

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Modesto, California

**March 27, 2014 at 3:30 p.m.**

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1. [11-94004-E-11](#) LUIS/ANGELA SOUSA

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
11-18-11 [[1](#)]

Debtors' Atty: Thomas O. Gillis

**Final Ruling: The Status Conference is continued to 3:30 p.m. on June 12, 2014.** No appearance at the March 27, 2014 Status Conference is required.

The Debtor/Plan Administrators state in their March 26, 2014 Status Report that a Motion to Administratively Close this case will be filed and the hearing set for May 1, 2014. The monthly operating reports for November and December 2013 were untimely filed on February 12, 2014. No post-confirmation reports have been filed.

No other pleadings have been filed indicating that the Debtor/Plan Administrators are not performing the plan. The delays in the Debtor/Plan Administrators in administratively closing the case appears to only result in them having to pay additional U.S. Trustee fees.

Notes:

Continued from 12/19/13

Operating Reports filed: 2/12/14 [Nov & Dec]

[TOG-14] Order Confirming Chapter 11 Plan filed 12/25/13 [Dckt 371]

**March 27, 2014 at 3:30 p.m.**

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2. [14-90205-E-11](#) JOSEPH TEDESCO

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
2-14-14 [[1](#)]

CASE DISMISSED 3/10/14

Debtor's Atty: David C. Johnson

**Final Ruling: The bankruptcy case having been dismissed, the Status Conference is removed from the calendar.** No appearance at the March 27, 2014 Status Conference is required.

Notes:

Order Dismissing Case for Failure to Timely File Documents filed 3/10/14  
[Dckt 18]

3. [10-92719-E-7](#) ERVIN/ANA RICHARDS

ORDER SETTING STATUS CONFERENCE  
RE: SUBSTITUTION OF ATTORNEY  
2-4-14 [[72](#)]

Debtors' Atty: Gregory J. Smith; Kathleen H. Crist

Notes:

Order setting status conference states that if a substitution of attorney is filed on or before 2/22/14, this status conference will be removed from the calendar and no appearance of the Debtors or counsel for Debtors is required.

[JCK-5] Change in Designation of Counsel for Service filed 2/11/14 [Dckt 77]

4. [12-93235-E-7](#) GRAZILDI HASKEL STATUS CONFERENCE RE: VOLUNTARY PETITION  
12-28-12 [[1](#)]

Debtor's Atty: Kathleen H. Crist

**Final Ruling:** The Debtor having designated a current member of the State Bar as counsel of record, **the Status Conference is removed from the calendar.** No appearance at the March 27, 2014 Status Conference is required.

Notes:

Order setting status conference states that if a substitution of attorney is filed on or before 2/22/14, this status conference will be removed from the calendar and no appearance of the Debtor or counsel for Debtor is required.

[JCK-1] Change in Designation of Counsel for Service filed 2/13/14 [Dckt 24]

5. [12-93049-E-11](#) MARK/ANGELA GARCIA APPROVAL OF AMENDED DISCLOSURE STATEMENT FILED BY DEBTORS  
MJH-12 Mark J. Hannon 2-12-14 [[308](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors, and Office of the United States Trustee on February 12, 2014. By the court's calculation, 43 days' notice was provided.

**Tentative Ruling:** The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

**The court's tentative decision is to deny the Motion to Approve Disclosure Statement.** 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, the court will make the following findings of fact and conclusions of law:

#### REVIEW OF THE DISCLOSURE STATEMENT

Case filed: November 30, 2012

Background: The Debtors are individuals, Mark and Angela Garcia, and have been in the business of operating a bail bond agency in Modesto, California. The debtors formerly operated under a corporation, Garcia Family Bail Bond,

Inc., but shortly before the bankruptcy Debtors closed out the corporation and now operate it as a sole proprietorship. The business suffered from the general downturn in the economy.

Debtors have also been involved in two state litigation cases in the last four years which have resulted in large amounts of attorney fees. Debtors are also the owners and shareholders of The Most Wanted Wine Co., with nine acres of grapes planted at their home. Debtors were paying to have them harvested, pruned, crushed and bottled. However, the retail outlet Debtors had to sell the wine has closed and no customers are purchasing grapes. Debtors state no income will be generated from The Most Wanted Wine Co. business.

