

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 13, 2023 at 11:30 a.m.

1. [22-23180-E-12](#) **HARDAVE/SUKHBINDER DULAI** **CONTINUED STATUS CONFERENCE**
[CAE-1](#) **RE: VOLUNTARY PETITION**
12-8-22 [1]

Debtors' Atty: Bruce Charles Dwiggin

Notes:

Continued from 3/23/23. The Parties requesting a continuance to 4/13/23 so the status conference could be conducted shortly after the 4/5/23 continued First Meeting of Creditors.

The Status Conference is XXXXXXX
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APRIL 13, 2023 STATUS CONFERENCE

The court's review of the Docket discloses that Amended Schedules were filed on April 11, 2023. Dckt. 55.

MARCH 23, 2023 STATUS CONFERENCE

On March 16, 2023, the Debtor in Possession filed a Status Conference Statement. Dckt. 41. The report provides the end of February balances in the bank account, the accounts receivable, other proceedings that may be required, and that a hearing on a Motion to Confirm is set for April 13, 2023.

At the Status Conference the Parties requested that the Status Conference be continued to April 13, 2023, so it could be conducted shortly after the April 5, 2023 continued First Meeting of Creditors. Additional, the Parties agreed that the hearing on the Motion to Confirm the Chapter 13 Plan be continued to 11:30 a.m. on May 18, 2023, to allow the parties to address issues and possible oppositions through discussions rather than having to file oppositions for matters which the Debtor may be addressing.

The Debtor in Possession provides information in support of the Debtor qualifying as a family farmer eligible to file a Chapter 12 bankruptcy case. Attached to the Statement are copies of tax return information concerning the Debtor's farming income and debt.

The Chapter 12 Trustee reports that the two Debtors and counsel appeared at the March 15, 2023 First Meeting of Creditors, and that the Meeting has been continued to April 5, 2023. Trustee March 15, 2023 Docket Entry Report.

The proposed Chapter 12 Plan filed on March 8, 2023 (Dckt. 34) provides for creditors divided into classes of claim. The Plan is to be funded from the continued farming operations. The two Debtors provide their Declaration addressing the events that lead up to the filing of this Chapter 12 Bankruptcy Case, the changes going forward, and the basis of their belief as to how going forward they will be able to perform the Plan. Dckt. 39.

The Status Report does not address the accuracy of the information of the Schedules that the two Debtors own extensive real property, but no personal property assets. (See the Minutes below from the February 9, 2023 Status Conference.) This include stating they have no household goods, no electronics, no clothing, no retirement savings, no crops (either growing or harvested), and no accounts receivable or other obligations owed to them by another person. This is contradicted in part by the Status Conference Statement. No amended Schedules A/B has been filed.

The court also notes that no property is claimed as exempt on Schedule C. Dckt. 14 at 19.

On Schedule I, Debtor states having no income from the farming operation. *Id.* at 44-45.

FEBRUARY 9, 2023 STATUS CONFERENCE

This Chapter 12 case was filed on December 8, 2022. The Chapter 12 Trustee reports that the First Meeting of Creditors has been continued to February 17, 2023. January 12, 2023, Trustee Docket Entry Report.

The debtors in this case are two individuals. The Chapter 12 Debtor's Schedules were filed on December 15, 2022. Dckt. 14. The assets identified include:

- A. Nine parcels of real property.
- B. Twenty (20) vehicles (some of which are farm equipment).
- C. No household goods or furnishings.
- D. No Electronics.
- E. No Clothing.
- F. No Jewelry.
- G. Several bank accounts.
- H. Additional farm tractors and equipment.
- I. No accounts receivable or other amounts owed them by someone else.

On Schedule C, *Id.*, Debtor claims no exemptions.

On Schedule I, debtor Hardave Dulai states he is self-employed and debtor Sukhbinder Dulai states she is an educator employed by the Yuba County Schools. *Id.*, p. 44-45. Debtor Hardave Dulai has \$0.00 in income from the farming operation, and debtor Sukhbinder Dulai is the sole income generator with her monthly wages from her job in education.

On Schedule J, Debtor lists four dependants and a parent (but does not list the parent providing any contribution for expenses), and that Debtor's monthly net income is \$32.75. *Id.* At 45-46.

On the Statement of Financial Affairs the income information is somewhat different:

Debtor Hardave Dulai		Debtor Sukhbinder Dulai
	2022 Income (11 Months)	
\$0.00	Wages	\$0.00
\$0.00	Operating a Business (Gross Income)	\$0.00
	2021	
\$0.00	Wages	\$0.00
\$927,032.00	Operating a Business (Gross Income)	\$0.00
	2020	
\$0.00	Wages	\$40,293.00
\$0.00	Operating a Business (Gross Income)	\$0.00

Id., 49-50.

As of the court's February 6, 2023 review of the Docket, no Status Report had been filed by Debtor.

At the Status Conference, counsel for the Chapter 12 Debtor requested that the Status Conference be continued 30 days to allow lead counsel, Mr. Dwiggins to be present.

The Chapter 12 Trustee reported that since Mr. Dwiggins could not be at the First Meeting of Creditors and it had to be continued. At the First Meeting, the Chapter 12 Trustee was told that there was

no insurance on the property of the bankruptcy estate. One general certificate was provided, but no information about what insurance was provided.

