UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge Modesto, California

June 24, 2021 at 2:00 p.m.

1. <u>20-90210</u>-E-11 RHS-1 JOHN YAP AND IRENE LOKE Arasto Farsad APPROVAL OF CONFIRMATION OF PLAN OF REORGANIZATION FILED BY DEBTORS' 4-20-21 [209]

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, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 28, 2021. By the court's calculation, 57 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. LOCALBANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is granted.

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

April 30, 2021 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

May 28, 2021 Last Day for Submitting Written Acceptances or Rejections

May 28, 2021 Last Day to File Objections to Confirmation

June 11, 2021 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Approved Disclosure Statement:

Creditor/Class	Treatment		
Class 1A: The Bank of New York Mellon	Claim Amount	Not Stated	
(lender) / Nationstar Mortgage LLC dba Mr. Cooper (loan	Impairment	Not Impaired - Property to be Surrendered	
servicer) (Proof of Claim # 2)		render on the effective date of the plan.	
Class 1B: U.S. Bank, National Association (lender) c/o Nationstar	Claim Amount Not Stated		
Mortgage, LLC dba Mr. Cooper (loan servicer)	Impairment	Impaired - No Change in Obligation Terms, but provides for arrearage cure.	
(Proof of Claim # 3) (Sr. Mortgage)	Collateral: 7400 Chantilly Way, Hughson, CA 95326 Creditors' Rights Remain Unchanged.		
Class 1C: U.S. Bank National Association	Claim Amount	Not Stated	
(lender) / PHH Mortgage Corporation (loan servicer)	Impairment	Not Impaired - No Change in Obligation Terms	
(Proof of Claim # 9) (Sr. Mortgage)	Collateral: 1102 Sarah Belle Lane Fallon, NV 89406 Creditors' Rights Remain Unchanged.		

Class 1D: The Bank of New York Mellon (lender) / Nationstar Mortgage LLC dba Mr. Cooper (loan servicer) (Proof of Claim # 5) (Please see Order on Motion to Value	Claim Amount Impairment	\$301,324.00 11 U.S.C. § 506(a) Valuation Order, Dckt. 128 Interest Rate: 5% (this is the current fixed note interest rate) Monthly Payment: \$1,617.57 Escrow: \$236.33 PITI: \$1,853.90 Term: 30 years	
Collateral at Dckt. 128) (Sr. Mortgage)	Collateral: 2412 6th St., Hughson, CA 95326		
Class 1E: Real Time Resolutions, Inc. / (loan servicer) for the	Claim Amount	\$60,576.26	
Bank of New York Mellon (lender)	Impairment	Interest Rate: 0.00 (note rate as well) Monthly Payment: \$336.53 Term: 30 years	
(Proof of Claim # 14) (2nd Mortgage)	Collateral: 1102 Sarah Belle Lane Fallon, NV 89406		
Class 1F: The Bank of New York Mellon (lender) / NewRez LLC (loan servicer)	Claim Amount \$1,002,247.57		
(Motion to Value at Dkt. 33, and a corresponding loan modification / stipulation to claim	Impairment	Interest Rate: 5% Monthly Payment: \$5,380.28 Escrow: \$1,134.50 PITI: \$6,514.78 Term: 30 years: as provided in the Loan Modification and Stipulation.	
treatment [a loan modification] that was granted on January 14, 2021 at Dkt. 165.)	Collateral: 1006 Lovell Ave., Campbell, CA 95008		
Class 2: General Unsecured Claims			

Persolve	Claim Amount	\$53,535.09	
(Proof of Claim # 1)	Impairment	5% dividend \$2,676.75 Monthly Payment: \$22.31	
Merrick Bank / Resurgent Capital	Claim Amount	\$1,743.53	
Services (Proof of Claim # 4)	Impairment	5% dividend \$87.18* (*Debtor will likely pay this claim off in full on the Effective Date if funds are available) Monthly Payment: \$0.73	
American Express National Bank c/o	Claim Amount	\$12,978.10	
Becket and Lee LLP	Impairment	5% dividend \$648.91 Monthly Payment: \$5.41	
(Proof of Claim # 6)			
American Express National Bank c/o	Claim Amount	\$2,631.09	
Becket and Lee LLP (Proof of Claim # 7)	Impairment	\$131.55* (*Debtor will likely pay this claim off in full on the Effective Date if funds are available) Monthly Payment: \$1.10	
Real Time Resolutions	Claim Amount	\$114,078.83	
(Proof of Claim # 10) (For a foreclosed property / former	Impairment	5% dividend \$5,703.94 Monthly Payment: \$47.53	
junior lien that did not mature or get accelerated)			
Veripro Solutions Inc.	Claim Amount	\$37,282.38	
(Proof of Claim # 11)	Impairment	N/A	

	Claim Disputed: According to Debtor, this 2006 loan was refinanced in 2008 and the claim should accordingly be withdrawn.	
Cit Bank, National Association / Countrywide (Junior or 2nd lien on Debtor's home at 7400 Chantilly Way in Hughson that was ordered wholly unsecured per docket # 69 [full text] and 72	Claim Amount	\$131,152.00
	Impairment	5% dividend \$6,557.60 Monthly Payment: \$54.65
[summary order]) (No claim filed)		
Lomarey, Inc. (Judicial lien on Debtor's home at	Claim Amount	\$480,148.00
7400 Chantilly Way in Hughson that was ordered wholly unsecured per docket # 69 [full text] and 72 [summary order])	Impairment	5% dividend \$24,007.40 Monthly Payment: \$200.06
(No claim filed)		
The Bank of New York Mellon (lender) / Nationstar Mortgage LLC dba Mr. Cooper (loan servicer)	Claim Amount	\$104,097.01
(Proof of Claim # 5, please see Order on Motion to Value Collateral at Dckt.	Impairment	5% dividend \$5,204.85 Monthly Payment: \$43.37
(UNSECURED PORTION of Senior Mortgage)		

