

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

April 29, 2021 at 2:00 p.m.

1.	<u>20-90349</u>-E-11	R. MILLENNIUM TRANSPORT, INC.	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-15-20 <u>1</u>
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SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 1/28/21, the Subchapter V Plan having been confirmed.

Order Confirming Plan filed 2/11/21 [Dckt 133]

The Status Conference is XXXXXXX

APRIL 29, 2021 STATUS CONFERENCE

The court Order confirming the Subchapter V Plan in this case was entered on February 11, 2021. Dckt. 133. No post-confirmation status report was filed by the Debtor who administering the confirmed plan.

At the Status Conference, 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.

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 Debtor in Possession, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2021. By the court's calculation, 51 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) 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 granted.

Primo Farms, LLC, the Subchapter V Debtor and Debtor in Possession in this case has set for hearing confirmation of its Subchapter V Plan (Dckt. 55). The Debtor/Debtor in Possession has complied with the Service and Filing Requirements for Confirmation:

March 9, 2021 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot
Mailed

April 5, 2021 Last Day for Submitting Written Acceptances or Rejections

April 5, 2021 Last Day to File Objections to Confirmation

The Summary of the Classes and creditors acceptance/nonacceptance/failure to cast a ballot is as follows:

Class	Voting	Claim Amount	Claim Treatment/ Percentage Calculation
Class 1 (Unimpaired): Priority Claims	No ballots cast.	N/A	N/A
Class 2 (Impaired): Stanislaus County Tax Collector	No ballots cast.		100% plus 18% interest per annum from the Petition Date, upon the earlier of (a) the close of escrow for the sale of the Modesto real property; or (b) July 31, 2021. The holder of the claim in this class will retain its lien until its claim has been satisfied.
Class 3 (Impaired): Alameda County Tax Collector	No ballots cast.	\$25,491.40	100% plus 18% interest per annum from the Petition Date, upon the earlier of (a) the close of escrow for the sale of the Hayward real property; or (b) July 31, 2021. The holder of the claim in this class will retain its lien until its claim has been satisfied.
Class 4 (Impaired): San Francisco County Tax Collector	No ballots cast.		100% plus 18% interest per annum from the Petition Date, upon the earlier of (a) the close of escrow for the sale of the San Francisco real property; or (b) July 31, 2021. The holder of the claim in this class will retain its lien until its claim has been satisfied.
Class 5 (Unimpaired): Sonoma County Tax Collector	No ballots cast.		The holder of this claim may exercise all legal and equitable remedies it may hold and is unaffected by the Plan.

Class 6 (Unimpaired): United Trustee Services (Mark West Estates Owners Association) (Santa Rosa)	No ballots cast.		The holder of this claim may exercise all legal and equitable remedies it may hold and is unaffected by the Plan. The debtor reserves all defenses it may be entitled to assert.
Class 7 (Impaired): LendingHome Funding Corp.	No ballots cast.	\$224,512.40	100% plus 5.5% interest per annum from the Petition Date, upon the earlier of (a) the close of escrow for the sale of the Modesto real property; or (b) July 31, 2021. The holder of the claim in this class will retain its lien until its claim has been satisfied.
Class 8 (Impaired): LendingHome	No ballots cast.	\$324,498.52	100% plus 5.5% interest per annum from the Petition Date, upon the earlier of (a) the close of escrow for the sale of the Hayward real property; or (b) July 31, 2021. The holder of the claim in this class will retain its lien until its claim has been satisfied.
Class 9 (Impaired): Forethought Life Insurance Co.	No ballots cast.	\$1,242,156.46	100% plus 5.5% interest per annum from the Petition Date, upon the earlier of (a) the close of escrow for the sale of the San Francisco real property; or (b) July 31, 2021. The holder of the claim in this class will retain its lien until its claim has been satisfied.

