UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 24, 2017 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

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1. 17-25011-D-13 AP-1 — RUSSELL STEWART — OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUN SOCIETY, FSB 9-27-17 [34]

Final ruling:

This case was dismissed on September 28, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

2. 17-25011-D-13 RDG-2 — RUSSELL STEWART — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-17 [28]

Final ruling:

This case was dismissed on September 28, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

3. 17-21913-D-13 AOE-7 — ROBERT/JENNIFER WILLIAMS — MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON AND CALHFA 9-13-17 [75]

Final ruling:

This is the debtors' motion to value the collateral of the Bank of New York Mellon (the "Bank") and CalHFA Mortgage Assistance Corporation ("CalHFA"); namely, a second and a third deed of trust, respectively, against the debtors' residence. The motion will be denied for the following reasons: (1) the moving parties failed to serve CalHFA at all; (2) the notice of hearing states that if you oppose the motion, you must file written opposition at least 14 days before the hearing date, but it does not include the cautionary language required by LBR 9014-1(d)(3(B)(ii) (counsel is aware of this rule, as he included the required language in the notice of hearing on the debtors' motion to confirm a second amended plan); (3) the proof of service of the amended notice of hearing was filed ten days after the amended notice was filed, in violation of LBR 9014-1(e)(2); (4) the various proofs of service do not include the docket control number, as required by LBR 9014-1(e)(3); and (5) the proofs of service are not signed under oath, as required by 28 U.S.C. § 1746.

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

4. 17-21913-D-13 AOE-8 — ROBERT/JENNIFER WILLIAMS — MOTION TO CONFIRM PLAN 9-13-17 [80]

Final ruling:

This is the debtors' motion to confirm a second amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties utilized an outdated PACER matrix, and therefore, failed to serve the creditor holding by far the largest claim in the case ($630,871) at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g); (2) the moving parties failed to serve CalHFA Mortgage Assistance Corporation, added to their Schedule D by amendment filed July 25, 2017, at all; (3) the moving parties gave only 39 days' notice of the hearing rather than 42 days', as required by LBR 3015-1(d)(1) and the rules cited therein; (4) the proof of service of the amended notice of hearing was filed ten days after the amended notice was filed, in violation of LBR 9014-1(e)(2); (5) the various proofs of service do not include the docket control number, as required by LBR 9014-1(e)(3); (6) the proofs of service are not signed under oath, as required by 28 U.S.C. § 1746; and (7) the proof of service of the plan evidences service of an "Amended Plan," whereas there have been two different amended plans filed in the case. There is no evidence of service of the second amended plan which is the subject of the motion.

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

5. 17-25915-D-13 JCK-1 — CLAYTON/NANCY RAPOZA — MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE 9-8-17 [8]

Tentative ruling:

This is the debtors' motion to value collateral of Capital One Auto Finance, a 2012 Ford Focus, at $10,000. The motion will be denied because moving parties have not demonstrated they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). The record in this case demonstrates the debtors incurred the debt within 910 days prior to filing their petition; namely, in September of 2015, approximately 730 days prior. Although the debtors do not address this issue in the motion or their supporting declaration, they have acknowledged in their Schedule D the account was "opened 09/15." Further, the Retail Installment Sale Contract attached to the creditor's proof of claim demonstrates the creditor holds a purchase money security interest, and as the debtors are retired and have been since before they purchased the vehicle, the vehicle was apparently purchased for personal use. Accordingly, under the hanging paragraph following § 1325(a)(9) of the Code, the debtors are not entitled to value the collateral at anything less than the full amount of the claim.

The court will hear the matter.

6. 17-25223-D-13 JHK-1 — JATINDER KLAIR — OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR MERCEDES-BENZ FINANCIAL SERVICES USA, LLC 9-21-17 [30]

Final ruling:

This is the objection of Mercedes-Benz Financial Services USA LLC to confirmation of the debtor's original chapter 13 plan. On September 28, 2017, the debtor filed a first amended plan and a motion to confirm it, set for hearing on November 21, 2017. As a result of the filing of the first amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

7. 17-25224-D-13 MC-1 — RAUL/GUADALUPE LUGO — MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE, INC. 9-20-17 [30]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

8.	17-25224-D-13 PPR-1	RAUL/GUADALUPE LUGO	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR CARRINGTON MORTGAGE SERVICES, LLC 9-5-17 [20]

Final ruling:

This is the objection of Carrington Mortgage Services, LLC to confirmation of the debtors' proposed chapter 13 plan. On September 22, 2017, Carrington purported to withdraw the objection. Because the debtors had earlier filed opposition to the objection, the purported withdrawal was ineffective. See Fed. R. Civ. P. 41(a)(1) and (2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). The court concludes from the purported withdrawal, however, that Carrington does not wish to contest the debtors' opposition. Accordingly, the objection will be overruled by minute order. No appearance is necessary.

