

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 29, 2024 at 11:30 a.m.

1. **23-23620-E-11** **ROBERT P. OBREGON DDS** **CONFIRMATION OF PLAN**
GEL-8 **INC.** **1-10-24 [84]**
 Gabriel Liberman

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest and Office of the United States Trustee on January 17, 2024. By the court’s calculation, 43 days’ notice was provided. 42 days’ notice is required.

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

The Confirmation of Plan of Reorganization is denied.

Robert P. Obregon, DDS, Inc. (“Debtor/Debtor in Possession”) seeks confirmation of its Chapter 11 Subchapter V Plan filed on January 10, 2024. Docket 84. The following dates and deadlines relate to the matter now before the court:

January 10, 2024: Plan filed.

January 11, 2024: Order Setting Confirmation Hearing for February 29, 2024, entered. Order; Dckt. 90.

February 9, 2024: Last day for creditors and other parties in interest to vote on the Plan. *Id.*

February 16, 2024: Last day to file Objections to Confirmation. *Id.*

February 22, 2024: Last Day to file the Tabulation of Ballots. *Id.* Debtor did not file a Tabulation of Ballots.

Table of Classes

Creditor/Class	Treatment	
Class 1: Wells Fargo Bank, N.A.	Claim Amount	\$605,478.27
	Impairment	Impaired
	<p>Under this plan the Debtor shall continue to make the mortgage payments to the Class 1 claimant in accordance with the pre-petition terms of the mortgage agreement. The Class 1 claimant shall retain its lien(s) encumbering Debtor’s assets until the obligation is paid in full.</p> <p>As such the Debtor shall make monthly installments payments to the claim holder. Payments shall continue as normally scheduled under the Note and Deed of Trust.</p> <p>Pre-petition arrearage claim of \$5,363.64 shall be paid in 12 equal monthly payments at \$446.97, in addition to the normal scheduled payment.</p>	
Class 2: Bankers Healthcare Group, LLC - serviced by First Montana Bank	Claim Amount	\$38,653.81
	Impairment	Impaired
	<p>The Class 2 Secured Claim of Bankers Healthcare Group, LLC - serviced by First Montana Bank is in the amount of \$38,653.81 as provided in proof of claim no. 2. Such amount shall be paid in full in equal monthly payments over 36 months until this Class is paid in full with interest at the rate of 8% per annum. The Class 2 claimant shall retain its lien(s) encumbering Debtor’s assets until the obligation is paid in full.</p>	

Class 3: Bankers Healthcare Group, LLC - serviced by Community Bank and Trust Company	Claim Amount	\$84,258.62
	Impairment	Impaired
	<p>The Class 3 Secured Claim of Bankers Healthcare Group, LLC - serviced by Community Bank and Trust Company is in the amount of \$84,258.62 as provided in proof of claim no. 3. By Plan confirmation, Debtor will have established, pursuant to section 506(a), that the value of the collateral securing this claim is partially secured at \$8,984.09. Therefore, this claim will be bifurcated into a secured and unsecured portion.</p> <p>The secured amount shall be paid in full in equal monthly payments over 36 months until this Class is paid in full with interest at the rate of 8% per annum. The Class 3 claimant shall retain its lien(s) encumbering Debtor's assets until the secured portion of the obligation is paid in full, at which time such claimant shall release and reconvey its lien(s) encumbering Debtor's assets.</p> <p>As such, the unsecured portion of claimant is provided for as a member of the General Unsecured Class.</p>	
Class 4: Bankers Healthcare Group, LLC - serviced by Five Star Bank	Claim Amount	\$141,723.55
	Impairment	Impaired
	<p>The Class 4 Secured Claim of Bankers Healthcare Group, LLC - serviced by Five Star Bank is in the amount of \$141,723.55 as provided in proof of claim no. 4.</p> <p>By Plan confirmation, Debtor will have established, pursuant to section 506(a), that the value of the collateral securing this claim is \$0.00. This claim will be treated as a general unsecured claim. Promptly following the Effective Date, such claimant shall release and reconvey its lien(s) encumbering Debtor's assets.</p>	
Class 5: United States Small Business Administration	Claim Amount	\$536,632.46
	Impairment	Impaired

	<p>The Class 5 Secured Claim of United States Small Business Administration is in the amount of \$536,632.46 as provided in proof of claim no. 1.</p> <p>By Plan confirmation, Debtor will have established, pursuant to section 506(a), that the value of the collateral securing this claim is \$0.00. This claim will be treated as a general unsecured claim. Promptly following the Effective Date, such claimant shall release and reconvey its lien(s) encumbering Debtor's assets.</p>	
Class 6: Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C	Claim Amount	\$177,169.34
	Impairment	Impaired
	<p>The Class 6 Secured Claim of Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C is in the amount of \$177,169.34 as provided in proof of claim no. 5.</p> <p>By Plan confirmation, Debtor will have established, pursuant to section 506(a), that the value of the collateral securing this claim is \$0.00. This claim will be treated as a general unsecured claim. Promptly following the Effective Date, such claimant shall release and reconvey its lien(s) encumbering Debtor's assets.</p>	
Class 7: Regions Bank d/b/a Ascentium Capital	Claim Amount	\$13,826.03
	Impairment	Unimpaired
	<p>The Class 7 Secured Claim of Regions Bank d/b/a Ascentium Capital is in the amount of \$13,826.03 as provided in proof of claim no. 12.</p> <p>Under this plan the Debtor shall continue to make the equipment finance payments to the Class 7 claimant in accordance with the pre-petition terms of the finance agreement.</p> <p>As such the Debtor shall make monthly installments payments to the claim holder.</p>	
Class 8: Unsecured Nonpriority Claims	Claim Amount	Estimated \$1,051,245.31
	Impairment	Impaired

	<p>The Debtor estimates that the total amount of general unsecured claims, including the deficiency claims of Classes 3, 4, 5, & 6 to be approximately \$1,051,245.31</p> <p>The Debtor shall pay pro rata share of \$60,838.00 or 5.79% of allowed unsecured claims over three (3) years from the Effective Date of the Plan less administrative priority fee paid to the Subchapter V trustee.</p> <p>On the first day of the month following the month in which the Effective Date of the Plan occurs, the Debtor shall begin either monthly quarterly payments on the Class 8 Unsecured Nonpriority Claims. See Exhibit C for distribution schedule.</p> <p>In the event a claimant’s scheduled monthly distribution under the Plan is less than \$10.00, Debtor reserves the right to disburse the total scheduled distribution under the Plan to such claimant in one lump sum payment within the first 12 months following the Effective Date.</p>	
<p>Class 9: Equity Holders: Robert P. Obregon</p>	<p>Claim Amount</p>	<p>Unknown</p>
	<p>Impairment</p>	<p>Impaired</p>
	<p>Equity Security Holders shall not receive a dividend until the payments contemplated by this Plan are completed. However, Equity Security Holders may receive payment for their services to the Debtor. In the event that an Equity Security Holder forgoes postconfirmation pay that pay shall accrue to the Equity Security Holder as a post-confirmation liability payable when cash flow permits or upon the sale or transfer of the Debtor.</p>	

Debtor intends to “fund the Plan with the proceeds and profits of manufacturing and servicing equipment primarily built for the US Government.” Plan, Dckt. 84 ¶ 7.01. The court believes this to be a clerical error.

