

It appears to the court that the in person participation of Surjit Singh Malhi and Rajwant Kaur Malhi, as the responsible representative of the Debtor/Debtor in Possession and who have fiduciary duties arising under the Bankruptcy Code and the confirmed Subchapter V plan is required before the court considers entering further Orders to Show Cause in this Case.

The court ordered Surjit Singh Malhi and Rajwant Kaur Malhi, and each of them, who are the responsible representatives for the Debtor/Debtor in Possession and have fiduciary duties arising in this case and under the Confirmed Subchapter V Plan that was confirmed by Order of this court, and David Johnston, Esq. shall appear in person at Continued Post-Confirmation Status Conference at 2:00 p.m. on April 11, 2024. The court further ordered that no telephonic appearances were permitted for the forgoing persons ordered to appear. Order; Dckt. 227.

The court further ordered that:

If Surjit Singh Malhi or Rajwant Kaur Malhi, or both of them fail to appear at the April 11, 2024 Continue Post-Confirmation Status Conference, and thereby forcing the court to further continue the Post-Confirmation Status Conference, in addition to issuing any orders to show cause for failure to comply with this order, the court shall issue a Writ for the United States Marshal to take into custody the person or persons failing to comply with this order to appear at the Continued Post-Confirmation Status Conference and present them at the further continued date. The Writ shall further provide that the U.S. Marshal shall take such person or persons into custody sufficiently in advance of the further continued Post-Confirmation Status Conference to insure that they will be present (which may include having to provide jail holding facilities for such persons in advance of the further continued Post-Confirmation Status Conference).

Id.

As shown in the Civil Minutes for the Post-Confirmation Status Conferences, the responsible representatives have been “missing in action” and not appearing in court. They have also failed in providing the court with updated Status Reports.

One of the issues arising is that the Debtor/Debtor in Possession is not making the monthly plan payments to the Subchapter V Trustee for disbursement to creditors and payment of administrative expenses. 11 U.S.C. § 1194(b) provides that in a non-consensual confirmation of a Subchapter V Plan, the disbursements to creditors/administrative expenses will be made through the Subchapter V Trustee and not directly by the Debtor/Debtor in Possession.

§ 1194. Payments

...

(b) Other plans. If a plan is confirmed under section 1191(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, **the trustee shall make payments to creditors under the plan.**

11 U.S.C. § 1194(b) [emphasis added].

In 11 U.S.C. § 1191, the section addressing confirmation of Subchapter V Plans, Congress provides for confirmation of Subchapter V Plans

(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) [each class has accepted the plan or is unimpaired], (10) [at least one impaired class have accepted the plan], and (15) [individual debtor plan required term] 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.

As set forth in the Civil Minutes for the hearing on confirmation of the Amended Plan, impaired Classes 2, 4, 5, 7, 9, 10, and 12 did not accept the Plan. Dckt. 130 at 2-3. Neither the Order Confirming the Amended Plan or the Amended Plan attached thereto override the provisions of 11 U.S.C. § 1191(b) providing for the Subchapter V Trustee to make the disbursement to the creditors/administrative expenses.

Modified Plan Filed

On April 9, 2024, the Debtor/Debtor in Possession filed a proposed Modified Plan. Dckt. 231. In the Modified Plan Debtor/Debtor in Possession states that the Debtor/Debtor in Possession has paid all but two of the secured claims and is current in payments to those remaining two secured claims, but

However, the [Debtor/Debtor in Possession] failed to make all required payments to the Subchapter V Trustee to pay priority and general unsecured claims, which have turned out to be much higher than expected.

Modified Plan, p. 2:22-26; Dckt. 231.

The provisions of 11 U.S.C. § 1194(b) does not provide for the Subchapter V Trustee to merely make disbursements to creditors having unsecured claims and administrative expenses, but states that it is the Subchapter V Trustee who will make the payments to creditor. (In the Amended Plan, administrative expenses are stated as “administrative expense claims.”

8 Collier on Bankruptcy ¶ 1194.02 discusses when the Subchapter V Trustee is the person making the plan payment disbursements, which discussion includes:

When the court confirms a plan under the cramdown provisions of section 1191(b), however, section 1194(b) requires the trustee to make payments to creditors under the plan unless the plan or the confirmation order provides otherwise. Chapters 122 and 133 have identical provisions.

Because only the debtor may propose a plan, the debtor in the first instance controls whether the debtor or the trustee makes payments to creditors in the cramdown situation. Nevertheless, the court controls confirmation, and who makes the plan payments may be a crucial factor in whether the court will confirm the plan. Alternatively, a court might condition confirmation on modification of the plan to require that the trustee make payments.

