

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

April 6, 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 3/9/23 to allow the Debtor/Debtor in Possession to address issues with counsel regarding whether Debtor qualifies for Chapter 12; whether conversion of this case will be sought by Debtor/Debtor in Possession; and whether dismissal of this case, and starting fresh if bankruptcy relief is determined to be necessary, in light of the ongoing global settlement discussions.

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| The Status Conference is continued to 2:00 p.m. on xxxxxxx, 2023. |
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APRIL 6, 2023 STATUS CONFERENCE

On April 3, 2023, the Debtor/Debtor in Possession filed a Pleading titled:

NOTICE OF DISMISSAL OF CHAPTER 12 CASE
[11 U.S.C. § 1208(b)]

Dckt. 106. From the title, it would appear that the case has been dismissed and all that remains is for the Clerk of the Court to close the file. However, the three sentence Notice states that the Debtor/Debtor in Possession "requests" the case be dismissed, that it was filed on April 18m, 2022, and that the case has not been converted under section 706 or 1112 of Title 11. Thus, it would appear from the text that the Debtor/Debtor in Possession is requesting the court issue an order.

Congress provides in 11 U.S.C. § 1208 for the conversion or dismissal of a Chapter 12 case, in pertinent part, as follows:

§ 1208. Conversion or dismissal

(b) On request of the debtor at any time, if the case has not been converted under section 706 or 1112 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

...

(d) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter or convert a case under this chapter to a case under chapter 7 of this title upon a showing that the debtor has committed fraud in connection with the case.

11 U.S.C. § § 1208(b), (d).

While 11 U.S.C. § 1208(b) appears to grant an absolute right to a Chapter 12 Debtor, Congress qualifies that with the permissive grant of authority to convert the case to one under Chapter 7, if such is requested by a party in interest, if the Debtor has committed fraud in connection with the bankruptcy case. In 8 COLLIER ON BANKRUPTCY ¶ 1208.02, Footnote 1, several cases are cited by the Treatise for this qualified right to dismiss:

***In re Graven*, 936 F.2d 378, 385-386 (8th Cir. 1991) -**

The express language of 11 U.S.C. §§ 1208(b) and (d) indeed raises a potential conflict. When interpreting a statute we look not only to the express language, however, but also to the overall purpose of the act. The Supreme Court has directed that we not "construe statutory phrases in isolation." *United States v. Morton*, 467 U.S. 822, 828, 81 L. Ed. 2d 680, 104 S. Ct. 2769 (1984). We must also consider "the design of the statute as a whole and . . . its object and policy." *Crandon v. United States*, 494 U.S. 152, 110 S. Ct. 997, 1001, 108 L. Ed. 2d 132 (1990). *See also Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608, 60 L. Ed. 2d 508, 99 S. Ct. 1905 (1979) ("As in all cases of statutory construction, our task is to interpret the words of these statutes in light of the purposes Congress sought to serve"); *Kifer v. Liberty Mut. Ins. Co.*, 777 F.2d 1325, 1332 (8th Cir. 1985) ("To ascertain such legislative intent, we may properly consider not only the language of the statute but also the subject matter, the object to be accomplished, the purpose to be served, the underlying policies, the remedy provided, and the consequences of various interpretations").

...

Recognizing an absolute right to dismissal under subsection 1208(b) would also completely undermine the express authority Congress granted the courts under subsection 1208(d) and would render that subsection useless. *See id.* . . .

...

We conclude that the broad purpose of the bankruptcy code, including Chapter 12, is best served by interpreting subsection 1208(d) to allow a court to convert a case to Chapter 7 upon a showing of fraud even though the debtor has moved for dismissal under subsection (b). Our holding on the interaction of subsections (b) and (d) does not conflict with the express language of subsection (b). Nothing in subsection (b) requires that a court act immediately upon a debtor's request for a voluntary dismissal. *See In re Tyndall*, 97 Bankr. 266, 268 (Bankr. E.D.N.C. 1989) (a court may delay action on a section 1208(b) motion while it considers motions by other parties). Once fraud is found, the provisions of subsection 1208(d) are triggered

and the court has the authority, under subsection (d), to dismiss the case or convert it to Chapter 7.