Banker’s Healthcare Group, LLC’s Opposition and Election under 11 U.S.C. § 1111(b)(2)

Creditor Banker's Healthcare Group, LLC (“BHG”) filed an Opposition and Election under 11 U.S.C. § 1111(b)(2) on February 7, 2024. Docket 98. BHG states:

1. BHG filed four claims in the case. *See* POCs 2-1--5-1. Claim No. 2-1 asserts a secured claim in the amount of \$38,653.81 (“BHG 1”), Claim No. 3-1 asserts a secured claim in the amount of \$84,258.62 (“BHG 2”), Claim No. 4-1 asserts a secured claim in the amount of \$141,723.55 (“BHG 3”), and Claim No. 5-1 asserts a secured claim in the amount of \$177,169.34 (“BHG 4”). *Id.*
2. The Plan provides in relevant part that BHG will receive: (a) full payment plus interest on account of BHG 1; (b) payment of the secured portion (\$8,984.09) of BHG 2 with interest and the remaining portion of the BHG

2 (\$75,274.53) will be treated as a general unsecured claim; and (c) BHG 3 (\$141,723.55) and BHG 4 (\$177,169.34) will be treated as general unsecured claims.

3. BHG hereby elects application of 11 U.S.C. § 1111(b)(2) with respect to BHG 2, and to the extent possible, BHG 3 and BHG 4.
4. BHG hereby objects to confirmation of the Plan because the Plan fails to treat BHG's claim (BHG 2) in accordance with its election under section 1111(b)(2) of the Bankruptcy Code.

Small Business Administration's Opposition

The United States, on behalf of its agency the Small Business Administration ("SBA"), filed an Objection on February 16, 2024. Docket 104. SBA states:

1. The proposed Plan was not filed in good faith, it is not fair and equitable, and it is not feasible.
2. During the covid pandemic, the Debtor applied for a COVID-19 Economic Injury Disaster Loan (EIDL) from the SBA to provide funding to help it recover from the economic impacts of the COVID19 pandemic.
3. On April 21, 2020, the Debtor obtained a \$500,000 EIDL secured only by personal property. POC No. 1-1. The loan was personally guaranteed by Dr. Obregon, President of Debtor. After valuation of its collateral, SBA was determined to be wholly unsecured.
4. After a series of extensions, payments on the EIDL were to begin on October 21, 2022.
5. Debtor failed to commence making payments, and the delinquent EIDL was sent to collections.
6. Debtor failed to pay Federal corporate taxes in 2022 totaling \$56,162.53.
7. Within 1 year before filing this case, the Debtor paid Dr. Obregon \$213,304.81, consisting of \$119,411.26 in "equity draws and personal expenses" plus \$93,893.55 for "salary, earned wages." Statement of Financial Affairs, Docket 1 p. 34.
8. The Plan suggests that the business will essentially operate at slightly better than break-even for its 3-year duration. The Plan proposes to pay Dr. Obregon an "Officer Salary" of \$18,000 per month. Exhibit B, Docket 84 p. 21:6.
9. The Plan proposed to treat SBA under class 5 as unsecured in class 8. Unsecured Class 8 are to be paid a pro rata share of \$60,838.00 or 5.79%

of allowed unsecured claims over three (3) years from the Effective Date of the Plan less administrative priority fee paid to the Subchapter V trustee.

10. The Plan was not proposed in good faith because “Dr. Obregon runs the Debtor corporation with the primary objective of paying himself a high salary without regard to the feasibility of his business.” Obj., Docket 104 p. 6:3-4. Debtor is insolvent because it paid Dr. Obregon too much money in 2021 (\$283,755) and 2022 (\$232,343). The Plan calls for Dr. Obregon to be paid \$18,000 per month leaving the business to generate almost no net income and pay almost nothing to unsecured creditors.
11. Despite always taking a high salary, Dr. Obregon has filed an individual chapter 7. He has apparently done this to discharge, among other things, his personal guarantee to SBA. Dr. Obregon claimed in his individual Chapter 7 case that SBA’s loan is secured in Dr. Obregon’s personal residence. SBA does not have a secured interest in his residence and to the extent Wells Fargo does, it is back up collateral for the loan being paid by the Debtor.
12. The court should fix the plan payment term to five years, not three years. Dr. Obregon, by filing a Chapter 11 case for his dental practice and an individual Chapter 7 case, has reorganized under what looks like a Chapter 13 case. Chapter 13 cases go for five years, and so too should this case.
13. The Plan is not fair and equitable under 11 U.S.C. § 1191(c)(2) because Debtor is not dedicating all its projected disposable income.

Succinctly put by the SBA., “\$18,000 per month is more than maintenance or support for Dr. Obregon. It affords him a luxury lifestyle including an \$800,000 residence and a new Mercedes. If Dr. Obregon refuses to work for his own corporation for less than \$18,000 to save it from liquidation, he should close it and go work for somebody who can run a profitable business.” Obj., Docket 104 p. 7:8-12.

DISCUSSION

To be an eligible debtor permitted to file under Chapter 11 Subchapter V of Title 11 of the United States Code, that person must be “engaged in commercial or business activities. . . that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000. . . not less than 50 percent of which arose from the commercial or business activities of the debtor.” 11 U.S.C. § 1182(1)(A). The debtor then acts as debtor in possession “unless removed as debtor in possession under section 1185(a) of this title.” *Id.* at (2). The debtor in possession has the rights and powers a trustee would have serving under Chapter 11. 11 U.S.C. § 1184.

The debtor in a Subchapter V case has 90 days to file a plan after the order of relief under Chapter 11. 11 U.S.C. § 1189(b). 11 U.S.C. § 1190 governs the contents of a plan, stating:

A plan filed under this subchapter—

(1) shall include—

(A) a brief history of the business operations of the debtor;

(B) a liquidation analysis; and

(C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization;

(2) shall provide for the submission of all or such portion of the future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan. . .

For a plan to be confirmable under Subchapter V, the plan must comply with the requirements of 11 U.S.C. § 1191. That section provides:

(a) Terms.—

The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title [1] are met.