PLAN SUMMARY:

<b>Creditor/Class</b>	<b>Treatment</b>	
Administrative Expenses	<b>Claim Amount</b>	\$48,950.00 (estimated)
	<b>Impairment</b>	
	Professional Fees \$38,000.00 Office of the U.S. Trustee Fees \$950.00  Paid in full on the effective date of the Plan.	
Priority Tax Claims  IRS FTB Gordon B. Ford	<b>Claim Amount</b>	\$52,028.02
	<b>Impairment</b>	
	IRS (Business) \$6,845.43 = five years with monthly payment \$123.00 with statutory interest rate	
	IRS (Personal) \$16,301.12 = five years with monthly payment of \$292.91 with statutory interest rate	
	FTB \$6,600.04 = five years with monthly payment of \$118.59 with statutory interest rate	
Gordon B. Ford \$16,878.60 = five years with monthly payment of \$428.61.20 with statutory interest rate		
Gordon B. Ford \$5,402.83 = five years with monthly payment of \$137.20 with statutory interest rate		
Class 1: HSBC Bank	<b>Claim Amount</b>	\$454,563.61
First Deed of Trust on 56572 Eleanor Road, Oakdale, CA	<b>Impairment</b>	impaired

	<p>The plan will not modify this claim. The debtors have applied for a loan modification with HSBC and with PHH Mortgage its loan servicing agent to have a forbearance of the arrearage pre and post petition. Any modification of this first deed of trust will be dependent upon the approval of HSBC and/or PHH Mortgage Services. Entry of the order confirming Debtor's plan shall constitute an order modifying the automatic stay; to allow HSBC to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non judicial remedies against its collateral.</p>	
<p>Class 2: JPMorgan Chase Bank, N.A.</p> <p>Second Deed of Trust on 56572 Eleanor Road, Oakdale, CA</p>	<p><b>Claim Amount</b></p>	<p>\$254,992.88 unsecured</p>
	<p><b>Impairment</b></p>	<p>impaired</p>
	<p>The court ordered that the secured claim of JPMorgan Chase Bank, N.A. is \$0.00. As JP Morgan Chase Bank did record a deed of reconveyance in or about February, 2013, no payments will be made to JP Morgan Chase Bank and JP Morgan Chase Bank will not retain any lien.</p>	
<p>Class 3: United States Fire Insurance Company</p> <p>Third Deed of Trust on 56572 Eleanor Road, Oakdale, CA</p>	<p><b>Claim Amount</b></p>	<p>\$350,000.00</p>
	<p><b>Impairment</b></p>	<p>impaired</p>
	<p>The secured claim of USFI is \$340,161.14 and shall be paid at the sum of \$1,562.18 monthly beginning upon an order confirming debtors plan. The term shall be 30 years with interest at 3.4%.</p>	
<p>Class 4: Realty California, LLC</p> <p>First Deed of Trust on 900 G Street, Modesto, CA</p>	<p><b>Claim Amount</b></p>	<p>\$650,000.00 secured</p>
	<p><b>Impairment</b></p>	<p>impaired</p>
	<p>LSC Realty California LLC shall receive the sum of \$4,751.00 monthly, either in third party rents or payment by the debtors as needed. This sum is amortized over thirty years at 6.25% interest. This note shall balloon on February 28, 2017, plus post-petition accruals, as reserved by the filed proof of claims. Additionally, the sum of \$117,864.75 shall be deferred to the end of the loan term, without accrual of interest.</p>	

Class 5: Bankers Surety Services, Inc.  Third Deed of Trust on 900 G Street, Modesto, CA	<b>Claim Amount</b>	
	<b>Impairment</b>	impaired
	The court ruled that the secured claim of Bankers Surety Services, Inc. is \$0.00. Bankers Surety Services LLC shall retain its lien until paid or completion of the plan.	
Class 6: Gordon B. Ford  Pre-petition real property taxes on 900 G Street, Modesto CA.	<b>Claim Amount</b>	\$16,878.16
	<b>Impairment</b>	impaired
	The claim shall be paid within five years with statutory interest. The sum owed is \$16,878.16 excluding penalties. This claim shall be paid within five years at a monthly payment of \$428.59 upon confirmation of the debtors plan. Interest shall be the statutory rate currently 18%.	
Class 7: Travis Credit Union  2000 Mercedes Benz ML55	<b>Claim Amount</b>	\$7,163.57
	<b>Impairment</b>	impaired
	The collateral will be surrendered and there will be no deficiency claim.	
Class 8.1: General Unsecured Claims	<b>Claim Amount</b>	\$432,586.158
	<b>Impairment</b>	impaired
	Each holder of a claim in class 8.1 will receive all sums due on its claim, over a ten year period, collectively receiving \$4,586.00 per month commencing upon the date the plan is confirmed. Class 8.1 claims include American Express Bank, FSB, Pacific Bell Telephone Company, American Info Source Agent For DirecTv, LLC, Ian MacDonald Formerly DBA MacDonald & Assoc., LSC Realty California, LLC, Department Stores National Bank Visa, and John Rorabaugh, CBS Outdoor, Capital One, Law Office of Brunn & Flynn, Pitney Bowes Inc. and USFI.	
Class 8.2: Secured Claims who did not file an unsecured claim after a 506(a) ruling	<b>Claim Amount</b>	\$338,153.50
	<b>Impairment</b>	impaired

