

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 11, 2023 at 11:00 a.m.

1. [23-20518-E-7](#)

AMBER RANKINS
Pro Se

**CONTINUED TRUSTEE'S MOTION TO
DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING
3-20-23 [\[20\]](#)**

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 Debtor (*pro se*) and Office of the United States Trustee on March 22, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<p>The Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.</p>

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that Amber Marie Rankins ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for April 27, 2023 at 8:00 a.m. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

The Debtor filed her Notice of Hearing and Opposition to the dismissal of this case. Dckt. 22. In the Opposition Debtor stated that she was unaware that she was “supposed to be at a court hearing,” and that she would “never intentionally not show up.”

The continued Meeting of Creditors is set for April 27, 2023, at 11:00 a.m., the same date and time as the hearing on this Motion to Dismiss.

The court continues the hearing on the Motion to Dismiss to 11:00 a.m. on May 11, 2023, to allow the Trustee to conduct the continued First Meeting of Creditor and consider whether the Trustee seeks dismissal of the case, whether the hearing needs to be further continued, and suggested dates for the extended deadlines for parties to file actions under 11 U.S.C. § 523, § 707, and § 727.

Any deadlines for the forgoing are initially extended through and including June 12, 2023.

Trustee’s 341 Meeting Report

Trustee’s April 27, 2023 Docket Entry indicates Debtor appeared at the April 27, 2023 Meeting of Creditors. The Report states the Meeting is continued to May 8, 2023 at 8:00 a.m.

Given Debtor has appeared, Trustee’s grounds for dismissal are resolved.

~~—————The Motion is denied.~~

~~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 Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris (“Trustee”), having been presented to the court, Debtor Amber Rankins having filed her Opposition, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~—————**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.~~

Debtor's Atty: Mark A. Wolff

Notes:

Continued from 4/5/23, the court ordering the Parties in Interest to file supplemental points and authorities on what constitutes farming operations for a debtor to qualify as a family farmer and be eligible for relief under Chapter 12.

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MAY 11, 2023 STATUS CONFERENCE

As addressed in the Minutes from the April 5, 2023 Status Conference, the issue has been raised whether Debtor qualifies as a Chapter 12 Debtor. Supplemental pleadings have been filed by the Debtor.

Congress provides in 11 U.S.C. § 109 and the definitions in 11 U.S.C. § 101 of who and what may be a debtor in a Chapter 12 case. With respect to individual debtor, the relevant provisions are [emphasis added]:

(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).

(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; . . . [remainder of definition is for a corporation or partnership as a “family farmer”]

11 U.S.C. § 101(18)(A).

(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.**

11 U.S.C. § 101(19).

(21) The term “**farming operation**” **includes** 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.

11 U.S.C. § 101(21).

The definition of “farming operation” describes activities of what one traditionally thinks of as farming - out in the field tilling the soil, producing crops or livestock, and the like.

Original and Supplemental Materials Filed by Debtor/Debtor in Possession

On March 22, 2023, Debtor/Debtor in Possession filed his first Declaration providing testimony relating to his eligibility to file a case as a Chapter 12 debtor. Dckt. 29. With respect to his debtor, Debtor testifies (identified by paragraph number used in the Declaration:

The debt owed to Umpqua Bank totals (\$1,492,350) which is secured by the real estate that is Debtor’s farm and residence. *Id.*, ¶ 4.

Debtor owes monies to several companies for debts relating to his farming operation: Commercial Equipment Lease Corp, (\$75,000); Holt of California \$44,500; and Susquehanna Commercial Finance, (\$115,000). *Id.*, ¶ 5.

The debt of (\$256,148.37) to Jana Properties, LP and Jack Faraone and Janet Wright, is a result of Debtor purchasing 75 acres of land for farming operations. *Id.*, ¶ 7.

The debt of (\$56,606) owed to the California Department of Tax and Fee Administration is for taxes due for timber from Debtor’s property. *Id.*, ¶ 9.

Debtor is a “professional forester.” *Id.* ¶ 11. His income comes from three main sources: (1) sale of timber and “related products” from his land; (2) Consulting work for third-parties; and (3) Grants from the USDA National Resources Conservation Service and the California Department of Food and Agriculture for implementing conservation plans for Debtor’s property and third-parties as part of his consulting services. *Id.*, ¶¶ 12-14.

Debtor testifies that his income has been:

For 2020 Debtor had \$13,723 Social Security income, \$16,676 unemployment compensation. *Id.* ¶¶ 16-17. Additionally, \$180,557 of the \$192,648 in business income was from sale of timber and logging operations. *Id.*, ¶19.

