOPHER/AMY PIERCE CONTINUED MOTION TO MODIFY PLAN  
CA-1 9-25-14 [[55](#)]

**Tentative Ruling:** This matter is continued from November 12, 2014, at 9:32 a.m. The court now issues the following tentative ruling.

The motion is granted, and the modified plan filed September 25, 2014 (Dkt. 58) is confirmed with the following modifications: Section 3 (Executory Contracts and Unexpired Leases) is amended as follows: (1) part 1 "Name of Other Party to Executory Contract/Unexpired Lease" shall state the name \_\_\_\_\_ as the lessor of a 2014 Dodge Journey; and (2) part 1 "Regular Payment" shall be "\$350.00/month."

Based on the assertions set forth in the supplemental statement filed December 9, 2014 (Dkt. 64), Amended Schedule J filed December 9, 2014 (Dkt. 62), and the supplemental declaration filed December 11, 2014 (Dkt. 66), as well as debtors' counsel's representations at the last hearing on this matter, the court construes the debtors' relationship with the purchaser of the 2014 Dodge Journey as a lessor/lessee relationship and, as such, the plan must reflect this situation.

The court will issue a minute order.

76. [14-30058](#)-B-13 PAUL/ALICE SALINAS OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON  
11-20-14 [[18](#)]

**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 dismissed.

The trustee's objections are moot. The bankruptcy case was dismissed elsewhere on today's calendar due to the debtors' ineligibility to be chapter 13 debtors.

The court will issue a minute order.

77. [14-30058](#)-B-13 PAUL/ALICE SALINAS  
KLA-1

MOTION TO DISMISS CASE AND/OR  
OBJECTION TO CONFIRMATION OF  
PLAN BY OPUS BANK  
11-20-14 [[22](#)]

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

The debtors' opposition is overruled. The Creditor's motion to dismiss is granted, and the case is dismissed due to ineligibility under 11 U.S.C. § 109(e). Due to the dismissal of the case, the Creditor's remaining objections to confirmation are dismissed as moot.

The debtors' opposition is unavailing as it is non-responsive to the issue of their eligibility to be chapter 13 debtors. Simply filing a first amended plan and making an unsworn, blanket statement that the plan has been proposed in good faith and satisfies all requirements of 11 U.S.C. § 1325(a), without more, is insufficient to overcome the arguments raised by the Creditor in its motion to dismiss.

The court will issue a minute order.

78. [10-44061](#)-B-13 MICHAEL/JEANNE CAREY  
PLG-5

MOTION TO MODIFY PLAN  
11-10-14 [[106](#)]

**Tentative Ruling:** The trustee's opposition is overruled. The motion is granted, and the modified plan filed November 10, 2014 (Dkt. 110) is confirmed with the following modification: the first line of the Additional Provisions shall be modified to state that "The debtors have paid a total of \$122,877.00 to the trustee through October 25, 2014 (month 49). Commencing on November 25, 2014 (month 50), the debtors shall pay \$2,492.00 per month to the trustee for the 11 remaining months of the 60 month plan."

The court will issue a minute order.

79. [14-21661](#)-B-13 CHARLES/SUSAN EPSTEIN  
RS-4

MOTION TO CONFIRM PLAN  
10-28-14 [[79](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed October 28, 2014 (Dkt. 83) is denied.

The court will issue a minute order.

80. [14-27661](#)-B-13 MICHAEL/JURHEE POLLARD MOTION TO CONFIRM PLAN  
CA-2 10-14-14 [[20](#)]

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

The motion is granted, and the amended plan filed October 15, 2014 (Dkt. 19), 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.

81. [14-30461](#)-B-13 MARIA FLORES OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON  
11-25-14 [[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 October 22, 2014 (Dkt. 7) is denied.

The court will issue a minute order.

