

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**February 4, 2021 at 11:30 a.m.**

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1.	<a href="#"><u>20-24123</u></a> -E-11 <b>RUSSELL LESTER</b> <a href="#"><u>FWP-14</u></a> <b>Thomas Willoughby</b> 1 thru 2	<b>APPROVAL OF CHAPTER 11 DISCLOSURE STATEMENT 12-17-20 <a href="#"><u>[307]</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 Notice of the Hearing 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 December 17, 2020. By the court's calculation, 49 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Approve Disclosure Statement 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 hearing on the Disclosure Statement is continued to 10:30 a.m. on <span style="color:red">XXXXXXX</span> 2021.</b>
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The Parties having agreed to mediate their disputes concerning the Disclosure Statement and related matters in this case, the court continues the hearing. In light of the pending Mediation, the court does not post any tentative ruling or discussion of the Disclosure Statement.

**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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, parties requesting special notice, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Terminate Exclusivity was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, 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, -----  
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**The hearing on the Motion to Terminate Exclusivity is continued to 10:30 a.m.  
on **xxxxxxx** 2021.**

The Parties having agreed to mediate their disputes concerning this Motion and related matters in this case, the court continues the hearing. In light of the pending Mediation, the court does not post any tentative ruling or discussion of the Motion.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 14, 2020. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is XXXXX.**

11 U.S.C. § 1229 permits a debtor to modify a plan after confirmation. The debtor, Timothy C. Wilson ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 12 Trustee, Michael Meyer ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1222, 1225(a), and 1229 and is confirmed.

### **CONTINUED HEARING**

At the hearing, the Chapter 12 Trustee reported that the Debtor is in default in the proposed plan payment, having paid \$10,000.00 in October 2020, and then only \$10,000.00 of the \$20,000.00 payment due in November 2020.

Debtor's counsel reported that the latest COVID-19 shutdowns have again shut down the mills and his lumbering efforts.

The Trustee noted that Debtor has not provided the court with evidence of his current financial situation, the impact on his business, and his profit and loss from 2020.

### **January 21, 2020 Status Report and Declaration**

Debtor filed a Status Report, a Declaration providing evidence of what is stated in the Status Report, and a 2020 Profit and Loss Report as an Exhibit to the Declaration in support of the Status Report on January 21, 201. Dckts. 207, 205, 206. Debtor testifies to the following:

1. Debtor has two main projects that will generate income to fund the plan.
2. First, he has a contract with the National Resources Conservation Service to thin 51 acres of which he has already cleared 10 acres. He expects to complete the remainder of the clearing within an additional 90 days. Per the contract, Debtor will be paid \$1,400 per acre. He expects expenses related to this job to be approximately \$400.00 per acre. He expects to receive \$71,400 gross, and after costs of \$20,400, a net income of \$51,000. Debtor does not know how long he will have to wait to receive payment.
3. Debtor has a second contract for tree thinning pursuant to Debtor's Timber Harvest Plan. He will be harvesting 45 acres of timber from which he expects to send 400,000 to 500,00 board feet of timber. He expects to receive approximately \$225,000 to \$250,000 for the timber to be sent to the mill. He expects expenses of approximately \$130,000. The expenses include: equipment rental, fuel and oil, equipment operators, and repairs. After accounting for expenses and other costs, Debtor expects to net approximately \$900.00 per load. Debtor has already stacked approximately 10 stacks of the estimated 110 loads that should be sent to the mill. This project has stalled due to the closure of the mills.
3. Debtor's 2020 income decreased due to COVID-19 and wildfire troubles such as losing employees, the closure of the mills, and the stay at home orders. Debtor has filed a copy of the 2020 profit and loss statement as Exhibit A.
4. Debtor relies on the mills and as such must wait until they are open and he has been informed that the mills expect to reopen in February 2021, which would result in Debtor being paid by March 2021. Debtor believes he will be able to complete his plan four months after the mills open.