For 2021 Debtor had \$13,920 in Social Security Income. *Id.*, ¶ 21. Of Debtor's \$173,879 in business income in 2021, \$51,814 was from sale of "timber and products" and \$61,102 for services provided to others as a professional forester. *Id.* ¶ 22(a), (b).

In 2021 Debtor also had \$60,963 in income from a USDA Grant for a conservation plan on Debtor's Property.

For 2022, Debtor had \$14,795 in Social Security income. *Id.*, ¶ 24. Debtor states he had "farm related income" in 2022 of \$116,265," but does not identify what was from timber sales from his Property and what was from third-party consulting services. Debtor also received \$10,000 in California Department of Food and Agriculture Grant. *Id.*, ¶ 25 - 26.

Supplemental Declaration

On May 2, 2023, Timothy Wilson, the Debtor/Debtor in Possession filed his Supplemental Declaration to provide information about his meeting the requirements to be a Chapter 12, Debtor. Dec.; Dckt. 40. This testimony includes the following (identified by paragraph number in the Declaration):

Debtor/Debtor in Possession entered into a Conservation Program Contract with the US Department of Agriculture in July 2020. He is filing a Draft Practice Map and Conservation Map Plan. This map outlines Debtor/Debtor in Possession's Property and the practices that are to be performed on the Property. *Id.*, ¶ 1.

In 2021 the Debtor received \$60,963 from the USDA Natural Resources, from the total of \$80,385 available from the July 2020 Conservation Program Contract. *Id.*, ¶ 2.

The conservation treatment to be done on the Debtor/Debtor in Possession's Property includes: Brush Management, Tree/Shrub Site Preparation, Tree/Shrub Establishment, Woody Residue Treatment, Forest Stand Improvements, and Tree/Shrub Pruning. *Id.*, ¶ 3.

The \$60,963 from the 2020 Conservation Program Contract was received in 2021. Due to health issues the Debtor could not complete the work in 2022 due to health issues and the wet Spring in 2022. *Id.*, ¶ 4.

The work performed under the 2020 Conservation Program Contract is "all to maintain and improve the health, productivity, and quality of the products." [What constitutes "the products" is not identified.] *Id.*, ¶ 5.

The term "Custom Hire" on Debtor's tax returns relates to work performed for others related to forestry. This includes: preparation of forest management plans, preparation of grants, and implementation of grants and forest management plans. In some cases Debtor might also perform the actual harvesting, pruning, and other site preparation work. *Id.*, ¶ 6.

Conservation Program Contract

A copy of the 2020 Conservation Program Contract is provided as Exhibit 13. Dckt. 41. The Agreement expires December 31, 2023. The Agreement states that it is to “implement and/or maintain specific conservation practices.”

No legal analysis or points and authorities have been provided by Debtor/Debtor in Possession.

Chapter 12 Trustee Points and Authorities

On May 4, 2023, Michael Meyer, the Chapter 12 Trustee, filed his Points and Authorities addressing the Debtor’s eligibility to file a Chapter 12 bankruptcy case. Dckt. 43. These points include (identified by page and line number in the Points and Authorities).

The Trustee summarizes and breaks out into a more reader friendly format the requirements of 11 U.S.C. § 101(18)(A):

To be determined a family farmer as defined in 101(18)(A) there are four tests that must be met. For an individual or individual and spouse the Court must find.

- (1) The Debtor or Debtors and spouse are engaged in a farming operation.
- (2) The Aggregate debts are not more than \$11,097,350.00.
- (3) Not less than 50% of the debts arise out of a farming operation excluding the principal residence.
- (4) More than 50% of the gross income is derived from farming operations.
 - a. In the last taxable year, or
 - b. Last two taxable years.

Id., p. 2:8-16.

The farming operation identified by Debtor is that of a “professional forester.” *Id.*, p. 2:19-20.

The Debtor’s aggregate debts are (\$2,081,117.81), well under the (\$11,097,015) statutory maximum. *Id.*, p. 2:21-23.

While the Debtor states his conclusion that more than 50% of his total debts are primarily farm debt, he provides no evidence supporting such conclusion. *Id.*, p. 2:24-28.

The Trustee disputes that more than 50% of the Debtor’s income came from farming operations. The Trustee identifies from Debtor’s 2021 tax returns that he had \$51,814 of income from farming operations. Debtor then stated \$61,102 from “Custom Hire” income and \$60,963 from “other” (which appears to be the grant monies. By the Trustee’s calculation, only 27% of the income is from “farm income.” *Id.*, p. 3:4-15.