Class 10 (Impaired): Larry Melton and Don Olmsted	For: 1 Against: 0	\$175,000	100% plus 5.5% interest per annum from the Petition Date, upon the earlier of (a) the close of escrow for the sale of the San Francisco real property; or (b) July 31, 2021. The holder of the claim in this class will retain its lien until its claim has been satisfied.
Class 11 (Impaired): Michael Lambert	No ballots cast.		100% plus 5.5% interest per annum from the Petition Date, upon the earlier of (a) the close of escrow for the sale of the San Francisco real property; or (b) July 31, 2021. The holder of the claim in this class will retain its lien until its claim has been satisfied.
Class 12 (Unimpaired): Harmon Financial Corporation	No ballots cast.		The holder of this claim may exercise all legal and equitable remedies it may hold and is unaffected by the Plan.
Class 13 (Impaired): Non-priority unsecured claims	No ballots cast.		100% plus 5.5% interest
Class 14 (Unimpaired): Membership interests in the Debtor	No ballots cast.		The members in the debtor will retain their membership interests.

The Declaration of Neftali Alberto filed in support of confirmation provides evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Dckt. 65, pg. 1

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

Evidence: Dckt. 65, pg. 1

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

Evidence: Dckt. 65, pg. 2

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. 65, pg. 2

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.

Evidence: Dckt. 65, pg. 2

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: Not applicable

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. 65, pg. 2-3 and Tabulation of Ballots - not all impaired classes have accepted the Plan.

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 not required 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. 65, pg. 3

(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. 65, pg. 3

(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. 65, pg. 4

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. 65, pg. 3

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. 65, pg. 3

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 [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], 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: Not Applicable

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.

Evidence: 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(b).

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.

This section is not applicable.

Trustee's Statement

Walter Dah, the Subchapter V Trustee, filed his Statement in Support of Confirmation. Dckt. 68. The Subchapter V Trustee makes a clear statement of this Plan, concluding, "As Debtor has no on-going operations and no employees, and the Plan provides for post-confirmation liquidation, it appears feasible."

Creditor's Statement

Creditor LendingHome Funding Corp, Wilmington Savings Fund Society, FSB, D/B/A/ Christiana Trust, as Trustee for Pretium Mortgage Acquisition Trust, and Forethought Life Insurance Company, states that there are amendments which everyone has agreed to:

Shortly after the filing of Debtor's Plan of Reorganization on March 3, 2021, Creditor's counsel, with the assistance of the Subchapter V Trustee, contacted Debtor's counsel and, pursuant to the overall policy of consensual and efficient subchapter V plans, proposed revisions to the treatment of Creditors' claims in Debtor's Plan, which Debtor's counsel accepted.

Absent incorporation of these revisions into Debtor's Plan, Creditor believes that the confirmation hearing should be continued to allow Debtor to file an amended plan that does incorporate the negotiated revisions.

Creditors' Status Statement, Dckt. 63.

At the hearing, the amendments were identified as **XXXXXXX**

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.

No creditor has objected to the Plan of Reorganization. Debtor in Possession has presented evidence in support of confirmation. The Plan of Reorganization is confirmed.

Section 1191(b) which governs the confirmation of a subchapter V plan, requires confirmation of the plan “notwithstanding the requirements of [section 1129(a) 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.”

Here, only one creditor has cast a ballot accepting the plan. The remaining impaired classes did not vote all. According to Debtor, the Plan does not discriminate and all creditors will either be paid in full or will be free to exercise all of their legal and equitable remedies against the Debtor. Thus, Debtor submits that the Plan is fair and equitable as to all classes of creditors.

~~————— The court determines that Debtor making a good effort to pay creditors in full, which would be more than if the Debtor were to no longer be under the protections of a bankruptcy case, the plan is fair and equitable.~~

~~————— The Motion is granted that the Subchapter V Plan, as amended to **XXXXXXX**, is confirmed.~~

~~**Counsel for the Debtor/Debtor in Possession shall lodge with the court a proposed order confirming the Plan, to which a copy of the Subchapter V Plan is attached as an exhibit.**~~

Debtor's Atty: David C. Johnston

Notes:

Continued from 4/8/21 to be conducted in conjunction with the confirmation hearing in this case.

Creditors' Status Statement Re: Confirmation of Plan filed 4/21/21 [Dckt 63]

The Status Conference is continued to 2:00 p.m. on xxxxxxx, 2021.

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 Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2021. By the court's calculation, 42 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). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion to Confirm the Plan is continued to 2:00 p.m. on
XXXXX, 2021, for a Scheduling Conference.**

Leslie F. Jensen, the Chapter 12 Debtor in this case has set for hearing confirmation of its Chapter 12 Plan (Dckt. 70).