In the Status Report, Debtor requests the court continue the hearing approximately 30 days (to early March 2021) so that Debtor has the opportunity to determine if and when the mills will reopen and to adjust his proposed Chapter 12 plan payments accordingly.

The Chapter 12 Trustee has been diligent in identifying issues to be addressed, keeping the Debtor focused on addressing funding of the Plan, and dealing with the COVID-19 disruption to business operations.

**February 4, 2021 Hearing**

At the hearing, 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is ~~XXXXX~~.**

The Chapter 12 Trustee, Michael Meyer ("Trustee"), seeks dismissal of the case pursuant to 11 U.S.C. § 1208(c)(6) on the basis that Debtor is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on September 30, 2020. Dckt. 189. Debtor states that the delinquency occurred due to COVID-19 and the current wildfires plaguing Northern California. Debtor also informs the court that despite the delays, Debtor has now commenced delivery of timber to the mills and should be receiving payments beginning October 20, 2020.

Debtor states that he is prepared to make a modified plan but preparation of the modified plan and related motion have been delayed due to the unavailability of Debtor's counsel as a result of a medical condition. Debtor anticipates filing the modified prior to the hearing on this motion to dismiss.

## **DISCUSSION**

Debtor is \$72,533.66 delinquent in plan payments, having failed to make a \$20,000 payment due July 2020 and a \$52,533.66 due August 2020. Failure to make plan payments which is a material default by debtor with respect to a term of a confirmed plan that is cause to dismiss a case. 11 U.S.C. § 1208(c)(6).

At the hearing, the Chapter 12 Trustee, Counsel for Debtor, and Counsel for Creditors Jack Faraone, Janet Wright, and Randy Wright addressed with the court the efforts being made to try and allow the Debtor to save this 2015 bankruptcy case notwithstanding the "2020 Challenges" thrown in front of all of them.

The Debtor agreed on the record that the plan payments as set forth in the proposed Second Modified Plan, with the first payment being due in October 2020, shall be timely made as provided in the proposed plan, and that the Chapter 12 Trustee shall then distribute those amounts as adequate protection payments (in light of the significant delay in 2020 payments to creditors) in the amounts as provided in the proposed Second Modified Plan. If the proposed Second Modified Plan is confirmed, the adequate protection payments shall be deemed payments under such confirmed plan.

## **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on October 14, 2020. Dckt. 195, 193. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 196. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

## **January 21, 2020 Status Report and Declaration**

Debtor filed a Status Report and a Declaration in support of the report to the Motion to Modify the Plan on January 21, 2021. Dckts. 207, 205. Debtor testifies to the following:

1. Debtor has two main projects that will generate income to fund the plan.
2. First, he has a contract with the National Resources Conservation Service to thin 51 acres of which he has already cleared 10 acres. He expects to complete the remainder of the clearing within an additional 90 days. Per the contract, Debtor will be paid \$1,400 per acre. He expects expenses related to this job to be approximately \$400.00 per acre. He expects to receive \$71,400 gross, and after costs of \$20,400, a net income of \$51,000. Debtor does not know how long he will have to wait to receive payment.
3. Debtor has a second contract for tree thinning pursuant to Debtor's Timber Harvest Plan. He will be harvesting 45 acres of timber from which he expects to send 400,000 to 500,00 board feet of timber. He expects to receive approximately \$225,000 to \$250,000 for the timber to be sent to the mill. He expects expenses of approximately \$130,000. The expenses include: equipment rental, fuel and oil, equipment operators, and repairs. After accounting for expenses and other costs, Debtor expects to net approximately \$900.00 per load. Debtor has already stacked approximately 10 stacks of the estimated 110 loads that should be sent to the mill. This project has stalled due to the closure of the mills.
3. Debtor's 2020 income decreased due to COVID-19 and wildfire troubles such as losing employees, the closure of the mills, and the stay at home orders. Debtor has filed a copy of the 2020 profit and loss statement as Exhibit A.

4. Debtor relies on the mills and as such must wait until they are open and he has been informed that the mills expect to reopen in February 2021, which would result in Debtor being paid by March 2021. Debtor believes he will be able to complete his plan four months after the mills open.