In re Davenport, 175 B.R. 355 (Bankr. E.D. Cal. 1994), in which Judge Michael McManus took a different view of the provisions of 11 U.S.C. § 1208(d). He sided, after holding contrary two prior times in the *Davenport* Case citing to the Eight Circuit Graven Decision that § 1208(d) qualified § 1208(b), that the Chapter 12 debtor's right to dismiss overruled the power of the court to convert the case to one under Chapter 7 if the Chapter 12 debtor had committed fraud on the court. He then further held:

The court has on two prior occasions determined that Bank has shown a *prima facie* case of fraud that would be sufficient under the Graven line of cases to hold debtors' section 1208(b) motion to dismiss in abeyance in favor of first hearing Bank's section 1208(d) motion to convert. On Bank's present motion for reconsideration, Bank again has convinced the court that an evidentiary hearing on debtors' conduct during the case would likely show either fraudulent or clearly abusive conduct in connection with this case. 6 With this decision, however, the court has rejected the Graven line of cases in favor of determining debtors' right to dismiss under section 1208(b) to be absolute. Notwithstanding this decision, based on Bank's preliminary showing, the court cannot tolerate debtors' alleged fraud and abuses to go unredressed. While the court cannot order conversion of debtors' case, the court does have the equitable power to fashion an appropriate sanction for fraud perpetrated against creditors and on the court.

In re Davenport, 175 B.R. at 361. Thus, even to Judge McManus, while he concluded that the right to dismissal was absolute, conduct of a Chapter 12 debtor in committing fraud on the court was sanctionable.

Given that Congress has expressly granted the court the discretion, “May,” for conversion of the Chapter 12 case to one under Chapter 7 if the debtor, who sought the extraordinary bankruptcy relief from the court, actually defrauded the court, it does not make legal (or common) sense that Congress also granted the Chapter 12 fraudster to neuter the court's authority to convert the fraudster's case to one under Chapter 7.

While decisions address the bankruptcy court judge imposing sanctions on the fraudster, that's not the sole remedy that Congress left to the court. **If the Chapter 12 debtor has committed fraud on the court, on the request of a party in interest, the court may dismiss a case under [Chapter 12] or convert a case under [Chapter 12] to a case under Chapter 7 of this title** 11 U.S.C. § 1208(d), double emphasis added.

In light of Congress expressly granting parties in interest the right to seek conversion of a Chapter 12 case when the debtor has committed fraud on the court, it would be a denial of Due Process for the court to dismiss a Chapter 12 case in the “middle of the night,” *ex parte*, no opportunity for a hearing provided.

Thus, some notice and opportunity to exercise the conversion rights must be given. Under the Local Bankruptcy Rules, a Chapter 12 debtor could easily notice the request for an order (which must be a motion as required by the Supreme Court in Federal Rule of Bankruptcy Procedure 9013) for a hearing on a mere fourteen days notice. L.B.R. 9014-1(f)(2). If parties in interest knew of fraud being committed on the court, they could readily get their motion to convert on file and be off to the dismissal/conversion races.

It needs to be remembered, that this right to seek conversion if a fraud committed on the court is not a “free ticket” to harassing the Chapter 12 debtor and have then drown in Chapter 12 purgatory. The party in interest generally will be a creditor with deep pockets who can have counsel quickly and readily put the evidence in front of the court. It is likely that the court would expedite the hearing to have the party in interest to either “put up or shut up,” and not leave the Chapter 12 debtor languishing. Additionally, such well heeled creditor with deep pockets could well afford to pay substantial civil sanctions ordered by the Bankruptcy Judge, as well as civil and criminal sanctions ordered by the Article III District Court Judge.

At the Status Conference, **XXXXXXX**

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:

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 wi ll 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"^{FN.1.} 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.

FN. 1. *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

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.

