

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

**March 9, 2023 at 2:00 p.m.**

1. [22-90128-E-12](#)      JEA2, LLC  
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
4-19-22 [1]**

Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 1/26/23. Counsel for Debtor in Possession requested a continuance to work on a settlement with the main secured creditor and determine whether the case should be dismissed or converted to one under a different Chapter.

Operating Report filed: 2/15/23

[CAE-1] Fourth Status Conference Report filed 2/22/23 [Dckt 89]

<p><b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">xxxxxxx</span>, 2023.</b></p>
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**MARCH 9, 2023 STATUS CONFERENCE**

On February 22, 2023, the Debtor in Possession filed an updated Fourth Status Conference Report. Dckt 89. The Debtor in Possession reports that an agreement has been reached for a third-party to farm the Property of the Bankruptcy Estate on a combination cash/share lease basis. With this lease, the Debtor in Possession foresees not having to obtain creditor for the next several seasons. Debtor in Possession states that a grant has been obtained for removing the non-productive almond trees on the Property. No Chapter 12 Plan is pending, the Debtor in Possession stating that there on ongoing negotiations with SBN V Ag 1, LLC ("Summit") to resolve Summits claim in this case. That claim involves property in other related bankruptcy cases.

On March 7, 2023, the Debtor in Possession filed a Motion to approve the lease of property of the Bankruptcy Estate. Dckt. 90. The basic terms of the lease are stated with particularity in the Motion, identified by the paragraph number in the Motion for Authorization to Lease Property are:

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3. Debtor has obtained a grant and a contractor to remove the non-productive trees on the property.

3. [second ¶ 3] The principal asset of this Chapter 12 case is the real property to be leased. Debtor has obtained a grant and a contractor to remove the non-productive trees on the property. The lease allows Debtor to farm the property while the lessor-shoulders the burden of funding the planting and cultivation. A true and correct copy of the lease is filed herewith as an Exhibit. Key terms include:

4. Lease term is four years; 2023 through 2026.

5. Lease payments are annually \$325 per acre. The first payment is due upon court approval of the lease, subsequent payments are due December 1. In addition, Lessee shall pay 1 % of gross receipts with a \$20.00 floor acre and a ceiling of \$60.00 per acre. Should Lessee choose to double crop an additional \$25.00 per acre will be due.

6. Lessor is responsible for tree removal .and annual discing.

The Lease; Exhibit 1, Dckt. 92; provides for JEA2, LLC, the Debtor, and not as the fiduciary Debtor in Possession, to lease the Property. Also, the Lease identified JEA2, LLC as “(Jeff Arambel).” The lease is signed by JEA2, LLC as the Lessor and not by JEA2, LLC the Debtor in Possession who is the fiduciary of the Bankruptcy Estate in which the Property is legally owned.

The Lease further provides that JEA2, LLC (“Jeffery Arambel”) will be allowed access to the Property during the lease only to inspect the property and/or making repairs to the property. All farming will be done by the Lessee, identified as Tom and Matt Maring - T&M Farms on the signature page of the lease. In the habendum clause of the Lease, the Lessor is identified as Tom and Matt Maring/T& M Farms.”

It is not clear whether Tom and Matt Maring are personally leasing the Property or there is an entity of T&M Farms that is leasing the Property.

In opposing confirmation to the prior Chapter 12 Plan filed by the Debtor in Possession, the Chapter 12 Trustee included in his Objection that “debtor is not a ‘family farmer’ engaged in a ‘farming operation.” Objection, p. 3:10; Dckt. 59. No analysis of this assertion was provided with the Objection.

In the Ruling denying the Motion to Confirm the proposed Chapter 12 Plan (Civil Minutes, Dckt. 84), the court touched on the basis law concerning who or what constitutes a “family farmer” who may seek relief under Chapter 12 (emphasis added).

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

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

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

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

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

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

At the hearing, counsel for the Debtor in Possession reported that there are ongoing discussions with Summit and are getting close to a settlement.

