

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

January 4, 2024 at 2:00 p.m.

1. 22-90415-E-7	JOHN MENDOZA	STATUS CONFERENCE RE:
<u>23-9020</u> CAE-1		COMPLAINT
	FARRAR V. MENDOZA	10-16-23 [1]

SUMMARY OF COMPLAINT

The Complaint filed by Gary Farrar, the Chapter 7 Trustee in Bankruptcy Case 22-90415, (“Plaintiff-Trustee”), Dckt. 1 , asserts claims for entry of a discharge in Defendant-Debtor’s Chapter 7 Bankruptcy Case. The basis for such relief stated in the Complaint include the following. It is alleged that beginning in 2014 Defendant-Debtor has owned as many as 37 properties and has engaged in a series of transfers to prevent creditors from reaching such assets. It is alleged that Defendant-Debtor organized limited liability companies to be the transferees of such properties.

It is alleged that these limited liability companies were controlled by Defendant-Debtor and Defendant-Debtor’s family members (including minor children being named as the sole member of the LLC). It is alleged that Defendant-Debtor continues in the control and management of these assets. The Complaint contains a very detailed statement of the basis for the claims asserted against Defendant-Debtor. Denial of discharge is requested pursuant to 11 U.S.C. § 727(a)(2)(B) [transfer, removal, destruction of property of the estate after the filing of the petition] and § 727(a)(4)(A) [knowing and fraudulent false oath or account in connection with the bankruptcy case].

SUMMARY OF ANSWER

John Mendoza (“Defendant-Debtor”) has filed an Answer, Dckt. 8, admitting and denying specific allegations.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (J), and (O). Complaint ¶¶ 1, Dckt. 1. In the Answer, Defendant -Debtor admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 2; Dckt. 1. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this**

January 4, 2024 at 2:00 p.m.

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bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (J), and (O). Complaint ¶¶ 1, Dckt. 1. In the Answer, Defendant -Debtor admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 2; Dckt. 1. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **xxxxxxx, 2024**.
- c. Expert Witnesses shall be disclosed on or before **xxxxxxx, 2024**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2024**.
- d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2024**.
- e. Dispositive Motions shall be heard before **xxxxxxx, 2024**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx, 2024**.

2. [23-90103-E-7](#) **PORSCHA LEWALLEN**
[23-9009](#) **CAE-1**
LEWALLEN V. UNITED STATES
DEPARTMENT OF EDUCATION ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-14-23 [12]

JANUARY 4, 2024 STATUS CONFERENCE

SUMMARY OF COMPLAINT

The Amended Complaint filed by Porscha Lewallen (“Plaintiff-Debtor”), Dckt. 12, asserts claims for determination that a student loan obligation is dischargeable. The basis for the relief stated in the Amended Complaint, as summarized by the court, is as follows. Plaintiff-Debtor states that the student loan

debt is \$27,075.73. Plaintiff-Debtor continues to work for the State of California. Plaintiff-Debtor is a single mother with one child. Plaintiff-Debtor has searched for higher paying jobs in other areas, but such jobs result in her having lower net income due to higher living expenses.

SUMMARY OF ANSWER

The United States Department of Education (“Defendant-Dept Ed”) has filed an Answer, Dckt. 22, admitting and denying specific allegations. The Affirmative Defenses include that Plaintiff-Debtor has failed to adequately avail herself of the possible administrative remedies.

REQUIRED PLEADING OF JURISDICTION AND CONSENT OR NON-CONSENT TO NON-CORE MATTER

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint “[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction...,” apply to complaints in Adversary Proceedings. In addition to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the additional pleading requirement concerning whether the matters in the complaint are core or non-core:

Rule 8 F.R.Civ.P. applies in adversary proceedings. The **allegation of jurisdiction required by Rule 8(a)** shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.**

Fed. R. Bankr. P. 7008 (emphasis added).

Federal Rule of Civil Procedure 8(a) requires that the Plaintiff expressly plead the basis for federal court jurisdiction:

(a) Claim for Relief. **A pleading that states a claim for relief must contain:**

(1) **a short and plain statement of the grounds for the court's jurisdiction**, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
...

Fed. R. Civ. P. 8(a) (emphasis added).