The Plan calls for payments of \$4,000 per month for a period of 60 months to Michael H. Meyer, Chapter 12 Trustee (the "Trustee"), who will pay expenses of administration in full, nominal priority claims in full, a small partially secured claim of a judgment lien creditor, and 18 cents on the dollar on general unsecured claims totaling \$1,108.234, which are not secured by any assets and not covered by insurance.

Moreover, the Plan calls for all other claims which are secured by the Debtor's assets or the assets of L & L Investments, LLC, a California limited liability company ("L & L") to be unimpaired by the Plan and paid directly by the Debtor or by L & L. According to the Plan, the claim held by Iraj Sabahi, to the extent valid and to the extent of insurance coverage, will be paid by the Debtor's errors and omissions policy and not by the Trustee.

Trustee's Opposition

Trustee filed an Opposition on April 14, 2021. Dckt. 77. Trustee opposes the confirmation on the following basis:

- A. The court should first determine whether Debtor is eligible for relief as a “family farmer” as defined in 11 U.S.C. § 101(18)(a).
- B. Debtor’s plan fails to provide all projected disposable income over the applicable commitment period.
- C. The Plan may have been proposed in bad faith.
- D. The Plan fails the Liquidation test.

Creditors' Objections

On April 15, 2021 Creditors Krista Osmers and her counsel The Dyer Law Firm filed an Objection to confirmation on the basis that:

- A. Debtor is not eligible for chapter 12 relief.
- B. The Plan is not proposed in good faith where Debtor has misrepresented and omitted facts about assets and finances.
- C. Debtor is not committing all of her projected disposable income to the plan.
- D. The Plan is not feasible.

Creditor Iraj Sabahi filed an Objection to the confirmation adopting the same arguments as creditor Krista Osmers and the Trustee. Dckt. 85. Additionally, Creditor Sabahi requests the court permit creditors to conduct discovery on the issues raised in the Objections, such as the value of Debtor’s L&L interest, the value of Debtor’s

DISCUSSION

A court may proceed with the confirmation of a Chapter 12 Plan pursuant to 11 U.S.C. § 1225 provided that:

- 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 [28 U.S.C. §§ 1911 et seq.], 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.

11 U.S.C. § 1225(a).

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.

11 U.S.C. § 1225(b)(1).

Trustee has presented an Opposition. Moreover, two creditors holding judgment-based claims have also opposed confirmation of the case. Both Trustee and Creditor Krista Osmer points the court first to whether Debtor is eligible as a “family farmer” for reorganization under Chapter 12, where Trustee notes that a Status Conference had been set in order to present evidence as to this issue and Creditor Osmer arguing that Debtor is not a family farmer.

This is indeed the threshold question. A Status Conference was held on January 28, 2021, where the court discussed with Trustee, Debtor and various creditors this issue.

According to Debtor, the LLC is the owner of the almond orchard, the farming operation. Debtor owns 50% of the membership interests (subject to restrictions in the operating agreement) and manages the LLC. Debtor asserts that Debtor qualifies as a family farmer entitled to relief under Chapter 12 because the majority of her debt, excluding her residence, is from farming, and because more than 50% of her gross revenue in 2019, the year preceding the filing of this bankruptcy case, was from farming. Moreover, Debtor asserts that 100 percent of the gross revenue of the LLC has been allocated to Debtor for many years and she has fully managed and is accountable for every cent of the gross revenue.

Here, however, Debtor’s income is based on her law practice. As previously discussed, Debtor’s Schedule I stated that she is a self employed attorney with a monthly income of \$5,500 in wages, salary, or commission. At the Status Conference, as it pertained to Debtor’s income, Debtor’s counsel “admitted that the \$5,500 a month does not represent her actual income from her law practice, but a net amount of income after deducting all of the losses assigned to her by the Limited Liability Company in which she is a fifty percent (50%) owner with Debtor’s sister.” *Civil Minutes*, Dckt. 54, at 6.

Debtor does not list any income or cash flow coming from the LLC. Debtor does not provide any financial information concerning the farming operation, whether the current operation is cash flow positive, and whether there is any farming operation for a Chapter 12 reorganization.

