

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 13, 2022 at 2:00 p.m.

1. 21-90556-E-11	INNOVATIVE BUILDING SYSTEMS, INC.	STATUS CONFERENCE RE: VOLUNTARY PETITION 11-25-21 [1]
SUBCHAPTER V		

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 12/25/21 [Dckt 13];
Order granting filed 12/27/21 [Dckt 16]

Trustee Report at 341 Meeting lodged 12/29/21

[CAE-1] Debtor's Chapter 11 Status Report filed 12/30/21 [Dckt 18]

The Status Conference is continued to 2:00 p.m. on xxxxxxx , 2022.
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This Subchapter V case was filed on November 25, 2021. On December 30, 2021, the Debtor/Debtor in Possession filed a Status Report. Dckt. 18. The information in the Status Report includes the following. The Debtor failed to pay fees in Nevada, its state of incorporation, and its corporate status has been suspended. With that suspension, California deems the Debtor's qualification to do business in California has been forfeited. However, upon the suspension in Nevada being lifted, California can revive Debtor's certification in California.

The Status Report does not include information about the efforts being made by the Debtor/Debtor in Possession to have the Nevada suspension lifted and its ability to do business in California revived.

The Debtor/Debtor in Possession identifies its only significant assets as a net operating loss which can be offset against future profits. Current, the Bankruptcy Estate is not operating any business, has no employees. It desires to correct the operational issues and address the claim of the Internal Revenue Service through a Subchapter V plan.

On Schedule A/B the Debtor lists no assets other than the operating loss. The Debtor has no inventory; office furniture or equipment; or machinery, equipment, or vehicles with which to operate a business. Dckt. 1 at 12.

On Schedule D, Debtor does not list any creditors with secured claims. *Id.* at 15. On Schedule E, Debtor lists a substantial priority tax claim. *Id.* at 16-17. Debtor lists \$164,558 in general unsecured claims, of which one creditor has a \$150,000 judgment. *Id.* at 17-18.

Debtor lists no leases or executory contracts on Schedule G. *Id.* at 19.

In the Status Report, Debtor/Debtor in Possession states, “The Debtor’s business since 2018 was steel fabrication and in many cases, installation of the steel products in buildings.” Status Report, p. 2:9-10; Dckt. 18. Debtor does not explain how it fabricates steel and installs steel products in building with no tools, equipment, or vehicles.

At the Status Conference, **XXXXXXX**

2 thru 4

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor's Attorney, Chapter 11 Trustee, creditors, and Office of the United States Trustee on November 23, 2021. By the court's calculation, 51 days' notice was provided. The court issued an Order setting the hearing date for January 13, 2022. Order, Dckt. 34.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The hearing on the Confirmation of Plan of Reorganization is continued to 2:00 p.m. on [xxxxx, 2022](#).

The Debtor in Possession Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 23, 2021 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

December 23, 2021 Last Day for Submitting Written Acceptances or Rejections

December 23, 2021 Last Day to File Objections to Confirmation

January 6, 2022 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 (Unimpaired)	For: 0 Against: 0	100%	100%
Class 2 (Impaired)	For: 1 Against: 0	100%	100%
Class 3 (Unimpaired)	For: 0 Against: 0	100%	100%
Class 4 (Impaired)	For: 2 Against: 2	100%	100%
Class 5 (Impaired)	For: 2 Against: 0	75%	100%

The Declaration of Bridgette Berry filed in support of confirmation provides evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Dckt. 48, pg. 1

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Evidence: Dckt. 48, pg. 2

3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence: Dckt. 48, pg. 2

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: Dckt. 48, pg. 2

5. (A)(I) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence: Dckt. 48, pg. 2

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(I) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Dckt. 48, pg. 2 & 3

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

Evidence: Dckt. 48, pg. 2 & 3

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Dckt. 48, pg. 3

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Dckt. 48, pg. 3

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: Dckt. 48, pg. 3

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Evidence: Dckt. 48, pg. 3

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: Dckt. 48, pg. 3

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Dckt. 48, pg. 3

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: Dckt. 48, pg. 3

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

Evidence: Dckt. 48, pg. 3

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Evidence: Dckt. 48, pg. 3

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Evidence: Dckt. 48, pg. 3

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Evidence: Dckt. 48, pg. 3

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

- (I) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
 - (II) (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (I) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

Evidence: Dckt. 48, pg. 3

(B) With respect to a class of unsecured claims—

- (I) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Evidence: Dckt. 48, pg. 3