As discussed below, Federal Rule of Civil Procedure 8(b) requires that a responding party must, in good faith, respond to each claim asserted, and if generally denying, such general denial must also be denying that federal jurisdiction exists. There is not an “except for allegations of jurisdiction” exclusion in Rule 8.

The court also notes that Rule 8(b)(3) expressly allows general denials only when a defendant is denying “all of the allegations of a pleading – including jurisdictional grounds. . . .” Rule 8(b)(3) further states that if a defendant does not intend to deny all allegations, including jurisdictional grounds, then specific admissions and denial must be made to identify which allegations, including jurisdiction, are admitted and which are denied.

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceedings. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the party consents or does not consent for the bankruptcy judge to issue final orders and judgment for non-core matters:

(b) Applicability of Rule 12(b)–(i) F.R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall include a statement that **the party does or does not consent to entry of final orders or judgment by the bankruptcy court.**

Fed. R. Bank. P. 7012(b) (emphasis added).

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1-3, Dckt. 12.

In the Answer, Defendant-Dept. Ed provides some interesting responses concerning the allegations of jurisdiction:

¶ 1. Defendant-Dept. Ed asserts that it need not respond to Plaintiff-Debtor’s allegation that jurisdiction to determine whether the debt is dischargeable.

Further, Defendant-Dept. Ed asserts that no federal court jurisdiction could exist since “Student Loans are presumed not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(8). Defendant-Dept Ed does not address that federal law, 11 U.S.C. § 523(a)(8) expressly states that such student loan debt is nondischargeable unless it is determined to be an undue hardship on the debtor. Federal court jurisdiction to make such Bankruptcy Code statutory law determination, and such core Bankruptcy Code matters have been referred to the Bankruptcy Judges in this District.

¶ 2. Defendant-Dept. Ed asserts that it need not respond to the allegation that the Bankruptcy Court for the Eastern District of California has jurisdiction to determine this Adversary Proceeding.

¶ 3. Defendant-Dept Ed asserts that it does not need to respond to the allegation that this is a core matter proceeding. However, Defendant-Dept. Ed will consent to the federal Bankruptcy Court entering final orders and judgment on the federal statutory law issues arising under 11 U.S.C. § 523(a)(8).

Defendant-Dept. Ed further asserts that Plaintiff-Debtor has “failed to address Red. R. Bankr. P. 7008, without identifying what provision(s) of Rule 7008 have not been complied with. Rule 7008 states that Federal Rule of Civil Procedure 8 is applicable in adversary proceeding and that an allegation of jurisdiction shall include a reference to the name, number, and chapter of the bankruptcy case to which the adversary proceeding relates, as well as the district and division in which such adversary proceeding is pending.

- ¶ 4. Defendant-Dept. Ed asserts that it need not respond to the allegation that venue is proper for this Adversary Proceeding because it is not required to respond to jurisdictional allegations.

At the hearing, counsel for Defendant-Dept. Ed addressed the court as to the legal basis for not having to admit or deny allegations of jurisdiction. **XXXXXXX**

Defendant-Dept. Ed does expressly consent to the bankruptcy Court entering the final orders and judgment in this Adversary Proceeding. Answer ¶¶ 3; Dckt. 22. The determination of whether a debt should be discharged as an undue burden pursuant to 11 U.S.C. § 523(a)(8) is a matter arising under Federal Statutory Law for which Federal Court jurisdiction exists, it is a Core Matter proceeding arising under the Bankruptcy Code itself, and the related Bankruptcy Case and this Adversary Proceeding have been referred to the Bankruptcy Judges in this District. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1-3, Dckt. 12. Defendant-Dept. Ed does expressly consented to the bankruptcy Court entering the final orders and judgment in this Adversary Proceeding. Answer ¶¶ 3; Dckt. 22. The determination of whether a debt should be discharged as an undue burden pursuant to 11 U.S.C. § 523(a)(8) is a matter arising under Federal Statutory Law for which Federal Court jurisdiction exists, it is a Core Matter proceeding arising under the Bankruptcy Code itself, and the related Bankruptcy Case and this Adversary Proceeding have been referred to the Bankruptcy Judges in this District. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **XXXXXXX, 2024**.

