



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 5, 2024 at 1:30 p.m.

Unless otherwise ordered, all matters before the Honorable Christopher M. Klein shall be simultaneously: (1) **In Person**, at Sacramento Courtroom #35, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued medical credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 5, 2024 at 1:30 p.m.

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1. [23-23109](#)-C-13 GREGOIRE TONOUKOUIN MOTION FOR COMPENSATION BY THE
[TLA](#)-2 Thomas Amberg LAW OFFICE OF AMBERG HARVEY FOR
THOMAS L. AMBERG, JR., DEBTORS
ATTORNEY(S)
1-24-24 [[50](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 41 days' notice was provided. Dckt. 55.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Allowance of Professional Fees is granted.

Thomas L. Amberg filed this first interim request seeking approval of compensation for attorney services provided to debtor, Gregoire Tonoukouin.

Fees are requested for the period November 3, 2023, through January 24, 2024. The movant requests fees in the amount of \$3,932.50 and no costs.

DISCUSSION

The court finds that the hourly rates are reasonable and that the movant effectively used appropriate rates for the services provided. Counsel's interim fees in the amount of \$3,932.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 13 trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The court authorizes the Chapter 13 trustee to pay 100% of the fees and 100% of the costs allowed by the court.

The movant is allowed, and the Chapter 13 trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$3,932.50
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pursuant to this Motion as interim fees pursuant to 11 U.S.C. § 331 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Movant is allowed the following fees and expenses as a professional of the Estate:

Movant, Professional employed by debtor, Gregoire Tonoukouin,

Fees in the amount of \$3,932.50,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

2. [18-26725](#)-C-13 REBECCA BLAYLOCK
[LGT](#)-1 Gabriel Liberman

OBJECTION TO CLAIM OF
CALIFORNIA AMERICAN WATER,
CLAIM NUMBER 6-1
1-29-24 [[52](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 54.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 6-1, filed by California American Water was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 3, 2019. Notice of Bankruptcy Filing and Deadlines, Dkt. 11. The Proof of Claim subject to this Objection was filed September 19, 2019.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Lilian G. Tsang, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 6-1 of California American Water is sustained, and the claim is disallowed in its entirety.

3. [23-23532](#)-C-13 LAURIE LEDESMA
[MRL-1](#) Mikalah Liviakis

MOTION TO MODIFY PLAN
1-30-24 [[22](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 27.

The Motion to Modify Plan is denied.

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 26) filed on January 30, 2024.

The Chapter 13 Trustee filed an Opposition (Dkt. 29) on February 20, 2024, opposing confirmation on the following grounds:

1. The plan is not feasible; and
2. The plan does not specify the prepetition and postpetition arrears for the claim of Guild Mortgage.

The debtor filed a response to the Chapter 13 Trustee's objection (dkt. 34) on February 27, 2024. The debtor agrees with the Trustee's issues and requests that they be resolved in the order confirming plan.

DISCUSSION

The plan mathematically requires a payment of \$106.25 per month for attorney's fees, not \$6,375.00 per month as proposed in section 3.06 of the plan.

The debtor has not demonstrated the plan is feasible because the plan terms do not coincide with the amount to be paid. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Notwithstanding whether the plan provides for the prepetition or postpetition arrearages as the Trustee argues, the debtor has not carried her burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by the debtor, Laurie Ledesma, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

4. [23-24645](#)-C-13 STEVEN/TAMMY CARROLL
[JCW](#)-1 Nicholas Wajda

OBJECTION TO CONFIRMATION OF
PLAN BY GUILD MORTGAGE COMPANY
LLC
2-7-24 [[19](#)]

Thru #6

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 27 days' notice was provided. Dkt. 22.

The Objection to Confirmation of Plan is sustained.

