

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 27, 2018 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.

1.	18-25602-D-13	ERNIE HAYDEN	OBJECTION TO CONFIRMATION OF PLAN BY LOANCARE, LLC
	CJO-1		10-31-18 [18]

2.	18-20004-D-13	JALON/MIRANDA HARRISON	OBJECTION TO CLAIM OF TWO JINN, INC., CLAIM NUMBER 18-1 AND 18-2
	RDG-3		10-18-18 [69]

Tentative ruling:

This is the trustee's objection to the original and amended claims of Two Jinn, Inc., dba Aladdin Bail Bonds ("Two Jinn"), Claim Nos. 18-1 and 18-2 on the court's claims register.¹ The trustee objects on the ground the claims were filed late. Two Jinn has filed a response. For the following reasons, the objection will be

sustained and both claims will be disallowed.

Two Jinn's response is signed "Abra Davila, Support Operations." The response does not include a state bar number for that individual and there is no suggestion the individual is a licensed attorney. Further, the California State Bar's records show no licensed attorney with that name. As Two Jinn is a corporation, it may appear only by an attorney. L.R. 183(a), incorporated herein by LBR 1001-1(c). The trustee's objection will be sustained for this reason.

The objection will be sustained for the additional independent reason that the claims were not timely filed and Two Jinn has failed to show it did not have notice of the case in time to file a timely proof of claim.² Two Jinn admits it "discovered" the bankruptcy case on February 2, 2018 and printed the "Creditor Notice" (presumably, the Notice of Chapter 13 Bankruptcy Case (the "Notice")) from PACER the same day. (The Notice was served by the Bankruptcy Noticing Center ("BNC") on January 28, 2018.) Two Jinn filed its proof of claim on May 18, 2018 - before the claims bar date listed in the Notice, May 22, 2018.

However, four days after the Notice was filed, the court issued an Amended Notice of Chapter 13 Bankruptcy Case (the "Amended Notice"), which shortened the claims bar date from May 22, 2018 to March 13, 2018.³ The Amended Notice was served by the BNC on February 1, 2018 on the same parties who had been served with the Notice. Two Jinn suggests that because it was not listed on the debtors' creditor matrix in PACER, it did not receive the Amended Notice, and thus, was not aware the claims bar date had been shortened.⁴

Two Jinn states that "[its] company" was not listed on the creditor matrix. However, the debtors did include on their Schedule E/F and creditor matrix Awa Collections, which was listed on Schedule E/F with the notation "Collection Attorney Two Jinn Inc." Two Jinn admits it "discovered" the bankruptcy on February 2, 2018, five days after the Notice was served by the BNC on Awa Collections. Two Jinn does not explain how it came to discover the bankruptcy case on February 2. The logical inference is that Two Jinn learned about the filing from Awa Collections; Two Jinn does not deny that.

Two Jinn has submitted no evidence to support its suggestion that it did not receive the Amended Notice. In any event, Two Jinn accessed the case docket and printed the Notice from PACER on February 2, five and a half weeks before the shortened claims bar date, and thus, was and remained aware of the bankruptcy filing from and after that date. Yet it failed to file its proof of claim promptly upon printing the Notice, failed to monitor the docket, and failed to notice the shortened claims bar date set forth in the Amended Notice, which, absent evidence to the contrary, the court finds that Two Jinn received. For these reasons, the court concludes Two Jinn had notice of the bankruptcy case in time to file a timely proof of claim but failed to do so.⁵ Accordingly, the objection will be sustained and the original and amended claims will be disallowed.

The court will hear the matter.

1 Two Jinns' second filed claim, Claim No. 18-2, expressly states it amends the first; thus, the second claim likely renders moot the trustee's objection to the first claim. However, because the trustee has expressly objected to both claims, and as Two Jinn has suggested no reason the court should not rule on both, the court will do so.

