

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**June 20, 2024 at 11:30 a.m.**

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1. [24-21710-E-11](#)      **SWANSTON OAK, LLC**      **STATUS CONFERENCE RE:**  
[CAE-1](#)           **VOLUNTARY PETITION**  
           **4-25-24 [1]**

<p><b>The Status Conference is continued to <span style="color: red;">XXXXXXX</span> on <span style="color: red;">XXXXXXX</span> , 2024.</b></p>
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**JUNE 20, 2024 STATUS CONFERENCE**

This Voluntary Chapter 11 Case was commenced by Swanston Oak, LLC. Petition; Dckt. 1. On Schedule A/B the Debtor states that: (1) It does not have any cash or cash equivalents; (2) No accounts receivable; (3) No investments; (4) No inventory; (5) No office equipment or furniture; (6) No vehicles; and (7) No other assets than the real estate assets listed as follows. Debtor does state that it has a “Fee” interest in eight properties with an aggregate value of \$6,525,000. Sch. A/B; Dckt. 17.

On Schedule D Debtor lists one creditor having secured claims for which the Debtor’s real properties are collateral. Dckt. 18.

On Schedule E/F Debtor lists two creditors with priority tax claims, which amounts total less than (\$4,000). Dckt. 19. For creditors with general unsecured claims, Debtor lists five creditors, with claims totaling less than (\$142,000). *Id.*

On the Statement of Financial Affairs Debtor states having no income in 2024, 2023, or 2022. Dckt. 22.

On June 6, 2024, the Debtor in Possession filed the Status Conference Report. Dckt. 32. In it, the Debtor in Possession states that the Bankruptcy Estate is administratively solvent and a Motion to Employ a Realtor(s) to sell the assets of the Bankruptcy Estate will be filed shortly. The Chapter 11 plan is anticipated to be a liquidating plan to repay all creditors.

At the Status Conference, XXXXXXX

**June 20, 2024 at 11:30 a.m.**

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Item 2 thru 3

<b>The Status Conference is continued to <span style="color: red;">xxxxxxx</span> on <span style="color: red;">xxxxxxx</span> , 2024</b>
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**JUNE 20, 2024 STATUS CONFERENCE**

As of the court's June 18, 2024 review of the Docket, no updated Status Report had been filed. There is a Motion for Relief From the Automatic Stay, which is set for hearing at the same time and date as this Status Conference.

Reviewing the Debtor's Schedules and Statement of Financial Affairs, the court notes the following information provided by Debtor under penalty of perjury:

I. Schedules

A. Schedule A/B - Assets; Dckt. 16.

1. Debtor owns one piece of land in Lincoln California.
2. Debtor owns one truck.
3. Debtor has no household goods or furnishings.
4. Debtor does have televisions, a computer, and a cell phone.
5. Debtor has some clothing, a watch, and two dogs and two cats.
6. Debtor has no other personal items.
7. Debtor has no cash or monies in checking or savings accounts.
8. Debtor has no interests in publically traded stocks, mutual funds, or bonds.
9. Debtor has no interests in any non-publically traded entities.
10. Debtor has a contractor's license.
11. Debtor has \$400,000 in cattle and equipment, which he lists as "Machinery, fixtures, equipment, supplies you use in business, and tools of your trade."

12. Debtor lists under Farm Related property, cattle with a value of \$50,000 and “Creep feeder, trailers, truck, corrals” with a value of \$20,000.

B. Schedule C - Exempt Assets; Dckt. 17.

1. Debtor claims no exemptions.

C. Schedule I - Income; Dckt. 22.

1. Debtor has \$10,000 in “wages” a month being a self-employed rancher.
2. Debtor has a monthly “payroll deduction” of (\$1,600) for Domestic Support Obligations.
3. After subtracting the (\$1,600) “payroll deduction” from the \$10,000 of self-employment wages, the Debtor has only \$6,500 a month in take-home pay.

