

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

**January 26, 2023 at 2:00 p.m.**

1. [20-90115-E-7](#)  
[21-9008](#)

**ALIMUTHANA**

**MCGRANAHAN V. SUWAID ET AL**

**CONTINUED PRE-TRIAL CONFERENCE  
RE: AMENDED COMPLAINT FOR  
AVOIDANCE OF UNAUTHORIZED  
POST-PETITION TRANSFER AND  
DECLARATORY RELIEF  
6-1-22 [\[33\]](#)**

Plaintiff's Atty: Daniel L. Egan; Jason Eldred

Defendant's Atty:

David C. Johnston [Bader Alikassim Suwaid]

Timothy J. Silverman [GNN Real Estate and Mortgage, Inc.]

Gurjeet S. Rai [Ali Muthana]

Nature of Action:

Recovery of money/property - other

Validity, priority or extent of lien or other interest in property

Declaratory judgment

Notes:

Continued from 9/8/22 by order of the court filed 9/7/22 [Dckt 92]

[WF-5] Trustee's Motion for Entry of Judgment Against Defendant Ali Saeed Muthana and Bader Alikassim Suwaid filed 9/19/22 [Dckt 95]; Order granting filed 10/31/22 [Dckt 101]; Judgment filed 11/18/22 [Dckt 102]

Plaintiff's Pretrial Statement filed 1/17/23 [Dckt 105]

**The Pretrial Conference is XXXXXXX**

**January 26, 2023 at 1:00 p.m.**

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## **SUMMARY OF COMPLAINT**

The Complaint filed by Michael D. McGranahan (“Plaintiff-Trustee”), Dckt. 1 , asserts claims for Avoidance of Unauthorized Post-Petition Transfers (11 U.S.C. §549) and recovery of such transferred property (11 U.S.C. § 550). The property transferred at issue is identified as 2022 White Fall Court, Ceres, California and the subsequent encumbrance of the property (second transfer).

A separate judgment in this Adversary Proceeding have been entered for the Plaintiff-Trustee and against Defendant-Debtor Ali Saeed Muthana and Defendant Alikassim Suwaid. Judgment, Dckt. 102. That resolves all claims against those two Defendants.

The Plaintiff-Trustee’s claims against GNN Real Estate and Mortgage, Inc. remain at issue.

## **SUMMARY OF ANSWER**

Defendant GNN Real Estate and Mortgage, Inc.

GNN Real Estate and Mortgage, Inc. (“Defendant GNN”) has filed an Answer, Dckt. 12, admitting and denying specific allegations, and alleging affirmative defenses of good faith, payment of equivalent value, that he paid the lender who would have foreclosed on the Property, and asserting a lien on the property for the debt incurred to prevent the foreclosure.

## **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(a) and (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 5, 6, Dckt. 1. In the Answer, Defendant Suwaid admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 7. In the Answer filed by Defendant GNN, admits the allegations of jurisdiction and core matter proceeding. Answer ¶ 1; Dckt. 12. 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.

## **PRETRIAL STATEMENTS**

The Parties have filed their respective Pre-Trial Statements. Dckts. 105, 107. For Plaintiff-Trustee, the claim against Defendant GNN can be grossly simplified to be that Defendant GNN, through its representatives were aware Debtor filed bankruptcy. That representatives of Defendant GNN (including the principal and owner of GNN) participated in the post-petition transfer of title to the Property at issue, which was done post-petition without the authorization of the Chapter 7 Trustee or the court.

Defendant GNN then make a loan, and received a loan fee, taking a lien back on the Property post-petition.

The Plaintiff-Trustee contends that Defendant GNN was aware of the bankruptcy case having been filed from the loan credit report and Defendant GNN cannot claim to be a good faith lender in purporting to obtain a lien against the Property.

Defendant GNN asserts that it provided the loan to pay an existing secured debt of the Debtor which had matured. It further asserts that the transfers and having the loan in the name of Defendant-Suwaïd because the Defendant-Debtor's credit was so bad.

Defendant GNN asserts that at no time were its representative aware that the Defendant-Debtor had filed bankruptcy. When the loan was made in 2021, Defendant GNN states that Defendant-Debtor had been granted his discharge, but that the bankruptcy case had not been closed and the Trustee had not abandoned the Property.

Defendant GNN asserts that it did not have Defendant-Debtor's credit report and did not obtain one as part of this loan.

### **ECONOMIC SIDE NOTE**

The Plaintiff-Trustee and Defendant GNN are heading down the road to an ultimate "I Win and You LOSE" court judgment scenario. As the Trustee frames it, based on the Debtor's statement of value, the Property had a value of \$360,100 and was subject to the pre-petition loan in the amount of ("251,875) secured by a deed of trust. The Plaintiff-Trustee has a Motion set for hearing on January 26, 2023, for an order approving the sale of the Property for \$360,100. 20-90115; Dckt. 130. In its Pre-Trial Statement, Defendant GNN seeks to be paid \$260,000, plus interest, attorney's fees and costs.

It appears that if the Trustee wins and there is no secured claim to be paid, then the estate would recover \$331,292 net proceeds after costs of sale. This would appear to be a 100% taxable recovery for the Estate. The Estate would also have not only the litigation costs to date, but the costs for a potentially multi-day trial and all of the preparation that goes therewith.