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Collateral Financing Group, LLC (Junior or 2nd lien on Debtor's	Claim Amount	\$94,421.00
property at 2412 6th Street in Hughson that was ordered wholly unsecured per docket	Impairment	5% dividend \$4,721.05 Monthly Payment: \$39.34
# 128)		
(No claim filed)		
First Horizon Home Loan Corporation (Wholly unsecured junior mortgage lien on Debtors'	Claim Amount	\$44,700.00
surrendered property located at 1032 Deena Way, Fallon, NV 89406)	Impairment	5% dividend \$2,235.00 Monthly Payment: \$18.63
(No Claim Filed)		<u>I</u>
(See Order on Motion to Value Collateral at Dckt. 137.)		
The Bank of New York Mellon (lender) / Nationstar Mortgage LLC dba Mr. Cooper (loan servicer)	Claim Amount	\$104,097.00
(Proof of Claim # 5)	Impairment	5% dividend \$5,204.85 Monthly Payment: \$43.37
(Please see Order on Motion to Value Collateral at Dckt. 128)		
(UNSECURED PORTION of Sr. Mortgage)		

The Bank of New York Mellon (lender) / NewRez LLC (loan servicer)	Claim Amount	\$78,867.00	
(Proof of Claim # 12) (Motion to Value at Dckt. 33) (UNSECURED	Impairment	5% dividend \$3,943.35 Monthly Payment: \$32.86	
PORTION of Senior Mortgage per Stipulation / Loan Modification re: 1006 Lovell)	(the Debtor and this claim holder agreed to a loan modification as part of their settlement of the claim so please refer to Class 1F for claim treatment which does NOT include a cram down anymore.)		
The PNC Financial Services Group, Inc./ Dreambuilder Investments, LLC	Claim Amount	\$154,950.00	
(No Claim Filed) (Motion to Value at	Impairment	5% dividend \$7,747.50 Monthly Payment: \$64.56	
Docket # 33 with a Stipulation at docket # 139 for a \$900,000.00 valuation)			

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1A (Not Impaired)	No Vote Needed	N/A	N/A
Class 1B (Impaired)	For: 1 Against: 0	100%	100%
Class 1C (Not Impaired)	No Vote Needed	N/A	N/A

Class 1D (Impaired)	For: 0 Against: 0	0%	0%
Class 1E (Impaired)	For: 1 Against: 0	100%	100%
Class 1F (Impaired)	For: 1 Against: 0	100%	100%
Class 2 (Impaired)	For: 0 Against: 0	0%	0%

The Declaration of John Hst Yap 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. 222, pg. 2

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

Evidence: Dckt. 222, pg. 2

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

Evidence: Dckt. 222, 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. 221, pg. 4

- 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. 221, pg. 4

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.

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. 221, pg. 5-6

- 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.

Evidence: Dckt. 221, pg. 6-7

- 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. 221, pg. 7

(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. 221, pg. 7

(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. 221, pg. 7

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.

Evidence: Dckt. 221, pg. 8

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. 221, pg. 8

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. 221, pg. 8

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.

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.

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.

Evidence: Dckt. 221, pg. 8-9

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.

Not Applicable.

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the

proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph 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.

Evidence: Dckt. 221, pg. 6-7

- 2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:
 - (A) With respect to a class of secured claims, the plan provides
 - (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
 - (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
 - (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
 - (iii) for the realization by such holders of the indubitable equivalent of such claims.

Evidence: Dckt. 221, pg. 6-7

- (B) With respect to a class of unsecured claims
 - (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
 - (ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Evidence: Dckt. 221, pg. 6-7

(C) With respect to a class of interests

- (i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or
- (ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

Evidence: Dckt. 221, pg. 6-7

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.

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, and Office of the United States Trustee on April 28, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert 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 Motion to Convert the Chapter 12 Bankruptcy Case to a Case under Chapter 7 is xxxxx.

This Motion to Convert the Chapter 12 bankruptcy case of Leslie F. Jensen ("Debtor") has been filed by Krista Osmers and the Dyer Law Group ("Movant"), a creditor.

Review of the Motion

Movant asserts that the case should be dismissed or converted based on the grounds as discussed below.

Active Concealment of Fraudulent Transfers

Movant alleges several transactions Debtor has undertaken since the judgement against them constitute fraudulent conveyances which are avoidable by the bankruptcy estate. Movant points the court to Cal. Civ. Code §3439.04(b), with the code section listing the factors that may be taken into consideration when Debtor has made transfers that may be fraudulent. These "badges of fraud" are (this court reformatting the factors so they stand out as separate bullet items, but not changing the text of the ruling):

- (1) Whether the transfer or obligation was to an insider.
- (2) Whether the debtor retained possession or control of the property transferred after the transfer.
- (3) Whether the transfer or obligation was disclosed or concealed.
- (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
- (5) Whether the transfer was of substantially all the debtor's assets.
- (6) Whether the debtor absconded.
- (7) Whether the debtor removed or concealed assets.
- (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
- (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
- (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

Movant notes that the badges are factors and not elements and that the court may find fraud at the court's discretion after weighing the factors. Movant then applies the factors to Debtor's actions:

- 1. Transfer of Debtors interest in an Orchard to her LLC which should be considered an insider. (Badge 1)
- 2. The transfer of the Orchard interest was done 8 days after verdict in favor of Creditor. (Badges 4 and 10)
- 3. There is nothing in Debtor's schedules that shows Debtor received any consideration for the transfer to the LLC. (Badge 8)
- 4. The transfer of the orchard to the LLC made Debtor insolvent (Badge 9)
- 5. The orchard was all of the Debtors assets that could not be exempted. (Badge 5)
- 6. While the interest was transferred to the LLC, Debtor retained possession and revenue of the orchard. (Badge 3).