D. Schedule J - Expenses; Dckt. 23.

1. Debtor has two children (one late teens and one adult) who are dependents.
2. Debtor has no monthly expenses for:
  - a. Home maintenance or repair;
  - b. Food or housekeeping supplies;
  - c. Insurance; or
  - d. Taxes (State, Federal, Self-Employment)
3. Debtor computes having (\$9,887) for expenses and then subtracts that from his gross \$10,000 of self employment wages, not deducting the (\$1,600) in “payroll deduction” for Domestic Support Obligation, and computes having only \$13 in monthly net income.

II. Statement of Financial Affairs; Dckt. 25.

- A. Debtor states that he is married.
- B. Debtor states having less than \$100,000 in gross income from operating a business in 2024, and having no income in 2023 or 2022. Part 2, ¶¶ 4, 5.
- C. Debtor is a sole proprietor , providing several business names. Part 11, ¶ 27.

At the Status Conference, **XXXXXXX**

## **MAY 23, 2024 CHAPTER 12 STATUS CONFERENCE**

On May 21, 2024, the Debtor in Possession filed a Status Report. Dckt. 27. The business that is property of the Bankruptcy Estate is that of a cattle farmer and rancher, operating primarily out of Dunnigan and Sheridan, California.

At the Status Conference, counsel for the Debtor in Possession reported that corrects need to be made to the Schedules and such would be forthcoming.

Counsel for Creditor Commercial Credit Group added to the court that at the First Meeting of Creditors the Debtor testified that he had two business – custom farming for others (which has not ceased) and his cattle operation. Creditor asserts a lien on the assets of the Bankruptcy Estate and the cash collateral proceeds thereof. Additionally, that no use of cash collateral has been authorized by the court or Creditor for the two months that this case has been pending. Creditor also states that there is a heretofore undisclosed \$400,000+ tax lien, which is junior to Creditor's lien.

The Chapter 13 Trustee confirmed that from her view substantial issues exist. These include completion and correction of the Schedules.

The Chapter 13 Trustee requests that the Debtor in Possession be ordered to file monthly operating reports in this Chapter 12 Case.

After discussion from the Parties in Interest, the court orders that the Debtor in Possession shall file Monthly Operating Reports.

COMMERCIAL CREDIT GROUP INC.  
VS.

**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.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, Chapter 12 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 6, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion for Relief from the Automatic Stay is <span style="color: red;">XXXXXXX</span>.</b></p>
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Commercial Credit Group Inc. (“Movant”) seeks relief from the automatic stay with respect to the following two assets:

1. A 2007 Caterpillar D10T Crawler Dozer, Serial No. RJG01025 (“2007 Crawler”)
2. A 1997 Caterpillar D10R Crawler Dozer, Serial No. 3KR00943 (“1997 Crawler”) (collectively, “Crawlers”).

The Crawlers are a type of bulldozer with a heavy plate used to load and push heavy objects, ideal for maneuvering over uneven surfaces and hauling heavy materials.

The moving party has provided the Declarations of Michael Mikulan and Gabriel Herrera to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jediah Hoffman, the Debtor and Debtor in Possession. Decls., Dockets 37, 38. According to Movant, Mr. Hoffman testified at the 341 Meeting that the Crawlers were not necessary to reorganize in his Chapter 12 case. Mot. 3:1-3, Docket 35. However, Debtor in Possession's counsel explained at a subsequent status conference that the Crawlers may be needed by Debtor in Possession to reorganize. *Id.* at 3:4-5.

Debtor in Possession executed a promissory note to Creditor in the amount of \$517,770, secured by the Crawlers, containing the following terms:

(a) repayment was to be in consecutive monthly installments of 22 installments in the amount of \$21,690.00 and 1 installment in the amount of \$40,590.00; (b) payments were to begin on January 15, 2023; (c) upon default, including by failing to make payment, default interest would accrue at 18% per annum, plus collection and other charges, and reasonable attorneys' fees; (d) the proceeds of the loan were to refinance other loans issued by the Creditor to the Debtor in Possession; and (e) the Debtor in Possession provided a blanket lien against his assets, including against the 2007 Crawler and the 1997 Crawler.