- c. Expert Witnesses shall be disclosed on or before **xxxxxxx** , **2024**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx**, **2024**.
- d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx**, **2024**.
- e. Dispositive Motions shall be heard before **xxxxxxx**, **2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx** , **2024**.

NOVEMBER 9, 2023 STATUS CONFERENCE

On October 27, 2023, the Porscha Lewallen, the Plaintiff-Debtor and Defendant the United States Department of Education filed a Stipulation for an extension of time for Defendant to file an answer. Dckt. 18. The extension has been granted to allow the Parties to focus on a “New Process for Student Loan Bankruptcy Discharge Cases.” The process is stated to be one in which the parties are provided with an expedited analysis of the factors determining dischargeability under 11 U.S.C. § 523(a)(8).

The Amended Complaint in this Adversary Proceeding was filed on September 14, 2023. The extension of time to file an answer is for an additional 30 days

The Status Conference is continued to 2:00 p.m. on January 4, 2024.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Subchapter V Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2023. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is XXXXX.
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APPLICABLE LAW

Subchapter V Confirmation Requirements

Congress provides in 11 U.S.C. § 1191(a) that the court shall confirm a proposed Subchapter V plan only if all of the requirements of 11 U.S.C. § 1129(a) are satisfied. Congress then excludes from compliance the requirements of § 1129(a)(8), (10), and (15), "if the plan does not discriminate unfairly, and is fair and equitable with respect each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1191(b).

The requirements for confirmation provided in 11 U.S.C. § 1129(a), as modified by 11 U.S.C. § 1191(b) [with the excluded provisions shown by ~~strikeout text~~], are:

(a) The court shall confirm a plan only if all of the following requirements are met:

- (1) The plan complies with the applicable provisions of this title.
- (2) The proponent of the plan complies with the applicable provisions of this title.
- (3) The plan has been proposed in good faith and not by any means forbidden by law.
- (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.
- (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.
- (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.
- (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 this title on such date; or
 - (B) if section 1111(b)(2) of this title 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.

~~(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.~~

(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 this title [11 USC § 507(a)(2) or 507(a)(3)], 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;

(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 this title [11 USCS § 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7)], 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;

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, 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) [11 USCS § 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).

~~(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.~~

(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.

(12) All fees payable under section 1930 of title 28 [28 USCS § 1930], 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.

(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.

(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) [11 USCS § 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.~~

(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.

Congress also provides in 11 U.S.C. § 1191(c) statutory definitions and requirements for “fair and equitable treatment” in confirming a Subchapter V Plan, stating:

(c) Rule of construction. For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title

(2) As of the effective date of the plan—

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

8 Collier on Bankruptcy ¶ 1191.04 provides a good discussion of this statutory requirement.

Then, in 11 U.S.C. § 1191(d), Congress provides the statutory definition for “Disposable Income” as used in 11 U.S.C. § 1191(c), stating;

(d) Disposable income. For purposes of this section, the term “disposable income” means the income that is received by the debtor and that is not reasonably necessary to be expended—

(1) for—

(A) the maintenance or support of the debtor or a dependent of the debtor;
or

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

A final special confirmation rule for Subchapter V Plans is stated by Congress in 11 U.S.C. § 1191(e):

(e) Special rule. Notwithstanding section 1129(a)(9)(A) of this title [required treatment for specific priority administrative expenses and involuntary case claims prior to entry of the order for relief] a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

Review of Subchapter V Plan Supporting Evidence

a. Subchapter V Plan; Filed September 26, 2023; Dckt. 164

- i. ¶ A; the plan satisfies the liquidation analysis - See Exhibit A below.

(1) Exhibit A Information

	Real Property	Personal Property
	\$1,045,000.00	\$228,011.00
Secured Claims Sch D	(\$83,600.00)	(\$41,557.00)
Non-Debtor Equity	(\$961,400.00)	\$0.00
Exemptions	(\$43,600.00)	(\$161,715.00)
	=====	=====
Value of Non Exempt Interest in Property of the Estate	(\$43,600.00)	\$24,739.00

From this, the Liquidation Analysis (Exhibit A) then computes that the Chapter 7 Administrative Expenses would be (\$3,223), leaving \$21,515 of value in property of the Bankruptcy Estate for payment of General Unsecured Claims.

