

**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 COVER SHEET**

**DAY: TUESDAY**

**DATE: June 4, 2024**

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

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

**June 4, 2024 at 1:00 p.m.**

- 
1. [24-20853](#)-B-13 MELANIE/SHANE BRITT MOTION TO VALUE COLLATERAL OF  
[PGM](#)-2 Peter G. Macaluso PATELCO CREDIT UNION  
**Thru #3** 5-2-24 [[41](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. 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 and a reply were filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to value the secured claim of Patelco Credit Union at \$18,000.00.

Debtors move to value the secured claim of Patelco Credit Union ("Creditor"). Debtors are the owner of a 2019 Dodge Ram 1500 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$18,000.00 as of the petition filing date. This is based on Debtors' declaration that states there are scrapes and dents on the sides, roof leak, mildew throughout the interior, engine knocking, and accident damages to the rear bumper. As the owners, Debtors' 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**

Creditor has filed an opposition asserting a valuation of \$34,498.00 based on the Kelley Blue Book's value of this vehicle in good condition. No declaration or exhibits were filed to support Creditor's valuation. Creditor contends that the Vehicle is in good condition because it is listed as such on Schedules A/B and because Debtors have not provided proof that an insurance claim was made for the damages to the rear bumper.

Separately, Creditor acknowledges that its Claim No. 10-1 lists the amount owing as \$28,802.14, which is less than its asserted value for the Vehicle.

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 10-1 filed by Patelco Credit Union is the claim that is the subject of the present motion.

**Discussion**

Creditor asserts that the value of the Vehicle is approximately \$34,498.00 based on the value provided by Kelley Blue Book. More precisely, Creditor's opposition states that

**June 4, 2024 at 1:00 p.m.**

**Page 1 of 7**

The absence of the Blue Book Report and the "Gomez Declaration" means that Creditor has effectively submitted no evidence to support its valuation of the Vehicle and, more important, submitted no evidence to rebut the Debtors' opinion of value which is admissible under Fed. R. Evid. 701. The statements of Creditor's counsel in the opposition are not evidence of value or of anything else. *Singh v. INS*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000).

The lien on the Vehicle's title secures a purchase-money loan incurred in October or November 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$28,802.14. 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 \$18,000.00. 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.

The court will issue an order.

## Final Ruling

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

Debtors move to value the secured claim of Hyundai Capital America ("Creditor"). Debtors are the owner of a 2018 Genesis G80 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$16,000.00 as of the petition filing date. This is based on Debtors' declaration that states there are alignment issues, a damaged axle, tinging noise of the engine, and a keyed right side. As the owner, Debtors' 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).

**June 4, 2024 at 1:00 p.m.**  
**Page 2 of 7**

adjustment in value may be appropriate upon proof of the Vehicle's deficiencies.

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 12-1 filed by Hyundai Capital America DBA Genesis Finance is the claim that is the subject of the present motion.

### **Discussion**

The \$22,475.00 value offered by the Creditor is based on a "clean" retail evaluation by J.D. Power. This valuation presumes "no mechanical defects, all equipment is in working order, only minor exterior and interior soiling, clean title history, and vehicle needs minimal reconditioning for resale." Cf. <http://www.jdpower.com/>.

The clean retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. This value assumes that the Vehicle is in near excellent condition. This may not be the case.

The court can accept a debtor's lay opinion of the value of its property and, in the absence of evidence to the contrary, may even accept a debtor's opinion of value as conclusive. *In re Enewally*, 368 F.3d 1165, 1173 (9th Cir. 2004). Because the court gives no weight to the Creditor's valuation, the court will accept the Debtors' opinion of value.

The lien on the Vehicle's title secures a purchase-money loan incurred on February 19, 2021, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,850.97 based on Claim No. 12-1. 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 \$18,000.00. 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.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

3. [24-20853](#)-B-13 MELANIE/SHANE BRITT MOTION TO VALUE COLLATERAL OF  
[PGM](#)-4 Peter G. Macaluso KEYBANK N.A.  
5-2-24 [[51](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to value the secured claim of Keybank N.A. at \$5,000.00.

Debtors move to value the secured claim of Keybank N.A. ("Creditor"). Debtors are the owner of a solar panels and related equipment ("Personal Property"). The Debtors seek to value the Personal Property at a replacement value of \$5,000.00 as of the petition filing date. As the owner, Debtors' 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. No proof of claim has been filed by Creditor for the claim to be valued.

### **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 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 to Keybank N.A. is \$44,843.95 as stated in Debtors' declaration. Debtors assert that the Personal Property is appropriately valued given that Joint Debtor is in the field of selling solar panels and is familiar with the solar panel industry. 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 \$5,000.00. 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.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

4. [24-21060](#)-B-13 ANNETTE ULIBARRI  
[LGT](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY LILIAN G. TSANG  
5-7-24 [[18](#)]

### **Final Ruling**

The objection was 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). A written reply was filed by the debtor Annette Ulibarri ("Debtor") and the Chapter 13 Trustee ("Trustee") filed a supplemental objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

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

The Trustee objects to confirmation of the plan on grounds that the meeting of creditors was continued and not concluded, and that Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Form 122C) lists a household size of two.

Debtor filed a response stating that the continued meeting of creditors has been concluded and that she filed amended Form 122C to correctly list a household size of one.

The Trustee filed a supplemental objection acknowledging that the meeting of creditors has been concluded and that this issue is resolved. However, amended Form 122C-2 (Chapter 13 Calculation of Your Disposable Income) indicates Debtor's monthly disposable income is \$310.95 per month. Using this amount and an applicable commitment period of 5 years, or 60 months, the dividend payable to general unsecured creditors is 19%. Debtor's Plan provides for a 0% distribution to general unsecured creditors. Therefore, Debtor's plan fails to comply with 11 U.S.C. § 1325(b)(1)(B) and may not be confirmed.

The plan filed March 26, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

5. [23-21849](#)-B-13 JUAN GONZALEZ  
[LGT](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS  
CASE  
5-14-24 [[90](#)]

**Final Ruling**

This matter was continued from May 28, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, May 31, 2024.

Debtor Juan Gonzalez ("Debtor") did not file a response but instead filed a voluntary application to dismiss chapter 13 case, DCJ-3. A Notice of Entry of Order of Dismissal was entered on May 31, 2024. Therefore, the continued motion to dismiss case is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

6. [23-21890](#)-B-13 ESTHER CHAVEZ  
[LGT](#)-4 James D Hornbuckle

CONTINUED MOTION TO DISMISS  
CASE  
5-14-24 [[85](#)]

### **Final Ruling**

This matter was continued from May 28, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, May 31, 2024.

Debtor Esther Chavez ("Debtor") filed an untimely response on June 3, 2024, stating that she had filed a motion to confirm the amended plan. Besides the response being untimely, the Debtor failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1 for both her response, [LGT-4](#), and the motion to confirm plan, [JDH-1](#). This form is mandatory for attorneys and trustees as of November 1, 2022.

Rather than dismissing this case, the court will provide Debtor additional time to submit a properly noticed motion to confirm plan by 5:00 p.m. on June 5, 2024. If Debtor fails to do so, the Chapter 13 Trustee's motion to dismiss case will be granted without further hearing.

The court will issue an order.