In light of the Debtor in Possession’s evidence submitted, the lack of farming operation, no ability shown to fund a plan, and with the concurrence of counsel for the Debtor in Possession, the Plan is not confirmed.

Civil Minutes, p. 6; Dckt. 84.

The court, having the responsibility to “get the law right” <sup>FN.1.</sup> has conducted some additional research into this question as to who may legally, as a matter of Federal Law, be a “family farmer” who may seek relief pursuant to Chapter 12 of the Bankruptcy Code.

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FN. 1. *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).  
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Congress defines a “family farmer” in 11 U.S.C. § 101(18) as follows (emphasis added):

(18) The term “family farmer” means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$11,097,350 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such

individual and spouse **receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income** for—

(I) **the taxable year preceding; or**

(ii) **each of the 2d and 3d taxable years preceding;**

the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) **corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family**, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, **and**

(I) **more than 80 percent of the value of its assets consists of assets related to the farming operation;**

(ii) **its aggregate debts do not exceed \$11,097,350 and not less than 50 percent of its aggregate noncontingent, liquidated debts** (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

So, the corporate entity (which includes a limited liability company, 11 U.S.C. § 101(9)) must have not less than fifty percent (50%) of its debt arise out of the farming operation owned or operated by that corporate entity.

Congress then defines the term “Family Farmer with regular annual income” in 11 U.S.C. § 101(19) to be:

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

Congress provides the statutory basis for a debtor to seek relief under the various Chapters of the Bankruptcy Code in 11 U.S.C. § 109. To be eligible for relief under Chapter 12, Congress requires:

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

Whether the corporation is a family farmer is determined as of the commencement of the bankruptcy case, not what may occur on some future dates. As required in 11 U.S.C. § 101(18), the fifty percent (50%) of income from the farming operation is based on the tax year preceding the filing of this case, or in each of the second and third tax year preceding the filing of this case.

The current Chapter 12 Bankruptcy Case was filed by the Debtor on April 19, 2022. On the Statement of Financial Affairs, which have been signed by Jeffery Arambel as the managing member of the Debtor under penalty of perjury, the gross income for the 2021 and the 2020 tax years are stated to be:

2021.....\$0.00  
2020.....\$0.00

Statement of Financial Affairs, Part 1, Questions 1 and 2; Dckt. 15 at 17. Thus, the Debtor states that there has been no gross income from which fifty percent (50%) can be from a farming operation on the Property.

On Schedule A/B, the only personal property assets of the Debtor are stated to \$2,100 in cash (not deposited with a financial institution) and \$35,000 of “trees available for fire wood, cut fire wood.” Sch. A/B; Dckt. 15 at 2-9. Debtor has no farm equipment, no farm materials, no accounts receivable, or other personal property asset relating to farming. The only other asset listed by Debtor on Schedule A/B is the real property, which is given a value of \$15,459,000. *Id.* at 7.

Going to the Schedules in which the Debtor listed creditors, the following debts are listed:

Schedule D - Secured Claims

SBN V Ag 1 LLC.....(\$8,922,789) claim

No date for when the debt was incurred is given  
The lien is stated to be “Agreement you made”

Stanislaus County Tax Collector.....(\$102,949)

This is stated to be for the 2017, 2018, 2019, 2020, 20 [sic] Property Taxes

Schedule E - Priority Unsecured Claims

None

Schedule F – General Unsecured Claims

West Stanislaus Irrigation District.....(\$180,141)

Review of Proofs of Claim Filed

Only one Proof of Claim has been filed in this case. Proof of Claim 1-1 has been filed by the Wanger Jones and Helsley law firm, with said claim in the amount of (\$8,733.44). In Proof of Claim 1-1 the creditor states that the basis of the claim is for “Legal services provided.” POC ¶ 8.