For the Trustee, if Defendant-GNN wins, the Trustee would likely recover \$50,000 net monies for the Bankruptcy Estate, with those likely to be exhausted by legal fees and administrative costs relating to this litigation.

If Defendant GNN wins, then it would recover the \$260,000, plus interest, fees and costs. But if it doesn't win, then it gets \$0.00.

So, in effect, both the Bankruptcy Estate, represented by the Plaintiff-Trustee, and Defendant GNN run the risk of ending up with a big Goose Egg at trial. Such a situation appears to be one in which rational, financially minded, parties and their knowledgeable counsel, as are the Parties and their respective counsel in this Adversary Proceeding are, can reach a win-win situation, which while not a total victory, the risk of absolute loss is eliminated and the respective parties walk away with dollar in their pockets, or in the Plaintiff-Trustee's case, dollar to be paid out to creditors.

At the Pre-Trial Conference, **XXXXXXX**

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2023**.

C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2023**.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2023**.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2023**.

F. The Trial shall be conducted at ----x.m. on -----, **2023**.

The Parties in their respective Pretrial Conference Statements, Dckts. 105, 107, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff-Trustee

Defendant GNN

Jurisdiction and Venue:	
1. Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a) and (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O).	
2. The Parties have consented to the bankruptcy judge issuing all final orders and judgment to the extent that any of the claims in the Complaint could be asserted to be non-core matters.	
Undisputed Facts:	
1. Both parties provided the court with long narrative discussions of what they assert to be undisputed facts. The court declines the opportunity to mine the long narratives to determine what the court thinks is an undisputed fact and which is argument as to a fact which a Party believe to exist.	
Disputed Facts:	Disputed Facts:
1. Defendant GNN had knowledge of Defendant-Debtor's Bankruptcy Case when the loan was made and the interest in the property of the Bankruptcy Estate is asserted to have	1. Defendant GNN asserts it had not knowledge of Defendant-Debtor's Bankruptcy Case from any credit report.
	2. Defendant GNN denies having any

<p>been given.</p> <p>2. Defendant GNN cannot claim good faith status with respect to making the loan and having received the interest in the property of the Bankruptcy Estate.</p>	<p>knowledge of Defendant-Debtor's Bankruptcy Case.</p> <p>3. Defendant GNN asserts that it is a good faith, <i>bona fide</i> lender, and that its deed of trust in the property of the Bankruptcy Estate is valid and enforceable.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None Identified</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Identified</p>
<p>Relief Sought:</p> <p>1. Avoidance of the deed of trust to Defendant GNN as an not permitted post-petition transfer of property of the Bankruptcy Estate.</p> <p>2. Determination that the deed of trust is void, having been made in violation of the automatic stay.</p> <p>3. Determination that Defendant GNN's affirmative defenses arising under 11 U.S.C. § 550(b) are not applicable to an avoidance sought pursuant to 11 U.S.C. § 549 and void for being in violation of the automatic stay.<sup>FN.1.</sup></p> <p>4. The affirmative defense of equitable subrogation because such would improperly circumvent an express provision of the Bankruptcy Code.</p>	<p>Relief Sought:</p> <p>1. Denial of the claim for avoiding the transfer to Defendant GNN by the deed of trust.</p> <p>2. Determination that Defendant GNN's deed of trust is valid and enforceable.</p> <p>3. Pursuant to 11 U.S.C. § 549(c) the Plaintiff-Trustee cannot avoid the transfer<sup>FN.2.</sup></p> <p>4. Defendant GNN asserts the right to equitable subrogation, its lien replacing an existing deed of trust securing an obligation which was due and is not the subject to <i>bona fide</i> contest, asserting that it was unaware of the bankruptcy case having been filed.</p>
<p>Points of Law:</p> <p>1. Identified above.</p>	
<p>Abandoned Issues:</p> <p>1. None Identified.</p> <p>2. Plaintiff-Trustee confirms that he is not seeking a monetary recovery against</p>	<p>Abandoned Issues:</p> <p>1. None Identified.</p>

Defendant GNN.	
<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Debtor Ali Muthana</li> <li>2. Defendant Karen Bhatti</li> <li>3. Trustee Michael McGranahan</li> <li>4. Defendant Bader Suwaid</li> <li>5. Matt Karzi</li> <li>6. Zabeh Karzi</li> </ol>	<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Ali Muthana</li> <li>2. Karen Bhatti</li> <li>3. Trustee McGranahan</li> <li>4. Bader Suwaid</li> <li>5. Matt Karzi</li> <li>6. Zabeh Karzi</li> <li>7. Kelli Dentone</li> </ol>
<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. Plaintiffs Amended Complaint</li> <li>2. GNN's Amended Answer to Amended Complaint</li> <li>3. Suwaid's Answer to Amended Complaint</li> <li>4. Judgment against Defendant-Debtor Ali Saeed Muthana and Defendant Bader Alikassim Suwaid</li> <li>5. Trustee's Motion to Sell Property Free and Clear of Lien</li> <li>6. Defendant GNN Real Estate and Mortgage, Inc.' s Response to Plaintiffs Requests for Production of Documents-Set One</li> <li>7. All documents produced in response to subpoenas and discovery from GNN</li> <li>8. Defendant GNN Real Estate and Mortgage, Inc.' s Response to Plaintiffs request for admissions</li> </ol>	<p>Exhibits:</p> <ol style="list-style-type: none"> <li>A. All documents produced by LendMe</li> <li>B. FCI Demand Loan Payoff dated 5/24/2021</li> <li>C. Loan disbursement summary dated 5/28/2021</li> <li>D. Emails between Bhatti and Karzi 5/27/2021</li> <li>E. Emails between Karzi and Dentone 6/1/2021</li> <li>F. Emails between Karzi and Bhatti 6/1/2021</li> <li>G. 2019 Muthana credit report</li> </ol> <p>Defendant GNN also states that it “reserves the right to include additional exhibits with notice to the Trustee.” There is no “right” to add exhibits without court approval by merely giving notice to the other party.</p>