Debtor computes there to be (\$1,372,464) in general unsecured claims, which results in a projected 1.57% dividend going to creditors holding General Unsecured Claims [$\$21,515 \div (\$1,372,464) = 1.57\%$]. ^{Fn.1.}

FN. 1. The computation of the amount of general unsecured claims appears to be based on the Proofs of Claims actually filed and not the Unsecured Claims as listed on Schedule E/F.

Amended Schedule F Scheduled Unsecured Claim Creditor	Scheduled Amount	Proof of Claim Amount	Creditor Filing General Unsecured Proof of Claim
Barbara Wagner	(\$425,000)	(\$646,000)	Barbara Wagner – POC 11
Capital One	(\$6,452)	(\$6,452)	Capital One – POC 2
Citibank	(\$1,535)	(\$1,535)	
Crabtree Schmidt	(\$20,100)	(\$49,808)	Crabtree Schmidt – POC 9

Discover Financial	(\$3,662)	(\$3,662)	Discover Bank – POC 3
Resurgent Capital Services (Cross River Bank)	(\$11,336)	(\$11,336)	LVNV Funding (Resurgent Capital Services) – POC 1
Rural Community Assistance Corp	(\$178,000)	(\$239,931)	Rural Community Assistance – POC 10
Sharon and Gary Hofmann	(\$220,000)	(\$334,038)	Sharon and Gary Hofmann – POC 12
Velocity Investments (Lending Club Corp)	(\$16,000)	(\$16,053)	Accelerated Inventory (Webbank) – POC 8
Viking Client Services	(\$20,947)	(\$20,946)	Atlas Acquisitions LL (UHG I LLC) – POC 5 [This appears to be the Debt listed for Viking Client Services]
	=====	=====	
Total by Debtor's Schedules	(\$903,032)	(\$1,329,761)	Total by Proofs of Claim Amounts and Debtor's Schedules if no Proof of Claim Filed

ii. ¶ B; Funding of Plan: Social Security and Self-Employment - See Exhibit B below.

- (1) Debtor will fund the Plan with \$2,082 a month, with the Plan term projected to be 60 months.
- (2) Exhibit B are Schedules I and J filed in this case. However, on December 29, 2023, Debtor filed an Amended Schedule I and Schedule J, which provides the following information as summarized by the court.

(a) Income

(i) Gross Income

- 1) Wages/Salary/Commissions.....\$12,959
- 2) Social Security.....\$ 3,290
- 3) No contribution from Co-habiting Partner

- (ii) Income Tax, Medicare, Social Security
Income Withholding.....(\$3,290)
=====
- (iii) Monthly Income.....\$15,023

On Amended Schedule I Debtor states under penalty of perjury that he is a Self-Employed Consultant, not an employee who is paid wages by an employer. No self-employment business income and expense information is provided as required on Schedule I, ¶ 8a.

- (b) Expenses.....(\$9,652)
- (Including)
- (i) Rent/Mortgage.....(\$3,273)
- (ii) Utilities.....(\$957)
- (iii) Food Housekeeping Supplies....(\$1,274)
- (iv) Taxes..... -\$0.00
- (c) Debtor's Monthly Net Income\$5,372

It is not clear how Debtor has only \$1,225 a month in taxes on \$155,508 in self-employment income and \$39,480 of Social Security Income (of which 80% is subject to federal taxes at Debtor's income level). Additionally, it is not clear how Debtor, as one person, has personally \$1,275 in food and housekeeping expenses monthly.

The 60 month Subchapter V Plan provides for monthly payments of \$2,082, with Debtor's projected disposable income computed to be \$5,372 on Amended Schedules I and J.

iii. Classes of Creditor Claims Article 2.

- (1) Class 1 - Priority Claims and Priority Taxes.
 - (a) ¶ 4.01; no such claims are anticipated, but if filed will be paid in full upon the effective date or date when order allowing claim is final.
- (2) Class 2 - Brichetto Secured Claim, to the extent as allowed by the court pursuant to 11 U.S.C. § 506.
 - (a) ¶ 4.01 - Claim is impaired. Debtor shall sell his interest in the farmland, with the sale to be conducted by the Subchapter V Trustee as previously ordered by the court.
 - (i) Brichetto shall retain their security interest and rights arising under California law arising from the partial judgment, as modified by the amended order or judgment, and subject to 11 U.S.C. § 506.