	<p>Each holder of a claim in Class 8.2 will not receive any sums due, as these claims were scheduled as disputed and each holder of a claim in Class 8.2 was duly noticed of such dispute, and failed to file a claim. Class 8.2 claims include JPMorgan Chase Bank, N.A., Accord Credit Services, AT&amp;T Advertising Solutions, Bankers Surety Services, Inc., CBE Group, E. Alan Nunez, ECMC, GC Services Limited Partnership, Law Office of Damrell, Nelson, Schrimp, Law Office of Lawrence C. Beaver, RCMNG CORP, Rdk Collection Services, Stanis Contr, Valley Yellow Pages, Visa Dsnb and William Origel Et Al.</p>
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A. C. WILLIAMS FACTORS PRESENT

- Y Incidents that led to filing Chapter 11
- Y Description of available assets and their value
- Y Anticipated future of the Debtor
- Source of information for D/S
- Y Disclaimer
- Y Present condition of Debtor in Chapter 11
- Y Listing of the scheduled claims
- Y Liquidation analysis
- Identity of the accountant and process used
- Y Future management of the Debtor
- Y The Plan is attached

*In re A.C. Williams*, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

**OBJECTIONS:**

**U. S. TRUSTEE**

The United States Trustee for the Eastern District of California ("UST") objects to the approval of the Debtors' Amended Disclosure Statement with respect to the Amended Plan of Reorganization dated February 11, 2014. In support of the Objection, the UST states that this is a "small business case." See Debtors' Petition, Dckt. 1.; Fed. R. Bankr. P. 1020(a); see also Disclosure Statement, at p. 1 (line 17). Trustee states that by virtue of 11 U.S.C. § 1121(e)(2), a small business debtor has an "outside bar of 300 days from the order for relief" to file a disclosure statement and a plan.

This case was filed on November 30, 2012, which is more than 300 days from the filing of the amended Plan on February 12, 2014. (However, the Debtors did originally file a plan and disclosure statement on July 8, 2013, which is within the 300 day period.) The Trustee argues that the Debtors were statutorily precluded from filing the Plan. Trustee states that a recent case has construed the 300-day deadline as applying only to debtors. See *In re Riviera Drilling & Exploration Co.*, 502 B.R. 863, 874 (B.A.P. 10th Cir. 2013) (“[N]othing in [§1121(e)] limits the ... right of creditors to file their plans ...”). CF. *In re Randi's, Inc.*, 474 B.R. 783, 786 (Bankr. S.D. Ga. 2012) (holding that § 1121(e) applied to debtor's sole shareholder). Trustee states that here, it is the Debtors that are proposing the Plan and thus, the Debtors should address whether the small business deadline precludes confirmation of the Plan.

### **G STREET INVESTMENTS, LLC'S OPPOSITION**

G Street Investments, assignee of the secured claim of LSE Realty California, LLC, (“Creditor”) objects to the amended disclosure statement on that basis that the deadline to file and confirm a plan in a small business case have passed and were not extended.

Creditor also argues that Debtors' Plan proposes to pay unsecured creditors over a period of 10 years, which it projects to be the sum of \$4,586 per month, but that for the month ending February 28, 2014, there was a deficiency of receipts over disbursements in the amount of \$2,165. Creditor states that the Amended Disclosure Statement should present a reliable projection of income over the 10-year term of the plan sufficient to establish feasibility, and should also provide justification for the long term of the plan because, not only is debtors' discharge delayed for that period of time, but monitoring the debtors' performance and operations for this period will be burdensome to creditors.