9.	Declaration of Zabeh A. Karzi Certifying Records	
10.	11-30-2015 Wells Fargo Statement	
11.	12-28-2015 Wells Fargo Statement	
12.	Proof of Claim No. 3-1 filed by Maiyesa Basidiq attaching Verdict after Trial dated 5-13-2019	
13.	5-16-2019 Uniform Residential Loan Application by Debtor	
14.	5-29-2019 Closing Statement from First American Title Company	
15.	5-29-2019 Deed of Trust by Debtor to PS Funding, Inc.	
16.	6-27-2019 Wells Fargo Bank Statement	
17.	Proof of Claim No. 3-1 filed by Maiyesa Basidiq attaching Judgment dated 6-14-2021	
18.	Selected Portions of Voluntary Petition and Schedules filed by Debtor in Case 20-90115 (2-11-20)	
19.	4-19-21 Email conversation between Matt Karzi and Karen Bhatti	
20.	5-17-2021-5-19-2021 Email conversation between Karen Bhatti and Kelli Dentone;	
21.	5-18-21 Email conversation between Matt Karzi and Karen Bhatti ( enclosing documents relating to Suwaid)	
22.	5-18-21 Email conversation between Matt Karzi and Karen Bhatti (enclosing documents relating to	

	Debtor)	
23.	5-18-21 Certification of Loan Application and Authorization to Obtain Credit Report (Muthana	
24.	5-17-2021-5-24-2021 email conversation between Matt Karzi and Karen Bhatti	
25.	1-1-21 Residential Lease by Debtor as Landlord in favor of Millet, as Tenants	
26.	5-24-21 6:08 p.m. e-mail from K. Bhatti to Matt Karzi	
27.	5/24/2021 Credit Report prepared by MFI Credit Solutions for Lendme	
28.	5/24/2021 Credit Report prepared by MFI Credit Solutions for Lendme (Bates Label No. MDM00168-00181)	
29.	5-24-21-5-25-21 E-mail conversation between Karen Bhatti, Matt Karzi and Kelli Dentone.	
30.	5-25-21 E-mail conversation with Karen Bhatti, Matt Karzi and Kelli Dentone	
31.	5-25-21 8:01 p.m. e-mail from K. Dentone to M. Karzi and K. Bhatti, with enclosure	
32.	5-25-21 Grant Deed transferring title from Debtor to Bader Suwaid - Exhibit L of Bhatti Exhibits	
33.	E-Mail Exchange Dated 5-25-21 between Bhatti, Dentone and Karzi	
34.	Rent Free Letter dated 5-27-21	
35.	5-27-21-5-28-21 E-mail conversation between Karen Bhatti and Kelli Dentone.	



<p>36. 5-28-21 Email conversation between Karen Bhatti and Kelli Dentone</p> <p>37. 5-28-21 Deed of Trust from Suwaid to GNN Real Estate</p> <p>38. 5-28-21 Promissory Note</p> <p>39. 6-1-21 Final Loan Settlement Statement</p> <p>40. Timeline of Events</p> <p>41. Summary of Key Participants</p>	
<p>Discovery Documents:</p> <p>1. Defendant GNN's Responses to Plaintiffs Request for Production of Documents</p> <p>2. Defendant GNN's Responses to Requests for Admissions Set. One.</p> <p>3. Declaration of Zabeah A. Karzi Certifying Documents</p> <p>4. Rule 2004 examination of Debtor Ali Muthana (7 /8/21) 31: 1-11, 31: 19-35:2, 48:22-54:20, 56:7-60:21, 73 :23-76:4,</p> <p>5. Rule 2004 examination of Debtor Ali Muthana (9/24/22) 108:4-9, 109:13-112:2, 113:19-115:1, 115:2-116:6, 117:2-117:20, 11:17-118:10, 120:8-17, 122:19-126:19</p> <p>6. Deposition of Karen Bhatti (7 /14/22) All</p> <p>7. Deposition of Debtor Ali Muthana (9/13/22) All</p>	<p>Discovery Documents:</p> <p>A. GNN's written responses to Trustee discovery</p> <p>B. Bhatti deposition</p> <p>C. Muthana deposition</p> <p>D. Muthana 2004 examinations</p> <p>E. LendMe production of documents pursuant to Trustee subpoena</p> <p>F. MFI Credit Solutions production of documents pursuant to Trustee subpoena</p>
Further Discovery or Motions:	Further Discovery or Motions:

1. None Identified	1. None Identified
Stipulations:  1. Anticipate stipulation as to authenticity of exhibits.	Stipulations:  1. Stipulation as to authentication and admissibility of documents and exhibits.
Amendments:  1. None Identified	Amendments:  1. None Identified
Dismissals:  1. None Identified	Dismissals:  1. None Identified
Agreed Statement of Facts:  1. Parties are open to discussing an agreed statement of facts.	
Attorneys' Fees Basis:  1. No statutory or contractual basis identified.  2. If one exists, Plaintiff-Trustee asserts Cal Civ. § 1717 reciprocal rights.	Attorneys' Fees Basis:  1. Contractual provision in deed of trust.
Additional Items  1. None Identified	Additional Items  1. None Identified
Trial Time Estimation: One Day	Trial Time Estimation: Two Days

FN.1. 11 U.S.C. § 550(a) provides as follows:

§ 550. Liability of transferee of avoided transfer

(a) Except as otherwise provided in this section, **to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a)** of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

(1) the **initial transferee** of such transfer or the entity for whose benefit such transfer was made; or

(2) any **immediate or mediate transferee of such initial transferee**.

The for value and good faith transferees defendant provided in 11 U.S.C. § 550(b) are stated to be applicable to someone directly or indirectly receiving a transfer of the property from the initial transferee:

(b) The trustee **may not recover under section** [subsection] **(a)(2)** of this section from—

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

FN.2. 11 U.S.C. § 549(c) provides (emphasis added):

(c) The trustee **may not avoid under subsection (a)** of this section a **transfer of an interest in real property** to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value **unless a copy or notice of the petition was filed, where a transfer of an interest in such real property may be recorded to perfect such transfer**, before such transfer is so perfected that a *bona fide* purchaser of such real property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to such interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 10/27/22 to be conducted in conjunction with the continued Motion to Confirm.

Operating Reports filed: 11/16/22; 12/16/22; 12/18/22

[CAE-1] Third Status Conference Report filed 1/12/23 [Dckt 78]

<b>The Status Conference is <span style="color: red;">xxxxxxx</span></b>
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**JANUARY 26, 2023 STATUS CONFERENCE**

On January 12, 2023, the Debtor in Possession filed an updated Status Conference Report. Dckt. 78. It appears that there are no new updates for the court and parties in interest.

At the Status Conference, xxxxxxx

**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.

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

Sufficient Notice Not Provided. No Proof of Service was attached. A Certificate of Service is required to be filed with the Clerk concurrently with pleadings or documents serviced. Local Bankruptcy Rule 9014-1(e).

At the hearing, **XXXXXXXXXX**

~~The Proof of Service states that the Motion and supporting pleadings were served on [Debtor, Debtor's Attorney, Chapter 12 Trustee, Official Committee of Creditors Holding General Unsecured Claims / creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee] on **xxxx, 202x**. By the court's calculation, **xx** days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).~~

~~-----The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.~~

**The Motion to Confirm the Plan is **xxxxx**.**

The Chapter 12 Debtor, JEA2, LLC, ("Debtor") seeks confirmation of the Chapter 12 Plan.

### **SBN V Ag I LLC's Objection**

SBN V AG I LLC ("Creditor") filed Objection to the July 18, 2022 Chapter 12 Plan on September 8, 2022. Dckt. 46. Creditor's Objection appears to be for Debtor's Original Plan, not Debtor's Amended Plan, the Plan currently set for confirmation. At the hearing, **XXXXXXXXXX**

## **Trustee's Opposition**

Michael H. Meyer, the Chapter 12 Trustee, ("Trustee") filed an Objection to Confirmation on October 12, 2022. Dckt. 59. Trustee objects on the following grounds:

1. The Chapter 12 Plan proposes to make payments directly to holders of impaired secured claims instead of through the Trustee. This is in violation of 11 U.S.C. § 1225(a)(1).
2. Debtor fails to provide interest for the secured tax claim.
3. Debtor is not a "family farmer" engaged in a "farming operation."

## **SBN V Ag I LLC's Second Objection**

Creditor filed a second Objection to the July 18, 2022 Chapter 12 Plan on January 5, 2023. Dckt. 76. Again, Creditor's Objection appears to be for Debtor's Original Plan, not Debtor's Amended Plan, the Plan currently set for confirmation. It is unclear whether Creditor objects the current proposed Plan.

## **DISCUSSION**

### **Review of the Proposed Plan**

The basic terms of the First Amended Chapter 12 Plan filed on September 4, 2022, (Dckt. 42) are summarized by the court as follows:

- A. "Debtor owns approximately 154.29 acres of flat crop land near Patterson, California. The land has two sources of water, West Stanislaus Irrigation District rights and an existing well. The crop land is currently occupied by an older and unproductive orchard of almond trees. The trees have not been irrigated for some years and the orchard had reached the end of efficient production." First Amended Plan, p. 2:7-11; Dckt. 42.
- B. "Debtor intends to resume cultivation in the 2023 crop year, likely through a crop share lease. Tomatoes are the likely crop to be planted." *Id.*, p. 2:12-13.
- C. For the Class 2 secured claim of SBN V Ag I, LLC, the Debtor in Possession "anticipates" closing a sale of property owned by another of Jeffery Arambel's entities, which also secures SBN's claim, and paying the SBN claim in full from that sale. *Id.*, p. 2:14-19.
- D. Debtor is to submit future income to the Chapter 12 Trustee for payments under the Plan. *Id.*, ¶ 1.02. Exhibit 1 to the Amended Plan sets forth the payment schedule by Debtor and payments to be made to creditors. The court does not see an Exhibit 1 attached to the plan or filed as an exhibit to the Amended Plan.
- E. "Debtor contemplates entering into multiple year crop share leases to generate immediate funds for Plan payments. The principal of the Debtor also anticipates obtaining additional funding for the Debtor from sales of other property and/or borrowing secured by non-estate assets." *Id.*, p. 3:11-15. However, Debtor in Possession states that the almond trees are not

productive and are not being irrigated. The Debtor in Possession plans on there being future crop sharing leases in the future.