9.	17-25224-D-13 RDG-1	RAUL/GUADALUPE LUGO	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 9-26-17 [37]

10.	17-25225-D-13 RDG-1	CHRIS NGUYEN AND AMANDA CHANG	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 9-26-17 [31]

11.	14-32330-D-13 JCK-3	MARY-ANNE MALOY	MOTION TO MODIFY PLAN 9-16-17 [37]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

12. 17-26131-D-13 NADINE MCDANIEL-ALLEN MOTION TO VALUE COLLATERAL OF
MS-1 FLAGSHIP CREDIT ACCEPTANCE
9-15-17 [11]

Tentative ruling:

This is the debtor's motion to value collateral of Flagship Credit Acceptance ("Flagship"); namely, a 2016 Nissan Sentra. Flagship has not filed opposition; however, the court intends to grant the motion only in part because the debtor has not demonstrated she is entitled to the relief sought in the amount requested, as required by LBR 9014-1(d)(3)(D).

The debtor purchased the vehicle in January of 2017, within a year prior to the filing of this case. Thus, ordinarily, the "hanging paragraph" that follows § 1325(a)(9) would preclude her from valuing the claim at less than its full amount. However, the debtor claims a portion of the debt was non-purchase money in nature, and therefore, that portion – on account of negative equity financing for the debtor's trade-in and for a cancellation of debt agreement (also known as GAP insurance) should be treated as general unsecured. She relies on AmeriCredit Fin. Servs. v. Penrod (In re Penrod), 611 F.3d 1158 (9th Cir. 2010), in which the court held that "a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." 611 F.3d at 1164. The court agrees that the true negative equity portion of the debt is not purchase money and also agrees as to the portion attributable to the cancellation of debt agreement, $900. See Johnson v. Hyundai Motor Fin. (In re Johnson), 2014 Bankr. LEXIS 5225, *13 (9th Cir. BAP 2014).

The debtor has, however, failed to submit evidence demonstrating that the portion of the debt that is attributable to negative equity financing is the full amount the debtor claims, $6,366. The Retail Installment Sale Contract filed as an exhibit by the debtor indicates, at line 1(J), that the amount was $2,866, not $6,366. The breakdown of the debtor's down payment for the new vehicle is in line 6 of contract. It begins with the agreed value of her trade-in vehicle, $8,000, and deducts the amount remaining due on her contract on that vehicle, $14,366, to arrive at a "Total Net Trade-In" value of negative $6,366, the amount the debtor claims. But the calculation does not stop there. Instead, it goes on to offset that negative equity financing by a total of $3,500, comprised of a manufacturer's rebate of $2,500, and the debtor's down payments, $250 (cash) and $750 (deferred down payment). In other words, the negative equity financed by the seller was offset by the amount of a manufacturer's rebate and the debtor's down payments. Adding those figures, a total of $3,500, to the Total Net Trade-In amount, <$6,366> , results in the $2,866 figure shown on the contract as the "Prior Credit or Lease Balance paid by Seller." It is that figure, $2,866, not the debtor's figure, $6,366, that is part of the Total Amount Financed, $26,107.51.

In In re Siemers, 2011 Bankr. LEXIS 4489 (Bankr. W.D. Wash. 2011), the debtors raised the same issue the court finds here and ruled against the debtors, holding that where the contract between the parties "computed the initial negative equity and then applied the cash down payment to reduce the negative equity," the debtors were "not entitled to cram down [the new lender's] claim by any more than [the reduced] amount." 2011 Bankr. LEXIS 4489, at *6; see also In re Gray, 382 B.R. 438, 442 (Bankr. E.D. Tenn. 2008) [amount of manufacturer's rebates and debtor's down payments properly applied against negative equity financed].

For the reasons stated, the court intends to grant the motion in part and to value Flagship's secured claim in the amount scheduled by the debtor, $25,626.06, less the amount of the GAP insurance, $900, and less the amount of the negative equity financing provided by Flagship, $6,366, offset by the manufacturer's rebate and the debtor's down payments, $3,500, for a secured claim of $21,860.06.1 The court will hear the matter.

