

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS**

**DAY: TUESDAY**

**DATE: September 18, 2018**

**CALENDAR: 1:00 P.M. CHAPTER 13**

**PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION  
PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**September 18, 2018 at 1:00 p.m.**

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1. [18-25111](#)-B-13 ROBIN BASINGER MOTION TO VALUE COLLATERAL OF  
[MRL](#)-1 Mikalah R. Liviakis IRS  
8-24-18 [[10](#)]

**Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to value the secured claim of Internal Revenue Service at \$4,199.00.

Debtor's motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Creditor has a tax lien on Debtor's personal property and real property.

Debtor's personal property consists of cash on hand, checking and savings accounts, household goods and furnishings, miscellaneous jewelry, 2002 Saab 93, and business assets, all of which Debtor values at \$4,199.00 ("Personal Property").

Additionally, Debtor has joint ownership in real property located at 8182 Rose Vine Lane, Fair Oaks, California ("Real Property"). Debtor values the Real Property at \$275,000.00. Ditech has a first position secured lien initiated in October 2007 on the Real Property in the amount of approximately \$235,804.00. Bank of America has a second position secured lien initiated in October 2007 on the property in the amount of \$57,318. The IRS tax lien was recorded in 2015. Therefore, there is no equity remaining in the Real Property for IRS lien to attach to.

As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Internal Revenue Service is the claim which may be the subject of the present motion.

**Discussion**

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and

**September 18, 2018 at 1:00 p.m.**

**Page 1 of 23**

boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the financing agreement with the Internal Revenue Service is \$65,798.63 as stated in Claim No. 1-1. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$4,199.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$4,199.00. See 11 U.S.C. § 506(a).

The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

3. [18-23816](#)-B-13 LISA SLEDGE CONTINUED OBJECTION TO  
[APN-1](#) Mary Ellen Terranella CONFIRMATION OF PLAN BY WELLS  
**Thru #5** FARGO BANK, N.A.  
8-9-18 [[34](#)]

**Tentative Ruling**

This matter was continued from September 4, 2018, to be heard in conjunction with Debtor's motion to value collateral of Wells Fargo Dealer Services. The objection and motion were originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection as to the valuation of collateral, monthly payments and interest rate, and sustain the objection as to acknowledging Wells Fargo Dealer Services has a purchase money security interest. The plan is confirmed provided that Wells Fargo Dealer Services' interest in its collateral is valued at \$3,733.24. See Item #5, dkt. 27, MET-2.

The plan filed June 23, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

4. [18-23816](#)-B-13 LISA SLEDGE CONTINUED OBJECTION TO  
[JPJ-1](#) Mary Ellen Terranella CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
8-8-18 [[31](#)]

**Tentative Ruling**

This matter was continued from September 4, 2018, to be heard in conjunction with Debtor's motion to value collateral of Wells Fargo Dealer Services. The objection and motion were originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan provided that Wells Fargo Dealer Services' interest in its collateral is valued at \$3,733.24. See Item #5, dkt. 27, MET-2.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed June 23, 2018, is confirmed.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

5. [18-23816](#)-B-13 LISA SLEDGE CONTINUED MOTION TO VALUE  
[MET-2](#) Mary Ellen Terranella COLLATERAL OF WELLS FARGO  
DEALER SERVICES  
7-31-18 [[27](#)]

### **Tentative Ruling**

This matter was continued from August 14, 2018, to provide creditor Wells Fargo Dealer Services an opportunity to appraise Debtor's vehicle.

The court's decision is to value the secured claim of Wells Fargo Dealer Services at \$3,733.24.

Debtor's motion to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Nissan Titan Crew CAB XE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Opposition by Creditor**

The Declaration of Adam Zacher, employee of Auto Inspection Service, an appraisal service company, states that the price a retail merchant would charge for the Vehicle is \$6,496.33. This valuation is based on an inspection of the interior of the Vehicle, including upholstery, electronic gages, and dashboard assembly, and an exterior inspection including the condition of the paint and tires. The valuation also concluded that the Vehicle was of sound mechanical condition since no mechanical failures were brought to light by the registered owner of the Vehicle.

### **Response by Debtor**

The Declaration of Lisa Sledge asserts that the inspection by Mr. Zacher did not take into account any mechanical issues and that he did not look under the hood to observe any issues that could have existed.