F. From the court's review of the First Amended Plan, there is no funding amounts that the Debtor will be required to make to the Chapter 12 Trustee. Rather, there are only vague references to funding the Plan and those are based on non-existent, future possible share crop leases, only after there is "conversion of dormant orchard land to row drop land." *Id.*, p. 7:10-13.

G. The First Amended Plan lists four claims to be paid, which are:

1. Class 2 Secured Claim of SBN V Ag I, LLC, ¶ 2.02.
  - a. Payments on the \$8,922,789 claim will be made as set forth in Exhibit 1. As noted above, there is not Exhibit 1 to the First Amended Plan. These payments will be funded through the sale of non-bankruptcy estate properties or refinance of non-bankruptcy estate properties, with no payments to be made through the Plan and the Chapter 12 Trustee. No Chapter 12 Trustee's fees will be due on the payment of this claim from the non-estate assets of Mr. Arambel or his other entities.
2. Class 3 Secured Claim - Stanislaus County Property Taxes. ¶ 2.03.
  - a. Payment on the \$102,944.43 secured tax claim will be made as provided in Exhibit 1 to the Plan. Which as noted above, there is no Exhibit 1 to the Plan.
3. Class 4 General Unsecured Claims. ¶ 2.04
  - a. The First Amended Plan provides for only the nonpriority unsecured claims of the West Stanislaus Irrigation District and Wagner Jones. Again, reference is made to the non-existent Exhibit 1 distribution schedule.

Jeffery Arambel, the sole Member of the Debtor provides his Declaration in support of Confirmation of this Chapter 12 Plan. Dckt. 43. That Declaration provides no information of the historic operation or any current or future economic information in support of confirmation. Mr. Arambel does testify that it is Exhibit 1 to the Plan that explains that claims will be paid. Declaration, p. 3:7-8.

As to the economic feasibility of the Plan, Mr. Arambel provides only his vague statement that "The Plan payments will be made through a crop share lease and a sale or refinance of cross collateralized property securing the Class One SBN V Ag, LLC claim. *Id.*, p. 3:10-11. No testimony is provided of any actual financial information, the status of any sales, or the actual ability to the Debtor to perform the Chapter 12 Plan.

Looking at the latest Operating Report filed by the Debtor in Possession, which is for the month of December, 2022 (Dckt. 80), the financial information provided therein is:

A. Since the bankruptcy case was filed on April 19, 2022, the Bankruptcy Estate has had cash receipts totaling \$4,525 for the nine months the case has been pending, and has the \$4,525 cash on hand as of December 31, 2022. Dckt. 80, p. 1.

B. However, of this \$4,525 of cash on hand, there is only \$241.43 deposited in a Bank of Stockton bank account. *Id.*, p. 2.

C. There are no accounts receivable, pre or post-petition in the bankruptcy estate. *Id.*

D. While generating no income, the Debtor in Possession has incurred a delinquent tax obligation of (\$102,949). *Id.*

E. The \$4,525 in “farming income,” has been generated by selling almond wood. *Id.*, p. 3.

F. The Debtor in Possession states that there have been no cash disbursements during this case for any Farm Expenses. *Id.*

From this financial there is little, if any, farming operations for this limited liability company.

Looking at the Schedules signed by Jeffery Arambel under penalty of perjury in this case, the assets of the Debtor consisted of:

- A. Cash.....2,100.00
- B. Accounts Receivable.....None
- C. Inventory.....None
- D. Crops - firewood from trees.....\$38,800
- E. Farm Machinery.....None
- F. Farm Supplies.....None
- G. Farm Equipment.....None
- H. Any other Farm Related Property.....None
- I. Office Furniture or Equipment.....None
- J. Machinery or Equipment.....None
- K. Automobiles, Trucks, Farm Vehicles.....None
- L. 154 Acres of Almond Orchard.....\$15,459,000

Schedule A/B, Dckt. 15. No other assets of the Debtor, other than the three identified above, are listed by the Debtor.



On the Statement of Financial Affairs, Mr. Aramble states that the Debtor had the following Gross Revenues for the current and prior to years:

- A. First four months of 2022.....\$2,100
- B. 2021.....\$ 0.00
- C. 2020.....\$ 0.00

Dckt. 1 at 17. For non-business income, Mr. Arambel states that there was none in 2022, 2021, and 2020. *Id.*

### **Payments Directly to Secured Claims**

Payments on impaired claims must be paid through the Chapter 12 Trustee. *See* 11 U.S.C. § 1226(c); *In re Fulkrod*, 973 F.2d 801, 803 (9th Cir. 1992). The Plan proposes to pay impaired claims directly.