*Id.* at 3:12-18. Debtor in Possession immediately defaulted under these terms, failing to make a single installment. Creditor repossessed various items of collateral, including the Crawlers, prepetition. *Id.* at 23-27.

The Creditor does not significantly dispute the Debtor in Possession's Schedule D valuation of the collateral identified. Post-petition, the Creditor has received and forwarded to the Debtor in Possession offers for the purchase of the 2007 Crawler at \$243,000, and the 1997 Crawler at \$42,000. *Id.* at 4:6-8. Creditor continues to accumulate storage fees and interest while in possession of the Crawlers.

The 2007 Crawler has a value of \$243,000, with liens encumbering it in the amount of \$776,008.73. *Id.* at 5:15-19. The 1997 Crawler has a value of \$42,000 with liens encumbering it also in the amount of \$776,008.73. *Id.* As such, there is no equity in the Crawlers. Creditor requests relief pursuant to 11 U.S.C. § 362(d)(2) as the Crawlers are not effective for a reorganization and there is no equity in the Crawlers. In the alternative, if the court finds that the Crawlers are necessary for an effective reorganization, Creditor requests the Motion be denied without prejudice.

## **OPPOSITION FILED BY DEBTOR IN POSSESSION**

On June 14, 2024, the Debtor in Possession filed Opposition Pleadings. Dckts. 43-45. In the Opposition it is asserted that the Crawlers are necessary "for the success of the Debtor's business endeavors and the success and feasibility of the Debtor." Opposition, p. 2:11-13; Dckt. 43. The court is directed to the Declaration of the Debtor in Possession in support of this statement.

In looking at the above stated ground of opposition, it is not stated that the equipment is necessary for an effective reorganization.

The Debtor in Possession then states that "the Debtor" has obtained Liability Insurance for all the heavy equipment being used in 'his' ranch and farm operations." *Id.*; p. 2:15-17.

The Debtor in Possession then requests an Evidentiary Hearing,

so that it can evaluate the live testimony of agricultural experts in order to make its determination on the condition of the Property and its trees for purposes of ruling upon Movant's request for relief from the stay under Section 362(d)(1).

*Id.*, p. 2:18-22.

In his Declaration, the Debtor in Possession provides testimony, as summarized by the court, including the following (identified by paragraph number in the Declaration):

1. I am a resident of the State of California and am over eighteen years of age. The following facts is within my personal knowledge, except as to those matters, if any, which are stated on information and belief and as to those matters I believe to be true; accordingly, if called as witness I could and would, competently testify thereto

It appears that the Debtor in Possession is stating that he does not have personal knowledge of all of what he is testifying to, as required by Federal Rule of Evidence 602,<sup>FN.1.</sup> but merely has been informed from some source or believes it to be true because it supports his Opposition.

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FN. Fed. R. Evid. 602.Need for Personal Knowledge (emphasis added)

A witness may testify to a matter **only if** evidence is introduced sufficient to support a finding that the **witness has personal knowledge of the matter**. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Additionally 28 U.S.C. § 1746 set forth the requirements for declarations and the affirmation that must be provided by the declarant (emphasis added):

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or **proved by the unsworn declaration**, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: **"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).**

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

The Debtor in Possession has not provided a declaration that complies with 28 U.S.C. § 1746.  
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In the Declaration, the Debtor in Possession state that the court:

2 . BE ADVISED, that ALL of my heavy equipment, particularly my Caterpillar D10T and my Caterpillar D10R and necessary for my income streams and for a feasible Chapter 12 Plan.