In the Motion for confirming the proposed Plan, while explaining that the plan is feasible based on her law practice income, Debtor glosses over the LLC and simply states “Debtor has such large operating losses which are carried forward from L&L that she does not expect to have any federal or state income tax liability for the life of the Plan.” Though there are operating losses that allows the member of an LLC to keep all the positive cash flow tax free, that does not mean that there is not a positive cash flow which is income, for bankruptcy purposes, to fund the plan.

As was also previously discussed at the January 2021 Status Conference, the court stated the following:

In response to Question 46 Debtor states that she has no interest in “any farm- or commercial fishing-related property?” *Id.* at 9.

Going back to Schedule I, Debtor states under penalty of perjury having no other income from any source, with the \$5,500 in “gross wages, salary, and commissions” from her “Employer” Law Office of Leslie F. Jensen, being her only income. *Id.* at 27. Debtor has no income other than from her “employment” as a lawyer. Though stated as “gross wages, salary, and commissions,” Schedule I states that there are no deduction from such “wages” for federal and state taxes, or Social Security tax.

On Form B6I attached to Schedule I, Debtor state that she is an “almond grower” who has been employed for seven years by L & L Investments, LLC. *Id.* at 29. No income from such employment by L & L Investments, LLC is shown on Schedule I.

On Schedule J, Debtor lists (\$10,479) in expenses, which include mortgage, taxes, and maintenance in Alabama, but no provision for payment of income taxes, Social Security taxes, or self-employment taxes (if Debtor is self-employed and not an employee of the “Law Offices of Leslie F. Jensen.” *Id.* at 30-31.

The above information is not changed on the Amended Schedule A/B filed on November 30, 2020, by Debtor, one day after the original Schedule A/B was filed by Debtor. Dckt. 22.

Id., at 4. To this day Debtor has not filed Supplemental or Amended Schedules addressing the court’s comments.

Collier on Bankruptcy provides insight in determining whether Debtor is a “family farmer” and thus eligible for Chapter 12 relief:

The definition of family farmer is divided into two parts. The first applies to individuals, and the second applies to corporations and partnerships. Each sets up a different, though related, test for determining whether individuals, corporations and partnerships qualify as family farmers.

Both have an aggregate indebtedness limitation of \$10,000,000, and require the debtor to be engaged in a farming operation at the time that the case is commenced. **If the case involves an individual, the farming operation must be owned and operated by such individual or by such individual and such individual’s spouse.** If the case involves a corporation or partnership, the entity must be engaged in a farming operation and the farming operation must be conducted by a family that owns, either alone or in conjunction with relatives, more than 50 percent of the stock of the entity. **For both individuals and entities, there is a further requirement that not less than 50 percent of the debtor’s noncontingent, liquidated debts at the commencement of the case, other than debts for a dwelling used as a principal residence, must arise out of the debtor’s farming operation.**

An individual debtor must fulfill one additional test. The individual debtor must have received from his or her farming operation at least 50 percent of such individual's gross income during the taxable year preceding the year in which the petition was filed or during each of the second and third taxable years preceding the year in which the petition was filed.

2 Collier on Bankruptcy P 101.18 (16th 2021) (Emphasis added.).

As explained in Collier,

To satisfy the farm income test, **an individual must have received at least 50 percent of such individual's gross income from the individual's farming operation** during the taxable year immediately preceding the taxable year in which the petition was filed or during each of the second and third years preceding the taxable year in which the petition was filed.

2 Collier on Bankruptcy P 101.18 (16th 2021) (Emphasis added.).

Finally, relevant to the case at hand,

Determining whether the farm income test has been fulfilled requires the court to first determine the amount of the debtor's gross income during the relevant tax year and then to determine the portion of that income attributable to the debtor's farming operation.

2 Collier on Bankruptcy P 101.18 (16th 2021).

In defining "gross income," the court cites to *In re Sandifer*, where as the bankruptcy court held that:

For purposes of determining whether Chapter 12 debtors met 50 percent of gross income requirement in 11 USCS § 101(18), court looked to definition of gross income in 26 USCS § 61 and determined that gross income reported by their limited liability company (LLC), which was formed by debtor husband and his son for their farming operation, should pass through to members and be considered income of those members; as result of attributing farm income reported by LLC to debtors, they earned at least half of their gross income from farming operation and met definition of "family farmer" in § 101(18) for purposes of their eligibility under 11 USCS § 109(f). *In re Sandifer*, 448 B.R. 382, 2011 Bankr. LEXIS 1410 (Bankr. D.S.C. 2011).