The Trustee points out that the Debtor has offered no legal authority that providing professional consulting services to others or receiving grants relating to the real property is income “derived from farming operations.” The Trustee identifies one seven, non-exclusive, factor test, which consists of:

1. Whether the location of the operation would be considered a traditional farm.
2. The nature of the enterprise at the location.
3. The type of product and its eventual market.
4. The physical presence or absence of family members on the farm.
5. Ownership of traditional farm assets.
6. Whether the debtor is involved in the process of growing or developing crops or livestock;
and
7. Whether or not the practice or operation is subject to the inherent risks of farming.

Citing *In re Rosenberger*, No. 20-50093, 2020 WL 6940926, (Bankr. W.D. Va. Sept. 29, 2020). *Id.*, p. 3:25-28, 3:1-8.

The Trustee takes exception to Debtor claiming his third-party consulting work as “income from a farming operation. The Trustee cites to a decision in this District from 2006 specifically addressing the question of what is a “farming operating.” In that case, the Hon. Michael S. McManus states:

A farming operation "includes 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." See 11 U.S.C. § 101(21). While the use of the word "includes" indicates that section 101(21) is not meant to be an exhaustive definitional list, to be considered a farmer a debtor must be engaged in an activity that subjects the debtor to the risks traditionally associated with farming. See *Armstrong v. Corn Belt Bank (In re Armstrong)*, 812 F.2d 1024 (7th Cir. 1986) (rental of farmland is not considered a farming operation because the debtor bore none of the traditional risks associated with farming).

Section 101(18) requires that a family farmer be "engaged" in a farming operation. By requiring a debtor to be engaged in a farming operation, Congress limited chapter 12 eligibility to true farmers and excluded speculators and investors who use farm losses to shelter non-farm income.

In re Gibson, 355 B.R. 807, 809-810 (Bankr. E.D. Cal. 2006).

The Trustee asserts that Debtor’s consulting and third-party work does not have any of the risks traditionally associated with farming. Debtor is required to prepare plans, interact with governmental agencies, and help other get grants for their possible farming operations.

The Trustee also takes exception to the Debtor asserting that Grant Monies received are income from farming operations. The Trustee provides the following listing of cases discussing what does not constitute “farm operations:”

In re McNeal, 848 F2d 170 (11th Cir.1988) (Debtor's operation of a chicken coop cleaning service and sale of manure for fertilizer did not constitute a “farming operation”); *In re Watford*, 92 BR 557 (Bankr.M.D.Ga.1988) (Business of catching and selling stone crabs and business involving storage of soybeans while awaiting sale did not constitute “farming operations”); *In re Maschhoff*, 89 BR 768 (Bankr.S.D.Ill.1988) (Income derived from rental of farm houses located on debtor's land did not constitute “income from farming operations”); *Matter of Armstrong*, 812 F2d 1024 (7th Cir.1987) (Merely leasing farm land to others does not constitute farming); *In re McKillips*, 72 BR 565 (Bankr.N.D.Ill.1987) (Boarding, raising, training and showing horses owned by others does not constitute farming operations) and *In re Dakota Lay'd Eggs*, 57 BR 648 (Bankr.D.ND.1986) (Income derived from sales of eggs purchased from independent farmers was not income of a “farming operation”).

No citation is provided for what appears to be a quotation from a case or treatise.

Analysis of Farmer and Farm Operations

A theme running through all of the reported cases is that determination of whether a person is a family farmer and what is a farming operation is based on the totality of the circumstances and whether the farming operations generated the income. The court in *In re Rosenberger*, 2020 Bankr. LEXIS 2580 (Bankr. W.D. Vir. 2020), cited to a published decision from Oregon, *In re Osborne*, 323 B.R. 489, 494 (Bankr. D. Or. 2005) stating the factors discussed by the Trustee above. The court reviews these factors and provides it's statements of how they apply to this Debtor as follows:

1. Whether the location of the operation would be considered a traditional farm.

To the extent that Debtor's consulting services relate to land use for farming, rather than merely vacate land being maintained for the beauty of nature or a future housing or commercial development, they locate of the property to which the consulting would relate could be “land used for traditional farming.” But the court has not been presented with evidence that Debtor's consulting work is done on what traditionally has been a “farm,” i.e. tilling soil, herding cows, collecting eggs, pruning trees, picking fruit and the like. Rather, Debtor could likely be spending substantial time in his air conditioned office, in the same manner as the attorney for a Chapter 12 farmer represents the Chapter 12 Debtor in Possession.

For 2021, Debtor states that for the \$187,799 in income (not including \$60,963 of Grant money), \$51,814 of Debtor's income was from timber operations on his own property. That is 27.6% of the income coming from farming operations on Debtor's Property.

