

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 31, 2013 at 3:30 p.m.

1. [13-91701](#)-E-11 MARVAIS WADEN AND SHIAMA STATUS CONFERENCE RE: VOLUNTARY
KAKAR PETITION
9-20-13 [[1](#)]

Debtors' Atty: David Foyil

Notes:

Status Report filed 10/11/13 [Dckt 22]

[DBP-1] Motion by Secured Creditors for Relief from Automatic Stay filed by BaySierra Financial, Inc. 10/16/13 [Dckt 25], set for hearing 10/31/13 at 10:00 a.m.

[DEF-2] Debtors' Motion to Employ Bankruptcy Counsel filed 10/17/13 [Dckt 34], set for hearing 12/19/13 at 10:30 a.m.

2. [11-93411](#)-E-11 SANJIV/SHEENA CHOPRA CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-27-11 [[1](#)]

Debtors' Atty: Robert M. Yaspan

Notes:

Continued from 6/13/13. Debtors in Possession reported that the settlement with Edenathan has been documented, with payments commencing.

Operating Reports filed: 6/17/13 [May], 7/17/13 [Jun], 8/15/13 [Jul], 10/1/13 [Aug], 10/3/13 [Oct-Dec 2011, Jan-Dec 2012, Jan-Jul 2013]

[RMY-33] Motion to Compromise Controversy Between Debtors Sanjiv Chopra and Sheena Chopra and Creditors Bank of the West/Jonathan Neil & Associates filed 5/22/13 [Dckt 640]; Order granting filed 7/2/13 [Dckt 691]

[RMY-34] Application of Debtors-In-Possession for Order Authorizing Compensation of Appraiser filed 5/30/13 [Dckt 649]; Order denying filed 7/3/13 [Dckt 704]

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[RMY-37] Application of Debtors-In-Possession for Order Authorizing Compensation of Appraiser filed 7/3/13 [Dckt 697]; Order granting filed 7/23/13 [Dckt 717]

[RHG-2] Motion for Substantive Consolidation and Appointment of a Chapter 11 Trustee filed 9/26/13 [Dckt 741], set for hearing 10/31/13 at 10:30 a.m.

[RHG-3] Motion by Karen Sethi for Temporary Allowance of Claim filed 10/15/13 [Dckt 787], set for hearing 10/31/13 at 10:30 a.m.

[RHG-4] Motion by Nagra, LLC for Temporary Allowance of Claim filed 10/15/13 [Dckt 783], set for hearing 10/31/13 at 10:30 a.m.

3. [11-93411](#)-E-11 **SANJIV/SHEENA CHOPRA** **CONFIRMATION OF SECOND AMENDED**
RMY-25 **Robert M. Yaspan** **PLAN OF REORGANIZATION FILED BY**
DEBTORS-IN-POSSESSION
6-19-13 [678]

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 creditors requesting special notice and Office of the United States Trustee on September 4, 2013. By the court's calculation, 57 days' notice was provided.

Tentative Ruling: The Confirmation of Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1).

The court's tentative decision is to continue the hearing on the Chapter 11 Plan of Reorganization to 3:30 p.m. on December 19, 2013. 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:

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

<u>9/6/13</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>10/9/13</u>	Last Day for Submitting Written Acceptances or Rejections
<u>10/9/13</u>	Last Day to File Objections to Confirmation
<u>10/23/13</u>	Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

In reviewing the Docket, the court has identified the following tabulation of ballots which the Debtors in Possession have included in the Declaration of Robert Yasan (counsel who received the ballots). Rather than a straight forward tabulation of ballots chart, it is a detailed narrative of the ballots. From this, the court has created the following table.

Class	Voting	
Class 1 Internal Revenue Service	No Ballot	
Class 2 General Unsecured Claims in the Amount of \$2,000 or less	2 Ballots Submitted For Confirmation: Not Stated Against Confirmation: Not Stated	Not Impaired
Class 3 General Unsecured Claims (excluding Class 2, 4 and 5 Claims, but including a \$2,730,000 claim of Edenathan, LLC) Only one ballot for Edenathan has been provided by the Debtors in Possession, and it fails to state a voting amount or class in which the this creditor purports to be voting. The court does not count the Edenathan Claim in Class 3.	4 Ballots Submitted 3 Votes for Confirmation...\$288,349 1 Vote Against Confirmation...\$13,959	Impaired The Debtors in Possession attempt to count the “votes” of creditor who failed to cast ballots but with whom the Debtors in Possession have cut side deals. The Bankruptcy Code does not provide for non-voting creditors to “vote” by cutting side deals with the Debtor in Possession. If the court were to allow the non-voting creditors to vote for the plan, then it should allow the non-voting creditor to vote against the plan.
Class 4 Claim of Edenathan, LLC	1 Ballot Submitted 1 Vote for Confirmation....Unstated Claim amount or Class within which creditor was voting.	

Class 5 Negra, LLC	1 Ballot Submitted 1 Vote Against Confirmation	This claim is the subject of an objection by the Debtors in Possession and for which a motion for temporary allowance for voting purposes was filed after the deadline for submitting ballots to counsel for the Debtors in Possession.
Class 6 The Debtors		

OPPOSITION

Creditors Karan Sethi and Nagra, LLC, ("Creditors") oppose the plan on several grounds. First, Creditors state the Debtor-in-Possession has the burden of proving that a Chapter 11 plan complies with the requirements for confirmation.

Second, Creditors state that the plan is not proposed in good faith.

Third, Creditors state that the plan is fundamentally unfair to creditors. Creditors state that under the Plan, the Debtor-in-Possession are paid \$24,624 a month while creditors are paid \$8,585 a month. Debtor-in-Possession also retain ownership of \$2,631,000 in assets. Creditors argue that the creditors receive none of this value and the Plan, in short, pays the Debtor-in-Possession nearly three times as much as it pays to creditors, and gives the Debtor-in-Possession over \$2.5 million in assets while giving creditors no assets. Creditor argues that the plan offers to pay unsecured creditors 8 cents on the dollar but pays Mr. and Mrs. Chopra 100 cents on the dollar, with interest for their loan.