In the Arambel case Summit has filed Proof of Claim 23-1. The claim is in the amount of (\$39,423,266.90) and is stated to be secured by real and personal property. In the proof of claim, this obligation is stated to be evidenced by a term note and a Line of Credit Note 1 executed by Jeffery Arambel in 2016. It is stated that these 2016 notes relate back to loans originally made in 2005.

It is not clear in this case the basis of the debt listed by the Debtor for Summit in this bankruptcy case.

At the hearing, **XXXXXXX**

### **JANUARY 26, 2023 STATUS CONFERENCE**

On January 12, 2023, the Debtor in Possession filed an updated Status Conference Report. Dckt. 78. It appears that there are no new updates for the court and parties in interest. At the Status Conference, counsel for the Debtor in Possession requested a continuance so that the Debtor in Possession can work on a settlement with the main secured creditor and determine whether the case should be dismissed or converted to one under a different Chapter.

No Proof of Claim has been filed by or for Summit - the largest creditor of Debtor. The court is familiar with Summit from its participation in the related Bankruptcy Case filed by Jeffery Arambel; 18-90029.

Debtor's Atty: Pro Se

Notes:  
Continued from 10/27/22

Operating Report filed: 1/18/23

Notice of Plan Administrator's Post-Confirmation Monthly Compensation Report for Payment of Professional Fees for Services filed: 11/16/22; 12/12/22; 1/13/23; 2/13/22

[BJ-1] Motion of American AGCrecit, FLCA for Relief from the Automatic Stay filed 11/28/22 [Dckt 1786]; Order granting filed 12/26/22 [Dckt 1817]

[BJ-2] Motion of American AGCrecit, FLCA for Abandonment of Certain Personal Property filed 11/28/22 [Dckt 1794]; Order granting filed 12/26/22 [Dckt 1818]

[FWP-25] Plan Administrator's Motion for Entry of Order Approving Use of Cash Collateral Pursuant to Stipulation with SBN V AG I LLC filed 1/12/23 [Dckt 1819]; Order granting filed 2/6/23 [Dckt 1834]

<p><b>The Post Confirmation Status Conference is continued to 2:00 p.m. on XXXXXXX , 2023.</b></p>
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### **MARCH 8, 2023 STATUS CONFERENCE**

The Plan Administrator filed an updated Status Report on March 6, 2023. Dckt. 1837. The Plan Administrator is informed that Summit completed its non-judicial foreclosure sale on the Business Park in February 2023. Summit submitted the winning credit bid of \$30,000,000. The Plan Administrator believes that Summit asserts a remaining claim of \$35,000,000.

The remaining issues identified by the Plan Administrator to be addressed are stated as: (I) Substantial tax reserve funds from the sale of real property and tax refunds, (ii) the Murphy Ranches, (iii) the Westly Lot (less than one half acre undeveloped), (iv) the 1/3 interest in the Oakdale Development Property, (v) the Estate's asserted interest in the remaining property held by Filbin Land & Cattle Company, (vi) the Estate's partial interest in a 5 acre property on Laird Road that the Estate owns a partial interest in with the remainder owned by Mr. Arambel's sister(s), (vii) certain crop retains, and (viii) certain other assets.

At the Status Conference, **XXXXXXX**

Debtors' Atty: Michael R. Totaro

Notes:

[MRT-1] Application by Debtors and Debtors in Possession to Employ Michael R. Totaro, Maureen J. Shanahan and The Law Offices of Totaro & Shanahan as General Insolvency Counsel and Approval of Hourly Fee filed 2/8/23 [Dckt 22], set for hearing 3/9/23 at 10:30 a.m.

[MRT-2] Application by Debtors in Possession to Employ Real Estate Broker/Agents Rodeo Realty, Inc. and, Susan L. Hackett as Real Estate Brokers/Agents to Lease Estate Real Property filed 2/8/23 [Dckt 27], set for hearing 3/9/23 at 10:30 a.m.