In addition to these conveyances, Debtor encumbered the Orchard with around \$1.8 million in loans. There is no record of where this money went. Moreover, Debtor took out a personal loan stated to be for the benefit of the LLC's farming operations on the Orchard and personally guaranteed by Debtor.

Creditor believes the fact Debtor was aware of these transfers, concealed them, and misrepresented her assets which shows this was an attempt to deceive and induce reliance of creditors with false information thereby undermining the bankruptcy process.

Debtor's Concealed and Uncommitted Disposable Income

Movant believes Debtor has been untruthful with the figures Debtor submitted in her Schedules I and J. The misrepresentations provide for an inaccurate disposable income with which to fund the proposed plan. Namely, the Creditor takes issue with:

- 1. Income generated from law practice as \$5,500 per month
- 2. Expenses at \$10,479 per month
- 3. Historical Monthly Income between \$33,333 and \$37,500 per month.

The alleged misrepresentation is highlighted by Debtor's proposal to pay \$4,000 a month as part of her proposed plan without accounting for it in Schedules filed with the court under penalty of perjury. Thus, the Creditor believes Debtor is undermining the bankruptcy process and should not be allowed to continue as the Debtor in Possession.

False Assertion Regarding Orchard's Valuation

Debtor has asserted that the Orchard cannot be valued and is not marketable for the purposes of being used as part of the Chapter 12 plan due to:

- 1. Its lack of a water source.
- 2. The high levels of mercury in water available on the property.
- 3. The low production records of the almonds grown on the Orchard.
- 4. The inability of a buyer to secure financing to purchase the Orchard.

Movant does not refute any of Debtor's statements concerning the conditions of the Orchard. However, Movant highlights the fact that there must be a valuation on the property given that Debtor's LLC was able to secure three separate loans from a reputable bank totaling \$1.8 million from 2017-2019. Thus, Debtor's claim that the land cannot be valued is false.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 3, 2021. Dckt. 124. Debtor opposes on the following basis:

1. The only timely evidence that supports Creditor's motion does not comply with Local Rule of Bankruptcy Procedure 9004-2(d)(1). This is because the exhibits are attached directly to "the only timely declaration submitted in support of the Motion".

- 2. Michael Dyer's supplemental declaration was untimely and should be stricken. At the May 3, 2021 hearing, the court ordered that all supplemental pleadings be filed and served by May 15, 2021. Michael Dyer's supplemental declaration was filed past the deadline on May 17, 2021 and is thus untimely. This untimeliness is grounds for the declaration to be stricken.
- 3. There is no evidence in support of the motion in either declaration filed with the court. Debtor argues that Michael Dyer's untimely declaration is filled with "hunches, conclusions of law, inadmissable hearsay, and unsupported arguments. In addition, Val Loumber's declaration simply verifies copies of a proof of claim filed by Bank of Stockton and offers no information to support a contention of "fraud in connection with the case". Moreover, the proof of claim supports Debtor's claim that the majority of her debt arises from farming related activities.
- 4. The Dyer Law Firm is not a creditor since they have not filed a proof of claim in the present case. Debtor does not contest the fact The Dyer Law Firm might be entitled to a portion of the claim recoverable by Krista Osmers. Debtor alleges The Dyer Law Firm has issued subpoenas ostensibly to conduct discovery in this contested matter even though the depositions will take place after the record closes. Some of the subpoenas were issued in the adversary proceeding involving Krista Osmers where discovery has not been permitted.
- 5. There have been no fraudulent transfers and that Creditor has not offered any admissible evidence with which to support their claim of fraud. Debtor states she transferred her portion of the Orchard to the LLC almost four years before the filing of the petition. Moreover, the Debtor asserts the Orchard is moot to the estate as the personal guarantee of the loan by Debtor means it is impossible to set aside the transfer even if it a fraudulent conveyance. This is because the estate would need to pay Bank of Stockton's deed of trust before there could be recovery of real property by the Debtor in Possession.
 - 11 U.S.C. § 548 is inapplicable since it can only avoid transfers made within a two year pre-petition period and the Orchard's transfer occurred almost four years before filing of the petition. Debtor contends that even applicable California law cannot reach as far back as the date of the transfer and that there has been no tolling of the reach back period in this case.

The transfer of the orchard does not meet the standard set forth in §5448(a)(1)(A) (presumably Debtor meant § 548(a)(1)(A)). Under § 548 transfer must have been done with the "intent to hinder, delay or defraud creditors". The Debtor states there are no facts in evidence to support this contention. Moreover, Debtor points to the fact that Debtor did not attempt to hide her other real property assets as evidence and thus is acting in good faith.

Creditor's judgment was not entered on December 2016 but was entered almost seven months later.

Debtor asserts § 548(a)(1)(B) is also inapplicable. Debtor rejects the Creditor's assertion that she did not receive consideration for her transfer of the Orchard. Debtor states the consideration was the 50% stake in the family LLC. Under California law, such transfers do not result in real property being reassessed as this is a transfer to a successor entity.

Even with the judgement against her by Creditor, such transfers did not render her insolvent at the time of transfer.

Finally, Debtor asserts that the creation of L&L and the procuring of the loans from Bank of Stockton were prudent and documented business decisions to develop and expand the family farm. The creation of the LLC allowed for more efficient business operation and was not solely created to shield the Orchard from potential creditors.