Creditors argue that the Debtors-in-Possession are using their affiliates as a shell game. Creditors also state that the plan consolidates the affiliates, but the Debtors-in-Possession use the unconsolidated affiliates as the excuse for making huge payments to the Debtors-in-Possession while paying far less to creditors. Creditors argue the plan is fundamentally unfair.

Fourth, Creditors state the plan pays creditors far less than they would obtain in liquidation in violation of 11 U.S.C. § 1129(a)(7). Creditors state the liquidation analysis provided in the Disclosure Statement is deeply flawed. Creditors question the appraisal of the value of the gyms and the deductions from the value of the gyms, which would add \$2 million to the value. Creditors state if a trustee were appointed, he or she would sell the gyms and net \$2.485 million.

Lastly, Creditors argue the plan does not pay creditors the Debtors-in-Possession' projected disposable income. Creditor states that the Debtors-in-Possession must prove that the property they are distributing is not less than their projected disposable income and they have not done so.

RESPONSE

Debtors-in-Possession respond, stating that the Creditors objections ultimately complaint hat not enough money is being paid to creditors. Debtors-in-Possession state the objections should be overruled for several reasons.

Debtors-in-Possession state the Chapter 11 plan reorganizes the Debtors-in-Possession under a plan that is both feasible and in the best interests of creditors.

Debtors-in-Possession argue that the objection should also be overruled because the Creditors do not have standing. Each of the claims arise from the purchase or sale of securities of an affiliate of the Debtors-in-Possession, all non-debtor entities.

Additionally, Debtors-in-Possession state that the Creditors have not presented any evidence to this court in connection with their complaints and no other interested party has joined Creditors in their objections.

Debtors-in-Possession also argue that Creditors miss the point on their objections because California law does not permit reverse piercing of the corporate veil; the facts and equity don't support piercing the corporate veil of non-debtor entities and bringing non-debtor entities into the bankruptcy estate would not increase recovery by the creditors. Debtors-in-Possession argue that there is no evidence that they have used the corporate format to hid or transfer assets and that Creditors ignore the liabilities of the non-debtor affiliates.

DISCUSSION

It appears that a serious question exists as to the votes for and against confirmation, and that the Karen Sethi claim may be a key vote for the class of general unsecured claims. From reviewing the extensive narrative of the ballots submitted, the copies of the ballots, and the failure of the Debtors in Possession to set forth a simple table of ballots, it could well appear that such was done to create confusion with the court as to who actually voted, the amount of claim they asserted, the class in which they would properly vote, and the correct tabulation of the ballots actually cast.

The Second Amended Plan now before the court expressly creates a separate class for the Edenathan unsecured claim for \$2,511,600 (with proof of claim filed for \$2,730,000, with \$218,400 to be paid in Class 3). Pursuant to an agreement with Edenathan, it is to receive an 8% dividend on its claim, which is the same percentage as other creditors with general unsecured claims. Eight percent of the \$2,730,000 claim is \$218,400.00.

Edenathan is not part of the Class 3 Claims, the Debtor in Possession Second Amended Plan expressly excluding that claim. However, the tabulation of ballots set forth in counsel's declaration expressly misrepresents not only the classification of this claim, but attempts to double count it. There is no basis for the court inferring that such misrepresentation was inadvertent. This raises significant good faith

issues for these Debtors in Possession and whether they can now meet the minimum requirement of proposing and prosecuting a Chapter 11 Plan, and prosecuting the Chapter 11 case in good faith.

In light of this case having been pending now for two years, the confirmation hearing set for October 31, 2013, an evidentiary hearing on the actual objection to the Karen Sethi claim, and the active prosecution of claim by Karen Sethi, the court will determine the Karen Sethi claim at the evidentiary hearing prior to conducting a confirmation hearing on the Second Amended Plan filed by the Debtors in Possession. If no appeal is taken from the ruling after the evidentiary hearing, then the court will have finally determined this claim. If an appeal is taken, the court will make its ruling the temporary allowance, if any, of this claim for voting purposes.

Further, in light of the questionable tabulation of ballots, the active participation of this creditor may be necessary for the court to have a truthful and accurate presentation of evidence for any confirmation hearing and to consider whether the Debtors in Possession have and are proceeding in good faith.

The hearing on the Motion for Temporary Allowance being continued to 9:30 a.m. on November 22, 2013, the court continues this hearing to be heard after such determination.

The court will also order Debtors-in-Possession to file a simple Tabulation of Ballots in the form of a chart, identifying the creditors, the actual ballots timely delivered to counsel for the Debtors in Possession, the vote, the amount of their claim, and the date.

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 Confirmation of Second Amended Plan of Reorganization filed by the Debtors-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 hearing on the Confirmation of Second Amended Plan of Reorganization is continued to 3:30 p.m. on December 19, 2013.

IT IS FURTHER ORDERED that Debtors-in-Possession shall file on or before November 7, 2013, a Tabulation of Ballots in the form of a chart, identifying the creditors, their vote, the amount of the claim and the date received by counsel for the Debtors in Possession.

4. [13-90323](#)-E-12 FRANCISCO/ORIANA SILVA

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
2-25-13 [[1](#)]

Debtors' Atty: Peter L. Fear

Notes:

Continued from 10/10/13 to be heard in conjunction with the continued motion to confirm.

5. [13-90323](#)-E-12 FRANCISCO/ORIANA SILVA
PLF-2 Peter L. Fear

CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
7-11-13 [[30](#)]

CONT. FROM 8-22-13

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, Chapter 12 Trustee, all creditors, and Office of the United States Trustee on July 11, 2013. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

No Tentative Ruling: The Motion to Confirm Chapter 12 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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:

INITIAL HEARING

Debtors move to confirm their Chapter 12 plan dated June 26, 2013. Debtor states he is farming oat hay and corn on his property. Debtor states he had been close to finalizing a lease with Albert Mendes to lease the dairy facility, but he now believes it is unlikely that he will be able to lease the dairy facility to him. He states he has several other interested parties that he is currently negotiating with and anticipates that any agreement he reaches with them would be similar to the agreement he would

October 31, 2013 at 3:30 p.m.

have has with Albert Mendez. This would mean renting the dairy facility for \$5,500 to \$6,000 depending on how many houses on the facility they want to use.