Debtor's fiancée personally took the Vehicle to Nissan of Vacaville for an oil change on August 18, 2018, prior to Mr. Zacher's inspection on August 23, 2018, and the service department provided a detailed list of necessary repairs. This list included V8 spark plug service, cooling service, transmission service, rear differential service, drive belt repair, left and right tie rod ends, brake fluid exchange service, and rear brakes and rotors replacement. The total repair cost for mechanical issues is \$2,763.09.

The court is persuaded that the mechanical repairs should be deducted from Mr. Zacher's valuation. This would reduce the Vehicle's value to \$3,733.24.

### **Proof of Claim Filed**

It appears that Claim No. 3-1 filed by Wells Fargo Dealer Services is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on April 30, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,373.07 according to Claim No. 3-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,733.24. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

**COUNSEL FOR DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7)**

**DAYS.**

6. [18-24222](#)-B-13 ATTLA MESKO CONTINUED OBJECTION TO  
[JPJ](#)-1 Timothy J. Walsh CONFIRMATION OF PLAN BY TRUSTEE  
JAN P. JOHNSON AND/OR MOTION TO  
DISMISS CASE  
8-14-18 [[17](#)]

**Final**

CONTINUED TO 9/25/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 9/20/18.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

7. [18-23925](#)-B-13 VISHAL/SANGEET LAROYIA MOTION FOR RELIEF FROM  
[JHW-1](#) Mohammad M. Mokarram AUTOMATIC STAY  
8-13-18 [[14](#)]

DAIMLER TRUST VS.

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

Daimler Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Mercedes Benz GLS450 (the "Vehicle"). The Vehicle is leased property with monthly payments of \$1,299.49. The moving party has provided the Declaration of Amy Wetch to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Wetch Declaration states that Debtor has not made 2 post-petition payments, with a total of \$2,598.98 in post-petition payments past due. The Declaration also states that there is 1 pre-petition payments in default of \$1,299.49.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Since this Vehicle is a lease, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization.

The court shall issue an order terminating and vacating the automatic stay to allow Daimler Trust, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

**COUNSEL FOR CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**



8. [15-28829](#)-B-13 WAGMA SAFI CONTINUED MOTION TO INCUR DEBT  
[MLA](#)-10 Mitchell L. Abdallah 8-21-18 [[195](#)]  
**Thru #9**

**Tentative Ruling**

This matter was heard on September 4, 2018, and continued to September 18, 2018, at 1:00 p.m., at which time the Debtor must be current on plan payments.

The motion was originally brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to permit the loan modification requested, provided the Debtor is current at the time of the hearing and the proposed increase in plan payments at Item #9 (Docket 187) funds the plan and cures existing arrears by month 60.

Debtor seeks court approval to incur post-petition credit. Caliber Home Loans ("Creditor") has agreed to a loan modification that will reduce Debtor's mortgage payment from the \$1,565.45 a month, as stated in Class 1 of the plan filed December 11, 2015, and confirmed on February 23, 2016, to \$1,420.10 a month. The modification is filed as exh. A, dkt. 198.

The motion is supported by the Declaration of Wagma Safi. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

9. [15-28829](#)-B-13 WAGMA SAFI MOTION TO MODIFY PLAN  
[MLA](#)-9 Mitchell L. Abdallah 8-7-18 [[187](#)]

**No Ruling**

10. [18-22029](#)-B-13 GARY VALDEZ  
[18-2106](#)  
APPLE CREEK APARTMENTS  
CALIFORNIA, LLC V. VALDEZ  
**Thru #11**

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
6-27-18 [[7](#)]

11. [18-22029](#)-B-13 GARY VALDEZ  
[18-2106](#) GEL-1  
APPLE CREEK APARTMENTS  
CALIFORNIA, LLC V. VALDEZ

MOTION TO DISMISS ADVERSARY  
PROCEEDING  
8-13-18 [[14](#)]

**No Ruling**

12. [18-23936](#)-B-13 LYUDMILA POKATILOV  
[JPJ](#)-1 Harry D. Roth

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON  
8-8-18 [[18](#)]

### **Tentative Ruling**

The objection was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, most of the real property listed on Schedule A/B is not property of the estate in this Chapter 13 because they are already part of the estate in a previously filed Chapter 7 case in Debtor's ex-husband's name. See *In Heath v. Farmer*, 2007 WL 7532278, at \*4 n.9 (9th Cir. BAP 2007). Therefore, the real property may not be included in the plan as being paid through Class 1 and 2.

Second, the Debtor has not amended Schedule I to include contributions made by her boyfriend toward household expenses. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the plan cannot be effectively administered because the terms for payment of the Debtor's attorney's fees and other administrative expenses are unclear. Section 3.06 of the plan specifies a monthly payment of \$0.00 for administrative expenses. IT is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and any other administrative expenses through a plan with a monthly payment specified at \$0.00.