6. Debtor states that at the time of Debtor's transfer of her property interest to L&L, the LLC had equity of \$5,055,229.00. At that time, there were projections to expand the almond operation and the loans totaling \$1.8 million from Bank of Stockton were necessary to make the Orchard operational. The market conditions and the drought have made those plans economically unfeasible and that is the reason for the diminution of assets.

APPLICABLE LAW

Section 1208(c) authorizes the court to dismiss a case for cause on request of party in interest. Specifically, the Bankruptcy Code provides a list for grounds to dismiss:

- (c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including
 - (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;
 - (2) nonpayment of any fees and charges required under chapter 123 of title 28;
 - (3) failure to file a plan timely under section 1221 of this title;
 - (4) failure to commence making timely payments required by a confirmed plan;
 - (5) denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1230 of this title, and denial of confirmation of a modified plan under section 1229 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan;
- (9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation; and
- (10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1208(c).

The provisions of section 1208(c) are similar to sections 1112(b) and 1307(c), which govern dismissal of chapter 11 and chapter 13 cases, respectively. FN.1 Unlike those two sections, section 1208(c) only authorizes dismissal of the case. Because the chapter 12 debtor is a farmer, the court may not convert a case involuntarily to chapter 7 even if the court believes that doing so is in the best interests of creditors, except where court finds that the debtor has committed fraud in connection with the bankruptcy case as provided under 11 U.S.C. § 1208(d).

FN.1. Questions of conversion or dismissal in a Chapter 13 or Chapter 11, must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate." *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

Section 1208(d) authorizes the court to convert a Chapter 12 case to one under Chapter 7 on request of a party in interest. If after notice and a hearing the court finds that the debtor has committed fraud in connection with the case, the court may convert over debtor's objection. Collier on Bankruptcy further explains:

This section refers to fraud generally and is not limited, as is section 1208(c)(7), to fraud in connection with obtaining confirmation of a plan. The requirement of notice and a hearing means an oral motion for conversion is not appropriate. *Snider v. Rogers (In re Rogers)*, 2018 Bankr. LEXIS 187 (Bankr. W.D.N.Y. Jan. 25, 2018). The proper standard of proof for showing fraud for conversion under section 1208(d) has not been settled. *See In re Packer*, 586 B.R. 274, 282–83 (Bankr. W.D. Ill. 2018) (noting that courts disagree on whether to apply the preponderance of the evidence standard or the clear and convincing standard).

Unlike Chapter 11 and 13, where a farmer debtor's case may not be converted over the debtor's objection, Section 1208 is the only provision in the Code that authorizes involuntary conversion to Chapter 7 where the debtor is a farmer. 8 Collier on Bankruptcy P 1208.04 (16th 2021).

The types of fraud that might be considered cause for an involuntary conversion would include intentional concealment of assets and intentional misrepresentations to the court. *See In re Caldwell*, 1001 B.R. 728 (Bankr. D. Utah 1989) (where conversion of a Chapter 12 into a Chapter 7 was warranted after Debtor's schedules were intentionally and materially misleading); *In re Zurface*, 95 B.R. 527 (Bankr. S.D. Ohio 1989) (finding the fraudulent transfer of a assets to a family owned corporation is also grounds for conversion.); *In re Kloubec*, 268 B.R. 173 (N.D. Iowa 2000) (where Debtor's hiding of assets was grounds for conversion to Chapter 7); and *Clark v. Devries* (*In re Clark*), 2016 U.S. App. LEXIS 10835 (9th Cir. June 15, 2016) (unpublished) (conversion to Chapter 7 warranted after debtor presumed to sell assets after a court order finding debtor had no ownership interest in said assets).

There is no need for a showing that creditors relied to their detriment on the debtor's fraudulent statements or acts. *In re Caldwell*, 101 B.R. 728 (Bankr. D. Utah 1989).

DISCUSSION

As a starting point, the court addresses Debtor's timeliness argument. Debtor raised the issue that Movants' declaration and exhibits are not timely and thus there is no evidence to support creditor's assertions.

At the May 3, 2021 hearing, the court ordered that all supplemental pleadings be filed and served by May 15, 2021. The docket shows Movant's declaration and exhibits were filed on May 17, 2021.

The court notes that May 15, 2021 was a Saturday. Federal Rule of Bankruptcy Procedure Section 9006(a)(1)(C) thus applies. This section states that when a court deadline falls on a Saturday, Sunday, or legal holiday, the filing party has until the end of the next court date to submit the filings in order to meet the notice requirements. In this instance, the next court date was Monday, May 17, 2021. Debtor admits to having received the documents on Monday, May 17, 2021. The documents were filed with the court on Monday, May 17, 2021. Thus, Movants' filing was timely.

The court now turns to the substantive arguments. Movant's claim that the Debtor's transfer of ownership from herself to the LLC was a fraudulent conveyance is properly before the court. The Debtor asserts the Orchard's deed was transferred on December 22, 2016 while the judgement was not entered against Debtor until July 7, 2017 (more than half a year later).

The court finds this argument being made in less than good faith, and an incomplete representation of the relevant facts before the court. Though the judgment was not entered until July 7, 2017, more than six months before the "entry" of the judgment, Debtor does not address that while the judgment was entered in July 2017, the jury's verdict in favor of Movant and against Debtor on Movant's Cross-Complaint and against Debtor on her Complaint were given December 14, 2016. Exhibit 1, Dckt. 119. From what has been presented to the court about the appeals taken and the various attorneys that Debtor lined up to file *amicus* briefs in support of her position (for what Proof of Claim have been filed by

those "amicus" attorneys), it appears that there were extensive post-verdict proceedings, while could likely have caused a fifteen month delay.

Apparently it is asserted that Debtor's transfer of her asset into the LLC occurring just eight (8) days after the \$300,000 (not including interest, attorney's fees and costs) financially adverse to Debtor verdicts were issued in the State Court. The evidence presented create an objective suspicion that Debtor's conveyance was in response to the verdict documenting the highly financially adverse to the Debtor verdicts.