(b) Exception.—

Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

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

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

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

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

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

under the plan is not less than the projected disposable income of the debtor.

(3)

(A) The debtor will be able to make all payments under the plan; or

(B)

(i) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(ii) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

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

(1) for—

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

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

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

(e) Special Rule.—

Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

11 U.S.C. § 1191. Therefore, 11 U.S.C. § 1129(a), other than subparagraph (15) of that section, is made applicable to a plan under Subchapter V through 11 U.S.C. § 1191. Disposable income, specifically defined in 11 U.S.C. § 1191(d), does not include debtor’s maintenance and support expenses that are reasonably necessary to be expended. *See* 8 COLLIER ON BANKRUPTCY ¶ 1191.04[c]. However, there does not exist much case law in the Subchapter V context analyzing what may constitute reasonably necessary expenditures for debtor’s maintenance or support. The methods for determining reasonable maintenance or support expenditures in cases under Chapter 12 or Chapter 13 can be insightful. *See In re Cesaretti*, Case no. 22-10454-nmc, 2023 WL 3676888 at *15 (Bankr. D. Nev. May 10, 2023); *In re Pearl Resources LLC*, 622 B.R. 236, 267-68 (Bankr. S.D. Tex. 2020).

Requirements of 11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code Chapter 11, Subchapter V.

Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: Dckt. xx, pg. x

5. (A)(I) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Only if this section is applicable.

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

Evidence: Dckt. xx, pg. x

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(I) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Dckt. xx, pg. x

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

This section is inapplicable pursuant to 1191(b).

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Dckt. xx, pg. x

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Dckt. xx, pg. x

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: Dckt. xx, pg. x

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Not required pursuant to 1191(b).

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: Dckt. xx, pg. x

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Dckt. xx, pg. x

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: Dckt. xx, pg. x

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

Not Applicable.

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

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

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Not required pursuant to 1191(a).

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

11 U.S.C. § 1111(b) Election

An undersecured creditor whose claim has been bifurcated into both secured and unsecured claims may make an 11 U.S.C. § 1111(b) election, therefore opting for its total claim to be treated as an allowed secured claim. 11 U.S.C. § 1111(b); *In re Weinstein*, 277 B.R. 284, 293 (B.A.P. 9th Cir. 1998). As discussed in *Weinstein*,

[W]hen an undersecured creditor makes the § 1111(b)(2) election, its allowed secured claim is equal to its total claim rather than the value of the collateral. In order for a reorganization plan to now comply with the cram down requirements of §

1129(b)(2)(A)(i)(I), the electing creditor must retain a lien equal to the total amount of its claim. The lien is not stripped down by § 506(d). Subsection (II) of § 1129(b)(2)(A)(i) guarantees an electing creditor a stream of payments equal to its total claim. However, the stream of payments need only have a present value “of at least the value of such holder's interest in the estate's interest in such property,” i.e., the value of the collateral. 11 U.S.C. § 1129(b)(2)(A)(i)(II). In other words, the present value of the electing creditor's stream of payments need only equal the present value of the collateral. . . but the sum of the payments must be in an amount equal at least the creditor's total claim.

Weinstein, 227 B.R. at 294 (internal quotations omitted).

Review of the Plan

No Declaration or authenticated exhibits have been filed in support of confirmation of the Plan. The court is unable to determine whether the elements of the Plan are in compliance with 11 U.S.C. §§ 1129(a) and (b)(2)(A) made applicable in this case through 11 U.S.C. § 1191.

1111(b) Election

The court’s order setting this confirmation hearing required any creditors who wish to make an election under 1111(b) to do so no later than 21 days after the Plan and accompanying documents have been set and served. Order, Docket 90 ¶ 5. The Plan and related documents were set and served on January 17, 2024. BHG timely elected 1111(b) treatment on February 7, 2024, 21 days after the Plan and related documents were served. The Plan does not currently treat BHG 2 as an allowed secured claim, instead bifurcating the total claim into both secured and unsecured claims. *See* Plan, Docket 84 p. 6:11-18.

With BHG electing treatment under 1111(b), BHG shall retain its lien in the total amount of the claim (11 U.S.C. § 1129(b)(2)(A)(i)(I), made applicable through 11 U.S.C. § 1191(c)(1)), while also receiving deferred cash payments on account of its claim that are equal to the present value of the collateral, with the sum of the payments equaling at least the total amount of the claim (11 U.S.C. § 1129(b)(2)(A)(i)(II), made applicable through 11 U.S.C. § 1191(c)(1)). The Plan is not confirmable without BHG’s Claim 3-1 receiving the proper treatment.

BHG Claims With Collateral of Inconsequential Value

BHG has requested that two of its wholly unsecured claims, POCs 4-1 and 5-1, to also receive 11 U.S.C. § 1111(b) treatment. The court has entered two orders determining that the value of the collateral to BHG and thus the amount of these two secured claims is \$0.00, valuing its claims under 11 U.S.C. § 506(a) as wholly unsecured claims. Orders, Dckt. 92, 94.

As noted above, 11 U.S.C. § 1111(b)(1)(B), emphasis added, states this limitation on exercising the 11 U.S.C. § 1111(b)(2) election stating:

(B) A class of claims may not elect application of paragraph (2) of this subsection if—

(i) the interest on account of such claims of the holders of such claims in such property is of inconsequential value; or

(ii) the holder of a claim of such class has recourse against the debtor on account of such claim and such property is sold under section 363 of this title or is to be sold under the plan.

This collateral is not merely of inconsequential value to BHG, but \$0.00 value, so the 11 U.S.C. § 1111(b)(2) election cannot be made for those two claims. *See*, detailed discussion of inconsequential value exclusion in 7 Collier on Bankruptcy ¶ 1111.03 [2][b][3][a]

Good Faith, Feasibility, and Fair and Equitable Treatment

11 U.S.C. § 1129(a)(3), made applicable through 11 U.S.C. § 1191(a), requires that the Plan has been proposed in good faith. SBA argues the Plan has not been proposed in good faith because “Dr. Obregon runs the Debtor corporation with the primary objective of paying himself a high salary without regard to the feasibility of his business.” *Obj.*, Docket 104 p. 6:3-4. Similarly, SBA argues that the Plan is not feasible “because there is no evidence that the Debtor can pay its expenses while paying Dr. Obregon such a large salary. When it did so in the past, it led the Debtor to incur vast debt, fail to pay taxes, and eventually file bankruptcy.” *Id.* at p. 7:14-16. Finally, SBA asserts that the Plan is not fair and equitable as required by 11 U.S.C. § 1191(b) and (c) for the same reasons.