82. [14-30363](#)-B-13 SARITA KUMAR OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-25-14 [[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 dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtor files a motion to confirm the first amended plan filed December 4, 2014 (Dkt. 24) (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). The trustee's motion to dismiss is conditionally denied because the debtor has not filed a motion to confirm the Amended Plan.

The court will issue a minute order.

83. [14-26065](#)-B-13 WILLIAM MARTIN AND MOTION TO VALUE COLLATERAL OF  
DEF-4 MELANIE LAIRD-MARTIN CITY OF JACKSON  
10-28-14 [[59](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of the City of Jackson's claim secured by the second deed of trust on real property located at 1601 Tunnel Hill Drive, Jackson, California 95642 (APN 044-460-025) (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 \$105,000.00 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 \$112,806.52. Thus, the value of the collateral available to the City of Jackson on its second deed of trust is \$0.00.

The court will issue a minute order.

84. [14-26065](#)-B-13 WILLIAM MARTIN AND MOTION TO CONFIRM PLAN  
DEF-3 MELANIE LAIRD-MARTIN 10-28-14 [[51](#)]

**Tentative Ruling:** The trustee's opposition pursuant to 11 U.S.C. § 521(a)(3) is sustained for the reasons set forth therein. The trustee's opposition that the feasibility of the plan depends on the granting of a motion to value collateral for the City of Jackson is overruled. The motion to confirm the amended plan filed October 28, 2014 (Dkt. 53) is denied.

The debtor's motion to value collateral for the City of Jackson was heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment for the City of Jackson's claim. Accordingly, this objection is overruled.

The court will issue a minute order.

85. [14-26065](#)-B-13 WILLIAM MARTIN AND COUNTER MOTION TO DISMISS CASE  
DEF-3 MELANIE LAIRD-MARTIN 12-2-14 [[68](#)]

**Tentative Ruling:** The trustee's countermotion (Dkt. 68) is filed under LBR 9014-1(f)(1)(B). The court issues the following tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

86. [14-29665](#)-B-13 SCOTT BARBER OBJECTION TO CONFIRMATION OF  
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-13-14 [[33](#)]  
  
WITHDRAWN BY M.P.

**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 November 21, 2014 (Dkt. 39).

87. [14-29453](#)-B-13 KAREN SCHWEITZER OBJECTION TO DEBTOR'S CLAIM OF  
JPJ-2 EXEMPTIONS  
11-17-14 [[35](#)]

**Tentative Ruling:** The trustee's objection is overruled.

The trustee objects to the debtor's claims of exemption in certain real and personal property pursuant to California Code of Civil Procedure ("CCP") § 703.140(b) on the grounds that the debtor failed to file a fully executed spousal waiver of right to claim exemptions pursuant to CCP § 703.140(a)(2). However, on November 22, 2014, the debtor filed a Spousal Waiver of Right to Claim Exemptions Pursuant to CCP § 703.140(a)(2) (Dkt. 49) which was signed by both the debtor and her husband. Accordingly, the trustee's objection is overruled.

The court will issue a minute order.



88. [14-29453](#)-B-13 KAREN SCHWEITZER  
JGD-2

OBJECTION TO CERTIFICATION  
11-24-14 [[50](#)]

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

The objection is removed from the calendar. The debtor withdrew the objection on December 12, 2014 (Dkt. 61).

89. [14-29868](#)-B-13 BRIAN GREGORY  
JPJ-2

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-17-14 [[26](#)]

**Tentative Ruling:** The trustee's objection is sustained for the reasons set forth therein. The debtor's claims of exemption in bank accounts with balances of \$1,515.00, household goods valued at \$4,000.00, wearing apparel valued at \$300.00, jewelry valued at \$1,225.00, a bicycle valued at \$1,000.00, two surfboards valued at \$500.00, two RC cars valued at \$720.00, accounts receivables valued at \$6,000.00, possible interest in a class action lawsuit valued at \$5,000.00, interest in a 1999 Chrysler Sebring valued at \$1,200.00, a 1005 Yamaha R6 valued at \$2,500.00, a welder valued at \$3,500.00, snap-on tools valued at \$3,000.00, six fire extinguishers valued at \$100.00, and hitches valued at \$120.00, all claimed as exempt under Cal. Code Civ. P. § 703.140(b) and more fully described on Schedule C (Dkt. 1, pp.14-15) and in the objection, are disallowed.