11 USCS § 101 (120. —Gross Income.)

In this case, the court the turns to Debtor's Statement of Financial Affairs, Docket 21, which provides the following information:

For last calendar year: (January 1 to December 31, 2019)	Operating farm - gross	\$486,671.00
	Operating law firm - gross	\$451,023.00
For last calendar year: (January 1 to December 31, 2018)	Operating farm - gross	\$542,226.00
	Operating law firm - gross	\$396,058.00

Statement of Financial Affairs, at 34. (No income has yet been provided by the year 2020.) Thus, it seems Debtor meets the income criteria where the farming operation's gross income, which she has testified is 100% attributable to her, is higher than the gross income for her law practice.

Debtor however has not provided the net income of the farming operation. The only net income provided is that for the law practice as stated in Debtor's Schedule I and discussed above. In her Declaration in support of confirmation, Debtor testifies:

The only net income I have is from my law practice[.]

Declaration, Dckt. 71, ¶ 9.

This statement may be taken to have two meanings: (a) either the farming operation does not generate cash flow and Debtor is covering the farm's losses with her law practice income or (b) by "net income" Debtor means taxable income. Debtor's counsel has previously referred to "operating losses" as it pertains to the farming operation and notwithstanding these losses, it is possible that there is net income coming from the farming operation and if so additional income that could fund the plan. As already noted, Debtor has not filed neither Amended nor Supplemental Schedules providing for farming income. Debtor has failed to provide financial information as it pertains to the farming operation which would be relevant as to the feasibility of the Chapter 12 Plan.

Turning to Creditor's objection related to Debtor's expenses. The court had previously noted an expenses issue at the January 28, 2021 Status Conference:

On Schedule J, Debtor lists (\$10,479) in expenses, which include mortgage, taxes, and maintenance in Alabama, but no provision for payment of income taxes, Social Security taxes, or self-employment taxes (if Debtor is self-employed and not a true employee of the "Law Offices of Leslie F. Jensen," which employer pays such taxes. *Id.* at 30-31.

Civil Minutes, Dckt. 54, at 4. As noted by Creditor, in reviewing Debtor's Schedules I and J, Debtor's income of \$5,500.00 minus expenses in the amount of \$10,479.00, there is a shortage of (\$4,979.00). In her Declaration in support of confirmation, Debtor states that as she is 65 years old and, if necessary, she will apply for Social Security benefits and would receive approximately \$2,500. Declaration, Dckt. 71, at ¶ 20. This additional income would still not be sufficient to cover her scheduled expenses.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Discovery

The parties have requested discovery in order to address the various financial issues relevant to this confirmation and assets which may not have been properly accounted for. Federal Rule of Bankruptcy Procedure 9014(c) incorporates Rules 28 through 37 of the Federal Rules of Civil Procedure and the court will set a discovery schedule in this Contested Matter.

The court sets the following schedule for discovery:

- a. Discovery in this Contested Matter may be commenced immediately.
- b. Expert Witnesses shall be disclosed on or before **XXXXXX xx, 2021**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **XXXXXX xx, 2021**.
- c. **Non-Expert** Discovery closes, including the hearing of all discovery motions, on **XXXXXX xx, 2021**.

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 Confirm the Chapter 12 Plan filed by Leslie F. Jensen ("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 hearing on the Motion to Confirm is continued to **xx:xx x.m.** on **XXXXXX xx, 20xx** for a Scheduling Conference.

IT IS FURTHER ORDERED that:

- a. Discovery in this Contested Matter may be commenced immediately.
- b. Expert Witnesses shall be disclosed on or before **XXXXXX xx, 2021**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **XXXXXX xx, 2021**.
- c. **Non-Expert** Discovery closes, including the hearing of all discovery motions, on **XXXXXX xx, 2021**.

FINAL RULINGS

5. [20-90107](#)-E-7

PAUL DASILVA

[20-9004](#)

WRIGHT ET AL V. DASILVA

CONTINUED STATUS CONFERENCE

RE:

AMENDED COMPLAINT

5-26-20 [\[11\]](#)

Final Ruling: No appearance at the April 29, 2021 Status Conference is required.