Debtor in Possession's Management Conference Statement filed 2/23/23 [Dckt 34]

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">XXXXXXX</span> , 2023.</b>
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### **MARCH 9, 2023 STATUS CONFERENCE**

This voluntary Chapter 11 case was filed on January 27, 2023. The Debtor in Possession in possession filed a Status Report on February 23, 2023. Dckt. 34. Counsel for the Debtor in Possession reports that title reports are being obtained to insure that all possible secured claims are identified. It appears at this time there may be only one secured claim, and that a motion to value is in the offing.

The Debtor in Possession is working to get the monthly operating reports filed, having obtained the court authorized services of a CPS to assist.

The court notes that two applications to employ professional have been filed, but no orders have been entered. In reviewing the court's proposed order inbox, the court does not see proposed orders having been uploaded. These applications have been set for hearing on March 9, 2023.

Looking at Schedule A/B, the most significant asset is real property located in Calabasas, California, which is identified as a single-family home with a value of \$2.5 Million and in which Debtor asserts a homestead exemption. Dckt. 33.

On Schedule D Debtor lists creditors having secured claims against the Calabasas property totaling approximately (\$11,575,000), a portion of which is also secured by real property located in Turlock, California. General unsecured claims totaling approximately (\$461,000) are listed on Schedule F.

Interspersed in the Schedules are forms from the Central District of California and some of the forms stated that they are for filing a case in the Central District of California.

At the Status Conference, XXXXXXX



4. [19-90382-E-7](#) TRACY SMITH  
[19-9012](#) CAE-1  
ALVAREZ V. SMITH ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-26-19 [\[1\]](#)

Plaintiff's Atty: Shane Reich  
Defendant's Atty:  
Peter G. Macaluso [Tracy Emery Smith]  
Unknown [Sharp Investor, Inc.]

Adv. Filed: 7/26/19  
Answer: None

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - willful and malicious injury  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Recovery of money/property - other

Notes:  
Continued from 9/8/22. Personal appearances at hearings, status conferences, or other proceedings are not required, and Telephonic Appearances are permitted.

[RLF-2] Amended Judgment filed 9/20/22 [Dckt 96]

<b>The Post-Judgment Status Conference is <span style="color: red;">XXXXXXX</span></b>
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### **MARCH 9, 2023 POST-JUDGMENT STATUS CONFERENCE**

No updated status reports have been filed. At the March 9, 2023 Post-Judgment Status Conference, XXXXXXX

### **DECEMBER 8, 2022 STATUS CONFERENCE**

Defendant-Debtor reported that the Plaintiff and Judgment-Debtor have not met during the extended period granted by the court requested by the Parties for such.

Judgment was granted Plaintiff on May 26, 2020. Jdgt; Dckt. 48. The Judgment imposes a mandatory injunction to turn over specified property to Plaintiff and for \$19,000 in damages. It further provides that if the mandatory injunction is complied with, in addition to remedies in enforcing a mandatory injunction, Plaintiff may have it amended to be a \$93,643.84 monetary judgment. These judgment monetary obligations are also determined to be nondischargeable pursuant to 11 U.S.C. § 523(A)(2)(A), § 523(a)(4), and § 523(a)(6), as separate and independent bases for nondischargeability.

Plaintiff has not provided the court with Post-Judgment Status Reports documenting the diligent enforcement of this Judgment.

On September 2, 2022, Plaintiff filed an Ex Parte Motion to have an amended judgment entered for the full monetary amount (as provided in the existing judgment), with credits for the following payment received totaling \$5,000.00 Dckt. 91. It further states that Judgment Debtor's counsel states that there has been another \$1,000 payment, but Plaintiff says that has not been received.

At the Post-Judgment Status Conference Judgment Creditor Plaintiff and Judgment Debtor requested a continuance (which the court does for case management purposes when an adversary proceeding file has not been closed) of six months.