The court is persuaded by this argument. Dr. Obregon proposes a Plan that will repay only 5.79% of unsecured claims over a three year period, totaling \$60,838.00 in payments. Yet, Dr. Obregon will pay himself \$216,000 per year from Debtor’s yearly funds at \$18,000 per month. *See* Plan, Exhibit B, Docket 84 p. 21:6. Thus, for the three year period in which Dr. Obregon will pay unsecured claims only \$60,838, the Debtor would pay the Doctor \$648,000.

Within 1 year before filing this case, the Debtor paid Dr. Obregon \$213,304.81, consisting of \$119,411.26 in “equity draws and personal expenses” plus \$93,893.55 for “salary, earned wages.” Statement of Financial Affairs, Docket 1 p. 34.^{Fn.1.}

FN. It is not clear to the court what “equity” existed in the Debtor for Dr. Obregon to receive \$119,411.26 in “equity draws and personal expenses,” in addition to his salary and earned wages of \$93,893.55 in the year prior to this bankruptcy case being filed.

It appears to the court that Dr. Obregon plans to receive more money in yearly salary while Debtor is going through the Chapter 11 bankruptcy process than Dr. Obregon received prepetition before Debtor filed. Debtor has not explained to the court how it can pay its principal officer such a large salary while offering so little to creditors. Such a repayment scheme can hardly be said to be fair and equitable. Nothing is mentioned of how the proposed \$18,000 per month salary is disposable income as defined under 11 U.S.C. § 1191(d). To the contrary, the court sees no evidence how Dr. Obregon’s proposed salary constitutes reasonably necessary expenditures for the maintenance or support of the Debtor’s principal officer.

At the hearing, **XXXXXXX**

of \$104,514.78 in cash receipts. *Id.*; p. 2. For cash disbursements the Debtor/Debtor in Possession reports an out go of (\$112,237.77). *Id.*

It appears that there is a clerical error in computation of net cash flow, the Debtor/Debtor in Possession showing it to be a positive \$2,301.08, when actually it was a negative cash flow of (\$7,722.99). *Id.* This then reduces the end of the month cash on hand for the Estate to be \$2,406.08, and not the \$12,525.15 as reported by the Debtor/Debtor in Possession. *Id.*

Looking at the Monthly Operating Report filed by the Debtor/Debtor in Possession, the profit/(loss) for recent months reported by the Debtor in Possession are:

1. For January 2024, a net loss of (\$7,722.99). Dckt. 102 at 2.
2. For December 2023, a net loss of (\$16,412.92). Dckt .95 at 2.
3. For November 2023, a net loss of (\$37,170.82). Dckt. 83 at 2.
4. For October 2023, a profit of \$47,090.82. Dckt. 82 at 2. For October the Debtor/Debtor in Possession lists having cash disbursements of only (\$18,506.30). *Id.* This is the month in which the case was filed.

Thus, it appears that while showing a profit of \$47,090.82 in October 2023, it also appears that the expenses for that month were likely front loaded and not reported on the Monthly Operating Report.

For the three full post-petition months of operation, those being November and December, 2023, and January 2024, the Debtor/Debtor in Possession reports an operating loss of (\$61,306.73).

At the Status Conference, **XXXXXXX**

3 thru 6

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).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 12 Trustee and fewer than all creditors on May 12, 2023. By the court’s calculation, 4 days’ notice was provided. The court required 4 days’ notice. Dckt. 30.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 11 Trustee, 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.

The Motion for Authority to Use Cash Collateral is XXXXXXX

February 29, 2024 Hearing

Ruth and Wesley Woolery (“Debtor in Possession”) filed the Declaration of Ruth Woolery in support of the Motion on February 15, 2024. In her Declaration, Debtor Ms. Woolery states:

1. Debtor in Possession is anticipating a large sale of cattle in July of 2024. Then, Debtor in Possession will make a 20% adequate protection payment to Creditor as well as an additional \$300,000 lump sum payment derived from cattle sales and federal drought insurance proceeds. Decl., Docket 145 ¶¶ 2-4.
2. Debtor in Possession received \$44,800 in drought insurance payments in January. Debtor in Possession mailed check in the amount of \$8,960 to Rabo on February 12, 2024. *Id.* at ¶ 5.

Debtor in Possession attached a proposed budget spanning from February 2024 through July 2024 in her same Declaration.

Creditor's Opposition

Creditor filed an Opposition on February 26, 2024. In its Opposition, Creditor states:

1. Debtor in Possession is not abiding by the cash collateral orders; Creditor has not received adequate protection payments for January of 2024, despite the January Monthly Operating Report ("MOR") showing \$85,583.11 in aggregate income. Decl., Docket 149 ¶ 12.
2. The exhibits to the January MOR show \$76,791.30 in aggregate expenses, including a \$27,380 payment to "Jim Estes," a \$12,550 payment to "Orland Livestock," and a \$15,240 payment to "C H Bar Cattle Co." These expenses are not described in the existing Budget or the Second Supplemental Declaration, nor are they consistent with the Debtors' prior MORs.
3. Debtor in Possession proposes a cattle sale in July, 2024 to realize \$360,000 in gross sales proceeds. Debtor in Possession proposes to make the 20% adequate protection payment on this sale in the amount of \$72,000, plus an additional \$300,000. That would leave Debtor in Possession with a mere \$1,500 at the end of July. This proposal is not realistic.
4. The Budget projects \$140,000 in Drought Insurance payments; no explanation is given for that anticipated income.
5. The herd is diminishing and adequate protection payments are not being made.

The court issued the following interim Order, "Debtor in Possession shall file and serve on or before February 15, 2024, Supplemental Pleadings to support a request to further use cash collateral, including ACCURATE FINANCIAL INFORMATION, AN ACCURATE BUDGET, AND EVIDENTIARY SUPPORT THEREFORE." Docket 134.

It is further asserted that the Debtor in Possession has uploaded a negligible Declaration and accompanying chart, which contains typographical errors and incomplete information. Specifically, the proposed budget has nothing filled in under the "income" section (Docket 145 p. 3), and creditor alleges funds are missing that are not accounted for in the budget.

Review of Supplemental Declaration and Attached Budget

The Declaration of Ruth Woolery, one of the two debtors in possession in this case, provides some summary information and conclusions as to what has occurred, authenticates the attached budget, and states that the 20% adequate protection payment for the \$44,800 drought insurance payment in January was set to Creditor in the form of a check for \$8,960 mailed on February 12, 2024.