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1 $25,626.06 - $900 - $6,366 + $3,500

13. 17-26131-D-13 MS-2 — NADINE MCDANIEL-ALLEN — MOTION TO VALUE COLLATERAL OF NATIONWIDE CREDIT, INC. 9-15-17 [16]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Nationwide Credit, Inc. at $0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Nationwide Credit, Inc.'s secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

14. 12-33940-D-13 JCK-9 — JOHN/EVA PAYAN — MOTION TO SUBSTITUTE EVA MARTHA PAYAN AS THE REPRESENTATIVE FOR JOHN DAVID PAYAN AND/OR MOTION TO EXCUSE DEBTOR FROM COMPLETING 1328 AND 522 CERTIFICATIONS 9-14-17 [96]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion to substitute Eva Martha Payan as the Representative for John David Payan and to excuse debtor from completing 11 U.S.C. § 1328 certificate or certificate of Chapter 13 Debtor re 11 U.S.C. § 522(q) exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

15. 15-27146-D-13 JCK-5 — DENNIS THURSTON — MOTION TO MODIFY PLAN 9-21-17 [66]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

16. 17-25252-D-13 RDG-1 — DOUGLAS SMITH — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-25-17 [15]

Final ruling:

This case was dismissed on October 4, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

17. 17-25256-D-13 RDG-2 — DANIEL HERNANDEZ AND LUZ DE LA HOYA-HERNANDEZ — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-17 [21]

18. 17-25259-D-13 RDG-1 — FABIOLA GARZA-NUNO AND VICTOR NUNO — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-25-17 [18]

19. 16-26671-D-13 RM-5 — JOHN/HASINA HELMANDI — CONTINUED OBJECTION TO CLAIM OF RICHARD G. HYPPA, CLAIM NUMBER 4 5-17-17 [132]

20. 17-22974-D-13 WILLIAM CRONIN MOTION TO CONFIRM PLAN
DCJ-2 9-12-17 [55]

Tentative ruling:

This is the motion of the debtor to confirm a second amended chapter 13 plan. The trustee has filed opposition. For the following reasons, the motion will be denied.

On June 3, 2016, well over a year ago, the debtor's spouse, Gina,[1] filed a chapter 13 case with a plan that would have reduced the secured claim of ReadyCap Lending, a second deed of trust against William and Gina's residence, now held by the U.S. Small Business Administration ("SBA"), to $0 based on the value of its collateral.[2] Gina also filed a motion to value the collateral, which the SBA opposed; based on the SBA's appraiser's testimony, as contrasted with Gina's testimony, the court found the value of the property to be $338,000 rather than $195,000, as asserted by Gina, and denied the motion. The court's ruling was issued on October 18, 2016. Gina then waited until January 30, 2017, the day before a scheduled hearing on the trustee's motion to dismiss her case, to file a motion to confirm an amended plan that would have paid the SBA $70,000 on its $370,247 claim. The trustee and the SBA filed oppositions but the case was dismissed on the trustee's motion, for failure to make plan payments, prior to the hearing on Gina's motion to confirm the amended plan. The motion to confirm would likely have been denied in any event, because the amended plan provided for the SBA's secured claim based on a valuation at odds with the court's ruling on the motion to value. Gina's case was dismissed on April 26, 2017.

William filed this case on May 1, 2017, and on May 18, filed a plan that would have paid the SBA $40,000 on its claim based on the alleged value of its collateral. The trustee objected to confirmation on the ground, along with seven others, that the debtor had failed to obtain an order valuing the SBA's collateral. The SBA also objected to confirmation. The trustee's objection was sustained and the SBA's was overruled as moot. On July 29, the debtor filed a motion to confirm a first amended plan that, like the original, would have paid the SBA $40,000. The trustee opposed the motion, again on several grounds, including the debtor's failure to obtain an order valuing the SBA's collateral. The motion was denied by final ruling on the specific ground that the debtor had failed to file motions to value any of three secured claims, including the SBA's, each provided for at less than its full amount. Despite the court's ruling, the debtor has now filed a second amended plan that provides for the SBA exactly as did his first two plans – at $40,000 based on the value of its collateral, but he has still, almost six months into the case, failed to file a motion to value the collateral.