With this statement, the Debtor in Possession dictates to the court a finding of fact and does not provide the court with any evidence of how and why the two Crawlers are necessary for generating monies to fund a Chapter 12 Plan.

The Debtor in Possession continues, telling the court to "BE FURTHER ADVISED" that he has sent to Movant a Certificate of Liability Insurance covering all of "his" equipment, and directs the court to see the Certificate of Insurance as an exhibit. *Id.*, ¶¶ 4, 5.

The Exhibit is filed at Dckt. 45, without a cover page identifying this Bankruptcy Case and the contested matter to which it relates. The Certificate of Liability Insurance is dated June 7, 2024, and states that the Insured is "Westside Production Solutions." Dckt. 45, p. 1. It is not clear from the Schedules and Statement of Financial Affairs who "Westside Production Solutions," the insured, is.

On page 2 of the Exhibit is a document titled "Inland Marine Coverage Part Contractors Equipment Coverage Form Supplemental Declarations" which is dated June 7, 2024. The insured person named is "Westside Production Solutions, Inc." Neither the Debtor in Possession nor the Bankruptcy Estate are named as insureds. *Id.*

On all of the other pages of the Exhibit, the identified insured is "Westside Production Solutions, Inc."

The Debtor in Possession has also filed a Statement of Disputed Facts, Dckt. 46, stating the disputed fact as to whether or not the Crawlers are necessary for Debtor's effective reorganization.

While stating this opposition, the Debtor in Possession offers no evidence of what possible reorganization will be sought, what business operations are ongoing in the Bankruptcy Estate, and how such will be funded.

## DISCUSSION

11 U.S.C. § 362(d)(2)



A Debtor in Possession has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a Debtor in Possession or estate has no equity in property, it is the burden of the Debtor in Possession or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor in Possession or the Estate. 11 U.S.C. § 362(d)(2).

However, importantly, the Motion includes some indication that Debtor in Possession may argue the Crawlers are necessary for an effective reorganization. Debtor has filed an Opposition making such a conclusory statement, but offering no evidence of how or why such may be necessary for an effective reorganization.

At the hearing, **XXXXXXX**

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 for Relief from the Automatic Stay filed by Commercial Credit Group Inc. ("Movant") 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 for Relief is **XXXXXXX**.

**Item 4 thru 5**

**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.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

The court set the hearing for June 20, 2024. Order, Dckt. 113.

The Motion to Approve Stipulation was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

**The Motion to Approve Stipulation is xxxxxxx.**

On January 23, 2024, Debtors Hardave Singh Dulai and Sukhbinder Kaur Dulai commenced this voluntary Chapter 12 Bankruptcy Case. On April 21, 2024, Debtors in Possession filed a proposed Chapter 12 Plan. Dckt. 75. The hearing on the Motion to Confirm was originally set for June 20, 2024, but has now been withdrawn.

Class 9 of the Plan includes the assumed lease of AgWest Farm Credit, PCA (“AgWest”). Plan, ¶ 2.9; Dckt. 75. It states that the lease is not impaired and “will be assumed by motion or stipulation and paid outside the Chapter 12 Plan.” *Id.*

No motion to assume the lease with AgWest has been filed. On May 25, 2024, an *Ex Parte* Stipulation re Treatment of Claim No. 8 was filed. The parties to the *Ex Parte Stipulation* are the Debtors in Possession and AgWest. Dckt. 112. The *Ex Parte Stipulation* provides recitals, which are summarized by the court as follows:

1. Debtors entered into a lease with AgWest in February 2022. *Id.*, p. 1:19-21.

2. Debtors defaulted on the lease and a Restructure Agreement was entered into on September 25, 2023. A copy of the Restructure Agreement is attached to the AgWest Proof of Claim 8 filed in this Bankruptcy Case. *Id.*, p. 1:22-25.