The budget for the period February 2024 through July 2024 includes the following information as summarized by the court. The monthly income from the cattle operation is modest, stated to be:

- A. February 2024 Income and Expense
 - 1. Income
 - a. \$12,215 income from farming operations
 - (1) Addition income from Drought Insurance....\$100,000
 - 2. Expenses
 - a. Expenses (\$75,943)
 - (1) Includes Adequate Protection Payment....(\$22,443)

- B. March 2024 Income and Expenses
 - 1. Income
 - a. \$12,215 income from farming operations
 - (1) Additional Drought Insurance Income....\$40,000
 - 2. Expenses.
 - a. (\$20,793)
 - (1) Includes Adequate Protection Payment....(\$10,443)

- C. April 2024 Income and Expenses
 - 1. Income
 - a. \$31,715 income from farming operations
 - 2. Expenses
 - a. (\$63,543)
 - (1) Includes Adequate Protection Payment....(\$6,343)

- D. May 2024 Income and Expenses
 - 1. Income
 - a. \$17,215 income from farming operations

- 2. Expenses
 - a. (\$19,643)
 - (1) Includes Adequate Protection Payment....(\$3,343)

- E. June 2024 Income and Expenses
 - 1. Income
 - a. \$7,215 income from farming operations
 - 2. Expenses
 - a. (\$19,643)
 - (1) Includes Adequate Protection Payment....(\$1,443)

- F. July 2024 Income and Expenses
 - 1. Income
 - a. \$367,215 income from farming operations
 - (1) Includes a \$360,000 from the sale of 200 Cattle.
 - 2. Expenses
 - a. (\$367,215)
 - (1) Includes Adequate Protection Payment.....(\$73,443)
 - (2) Includes "land payment".....(\$300,00)

The budget reports that after six months of operation, the operating funds balance of \$41,272 at the end of February 2024, drops to \$1,582 at the end of July 2024, after the sale of \$367,215 of the herd.

Creditor's claim in this case, which is secured by the real property is (\$496,569.91), which is secured by real property stated on Creditor's Proof of Claim 8-1 to have a value of \$2,470,000.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

Debtor in Possession moves for an interim order authorizing the use of cash collateral and requests the court schedule a final hearing to consider entry of a final order authorizing use of cash collateral, granting replacement liens, and approving the proposed Debtor in Possession budget.

Debtor in Possession requests the use of cash collateral to (1) pay post-petition operating expenses incurred in the ordinary course of business; (2) pay costs and expenses of administration of the case; and (3) pay all other amounts as specified in the Debtor in Possession budget. Debtor's Declaration in support of the Motion states the use of cash collateral is necessary to continue farming operations. Dckt. 23. Upon review of the proposed budget, Exhibit 1, Debtor's budget is funded by the sale of the following:

Spring 2023 Calves.....\$355,000 generated February 2024

AB Fats.....\$20,000 generated December 2023

Cull Cows.....\$20,000 generated May 2023
.....\$18,750 generated February 2024

MC Fats.....\$7,215 generated monthly, beginning in June 2023

FSA Livestock Forage.....\$90,000 generated July 2023
.....\$75,000 generated September 2023

Equipment Sales.....\$20,000 generated June 2023.

CREDITOR'S OPPOSITION

Creditor Rabo Agrifinance LLC ("Creditor RAF") filed a preliminary opposition on March 15, 2023. Dckt. 27.

Debtor's Motion states Creditor holds first-priority lien on substantially all assets, due to a perfected UCC-1 filing, as well as real property located at 42563 Wilcox Road, Hat Creek, California, in the amount of approximately \$1,700,000. Debtor's Motion, Dckt. 21. Debtor's Schedules, however, state under penalty of perjury that Creditor RAF has a secured claim in the amount of \$0.00, supported by collateral in an amount of \$0.00 and unsecured in the amount of \$0.00. Schedule D, Dckt. 1 at 11. Creditor RAF has not yet filed a proof of claim, however, their opposition states Debtor owes approximately \$2,269,868.81 on an Operating Line of Credit and \$496,569.11 on a Real Estate Line of Credit. Opposition, Dckt. 27 at 3:21-22.

Schedule Creditor RAF objects on the following grounds:

1. No Emergency Articulated:
 - a. The Emergency Motion fails to explain why Debtor in Possession must use Creditor RAF's cash collateral on an emergency basis.
 - b. The Motion fails to provide any details regarding the status of Creditor RAF's collateral, or what, precisely, Debtor in Possession would like to sell. The Motion only states Debtor in Possession plans to sale \$20,000 in "Cull Cows."
2. Shortcomings of Budget:

- a. The budget does not indicate what is truly necessary for Debtor's continued operations.
- b. The proposed accounting expense is inappropriate because Debtor has not sought approval to employ an accountant.
- c. It is not clear whether May budgeted items relate to pre-petition obligations.
- d. Creditor RAF does not know what cash collateral Debtor currently has on hand.

Creditor RAF requests the Emergency Motion be denied or set on full notice so Debtors may file their schedules and provide information necessary for Creditor RAF and the court to evaluate the proposed use of collateral.

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

In prior Civil Minutes for this Motion the court has addressed various issues that arose and how they were resolved. The court does not repeat those here in light of the number of further hearings and interim orders that have been issued. The court incorporates them by reference and any party in interest can readily find them on the Docket.

MAY 16, 2023 HEARING AND INTERIM AUTHORIZED USE OF CASH COLLATERAL

Counsel for the Debtor in Possession reported that on May 16, 2023, a cattle report to Creditor. There are 658 head of cattle. The Debtor in Possession is providing documentation to Creditor's counsel.

The court authorizes the use of cash collateral for May and June 2023 as outlined above for the proposed budget (Dckt. 31).

Counsel for Creditor and counsel for Debtor in Possession shall joint prepare and lodge with the court a proposed order authorizing such use.

JUNE 8, 2023 Hearing

The court's review of the Docket as of June 5, 2023, showed that no further pleadings were filed.

At the hearing, counsel for the Debtor in Possession reported that a stipulation has been reached with Rabo Agrifinance for the interim use of cash collateral. The parties have prepared a Stipulation to be filed with the court and a proposed order to be lodged with the court. The Stipulation provides for the use of cash collateral through August 11, 2023.

AUGUST 10, 2023 CONTINUED HEARING

The court has authorize the prior use of cash collateral as agreed by the Parties. The most recent order was entered on June 9, 2023. Dckt. 58. No supplemental pleadings for the further use of cash collateral have been filed.

The court grants the Motion on an interim basis, authorizing the use of cash collateral as state din the budget. Counsel for the Debtor in Possession shall lodge with the court a proposed order authorizing the use of cash collateral through September 30, 2023.

The court continues the hearing on this Motion to 10:30 a.m. on September 28, 2023, for consideration of the further authorization to use cash collateral.