11 U.S.C. § 109(f).

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.

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.

2. [22-90128-E-12](#)
[RLC-5](#)

JEA2, LLC
Stephen Reynolds

MOTION TO APPROVE LEASE
3-7-23 [90]

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.

| |
|--|
| The Motion to Approve Lease is xxxxxxx |
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On March 7, 2023, JEA2, LLC, the Chapter 12 Debtor in Possession in this case have filed a Motion for the court to approve the lease of real 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:

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:

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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.

Opposition Filed By SBN V Ag I LLC

On March 23, 2023, SBN V Ag I LLC (“Summit”) filed an Objection to Motion to Approve Lease. Dckt. 102. Summit’s opposition hits several points (identified by paragraph number used in the Objection):

- 3 - 4. Summit has filed a proof of claim in another bankruptcy case in which it asserts a lien against the Property, which lien secures an obligation directly owed by the Debtor and for its personal guarantees of obligations of Jeffery Arambel, Debtor’s managing and sole member.
- 6. The lease fails to disclose that is it subject to Summit’s lien on the Property.
- 7. Rents from the lease are Summit’s cash collateral.
- 9. Debtor does not qualify as a Chapter 12 debtor and that this case should be converted to one under Chapter 7 pursuant to this court’s Chapter 12 Scheduling Order issued on April 25, 2022 (Dckt. 9).

The court shall issue a minute 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 Approve Lease having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**

Debtor's Atty: David C. Johnston

Notes:

Continued from 1/26/23 to allow the Debtor/Debtor in Possession Plan Administrator to reach a resolution of this ongoing dispute or commence the necessary claim objection litigation.

[DMS-1] First Application for Trustee Compensation and Allowance of Expenses in a Case Under Subchapter V of Chapter 11 filed 2/7/23 [Dckt 189]; Order granting filed 3/10/23 [Dckt 195]

The Status Conference is XXXXXXX

APRIL 6, 2023 STATUS CONFERENCE

Since the January 26, 2023 Status Conference, the court has entered an order approving interim fees and expenses for David M. Souza, the Subchapter V Trustee. Order; Dckt. 195. No updated Status Report has been filed by the Debtor/Debtor in Possession Plan Administrator.

At the Status Conference, XXXXXXX

JANUARY 26, 2023 STATUS CONFERENCE

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

At the Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported that the dispute over rejection damages is ongoing with Fresno Truck Center, dba Lee Financial Services.

The court continues the Status Conference to allow the Debtor/Debtor in Possession Plan Administrator to reach a resolution of this ongoing dispute or commence the necessary claim objection litigation.

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 Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 7, 2022. By the court's calculation, 50 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).

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| The Confirmation of Subchapter V Plan of Reorganization is XXXXX. |
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The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 27, 2022 Plan to be filed by December 7, 2022

January 9, 2023 Last Day to File Objections to Confirmation

January 19, 2023 Last Day to File Replies to Objections, Tabulation of Ballots,
Proof of Service

Table of Classes

| Creditor/Class | Treatment | |
|--|--|---|
| Class 1: Priority Claims Except Administrative Expense and Priority Tax Claims | Claim Amount | Unknown |
| | Impairment | Unimpaired |
| | Debtor is not aware of any Class 1 Priority Claims. Any Class 1 Priority Claim will be paid in full, in cash, upon the effective date. | |
| Class 2: Ally Financial | Claim Amount | \$3,712.79, Proof of Claim 2-1. |
| | Impairment | Unimpaired |
| | Will be paid according to the original documents with no modification under the Plan. | |
| Class 3: Farmers & Merchants Bank | Claim Amount | Unknown, Debtor does not indicate the total amount of these claims. |
| | Impairment | Unimpaired |
| | Will be paid according to the original loan documents with no modification under the Plan. | |
| Class 4: Kia Finance America | Claim Amount | \$16,496.99, Proof of Claim 7-1. |
| | Impairment | Unimpaired |
| | Will be paid according to the original loan documents with no modification under the Plan. | |
| Class 5: Kia Finance America | Claim Amount | \$16,186.26, Proof of Claim 6-1. |
| | Impairment | Unimpaired |
| | Will be paid according to the original loan documents with no modification under the Plan. | |
| Class 6: Toyota Motor Credit Corporation | Claim Amount | \$6,281.00, Schedule D § 2.4, Dckt. 25. |
| | Impairment | Unimpaired |
| | Will be paid according to the original loan documents with no modification under the Plan. | |
| Class 7: Non-Priority Unsecured Claims | Claim Amount | Unknown, Debtor does not indicate the total amount of these claims. |
| | Impairment | Unimpaired |