Debtor states he has corn planted and anticipates selling the crop at harvest in November 2013 for approximately \$54,000.00 and use these funds to make plan payments.

NEBRASKA STATE BANK'S OPPOSITION

Creditor Nebraska State Bank filed a limited objection to confirmation on the basis of the treatment of its claim under Class 3, in that the value as of the date of the plan of the property to be distributed under the plan on account of its claim is less than the allowed amount of said claim.

Creditor also states that the plan does not reference the pre-payment restriction under the promissory note and security agreement documents relative to its claim. Creditor requests that this be included.

Creditor states that they have agreed to execute a stipulation to resolve these limited grounds of opposition and upon the execution of that Stipulation, it will withdraw its limited opposition.

STIPULATION

Debtor and Creditor filed a Stipulation re: Limited Objection to Confirmation of Chapter 12 Plan dated June 26, 2013. The parties have agreed to the terms of a 19 year amortization (rather than 20 as proposed in the plan) and retention of the pre-payment restriction until after September 17, 2017.

SUPPLEMENTAL DECLARATION

Counsel for Creditor filed a supplemental declaration requesting a continuance to allow the Debtor to further market the real property for rent as a dairy facility, as the previous prospective tenant was unable to rent. Both Creditor and Debtor's counsel have agreed to the continuance.

CONTINUANCE

However, it has been reported to the court that the rental of the property upon which the proposed plan depends cannot be consummated. The Debtor-in-Possession and objecting creditor have requested a 45 day continuance for the Debtor-in-Possession to consider what possible amendments can be made to this plan.

The court granted a continuance, with the hearing on the Motion continued to October 10, 2013.

STATUS REPORT

The Debtors filed a Status Report stating that they have obtained a tenant for the dairy facility and the motion to approve that lease is set

for October 31, 2013, at 10:30 a.m. and seeks a continuance of this motion for the same date.

The court continued the confirmation hearing again to October 31, 2013, to afford time to address issues concerning the lease at the 10:30 a.m. calendar that date and for the parties to reevaluate confirmation in light of what occurs at that morning.

SUPPLEMENTAL DECLARATION

Debtor Francisco Silva filed a supplemental declaration on October 17, 2013, stating that he has entered into a lease agreement with Jeff Whalen Dairy Farms, LLC for him to use the dairy facilities for \$5,500.00 per month. The lease agreement does not include three of the houses on the property, one in which he lives in and the other two in which his two sons live on. The sons have agreed to pay \$650 per month rent, which will bring in an additional \$1,300 per month. Debtor states while he does not have a lease agreement with his two sons, they informed him that they anticipate living in the houses for at least the next year and will likely stay there for the next five (5) years.

The court granted the Motion to Approve Lease on the 10:30 calendar earlier today.

DISCUSSION

Upon review of the proposed Chapter 12 Plan, the evidence in the form of the declaration of Francisco Silva, the Debtor, Dckt. 44 and arguments of counsel, the court makes the following findings of fact and conclusions of law in support of confirmation of the Chapter 12 Plan pursuant to 11 U.S.C. § 1224.

- (1) the plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;
- (2) any fee, charge, or amount required under chapter 123 of title 28 [28 USCS §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;
- (3) the plan has been proposed in good faith and not by any means forbidden by law;
- (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date;
- (5) with respect to each allowed secured claim provided for by the plan-
 - (A) the holder of such claim has accepted the plan;
 - (B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and

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

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

Notwithstanding the objection of the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan-

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

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c) [11 USCS § 1222], beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c) [11 USCS § 1222(c)], beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended--

(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

6. [11-94224-E-11](#) EDWARD/ROSIE ESMAILI
David C. Johnston

APPROVAL OF AMENDED DISCLOSURE
STATEMENT FILED BY DEBTORS
9-13-13 [[338](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, and Office of the United States Trustee on September 13, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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 approve the 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: December 12, 2011

Background: Debtors-in-Possession, Edward and Rosie Esmaili, doing business as Crimetek Security, operate a private patrol business. The business provides security guards and patrolmen for government agencies, private businesses, and farmers, primarily in Stanislaus County. Debtors also sell monitoring equipment to customers and also provide monitoring services. Debtors state when the real estate and construction bubble burst, Debtor had too many employees, lost contracts, and their customers became insolvent, failing to pay for services performed. Debtors became indebted to the Internal Revenue Service when they failed to remit payroll taxes.

Creditor/Class	Treatment	
Unclassified Administrative Claims	Claim Amount	
	Impairment	

	<p>The holders of unclassified administrative claims will be paid in cash on the effective date of the plan, unless they agree to different treatment.</p> <p>U.S. Trustee fees (unstated); Attorney Fees (\$15,000.00); Accountants (\$15,000.00);</p> <p>BBCN Bank asserted an administrative claim for \$130,000.00 and the court has not ruled on the claim. The plan deals with this claim as a secured claim but if the court determines that BBCN Bank holds an administrative claim, such claim will be treated in the same manner as other unclassified claims and the portion of the Class 2 Claim described will not be paid.</p>	
<p>Unclassified Priority Tax Claim</p> <p>Internal Revenue Service</p>	<p>Claim Amount</p>	<p>\$552,618</p>
	<p>Impairment</p>	
<p>Class 1: Secured Claim of IRS</p> <p>(non-consensual lien on equity in vehicles and non-business personal property)</p>	<p>Claim Amount</p>	<p>\$73,516</p>
	<p>Impairment</p>	<p>impaired</p>
	<p>IRS will receive regular installment payments of total value, as of the Effective Date of the Plan, equal to the allowed amount of such claim and interest at the rate of 3% per annum</p> <p>Debtor will make 84 payments of \$972 each commencing on January 1, 2014.</p>	
<p>Class 2: Secured claim of BBCN</p> <p>(consensual lien on tangible business personal property and junior deeds of trust on real property)</p>	<p>Claim Amount</p>	<p>\$130,000 secured, \$677,057 unsecured</p>
	<p>Impairment</p>	<p>impaired</p>