The trustee has filed opposition, again based on the debtor's failure to file a motion to value the SBA's collateral, his failure to file a motion to value a secured car claim, and on five other grounds. The debtor is well aware of the problem concerning his failure to seek to value the SBA's claim. In his declaration supporting this motion, he states, "My first amended plan . . . was denied confirmation on September 12, 2017 based on the lack of motions to value secured creditors which were not going to be paid in full. One of these issues has been resolved and the other two will be resolved prior to the hearing on my present plan." Debtor's Decl., DN 57, ¶4. It appears the issue that has been resolved concerns the debtor's 2003 Chevrolet 2500, listed in his original plan as a claim to be valued but now listed as a claim to be paid in full. At this stage, the debtor, having filed no motions to value the SBA's claim or the other car claim, cannot have

the other two issues resolved prior to the hearing.

The motion will be denied on the ground, as with the first amended plan, that the debtor has failed to file motions to value secured claims not proposed to be paid in full. In addition, the court finds the debtor has failed to demonstrate that he proposed this plan in good faith. Instead, it appears the debtor, faced with the court's order valuing his residence in Gina's case just a year ago at a significantly higher value than the debtor now claims, and faced with the SBA's objection to his original plan and the trustee's opposition to his first amended plan, is merely engaged in stalling tactics.

The court will hear the matter.

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1 The court will use the debtor's and his spouse's given names for the sake of convenience; no disrespect is intended.

2 Gina's case followed an earlier case filed by William, filed January 6, 2016 and dismissed March 22, 2016 on the trustee's motion for failure to appear at the § 341 meeting and failure to provide tax returns and payment advices. That case followed an earlier case by Gina, filed December 3, 2015 and dismissed December 21, 2015 for failure to file schedules and statements. Prior to that time, Gina and William were in a joint case for three years, from May 2012 to April 2015, in which they obtained confirmation of a plan that valued the second deed of trust, then held by CIT Small Business Lending Corporation, at $0, but in which they later defaulted on their plan payments.

21. 17-24097-D-13 ISAAC ARISTA — AMENDED MOTION TO CONFIRM PLAN
AKA-1 — 8-29-17 [34]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(g). The moving party failed to serve Alicia Arista, listed on his Schedule H as a co-debtor on the debtor's two car loans and his IRS debt. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties who are co-debtors on debts of the debtor. In addition, the debtor has failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires debtors to include on their master address the names and addresses of all parties included or to be included on their schedules, including Schedule H.

As an aside, because the moving party initially included an incorrect hearing date and then an incorrect location, he filed three complete sets of moving papers – the original motion, notice, and declaration; an amended motion, a notice of hearing on the amended motion, and an amended declaration; and finally, a second amended motion, a notice of hearing on the second amended motion, and a second amended declaration, all with the same docket control number. This procedure clutters the court's docket and makes it unreasonably time-consuming for the court to examine all the documents and assess them for differences.

As a result of the above-described service defect, the motion will be denied by minute order. No appearance is necessary.

22. 17-25223-D-13 JATINDER KLAIR
JHK-2
MERCEDES-BENZ FINANCIAL SERVICES USA, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-4-17 [52]

23. 15-29725-D-13 TYESHA LINDSEY
TBK-3

CONTINUED MOTION TO MODIFY PLAN
8-31-17 [65]

24. 16-21825-D-13 JUAN/NADINE MORGA
CLH-6

MOTION FOR COMPENSATION FOR CHARLES L. HASTINGS, DEBTORS' ATTORNEY
10-4-17 [107]

Tentative ruling:

This is a motion for an additional allowance of attorney's fees and costs to the debtors' counsel. The motion will be denied for the following reasons: (1) the moving party gave only 20 days' notice of the hearing rather than 21 days', as required by Fed. R. Bankr. P. 2002(a)(6); (2) the moving party failed to serve the debtors, as required by the same rule; (3) the moving party failed to serve the party requesting special notice at DN 92 at its designated address, as required by Fed. R. Bankr. P. 2002(g); and (4) the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(6). Except for three of the four creditors who have filed special notice requests and one other creditor, the moving party failed to serve any of the several creditors who have filed claims in this case and failed to serve seven others who are listed on the debtors' schedules but who have not filed claims.

As a result of these service and notice defects, the motion will be denied by minute order. Alternatively, the court will continue the hearing and allow for counsel to cure the above service defects.