### **Failure to Provide Interest on Tax Claim**

11 U.S.C. § 506(b) governs when interest shall be allowed on secured claims. 11 U.S.C. § 511(a) states the interest rate on tax claims shall be determined under applicable nonbankruptcy laws. Here, Debtor provides evidence that Stanislaus County Tax Collector has a secured claim on their property, commonly known as 154 Acres of Almond Orchard. Schedule D, Dckt. 15. Debtor does not provide for an interest on the secured claim. Debtor should include the statutory interest rate set by the county.

### **Debtor Not a Family Farmer**

A family farmer is defined in 11 U.S.C. § 101(18). A farming operation is defined through 11 U.S.C. § 101(21). Farming operations include the farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state. *Id.* Trustee does not indicate why Debtor is not a family farmer nor why their operation is not a farming operation. It may be Trustee's understanding that turning dead almond trees to firewood and then growing tomatoes through a "crop share lease" is not a farming operation.

Congress provides in 11 U.S.C. § 109(f) when a family farmer may be a debtor under Chapter 12, stating:

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

In 11 U.S.C. § 101 Congress further defines a "family farmer" with regular annual income as:

(19) The term "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

The financial information provided by Mr. Arambel under penalty of perjury in the Schedules and Statement of Financial Affairs documents that the Debtor has no stable and regular annual income to fund a Chapter 12 Plan. The Debtor has no regular income, and in 2020 and 2021 absolutely no income. The only meager dollars here and there are from cutting wood from dead and dying trees.

At the hearing, **XXXXXXXXXX**

The Plan does not comply with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title.

The court shall issue an order substantially in the following form holding that:

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

The Motion to Confirm the Chapter 12 Plan filed by JEA2, LLC (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm is denied, and the proposed Chapter 12 Plan is not confirmed.

**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 Continued.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Abandon is <span style="color: red;">XXXXXXXXXX</span></b>
---

### REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwarzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwarzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwarzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC (“Summit”) as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.*, ¶ 37. Ms. Schwarzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

### **Creditor’s Opposition**

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment (“Adjustment”) process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties’ title companies and successfully recorded..

### **Plan Administrator’s Reply**

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; and even after abandonment, the Adjustment process may still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

### **SBN V Ag I LLC (“Summit”) Response**

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator’s proposal of temporary deferral of the Murphy

Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

## DISCUSSION

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

### Bifurcated Abandonment of the Murphy Ranch Properties

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

### **August 12, 2021 Hearing**

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

### **September 30, 2021 Hearing**

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

### **October 21, 2021 Hearing**

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

### **November 16, 2021 Status Report**

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

### **December 16, 2021 Hearing**

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

### **March 10, 2022 Hearing**

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

### **April 18, 2022 Status Report**

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

### **CONTINUANCE OF MAY 26, 2022 HEARING**

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.

### **CONTINUANCE OF JUNE 30, 2022 HEARING**

Focus Management Group, the Plan Administrator, and American AgCredit have filed Updated Status Reports (Dckts. 1707, 1709) information the court that the parties are now working of the deeds for the lot line adjustments that have been approved, and a further continuance is requested.

The Hearing is continued to 10:30 a.m. on August 4, 2022.

### **July 29, 2022 Status Report**

On July 29, 2022, American AgCredit filed a Status Report stating documents for the lot-line are currently being circulated and signed for recording but the process has not concluded. Dckt. 1723. American requests the matter be continued for 30-45 days for the process to continue.

### **August 4, 2022 Hearing**

As of the court's review of the Docket, the Plan Administrator had not filed a concurrence in the request for a continuance, so the court posted this as a tentative ruling. Though the court could assume that the Plan Administrator concurs, there may be some administrative "tweaks" that the Parties want to address at the hearing.

At the hearing, the Parties agreed that this should be further continued in light of the advances being made on getting the issues resolved with the County.

### **September 8, 2022 Hearing**

At the hearing, counsel for the Plan Administrator reported that the lot line adjustments were recorded on Tuesday, but recorded copies have not been received.

The other Parties appearing agreed to a continuance to confirm that everything has been correctly wrapped up.

### **OCTOBER 17, 2022 HEARING**

On October 21, 2022, the Plan Administrator filed an updated Status Report. Dckt. 1764. The Plan Administrator reports that it has been informed that there continue to be problems with the title company, and additional time has been requested. Additionally, that the Plan Administrator has received an offer for the Murphy Ranches which is under review.

The Plan Administrator requests that the hearing be continued to 10:30 a.m. on December 15, 2022, as to the Murphy Ranches.

On October 21, 2022, American AgCredit filed its updated Status Report. Dckt. 1770. It reports that the work on addressing the title issues continue, and a continuance of 60 days is requested.

The Murphy Ranches being the remaining properties at issue, the court continues the hearing to 10:30 a.m. on December 15, 2022.

### **DECEMBER 15, 2022 HEARING**

On December 13, 2022, Focus Management Group USA, Inc., the Chapter 11 Plan Administrator filed in updated Status Report. Dckt. 1805. The Plan Administrator reports that American AgCredit has confirmed that the issues relating to the Lot Line Adjustment have resolved and the adjustment has been completed.

The Plan Administrator reports that with that completed, the Parties can proceed with a global settlement. The Plan Administrator requests that the hearing on this Motion be continued to the court's January 26, 2023 Calendar so that the Plan Administrator and the other parties can continue with the global negotiations.