	<p>Creditor will receive regular installment payments of a total value, as of the Effective Date of the Plan, equal to the amount of such secured claim and interest at the rate of 5% per annum. Creditor will also receive payments totaling 20% of such unsecured claim. Debtor will make 120 payments of \$1,379 each on the secured claim and 120 payments of \$1,128 on the unsecured claim commencing on January 1, 2014.</p>	
<p>Class 3: Secured Claim of Bank of America, N.A. (504 Wild Tree Lane, Turlock, California)</p>	Claim Amount	\$661,977
	Impairment	
	<p>The Debtors do not anticipate making payments on such claim and believe the holder of the claim will foreclose on its collateral pursuant to state law.</p>	
<p>Class 4: Secured Claim of Key Bank, N.A. (504 Wild Tree Lane, Turlock, California)</p>	Claim Amount	\$41,735
	Impairment	impaired
	<p>Creditor will receive the treatment as general unsecured claim. Creditor will receive payments totaling 20% of such unsecured claim. Debtor will make 120 payments of \$70 each commencing on January 1, 2014.</p>	
<p>Class 5: Secured claim of Wells Fargo Bank, N.A. (1153 Kay Circle, Turlock, California)</p>	Claim Amount	\$190,000 secured, \$97,013 unsecured
	Impairment	impaired
	<p>Creditor will receive regular installment payments of a total value, as of the Effective Date of the Plan, equal to the amount of such secured claim and interest at the rate of 4% per annum. Creditor will also receive payments totaling 20% of such unsecured claim. Debtor will make 360 payments of \$907 each on the secured claim and 120 payments of \$162 on the unsecured claim commencing on January 1, 2014.</p>	

Class 6: Secured Claim of Wells Fargo Bank, N.A. (2281 Aldersgate Court, Turlock, California)	Claim Amount	\$187,000 secured, \$141,744 unsecured
	Impairment	impaired
	Creditor will receive regular installment payments of a total value, as of the Effective Date of the Plan, equal to the amount of such secured claim and interest at the rate of 4% per annum. Creditor will also receive payments totaling 20% of such unsecured claim. Debtor will make 360 payments of \$893 each on the secured claim and 120 payments of \$237 on the unsecured claim commencing on January 1, 2014.	
Class 7: General Unsecured Claims	Claim Amount	\$635,000
	Impairment	impaired
	Each holder of a claim in this class shall receive a dividend of 20% of its allowed claim. Debtor shall make 120 payments of \$1,060 each to the class as a whole, with distribution to be pro rata, commencing January 1, 2014.	
Class 8: Debtor's ownership interests	Claim Amount	
	Impairment	not impaired
	The ownership interests of Debtor will not be affected by the plan.	

A. C. WILLIAMS FACTORS PRESENT

- Y Incidents that led to filing Chapter 11
- Y Description of available assets and their value
- N Anticipated future of the Debtor
- N Source of information for D/S
- N Disclaimer
- Y Present condition of Debtor in Chapter 11
- Y Listing of the scheduled claims
- Y Liquidation analysis
- N 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).

DISCUSSION

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).

Based on a review of the disclosure statement and no objection being filed by any creditor or party in interest, the court approves the disclosure statement filed September 13, 2013.

7. [11-92235-E-11](#) JAMES/LORI SARAS

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-22-11 [[1](#)]

Debtors' Atty: Mikalah R. Liviakis

Notes:

Continued from 4/18/13

[JDM-1] Notice of Withdrawal of Evidentiary Hearing re Motion for Administrative Expenses of Nora Torres Farm Services, Inc. filed 9/17/13 [Dckt 751]

[MRL-137] Motion for an Order Authorizing Sale of 1969 Costner Road filed 9/6/13 [Dckt 746]; Order granting filed 10/3/13 [Dckt 755]

[MRL-133] Order Confirming Chapter 11 Plan filed November 16, 2012 (Dckt. 665]

8. [13-90935-E-12](#) ARTURO/RAMONA ROMERO
KDG-5 Hagop T. Bedoyan

CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
8-12-13 [[44](#)]

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, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2013. By the court's calculation, 80 days' notice was provided.

No Tentative Ruling: The Motion to Confirm Chapter 12 Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's tentative decision is to xxxx the Motion to Confirm Chapter 12 Plan. 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:

Debtors-in-Possession move the court for an order confirming their Chapter 12 Plan filed on August 10, 2013.

OPPOSITION

Creditors American Equity Service, Inc. ("Creditor") objects to confirmation of the Chapter 12 Plan on several grounds.

First, Creditor argues that Debtors are not family farmers pursuant to 11 U.S.C. § 109(f). Creditor states that during 2012 the Debtors derived only 36.1% of their income from farming operations, and during 2011 and 2010 (the prior two years before filing) derived 32.2% and 34.5% of their gross income from farming respectively. Creditor argues that Debtors must have at least 50% of their gross annual income, during either the last full year before the Petition Date or during each of the two previous years, must be derived from farming operations. 11 U.S.C. § 101(18) (A).

Creditor also argues that Debtors do not propose to make any changes to their farming operations, which shows that their income will not be sufficiently stable and regular pursuant to 11 U.S.C. § 101(19).

Second, Creditor argues that the plan is not feasible. Creditor states that even if Debtors qualify as family farmers, they have failed to demonstrate that they will have the income or profits necessary to make the plan feasible. Creditor argues that the record includes no evidence that substantial and consistent operating losses of over the last six years will do anything other than remain substantial and consistent operating losses over the term of the Plan, and the Debtors have failed to show that sales of equipment that are proposed under the Plan will yield revenue sufficient to fund the plan.

Lastly, Creditor argues that the plan lacks good faith as to their claim. Creditors states that the plan proposes that Creditor, after the debt became due and payable in 2013, wait another ten years for payment. Creditor argues that the Debtors have a bad record regarding paying Creditor and that nothing would change the record in the future, except they will try to sell some poorly identified equipment, which does not state the tax consequences of such a sale. Creditor states that the circumstances of the case demonstrate that Debtors do not propose to make any significant changes in their activities to demonstrate that they in good faith intend that the plan will result in payment to Creditor and other creditors.

CONTINUANCE

The parties filed a Stipulation on September 19, 2013, to continue the hearing to allow the parties to negotiate. The court ordered the continuance on September 23, 2013. Dckt. 75.

