

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Sacramento, California

**May 11, 2023 at 11:30 a.m.**

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<b>1.</b>	<b><u>22-23180-E-12</u></b> <b><u>DWL-1</u></b>	<b>HARDAVE/SUKHBINDER DULAI</b> <b>Bruce Dwiggin</b>	<b>CONTINUED MOTION TO CONFIRM</b> <b>CHAPTER 12 PLAN</b> <b>3-9-23 [36]</b>
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**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.

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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 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Confirm the Plan is denied, and the Plan is not confirmed.</b>
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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>

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

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.

### **Tehama County Treasurer and Tax Collector's Objection**

Creditor Tehama County Treasurer and Tax Collector ("Tehama County") filed a limited objection on April 24, 2023. Dckt. 61. Creditor opposes on three grounds:

1. The Plan does not include Tehama County's unpaid taxes from the 2022-23 year.
2. The Plan miscalculates Tehama County's 2021-22 unpaid property taxes.

3. The Plan refers to Tehama County's secured tax claim as an unsecured priority claim. Tehama County has a secured claim in the amount of not less than \$67,719.90.

Tehama County's Proof of Claim, Proof of Claim 15-1, evidences the secured claim and tax obligations for both the 2021-22 year and 2022-23 year.

### **AgWest Farm Credit, PCA's Objection**

Creditor AgWest Farm Credit, PCA ("AgWest") filed an objection on April 27, 2023. Dckt. 64. AgWest opposes on four grounds:

1. Debtor's Plan provides for AgWest as a secured claim. However, Debtor is liable to AgWest on a lease, not a secured claim. The Plan does not propose to assume or reject the lease, nor does the Plan propose to cure lease defaults. AgWest's Proof of Claim, Proof of Claim 9-1, evidences the liability is a lease, not a secured claim.
2. The Plan is not proposed in good faith and by means not forbidden by law since Debtor is trying to treat AgWest's claim as a secured claim, not a lease.
3. If Debtor plans to assume and cure the lease defaults, their projections show they do not have enough money to cure the defaults given other Plan commitments.

The amount necessary to cure the default as of the date of the Petition is \$26,761.52. Proof of Claim 9-1.

4. If Debtor is going to reject the lease, and AgWest is to be treated as an unsecured claim, Debtor needs to provide all disposable income and meet the best interest of creditors test. AgWest states "[t]here is meager evidence submitted to indicate the Debtors are complying with these provisions and as the plan proponent, the Debtors bear the burden of proof." Opposition, Dckt. 64 at 3.

### **Trustee's Opposition**

Chapter 12 Trustee, Michael H. Meyer, ("Trustee") filed an opposition on April 27, 2023. Dckt. 68. Trustee provides Debtor's proposed changes to the Plan. However, Trustee indicates that they are unable to assess whether a confirmable Plan can be file until Creditor Met Life files its objection. Debtor's proposed changes are the following:

1. Class 1
  - a. Priority Claims

2. EDD \$4,917.16 - Debtor will file an objection to claim in its entirety
3. Class 2
  - a. Secured Vehicle Claims:
    - i. Creditors with Claims:
      - (1) Bank of America (2017 Ram)
      - (2) Chase Auto (2020 Ram)
      - (3) Diversified Financial Services
      - (4) School First (2017 Ram)
    - ii. Proposed Treatment:
      - (1) Amount of their claim with varying interest rates
  - b. Property Tax Claims
    - i. Counties with Claims:
      - (1) Butte County
      - (2) Sutter County
      - (3) Tehama County
    - ii. Proposed Treatment:
      - (1) Amount of their claim with 18.00% interest
  - c. AgWest Lease
    - i. Proposed Treatment:
      - (1) Will apply funds on hand immediately to back payment and Debtors will make next rent payment when it comes due next year under the contract terms. Debtors will pay the remaining default between now and when next rent comes due. AgWest has relief from the stay, but will forbear until there is a payment default.

4. Class Three/Four
  - a. Metropolitan Life Insurance Company - Secured Claim in Real Property
    - i. Proposed Treatment:
      - (1) Pre- and post- petition arrearages:
        - (a) Pre-petition arrearages - \$293,641.83
        - (b) Post-petition arrearages - \$147,823.52
        - (c) Debtors will make monthly arrearage payments to both
      - (2) Ongoing contractual payments:
        - (a) Paid semi-annually
5. Class Five
  - a. Unsecured Claims
    - i. Proposed Treatment:
      - (1) Will be paid \$2,111.26 over 36 months starting in month 25
6. Class Six
  - a. None
7. Class Seven
  - a. None

The above appears to resolve Creditor Tehama and AgWest's Objections. However, the Trustee remains concerned regarding the following:

- A. Debtor's filed plan fails to provide payments that will satisfy the claims amount with interest over the Plan period.
- B. Debtor has not provided a breakdown of anticipated expenses for 2023.