The court will issue a minute order.

90. [14-29868](#)-B-13 BRIAN GREGORY  
DJC-1

MOTION TO VALUE COLLATERAL OF  
SHEFFIELD FINANCIAL, LLC  
11-13-14 [[21](#)]

**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. \$5,000.00 of Sheffield Financial, LLC's claim secured by a 2012 Big Tex 21AC 51 foot car wedge auto transport trailer (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$5,000.00 on the date of the petition.

The court will issue a minute order.

91. [14-29868](#)-B-13 BRIAN GREGORY  
APN-1

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
10-31-14 [[14](#)]

**Tentative Ruling:** Creditor Wells Fargo Bank, 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 debtor's opposition is overruled. The Creditor's objection that the plan does not provide the Creditor with the present value of its secured claim is sustained. The Creditor's objection that the plan is not feasible when taking into consideration the present value of its claim is sustained. The balance of the Creditor's objection is overruled without prejudice. The Creditor's request for reasonable attorney's fees and costs is denied without prejudice. Confirmation of the plan filed October 1, 2014 (Dkt. 5) (the "Plan") is denied.

According to the court's claims register, the Creditor filed a secured proof of claim, claim number 3, on October 29, 2014 in the amount of \$37,188.29. The valuation of the subject collateral as set forth in the proof of claim is \$42,675.00. The Plan provides for the Creditor's claim in Class 2.B.2 listing the value of the Creditor's interest in its collateral at only \$17,000.00. The court acknowledges that the parties are currently disputing the valuation for the collateral. However, under 11 U.S.C. § 502(a), a filed claim is deemed allowed until an objection is filed. Further, pursuant to § 2.04 of the Plan, the proof of claim, not the plan or the schedules, determines the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim. To date, the debtor has filed neither an objection to the claim nor a motion to value the Creditor's collateral. Accordingly, the Creditor's proof of claim, not the plan or schedules, controls, and the Plan does not provide for the present value of the Creditor's claim.

The Creditor's remaining objections are overruled without prejudice to be raised again in opposition to a possible debtor's motion to value collateral or objection to claim.

The Creditor's request for attorney's fees and costs is denied without prejudice because the Creditor has presented no evidence of what, if any, fees and costs were actually incurred. LBR 9014-1(d)(6).

The court will issue a minute order.

92. [14-29868](#)-B-13 BRIAN GREGORY  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-13-14 [[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 debtor's opposition is sustained in part. The trustee's objection that the feasibility of the plan depends on the granting of a motion to value collateral of Sheffield Financial LLC is overruled. The trustee's remaining objections are sustained for the reasons set forth therein. Confirmation of the plan filed October 1, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The motion to value collateral of Sheffield Financial LLC was heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment for this claim. Accordingly, this objection is overruled.

The court will issue a minute order.

93. [14-30369](#)-B-13 JAMES/MONICA ALEXANDER  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-25-14 [[19](#)]

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

The debtors' opposition is overruled. The trustee's objections are sustained. Confirmation of the plan filed October 19, 2014 (Dkt. 7) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The debtors have provided no evidence, aside from the unsworn assertions in their opposition, that they have provided the trustee with the outstanding documents.

Regarding the plan's proposed treatment for the chapter 13 filing fee, the debtors cannot modify a court order (Dkt. 6) through a plan provision. To accomplish that result, the debtors must seek relief from the order by motion under Fed. R. Bankr. P. 9024, incorporating Fed. R. Civ. P. 60. Obtaining relief from a court order ordinarily requires a showing of mistake, inadvertence, surprise or excusable neglect.