Fourth, the Debtor failed to file a Notice of Related Case as required by Local Bankr. R. 1015-1(a). The Debtor's ex-husband Aleksander N. Pokotilov filed a Chapter 7 case on July 20, 2016, case no. 16-24744. The Debtor has not complied with 11 U.S.C. § 1325(a)(1).

The Trustee's objection as to Debtor's failure to file her 2015 tax returns pursuant to 11 U.S.C. § 1308 appears to be resolved. Debtor states that she filed both her 2015 federal and state tax returns.

Nonetheless, the plan filed June 22, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

13. [16-22152](#)-B-13 THOMAS/DENISE RAHMING  
[JHW](#)-1 Eamonn Foster

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-9-18 [[145](#)]

SANTANDER CONSUMER USA, INC.  
VS.  
DEBTORS DISMISSED:  
08/08/2018

**Final**

The case having been dismissed on August 8, 2018, the motion for relief from automatic stay is dismissed as moot.

**THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.**

14. [18-24153](#)-B-13 GERALDINE BAUGHMAN CONTINUED OBJECTION TO  
[APN-1](#) Michael O'Dowd Hays CONFIRMATION OF PLAN BY GLOBAL  
**Thru #15** LENDING SERVICES, LLC  
7-27-18 [[18](#)]

**Tentative Ruling**

The objection was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection as to providing the entire amount of the debt on the motor vehicle and acknowledging that Global Lending Services, LLC has a purchase money security interest, but overrule the objection as to monthly payments and interest rate. The plan filed July 11, 2018, is not confirmed.

Feasibility of the plan depends on the granting of a motion to value collateral of Global Lending Services, LLC for a 2018 Hyundai Elantra. However, the purchase money loan was incurred on November 27, 2017, which is less than 910 days prior to the filing of the petition. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value.

The plan filed July 11, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**COUNSEL FOR CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

15. [18-24153](#)-B-13 GERALDINE BAUGHMAN CONTINUED OBJECTION TO  
[JPJ-1](#) Michael O'Dowd Hays CONFIRMATION OF PLAN BY JAN P.  
JOHNSON  
8-16-18 [[23](#)]

**Tentative Ruling**

The objection was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection as moot and deny confirmation of the plan for reasons stated at Item #14, dkt. 18, APN-1.

The plan filed July 11, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

16. [18-23165](#)-B-13 AREN JACKSON  
[SLE](#)-1 Steele Lanphier

MOTION TO CONFIRM PLAN  
8-13-18 [[25](#)]

**No Ruling**

17. [17-27971](#)-B-13 MO TEYMOURI OBJECTION TO CLAIM OF MAHSA  
GW-2 Gerald L. White TEYMOURI, CLAIM NUMBER 6  
**Thru #18** 8-1-18 [[30](#)]  
**No Ruling**

18. [17-27971](#)-B-13 MO TEYMOURI OBJECTION TO CLAIM OF MAHSA  
GW-3 Gerald L. White TEYMOURI, CLAIM NUMBER 5  
8-1-18 [[35](#)]  
**No Ruling**

19. [18-20871](#)-B-13 VICTORIA RUGG  
[DBJ](#)-4 Douglas B. Jacobs

MOTION TO EXTEND TIME  
8-14-18 [[45](#)]

**Tentative Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to extend time as moot. The court entered an order on August 16, 2018, granting Debtor's ex parte request to extend time to file an amended plan. Dkt. 58.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**



20. [18-23983](#)-B-13 SHARON LOCKETT  
[JPJ](#)-1 Richard L. Jare

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
8-8-18 [[30](#)]

**Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtor failed to file an amendment to correct the amount of attorney's fees paid through the plan. The Debtor has not complied with 11 U.S.C. § 1325(a)(1), (a)(3), and § 521(a)(3).

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed June 26, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

21. [18-23886](#)-B-13 MARILYN WALKER  
[JPJ](#)-1 Bruce Charles Dwigins

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON  
8-16-18 [[15](#)]

**No Ruling**

22. [18-23887](#)-B-13 TIMOTHY NEHER CONTINUED OBJECTION TO  
[JPJ-1](#) Pro Se CONFIRMATION OF PLAN BY JAN P.  
**Thru #29** JOHNSON  
8-16-18 [[61](#)]

**No Ruling**

23. [18-23887](#)-B-13 TIMOTHY NEHER OBJECTION TO DEBTOR'S CLAIM OF  
[JPJ-2](#) Pro Se EXEMPTIONS  
8-15-18 [[58](#)]

**Final Ruling**

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to overrule the objection and the exemption is allowed.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a) (2). California Code of Civil Procedure §703.140(a) (2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver was filed on September 10, 2018. The Trustee's objection is overruled and the claimed exemption is allowed.

**THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.**

24. [18-23887](#)-B-13 TIMOTHY NEHER MOTION TO DETERMINE SECURED  
[TLN](#)-10 Pro Se STATUS OF CLAIM #23 AND/OR  
MOTION TO AVOID LIEN OF MARC  
NOBLE  
9-4-18 [[86](#)]

**No Ruling**

25. [18-23887](#)-B-13 TIMOTHY NEHER MOTION TO CONFIRM PLAN  
[TLN](#)-5 Pro Se 8-14-18 [[55](#)]

**No Ruling**

26. [18-23887](#)-B-13 TIMOTHY NEHER MOTION TO VALUE COLLATERAL OF  
[TLN](#)-6 Pro Se SAFE CREDIT UNION  
8-21-18 [[76](#)]

**Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to deny the motion to value collateral of Safe Credit Union.

Debtor's motion to value the secured claim of Safe Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Ford F250 ("Vehicle"). The Debtor seeks to value the Vehicle at a private party value of \$11,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, the court finds issue with the Debtor's valuation. The motion states that the value is \$11,500.00 and in support of this valuation are two separate Kelley Blue Book exhibits for the Vehicle in Good Condition and Fair Condition. However, the valuations provided are "private party" values. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. *See 11 U.S.C. § 506(a)*].

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See 11 U.S.C. § 506(a)(2)*.

The Debtor has not persuaded the court regarding his position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a)

is denied without prejudice.

**THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.**

27. [18-23887](#)-B-13 TIMOTHY NEHER MOTION TO VALUE COLLATERAL OF  
[TLN](#)-7 Pro Se SIERRA CENTRAL CREDIT UNION  
8-21-18 [[72](#)]

**Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Sierra Central Credit Union at \$13,000.00 based on the stipulation entered into between Debtor and Sierra Central Credit Union in the prior Chapter 13, case no. 17-23129, dkt. 280.

The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

**THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.**

28. [18-23887](#)-B-13 TIMOTHY NEHER MOTION TO VALUE COLLATERAL OF  
[TLN](#)-8 Pro Se LENDINGHOME FUNDING CORPORATION  
8-21-18 [[68](#)]

**No Ruling**

29. [18-23887](#)-B-13 TIMOTHY NEHER MOTION TO VALUE COLLATERAL OF  
[TLN](#)-9 Pro Se LES SCHWAB TIRE CENTERS OF  
CALIFORNIA, INC.  
8-21-18 [[64](#)]

**No Ruling**

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.**

31. [18-25595](#)-B-13 STEVEN/SHARON COLLINS  
[PGM](#)-1 Peter G. Macaluso

MOTION TO IMPOSE AUTOMATIC STAY  
O.S.T.  
9-5-18 [[10](#)]

**No Ruling**

**Tentative Ruling**

This matter was continued from September 11, 2018, to allow Debtors to resolve the issues raised by the Trustee.

The motion was originally set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

The motion seeks permission to purchase real property as a primary residence commonly known as 4444 Dolores Drive, Woodland, California. Debtors state that they have been pre-approved for a loan amount of \$435,000.00. The mortgage loan is a 30-year fixed rate loan with interest at 4.875% and monthly payments of \$2,950.00.

Chapter 13 Trustee Jan Johnson opposes the motion on grounds that the Debtors have failed to file amended Schedules I and J or other evidence of their ability to pay the new mortgage amount in addition to the monthly plan payments of \$1,455.00 through February 2019 and then \$1,705.00 from March 2019 through the remaining duration of the plan. According to Debtors' Schedule J filed March 31, 2015, their monthly expense for rent was \$1,875.00. The new mortgage payment of \$2,950.00 is \$1,075.00 higher than their previous rent expense. Debtors' motion states only that they are employed with the same companies but gives no indication of any increase in income, and the Debtors state they will adjust their expenses without specifying which expenses will be adjusted and the amount of those adjustments.

At the September 11, 2018, hearing, Debtors' attorney stated on the record in open court that he provided the Trustee with documentation showing that Debtors' rent has substantially increased and that he is awaiting Debtors' wet signatures to file amended schedules. The Trustee and Debtors agreed to a one week continuance of the matter in order for Debtors to file amended schedules.

The matter will be determined at the scheduled hearing.