No further documentation has been filed to date.

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 Chapter 12 Plan filed by Debtors-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 Motion is xxxx.

9. [13-90935](#)-E-12 ARTURO/RAMONA ROMERO CONTINUED MOTION FOR RELIEF
MHK-1 Hagop T. Bedoyan FROM AUTOMATIC STAY
8-27-13 [[49](#)]

AMERICAN EQUITY SERVICE,
INC. VS.

CONT. FROM 9-26-13

Local Rule 9014-1(f) (1) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to xxxx the Motion for Relief from the Automatic Stay. 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:

American Equity Service, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6955 Faith Home Road, Ceres, California. The moving party has provided the Declaration of Devra Riggs to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant contends that cause exists for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (1). The Riggs Declaration states that the Debtor failed to perform as agreed under the terms of their loan and Debtors have cancelled their insurance either differed times placing force-placed insurance on the property, seven forbearance agreements have been negotiated, and for formal loan modification have been executed, five notices of default entered. AES opines that the current value of the

property is \$1,400,000, when the debtor lists the current value of the property at \$2,120,000 in their schedules. AES is owed \$1,081,630.80.

Movant argues that the Debtors past economic performance both before and after the loan shows Debtors will once again default on their obligations. Movant argues that the Debtors will be in their mid 90's when the loan becomes due under the plan and that most of the AES investors are elderly and unlikely to see the performance of the loan.

Movant states several plan objections, stating the proposed interest rate is too low, the plan treatment purports to amortize the claim over 30 years, but the plan treatment is inconsistent. Movant is not sure where the annual payment to AES will come from.

OPPOSITION

Debtors argues that the motion must be denied because a substantial equity cushion exists in the property to protect Movant's interest, well over 11.45 percent. Debtors state that the property is also currently covered by insurance. Debtors argue that there is not sufficient cause to lift the automatic stay.

STIPULATION

The parties filed a Stipulation to continue the hearing and Debtors agreed to provides AES with the following adequate protection:

(1) Debtors will provide AES with an accounting of the 2013 cherry crop and crop proceeds on or before October 24, 2013, and;

(2) Debtors will pay the net proceeds of the 2013 cherry crop, not to be less than \$8,000.00 to AES on or before October 10, 2013, to be applied to the outstanding debt owed to AES.

Movant filed a Notice of Compliance, stating Debtors complied with the Stipulation and provided AES with a check in the amount of \$8,048.28 and the 2013 cherry crop accounting from the packer.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

However, the existence of missed payments by itself does not guarantee relief from stay. Since the equity cushion provides enough protection to the creditor, moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

No other or additional relief is granted by the court.

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 Relief From the Automatic Stay filed by the creditor 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 relief from the automatic stay is **xxxxxx**.

10. [12-91736-E-12](#) **ANTONIO GOMES** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**
6-20-12 [[1](#)]

Debtor's Atty: Thomas O. Gillis

Notes:

Continued from 9/5/13 to be heard in conjunction with other motions on calendar.

11. [12-91736-E-12](#) **ANTONIO GOMES** **CONTINUED MOTION TO DISMISS**
MNE-1 **Thomas O. Gillis** **CASE**
1-16-13 [[84](#)]

CONT. FROM 9-5-13, 8-22-13, 6-13-13, 4-18-13, 2-21-13

Local Rule 9014-1(f) (2) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2013. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

No Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2).

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:

INITIAL HEARING

On February 21, 2013 the court continued the hearing to be heard in conjunction with the motion to confirm. The court ordered opposition, if any, to be filed and served on or before March 28, 2013 with replies to be filed and served on or before April 4, 2013.

On April 8, 2013 Debtors filed an *ex parte* application to shorten time to file and serve a response to the motion to dismiss. Debtor states that his attorney did not calendar the response deadline and that the need to file a response was not discovered until April 7, 2013. Debtor states that the Trustee does not oppose the late filing of a response. On April 9, 2013 the court granted the motion and ordered Debtor to file and serve opposition by April 12, 2013.

The Chapter 12 Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 28, 2012.

However, a review of the docket shows that Debtor has filed an Amended Chapter 12 Plan on February 7, 2013, set for hearing April 18, 2013.

This Chapter 12 case was filed on June 20, 2012. On December 1, 2012, the court denied confirmation of the plan proposed by the Debtor in Possession in this case. The court denied the motion in part because of the Debtor in Possession's failure to comply with the minimum pleading requirements of Federal Rule of Bankruptcy Procedure 9013 (motion must state with particularity the grounds from relief). Civil Minutes, Dckt. 78. The court also denied the Motion because the Debtor in Possession was unable to provide the court with the minimum necessary testimony in his declaration to support confirmation. Given that the preparation of the declaration is so easy, the court infers that a party should be able to present the best testimony to the extent possible. Failure to include information could well be because the Debtor in Possession is attempting to hide the information or mislead the court. The court also denied confirmation based on the failure to properly provide for the secured claims of Movin' Hay and A.L. Gilbert Company.

Following the December 1, 2012 denial of confirmation, the Debtor in Possession took no action to present a new plan to the court. On January 16, 2012, the Chapter 12 Trustee filed the present motion to dismiss.

At the prior hearing the court noted the Debtor in Possession's failure to timely prosecute its case. As discussed above Debtor in Possession did not timely file an opposition to the motion to dismiss. It is a party's responsibility to respond to pleadings. Merely taking some action, and tasking the court to review the docket in each case, determine what opposition the debtor in that case may or may not have to the motion, create an opposition for that debtor, place that opposition on the record for that debtor, advocate and then consider the opposition to the motion created by the court for that debtor, and then rule on the opposition created and advocated for that debtor by the court is improper.

The court notes that on February 7, 2012, more than two months after denying confirmation of the prior plan, the Debtor in Possession filed an amended plan and motion to confirm.

The Motion to Confirm states with particularity the following grounds upon which he relies for the court to confirm the amended plan:

- A. Debtor provides his legal conclusion that "his Amended Chapter 12 Plan satisfies the requirements of 11 U.S.C. § 1222 and 1225 and all other applicable rules of law.
- B. "Wherefore, Debtor prays that: 1. His Amended Chapter 12 Plan be confirmed, and 2. He is provided such other and further relief as the Court deems to be just and proper."