The court notes that, even if the debtors have provided the trustee with the outstanding documents and the filing fee provision in the plan could be deleted in the order confirming plan, the plan is not currently confirmable because it does not properly account for all filed claims to date including, inter alia, the unsecured priority claim filed by the Internal Revenue Service on November 12, 2014.

The court will issue a minute order.

94. [14-30071](#)-B-13 ALICE RANSOM  
MJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
11-21-14 [[34](#)]

**Tentative Ruling:** Creditor Bank of New York Mellon fka the Bank of New York as Trustee for the Certificateholders of CWMBS, Inc. CHL Mortgage Pass-Through Trust 2005-J3, Mortgage Pass-Through Certificates, Series 2005-J3 (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 first objection that the plan fails to provide a reasonable repayment schedule is overruled. The Creditor's remaining objections are sustained for the reasons set forth therein. Confirmation of the plan filed October 8, 2014 (Dkt. 5) is denied. The Creditor's request for attorney's fees and costs is denied.

The Creditor's assertion that the plan fails to propose a reasonable repayment schedule simply in light of the debtor's history of non-payment, without more, is insufficient.

The Creditor cites to no authority in support of an award of attorney's fees and costs in this instance. LBR 9014-1(d)(5).

The court will issue a minute order.

95. [14-30071](#)-B-13 ALICE RANSOM  
PPR-1

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
11-20-14 [[29](#)]

**Tentative Ruling:** Creditor Bank of New York Mellon fka the Bank of New York, as Trustee for the Benefit of the Certificateholders of the CWHEQ Inc., Home Equity Loan Asset-Backed Certificates, Series 2006-S3 (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 October 8, 2014 (Dkt. 5) is denied. The Creditor's request for attorney's fees and costs is denied.

The Creditor cites to no authority in support of an award of attorney's fees and costs in this instance. LBR 9014-1(d)(5).

The court will issue a minute order.

96. [14-30072](#)-B-13 STARR SHINE  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-20-14 [[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 October 8, 2014 (Dkt. 7) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The debtor cannot modify a court order (Dkt. 6) through a plan provision. To accomplish that result, the debtor must seek relief from the order by motion under Fed. R. Bankr. P. 9024, incorporating Fed. R. Civ. P. 60. Obtaining relief from a court order ordinarily requires a showing of mistake, inadvertence, surprise or excusable neglect.

The court will issue a minute order.

97. [13-20173](#)-B-13 MALAYKONE SAKULSINGHDUSIT MOTION TO MODIFY PLAN  
JLK-1 10-31-14 [[39](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed October 31, 2014 (Dkt. 43) is denied.

The court will issue a minute order.

98. [12-32174](#)-B-13 SANDRA HOLLIS MOTION TO MODIFY PLAN  
WW-2 11-4-14 [[35](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed November 4, 2014 (Dkt. 37) is denied.

The court will issue a minute order.

99. [14-22576](#)-B-13 RICK MCGLUMPHY OBJECTION TO CLAIM OF CREDIT  
JPJ-2 MANAGEMENT LP, CLAIM NUMBER 1-1  
10-29-14 [[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 1-1, filed on March 21, 2014, by Credit Management, LP (the "Creditor") in the amount of \$296.08 (the "Claim"), is disallowed in its entirety.

The trustee questions the validity and nature of the Claim. 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).

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 a cable services account held by the debtor. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account, an account stated based upon an account in writing, and a balance due upon a mutual, open and current account is four (4) years. In this case, the account summary attached to the Claim shows that the date of the last payment on the account was January 24, 2008. Therefore, the trustee has provided sufficient evidence that the Creditor's cause of action on its Claim began to accrue on January 24, 2008, more than four years before the

debtor commenced his chapter 13 bankruptcy on March 14, 2014. By failing to respond to the objection, the Creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in its entirety.