(3) Class 3 - Mercedes Benz claim, to the extent as allowed by the court pursuant to 11 U.S.C. § 506.

(a) ¶ 4.01 - Claim is unimpaired, to be paid as provided in the contract upon which Mercedes Benz Claim is based.

iv. Class 4 - General unsecured claims

(1) ¶ 4.01 - Claims are impaired and will be paid monthly 4.73% principal payments.

It appears that this language may contain a clerical error. If creditors are paid 4.73% monthly principal payments for 60 months, then that would equal payments totaling 283.8% of each claim. It looks like there is a clerical error in this provision and it should say something like:

Allowed Class 4 general unsecured claims shall received a dividend equal to 4.73% of their allowed claim, with such divided to be paid in equal monthly installments over the 60 month term of the Plan.

b. Declaration in Support of Confirmation; Dckt. 208 (same as Amended Declaration in Reply to Hofmann Creditor's Opposition to Confirmation).

i. Debtor testifies:

(1) ¶ 3; Debtor has a household of 2 adults.

(2) ¶ 4; Debtor's intention is to purchase the Property, using his 8.33% interest in the Property as a down payment.

(3) ¶ 6; Debtor pays approximately (\$300) a month to maintain the Property.

(4) ¶ 7; Debtor pays approximately (\$957) a month in utilities.

(5) ¶ 8; Debtor pays approximately (\$423) a month in pet expenses.

(6) ¶ 9; Debtor pays approximately (\$1,023) a month in out of pocket medical expenses.

Opposition to Confirmation

c. Sharon and Gary Hofmann Opposition; Dckt. 192

i. Hofmann Creditors own 91.66% interest in Valley Home Road Property.

(1) Debtor owns 8.33% interest

ii. Alleged that Debtor's liquidation analysis with the Plan is flawed because:

- (1) Debtor can exempt only his interest in the Property, and if the Property were sold the Hofmann Creditors would receive over 90% of the sales proceeds.
 - (2) No discussion of the liquidation analysis is made, nor computations to show how it is not properly computed by Debtor.
- iii. Alleged that Plan does not provided “adequate means” for implementing the Plan as required by 11 U.S.C. § 1123(a)(5).
 - (1) This is because the Plan does not address:
 - (a) Debtor’s minority interest in the Property
 - (b) Debtor has been squatting in the Property
 - (c) Does not provide any distributions for Hofmann Creditors as co-owners.
- iv. Alleged that confirmation is likely to be followed by a liquidation or need for future reorganization, violating the requirements of 11 U.S.C. § 1129(a)(11).
 - (1) Plan does not address the ownership interest of Hofmann Creditors, which is not property of the Bankruptcy Estate.
 - (a) Plan does not address the pre-petition final state court “decision” with respect to such rights.
 - (b) Upon confirmation, Hofmann Creditors could proceed to enforce their rights in state court.

No analysis of the allegations is provided, no analysis of the state court “decision”, and no evidence presented in opposition to confirmation.

Debtor’s First Amended Reply to Hofmann Creditors’ Opposition; Dckt. 219.

- d. The liquidation requirement (that creditors receive no less than they would in a Chapter 7 case) is satisfied, and if the payments on the claims are over time, then they must receive the present value (which requires the plan to provide for interest for such creditors).
 - i. Chapter 11 Estate contains only the Debtors’ interests in property.
 - ii. Objection is Procedurally Deficient; FRBP 9014 and 2030(b)(1), and LBR9014-1(f), 3015-1(c)(4).
 - iii. Only Debtor’s 8.33% interest in the Property is included in the Bankruptcy Estate, not Hofmann Creditors’ 91.67% interest.