The court cannot identify any provisions in the confirmed Amended Plan or the proposed Modified Plan that change the provisions of 11 U.S.C. § 1194(b) that requires the Subchapter V Trustee to make the plan disbursements to creditors.

At the Status Conference, **XXXXXXX**

JANUARY 25, 2024 STATUS CONFERENCE

A review of the Docket on January 22, 2024, does not show an updated Status Report having been filed by the Debtor/Debtor in Possession.

At the Status Conference, counsel for the Debtor/Debtor in Possession reports that an amended plan needs to be filed to include the settlement that has been reached Fresno Truck Center. Counsel suggested that the matter be continued for 60 days, to allow the parties to work out a modified plan and get the motion to confirm on calendar.

The Subchapter V Trustee concurred with the request for the continuance, but said that the Plan needs to have added creditor protections.

The Status Conference is continued to 2:00 p.m. on March 28, 2024.

JULY 13, 2023 POST-CONFIRMATION STATUS CONFERENCE

A review of the Docket discloses nothing has been filed since the May 22, 2023 updated Status Report filed by the Debtor/Debtor in Possession. At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the claim of Fresno Truck Center has been resolved by a stipulation that provides for payment of the claim through installments.

FINAL RULINGS

2. [24-90079-E-12](#)
[CAE-1](#)

JOHN BRASIL

STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-21-24 [1]

Final Ruling: No appearance at the April 11, 2024 Status Conference is required.

Debtor's Atty: Brian S. Haddix

Notes:

Trustee's Final Report and Account filed 2/27/24 [Dckt 17]

Resignation of Appointment of Trustee filed 2/29/24 [Dckt 20]

Notice of Appointment of Successor Trustee filed 3/1/24 [Dckt 21]

Trustee's Final Report and Account filed 3/5/24 [Dckt 23]

[BSH-1] Application to Employ Brian S. Haddix as Counsel filed 3/13/24 [Dckt 27]; Order granting filed 3/18/24 [Dckt 29]

Trustee Report at 341 Meeting lodged 3/20/24

The Status Conference is continued to 10:30 a.m. on April 25, 2024, to be conducted in conjunction with the Debtor in Possession's Motion to Dismiss this Chapter 12 Case.

APRIL 11, 2024 INITIAL CHAPTER 12 STATUS CONFERENCE

On April 5, 2024, the Debtor in Possession filed a Motion to Dismiss this Chapter 12 Case based on the grounds that the Debtor in Possession has now determined that the Debtor does not qualify for relief under Chapter 12. Mtn. and Related Pleadings; Dckts. 37-41. The Debtor in Possession has filed a Status Report in which he provides detailed information of how the determination has been made that the Debtor does not qualify for Chapter 12 relief.

Status Conference is continued to 10:30 a.m. on April 25, 2024, to be conducted in conjunction with the Debtor in Possession's Motion to Dismiss this Chapter 12 Case.

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 Initial Chapter 12 Status Conference having been scheduled, the Debtor in Possession having filed a Motion to Dismiss this Case it having been determined that Debtor does not meet the requirements to be a Chapter 12 Debtor, and upon review of the pleadings and files in this Case, and good cause appearing,

IT IS ORDERED that the Status Conference is continued **to 10:30 a.m. on April 25, 2024**, to be conducted in conjunction with the Debtor in Possession's Motion to Dismiss this Chapter 12 Case.

3. [23-90103-E-7](#) **PORSCHA LEWALLEN**
[23-9009](#)
CAE-1

**CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-14-23 [12]**

**LEWALLEN V. UNITED STATES
DEPARTMENT OF EDUCATION ET AL**

**ADVERSARY PROCEEDING
DISMISSED: 03/15/24**

Final Ruling: No appearance at the April 11, 2024 Status Conference is required.

Plaintiff's Atty: Jeffrey D. Rowe

Defendant's Atty:

Jeffrey J. Lodge [U. S. Department of Education]

Unknown [Nelnet, Inc.]

Adv. Filed: 6-9-23

Reissued Summons: 6/16/23

Answer: none

Amd Cmpl. Filed: 9/14/23

Answer: 12/13/23

Nature of Action:

Dischargeability - student loan

Notes:

Stipulation to Dismiss Adversary Proceeding with Prejudice filed 3/15/24 [Dckt 27]

This Adversary Proceeding having been dismissed pursuant to the Stipulation of the Parties (Dckt. 27), **the Status Conference is concluded and removed from the Calendar.**