(C) With respect to a class of interests—

- (I) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation

preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

Evidence: Dckt. 48, pg. 3

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Creditor's Response

On December 14, 2021, Creditor, Korinn Berry, filed a Response to Debtor in Possession's Confirmation of Chapter 11 Plan. Dckt. 40. Creditor requests for an extension on the hearing to vote on a plan because Creditor has not had adequate time to seek out Bankruptcy Counsel. Creditor further states she was not consulted or included in the decision making process of this plan and has not received adequate time to review the books of the business. Creditor has a thirty-three percent (33.3%) equal ownership stake in the business. The other equal shares are thirty-three percent (33.3%) to Bridgette Berry (ex-wife) and thirty-three percent (33.3%) to Becky Berry (Bridgette's Mother).

Creditor's Opposition

On December 23, 2021, Creditors, Gustavo Navarro, Federico Ramirez, and Sylvia Navarro, Objected to Debtor in Possession's Confirmation of Chapter 11 Plan. Dckt. 45. Creditors hold Class 4, non-priority unsecured claims totaling \$56,379.00. The Creditors object to the confirmation of this Plan because the Plan proposes to pay Creditors and other unsecured creditors at a thirty percent (30%) dividend over the next five years. Creditors further state there is no rational basis or reason why that number should not be one hundred percent (100%) if the business improves in the future. The Creditors further contend the Projected Post-Confirmation Cash Receipts, attached as Exhibit A, is not entirely accurate because it only provides for six months when it should provide for three or five years.

Debtor in Possession's Response

On January 6, 2022, Debtor in Possession filed Bridgette Berry's, the responsible representative of the Debtor in Possession, Declaration In Support of the Chapter 11 Plan. Dckt. 48. In the Declaration Debtor addresses the concerns raised by both Creditors in Paragraphs 20 and 21.

Addressing the first Creditor, Korinn Berry, Debtor states she disagrees with Creditor's accusation Creditor has been denied access to financial records. However, Debtor in Possession is not opposed to a continuance and has provided Creditor with the log in information for Quick Books to review financial information.

Addressing the other Creditors, Gustavo Navarro, Federico Ramirez, and Sylvia Navarro, concerns, Debtor stipulates she has prepared five year projections but has not had the ability to review with the Debtor's attorney. Granting the continuance requested by Korinn Berry will allow for such review to take place. Debtor further states specific repairs to the kitchen must be completed in order for the business to sell coffee. Additionally, the present plan is to sell pre-packaged snacks with basic coffee in addition to the rotation food trucks which come to the taproom.

Further, marketing is extremely expensive because the last Yelp advertising cost was \$600.00, which only generated twenty (20) hits on the business's Yelp page. The Debtor clarifies the confusion revolving around the three different addresses for the business. One address is for the cold storage to store the beer, another for the taproom to sell the beer, and the last one is where the brewing process takes place. Lastly, Debtor does intend to substantially increase the dividend on Class 4 claims and will know the payment schedule and dividend within the next week.

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 the Chapter 11 Plan filed by MoBrewz, LLC ("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 hearing on the Motion to Confirm is continued to 2:00 p.m. on **XXXXXX**, 2022.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Motion for Continuance and to Conduct Contested Matter Discovery Hearing was served by the Clerk of the Court on Creditor on December 14, 2021. The court computes that 30 days' notice has been provided.

The Motion for Continuance on the Hearing to Vote on a Plan and to Conduct Contested Matter Discovery is granted and court has by separate order continued the hearing on the Motion to Confirm the Chapter 11 Plan.

On December 14, 2021, Creditor, Korinn Berry, filed a Response to Debtor in Possession's Confirmation of Chapter 11 Plan. Dckt. 40. The Court has separated this pleading from the Confirmation of the Chapter 11 Plan and classified it as a Motion for Continuance and to Conduct Contested Matter Discovery Hearing. Creditor requests for an extension on the hearing to vote on a plan because Creditor has not had adequate time to seek out Bankruptcy Counsel. Creditor further states she was not consulted or included in the decision making process of this plan and has not received adequate time to review the books of the business. Creditor has a thirty-three percent (33.3%) equal ownership stake in the business. The other equal shares are thirty-three percent (33.3%) to Bridgette Berry (ex-wife) and thirty-three percent (33.3%) to Becky Berry (Bridgette's Mother).