SEPTEMBER 28, 2023 HEARING

On August 30, 2023, the Debtor in Possession filed a dismissal of the Motion to Confirm the Chapter 12 Plan filed in this Case. Dckt. 19. Further, that an amended Plan would be filed the week of September 5, 2023. The Docket does not reflect such an amended Plan having been filed.

At the hearing, counsel for the Debtor in Possession reported that 20 head of cattle have been sold and the 20% of the proceeds will be transmitted to the creditor shortly.

The Parties agreed to extend the use of cash collateral, with a continued hearing date on December 14, 2023 at 10:30 a.m. The Parties may by Joint Status Report further extend the time for the use of Cash Collateral and the hearing date.

DECEMBER 14, 2023 HEARING

The court entered prior Orders authorizing the use of cash collateral. The latest order was entered on August 14, 2023. Dckt 84. The Civil Minutes for the last hearing on this Motion, conducted on September 28, 2023, state that the Parties agreed to extend the use of cash collateral and a proposed order was to be prepared by the Parties and lodged with the court. A review of the Docket indicates that no order has been issued from the September 28, 2023 hearing.

The court discussed the fiduciary duties of the Debtor in Possession in this case, the failure of the fiduciary Debtor in Possession to comply with the prior cash collateral order, and the need for the Debtor in Possession to diligently prosecute confirmation of a Chapter 12 Plan in this case that was filed May 2, 2023.

Counsel for Creditor Mills Ranch expressed frustration over the Debtor in Possession's failure to remove the pending state court litigation or object to the Proof of Claim filed by Mills Ranch, noting that it was not until November 2023 that the Debtor in Possession requested the appointment of special counsel to prosecute such litigation, notwithstanding this Case having been filed in May 2023.

Though Rabo AgriFinance, LLC did not agree to further use of the cash collateral, in light of the terms of prior agreements, the holidays, and the focus on the obligations of the fiduciary Debtor in Possession, the court extends the use of cash collateral, on the same terms and amounts as in the prior order for which the consent of Rabo AgriFinance, LLC had been given, for the period through January 20, 2024.

The hearing on this Motion is continued to 2:00 p.m. on January 17, 2024, to be conducted in conjunction with the Status Conference in this Case.

Counsel for the Debtor in Possession was to prepare a proposed order consistent with the court's ruling and terms of the prior orders authorizing the use of cash collateral, have it approved as to form by counsel for Rabo AgriFinance, LLC (notwithstanding Rabo AgriFinance, LLC not consenting to the use of cash collateral), and lodge the proposed order with the court.

January 17, 2024 Hearing

A review of the Docket reflects that no supplemental pleadings have been filed or served on other parties in interest.

On January 4, 2024, Wesley and Ruth Woolery (“ Debtor in Possession”) filed a Status Report, updating the court on its state of affairs since the December 14, 2023 Hearing. Docket 119. In its Status Report, Debtor in Possession states:

1. Debtor in Possession has continued operations under the terms of the Interim Cash Collateral Orders dated June 9, 2023, and December 14, 2023. Orders for the September 14, 2023 and December 14, 2023 hearings have been prepared and are being reviewed by counsel for Rabo Agrifinance, LLC.
2. Special counsel has been retained.
3. It appears that the estate is administratively solvent.
4. Motions to value collateral and any claims objections are not anticipated.
5. Special counsel has been retained to deal with the large Mills Ranch claim. The estate has claims against Mills Ranch that would result in the elimination of the Mills Ranch claim and an affirmative award in favor of the Debtor in Possession.
6. No motions under 11 U.S.C. § 365(d)(3) or (4) have been received or are anticipated.
7. No new credit has been requested.
8. There are no pending motions to dismiss or convert.
9. Debtors intend to file a Chapter 12 Plan in the week of January 8, 2024.

At the hearing, the court addressed with counsel for the Debtor in Possession, the Chapter 12 Trustee, and the respective counsel for the other parties in interest appearing at the Status Conference the prosecution of a Plan that includes provisions for the Mills Ranch litigation and having that litigation removed from state court in the near future.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:00 a.m. on February 1, 2024. Pursuant to the Stipulation of the Parties, the court extends the authorization to use cash collateral through and including February 2, 2024, pursuant to the stipulation of the Debtor in Possession and Rabo Agrifinance on the record, with that extension to be stated in the *Nunc Pro Tunc* Order being issued by the court for the use of cash collateral at the prior December 14, 2024 hearing on this Motion.

The Debtor in Possession shall file and serve the Supplemental Pleadings for the further use of Cash Collateral on or before January 24, 2024. Opposition may be presented orally at the February 1, 2024 hearing.

FEBRUARY 1, 2024 HEARING

Wesley and Ruth Woolery, the “Debtors in Possession”) were to file and serve the Supplemental Pleadings for the further use of Cash Collateral on or before January 24, 2024. On January 24, 2024, Debtor in Possession filed the Declaration of Ruth Woolery, stating:

1. Debtor in Possession has been operating under the terms of a series of interim cash collateral orders. Decl., Docket 129 ¶ 2.
2. The projected income May through December was \$275,505, the actual income was \$174,415. *Id.*
3. The projected expenses for May through December were \$231,456, the actual was \$132,030. *Id.*
4. Debtor in Possession expects that their expenses will remain less than budgeted through June. *Id.*
5. Debtor in Possession has paid 20% of non-wage income to Rabo Bank. *Id.*
6. Due to market conditions, Debtor in Possession may defer the anticipated February Spring Calf Sale to July. *Id.*

Attached to the Declaration is a budget for the months of May 2023 through April 2024. Dckt. 129 at p. 3.

As of February 1, 2024, Creditor asserting the lien on cash collateral says that the \$20,000 payment from the October 2023 farm subsidy payment had not been paid until February 1, 2024 (counsel for the Debtors in Possession reporting that it was being made the morning of the February 1, 2024 hearing on this Motion). What was disclosed to the court at the February 1, 2024 Hearing was that the Debtors’ in Possession, the Fiduciary of the Bankruptcy Estate, financial information was out of date and no longer accurate. Counsel for the Debtors in Possession stated that the necessary financial information was not being provided by the Fiduciary Debtors in Possession.

The Creditor with the lien on the Cash Collateral reported that it would not consent to the use of cash collateral. It was not explained to the court or parties in interest what cash collateral was being used.

Here, the collateral from which the cash collateral is derived includes (but the court does not say is limited to) a cattle herd. That herd needs to be cared for by the Fiduciary Debtors in Possession to preserve value in the Creditor’s collateral.

The court makes a one month extension for the use of cash collateral on the terms of the budget and conditions as set forth in its January 19, 2024 Order (Dckt. 128) which relates back to this court’s *Nunc Pro Tunc* Order issued pursuant to the court’s ruling at the December 14, 2023 hearing. Dckt. 115. The *Nunc Pro Tunc* Order was filed on January 17, 2024 (Dckt. 124)

The court continues the hearing to 11:30 a.m. on February 29, 2024, to be conducted in conjunction with the continued Status Conference.