At the hearing, counsel for the Plan Administrator reported that the global settlement negotiations were proceeding and the Parties agreed to continue this hearing.

### **JANUARY 26, 2023 HEARING**

As of the court's January 25, 2023 review of the Docket, no updated status report had been filed or information about whether the Plan Administrator would or could proceed with the abandonment.

At the January 26, 2023 hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

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

The Motion to Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, 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 to Abandon is **XXXXXXXX**



**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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 13, 2023. By the court's calculation, 13 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

Under the facts and circumstances of this Motion, the court shortens the time to the 13 days given.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

**The Motion for Authority to Use Cash Collateral is granted.**

Focus Management Group USA, Inc. ("Plan Administrator") moves for an order approving the use of cash collateral pursuant to stipulation with SBN V AG I LLC ("Summit"). Plan Administrator requests the use of cash collateral to operate the Reorganizing Debtor's business and pay Plan Expenses.

Plan Administrator proposes to use cash collateral for the following expenses:

Plan Expenses in accordance with the Stipulated Budget  
such as insurance and professional fees for the time period of  
January 1, 2023, through March 31, 2023.

A windup period if the estate is fully administered at that time and as may be extended by Summit's further stipulation.

The use of cash collateral is authorize for the expenses as set forth in the Budget filed as Exhibit A (Dckt. 1821), filed in support of the Motion and incorporated herein by this reference.

## **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

### **(b)(2) Hearing**

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## DISCUSSION

The Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for reorganizing Debtor's business and paying Plan expenses. The Motion is granted, and the Plan Administrator is authorized to use the cash collateral for the period January 1, 2023, through March 31, 2023, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by The Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by the Plan Administrator.

**Counsel for the Plan Administrator shall prepare and lodge with the court a proposed order consistent with this ruling.** The Cash Collateral Budget; Exhibit A, Dckt. 1821; shall be attached to the proposed order as an Addendum and incorporated therein.

6. <a href="#"><u>18-90030</u></a> -E-11 <a href="#"><u>FWP-2</u></a>	<b>FILBIN LAND &amp; CATTLE CO., INC. Peter Fear</b>	<b>CONTINUED MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN 12-9-21 [<a href="#"><u>522</u></a>]</b>
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**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Plan Administrator, SBN V Ag I LLC, and Office of the United States Trustee on December 9, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Order in Aid of Execution of the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Entry of Order in Aid of Execution of Plan is <span style="color: red;">xxxxxxx</span>.</b>
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On October 20, 2022, Focus Management Group, USA, the Plan Administrator in the Arambel Case, filed an updated Status Report. Dckt. 548. The Plan Administrator reports that while the parties have negotiated possible resolution terms, no settlement has been finalized. The reasons for being unable to finalize a settlement are stated to include:

- (1) the IRS inadvertently sent tax refund checks for the Arambel Plan Estate to Mr. Arambel, but Mr. Arambel has turned over those monies of the Arambel Plan Estate to the Plan Administrator;
- (2) Summit has been focused on a sale of the Business Park property that was abandoned to the Debtor in May 2021, but that sale failed in September 2022; and
- (3) Summit and Mr. Arambel are continue in their negotiations which may obviate the need for a sale of the Business Park.

The Plan Administrator requests a further continuance.

At the hearing, the Parties requested that the court to continue the hearing to 2:00 p.m. on January 26, 2023.

Much of the grounds for the continuance are stated to be based on all the work being done by Summit in working with the Jeffery Arambel to achieve a global forbearance agreement to avoid (at least for now) foreclosures by Summit.

#### **JANUARY 26, 2023 HEARING**

The court's review of the Docket in this Case on January 25, 2023, disclosed that no updated information about this Motion has been filed.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

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

The Motion for Entry of Order in Aid of Execution of Plan filed by Focus Management Group, USA, Inc., the Arambel Chapter 11 Plan Administrator 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 Entry of Order in Aid of Execution of Plan is **XXXXXXXXXX**.

**SUBCHAPTER V**

Debtor's Atty: David C. Johnston

Notes:

Continued from 10/27/22

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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**JANUARY 26, 2023 STATUS CONFERENCE**

No updated status reports have been filed and no post-confirmation fee applications have been filed. By the end of March 2022, the final orders were entered on the Debtor/Debtor in Possession Plan Administrator's objections to claims. There has been nothing filed in connection with the administration of this case and the Confirmed Plan since March 2022.

At the Status Conference, XXXXXXX

**OCTOBER 27, 2022 STATUS CONFERENCE**

No updated status reports have been filed. No motions for allowance of fees have been filed.

At the October 27, 2022 Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported that the remaining item to address is the Lee Financial claim rejection damages.

**JULY 14, 2022 STATUS CONFERENCE**

No updated Status Report was filed by the Debtor/Debtor in Possession Plan Administrator. At the Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported that there is one outstanding issue, that being a claim for a lease rejection by Fresno Truck Center. That claim has been partially reduced and additional information is being provided which the Debtor/Debtor in Possession Plan Administrator believes that it will be further reduced.

The Subchapter V Trustee reported that the Debtor/Debtor in Possession Plan Administrator is working diligently to get the secured claims paid and prosecute the Plan.

The Status Conference is continued for case management purposes, counsel for the Debtor/Debtor in Possession Plan Administrator and the Subchapter V Trustee stating that there are fee motions to be filed.