| | | |
|--|--|---|
| | Paid in full, with an interest at the rate of 3.33% per annum from the petition date, in cash on the effective date. | |
| Class 8: Equity Security Holders | Claim Amount | Unknown, Debtor does not indicate the total amount of these claims. |
| | Impairment | Unimpaired |
| | Holders of interests in this class will retain their shares without modification. | |
| Administrative Expense Claims | Claim Amount | Estimated \$12,500, Plan, Dckt. 50. |
| | Shall be paid upon the effective date in cash when the court allows through a noticed motion. | |
| Priority Tax Claims | Claim Amount | Estimated \$0 |
| | Shall be paid upon the effective date in cash with interest. | |

No declaration has been filed in support of the Motion to provide evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129.

Opposition to Plan

Creditor Hyundai Capital America dba Kia Motors Finance (“Creditor”), holding a secured claim, filed an opposition on January 9, 2023. Dckt. 58. However, on March 16, 2023, Creditor withdrew their opposition, stating Debtor cured the post-petition default and has remained current on post-petition payments.

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Here, the court has not been provided enough evidence to determine the Plan has been proposed in good faith and not by any means forbidden by law. Additionally, to determine whether the proposed Plan is feasible.

In the Subchapter V Plan the Debtor/Debtor in Possession states:

In 2021, the Debtor had gross revenues of \$6,881,398 and total expenses of \$6,273,285, for a net profit of \$612,675. Clearly, the very modest payments on five secured claims will be feasible and will not require further reorganization.

Sub V Plan, p. 3:22-24; Dckt. 50. While Debtor/Debtor in Possession asserts this conclusion, it is not one the court is able to make.

Request for Further Continuance

On April 3, 2023, the Debtor/Debtor in Possession filed a Notice of Inability to Proceed with the confirmation hearing and requested a further continuance. Dckt. 9. In the Notice and Request, the Debtor/Debtor in Possession notes for the court (identified by paragraph number in the Notice and Request):

5. The Plan calls for a 100% dividend on all claims. Based on the November 7, 2022 bar date for non-governmental claims, there were no general unsecured claims.

6. On December 7, 2022, one month after the Bar Date, two unsecured claims were filed, each in the amount of \$594,140.28, by Melissa Comfort (formerly Miller) and Preston Miller. A review of these claims reveals they are based on a 2012 Settlement Agreement. The Debtor/Debtor in Possession asserts that in addition to being untimely, these obligations would be dependant on the two claimants paying the SBA obligation.

7. On January 3, 2023, the SBA filed a timely general unsecured claim for \$684,546.81. The Debtor/Debtor in Possession asserts that the claim is barred by the statute of limitations and other defenses.

At the Confirmation 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 hearing on the Motion for Confirmation of the Subchapter V Plan filed by Provident Care, Inc. 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 hearing on the Motion is **XXXXXXX**

FINAL RULINGS

5. [22-90474](#)-E-12 GARY/LISA ALLDRIN CONTINUED STATUS CONFERENCE
[CAE-1](#) RE:
 VOLUNTARY PETITION
 12-25-22 [[1](#)]
CASE DISMISSED: 3/10/23

Final Ruling: No appearance at the April 6, 2023 Status Conference is required.

This Bankruptcy Case having been dismissed on March 10, 2023 (Order, Dckt. 46),
the Status Conference is concluded and removed from the Calendar.