Motion, Dckt. 88.

The court reviewed with Counsel and the Debtor in Possession in detail the necessity of stating with particularity the grounds upon which relief is requested in a motion. See Civil Minutes Dckt. 78. At the prior hearing the court noted Debtor in Possession's continued failure to comply with basic pleading standards and provide sufficient information in the motion to confirm.

On March 6, 2013 Debtor in Possession filed an amended motion to confirm stating grounds with particularity to address the pleading defects noted by the court with regard to the initial motion to confirm.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed its opposition as Exhibit A to the motion for leave to file late opposition. Dckt. 112. The Opposition was then never filed.

The Opposition may never have been filed because the Debtor believed it so simple. Debtor, in a four sentence opposition, states that the Trustee's motion to dismiss was based on Debtor's failure to file a plan. Debtor states that he filed a plan on February 7, 2013 as well as a motion to confirm set for hearing on April 18, 2013. Therefore, because the Debtor filed a Plan, he asserts that the Motion to Dismiss should be denied.

DISCUSSION

The court continued the hearing on the motion to dismiss to be heard with the pending motion to confirm.

12. [12-91736-E-12](#) ANTONIO GOMES
TOG-12 Thomas O. Gillis

CONTINUED AMENDED MOTION TO
CONFIRM CHAPTER 12 PLAN
3-6-13 [[105](#)]

CONT. FROM 9-5-13, 8-22-13, 6-13-13

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 12 Trustee, all creditors, and Office of the United States Trustee on March 6, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion to Confirm the Plan 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).

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:

PRIOR HEARING

The Debtor seeks confirmation of his Chapter 12 Plan. Creditor Movin' Hay, Inc. objects to confirmation.

Service

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

**LOCAL RULE 2002-1
Notice Requirements**

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:
United States Attorney

(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

- (1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044
- (2) United States Attorney as specified in LBR 2002-1(a)
above; and,
- (3) Internal Revenue Service at the addresses specified on
the roster of governmental agencies maintained by the
Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Service
PO BOX 21126
Philadelphia PA 19114

Dckt. 107. The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. See Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

In looking at the Certificate of Service for the Notice of Continued Hearing, Dckt. 197, it does not appear that the Internal Revenue Service has been served at the addresses, including the U.S. Attorney for the Eastern District of California or the United States Department of Justice. It appears that the Debtor in Possession is continuing to use the same defective mailing matrix certificate after certificate. See Certificates of Service, Dckts. 94, 107, 170, 197.

Though the court had proceeded with the hearing based on the Internal Revenue Service filed claim being less than \$15,000.00 and a priority claim which was paid in full, using the "little likelihood of there being a problem" escape hatch for counsel, the failure of counsel to correct the mailing matrix raises significant issues concerning the prosecution of this case.

Pleading with Particularity

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Debtor moves the court for an Order confirming his Chapter 12 plan filed on February 7, 2013;
- B. A copy of the plan is attached hereto and incorporated herein by reference;
- C. The Motion is made pursuant to the provisions of 11 U.S.C. §§ 1224, 1225, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of California; and
- D. A copy of the plan has been served on Debtor, all creditors, the Chapter 12 Trustee, the US Trustee and parties requesting special notice.

The Debtor in Possession correct this oversight with the filing of an Amended of the Motion to Confirm Chapter 12 Plan. Dckt. 105.

CREDITOR MOVIN' HAY, INC.'S OPPOSITION

Creditor Movin' Hay, Inc. opposes confirmation on the following grounds:

- a. The plan provides for disparate treatment of similarly situated creditors. Creditor states that the plan provides for payment to Creditor in Class 2.9 at an interest rate of 4%. Creditor states that the plan provides for payment to Seterus Servicing at a rate of 4.25% even though Seterus is in a more secure position since Seterus holds a first priority deed of trust. Creditor states that the plan does not set forth any logical basis for differentiating between the interest rate among secured creditors. Creditor states that some of the more secured creditors are receiving a higher interest rate than some of the less secured creditors.
- b. The expenses and payments exceed the projected income set forth on Exhibit B. See docket number 92. Creditor states that the subtotal for payments by Debtor through the Trustee are incorrect since payments to various classes of creditors actually totals \$5,173.44 and not \$4,436 as stated on Exhibit B. Creditor states the Class 2.3 payment is incorrectly

stated in Exhibit B as \$555.28 and should instead be \$390.28 as stated in the Amended Chapter 12 Plan. Creditors states that the payments are actually \$137.44 more than the amount set forth on Exhibit B. Creditor states that Debtor in Possession does not have sufficient reserve funds to cover expenses.

CONTINUANCE

On April 15, 2013 the Debtor filed a motion to continue the hearing to resolve the objection of Creditor. On April 16, 2013 the court granted the motion and continued the hearing to June 13, 2013. Nothing had been filed before the hearing. The court continued the hearing again to allow Debtor-in-Possession to file and serve supplemental pleadings in support of this motion on or before July 12, 2013. Debtor was to commence making plan payments in the amount of \$3,946.00 to the Chapter 12 Trustee commencing with June 2013 and each month thereafter until further order of the court, confirmation of the plan, conversion of the case or dismissal of the case.

DEBTOR'S SUPPLEMENTAL PLEADINGS

Debtor filed supplemental dairy profit and loss statements, prepared by Debtors-in-Possession CPA, Hillberg and Company in Turlock, California. Debtor-in-Possession also provided a current profit and loss statement with future projections of profit and loss. Debtors filed a proof of service that these were served on July 31, 2013.

MOVIN' HAY, INC.'S SUPPLEMENTAL OBJECTION

Creditor Movin' Hay, Inc. objects, stating that neither counsel nor Creditor were served with Debtor's supplemental documents and they discovered on August 7, 2013 that the documents had been filed and it has not had enough time to analyze the exhibits to determine the feasibility of the projected cash flow in comparison with the historical data provided.

