



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 4, 2023 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**.

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UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

December 4, 2023 at 1:30 p.m.

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|----|--|------------------------------------|--|
| 1. | <u>23-23320</u> -C-13
<u>LGT</u> -1 | TRINIDAD SANCHEZ
Peter Macaluso | OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
11-8-23 [<u>14</u>] |
|----|--|------------------------------------|--|

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 26 days' notice was provided. Dkt. 17.

<p>The Objection to Confirmation of Plan is sustained.</p>

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

1. Debtor has failed to provided all business documents;
2. Plan may not provided for all of debtor's disposable income;
3. The plan relies on an improper motion to value collateral; and
4. The plan does not provide for a monthly dividend for attorney's fees.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on November 17, 2023. Dkt. 18. The debtor represents he has provided all available business documents. Debtor contends that he has amended Form 122C-1 with the debtor's detailed monthly income and the distribution to unsecured creditors should be no more than 6.8%. Debtor concedes that the collateral to SAFE Credit Union is not subject to a motion to value and proposes to increase the dividend to creditor to \$360.00 per month and a dividend of \$100.00 for attorney's fees.

DISCUSSION

The debtor has not filed all business documents including six months of profit and loss statements and proof of license and insurance or written statement that no such documentation exists.

December 4, 2023 at 1:30 p.m.

Page 1 of 14

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (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.

2. [18-25924](#)-C-13 DANIEL SPOLARICH
[RWF](#)-3 Robert Fong

MOTION TO WAIVE FINANCIAL
MANAGEMENT COURSE REQUIREMENT,
WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, AS TO DEBTOR
11-1-23 [[59](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 33 days' notice was provided. Dkt. 64.

**The Motion to Waive section 1328 Certificate Requirement
is xxxxxxxx.**

Counsel for debtor, filed this Motion (1) offering a suggestion of death of the debtor, Daniel Thomas Sporlarich; and (2) seeking waiver of the 11 U.S.C. § 1328 certification.

The movant filed as an Exhibit, a copy of a Certificate of Death showing the debtor passed away on March 1, 2021. Dkt. 62.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that a Chapter 13 case where the debtor dies or becomes incompetent may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred, if further administration is possible and in the best interest of the parties.

However, at this point in time, a motion to substitute under FRCP 25 as incorporated by FRBP 7025 and 9014(c) has not been filed.

At the hearing xxxxxxxx

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.

IT IS ORDERED that the Motion is xxxxxxxx

3. [23-23944](#)-C-13 ERIC/DANIELLE ELLEDGE MOTION TO AVOID LIEN OF LEONARD
[TLA](#)-1 Thomas Amberg C. JONES
11-8-23 [[8](#)]

Tentative Ruling:

The Motion 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. 13.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Leonard C. Jones, Administrator of The Algrie Davis Estate ("Creditor") against property of the debtor commonly known as 5060 Stoner Dr., Sacramento, California ("Property").

A judgment was entered against the debtor in favor of Creditor in the amount of \$29,865.36. Exhibit D, Dkt. 10. An abstract of judgment was recorded with Sacramento County on October 6, 2023, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$429,000.00 as of the petition date. Dkt. 1. The unavoidable and senior liens that total \$280,420.00 as of the commencement of this case are stated on Debtor's Schedule D. Dkt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$350,000.00 on Schedule C. Dkt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors Eric and Danielle Elledge 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 judgment lien of Leonard C. Jones, Administrator of The Algrie Davis Estate, California Superior Court for Sacramento County Case No. 34-2021-00302724, recorded on October 6, 2023, Document No. 202310060677, with the Sacramento County Recorder, against the real property commonly known as 5060 Stoner Dr.,

Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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 only 33 days' notice was provided. Dkt. 63.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 56) filed on October 16, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 64) on November 7, 2023, opposing confirmation on the following grounds:

1. The debtor's Disclosure of Compensation of Attorney for Debtor is contradictory of the "No Look Fee" and the plan does not provide a monthly dividend for attorney fees;
2. The debtor's Amended Schedules A/B does not list any clothing or jewelry, but debtor testified at the 341 meet that he does possess those items;
3. The plan does not meet the liquidation test;
4. The plan is not feasible; and
5. The plan does not provide for all debtor's monthly disposable income.

DISCUSSION

The debtor has non-exempt assets totaling \$10,000.00. The plan provides for a eleven percent dividend to unsecured claims, which is less than the xx percent dividend necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

The plan mathematically requires a payment of \$153.00 per month, which is greater than the proposed \$125.26 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 filed amended Disclosure of Compensation of Attorney for Debtor is contrary to the Rights and Responsibilities signed by debtor and his attorney.

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, Clifton Reed, 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.

5. [21-23869](#)-C-13 TERANCE WILLIAMS
[LGT](#)-1 David Foyil

OBJECTION TO CLAIM OF TWO JINN,
INC., CLAIM NUMBER 4
10-30-23 [[62](#)]

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 35 days' notice was provided. Dkt. 64.