Though Debtor may have harbored a fervent belief that she could not lose (the appeals and lining up *amicus* counsel who now assert claims in this bankruptcy case), the writing was clearly on the wall for the Debtor when the December 14, 2016 adverse verdicts were entered. Debtor knew she was soon to be receiving a judgment against her.

As argued, it can be inferred that this transfer was intended to hinder, delay, or defraud Movant, who was to be her creditor for the judgment on the horizon. Delay of the entry of the judgment does not alter Debtor's (who is an attorney) knowledge of the verdict and the financially horrible judgment that would soon be entered. The court looks to the timing of the transfer, the fact the transfer of the property was a transfer of substantially all of Debtor's assets, the fact the transfer left Debtor insolvent (Debtor having no other property that Movant could go after), and yet Debtor retained control and asserting direct interest in the revenues of the Orchard. These are factors that indicate a fraudulent conveyance under Cal. Civ. Code §3439.04(b).

Next, Movant points the court to the Debtor's actions in encumbering the Orchard with \$1.8 million in loans in the name of the LLC and further assuming personal loans for the benefit of the LLC. The actions taken by Debtor in the bankruptcy proceeding may indicate that the Debtor has attempted to hinder creditors where the LLC benefitted from these funds and yet Debtor seeks to have them discharged under her name. Moreover, Movant alleges that with knowledge of these dealings, Debtor failed to originally report them as part of her petition, and purposely omitted these obligations from Debtor's hypothetical liquidation analysis. In her Opposition, Debtor alleges that the funds were used to rehabilitate the Orchard and make the property operational and profitable. Yet, Debtor provides no explanation for why Debtor originally failed to disclose the transactions in this bankruptcy case.

Movant's claim that Debtor has concealed and uncommitted her projected disposable income is also well taken. This is not the first time that the court has encountered this issue; the court having raised this issue apparent on the face of pleading filed by Debtor under penalty of perjury at previous hearings. Debtor's Schedules I and J show that Debtor has no disposable income and that her monthly net income is (\$4,979).

Based on the information provided in her Schedules, there is no way that Debtor could fund a plan to repay her creditors as required in a Chapter 12 case. Moreover, Debtor's response in her Statement of Financial Affairs indicate Debtor's law practice has historically generated between \$33,333 and \$37,500 a month. Without an accurate representation of Debtor's financials, neither the court nor the creditors can make a fair assessment of Debtor's good faith in filing this case.

Movant also claims that Debtor's assertion that the Orchard cannot be valued is false. In the time after conveyance of the property to the LLC, Debtor encumbered the Orchard with over \$1.8 million in loans. Debtor's assertions of the conditions of the Orchard and the issues around it do not change the fact the Bank of Stockton loaned substantial funds on three separate occasions secured by the Orchard.

The bank must have had some valuation of the property to make them secure enough to make the substantial loans, and the fact that the conditions might have deteriorated or that someone was unable to secure a loan to purchase the property do not indicate the land cannot be valued. The fact that Debtor does not like the proposed valuation of the land does not mean it cannot be valued. Orchard valuation is also not a new argument in this court. The court having previously raised this issue with Debtor.

Finally, Debtor raises the issue that Movant, The Dyer Law Group, is not a creditor to the bankruptcy estate as they have never submitted a proof of claim. The fact that The Dyer Law Group might be entitled to some portion of the judgement that is owned to Krista Osmers does not disqualify them from being a creditor of Debtor. Though the claims bar date in the Chapter 13 case, if converted to Chapter 7, a new claims bar date springs into life. Fn.1.

FN. 1. This is discussed in the 2017 Advisory Committee Notes to Federal of Bankruptcy Procedure, which states: "If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002." Federal Rule of Bankruptcy Procedure 1019 provides in pertinent part:

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

(2) New filing periods.

(A) A new time period for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under Rules 1017, 3002, 4004, or 4007,

Movant Dyer Law Group argues that while they have not filed a Proof of Claim, the firm holds a "claim" over proceeds that Ms. Osmers recovers on the basis that they are owed attorney's fees to which they are entitled. Proof of Claim 4-1 has been filed for Ms. Osmers, which was signed and filed by Justin Dryer, Esq., an attorney with the Dyer Law Firm.

Also, the Motion to Dismiss or Convert has been filed by both Judgment Creditor "Krista Osmers . . . and her counsel, The Dyer Law Firm. . . ." Motion, p. 1:20-21; Dckt. 96. Though Dyer Law Firm may have stumbled in filling Proof of Claim 4-1 and not identified their interest in the claim either as an assignee or asserting possible lien rights on it, handing the Debtor an "argument stick" to bat them around the head and shoulders, there is no dispute as to Ms. Osmers being a creditor and that the Dyer Law Firm is her attorneys.

At the hearing xxxxxxxx

Cause exists / does not exist to convert this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted / denied, and the case is converted to a case under Chapter 7.

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 Convert or Dismiss the Chapter 12 case filed by Krista Osmers and the Dyer Law Group ("a creditor") 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 Convert or Dismiss is **xxxxx**.

The Order to Show Cause is xxxxxxx

This Chapter 12 Case was commenced on October 29, 2020. It has been stated to the court that prior to filing this case, the Debtor, "acting through a family entity L & L Investments, LLC," grew almonds on property in western Stanislaus County. The Debtor is identified as a 50% member/owner of L & L Investments, LLC, and is the sole managing member of L & L Investments, LLC. Schedule A/B, Question 19; Dckt. 21. Debtor's sister, Lisa Jensen-Long, is the other 50% member/owner of L & L Investments, LLC. Declaration of Mark Jordan, CPA. Dckt. 44.