For 2022, Debtor does not identify what portion of the \$131,060 in income (excluding Grant monies) came from his farming operation and what came from providing consulting services to third-parties.

The court discusses the nature of the “Grant monies” below.

2. The nature of the enterprise at the location.

Debtor has show that there is some timber operations on his property, which appears to account for less than 30% of Debtor's income. Debtor has not shown where and how he does his consulting work, and how such work is being done on "farm property," as opposed to relating to "farm property" in the manner as would the attorney for a Chapter 12 debtor being doing work relating to "farm property."

3. The type of product and its eventual market.

For more than 30% of Debtor's income, the "product" being produced are grants, paper/electronic reports, emails, communications, and the like. Debtor provides professional services to farmers, much as an attorney, accountant, or veterinarian would, but does not engage in "farming operations" in providing those services which generate the vast majority of Debtor's income.

4. The physical presence or absence of family members on the farm.

While the Debtor is on his land which he states generates less than 30% of his income, the evidence does not show that Debtor's consulting operations is requiring any substantial physical presence on any of the farms for which he generates his consulting income.

5. Ownership of traditional farm assets.

Debtor does own some traditional farm assets, such as "chainsaws, splitter, and water tank." Schedule A/B, ¶ 40; Dckt. 1. Also, a "Cat 4D - 2000, road grader - 100, disc - 300, fence posts - 1000, and irrigation pipe - 1000. This is consistent with his "farming operation" of selling trees and tree products from the land he owns. If he provides the use of this equipment to third-parties, then that is in the nature of being the renter of equipment for compensation.

He does also list having office equipment consisting of "Computer, printer, desk, files, chair." *Id.*, ¶ 39. These appear to be "tools" necessary for providing his consulting services that generate the majority of his income.

6. Whether the debtor is involved in the process of growing or developing crops or livestock;

For this point, Debtor does state he harvests timber and timber products from the Property he owns. This is less than 30% of Debtor's income.

and

7. Whether or not the practice or operation is subject to the inherent risks of farming.

The sale of timber and timber products could be subject to some inherent risks of farming - flood, drought, fire, and the like. However, there is no evidence presented showing that the income generated from being a consultant to third-party farmers and non-farmers has any risks inherent with farming. Debtor

provides his professional consulting services to third-party farmers, much as the Chapter 12 attorney does, and then gets paid without regard to whether the “crops come in.”

With respect to the Grant money, it comes in without any risks of farming operations. The money is used to make environmental improvements to the property, not for farming operations.

Debtor advances the argument, unpersuasively, since he as a professional provides professional services to persons who are farmers, then he to is a farmer. No, he is a professional providing professional advice and service to other who are the farmers, do the farming, and take on all the risks of farming.

At the Status Conference, **XXXXXXX**

APRIL 5, 2023 CHAPTER 12 STATUS CONFERENCE

On March 22, 2023, the Debtor in Possession filed a Status Report. Dckt. 28. In the Status Report, the Debtor in Possession provides an analysis of Debtor’s eligibility for prosecuting a case under Chapter 12. Debtor’s business is as a “professional forester.”

The Chapter 12 Trustee filed his Status Report on March 30, 2023. Dckt. 32. With respect to eligibility as a Chapter 12 Debtor, the Trustee calls into question the following elements, asserting:

A. The Debtor in Possession has not provided evidence that more than fifty percent (50%) of the debt is from farming operations in the second and third year preceding the commencement of this Bankruptcy Case.

B. The Chapter 12 Trustee raises the same question for Debtor’s income being more than fifty percent (50%) for the second and third year preceding the commencement of this Bankruptcy Case.

1. The Trustee’s computation that in 2021 the Debtor had \$51,814 in farm income and \$138,026 in income from non-farming sources.

C. The Trustee states that there is not evidence and legal authority that Custom Hire and Other Income is from a farming operations.

At the Status Conference, counsel for the Debtor in Possession provided analysis of the information provided in the Debtor in Possession Status Report. Dckt. 32, 33.

The Trustee questions whether more than 50% of the income was from farming operation. The Trustee points to Debtor’s hire income for farming work on other income and the grant income.

At the Status Conference the court and counsel for the respective parties addressed the legal question of whether the activities stated by the Debtor/Debtor in Possession at the First Meeting of Creditors and the Debtor in Possession in the Status Report and supporting Declaration (Dckts. 28, 29).

The court continues the Status Conference and orders the Parties in Interest to file supplemental points and authorities on what constitutes farming operations to for a debtor to qualify as family farmer and be eligible for relief under Chapter 12.