In the Status Report, Debtor requests the court continue the hearing on the Motion to Modify to approximately 30 days (to early March 2021) so that Debtor has the opportunity to determine if and when the mills will reopen and to adjust his proposed Chapter 12 plan payments accordingly.

The Chapter 12 Trustee has been diligent in identifying issues to be addressed, keeping the Debtor focused on addressing funding of the Plan, and dealing with the COVID-19 disruption to business operations.

#### **February 4, 2021 Hearing**

At the hearing, xxxxxxx



Debtor's Atty: *Pro Se*

Notes:

Set by order of the court filed 1/21/21 [Dckt 1518]. Persons ordered to appear: Aiad Samuel, a Debtor in this case; Richard Jare, Esq.; Scott Sackett, the Chapter 11 Plan Administrator and Chapter 11 Trustee; and Jason Rios, Esq, counsel for Scott Sackett in this case.

<b>The Interim Status Conference is <span style="color: red;">xxxxxxx</span></b>
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On January 15, 2021, the Chapter 11 Plan Administrator Scott Sackett filed a Motion for a Representative to be substituted for the late Hoda Samuel, a co-debtor in this Bankruptcy Case, or that such substitution be waived. Dckt. 1507. Unfortunately, Mrs. Samuel passed away on August 21, 2020. Notice of Death and Motion to Continue Administration and Order; Dckts. 1496, 1506.

The Motion for substitution of a representative for the late Mrs. Samuel states that no motion for appointment of a representative has been filed by co-debtor Aiad Samuel (her husband) or other representative of her estate. The Motion requests the court appoint co-debtor Aiad Samuel, Peter Samuel (Mrs. Samuel's son), other representative of Mrs. Samuel's estate, or other person. Dckt. 1507. The Motion does not indicate that either of the two named persons (naturals to be the representative) has consented and join in the relief requested.

The Motion recounts that at the hearing on the Notice of Death and Motion to Continue Administration of the Hoda Samuel Chapter 11 case, attorney Richard Jare appeared and reported that the Samuel Family was in the process of engaging his services to represent the Family. It also states that Mr. Jare and counsel for the Plan Administrator communicated in writing at the end of December 2020 and early January 2021. *Id.*, ¶¶ 9, 11, 12.

### **Interim Status Conference**

Both Debtor Aiad Samuel and the late Co-Debtor Hoda Samuel have been strident in asserting various claims and interests. Though this case appears to be nearing an end, there are rights and interests of the late Co-Debtor Hoda Samuel for which the appointment of a representative is appropriate. It may be Aiad Samuel, her husband, one of their children, or a successor to her rights and interests. Such representative would be for this Chapter 11 case only and not necessarily for the various District Court actions and appeals thereon that the late Hoda Samuel was attempting to prosecute.

Debtor Aiad Samuel has not attended the last several hearings in this case. The court believes that his attendance and participation is necessary and appropriate. Additionally, in light of Richard Jare, Esq. having indicated that he is providing legal services to the Samuel family members, his attendance and participation at the Interim Status Conference is necessary and appropriate. In appearing

at the Interim Status Conference, Mr. Jare will not be making an appearance in the case on behalf of any person to constitute him becoming an attorney of record.

The court's order setting the February 4, 2021 Interim Status Conference required the appearances of Aiad Samuel, a Debtor in this case; Richard Jare, Esq., Scott Sackett, the Chapter 11 Plan Administrator and Chapter 11 Trustee; and Jason Rios, Esq., counsel for Scott Sackett in this case.

A review of the Docket on February 3, 2021 discloses that no counsel has substituted in to represent Mr. Samuel and no report from Mr. Samuel in *pro se* has been filed updating the court of said debtor's intentions in the case. (The court did not order the filing of any reports in light of the short time between issuing the order for the Interim Status Conference on January 21, 2021, and the February 4, 2021 Interim Status Conference.)

At the Interim Status Conference **XXXXXXX**