- 2 The time for filing proofs of claim in chapter 13 cases may be enlarged only to the extent and under the conditions stated in Fed. R. Bankr. P. 3002(c). Fed. R. Bankr. P. 9006(b)(3). In cases filed before December 1, 2017, that extent and those conditions do not include lack of notice of the bankruptcy case in time to file a proof of claim. In re Coastal Alaska Lines, Inc., 920 F.2d 1428, 1432-33 (9th Cir. 1990). However, Rule 3002(c)(6) was amended effective December 1, 2017 to include in the list of conditions the situation where "the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)." Fed. R. Bankr. P. 3002(c)(6)(A); see also In re Lovo, 584 B.R. 79, 80, n.1 (Bankr. S.D. Fla. March 27, 2018), quoting Rule 3002 advisory committee's note to 2017 amendment. As the present case was filed after the effective date of the amendment, the court will assume without deciding that Two Jinn's argument about lack of notice, if it were accurate, would fall within the bounds of amended subdivision (c)(6)(A).
- 3 It seems likely the adjustment was made to comply with the amendment to Fed. R. Bankr. P. 3002(c), effective December 1, 2017, which shortened the time for filing proofs of claim in chapter 13 cases from 90 days after the date first set for the § 341 meeting to 70 days after the petition date. See Rule 3002 advisory committee's note to 2017 amendment.
- 4 Two Jinn contends, "Based on the Creditor Matrix in PACER our company was not listed in order to receive the initial bankruptcy filing documents and would also not receive any subsequent documents i.e. Creditor Notice shortening the time frame for filing a Proof of Claim from May 22, 2018 to March 13, 2018." Two Jinns' Response, filed Oct. 29, 2018, at 1:16-20.
- 5 In Coastal Alaska Lines, the bankruptcy court clerk's office sent out a notice of no-asset case, advising that if assets were later discovered, a notice to file claims would be sent. The Ninth Circuit, noting the creditor had received actual notice of the bankruptcy filing from the debtor's attorney, and also knew it was not listed on the creditor matrix, concluded the creditor should have added itself to the matrix in order to preserve its rights. Coastal Alaska Lines, 920 F.2d at 1431. When it failed to do so, its late claim was properly disallowed. Id.

3. 18-20004-D-13 JALON/MIRANDA HARRISON OBJECTION TO CLAIM OF BROOKWOOD
RDG-4 LOANS OF CALIFORNIA, LLC, CLAIM
NUMBER 17-1
10-18-18 [72]

4. 18-20805-D-13 GRANT BROOKS
JCK-4

MOTION TO CONFIRM PLAN
10-8-18 [84]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. Direct Capital Corporation has filed opposition. The court intends to use this hearing as a status conference.

The debtor contended in connection with an earlier motion to confirm a plan that if he prevailed on his pending motion to vacate a wage garnishment order in state court, Direct Capital would not be a creditor of the debtor's and would not have standing to oppose confirmation. By order filed July 24, 2018, the court lifted the automatic stay to allow the state court litigation between the debtor and Direct Capital to go forward. On September 5, 2018, the debtor opposed the trustee's motion to dismiss this case on the basis that he expected a resolution of the state court dispute shortly after a September 25, 2018 hearing date. However, neither the debtor's present motion to confirm nor Direct Capital's opposition apprises the court of the status of the state court litigation.

The court will use this hearing as a status conference to determine the status of the litigation. If it has not been resolved, or has been resolved in Direct Capital's favor, such that Direct Capital continues to have standing to oppose confirmation, the court will continue the hearing and give the parties an opportunity to file further briefs. The court notes that the issues Direct Capital raises in opposition to this motion are similar if not the same as those it raised in opposition to an earlier motion and that neither the earlier opposition nor the debtor's reply to it included any case authority for the parties' respective positions.

The court will hear the matter.

5. 15-29306-D-13 ROSALIO/ROSA MENDOZA
JCK-3

MOTION TO MODIFY PLAN
10-8-18 [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.

6. 17-20211-D-13 ROBERT/CYNTHIA RANGEL
JCK-7

MOTION TO MODIFY PLAN
10-17-18 [98]

7. 17-27513-D-13 MARVIN NASH OBJECTION TO CLAIM OF PAWNEE
RDG-1 LEASING CORPORATION, CLAIM
NUMBER 21
10-18-18 [38]

8. 18-25817-D-13 JOSEPH/JENNIFER DEGRAVIO MOTION TO VALUE COLLATERAL OF
CLH-1 AMERICAN HONDA FINANCE
11-2-18 [17]

Tentative ruling:

This is the debtors' motion to value collateral of American Honda Finance ("Honda"). The motion will be denied because the moving parties failed to serve Honda in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Honda at a street address with no attention line, whereas service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process.