Creditor, Guild Mortgage Company LLC ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that the plan does not fully provide for all the arrearages as set for in Creditor's Proof of Claim.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Guild Mortgage Company LLC, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

5. [23-24645](#)-C-13 STEVEN/TAMMY CARROLL
[LGT-1](#) Nicholas Wajda

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
2-15-24 [[30](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 19 days' notice was provided. Dkt. 33.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Lilian Tsang ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The attorney's fees in the plan are not paid in equal monthly installments over the life of the plan;
2. The plan does not provide for all of the debtors' monthly disposable income;
3. The plan is not feasible; and
4. The plan does not fully provide for Guidl Mortgage's arrears.

DISCUSSION

The plan proposes 25% distribution to general unsecured creditors, which is less than all of the debtor's disposable income. That is reason to deny confirmation. 11 U.S.C. § 1325(b)(1).

The plan mathematically requires a payment of \$8,352.00 per month, which is greater than the proposed \$5,625.00 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Trustee argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Lilian Tsang, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

6. [23-24645](#)-C-13 STEVEN/TAMMY CARROLL OBJECTION TO CONFIRMATION OF
[SKI](#)-1 Nicholas Wajda PLAN BY MERCEDES-BENZ VEHICLE
TRUST
2-12-24 [[23](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 26.

The Objection to Confirmation of Plan is sustained.

Creditor, Mercedes-Benz Vehicle Trust ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan fails to provide for the assumption or rejection of Debtor's lease with Creditor; and
2. The plan does not cure the arrears of Creditor's claim within the first six months of the plan.

DISCUSSION

The plan at Section 4.01 provides that unexpired leases may be assumed and prepetition arrears for assumed leases shall be paid in full with a monthly dividend as specified in the plan.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan assumes the lease. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(5).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Mercedes-Benz Vehicle Trust, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

7. [23-22374](#)-C-13 WILLIE WATSON
[23-2078](#) Peter Cianchetta

MOTION FOR SUMMARY JUDGMENT
1-23-24 [[13](#)]

WILLIAMS ET AL V. WATSON, SR.

Tentative Ruling:

The Motion has been set on Local Rule 7056-1 procedure which requires 42 days' notice. The Proof of Service shows that 42 days' notice was provided. Dkt. 18.

The Motion for Summary Judgment is XXXXXXXXXX

The Plaintiffs filed this Motion for Summary Judgment (Dkt. 65) on January 3, 2024 seeking a determination that the debt owing to Plaintiffs is nondischargeable pursuant to 11 U.S.C. § § 523(a)(2) and/or 523(a)(6). Plaintiffs contend that a judgment on the merits has already been entered in the state Superior Court and the Defendant is precluded from re-litigating the matter.

Plaintiffs assert that issue preclusion is appropriate here for the following reasons: (1) the state court judgment is final; (2) the issues in the state court action are identical as the issues here; (3) the state court proceeding was actually litigated; (4) the issue in the state court proceeding was necessarily decided; and (5) the parties here are the same parties in the state court proceeding.

OPPOSITION

The Defendant filed an opposition (dkt. 20) on February 14, 2024. Defendant asserts that the motion was not filed according to the Local Rules of Practice. Specifically, Defendant asserts that the amount of time of notice was only 21 days because the Plaintiffs filed an amended Notice of Hearing on February 13, 2024 that corrected the hearing date from March 5, 2023 to March 5, 2024. See docket 19.

REPLY

The Plaintiffs filed a reply (dkt. 22) on February 20, 2024, asserting that the amended Notice of Hearing corrected a scrivener's error, and the original Notice of Hearing complied with Local Rule 7056-1. Plaintiffs represent that Defendant's counsel left a voicemail with Plaintiffs' counsel that acknowledged the error in the date.