Counsel for Creditor asserts that Debtor failed to file a supplemental pleading as required by the court, as none were served on counsel. Counsel states he was not served with Debtor's Ex Parte Motion for an order enlarging time to file supplemental exhibits either and was not aware of the extension.

A.L. GILBERT COMPANY'S OPPOSITION

A.L. Gilbert Company filed an objection stating that he checked the docket on July 29, 2013 at 2:12 and did not see any supplemental pleadings filed by the Debtor. Counsel asserts that neither he nor his client were ever served with any supplemental pleadings by the Debtor, or were served with the ex parte motion for enlarging time to file supplemental exhibits.

Creditor A.L. Gilbert Company states its has not had sufficient time to analyze the supplemental pleadings filed by Debtor. Creditor also states that Debtor has not made all of the required monthly payments to the Chapter 12 Trustee pursuant to the Court's order.

FURTHER CONTINUANCE

Both objecting creditors assert that they were not served with the Debtors-in-Possession supplemental pleadings filed with the court on July 29, 2013. The amended proof of service filed on July 31, 2013 provides a list of creditors served, which includes both Movin' Hay, Inc. and A.L. Gilbert Company and their respective counsel. Dckt. 170. It does appear peculiar that both creditors appear not to have received the supplemental exhibits.

Based on the foregoing, the court continued the hearing on the Motion to Confirm to September 5, 2013, to allow the parties in interest to review the supplemental data provided by the Debtor-in-Possession in support of confirmation. If there is any further opposition, it should be served and filed by August 30, 2013.

Movin' Hay, Inc. Supplemental Opposition

The August 30, 2013 Supplemental Opposition filed by Movin' Hay, Inc. asserts (1) the dairy cows are not well nourished and are underweight, (2) the feed supply is inadequate for the dairy herd, and (3) the Debtor cannot meet his income projections due to the condition of the dairy herd. The declaration of Richard Van Vliet is filed in opposition to the motion to confirm. Dckt. 187. He provides his opinion that based on an August 29, 2013 inspection, the dairy herd is underweight and not sufficiently nourished. Based on the condition of the herd, the Debtor cannot meet the income projections necessary for the plan to succeed.

SEPTEMBER 5, 2013 HEARING

The court continued the hearing and ordered that the Debtors-in-Possession to file an exhibit of the proposed final amended plan.

PROPOSED CORRECTED PROVISIONS

On September 26, 2013, Debtors-in-Possession filed a corrections to the Amended Chapter 12 Plan filed February 7, 2013. The corrections are to Class 2.1 Claim of Farmers and Merchant's Bank and Class 2.9 Claim of Movin' Hay, Inc. Judgment.

Class 2.1 Amendment - Farmers and Merchant's Bank Claim

The Amendment to Provide for the treatment of his claim is stated as follows:

"The claim held by Farmers and Merchants Bank herein ("F&M Bank") secured by a note and security instalment on debtor's dairy cattle and some equipment will be a Class 2.1 Claim. The debt owing to F&M Bank was about \$88,275 when the Debtor filed his Chapter 12 case. The Class 2.1 claim is fully secured and will be paid in full by debtors. The balance of the claim at confirmation will be about \$67,000.

The Class 2.1 claim will accrue interest at 8.75 percent per annum after the Effective Date of the Plan. The Class 2.1 claim will be amortized over 5 years and paid with principal and interest payments of about \$1,382.69 beginning the 20th day of the month following plan confirmation and continuing on the 20th day of each month thereafter until paid in full. The payments to F&M Bank shall be paid through the Trustee during the 5 year plan. The actual amount owing shall be adjusted by the parties.

F&M Bank will release its security interest and any other encumbrance of record that it holds against its collateral after the Class 2.1 claim is paid in full.

Quarterly, the bank may inspect the collateral. The debtor shall pay a reasonable inspection cost, payable through the Trustee.

On the status of the loan, the creditor will provide to the Debtor and the Trustee a periodical statement or invoice that shows the balance of the loan and the nature any fee or assessment.

This creditor payment is to be made through the Trustee. If Debtor is ten days late on his payment to the Trustee, the bank may give the attorney for the Debtor a ten day notice of default. If the default is not cured, the bank may apply to the bankruptcy court for relief from stay. The only defense shall be that the payment was actually paid to the Trustee within the ten day grace period."

Class 2.9 Amendment - Movin' Hay, Inc. Judgment

"The claim held by the Movin'Hay, Inc ("Movin'Hay") will be a Class 2.9 claim. The Class 2.9 claim was about \$30,639 on the Effective Date of the Plan. The Class 2.9 claim will accrue interest at the rate of 4.0 percent per annum. The actual amount owing shall be adjusted by the parties.

The Class 2.9 claim will be paid through payments as follows: \$1,000 shall be paid to the Trustee on October 15,2013; November 15, 2013; December 15,2013 and January 15,2014.

Thereafter, Debtor shall pay \$1,500 per month until the balance is paid in full. The payments shall be paid through the Trustee.

This creditor shall retain his judgment lien until paid in full. Also, the creditor shall have the additional security of a second lien on the dairy herd. The first lien is being held by Farmers and Merchant Bank.

This creditor payment is to be made through the Trustee. If Debtor is ten days late on his payment to the Trustee, the bank may give the attorney for the Debtor a ten day notice of default. If the default is not cured, the bank may apply to the bankruptcy court for relief from stay. The only defence shall be that the payment was actually paid to the Trustee within the ten day grace period."

Corrected Provisions of Amended Chapter 12 Plan, Dckt. 196.

In considering the proposed amendments, the court notes first that Farmers & Merchant's Bank has a secured claim in this case, the collateral is the dairy herd (which has with it the inherent risks of any living collateral), and the collateral is the cornerstone upon which the reorganization must be based. The amortization schedule provides for a reasonable monthly payment and reflects a good faith determination of what should and could be provided in a Chapter 12 bankruptcy case.

For Movin' Hay, Inc., it has a judgment which is secured by a judicial lien. An abstract of Judgment was recorded by Movin' Hay, Inc. With the Stanislaus County Recorder on March 28, 2011. Proof of Claim No. 18, attachment. It is asserted that the real property securing this claim by virtue of the judicial lien has a value of \$240,000.00, and the claim is only in the amount of \$30,639.00. The agreed terms including the granting of an additional lien on the dairy herd for this creditor. The monthly plan payments will have this claim paid within 25 months of October 2013 (approximately three and one-half years after this case was commenced). No explanation is provided for the granting of this additional lien to Movin' Hay, Inc.