As a result of this service defect, the motion will be denied by minute order. Alternatively, the court will continue the hearing to allow the moving party to address this service defect.

9. 18-25817-D-13 JOSEPH/JENNIFER DEGRAVIO OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-29-18 [14]

10. 18-24820-D-13 CLYDE/LAILE ATKIN CONTINUED OBJECTION TO
APN-1 CONFIRMATION OF PLAN BY TOYOTA
MOTOR CREDIT CORPORATION
9-19-18 [19]

11. 18-24820-D-13 CLYDE/LAILE ATKIN CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-17-18 [16]

12. 18-25722-D-13 MOSES/APRIL GONZALES MOTION TO VALUE COLLATERAL OF
GSJ-1 SANTANDER CONSUMER USA
10-27-18 [17]

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.

13. 18-25722-D-13 MOSES/APRIL GONZALES MOTION TO VALUE COLLATERAL OF
GSJ-2 DITECH FINANCIAL, LLC
10-27-18 [22]

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.

14. 18-25722-D-13 MOSES/APRIL GONZALES OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY TRUSTEE RUSSELL D. GREER
10-29-18 [27]

15. 18-25040-D-13 CARLA HUNT OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
10-29-18 [31]
16. 18-26842-D-13 FENNIS GIPSON MOTION TO EXTEND AUTOMATIC STAY
WLG-1 11-1-18 [8]
17. 18-25445-D-13 JAMAICA MOON AND VIDAL OBJECTION TO DEBTORS' CLAIM OF
RDG-2 DANIELS EXEMPTIONS
10-15-18 [18]

Tentative ruling:

This is the trustee's objection to the debtors' claims of exemption of their (1) § 457 deferred compensation plans; (2) life insurance plans; and (3) PERS retirement accounts. For all three of these categories of assets, the trustee objects to the debtors' failure to claim a particular dollar amount as exempt, instead claiming "100% of fair market value, up to an applicable statutory limit."

The debtors have not filed opposition; however, since the objection was filed, they have filed two amended Schedules C. For the § 457 plans, the debtors claimed particular dollar amounts as exempt, thereby rendering the trustee's objection, as to those plans, moot. For their PERS accounts, the debtors changed the values of the accounts from \$14,191 and \$1,969, respectively, to "unknown" for both. As for the amounts claimed as exempt, the debtors maintained the "100%" claims they had asserted in their original Schedule C. Thus, the amended Schedules C did not moot the trustee's objection with regard to the PERS accounts.¹

For the PERS accounts, the debtors added in their descriptions that the accounts are "ERISA Qualified and not property of the estate." The debtors' attempt to exempt 100%, or any amount, of the value of the PERS accounts conflicts with their contention that the accounts are not property of the estate. "It is a 'well settled rule that property cannot be exempted unless it is first property of the estate.'" Eleiwa v. Whitmore (In re Eleiwa), 2013 Bankr. LEXIS 5746, *7, 2013 WL 2443086 (9th Cir. BAP 2013), quoting Heintz v. Carey (In re Heintz), 198 B.R. 581,

586 (9th Cir. BAP 1996). Therefore, the trustee's objection is properly sustained as to those accounts. See Eleiwa, 2013 Bankr. LEXIS 5746, at *6-8.2

As for the life insurance policies, the debtors originally scheduled them as having a current value of \$0 and, for each, listed the amount claimed as exempt as "100% of fair market value, up to any applicable statutory limit." The debtors made no changes in their first amended Schedule C, but in the second, they changed the amount of the exemption claimed from "100% of fair market value, up to any applicable statutory limit" to simply "100%." The debtors claimed all three policies as exempt under Cal. Code Civ. Proc. § 704.100 without specifying a subsection of that section. For the last entry, which is actually for two policies - one for the debtor and one for a non-filing spouse (presumably, a former spouse), the debtors added new descriptive matter.³ As the second amended schedule does not appear to resolve the trustee's objection, the court will construe the objection as applying to the second amended schedule and the parties may have additional time to brief the issue if they choose.