2. [22-23180](#)-E-12 **HARDAVE/SUKHBINDER DULAI** **MOTION TO CONFIRM CHAPTER 12**
[DWL-1](#) **Bruce Dwiggin** **PLAN**
3-9-23 [\[36\]](#)

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

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm the Plan is xxxxxxx

To confirm a Chapter 12 Plan the court must make the following findings of fact and conclusions of law, 11 U.S.C. § 1225,:

- A. The Plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;
- B. Any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;
- C. The Plan has been proposed in good faith and not by any means forbidden by law;

- D. The value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date;
- E. With respect to each allowed secured claim provided for by the Plan—
 - 1. The holder of such claim has accepted the Plan;
 - 2. The
 - a. Plan provides that the holder of such claim retain the lien securing such claim; and
 - b. The value, as of the effective date of the Plan, of property to be distributed by the Trustee or Debtor under the Plan on account of such claim is not less than the allowed amount of such claim; or
 - 3. Debtor surrenders the property securing such claim to such holder;
- F. Debtor will be able to make all payments under the Plan and will be able to comply with the Plan; and
- G. Debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if Debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

If the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.

(2) For purposes of this subsection, “disposable income” means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor’s business.

DISCUSSION

The Debtor filed a Chapter 12 plan on March 8, 2023. The Plan provides monthly payments to the Trustee in the amount of: \$11,811.00 per month for the first three months; \$38,911.97 per month for the next 21 months; \$41,234.36 per month for the next 36 months. The Plan provides the following treatment of each claim:

Class	Treatment
Class 1: All claims entitled to Priority under 11 U.S.C. .§ 507	Monthly payments through the Trustee for 60 months starting April 20, 2023 including:
Butte County Tax Collector, \$19,241.78, the court notes, Butte County Tax Collector filed a Proof of Claim on March 24, 2023, Proof of Claim 14-1, which indicates their claim is only \$16,777.10	Butte County Tax Collector - \$488.62
Sutter County Tax Collector, \$4,623.99	Sutter County Tax Collector - \$117.39
Tehama County Tax Collector, \$21,122.04	Tehama County Tax Collector - \$536.36
Employment Development Department, \$4,917.16	Employment Development Department - \$50.00

<p>Class 2: Secured Claims which have been filed by creditors and are allowed</p> <p>Bank of America, \$12,756.92 with an interest rate of 3.54%</p> <p>Chase Auto Finance, \$41,176.42 with an interest rate of 6.040%</p> <p>Diversified Financial Services, \$22,613.75 with an interest rate of 5.5%</p> <p>Farm Credit West, \$26,761.52 with an interest rate of 5.5%</p> <p>Schools First Federal Credit Union, \$7,312.16 with an interest rate provided by Schools First Credit Union</p>	<p>Monthly payments through the Trustee for 60 months starting April 20, 2023 including:</p> <p>Bank of America - \$232.30</p> <p>Chase Auto Finance - \$796.82</p> <p>Diversified Financial Services - \$421.28</p> <p>Farm Credit West - \$511.18</p> <p>Schools First Federal Credit Union - \$133.32</p>
<p>Class 3: Holders of claims secured only by security interest in property that is Debtor's Residence.</p> <p>Debtor does not indicate there are any class 3 claims. Instead, Debtor states, "Debtor's residence is on the farm and included in Class 4."</p>	<p>N/A</p>
<p>Class 4: Holders of claims secured only by a security interests in real property on which the Debtor will conduct their farming operation</p> <p>Metropolitan Life Insurance Company, \$4,926,235.92, of which \$293,641.83 is arrearages and \$4,632,594.09 is principal. Promissory Note interest rate is 3.65%, default interest rate is 16.0%.</p>	<p>Monthly payments through the Trustee.</p> <p>Metropolitan Life Insurance Company</p> <p>Arrearage payments - 60 monthly payments of \$7,450.00 starting April 20, 2023</p> <p>Principal Payment - 57 monthly payments of \$24,697.25 starting July 20, 2023</p>

Class 5: Unsecured claims filed by the claims bar date Capital One Bank, \$10,362.65 Capital One Bank, \$4,682.62 Quantum 3 Group as agent for Mercury Financial / First Bank, \$5,330.75 Pacific Gas & Electric, \$55,629.44	Monthly payments through the Trustee: Total amount of unsecured claims: \$76,005.46 36 monthly payments of \$2,111.26 starting April 20, 2025
Class 6: None	
Class 7: Eric Duran, 8 acres of Walnuts, Sharecropping, No Claim Jim Suver, 8 acres of Kiwis, Sharecropping, No Claim	

Debtor asserts that two unexpected crop related events in 2022 led them to financial difficulties. These include: (1) a late winter freeze decimating their kiwi crops and (2) receiving less than half of what they were expecting per pound for their walnuts. Debtor states the 2023 cash flow is looking more robust and their pistachio orchard will begin to bear fruit in 2024 and 2025, fully producing in 2026. This allows Debtor to fund their Plan.

First Meeting of Creditors

The First Meeting of Creditors has not been concluded, with it being continued to April 11, 2023. April 5, 2023 Trustee Docket Entry Report.

Declaration of Debtor; Dckt. 39

The two debtors have filed their Declaration in support of this Motion. Dckt. 39.

At the Hearing, **XXXXXXX**

~~From review of the Plan, the court believes that Debtor's Plan is feasible. Based on the foregoing, the Motion is granted and Debtor's Plan is confirmed.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 12 Plan filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor’s Chapter 12 Plan filed on March 8, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 12 Plan, transmit the proposed order to Michael Meyer (“the Chapter 12 Trustee”) for approval as to form, and if so approved, the Chapter 12 Trustee will submit the proposed order to the court.