The court will issue a minute order.

100. [13-31277](#)-B-13 MICHAEL/PAULA RHOADES MOTION TO MODIFY PLAN  
PLC-5 11-6-14 [[117](#)]

**Tentative Ruling:** The trustee's opposition is sustained. Creditor Previti Family Holdings, LLC's opposition is sustained. The motion to confirm the modified plan filed November 6, 2014 (Dkt. 120) is denied.

The court will issue a minute order.

101. [13-31277](#)-B-13 MICHAEL/PAULA RHOADES MOTION TO DISMISS FOR FAILURE  
[14-2256](#) MHK-1 TO STATE A CLAIM UPON WHICH  
RHOADES ET AL V. GUARDIAN HOME RELIEF CAN BE GRANTED AND FOR A  
BROKERS, INC. ET AL MORE DEFINITE STATEMENT  
10-31-14 [[9](#)]

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

This matter is continued to January 20, 2015, at 9:32 a.m.

This matter was improperly calendared by the movant on this Chapter 13 Calendar. Although the parent case is a chapter 13 case, this motion relates to an underlying adversary proceeding and must therefore be heard on one of the court's regularly scheduled Law and Motion Calendars. Accordingly, the matter is continued to January 20, 2015, at 9:32 a.m.

The court will issue a minute order.

102. [13-31277](#)-B-13 MICHAEL/PAULA RHOADES MOTION TO SEVER AND STAY  
[14-2256](#) MHK-2 PLAINTIFFS' FIRST AND SECOND  
RHOADES ET AL V. GUARDIAN HOME CLAIMS FOR RELIEF, TO SEVER  
BROKERS, INC. ET AL PLAINTIFFS' THIRD CLAIM FOR  
RELIEF, AND TO SEVER, GRANT  
RELIEF FROM STAY AND COMPEL  
CONTRACTUAL BINDING ARBITRATION  
ON REMAINING CLAIMS  
10-31-14 [[12](#)]

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

This matter is continued to January 20, 2015, at 9:32 a.m.

This matter was improperly calendared by the movant on this Chapter 13 Calendar. Although the parent case is a chapter 13 case, this motion relates to an underlying adversary proceeding and must therefore be heard on one of the court's regularly scheduled Law and Motion Calendars. Accordingly, the matter is continued to January 20, 2015, at 9:32 a.m.

The court will issue a minute order.

103. [14-25477](#)-B-13 TERRI BANKS  
PLC-5

MOTION TO CONFIRM PLAN  
10-27-14 [[57](#)]

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

The motion is granted, and the amended plan filed October 27, 2014 (Dkt. 59), will be confirmed.

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

104. [14-29780](#)-B-13 CALVIN/SHARON BUFFO  
BB-1

MOTION TO VALUE COLLATERAL OF  
CITIBANK, N.A.  
11-10-14 [[19](#)]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Citibank, N.A.'s claim secured by the second deed of trust on real property located at 30564 Figaro Drive, Shingletown, California 96088 (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 \$171,500.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage with a balance of approximately \$187,258.00. Thus, the value of the collateral available to Citibank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.



105. [14-29780](#)-B-13 CALVIN/SHARON BUFFO  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-20-14 [[25](#)]

**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 first objection pursuant to 11 U.S.C. § 521(a)(3) is overruled. The trustee's remaining objections are sustained for the reasons set forth therein. Confirmation of the plan filed October 10, 2014 (Dkt. 10) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

On December 8, 2014, the debtors filed a fully completed amended Schedule B (Dkt. 28) to resolve the objection that the trustee raised under 11 U.S.C. § 521(a)(3).

The court will issue a minute order.

106. [14-30481](#)-B-13 TERRY/MARLYS ARNOLD  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-25-14 [[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 dismissed. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a motion to confirm the first amended plan filed October 28, 2014 (Dkt. 9) (the "Amended Plan") and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the Amended 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 objections are moot. The Amended Plan supersedes the plan to which the trustee's objections are directed. 11 U.S.C. § 1323(b). The trustee's motion to dismiss is conditionally denied because the debtors have not filed a motion to confirm the Amended Plan.