Bank of Stockton is identified as a creditor with three different loans made to L & L Investments, LLC, which total more than \$1,600,000.00. Debtor states she personally guaranteed the three loans. The production line of creditor, for which there is owed \$500,000.00, is secured by the L & L Investments, LLC's accounts, crops, crop proceeds, and "etc." Further, for the almonds sold, the processor pays the Bank of Stockton directly the proceeds from the sale of the almonds. Amended Status Report, Dckt. 34.

By Debtor's calculation on her Schedules, she has few, if any, assets that are not asserted to be fully encumbered or exempt.

A review of Debtor's Schedules shows two residential properties owned by Debtor, a law office checking account with a \$25,000.00 balance, accounts receivable of \$55,000.00, and Debtor's 50% interest in L & L Investments, LLC, with a value of \$50,000.00, an interest in a condo in Mexico, and a timeshare interest in Maui as the Debtor's assets of significant value. Amended Schedule A/B, Dckt. 22.

On Amended Schedule D, Debtor lists the Briarwood Point property as having a value of \$348,000.00 and being encumbered by a claim in the amount of (\$195,420.00). Dckt. 22 at 15. No exemption is claimed in this property. For the Legend Drive property, Debtor's residence, a value of \$477,000.00 is given, with there being debt of (\$297,439.00) encumbering this property. *Id.* at 16. On Schedule C, Debtor claims an exemption of \$175,000.00 pursuant to California Code of Civil Procedure \$704.730.

On Schedule I, Debtor lists income only from a law practice. Dckt. 21 at 27. The current law practice income is substantially less than reported on the Schedules for 2019 and 2018 gross income. On Form B 6I, Debtor states that she has the additional occupation of "almond grower" and is employed by L & L Investments, LLC, and has been so employed for seven years. *Id.* at 29. No income is shown for the employment by L&L Investments, LLC.

On Schedule J, Debtor states under penalty of perjury having reasonable and necessary monthly expenses, which results in there being a negative cash flow of (\$4,979.00) per month. *Id.* at 31.

On the Statement of Financial Affairs, Debtor shows that her gross income from her business (the law practice) is unknown for 2020 (though this case was filed at the end of October 2020), and no farming

income is shown for 2020. For both 2019 and 2018 Debtor lists having mid six-figure gross income from her law practice and mid six-figure gross income from farming operations. *Id.*, 33-34.

The Chapter 12 Trustee filed his Status Conference Statement, in which he raised concerns over whether the financial information provided by Debtor under penalty of perjury established that Debtor could qualify as a "family farmer" for purposes of a Chapter 12 case. Trustee Status Report, Dckt. 36.

Upon review of the Schedules, Statement of Financial Affairs, the issues raised by the Chapter 12 Trustee, and responses from the Debtor in Possession, the court ordered the Debtor in Possession to file supplemental pleadings addressing this issue. The supplemental pleadings and other issues concerning the Schedules and Petition are addressed in the following section of this Order.

REVIEW OF PETITION, SCHEDULES, STATEMENT OF FINANCIAL AFFAIRS, AND SUPPLEMENTAL PLEADINGS FILED BY DEBTOR WHO IS SERVING AS THE DEBTOR IN POSSESSION

The Debtor in Possession was ordered to file supplemental pleadings addressing the Chapter 12 eligibility issues raised at the first Status Conference. Order, Dckt. 39. Two Declarations have been filed by the Debtor in Possession.

Both Declarations list the attorney of record in the upper left hand corner as David Johnston, Esq., who is the counsel for the Debtor in Possession in this case. Dckts. 43, 44.

The first Declaration is that of Mark Jordan, a CPA. Dckt. 44. He testifies to having done tax returns for the Debtor for decades, and states that all communications for the L & L Investments, LLC, have come from the Debtor, not from Lisa Jensen-Long, Debtor's sister. He also provides general recollections about capital accounts.

In providing this testimony under penalty of perjury, Mr. Jordan states that the testimony is based on his personal knowledge. Declaration, \P 1; Dckt. 44. He testifies that he has prepared tax returns for L & L Investments, LLC, since its inception in 2017. Id. \P 3. He testified that he has done tax returns for the Debtor since the late 1980's when she commenced her "sole proprietorship" (which appears to be her law practice). Id.

Mr. Jordan testifies that all directions for his work for L & L Investments, LLC, have come from the Debtor and that at no point has he been contacted by Lisa Jensen-Long, the other 50% owner/member of the L & L Investments, LLC. *Id.* ¶ 4. He testifies that he has prepared K-1's for Lisa Jensen-Long (and presumably for the Debtor), but he does not provide any copies of the K-1's for Lisa Jensen-Long or the Debtor.

Mr. Jordan's testimony provides little of substance and merely that he has some "recollection" of how the Debtor and Lisa Jensen-Long acquired the farm that is in the L & L Investments, LLC, and that he has never spoken or communicated with Lisa Jensen-Long.

The second Declaration is provided by Steven Schroeder, who states he has multiple degrees and certifications (including a law degree). He provides his conclusion that notwithstanding the terms of the L & L Investments, LLC, Agreement, that the two members of the L & L Investments, LLC, may agree to divide the assets or proceeds in a different manner. He further "testifies," without providing a basis, his

legal conclusion that the members of the L & L Investments, LLC, have "agreed" to allocate 100% of the gross revenues to Debtor.

It appears that Mr. Schroeder's basis for this legal conclusion is that since the Debtor is the managing member, she is entitled to 100% of the L & L Investments, LLC. He concludes with an apparent legal opinion, stating;

9. In my opinion, the agreement to allocate 100% of the LLC's gross revenues [however, he does not direct the court to any such agreement or personal knowledge of such agreement] to [Debtor] is permitted by the operating agreement and is not prohibited.