- (1) Debtor's Schedules Value the Property at \$545,000, with the Debtors' 8.33% interest having a value of \$43,600.
- iv. By separate order, the court has authorized the Subchapter V Trustee to liquidate the Property, with 8.33% of the proceeds paid to Debtor and 91.67% paid to Hofmann Creditors (to provide for the Financial Partition of the Property consistent with the state court "decision").
- v. Confirmation of a plan is binding on all creditors, including the Hofmann Creditors.
- vi. Hofmann Creditors have submitted no evidence in Opposition.
- e. First Amended Declaration in Opposition to Hofmann Creditors' Opposition; Dckt. 217. (Same as Declaration in Support of Confirmation.)
 - i. Debtor testifies:
 - (1) ¶ 3; Debtor has a household of 2 adults.
 - (2) ¶ 4; Debtor's intention is to purchase the Property, using his 8.33% interest in the Property as a down payment.
 - (3) ¶ 6; Debtor pays approximately (\$300) a month to maintain the Property.
 - (4) ¶ 7; Debtor pays approximately (\$957) a month in utilities, plus an additional (\$100) a month for propane..
 - (5) ¶ 8; Debtor pays approximately (\$423) a month in pet expenses.
 - (6) ¶ 9; Debtor pays approximately (\$1,023) a month in out of pocket medical expenses.

Response of Brichetto Creditors

On December 7, 2023, Creditors John P. and Jacqueline J. Brichetto, each individually and each as Trustees of the John and Jacqueline Brichetto 2008 Revocable Trust dated May 7, 2008; Joseph P. Brichetto, John M. Brichetto, Lee Ana L. Brichetto ("Brichetto Creditor") filed a Response stating their Conditional Approval of the Subchapter V Plan. Dckt. 186. While titled as a "Conditional Approval," the Response states specific objections to the proposed Plan.

Objection A, p. 4:20 - 6-16; Dckt. 186.

1. Debtor lists (\$3,600) in rental/mortgage. Brichetto Creditor asserts that this should be reduced to \$2,000 a month. The factors include that Debtor's companion living at the premises.

2. Debtor's home maintenance, repair, or upkeep expense of (\$610) a month. Brichetto Creditor states that none of the operating reports include such an expense, and suggests that a reasonable amount would be (\$125) a month.
3. Debtor's electrical, heat, and gas expenses of (\$900) a month. Brichetto Creditor asserts that no documentation has been provided for such an expense. It is also noted that the expenses of Schedule J include an additional (\$100) a month for propane. Brichetto Creditor asserts that the allowed expense should be no more than (\$470.00) or the actual expense, whichever is less.
4. Debtor's (\$1,400) food and housekeeping supplies. Brichetto Creditor asserts that a reasonable amount for one person is (\$550) a month [(\$307) for food and (\$30) for housekeeping supplies].
5. Debtor's (\$350) pet expense. Brichetto Creditors asserts that this amount should not exceed (\$125) a month, and that Debtor's desire to have pets need to be balanced by the more than (\$1,000,000) in unsecured debt he seeks to discharge in this Bankruptcy Case.

DISCUSSION

This Case has presented the court, and the parties and their respective counsel, with an unusual set of circumstances for a Subchapter V case. Fortunately, the Parties and their counsel, with the assistance of the Subchapter V Trustee, have used this Bankruptcy Case to try and (somewhat) cost effectively address the competing claims and interest.

One major fight has been between the Debtor and the Hofmann Creditors. As noted in the Debtor's supporting pleadings and the Hofmann Creditors opposition, the Debtor has interests in several parcels of real property:

For the 1330 Valley Home Road residential property (APN 002-005-049), Debtor holds an 8.33% and the Hoffman Creditors hold a 91.37% interest.

For the 13330 Valley Home Road Farm Land Property (APN 002-005-051), Debtor holds an 8.33% and the Hoffman Creditors hold a 91.37% interest.

1330 Valley Home Road 17 acres of Farm Land (APN 022-005-050), Debtor has an 8.33% ownership interest and the Brichetto Family has a 91.37 ownership interest.

The co-owners of the properties had obtained a judgment in State Court for the partition of the properties, it being by a financial partition of the proceeds following the sale of the properties. The filing of the bankruptcy disrupted the State Court partition sales of the properties. Debtor was asserting a right to purchase the residence property and payoff the Hoffman Creditors for their 91.37% interest in said property.

Though some of the animosity from the State Court Action spilled over to the Bankruptcy Case, with respect to the real properties, the Parties saw the wisdom in having the Debtor removed from control of the real properties and have the Subchapter V Trustee placed in possession of such properties and then

the Subchapter V Trustee proceed with a commercially reasonable marketing and sale of the properties with the respective owners receiving their respective interests in the proceeds from the sale (effectuating the financial partition).

