

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

February 16, 2023 at 10:30 a.m.

1.	<u>22-90160</u>-E-11 <u>CAE-1</u>	EAGLE LEDGE FOUNDATION, INC.	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-18-22 [1]
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Debtor's Atty: Dennis D. Miller, Kathleen L. DiSanto

Notes:

Continued pursuant to court order filed 1/23/23 [Dckt 189]

Operating Reports filed: 1/24/23

[DDM-5] Order Continuing Hearing on Motion for Interim and Final Orders Authorizing Use of Cash Collateral, Granting Replacement Liens, Providing Adequate Protection, and Approving DIP Budget filed 1/24/23 [Dckt 193]; continued to 4/6/23 at 10:30 a.m.

[DDM-12] [CAE-1] Debtor in Possession's Third Status Report filed 1/25/23 [Dckt 194]

The Status Conference is continued to 10:30 a.m. on xxxxxxx , 2023 (specially set time).

FEBRUARY 16, 2023 STATUS CONFERENCE

On January 25, 2023, the Debtor in Possession filed its updated Third Status Report. Dckt. 194. Items reported include:

- A. The Estate continues to have substantial cash reserves, in addition to other non-cash assets, and is administratively solvent.
- B. The Debtor in Possession has authorization to use cash collateral through the end of April 2023, with a continued hearing on the Motion to Use Cash Collateral set for 10:30 a.m. on April 16, 2023.

- C. The Debtor in Possession intends to file an amended Chapter 11 Plan within the next forty-five (45) days. The Debtor in Possession continues to work to determine the nature and scope of certificate holders' interests in property and claims of creditors.
- D. With the Claims Bar Date having passed, there are less than \$10,000 in claims filed.
- E. The Debtor in Possession reports that TMI confirms that notice are being mailed to the certificate holders.

At the Status Conference, **XXXXXXX**

2. [21-90484-E-11](#) **TWISTED OAK WINERY, LLC** **MOTION TO MODIFY CHAPTER 11**
[BSH-11](#) **Brian Haddix** **PLAN**
1-5-23 [\[205\]](#)

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, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2023. By the court's calculation, 42 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 XXXXXXX.

11 U.S.C. § 1127 permits a Plan Proponent or Reorganized Debtor to modify a plan after confirmation.

The debtor, Twisted Oak Winery, LLC (“Debtor”), has not filed evidence in support of confirmation. No declaration of the Debtor or other evidence was filed to support the Motion to Modify.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

The court notes that in the Points and Authorities, reference is made to the Declaration of Jeff Stai being filed in Support of Modification of the Plan. Points and Authorities, p. 4:8-9; Dckt. 207. The court is directed to Docket 103 for the Declaration, and it is stated that the Declaration has been filed simultaneously with the Points and Authorities.

The Points and Authorities were filed on January 4, 2023. Dckt. 207. The Declaration at Dckt. 103 is not a Declaration in Support of the Motion to Modify the Plan, but is titled “Declaration of Jeff Stai, Debtor’s Managing Member, in Support of Confirmation of third Amended Chapter 11 Plan.” Dckt. 103. This Declaration of Jeff Stai, Dckt. 103, was filed on April 30, 2022. This is not “simultaneously with the Memorandum [of Points and Authorities],” but eight months in the past.

The Testimony of Mr. Stai in the eight month old Declaration consists of:

1. I have personal knowledge of the facts contained herein and, if called upon, could competently testify thereto.
2. The loan was not with Mechanics Bank. The loan was with Pacific State Bank. I never delivered the documents to Mechanics Bank as Ms. Merrifield-Olivia, in her declaration, alleges were delivered. Not on behalf of Twisted Oak Winery, LLC or for me personally.

Dckt. 103. It is unclear how this relates to the Motion to Modify the Plan.

MODIFICATIONS REQUESTED

The Motion to Modify the Confirmed Chapter 11 Subchapter V Small Business Plan states the following grounds with particularity (Fed. R. Bankr. P. 9013):

1. Debtor confirmed a plan on October 5, 2022, pursuant to 11 U.S.C. § 1191(b).
2. Post-confirmation, Debtor and the only impaired creditor, Mechanics Bank, agreed to modify the plan treatment of Mechanics Bank’s claim.

3. Prior to this motion, the modified plan was circulated between the Subchapter V Trustee Lisa Holder, and counsel for Mechanics Bank, Tom Normandin. The parties are in agreement as to the modified terms which modify the treatment only of the one impaired creditor.

Motion, Dckt. 205.

Reading the above, the grounds are that the Debtor and Mechanics Bank have agreed to modify the Bank's treatment of its claim. No statement of what the modification is or how it impacts the plan is provided.

Then, the modified plan was sent to the Subchapter V Trustee and counsel and Mechanics Bank. It is stated that these two agree to the unspecified modification.

Thus, for relief, the court should grant the relief and authorize the unspecified modifications.

While there are some, limited, factual allegations in the Motion, there is no evidence supporting them.

The Modified Subchapter V plan was also filed on January 5, 2023. Dckt. 208. It appears that it has been assigned to the court to perform legal services in comparing the proposed Modified Plan to the Original Confirmed Plan to identify the changes, then state for the Debtor/Debtor in Possession Plan Administrator what the changes are, then provide an economic analysis of the changes and how for the Debtor/Debtor in Possession Plan Administrator such analysis supports confirmation, and finally advocate for the Debtor/Debtor in Possession Plan Administrator for confirmation of the Modified Plan.

No Stipulation for Modification of the Plan and agreement to the terms by the Subchapter V Trustee, Mechanics Bank, and the Debtor/Debtor in Possession has been filed.

The Motion was noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1), with opposition being required to be filed at least fourteen (14) days prior to the February 16, 2023 hearing. No oppositions have been filed. However, mere non-opposition is not affirmative consent. No responses showing consent or concurrence with the requested Modification have been filed.

Points and Authorities

The court notes that a sixteen (16) page Points and Authorities providing the Debtor/Debtor in Possession Plan Administrator's legal authorities, citations, and arguments are stated. Dckt. 207. A points and authorities is not the Motion.

It appears that pages 4 and 5 may state "grounds" which the Supreme Court requires in Federal Rule of Bankruptcy Procedure 9013 to be stated in the Motion. (This is similar to the requirement of the Supreme Court stated in Federal Rule of Civil Procedure 7(a)).

In the "grounds" portion of the Points and Authorities, there is no statement of what the modification of the Plan is to be.

On page 5 of the Points and Authorities the Legal Argument commences.

The Points and Authorities includes extensive legal arguments, citations, and discussion, appearing to indicate that what is being requested is legally questionable. It is not a very simple set of legal authorities showing compliance with the Bankruptcy Code.

The court not having been presented with grounds stated with particularity and relief stated with particularity (as required by Federal Rule of Bankruptcy Procedure 9013), and not having been presented with any evidence in support of the Motion, and declining the opportunity to provide legal services for and advocate on behalf of the Debtor/Debtor in Possession, it is not within the court province to merely rubber stamp whatever modification the Motion seeks to have confirmed.

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 to Confirm the Modified Chapter 11 Plan filed by the debtor, Twisted Oak Winery, 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 the Motion is **XXXXXXX** .