Plaintiffs' Atty: Donna T. Parkinson; Steve M. Defilippis
Defendant's Atty: Jessica A. Dorn

Adv. Filed: 4/28/20
Answer: 6/24/20
Amd. Cmplt. Filed: 5/26/20
Answer: 6/24/20

Nature of Action:
Dischargeability - other

Notes:

Continued from 1/28/21. Updated status reports to be filed on or before 4/22/21 advising the court of the status of the State Court litigation.

[PP-2] Order Approving Ex Parte Application to Approve Stipulation to Lift Discovery Stay to Take Marijuana Expert Depositions filed 2/2/21 [Dckt 39]

Plaintiffs' Status Conference Statement filed 4/15/21 [Dckt 41] [requests extension of 3 months]

The Status Conference is continued to 2:00 p.m. on August 19, 2021.

APRIL 27, 2021 STATUS CONFERENCE

On April 26, 2021, counsel for Defendant-Debtor filed a Supplemental Initial Status Conference Statement. Dckt. 43. Counsel reports that the Parties have settled the litigation that was set to go to trial in Superior Court and a written agreement has been signed. It is anticipated that the payment of the Settlement amount will take at least three months, and a continuance of that period is requested. Counsel for Defendant-Debtor states that Plaintiff and Defendant-Debtor are requesting the continuance.

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 by the Court, counsel for Defendant-Debtor having filed a Supplemental Interim Status Report (Dckt. 43) advising the court that the dispute has been settled and requesting a continuance of the Status Conference, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on August 19, 2021.

SUBCHAPTER V

Final Ruling: No appearance at the April 29, 2021 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Continued from 1/28/21 [Dckt 82]

Operating Reports filed: 4/13/21

Chapter 11 Status Conference Statement [by Creditor, Scott R. Williams and Anastasie C. Martin Trustees of The William Trust Dated August 19, 2014] filed 2/8/21 [Dckt 84]

[RDW-1] Motion to Dismiss Case and/or Motion to Convert continued to 5/20/21 at 10:30 a.m. [Minutes, Dckt. 98]

[RAC-3] Order granting motion to sell property [5412 Kiernan Avenue, Salida, CA] filed 3/17/21 [Dckt 103]

Status Conference Statement [by Subchapter V Trustee] filed 4/15/21 [Dckt 106]

[RAC-4] Application for Authorization to Employ R. Clifford & Associates as Substitution Counsel for Blakeley LLP as Counsel to the Subchapter V Trustee filed 4/15/21 [Dckt 108]

The Status Conference is continued to 2:00 p.m. on July 29, 2021.

APRIL 29, 2021 STATUS CONFERENCE

The Subchapter V Trustee filed an updated Status Report on April 15, 2021. Dckt. 106. The Debtor in Possession has been removed as such in this case and the Subchapter V Trustee given the full powers of a Chapter 11 trustee. Order, Dckt. 54.

The Subchapter V Trustee recounts the trail of his efforts to sell the property of the Bankruptcy Estate and conduct of the Debtor and Ms. Cruz alleged to impede the Trustee's administering this and other property of the Bankruptcy Estate. The Trustee's Report concludes with:

Next Steps

The Trustee expects the sale of the Property to timely close, at which time the Trustee intends on filing a motion to pay the claims of the estate, in full, with interest. With all of the claims of the estate having been paid in full, a dismissal of the case would be in order, as there will be a sizeable dividend to the

Debtor. However, the U.S. Trustee will be provided with all of the documentation regarding the wrongdoing that the Debtor and/or Cruz are responsible for. Optimally, the License would be sold to the buyer of the Property, with all proceeds going to the Court's fund as a sanction, but before expending further estate resources on the matter, the Trustee will defer first to the U.S. Trustee.

Upon reviewing the file, considering the updated Status Report, and no other reports filed by any creditors or the Debtor, the court continues the Status Conference. The court perceives no benefit, and only unnecessary cost and expense, for having persons appear at a status conference.

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 SubChapter V Status Conference having been scheduled, the Subchapter V Trustee filing his updated Status Report, the sale of property of the estate in process, upon review of the filed in this case, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on July 29, 2021.