The court will issue a minute order.

107. [13-27583](#)-B-13 ANDREW LUU  
SLE-1

MOTION TO MODIFY PLAN  
10-29-14 [[79](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed October 29, 2014 (Dkt. 82) is denied.

The court will issue a minute order.

108. [14-29884](#)-B-13 RICARDO/EMILY ORDORICA  
JME-1

MOTION TO VALUE COLLATERAL OF  
REAL TIME RESOLUTIONS, INC.  
11-18-14 [[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 Bank of America, N.A. (serviced by Real Time Resolutions, Inc.) (the "Creditor")'s claim secured by the second deed of trust on real property located at 5716 Laurine Way, Sacramento, California 95824 (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 \$92,500.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Green Tree Servicing with a balance of approximately \$104,997.87. Thus, the value of the collateral available to the Creditor on its second deed of trust is \$0.00.

The court will issue a minute order.

109. [14-29884](#)-B-13 RICARDO/EMILY ORDORICA  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-19-14 [[23](#)]

**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 that the feasibility of the plan depends on the granting of a motion to value collateral for Real Time Resolutions is overruled. The trustee's remaining objections are sustained for the reasons set forth therein. Confirmation of the plan filed October 7, 2014 (Dkt. 10) is denied. The trustee's motion to dismiss is

conditionally denied, the conditions being that on or before December 30, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The debtors' motion to value collateral for Bank of America, N.A./Real Time Resolutions, Inc. was heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment for that claim. Accordingly, this objection is overruled.

The court will issue a minute order.

110. [14-27386](#)-B-13 DOUGLAS WADLEY MOTION TO CONFIRM PLAN  
JMC-1 10-14-14 [[38](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the plan filed October 10, 2014 (Dkt. 37) is denied.

The court will issue a minute order.

111. [09-42691](#)-B-13 SHAWN/HEATHER KINNEY MOTION FOR ENTRY OF DISCHARGE  
RLC-1 11-2-14 [[48](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The debtors' motion for entry of discharge is denied.

By this motion, the debtors seek entry of discharge prior to a court determination that the case has been fully administered. More specifically, the debtors seek entry of discharge prior to the period by which parties-in-interest have an opportunity to file an objection to the trustee's Final Report and Account. The debtors claim that such action is warranted in this instance because they are seeking to refinance their home to take advantage of current interest rates and the entry of discharge is one of the requirements for them to close on their new loan. They believe that the failure to enter their discharge early will put their current refinance at risk.

The court finds that the debtors have failed to establish entitlement to an early entry of discharge. The court is persuaded that In re Avery, 272 B.R. 718 (Bankr. E.D. Cal. 2002) is the applicable authority on this issue. Avery acknowledges the relationship between the entry of a chapter 13 discharge and the approval of the trustee's final account and report. It further acknowledges that there can sometimes be a significant lag between the date of the debtor's last payment and the entry of the his/her discharge, which can exceed ninety days in some instances. This may prompt the debtor, as has occurred in the instant case, to seek entry of an earlier discharge in light of 11 U.S.C. § 1328(a)'s directive that a discharge be entered as soon as practicable

after the completion of plan payments. In relevant part, Avery addresses this issue:

The trustee must mail the final report and notice 33 days before the deadline for filing objections. Fed. R. Bankr.P. 9006(f). The trustee shall set any objections for hearing in accordance with Local Bankruptcy Rule 9014-1. If no one files an objection, or after the court overrules any objection, the court will approve the final report and then issue the debtor's discharge.

...