#### **APRIL 21, 2022 STATUS CONFERENCE**

The Court overruled the Objections to the Claims of Gina Windorski (POC 2-1) and Jacob Price (3-1). Orders; Dckts. 170, 172.

At the Status Conference, counsel for the Debtor Plan Administrator reported that resolution of the one pending claim objection is in process, with the parties electing to address the “sticking points” through the BDRP process. The court continues the Status Conference to July 14, 2022, to allow sufficient time for that process to evolve.

#### **JANUARY 27, 2022 STATUS CONFERENCE**

On January 26, 2022, the Debtor/Plan Administrator filed an Objection to Proof of Claim 2-1 filed by Gina Windorski. Dckt. 151. The hearing on the Objection to Claim is set for March 24, 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that there are several matters to be resolved. The first relates to several claims filed by former employees. Two objections to claim have been filed.

Second, the claim of Fresno Truck Center is at issue. The Parties are working to resolve it. For this creditor, a proof of claim was not filed by the bar date. However, it asserts that its claim was for leases, and by rejection in the plan the bar date runs from that.

The Subchapter V Trustee reports that the Plan is being performed.

The court continues the Status Conference in light of the Subchapter V Trustee continuing the investigation and the U.S. Trustee reviewing the issues and taking such action as appropriate.

#### **SEPTEMBER 30, 2021 STATUS CONFERENCE**

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

At the Status Conference, the Subchapter V Trustee reported that plan payments have been made by Debtor and disbursements on secured claims. No disbursements have been made to unsecured claims. Debtor has obtained a judgment against two creditors.

Also, the claim for several leases relating to the Fresno Truck Center was filed after the Plan was confirmed. Debtor asserts that the Plan allows that.

## **APRIL 29, 2021 STATUS CONFERENCE**

The court Order confirming the Subchapter V Plan in this case was entered on February 11, 2021. Dckt. 133. No post-confirmation status report was filed by the Debtor who administering the confirmed plan.

At the Status Conference, counsel for the Debtor reported that they are working on the mechanics on making the payments under the Plan since not all classes affirmatively voted to accept the Plan.

The Trustee noted that while the Plan does not provide for the Trustee to make the payment, under operation of Subchapter V the Trustee will do so, except for the direct electronic payments already being made pursuant to prior adequate protection orders

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

The court having conducted the October 22, 2022 Status Conference, the Debtor/Debtor in Possession Plan Administrator prosecuting the performance of the Confirmed Plan, motions for approval of fees are to be filed, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **2:00 p.m. on January 26, 2023.**

# FINAL RULINGS

8. [20-90210](#)-E-11      JOHN YAP AND IRENE LOKE      CONTINUED STATUS CONFERENCE  
[21-9016](#)      CAE-1      RE:  
YAP ET AL V. PNC FINANCIAL      COMPLAINT  
SERVICES GROUP, INC. ET AL      12-10-21 [[1](#)]

Plaintiff's Atty: Arasto Farsad; Nancy W. Weng  
Defendant's Atty: unknown

Adv. Filed: 12/10/21  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property

Notes:  
Continued from 12/15/22 to allow for the filing of any post-judgment motions.

**The Post-Judgment Status Conference is concluded and removed from the Calendar.**

The Clerk of the Court may close the file for this Adversary Proceeding.

## JANUARY 26, 2023 POST-JUDGMENT STATUS CONFERENCE

The court continued this Status Conference for administrative purposes to track whether any post-judgment motions were filed. None have been filed.

The Post-Judgment Status Conference is concluded and removed from the Calendar.



9. [22-90296](#)-E-11

PROVIDENT CARE, INC.

CONFIRMATION OF CHAPTER 11

PLAN

David Johnston

11-27-22 [[50](#)]

**Final Ruling: No appearance at the January 26, 2023 Hearing is required.**

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**Pursuant to court order, Dckt. 63, the hearing on the Motion to Confirm Chapter 11 Plan is continued to 2:00 p.m. on March 30, 2023.**

10. [22-90160](#)-E-11      EAGLE LEDGE FOUNDATION,      CONTINUED STATUS CONFERENCE  
[CAE-1](#)      INC.      RE:  
           VOLUNTARY PETITION  
           5-18-22 [\[1\]](#)

**Final Ruling: No appearance at the January 26, 2023 Status Conference is required.**

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Debtor's Atty: Dennis D. Miller; Kathleen L. DiSanto

Notes:

Continued from 10/6/22

Operating Reports filed: 10/14/22; 11/10/22; 12/14/22

[DDM-5] Third Interim Order Granting Motion for Interim and Final Orders Authorizing the Use of Cash Collateral, Granting Replacement Liens, Providing Adequate Protection, and Approving DIP Budget and Setting Hearing filed 10/12/22 [Dckt 156]

[DDM-18] First Interim Application for Allowance and Payment of Interim Compensation and Expenses by Lubin Olson & Niewiadomski as Counsel for Debtor-in-Possession filed 11/10/22 [Dckt 170]; Order granting filed 12/19/22 [Dckt 186]

[DDM-19] Debtor's Ex Parte Application to Request Telephone Appearance and Continuance of Status Conference filed 1/18/23 [Dckt 187];

<p><b>Pursuant to court order, Dckt. 189, the Status Conference is continued to 10:30 a.m. on February 16, 2023.</b></p>
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