Creditor also states that Debtors have understated the amount of their unsecured debt. The disclosure statement (13:17) estimates unsecured creditors to be in the amount of \$550,339.18. But this schedules the LSC/G Street Investment claim in the amount of \$180,000, whereas the deficiency is closer to \$400,000, based on a valuation of \$650,000. This raises total unsecured debt to \$770,000. Creditor states the Amended Disclosure Statement should explain that, for debtors to pay this amount in full over ten years, as they are required to under both the Absolute Priority Rule and under 11 U.S.C. § 1129(a)(15), a monthly payment of over \$6,500 is required.

Creditor also states that the Debtors propose to pay the secured claim of LSE Realty/G Street Investments in full in three years and that the debtors' lien-strip is not effective until debtors receive their discharge, the lien continues to secure the full amount of the claim of approximately \$1,040,000 plus accrued interest. Creditor states the Amended Disclosure Statement should clarify the amount of the proposed payment as well as the source of funding.

Creditor states that the administrative expenses payable at the time of confirmation should be fully disclosed. The Trustee, Mr. John Bell, his counsel and accountant will have compensation claims payable at time of confirmation or upon allowance of their fee applications.

Additionally, Creditor states that John Bell was appointed Trustee following motions to convert or dismiss and has been active in the case. Creditor asserts that the Amended Disclosure Statement should speak to his achievements as well as his opinion of the feasibility of the plan.

Lastly, the Creditor states the Amended Disclosure Statement refers to a valuation of the commercial property at 900 G Street, Modesto, California, in the amount of \$650,000.00 based on appraisal performed in 2013. Creditor asserts that values may have increased, and cram-down is generally measured by value at time of confirmation. The Amended Disclosure Statement should explain this and suggest a procedure for valuing the property at the time of confirmation.

#### **STANDARD:**

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).
2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).
3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*
4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).
5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

#### **DISCUSSION**

This case was filed on November 30, 2012 as a "small business case." See *Petition*, Dckt. 1.; Fed. R. Bankr. P. 1020(a). A small business debtor has an "outside bar of 300 days from the order for relief" to file a disclosure statement and a plan. 11 U.S.C. § 1121(e)(2). It has been more than 300 days since the filing of the case. The Debtors have not addressed whether the small business deadline precludes confirmation of the Plan.

The Chapter 11 Trustee, John Bell, has not responded to the disclosure statement or small business debtor bar. Additionally, the Trustee, his counsel and accountant will have compensation claims payable at time of confirmation or upon allowance of their fee applications, which was not included in the disclosure statement.

When Congress specifies specific conduct, deadlines, or limitations, the court begins with the plain language of the statute. *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000). The statutory language is considered in light of the greater statutory scheme enacted by Congress, not merely in isolation. Here, Congress states,

“(e) In a small business case-

(1) **only the debtor may file a plan until after 180 days after the date of the order for relief**, unless that period is-

(A) extended as provided by this subsection, after notice and a hearing; or

(B) the court, for cause, orders otherwise;

(2) the plan and a disclosure statement (if any) **shall be filed not later than 300 days after the date of the order for relief**; and

(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, **may be extended only if-**

(A) the **debtor**, after providing notice to parties in interest (including the United States trustee), **demonstrates** by a preponderance of the evidence that it is more **likely than not that the court will confirm a plan within a reasonable period of time**;

(B) a **new deadline is imposed at the time the extension is granted**; and

(C) the **order extending time is signed before the existing deadline has expired.**”

11 U.S.C. § 1121(e), emphasis added.

As discussed in Collier on Bankruptcy, Sixteenth Edition, ¶ 1121.07, the above time limits apply to the debtor, but not to the trustee or other parties in interest. However, if other parties in interest or the trustee are not acting to prosecute a plan, then grounds may exist to convert or dismiss the case pursuant to 11 U.S.C. § 1112(b), including, but not limited to, (b)(4)(A), (F), and (J). Further, the statute does not expressly address the effect of the Debtors having filed a plan and disclosure statement

within the 300-day period, but approval of that disclosure statement having been denied, leading to an amended plan and disclosure statement being filed.

Based on the foregoing, the court denies the motion to approve the Disclosure Statement.

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 Approval of the Disclosure Statement filed by the Debtors 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 Debtors' Disclosure Statement is not approved.