Debtor's Atty: Brian S. Haddix

Notes:

Continued from 10/6/22 [Order filed 10/22/22, Dckt 168]

Operating Reports filed: 11/25/22

[BSH-7] First and Final Formal Application of James D. Bielenberg's as CPA & Consultant to the Debtors for Interim Compensation filed 10/10/22 [Dckt 154]; Order granting filed 12/19/22 [Dckt 204]

[BSH-8] Counsel's *Ex Parte* Motion for Order Authorizing Counsel to Notice a Modesto Division Case's Hearing on Court's "Sacramento" Law & Motion Calendar filed 10/26/22 [Dckt 169]; Order granting filed 10/28/22 [Dckt 173]

[BHS-9] First and Final Application for Compensation and Reimbursement of Expenses by Bankruptcy Counsel for Debtor in Possession filed 11/10/22 [Dckt 177]; Order granting filed 12/2/22 [Dckt 199]

[BHS-11] Debtor-in-Possession's Motion to Modify Confirmed Chapter 11 Subchapter V Plan of Reorganization filed 1/5/23 [Dckt 205]; Order granting filed 2/22/23 [Dckt 212]

First Modified Plan of Reorganization for Small Business Under Chapter 11 filed 1/5/23 [Dckt 208]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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On February 22, 2023, the court entered its order granting the Debtor/Debtor in Possession's Motion to Confirm the Subchapter V Plan in this case. No confirmation order has been entered as of this time. The order granting the Motion to Confirm provides that counsel for the Debtor/Debtor in Possession is to lodge with the court the proposed order confirming the Plan.

As noted in the Order granting the Motion to Confirm, counsel for the Debtor/Debtor in Possession Plan Administrator, counsel for U.S. Trustee, and counsel for the Mechanics Bank were to confer whether this confirmation, in light of the agreement reached with Mechanics Bank whether this was a consensual confirmation and the confirmation order could so provide. If not, then the confirmation would be of a non consensual plan. .

At the Status Conference, XXXXXXX

6. [21-90584-E-7](#)      **MARIA CUEVAS LEMUS**  
[22-9004](#)      **CAE-1**  
**CUEVAS LEMUS V. MARTINEZ,**

**CONTINUED STATUS CONFERENCE RE:**  
**COMPLAINT**  
**10-6-22 [1]**

Plaintiff's Atty: Marc Voisenat  
Defendant's Atty: Arnold L. Graff

Adv. Filed: 10/6/22  
Answer: 11/28/22

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Injunctive relief - imposition of stay  
Declaratory judgment

Notes:  
Continued from 1/26/23

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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### **MARCH 9, 2023 STATUS CONFERENCE**

No updated Status Report has been filed by the Parties. At the Status Conference, XXXXXXX

### **SUMMARY OF COMPLAINT**

The Complaint filed by Maria Dolores Cuevas Lemus ("Plaintiff-Debtor"), Dckt. 1, asserts claims for alleged violation of the automatic stay (post-petition foreclosure), a determination that the alleged foreclosure is void, and injunctive relief to prevent Defendant from taking any other action to control or dispose of the property which is the subject of the alleged void foreclosure.

### **SUMMARY OF ANSWER**

Arturo Martinez ("Defendant") have filed an Answer, Dckt. 11, admitting and denying specific allegations. Twenty-One Affirmative Defenses are stated.

### **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff-Debtor Maria Dolores Cuevas Lemus alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 2, Dckt. 1. In the Answer, Defendant Arturo Martinez admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 3; Dckt. 11. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record

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

**DECEMBER 15, 2022 STATUS CONFERENCE**

The Parties are actively negotiating a possible settlement and requested a continuance of the Status Conference. The Status Conference is continued to January 26, 2023 at 10:00 a.m. (Specially Set Time) to be conducted in conjunction with a motion for relief from the stay.

**JANUARY 26, 2023 STATUS CONFERENCE**

In light of the court having granted the Motion to Annul the Stay, the Status Conference is continued to March 9, 2023, at 2:00 p.m. at the request of the Parties