On December 20, 2021, the Court issued an Order to Set Hearing Re: Motion/Application for Continuance and to Conduct Contested Matter Discovery Hearing. Dckt. 41. The confirmation process in Chapter 11 is a contested matter proceeding in the bankruptcy court. Federal Rules of Bankruptcy Procedure Rules 3020, 9014. The discovery provisions of the Federal Rules of Civil Procedure Rule 26 and Federal Rules of Bankruptcy Procedure Rule 7026 are incorporated into Contested Matter proceedings in a bankruptcy case. Federal Rules of Bankruptcy Procedure Rule 9014(c). The Court set for hearing the Motion for Continuance filed by Korinn Berry (Dckt. 40) to be conducted in conjunction with the hearing on the confirmation of the proposed Subchapter V Plan on January 13, 2022, at 2:00 p.m.

On January 6, 2022, Debtor, Bridgette Berry, filed a Declaration In Support of the Chapter 11 Plan. Dckt. 48. In the Declaration Debtor addresses the concerns raised by Korinn Berry in Paragraph 20. Bridgette Berry, Debtor, states she disagrees with Creditor's accusation Creditor has been denied access to financial records. However, Debtor is not opposed to a continuance and has provided Creditor with the log in information for Quick Books to review financial information.

At the Hearing **XXXXXXXXXXXXXXXXXX**

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 Continuance on the Hearing to Vote on a Plan and to Conduct Contested Matter Discovery is granted and the Hearing to Vote, 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 for Continuance is granted, with the court continuing the hearing on the Motion to Confirm the Chapter 11 Plan by separate order of the court.

4. [21-90378-E-11](#) **MOBREWZ, LLC** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**

Debtor's Atty: David C. Johnston; Brian S. Haddix

Notes:

Continued from 12/2/21 to be conducted in conjunction with the confirmation hearing.

The Status Conference is continued to XXXXXX on XXXXXX, 2022.
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JANUARY 13, 2022 STATUS CONFERENCE

At the Status Conference, **XXXXXX**

DECEMBER 2, 2021 STATUS CONFERENCE

On November 16, 2021, the Debtor/Debtor in Possession filed a Chapter 11 Small Business Plan. The Plan terms state that the Class 1 priority claims, and the Class 2 and Class 3 secured claims, on the terms of the loan documents, will be paid in full. For general unsecured claims a 30% dividend or \$1,500 a month for 60 months, whichever occurs first. Dckt. 33. The confirmation hearing for the Chapter 11 Plan is set for 2:00 p.m. on January 13, 2022. Dckt. 34.

The Debtor/Debtor in Possession filed a Status Report on November 26, 2021 (Dckt. 37) confirming that the plan, notice of confirmation hearing, and related documents have been sent.

SEPTEMBER 30, 2021 STATUS CONFERENCE

Through a Status Report in an unrelated adversary proceeding, the court has learned that counsel for the Debtor has been diagnosed with COVID-19 and has been hospitalized. Also, that counsel for Debtor will be unable to practice law for the period from late September 2021 through late November 2021.

The Debtor/Debtor in Possession filed a Status Report on September 17, 2021. Dckt. 22. In it the Debtor/Debtor in Possession recounts the current status of the business and the difficulties in updating the facilities and getting the business open due to COVID-19 issues.

It is projected in the Report that the Debtor/Debtor in Possession will have a Chapter 11 plan filed on or before November 15, 2021, which is the 90th day after the filing of the Plan. Given counsel for the Debtor/Debtor in Possession disruption of his legal practice, such appears to be in question.

The Trustee's report of the First Meeting of Creditors states that the Debtor/Debtor in Possession appeared and counsel for the Debtor/Debtor in Possession appeared at the Meeting on September 22, 2021. September 23, 2021 Trustee Docket Entry Report. The First Meeting has been continued to October 7, 2021.

At the Status Conference, the Subchapter V Trustee reported that the Meeting of Creditors has been conducted. An issue exists whether Debtor can obtain the additional capital.

The U.S. Trustee has a continued 341 Meeting scheduled for next week.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on November 10, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Final Decree and Order Closing Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Final Decree and Order Closing Case is XXXXXXXXXX.

The Motion for Final Decree and Order Closing Case has been filed by Russell Wayne Lester ("Debtor in Possession"). Dckt. 781. Debtor in Possession makes this request pursuant to 28 U.S.C. §§ 157(b)(2)(A), (O) AND 11 U.S.C. § 350.

Debtor in Possession filed for bankruptcy relief under Chapter 11. Debtor in Possession's Plan was confirmed on May 27, 2021 and modified on July 1, 2021. The order confirming the Plan is now final and Debtor in Possession claims their case has been fully administered.