Declaration, Dckt. 43.

Mr. Schroeder provided no evidence for his various conclusions and legal opinions stated to the court.

Schedules, Statement of Financial Affairs, and Requirements to Qualify as a Chapter 12 Family Farmer

Bankruptcy being a statutory based area of the law, Congress provides a definition of what persons can qualify to be a Chapter 12 Debtor, stating in 11 U.S.C. § 109(f):

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

The term "family farmer," as applies to an individual seeking relief under Chapter 12 of the Bankruptcy Code, is defined in 11 U.S.C. § 101(18) and (19) [emphasis added]:

- (18) The term "family farmer" means
- (A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$10,000,000 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;

(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.

The Chapter 12 Trustee has challenged Debtor's eligibility. Debtor in Possession's Counsel responds that Lisa Jensen-Long, the other 50% member/owner has agreed to have all of the gross income, and presumably all of the loss, from L & L Investments, LLC, allocated to the Debtor. No evidence of any such agreement or historic allocation has been provided to the court.

One of the disputed issues is what is Debtor's actual share of the gross income from L & L Investments, LLC, how that applies to determining eligibility to be a Chapter 12 debtor, and documentation that Debtor has received all income from the L & L Investments, LLC.

Information Provided on Schedules

The court has reviewed Debtor's Petition, Schedules, and Statement of Financial Affairs. It appears that there is some grossly inaccurate information stated in there by the Debtor, who is a licensed California attorney, and Debtor's counsel who filed (and presumably participated in the preparation, review of, and has given his Federal Rule of Bankruptcy Procedure 9011 certifications to) them.

On Amended Schedule A/B, Debtor does not list having any interest in or ownership of an unincorporated business with the name "Law Offices of Leslie F. Jensen." Dckt. 22 at 8-11. However, on Amended Schedule A/B, Debtor states that she has "Accounts receivable" owed to her personally, not to an entity named Law Offices of Leslie F. Jensen," with a value of \$55,000.00. *Id.* at 11. Debtor also states that she has "Office equipment, computers, desks, chairs" that she owns, not some other entity, with a value of \$9,500.00. *Id.*

<u>Debtor's Income Information and</u> Non-Disclosure of Non-Debtor Spouse Income

In response to Question 46, Debtor states that she has no interest in "any farm- or commercial fishing-related property?" *Id.* at 9, and Amended Schedule A/B, Dckt. 22 at 11.

Going back to Amended Schedule I, Debtor states under penalty of perjury having no other income from any source, and Debtor states that her only income is the \$5,500.00 in "gross wages, salary, and commissions" from her "Employer" Law Office of Leslie F. Jensen. Dckt. 21 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 deductions from such "wages" for federal and state taxes, or Social Security tax.

No income is shown from the operation of any business by Debtor in response to Question 8 of Schedule I. *Id.* at 28.

On Form B6I attached to Schedule I, Debtor states 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.

Debtor is married and disclosed in her Declaration in support of confirmation (Dckt. 71) that her husband suffered from a medical condition that required extensive surgery in 2019 which recovery reduced Debtor's ability to practice law.

On Schedule I, with respect to the income information for Debtor's non-debtor spouse, Debtor responds under penalty of perjury that it is "N/A," which the court construes to be an assertion that the required information to be disclosed is "not applicable" to Debtor. No basis is stated for such disclosure not being applicable to this Debtor.

On her Statement of Financial Affairs, Debtor states she is married. Dckt. 21 at 33. From the Expenses on Schedule J (*Id.* at 30-31), it appears that these are expenses for two persons.

Debtor has not disclosed any income, Social Security, pension, retirement, or any other income that her husband is receiving.

Debtor merely stating that disclosing this required information is "Not Applicable" is not a proper, good faith response under penalty of perjury.

Expense Information

On Schedule J, Debtor states under penalty of perjury that she has (\$10,479.00) in necessary and reasonable monthly expenses. *Id.* at 30-31. These expenses of (\$10,479.00) include:

1.	Residence Property	
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Mortgage Payment(\$2,416)
Mortgage Payment(\$2,416)

- 2. Clothing and Laundry.....(\$ 600)
- 3. Personal Care Products & Services....(\$ 210)
- 4. Non Residence Real Property
 (Only Other Property Owned by Debtor the Alabama Property)

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a. Mortgage/Taxes/Ins....($1,552)
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- b. Maintenance.....(\$ 280)
- c. Alabama Home Expense......(\$ 448)

Conspicuously absent from the income and expenses are any state or federal income taxes, self-employment taxes, Medicare, or Social Security payments.

On her Statement of Financial Affairs, Debtor states under penalty of perjury that she has two businesses and the gross income therefrom for 2020, the year the case was filed and the two preceding years, stated as follows:

Year	Gross Income From Operating Law Practice	Gross Income From Operating Farm
2020 (Jan - Oct Filing)	Unknown	Unknown
2019	\$451,226	\$486,671
2018	\$396,058	\$542,226

Id. at 33-34. No income information is provided for Debtor's non-debtor spouse, with those information fields left blank. *Id.*

In response to Question 27 on the Statement of Financial Affairs requiring the Debtor to provide details of her business or connections to any business, she states that one business is Law Office of Leslie F. Jensen and the other is L & L Investments, LLC. *Id.* at 27. While stating that she has these businesses, Debtor neglected to complete the required information identifying whether the businesses were sole proprietorship, self-employed, LLC, partnership, or interest in or officer of a corporation. While identifying L & L Investments, as an LLC, and listing a 50% interest on Schedule A/B, Debtor does not identify the nature of the "Law Office of Leslie F. Jensen." On her Amended Petition, in response to Questions 4 and 12, Debtor states that her business name is "DBA Law Office of Leslie F. Jensen" and that such operates as a sole proprietorship. Dckt. 58 at 2, 4. Based on the other information provided on the Schedules and in this case, this is Debtor's sole proprietorship, self-employed law practice.