The Fiduciary Debtor in Possession shall file and serve on or before February 15, 2024, Supplemental Pleadings to support a request to further use cash collateral, including ACCURATE FINANCIAL INFORMATION, AN ACCURATE BUDGET, AND EVIDENTIARY SUPPORT THEREFORE. Opposition thereto may be presented orally at the hearing, or may be filed prior to the hearing up to noon on February 27, 2024.

The court shall issue a separate Order to Show Cause why this Case should not be converted to one under Chapter 7 as provided in this court's Order Setting Status Conference (Dckt. 10, p. 2)

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 Use of Cash Collateral filed by Wesley and Ruth Woolery, the two Debtors in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Authority to Use Cash Collateral is
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.

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).

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, Chapter 12 Trustee, attorneys of record, creditors and parties in interest, and Office of the United States Trustee on February 16, 2024. By the court’s calculation, 13 days’ notice was provided. 14 days’ notice is required. Though one day late of the required notice, the court will waive the service defect to hear this Motion in conjunction with the other Woolery matters.

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, 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 to Withdraw as Attorney is xxxxxxx.

Stephen M. Reynolds (“Movant”), counsel of record for Wesley Earl Woolery and Ruth A. Woolery (the “Debtors in Possession”), filed a Motion to Withdraw as Attorney as Debtors in Possession’s counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 1.16(b)(4).
- B. Counsel cannot effectively represent Debtors in Possession due to representation being unreasonably difficult. Movant cannot motivate his clients to provide necessary information. Decl., Docket 144 ¶ 2.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCALBANKR.R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion

noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 1.16. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 1.16(d). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(4) the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively;

CAL. R. PROF'L CONDUCT 1.16(b)(4).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Debtors in Possession have not communicated with him or signed necessary documents. Movant states in his declaration:

In this case the conduct of my clients has made effective representation of them unreasonably difficult. Specifically I have not been provided information in a timely manner that is necessary for the effective prosecution of the present case.

Declaration, Dckt. 144 ¶ 2.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. However, Debtors in Possession's failure to cooperate with counsel is reason to allow withdrawal. In reviewing this case, it is at a point in which Debtors in Possession can diligently and promptly engage replacement counsel, with the court building in a cushion if it appears that the Debtors in Possession has been doing such since the February 15, 2024 filing of this Motion.

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 Withdraw as Attorney filed by Stephen M. Reynolds ("Movant") 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 Withdraw as Attorney is **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. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was ordered on January 18, 2024. Docket 135 The court computes that 43 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor in Possession’s failure to prosecute this Chapter 12 bankruptcy case. Wesley Woolery and Ruth Woolery, the Fiduciary Debtors in Possession, were not providing current and accurate financial information as it relates to their requested use of cash collateral.

The Order to Show Cause is xxxxxxx.

ORDER TO SHOW CAUSE

On February 7, 2024, this court issued an Order to Show Cause in connection with the continued Status Conference in this Case. Dckt. 135. What was brought to light was that in connection with a hearing on a Motion for Use of Cash Collateral the Debtor in Possession was not providing current and accurate financial information as it relates to their requested use of cash collateral. OSC; Dckt. 135. Attached to the Order to Show Cause are the Civil Minutes from the February 1, 2024, hearing on the Motion to Use Cash Collateral. Those Minutes state:

FEBRUARY 1, 2024 HEARING

Wesley and Ruth Woolery (“Debtor in Possession”) was to file and serve the Supplemental Pleadings for the further use of Cash Collateral on or before January 24, 2024. On January 24, 2024, Debtor in Possession filed the Declaration of Ruth Woolery, stating:

1. Debtor in Possession has been operating under the terms of a series of interim cash collateral orders. Decl., Docket 129 ¶ 2.
2. The projected income May through December was \$275,505, but the actual income was \$174,415. *Id.*

3. The projected expenses for May through December were \$231,456, the actual was \$132,030. *Id.*

4. Debtor in Possession expects that their expenses will remain less than budgeted though June. *Id.*

5. Debtor in Possession has paid 20% of non-wage income to Rabo Bank. *Id.*

6. Due to market conditions, Debtor in Possession may defer the anticipated February Spring Calf Sale to July. *Id.*

Attached to the Declaration is a budget for the months of May 2023 through April 2024.

Dckt. 129 at p. 3.

As of February 1, 2024, Creditor says that the \$20,000 payment from the October 2023 farm subsidy payment [was received by Debtor in Possession]. What was disclosed to the court at the February 1, 2024 Hearing was that the Debtor in Possession, the Fiduciary of the Bankruptcy Estate, financial information was out of date and no longer accurate. Counsel for the Debtor in Possession stated that the necessary financial information was not being provided by the Fiduciary Debtor in Possession.

The Creditor with the lien on the Cash Collateral reported that it would not consent to the use of cash collateral. It was not explained to the court or parties in interest what cash collateral was being used.

Here, the collateral from which the cash collateral is derived includes (but the court does not say is limited to) a cattle herd. That herd needs to be cared for by the Fiduciary Debtor in Possession.

The court makes a one month extension for the used of cash collateral on the terms of the budget and conditions as set forth in its January 19, 2024 Order (Dckt. 128) which relates back to this court's Nunc Pro Tunc Order to be issued pursuant to the court's ruling at the December 14, 2023 hearing. Dckt. 115. The Nunc Pro Tunc Order was filed on January 17, 2024 (Dckt. 124).

The court continues the hearing to 11:30 a.m. on February 29, 2024, to be conducted in conjunction with the continued Status Conference.

The Fiduciary Debtor in Possession shall file and serve on or before February 15, 24, Supplemental Pleadings to support a request to further use cash collateral, including ACCURATE FINANCIAL INFORMATION, AN ACCURATE BUDGET, ANDEVIDENTIARY SUPPORT THEREFORE. Opposition thereto may be presented orally at the hearing, or may be filed prior to the hearing up to noon on February 27, 2024.

The court shall issue an Order to Show Cause why this Case should not be converted to one under Chapter 7 as provided in this court's Order Setting Status Conference (Dckt. 10, p. 2).

RESPONSE PLEADINGS FILED

Debtor in Possession timely filed on or before February 15, 2024, Supplemental Pleadings to support a request to further use cash collateral and to show cause why this case should not be converted to one under Chapter 7. Debtor in Possession filed an Operating Report for January, 2024 on February 13, 2024. Docket 138. Debtor in Possession also filed an Opposition to Conversion and supporting Declaration on February 15, 2024. Docket 140, 141.