6. [14-90155-E-11](#) **NORTH AMERICAN DIESEL INDUSTRIES, INC.** **STATUS CONFERENCE RE: VOLUNTARY PETITION**  
**2-6-14 [1]**

Debtor's Atty: Brian S. Haddix

Notes:

[SMO-1] Order Directing the Appointment of a Chapter 11 Trustee filed 3/7/14 [Dckt 55]

Trustee Report at 341 Meeting docketed 3/13/14

[UST-2] Motion of the United States Trustee for Reconsideration of Order Directing Appointment of Chapter 11 Trustee filed 3/17/14 [Dckt 69], set for hearing 3/27/14 at 10:30 a.m.

#### **MARCH 27, 2014 STATUS CONFERENCE**

The United States Trustee has filed her motion for reconsideration of the court's order for the appointment of a Chapter 11 Trustee. Notwithstanding the efforts of the United States Trustee, no person has been willing to accept such an appointment. The United States Trustee has provided the declaration of David Flemmer, a chapter 11 trustee candidate, which provides his investigation, observations, and opinions as to why he concluded that he would not accept the appointment as a Chapter 11 trustee.

7. [14-90156-E-11](#) DIESEL ENGINE INDUSTRIES, INC. STATUS CONFERENCE RE: VOLUNTARY PETITION  
2-6-14 [[1](#)]

Debtor's Atty: Brian S. Haddix

Notes:

[SMO-1] Order Directing the Appointment of a Chapter 11 Trustee filed 3/7/14 [Dckt 54]

Trustee Report at 341 Meeting docketed 3/13/14

[UST-2] Motion of the United States Trustee for Reconsideration of Order Directing Appointment of Chapter 11 Trustee filed 3/17/14 [Dckt 66], set for hearing 3/27/14 at 10:30 a.m.

**MARCH 27, 2014 STATUS CONFERENCE**

The United States Trustee has filed her motion for reconsideration of the court's order for the appointment of a Chapter 11 Trustee. Notwithstanding the efforts of the United States Trustee, no person has been willing to accept such an appointment. The United States Trustee has provided the declaration of David Flemmer, a chapter 11 trustee candidate, which provides his investigation, observations, and opinions as to why he concluded that he would not accept the appointment as a Chapter 11 trustee.

8. [14-90257-E-11](#) CHEM-AWAY, INC. STATUS CONFERENCE RE: VOLUNTARY PETITION  
2-26-14 [[1](#)]

Debtor's Atty: David C. Johnston

Notes:

Notice of Incomplete Filing filed 2/26/14 [Dckt 2], documents due 3/12/14; documents not filed as of 3/27/14

Notice of Meeting of Creditors filed 2/28/14 [Dckt 8], set for 3/27/14 at 9:00 a.m.

Debtors' Atty: Nelson F. Gomez

Notes:

Continued from 12/19/13

**SUMMARY OF SCHEDULES**

I. Schedule A - Real Property

- A. 5001 East Monte Vista
  - 1. Value.....\$ 65,000
  - 2. Liens.....(\$186,948)

II. Personal B - Personal Property

- A. \$34,094.00
  - 1. Nursery Inventory.....\$ 3,500
  - 2. Three Vehicles.....\$29,020
  - 3. Business Equip.....\$ 3,200
  - 4. Cash/Bank Accts.....\$ 474

III. Schedule D - Secured Claims

- A. IndyMac Mortgage Services
  - 1. Monte Vista Property....(\$186,948)

IV. Schedule E - Priority Unsecured

- A. None

V. Schedule F - General Unsecured

- A. (\$504,672)
  - 1. Saxon Mortgage Service.....(\$374,239)
  - 2. GMAC Mortgage.....(\$ 93,596)
  - 3. J&L Teamworks.....(\$ 30,056)

VI. Schedule I - Income

- A. \$5,305 (Gross)
  - 1. Operation of Business.....\$3,865
  - 2. Contrib. From Daughter.....\$1,440

VII. Schedule J - Expenses

- A. (\$4,518)
  - 1. Mortgage/Rent..... (\$1,440)
  - 2. Property Taxes..... (\$ 110)
  - 3. Home/Renter Insurance..... (\$ 0 )
  - 4. Business Expenses..... (\$1,664)
  - 5. Food..... (\$ 400)

**SUMMARY OF STATEMENT OF FINANCIAL AFFAIRS**

I. Question 1 - Income From Employment or Business

- A. 2012.....\$19,809
- B. 2011.....\$21,929
- C. 2010.....\$13,212

II. Question 2 - Other Income

- A. 2012.....None
- B. 2011.....None
- C. 2010.....None