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. 4-1, filed by Two Jinn, Inc. dba Aladdin Bail Bonds was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 21, 2022. Notice of Bankruptcy Filing and Deadlines, Dkt. 11. The Proof of Claim subject to this Objection was filed September 15, 2023.

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 4-1 of Two Jinn, Inc. dba Aladdin Bail Bonds is sustained, and the claim is disallowed in its entirety.

6. [23-22374](#)-C-13 WILLIE WATSON
Peter Cianchetta

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
10-26-23 [[98](#)]

No Tentative Ruling:

The Objection was filed without a Notice of Hearing, a separately filed Certificate of Service and without the Certificate of Service form required by Local Rule.

The Objection to Claimed Exemptions is XXXXXXXXXX

Creditor Bowles & Verna, LLP filed this Objection objects to the debtor's claimed exemptions pursuant to California Civil Code of Procedure § 704.110 because the debtor fails to specify which category of retirement or pension benefits apply to his deposit at Farmers & Merchant Bank.

DISCUSSION

"All amounts received by any person, a resident of the state, as a public retirement benefit from the United States or a public entity or from a public retirement system are exempt."

Cal. Code Civ. Pro. § 704.110(d)

CCCP § 704.110(d) applies to benefits in the actual possession of the recipient or that have been deposited. However, funds that are exempt remain exempt to the extent they can be traced into the deposit accounts and the exemption claimant has the burden of tracing exempt funds. Cal. Code Civ. Pro. § 703.080.

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 Objection to Claimed Exemptions filed by Bowles & Verna, LLP having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is XXXXXXXXXX

7. [23-22374](#)-C-13 WILLIE WATSON
[HLG](#)-1 Peter Cianchetta

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-2-23 [[108](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 112.

The Objection to Claimed Exemptions is XXXXXXXXXX

Creditors Jessica Williams and Emma LaVerne Williams filed this Objection objects to the debtor's claimed exemptions pursuant to California Civil Code of Procedure § 704 for the following reasons:

(a) the debtor has not offered any evidence as to the value of the property he claims exempt;

(b) the value of the homestead exemption is limited under 11 U.S.C. § 522(q) (1) (B) (ii);

(c) the debtor's non-real property is not set forth in sufficient detail; and

(d) the specific laws may not apply.

DISCUSSION

It is alleged that Creditors hold a state court judgment against the debtor for fraud and the doctrine of issue preclusion precludes the debtor from relitigating the issue of fraud again in this court.

11 U.S.C. § 522(q) (1) (B) (ii) limits the amount of the homestead exemptions in cases where a debt arose from "fraud, deceit or manipulation in a fiduciary capacity..." 11 U.S.C. § 522(q) (1) (B) (ii). This court has discussed this section in a previous case this year. See *In re Oliver*, 649 B.R. 206 (Bankr. E.D. Cal. 2023).

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 Objection to Claimed Exemptions filed by 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 Objection is XXXXXXXXXX

8. [23-23279](#)-C-13 MIRIAM KNIGHT
[CYB](#)-1 Candace Brooks

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL GROUP, LLC
11-2-23 [[13](#)]

Final Ruling: No appearance at the December 4, 2023 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 17.

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 to Value is granted.

The debtor filed this Motion seeking to value the portion of One Main Financial Group, LLC's ("Creditor") claim secured by the debtor's property commonly known as 2015 Dodge Grand Caravan (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$12,465.00. Declaration, Dckt. 15.

DISCUSSION

Upon review of the record, the court finds the value of the Property is \$12,465.00. There are no senior liens encumbering the Property. Therefore, Creditor's secured claim is determined to be \$12,465.00. 11 U.S.C. § 506(a).

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 Value Collateral and Secured Claim filed by the debtor 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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of One Main Financial Group, LLC ("Creditor") secured by property commonly known as 2015 Dodge Grand Caravan (the "Property") is determined to be a secured claim in the amount of \$12,465.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

9. [23-23279](#)-C-13 MIRIAM KNIGHT
[LGT](#)-1 Candace Brooks

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
11-6-23 [[18](#)]

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 28 days' notice was provided. Dkt. 21.

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 plan relies on a Motion to Value Collateral; and
2. The plan is not feasible.

DISCUSSION

The Motion to Value Collateral (Item 8) above has now been granted and, therefore; the Trustee's issue is now resolved.

The plan mathematically requires a payment of \$566.85 per month, which is greater than the proposed \$540.00 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).

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.

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 56 days' notice was provided. Dkt. 70.

The Motion to Modify Plan is denied.

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 69) filed on May 4, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 72) on June 5, 2023, opposing confirmation because the plan does not provide for the claim of the Franchise Tax Board (Proof of Claim No. 8-1).

RESPONSE

The debtor filed a response (dkt. 75) stating that she is not required to file a state income tax return and the numerous attempts to contact FTB have gone unanswered.

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 debtor is required to file a state income tax return, 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).

This matter was continued to allow the debtor additional time to resolve the issue with the Proof of Claim filed by the California Franchise Tax Board (Claim No. 8-1). At this point, nothing new has been filed and the Claim No. 8-1 has not been amended.

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, Valerie Ramirez, 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.