On July 7, 2023, the court entered its order removing the Debtor from possession and control of the following properties and placing them in the possession and control of the Subchapter V Trustee:

- A. Debtor was removed from serving as the Debtor in Possession for the Estate's 8.33% for:
1. The 2 acre residential property listed on the Schedules A/B, Line 1.1, 13330 Valley Home Rd, Oakdale, California;
 2. The two parcels contiguous to the residential property, identified as:
 - a. 24 acres farmland property listed on Schedules A/B on Line 1.2, and
 - b. 17 acres farmland property listed on Schedules A/B on Line 1.3.
 3. The Subchapter V Trustee was expressly authorized to market and sell the estate's interest in the three parcels, including a sale pursuant to 11 U.S.C. § 363(h), which allows a trustee to sell both the debtor's and the co-owner's interests in property and then financially partition the sales process.

Order; Dckt. 119. The court entered its order on August 9, 2023, authorizing the Subchapter V Trustee to engage the services of Keller Williams Market Center 153 for the marketing and sale of the real properties identified above. Order; Dckt. 133. Having these orders in place for the Subchapter V Trustee to market and sell the Properties, the Hofmann Creditors requested that the court dismiss without prejudice their Motion for Relief From the Stay so they could proceed with the State Court partition of the residence property.

On December 15, 2023, the court entered its order granting the Subchapter V Trustee's Motion for Authorization to Sell the Estate's interest in the two farmland parcels to the Brichetto Family (the co-owners of the Property). Order; Dckt. 195.

Motion to Avoid Lien as Impairing Exemption

On December 27, 2023, Debtor filed his Motion to have the judicial lien of the Brichetto's on the Farmland Properties avoided and Debtor recover his real estate exemption from the sale of his interest in the Farmland Properties. Motion; Dckt. 197. On Schedule C Debtor claimed a homestead exemption in the amount of \$43,600 in the 2 acre residential parcel (APN 002-005-049). Schedule C; Dckt. 32 at 15. This homestead exemption was claimed pursuant to California Code of Civil Procedure § 704.730 (California \$300,000+ homestead exemption). *Id.*

In the Motion to Avoid Judicial Lien, the properties and the proceeds of which that are the subject of the Motion are identified as Parcels APN 002-005-051, 002-005-050, and 002-005-049. Exhibit A; Dckt. 200. These are the residence parcels still in the Estate and the Estate's interest in the two Farmland Parcels that the Subchapter V Trustee has sold.

The copy of Schedule C filed as Exhibit B in support of the Motion to Avoid Judicial Lien is the one referenced above (Dckt. 32) in which the property identified in which the exemption is claimed to be: "13330 Valley Home Rd Oakdale, CA _ 95361 _ Stanislaus County _ SFR - 2 Acres - 002-005-049, Line from Schedule A/B: 1.1." Exhibit B; Dckt. 200 (with the court adding the three commas, _ to identify the line breaks on Schedule C).

Confirmation of Plan

It appears that a portion of the Hofmann Creditors' Opposition can be resolved by clearly providing that the Subchapter V Trustee continues to remain in control and possession of the Residence Property, and the Subchapter V Trustee will proceed with the marketing and sale of the Residence Property. Additionally, that the proceeds of such sale shall be financially partitioned between the Debtor, 8.33%, and the Hofmann Creditors, 91.37%.

Liquidation Test Compliance

With respect to the argument (no analysis provided) by the Hofmann Creditors that the 1.57% minimum dividend does not satisfy the liquidation test, the court does not agree. From the court's review of the Schedules, Proofs of Claims filed, and the evidence of the value of the property of the Bankruptcy Estate, it does not appear that the liquidation value analysis provided as part of the Subchapter V Plan is incorrect. Thus, the minimum 1.57% dividend to creditors holding general unsecured claims does satisfy the liquidation test.

Funding of Subchapter V Plan

The Opposition to Confirmation filed by the Hofmann Creditors raises the issue of whether the Plan is properly and sufficiently funded. As counsel for the respective parties are well aware, the Supreme Court has made it clear to trial court judges that they must properly apply the law, and not rely on either an unopposed misstatement or ignorance of the law. *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

At the hearing, **XXXXXXX**