*In appropriate circumstances*, the court will entertain a motion by either the debtor or the trustee requesting the entry of a discharge prior to the approval of the final report. The motion must be served on all parties in interest and set for hearing pursuant to Local Bankruptcy Rule 9014-1. *If the approval of the final report will be unduly delayed and the debtor has a legitimate need for the early entry of a discharge*, and provided the motion also demonstrates that the debtor has made all plan payments and that all claims have been paid in accordance with the plan, the court may enter the discharge in advance of the final report's approval.

This is not an invitation to file such a motion in every case. Rather, the court expects that the trustee's customary efficiency will make a motion unnecessary in all but a few cases.

In re Avery, 272 B.R. 718, 731 (Bankr. E.D. Cal. 2002) (emphasis added).

The issue of early entry of discharge presents a two-part inquiry. In this case, the court finds that the debtors have failed to satisfy this test. First, the court notes that the debtors' alleged need for entry of discharge in order to take advantage of a favorable interest rate in refinancing their home is based on conjecture about the direction and timing of potential interest rate changes. No persuasive evidence is presented to support the debtors' implicit conclusion that interest rates will rise so fast and so high that their ability to refinance will be jeopardized. Thus, there is no showing of a "legitimate need" as contemplated by Avery.

Second, the debtors have provided no evidence that the filing of the trustee's Final Report and Account will be unduly delayed in this case. In fact, they state in their attached declaration (Dkt. 49) that the delay in processing their discharge in this case will be "normal." Furthermore, the trustee has stated nothing in his opposition to suggest that he will be unduly delayed in filing his Final Report and Account.

The debtors' reply is unavailing for the following reasons. To start, the court disagrees with In re Green, 321 B.R. 725 (Bankr. D. Nevada 2005), and it does not constitute binding authority on this court. The debtors' citation to In re Estrada, 322 B.R. 149 (Bankr. E.D. Cal. 2005) merits further discussion. In Estrada, the debtors completed all their plan payments. However, due to a miscalculation on the part of the trustee, there was a slight overpayment to general unsecured creditors. The court found that before the trustee could file his final report and account, he had to recover the funds that were erroneously paid to creditors and refund it to the debtors. The court allowed for entry of the debtors' discharge on the grounds that the debtors had demonstrated

that all plan payments had been made and that the trustee's final report and account would be unduly delayed while the trustee took action to correct the trustee's error. This finding is not inconsistent with Avery. In fact, Estrada expressly relies on Avery in coming to this conclusion. As set forth in Avery, an entry of discharge prior to approval of a final report and account may occur in "appropriate circumstances." In Estrada, those "appropriate circumstances" were present because the debtors had made the required plan payments and creditors were overpaid due to an error on the part of the trustee. There was no reason to delay entry of discharge when an undue delay was caused by the error of the trustee. In this case, the court acknowledges the debtors' argument that the requirement that a trustee's final report and account be filed prior to the entry of their discharge is not absolute. Avery does not say that the requirement is absolute. It specifically states that the requirement may be circumvented in appropriate circumstances. Estrada adopts this view. In this case, the debtors have simply failed to show "appropriate circumstances" to merit an early entry of discharge because they have failed to establish a legitimate need and have not shown that there will be an undue delay in the filing of the trustee's Final Report and Account.

The court will issue a minute order.

112. [09-42691](#)-B-13 SHAWN/HEATHER KINNEY  
RLC-2

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF REYNOLDS LAW  
CORPORATION FOR STEPHEN M.  
REYNOLDS, DEBTORS' ATTORNEY  
10-30-14 [[42](#)]

**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 in the total amount of \$1,800.00 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 October 20, 2009, the debtors commenced the above-captioned case by filing a voluntary petition under chapter 13 (Dkt. 1). The debtors' former counsel, Piotr G. Reysner ("Mr. Reysner") opted into the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The order confirming plan filed January 21, 2010 (Dkt. 22) disclosed that Mr. Reysner was paid \$1,726.00 in fees prior to the filing of the petition and that \$1,774.00 would be paid by the chapter 13 trustee through the confirmed plan.