No further opposition has been filed by any creditors or parties in interest to date.

13. [12-91442-E-11](#) **ALEXANDRINO/DURVALINA** **CONFIRMATION OF PLAN OF**
VASCONCELOS **REORGANIZATION FILED BY DEBTORS**
Thomas O. Gillis **6-10-13 [[133](#)]**

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 creditors requesting special notice and and Office of the United States Trustee on September 30, 2013. By the court's calculation, 31 days' notice was provided.

Tentative Ruling: The Confirmation of Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's tentative decision is to grant Chapter 11 Plan of Reorganization. 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:

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

8/22/13

Plan, Disclosure Statement, Disc Stmt Order,
and Ballots Mailed

October 31, 2013 at 3:30 p.m.

- Page 29 of 36 -

9/26/13 Last Day for Submitting Written Acceptances or Rejections

9/26/13 Last Day to File Objections to Confirmation

10/10/13 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
2.2	For: 1 Against: 0	100%	100%
2.3	For: 1 Against: 0	100%	100%
2.5	For: 1 Against: 0	100%	100%
5	For: 1 Against: 0	100%	100%
5	For: 1 Against: 0	100%	100%

Debtor-in-Possession states they have three (3) rental properties and there are no unsecured creditors on Schedule F. The total amount bifurcated to unsecured is \$289,890.16, which is the total of unsecured claims. Therefore all unsecured creditors have voted yes. All three secured creditors voted yes. The third rental property is unimpaired and will be paid pursuant to their note and deed of trust and is not entitled to vote.

EVIDENCE

Debtors-in-Possession have filed a Declaration in support of confirmation that provides evidence of the 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: Declaration, 3:17-27

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

Evidence: Declaration, 3:17-27

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

Evidence: Declaration, 4:7-24

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: Declaration, 5:1-9

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: Declaration, 5:10-15

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: Declaration, 5:17-20

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 date 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 USCS § 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: Declaration, 5:21 - 6:16

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: Declaration, 6:18 - 7:7

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: Declaration, 6:18 - 7:7

(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: Declaration, 6:18 - 7:7

(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 which 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: Declaration, 6:18 - 7:7

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: Declaration, 7:8-12

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: Declaration, 7:13 - 8:2

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: Declaration, 8:3-10

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 USCS § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 USCS § 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: Declaration, 8:11-21

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 become payable after the date of the filing of the petition.

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: Declaration, 8:22-25

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: N/A

CONCLUSION

Based on the evidence filed in support of confirmation, the court grants the motion to confirm the Chapter 11 plan.

Counsel for the Debtors in Possession shall lodge with the court a proposed order confirming the Chapter 11 Plan, with a copy of the plan attached thereto.

14. [13-91189-E-11](#) MICHAEL/JUDY HOUSE

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-25-13 [1]**

Debtors' Atty: Robert M. Yaspan

Notes:

Continued from 8/1/13

Status Report filed 10/17/13 [Dckt 55]

Operating Reports filed: 8/22/13

Amended Civil Minute Order re use of cash collateral, adequate protection, and scheduling a final hearing filed 9/9/13 [Dckt 52]; hearing on motion set for 2/13/14 at 10:30 a.m.

Notice of Perfection of Lien on Rents filed by AgCredit, FLCA, 8/15/13 [Dckt 44]

Notice of Withdrawal of Claim #10 filed by American Express Bank, FSB 10/9/13 and 10/15/13

OCTOBER 31, 2013 STATUS CONFERENCE

The Debtors in Possession filed their Status Report on October 17, 2013. They state that they intend to file a motion to set a claims bar date for January 2014, and file a Plan by February 2014. The Debtors in Possession are going to employ appraisers to value the two ranches. These ranches have specialized poultry buildings which are currently being leased to a poultry processing company.

The Debtors in Possession report that they obtained an order authorizing the use of cash collateral and are in compliance with that order. Amended Order, Dckt. 52. The use of cash collateral is authorized through February 2014, with replacement liens granted creditors.

AUGUST 1, 2013 STATUS CONFERENCE

The Debtors in Possession are considering whether the case should be converted to one under Chapter 12. The Debtors in Possession have pending a cash collateral motion. The estate has two parcels of land on which there are poultry operations.

Karen House, Trustee, reports that she has the first deed of trust on Smith Road and second deed of trust on Sterns Road property (total payments of \$7,000 a month). Petaluma pays rent to House, and House owes on an obligation, which Petaluma has been offsetting.

American Ag reports that it is also delinquent in payments and is evaluating the case.

MONTHLY OPERATING REPORT CONFERENCE SUMMARY

September 2013 Report - Not Filed

August 2013 Report		Untimely Filed: October 30, 2013		
INCOME	Current		Cumulative	
Wages	\$ 4,219.00		\$ 4,509.00	
Sales	\$ 425.00		\$ 500.00	
Rents	\$ 21,734.00		\$ 41,668.00	
Sale of Disney Timeshare	\$ 0.00		\$ 8,051.00	
Misc.	\$ <u>0.00</u>		\$ <u>0.00</u>	
Total	\$ 26,378.00		\$ 54,728.00	
EXPENSES	\$ (16,262.00)		\$ (41,865.00)	
PROFIT/ (LOSS)	\$ 10,116.00		\$ 12,863.00	
Specific Expenses				Cumulative
Rent - Real Property	\$ (1,430.00)			-
Administrative	\$ (9,569.00)			\$ (14,826.00)
Cash Outflows	\$ (436.00)			\$ (1,653.00)

Food, Utilities, Expenses	\$ (175.00)		\$ (1,232.00)
US Trustee Fees	\$ 0.00		\$ (325.00)
Gifts and Charitable Contributions	\$ (1,000.00)		\$ (1,150.00)
ACCOUNTS RECEIVABLE	\$ 0.00		
ACCOUNTS PAYABLE	\$ 0.00		