In the Declaration, Debtor in Possession states:

- a. Debtor in Possession is current on their adequate protection payments under the interim cash collateral Orders and is current on the filing of Monthly Operating Reports. Dec. ¶ 1; Dckt. 141.
- b. Beef producers are in a very strong position at present, and Debtor in Possession anticipates strong prices in the next few years. *Id.*; ¶ 2.
- c. Creditor Rabo AgriFinance LLC's ("Creditor") collateral has only increased in value. *Id.* ¶ 3.

Debtor Ruth Woolery attached two cattle inventories to her Declaration, purporting to show an increase in the overall weight of the cattle stock and arguing that Creditor's position has improved. *Id.*

In the Opposition, Debtor argues that 11 U.S.C. § 1208(a) argues that a Chapter 12 case may be converted to one under Chapter 7 only if the Debtor consents. However, 11 U.S.C. § 1208(a) merely states that elect to convert a case to Chapter 7 at any time, and the right of the Debtor to convert to Chapter 7 cannot be waived by the Debtor.

In 11 U.S.C. § 1208(d), the Bankruptcy Code provides that on request of a party in interest the court may convert a Chapter 12 case to one under Chapter 7 upon a showing of the debtor having committed fraud in the Chapter 12 case. As expressly provided in 11 U.S.C. § 105(a), "No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

Here, the matters raised to the court included the Debtor in Possession not providing accurate financial information regarding operation of the bankruptcy estate in this case and failing to file monthly operating reports. Such could well be construed and the fiduciary Debtor in Possession working to commit fraud in this case, hiding assets and monies of the Bankruptcy Estate.

Because Debtor in Possession's current counsel has filed a Motion to substitute out of such representation, it is requested that the court continuing the hearing on the Order to Show Cause to April 4, 2024, to allow for the replacement of new counsel for the Debtor in Possession. The hearing on the Motion to Withdraw as Counsel for the Debtor is set for February 29, 2024.

Creditor's Response to the Order to Show Cause

Creditor filed a Reply and supporting Declaration on February 23, 2024. Dockets 148, 149. In the Reply, Creditor states that the Debtor has been in this Chapter 12 case for over nine months and has failed to propose a confirmable plan, make process in prosecuting supposedly valuable estate claims, or comply with orders of this court and the Bankruptcy Code. Response, p. 2:2-10; Dckt. 148.

The Response continues, asserting that no accurate budget has been provided by the Debtor in Possession; the Debtor in Possession seeks the further use of cash collateral using a nine month old, out of date budget; the Budget filed on February 15, 2024 proposes to make the adequate protection payment of Creditor in July 2024, estimating \$360,000 in gross sales proceeds from which the Debtor in Possession is make payments of \$370,000 to Creditor. *Id.*, p. 2-3. Further, the Debtor in Possession makes reference to cattle sales having been made in January 2024, but no information about such sales has been provided. *Id.*; p. 3.

Creditor concludes, stating that the Bankruptcy Estate is being grossly mismanaged, the size of the cattle herd, Creditor's collateral has continued to decline, and the Debtor in Possession has not taken any action to remove and prosecute an asserted \$950,000 claim against Mills Ranch.

The Declaration of Paul Lang, an employee of Creditor, is filed in support of the Response. Dec.; Dckt. 149. Lang's testimony includes testifying as to his review of the Debtor's Monthly Operating Reports, the income reported, and how he computes that the Debtor in Possession has failed to make the 20% adequate protection payments on \$85,283 of income received by the Debtor in Possession.

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 Order to Show Cause 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 Order to Show Cause is **XXXXXXX**

6. [23-21438-E-12](#)

WESLEY/RUTH WOOLERY

CONTINUED STATUS CONFERENCE

RE: VOLUNTARY PETITION

[CAE-1](#)

5-2-23 [1]

The Status Conference is **XXXXXXX**

JANUARY 29, 2024 STATUS CONFERENCE

At the Status Conference, **XXXXXXX**

JANUARY 17, 2024 STATUS CONFERENCE

The Debtor in Possession filed an updated Status Report on January 4, 2024. Dckt. 119. The Debtor in Possession reports that they have continued in operations under the terms of the prior Interim Cash Collateral Orders (Dckts. 58, 84). The Nunc Pro Tunc Orders (the court having stated the rulings at the prior hearings but through clerical error proposed orders not having been lodged with the court) for the authorization to use cash collateral from the September 14, 2023, and the December 14, 2023 hearings are being finalized by the Parties.

The Debtor in Possession reports that no motions to value or claim objections are anticipated prior to Plan Confirmation. Special Counsel has now been employed to address the Mills Ranch claims and asserted counterclaims of the estate against Mills Ranch.

The Chapter 12 Plan has not yet been filed (as of the court's January 12, 2024, review of the Docket).

At the Status Conference, the Chapter 12 Trustee concurred with Debtor in Possession counsel to continue the Status Conference.

Counsel for Rabo Agrifinance commented that his client is expressing frustration over the Debtor in Possession not yet having a Plan on file and wants to see a Plan which includes the Mills Ranch litigation. Counsel for Mills Ranch noted that there were some clerical errors in the Monthly Operating Reports. He also pressed for getting a plan on file and the litigation moved to federal court.

FINAL RULINGS

7. [21-23778-E-7](#)
[22-2006](#)
CAE-1

CAREN SPAULDING
Jeffrey Ogilvie

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT

RICHARDS V. SPAULDING ET AL 1-25-23 [49]

Final Ruling: No appearance at the February 29, 2024 Status Conference is required.

The Status Conference is continued to 11:30 a.m. on May 21, 2024 (specially set day and time).

FEBRUARY 29, 2024 STATUS CONFERENCE

On February 26, 2024, Plaintiff-Trustee Geoffrey Richards and Defendants Caren Spaulding and Thomas Spaulding, individually and as Trustee of the Spaulding Family Living Trust filed a Joint Status Report that the Parties have been actively working to resolve this matter, including BDRP mediation and direct negotiations. Dckt. 85. The Plaintiff-Trustee reports that he anticipates that a motion to approve a settlement agreement should be set for hearing on or before April 18, 2024. The parties request the court continue the Status conference 90 days.

The Status Conference is continued to 11:30 a.m. on May 21, 2024 (specially set day and time).

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 Continued Status Conference having been set for February 29, 2024 in this Adversary Proceeding, the Parties filing a Joint Status Report advising the court that they are finalizing a settlement and anticipate having a hearing on a Motion to Authorize the Settlement in mid-April, 2024, and upon review of the file in this Adversary Proceeding, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **11:30 a.m. on May 21, 2024** (specially set day and time).