In June 2012, Mr. Reysner was disbarred and no longer eligible to represent the debtors in this case. The debtors retained the applicant to continue representing them. The applicant has opted out of the Guidelines since he has failed to file an executed copy of Form EDC 3-096, *Rights and Responsibility of Chapter 13 Debtors and Their Attorneys*.

LBR 2016-1(a).

The applicant now seeks first and final compensation for services rendered and costs incurred since he was retained by the debtors in June 2012. 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.

113. [14-21592](#)-B-13 NHU HUYNH AND MY LE  
JPJ-1

OBJECTION TO CLAIM OF AMERICAN  
INFOSOURCE, LP, CLAIM NUMBER 4  
10-29-14 [[36](#)]

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

The trustee's objection is sustained, and claim number 4-1, filed on March 3, 2014, by American InfoSource, LP, as agent for Midland Funding, LLC (the "Creditor") in the amount of \$330.60 (the "Claim"), is disallowed in its entirety.

The trustee questions the validity and nature of the Claim. 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).

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 related to a revolving credit/services account held by the debtors. Pursuant to California Code of Civil Procedure ("CCP") § 337, the statute of limitations on an action to recover upon a book account, an account stated based upon an account in writing, and a balance due upon a mutual, open and current account is four (4) years. In this case, the account summary attached to the Claim shows that the last payment date was May 1, 2009. Therefore, the trustee has provided sufficient evidence that the Creditor's cause of action on its Claim began to accrue on May 1, 2009, more than four years before the debtors commenced their chapter 13 bankruptcy on February 20, 2014. By failing to respond to the objection, the Creditor has failed to carry its burden. Accordingly, the objection is sustained and the Claim is disallowed in its entirety.

The court acknowledges that the Creditor filed a notice of withdrawal of the Claim on December 1, 2014. However, the Creditor cannot unilaterally withdraw the Claim after an objection is filed except after a hearing and notice to the trustee. Fed. R. Bankr. P. 3006.

The court will issue a minute order.

114. [14-28594](#)-B-13 BROOKE PHAYER  
JPJ-2

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-3-14 [[34](#)]

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

The trustee's objection is sustained for the reason set forth therein. The debtor's claims of exemption on Schedule C (Dkt. 14, p.7) are disallowed.

The court will issue a minute order.

115. [14-27895](#)-B-13 JACOB LARSON  
JLB-1

MOTION FOR APPROVAL OF  
STIPULATION TO ALLOW CREDITOR  
MATHIAS REED TO PROCEED IN  
STATE COURT  
10-22-14 [[35](#)]

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

The motion is granted in part, and the stipulation filed as Exhibit "A" to the motion (Dkt. 35, pp.3-5) (the "Stipulation") is approved and binding between the parties thereto. Subject to the provisions set forth in the Stipulation, the automatic stay is modified as against the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) in order to permit creditor Mathias Reed to proceed in the state court civil action entitled Reed v. Larson, case number PC20110297. The 14-day period specified in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Except as so ordered, the motion is denied.

The court will issue a minute order.

116. [14-31496](#)-B-13 PAUL/DAWN ALEGRE  
MOH-1

MOTION TO VALUE COLLATERAL OF  
GOLDEN 1 CREDIT UNION  
11-28-14 [[10](#)]

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

117. [12-36999](#)-B-7 VIVIAN LILY  
[12-2717](#) DRO-2  
OLICK V. LILY

MOTION TO COMPEL  
11-15-14 [[94](#)]

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

This matter is continued to January 20, 2015, at 9:32 a.m.

This matter was improperly calendared by the movant on this Chapter 13 Calendar. This motion relates to an adversary proceeding and must therefore be heard on one of the court's regularly scheduled Law and Motion Calendars. Accordingly, the matter is continued to January 20, 2015, at 9:32 a.m.

The court will issue a minute order.