The court will hear the matter.

1 "[The debtor's] second amended schedule C refers to the same property claimed exempt in her first amended schedule C, although it is described somewhat differently. Schedules may be amended to change claimed exemptions, or to add omitted assets, at any time before the case is closed, But an exemption claim does not merit a fresh determination simply by the 'clarification' or variation of description in an amended schedule C." Cogliano v. Anderson (In re Cogliano), 355 B.R. 792, 801-02 (9th Cir. BAP 2006).

2 The court need not make and is not making a determination as to whether or not the PERS accounts are property of the estate.

3 "Policies have no cash value, face values 50k and 70k, estimated. They are 1 year's salary for each. Beneficiary: Jamaica Moon & Vida Daniels." The policies are still listed as having a current value of \$0.

18. 17-27770-D-13 LYNN SALERNO
NLL-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
10-25-18 [72]

Final ruling:

This matter is resolved without oral argument. This is Bank of America, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the creditor's interest in the property is not adequately protected. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay as to the debtor, the estate and any co-debtor by minute order. There will be no further relief afforded. No appearance is necessary.

19. 18-25171-D-13 LORENA LOPEZ-ALVAREZ OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
10-15-18 [21]

Final ruling:

This is the trustee's objection to the debtor's claim of exemption of \$820,000 in value in a life insurance policy. On November 9, 2018, the debtor filed an amended Schedule C in which she claims \$1.00 in value in the life insurance policy. As a result of the filing of the amended Schedule C, the present objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

20. 18-20878-D-13 MONICA HERRERA MOTION TO CONFIRM PLAN
PLC-3 10-1-18 [71]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving party served the motion, notice, and declaration, but not the plan itself, as required by LBR 3015-1(d)(1); and (2) the motion states that the debtor seeks to confirm a second amended plan filed concurrently with the motion and the debtor's supporting declaration refers repeatedly to a second amended plan, whereas the plan filed with the motion was not a second amended plan - it was entitled simply Chapter 13 Plan - Amended.

For the reasons stated, the motion will be denied and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

21. 18-25587-D-13 ANAHI SANTILLAN-LOPEZ OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
10-29-18 [14]

22. 16-25588-D-13 DARREN BLAYLOCK MOTION FOR RELIEF FROM
RPZ-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 10-29-18 [34]
COMPANY VS.

23. 18-25597-D-13 JAMES SHERMAN
RDG-2

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-29-18 [29]

Final ruling:

This case was dismissed on November 1, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

24. 18-21701-D-13 DEBRA LOWE
MC-1

MOTION TO EMPLOY MCKEEVER REAL
ESTATE AS REALTOR
11-2-18 [30]

25. 18-23708-D-13 STANLEY ASBURY AND
GSJ-3 KATHRINE STEWART ASBURY

CONTINUED MOTION TO CONFIRM
PLAN
10-8-18 [45]

26. 13-29733-D-13 ALAN BERNER
CLH-1

CONTINUED MOTION FOR
SUBSTITUTION OF TODD BERNER AS
THE SUCCESSOR TO THE DECEASED
DEBTOR, MOTION FOR CONTINUED
ADMINISTRATION OF THE CASE
UNDER CHAPTER 13 AND/OR MOTION
FOR WAIVER OF THE POST
CERTIFICATION REQUIREMENT FOR
ENTRY OF DISCHARGE FOR THE
DECEASED DEBTOR
9-10-18 [58]

27. 18-25171-D-13 LORENA LOPEZ-ALVAREZ CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
10-15-18 [24]
28. 18-24279-D-13 TONJA GOINS CONTINUED MOTION TO CONFIRM
JCK-1 PLAN
9-28-18 [18]
29. 18-26791-D-13 ANTONIO VIOLA MOTION FOR RELIEF FROM
ADR-1 AUTOMATIC STAY
SOLID & SMART INVESTMENTS, 11-2-18 [10]
LLC VS.