APPLICABLE LAW

Final Decree and Closing of Case

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is

required to close a case after an estate is “fully administered and the court has discharged the trustee.” The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been “fully administered,” factors the court considers include whether:

- A. the plan confirmation order is final;
- B. deposits required by the plan have been distributed;
- C. property to be transferred under the plan has been transferred;
- D. the debtor (or the debtor’s successor under the plan) has taken control of the business or of the property dealt with by the plan;
- E. plan payments have commenced; and
- F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

DISCUSSION

Movant argues the following factors support approval of the Motion:

- A. The estate has been fully administered for purposes of 11 U.S.C. § 350(a).
- B. The order confirming the Plan was entered four months ago and is now final.
- C. All documents needed to implement the Plan have been signed, the SPE has been formed with all property transferred to the SPE as required under the Plan.
- D. The Reorganized Debtor has operated his business post-confirmation pursuant to the Plan.
- E. The Reorganized Debtor has made post-confirmation payments to the holders of allowed claims as authorized under the Plan.
- F. Two of the three Ranch properties to be sold pursuant to the Plan have closed, and the third is scheduled to close prior to the hearing date on this Motion. Other than the Gordon Ranch, whose sale was approved by the Court, these sales do not require Court approval under the Plan.

G. There are no pending matters in the Reorganized Debtor's case.

Motion, Dckt. 781, at p. 4-5.

Since September 2021 have requested an accounting of Prudential claim, payments, and application of payments

The court continued the hearing to 2:00 p.m. on December 16, 2021 (specially set to Modesto Calendar).

December 16, 2021 Hearing

At the hearing, counsel for the Debtor reported that the parties have been engaged in discussions, but have not yet reached agreement for closing of the case.

An extensive discussion was conducted at the hearing, with the parties addressing their disputes, whether the case can be closed, undisputed amounts paid from the easement proceedings, and then the case being reopened and the court determine the proper amounts to be paid as provided in the Plan (as well as determining whether demands for excess amounts or reduced amounts were asserted in good faith or were an affirmative breach of the Plan).

January 5, 2022 Hearing

At the hearing, counsel for the Reorganized Debtor reported that a resolution is being worked on. Counsel for First Northern Bank of Dixon ("FNBD") stated what he believed the terms to be and that an order resolving this is possible. Counsel for Prudential echoed counsel for FNBD that a resolution can be reached.

At the request of the Parties, the court continues the hearing to 2:00 p.m. on January 13, 2022.

January 13, 2022 Hearing

XXXXXXXXXX

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 Final Decree and Order Closing Case filed by Russell Wayne Lester ("Debtor in Possession"), 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 hearing on the Motion for Final Decree and Order Closing Case is XXXXXXXXXXXXXXXX.

FINAL RULINGS

6. [21-90338-E-7](#) **JOSE GUZMAN AND** **STATUS CONFERENCE RE:**
[21-9014](#) **GUILLERMINA DE FLORES** **COMPLAINT**
FH TRUCKING, INC. V. GUZMAN **11-4-21 [1](#)**

Final Ruling: No appearance at the January 13, 2022 Status Conference is required.

Plaintiff's Atty: Armando S. Mendez
Defendant's Atty: unknown

Adv. Filed: 11/4/21
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:
Request for Entry of Default [Jose Manuel Guzman; Attorney T. Mark O'Toole; and Trustee Shari L. Carello] filed 12/20/21 [Dckt 7]; Entry of Default and Order Re: Default Judgment Procedures filed 1/5/22 [Dckt 8]

The Status Conference is continued to 2:00 p.m. on March 10, 2022.

FH Trucking, Inc., Plaintiff, filed the Complaint in this Adversary Proceeding seeking to have a debt determined nondischargeable as provided in 11 U.S.C. § 523(a)(2)(A), (a)(2)(B), and (a)(6). Dckt. 1. The Default of Defendant Debtor Jose Guzman was entered on January 5, 2022. Dckt. 8. Plaintiff must now proceed with a noticed motion (supported by admissible evidence) for the court to enter a default judgment.

The court continues the Status Conference so the Parties may focus on the motion for entry of default judgment.

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 Status Conference having been scheduled to be conducted on January 13, 2022, the default of the Defendant-Debtor having been entered on January 5, 2022, the Plaintiff now having to file and set for hearing a motion for entry of default judgment, and upon review of the pleadings and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on March 10, 2022.**