## **Metropolitan's Objection**

Creditor holding a secured Claim Metropolitan Life Insurance Company ("Metropolitan") filed an objection on April 27, 2023. Dckt. 70. Creditor objects on the following grounds:

1. The Plan is not feasible:
  - a. There are no *pro formas* showing income and expenses for the period of the Plan.
  - b. The two monthly operating reports, when annualized, demonstrate the Plan is not feasible.
  - c. Debtor provides a bare bones projection of income for 2023 with no correlating projection of expenses.
  - d. Claims of Metropolitan and Tehama were understated.
2. Interest Rate of Metropolitan:
  - a. The Plan reduces the default interest rate. Metropolitan claims the proper rate is the *Till* rate of 9%.
3. Plan terms are silent as to the following:
  - a. What are the loan terms at the end of the Plan?
  - b. How will Debtors pay attorney's fees and other expenses that Debtors are required to pay under the loan terms?

## **Sutter County's Objection**

Sutter County Tax Collector ("Sutter County"), holding a secured tax claim, filed an objection on April 27, 2023. Dckt. 74. Sutter County objects on the following grounds:

1. The Amended Plan did not provide for payment in full of Sutter County's secured claim.
2. The Amended Plan did not provide for an interest rate of 18% per annum.
3. The Amended Plan did not provide for Sutter County to retain its lien.

Debtor's proposed changes, docketed in Trustee's Objection, Dckt. 68, appears to resolve the above objections.

## DISCUSSION

Although Debtor's proposed changes listed in Trustee's objection appear to resolve most of the objecting creditors' issues, the court has concerns as to the feasibility of the plan. Even if Debtor's proposed changes were incorporated, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1225(a)(6).

Debtor's states 2022 left them with two unexpected crop problems led them to unfortunate financial times. Plan, Dckt. 37 at 4-5. Debtor's income relies on crops, and states an unexpected late winter freeze and drop in the walnut market had a major affect on cash flow for 2022 and the beginning of 2023. *Id.*

Debtor states 2023 cash flow "is looking more robust." *Id.* To evidence this, Debtor's Declaration states, "after carefully reviewing our projected finances for harvesting of the various fruit and nut crops we farm, we feel that we will be able to make the payments scheduled under the terms of the Chapter 12 Plan . . . ." Declaration, Dckt. 39 ¶ 7(e). Debtor does not provide evidence of these projected finances.

Additionally, Debtor states their pistachio orchard, planted back in 2020, will begin to bear fruit in 2024 and will be fulling producing in 2026. Debtor does not provide an estimate of the yearly cash flow of the pistachio crops. Therefore, the court is unable to assess the feasibility in the pistachio farm helping to fund the Plan.

Debtor's Monthly Operating report for January 2023 indicates Debtor's Farm and Household Expenses totaled \$31,530.23, while their receipts only totaled \$3,676.63, all of which were from outside wages. Dckt. 42. Debtor's Monthly Operating Report for February 2023 indicates Debtor's Farm and Household expenses totaled \$36,83.03, while their receipts only totaled \$21,993.19. Dckt. 43. Negative cash flow indicates a lack of feasibility in being able to fund the Plan.

Although January and February are not peak harvesting months, given Debtor's own admission that last year's crop had two unexpected emergencies, Debtor should provide more evidence as to cash flow projections for the life of the Plan. Without such, the court cannot assess the feasibility of the Plan.

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

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 to Confirm the Plan is ~~denied, and the proposed Chapter 13 Plan is not confirmed.~~

Debtors; Atty: Bruce Dwiggins

Notes:

Continued from 4/13/23 to be heard in conjunction with the continued Motion to Confirm Chapter 12 Plan.

Trustee Report at 341 Hearing lodged 4/14/23

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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### **MAY 11, 2023 STATUS CONFERENCE**

The May 11, 2023 Status Conference was conducted in conjunction with the hearing on the confirmation of Debtor's Proposed Chapter 12 Plan. XXXXXXX

### **APRIL 13, 2023 STATUS CONFERENCE**

The court's review of the Docket discloses that Amended Schedules were filed on April 11, 2023. Dckt. 55. Counsel for the Debtor in Possession reported that there on ongoing discussions about resolving plan issues. The Chapter 12 Trustee reported that the First Meeting of Creditors has been continued to April 14, 2023.

### **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:

<b>Debtor Hardave Dulai</b>		<b>Debtor Sukhbinder Dulai</b>
	<b>2022 Income (11 Months)</b>	
\$0.00	Wages	\$0.00
\$0.00	Operating a Business (Gross Income)	\$0.00
	<b>2021</b>	
\$0.00	Wages	\$0.00
\$927,032.00	Operating a Business (Gross Income)	\$0.00
	<b>2020</b>	
\$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.