The Stipulation between the Debtors in Possession and AgWest is that the Parties agree to abide by the Restructure Agreement. *Id.*, p. 2:4-5. The Debtors in Possession shall make the Forbearance Payment of \$5,392.45 on or before May 31, 2024. See ¶ 7.1 A (III)(2) of the Restructure Agreement attached to the AgWest Proof of Claim No. 8. <sup>Fn.1.</sup>

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FN. 1. In the Stipulation, reference is made to the two Debtors agreeing to do things which are within the duties of a bankruptcy trustee, for which the two Debtors will be servicing as the Debtors in Possession. The Stipulation does not use the term “Debtors in Possession” to reflect the two Debtors acting as the Debtors in Possession. The court references such acts by a fiduciary Debtors in Possession as being done by the Debtors in Possession. In other situations, the court uses the phrase “debtor,” which is defined in 11 U.S.C. § 101(13), for other acts stated in the Stipulation as being done by “Debtors.”  
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Then, upon the Forbearance Payment being made, the Debtors in Possession and AgWest will execute a new lease to pay the remaining lease balance of \$25,196.19 in full before September 1, 2026. *Id.*, p. 2:8-10. The Debtors in Possession will request court approval of the new lease agreement upon its execution.

The Stipulation continues, stating that the Debtors (question if it be the Debtors in Possession under a confirmed Plan, or just the two Debtors personally) pay unstated amounts of attorney’s fees of AgWest from the past and into the future. These attorney’s fees will have to be paid upon the earlier of the Court’s approval of a new lease, confirmation of the Chapter 12 Plan, or conversion of this case to one under Chapter 7. *Id.*, p. 2:11-15.

Further, the Stipulation is incorporated into the proposed Chapter 12 Plan. *Id.*, p. 2:16.

The Stipulation closes with it being repeated that the “Debtors” will pay the unstated attorney’s fees and costs within the above stated deadlines. *Id.*, p. 2:17-20.

## DISCUSSION

When an order of the court is sought in a Bankruptcy Case, the Supreme Court provides in Federal Rule of Bankruptcy Procedure 9013 that such must be requested by a motion, or if authorized by the Federal Rules of Bankruptcy Procedure, by an application. Such motion will state the grounds with particularity upon which the requested relief is based and the relief sought to be stated in the order.

Congress provides in 11 U.S.C. § 365 for the assumption or rejection of a pre-petition lease. Such assumption or rejection of a lease, is subject to the court’s approval. 11 U.S.C. § 365(a). Such approval is obtained through a motion or the Chapter 12 Plan. See, 3 Collier on Bankruptcy, Sixteenth Edition, ¶ 365.03. This is after a noticed hearing. *Id.*

For this request for relief, the Debtor in Possession has not filed any supplemental pleadings with the court clarifying the nature of this Stipulation. There are continuing concerns here for the court,

especially in regard to unspecified attorney's fees and the language of the new lease that is to be binding under the Chapter 12 Plan. The court cannot issue an Order approving the Stipulation without being aware of the fees to be paid, and without seeing and considering the actual language of the new lease.

At the hearing, **XXXXXXX**

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 *Ex Parte* Motion to Approve Stipulation filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai ("Movant") 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 for Approval of Stipulation is **XXXXXXX**.

5.	<a href="#"><u>24-20265</u></a> -E-12 <a href="#"><u>RCW</u></a> -3	<b>HARDAVE/SUKHBINDER DULAI</b> Ryan Wood	<b>MOTION TO CONFIRM CHAPTER 12 PLAN</b> 4-26-24 [ <a href="#"><u>82</u></a> ]
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**WITHDRAWN BY M.P.**

#### Final Ruling

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Hardave Singh Dulai and Sukhbinder Kaur Dulai ("Debtor") having filed a Notice of Withdrawal, Dckt. 116, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **no responses having yet been filed, the Motion to Confirm the Chapter 12 Plan was dismissed without prejudice, and the matter is removed from the calendar.**