25. 17-20829-D-13 CAS-1 — ALBERTO DELAROSA AND ESPERANZA LOREDO — CONTINUED MOTION TO CONFIRM PLAN
9-15-17 [123]

Tentative ruling:

This is the debtor's motion to confirm a fourth amended chapter 13 plan. The motion will be denied for the following reasons. First, the motion was brought by the debtor in propria persona, whereas the debtor is represented by counsel in this case, Charles Stoner, and counsel has not moved to withdraw as counsel of record. An individual may be represented by counsel or may represent himself or herself, but is not free to represent himself or herself without counsel obtaining court approval to withdraw as counsel of record. Second, the moving party purports to seek confirmation of a "Fourth Amended Chapter 13 Plan . . . filed on April 5, 2017," but there was no plan filed on that date and the most recent plan on file is a third amended plan filed April 11, 2017. Third, the moving party gave only 25 days' notice of the hearing, rather than 42 days', as required by LBR 3015-1(d)(1) and the rules cited therein. Fourth, the "list of creditors attached" referred to in the proof of service is not attached; thus, there is no evidence of service on any creditors, only the United States Trustee and the chapter 13 trustee.

For the reasons stated, the motion will be denied. The court will hear the matter.

26. 17-25259-D-13 JGL-1 — FABIOLA GARZA-NUNO AND VICTOR NUNO — MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
10-10-17 [21]

Tentative ruling:

This is the debtors' motion to value collateral of Ally Financial ("Ally"); namely, a 2016 Ford Explorer. Ally has not filed opposition; however, the court intends to grant the motion only in part because the debtors have not demonstrated they are entitled to the relief sought in the amount requested, as required by LBR 9014-1(d)(3)(D).

The debtors purchased the vehicle in March of 2016, within the 910-day period prior to the filing of this case. Thus, ordinarily, the "hanging paragraph" that follows § 1325(a)(9) would preclude them from valuing the claim at less than its full amount. However, the debtors claim a portion of the debt was non-purchase money in nature, and therefore, that portion – on account of negative equity financing for the debtors' trade-in – should be treated as general unsecured. They rely on AmeriCredit Fin. Servs. v. Penrod (In re Penrod), 611 F.3d 1158 (9th Cir. 2010), in which the court held that "a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." 611 F.3d at 1164. The court agrees that the true negative equity portion of the debt is not purchase money.

The debtors have, however, failed to submit evidence demonstrating that the portion of the debt that is attributable to negative equity financing is the full amount the debtors claim, $8,800. The Retail Installment Sale Contract filed as an exhibit by the debtors indicates, at line 1(Q), that the amount was $5,850, not $8,800. The breakdown of the debtors' down payment for the new vehicle is in line 6

of contract. It begins with the agreed value of their trade-in vehicle, $10,500, and deducts the amount remaining due on their contract on that vehicle, $19,300, to arrive at a "Net Trade-In" value of negative $8,800, the amount the debtors claim. But the calculation does not stop there. Instead, it goes on to offset that negative equity financing by a total of $2,950, comprised of a manufacturer's rebate of $2,000 and an additional amount listed as "F. Other: N/A," $950. In other words, the negative equity financed by the seller was offset by the amount of a manufacturer's rebate and an additional amount, presumably the debtors' cash down payment. Adding those figures, a total of $2,950, to the Total Net Trade-In amount, <$8,800> , results in the $5,850 figure shown on the contract as the "Prior Credit or Lease Balance paid by Seller." It is that figure, $5,850, not the debtors' figure, $8,800, that is part of the Total Amount Financed, $39,978.

In In re Siemers, 2011 Bankr. LEXIS 4489 (Bankr. W.D. Wash. 2011), the debtors raised the same issue the court finds here and ruled against the debtors, holding that where the contract between the parties "computed the initial negative equity and then applied the cash down payment to reduce the negative equity," the debtors were "not entitled to cram down [the new lender's] claim by any more than [the reduced] amount." 2011 Bankr. LEXIS 4489, at *6; see also In re Gray, 382 B.R. 438, 442 (Bankr. E.D. Tenn. 2008) [amount of manufacturer's rebates and debtor's down payments properly applied against negative equity financed].

For the reasons stated, the court intends to grant the motion in part and to value Ally's secured claim in the amount of its proof of claim, $37,436.81, which the debtors acknowledge in their motion is the approximate amount owed, less the amount of the negative equity financing provided by Ally, $8,800, offset by the manufacturer's rebate and the debtors' down payment, $2.950, for a secured claim of $31,586.81. The court will hear the matter.

27.	15-25770-D-13 PGM-2	ERIC BARBARY AND MARIAN CORK-BARBARY	CONTINUED MOTION TO MODIFY PLAN 8-24-17 [77]