Discussion

At the hearing XXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Summary Judgment filed by the Plaintiffs, Jessica Williams and Emma LaVerne Williams, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxxxxxxx~~

8. [23-22374](#)-C-13 WILLIE WATSON
[HLG-1](#) Peter Cianchetta

MOTION TO DISMISS CASE
2-21-24 [[172](#)]

Thru #10

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f) (2) notice which requires 14 days' notice. The Proof of Service does not show that the debtor or the Chapter 13 Trustee was served. Dkts. 176 and 177. Further, the Proof of Service indicates that only 13 days's notice may have been given. Dkt. 177

The Motion is ~~xxxxxxx~~, and the case is ~~xxxxxxx~~

Creditors, Jessica Williams and Emma LaVerne Williams (Creditors), filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not confirmed a plan in the seven months since this case was filed on July 18, 2023.

Creditors further contend that this case was filed in bad faith because the debtor filed two prior cases that were both dismissed, filed incomplete filings, and filed schedules that omitted accounts and portions of funds from an account.

Finally, Creditors assert the plan that is currently filed and set for confirmation should not be confirmed.

At the hearing ~~xxxxxxxxxxxx~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by Creditors, Jessica Williams and Emma LaVerne Williams, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is ~~xxxxxxx~~, and the case is ~~xxxxxxxxxx~~

9. [23-22374](#)-C-13 WILLIE WATSON
[PLC-4](#) Peter Cianchetta

MOTION TO CONFIRM PLAN
1-22-24 [[130](#)]

Final Ruling: No appearance at the March 5, 2024 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 43 days' notice was provided. Dkt. 134.

The Motion to Confirm is denied as moot.

On January 26, 2024, the debtor filed a new proposed plan. Filing a new plan is a de facto withdrawal of the pending plan. Therefore, the Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Willie Watson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 39 days' notice was provided. Dkt. 142.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 139) filed on January 26, 2024.

The Chapter 13 Trustee filed an Opposition (Dkt. 166) on February 20, 2024, opposing confirmation on the following grounds:

1. The plan is not feasible;
2. The plan misclassifies the claim of Nationstar Mortgage LLC as a class 4 claim;
3. The plan proposes a different lump sum payment amount in separate sections of the plan.

Creditors, Jessica and LaVerne Williams (Creditors), filed an Opposition (Dkt. 168) on February 20, 2024, opposing confirmation on the following grounds:

1. The plan proposes a payments for a term exceeding five years;
2. The undervalues the creditors' claim;
3. The plan improperly provides for Creditors' claim;
4. The plan is inconsistent; and
5. The plan was filed in bad faith.

DISCUSSION

The plan proposes valuing the secured claim of Jessica and LaVerne Williams. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

The plan mathematically requires a payment of \$3,532.40 per month, which is greater than the proposed \$3,500.00 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to

deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan, beginning with Section 3.07, requires that all delinquent secured claims that mature after the completion of the plan, must be included as a class 1 claim, and payable through the Trustee. Here, the plan incorrectly classifies the claim of Nationstar Mortgage LLC as a class 4 claim when it should be classified as a class 1 claim. That is reason to deny confirmation.

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Willie Watson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

11. [23-22893](#)-C-13 CHERYL RYCE
[WLG-2](#) Nicholas Wajda

CONTINUED MOTION TO CONFIRM
PLAN
1-3-24 [[61](#)]

Final Ruling: No appearance at the March 5, 2024 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 67.

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Second Amended Chapter 13 Plan (Dkt. 65) filed on January 3, 2024.

Creditor, Ariela Rotschild, Trustee of the Rotschild Trust Dated November 21, 2001 ("Creditor"), filed an Opposition (Dkt. 70) on February 5, 2024, opposing confirmation on the following grounds:

1. The plan relies on an sale of property without a hard date for the property to be sold; and
2. The plan provides that postpetition mortgage fees and expenses of Creditor would not be paid at the time of sale through escrow.

DISCUSSION

At the prior hearing on February 20, 2024, the parties represented that they had agreed to a stipulation as to the amended plan and would be uploading the stipulation with all the parties signatures.

A review of the docket shows that the stipulation was filed as the parties represented. Dkt. 72.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Cheryl Ann Ryce, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the Amended Chapter 13 Plan (Dkt. 65) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.