While Debtor has represented having huge losses from the farming operation and may not owe income taxes, that does not excuse Debtor from paying self-employment, Social Security, and other taxes.

Status and Initial Confirmation Hearing Discussion

At the Status Conference and again at the April 29, 2021 initial hearing on the Debtor's Motion to Confirm the Chapter 12 Plan, the parties in interest continued to disagree that the Debtor qualified as a "family farmer." There is also now pending a Motion to Dismiss this Case for grounds other than Debtor not qualifying as a family farmer.

After discussion at the April 29, 2021 hearing, the court determined and the parties in attendance concurred that the issue of eligibility and the asserted grounds to dismiss or convert the case should be addressed before the parties engaging in extensive confirmation discovery.

Upon consideration of the information provided by Debtor under penalty of perjury, the issues concerning whether Debtor meets the requirements to be a debtor in a Chapter 12 case, and good cause appearing, the court issued the Order to Show Cause and requires the following:

- B. On or before **May 27, 2021**, Leslie F. Jensen, the Debtor in Possession, shall file a Response, supported by credible, admissible (Fed. R. Evid) evidence and legal argument consistent with the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011 to establish her eligibility to be a Chapter 12 debtor in this bankruptcy case
- C. On or before **June 3, 2021**, any party in interest may file Responses, supported by credible, admissible (Fed. R. Evid) evidence and legal argument consistent with the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, to this Order to Show Cause and the Debtor in Possession's and the Debtor's (if any separate) Response.
- D. On or before **June 10, 2021**, Debtor in Possession shall file and serve Replies, if any, to Responses filed by any non-debtor or non-debtor in possession party in interest.

The court further ordered that Debtor, Leslie F. Jensen, shall file amended Schedules and Statement of Financial Affairs to correct any incomplete, inaccurate, or non-reported information, including, without limitation, (1) disclosing the current income and the 2020 year to filing date, 2019, and 2018 gross income of her non-debtor spouse; (2) all tax payment obligations from her business or other income, including self-employment taxes and other taxes or amounts a self-employed person must pay even if Debtor does not have to pay income taxes, and (3) correctly stating her self-employment income as business income (not wages paid by a third-party employer) and include the required income and expense attachments for all businesses of the Debtor.

Additionally, that such financial information for income shall accurately state the actual income cash flow, and not merely an amount of "taxable income" that may exist after Debtor takes advantage of substantial losses from the L & L Investments, LLC, that she can use to reduce her taxable income.

Compliance with Order to Show Cause by Debtor and Debtor in Possession

Debtor in Possession's counsel filed Debtor's declaration in response to the Order to Show Cause. Leslie Jensen testifies as follows (identified by paragraph number in the Declaration):

3. That Debtor's marriage to Michael Stout, identified as ex-husband, was on short duration and terminated effective June 11, 2021 "as to 'status only." the "short duration" is not disclosed, nor what is meant by the "status only" term, which may be one that family law attorneys are familiar with, but not all attorneys and judges.

Further, when they were married, her "Ex Husband" had already retired from Modesto Irrigation District and was receiving payments on his pension plan and Social Security.

She further testifies that she was not and is not familiar with his finances, but she filed joint tax returns which represent to the Internal Revenue Service and California Franchise Tax Board that the information in the returns she is signing is true and accurate.

She testifies that they never have any joint accounts or credit obligations. However, their one "financial entanglement" was the purchase of a home in Alabama, which they own as joint tenants, and for which Debtor has made all the mortgage and expense payments.

4. Shortly after the Chapter 12 bankruptcy case was filed, Debtor filed for dissolution of the marriage in November 20, 2020.

[That a married couple would choose to dissolve a marriage when one of the spouses faced several financial struggles, whether because it had emotionally poisoned the marriage or to "protect" the existing and future assets of the non-debtor spouse and the two continued in their relationship without the existence of a marriage license, is not surprising or improper.]

Debtor continues, stating that she has not given her Ex-Husband any assets and that "the dissolution of marriage was not to shield any of my assets from bankruptcy case."

[This appears to be a tacit acknowledgment that the bankruptcy was filed to protect the Ex-Husband's existing and future separate assets from the financial travails of Debtor.]

- 5. Debtor states that she has no information about the Ex-Husband's current income and they, the marriage now terminated as to "status only," are not filing joint tax returns.
- 9. To be transparent, Debtor states that she is now filing a Profit and Loss Statement for her law practice business and a copy of her Self-Employment tax return.

[As clearly stated on Schedule I, ¶ 8a; Dckt. 21, the Profit and Loss Statement for a debtor's business is required, not merely optional to make the financial disclosures more "transparent."]

10. Because of a \$148,046 in farming operation losses, Debtor was not required to pay any federal or state income taxes.

Three Exhibits are provided by the Debtor/Debtor in Possession, which are authenticated in the Declaration. The First is the "Notice of Entry of Judgement (Status Only)." Dckt. 142 at 2. This Notice of Entry of Judgment (and not the actual judgment) states that a judgment was entered on June 15, 2021 for "Dissolution - status only." The boxes not checked on the form include: "Dissolution," "Dissolution - reserving jurisdiction over termination of marital status or domestic partnership;" "Legal separation." No other information is provided and this court cannot divine what is actually in that Judgment that Debtor relies upon.

The court's research turns up California Family Code § 2337 which is titled "§ 2337. Severance and grant of early trial on issue of dissolution of status of marriage; Preliminary declaration of disclosure." It provides in pertinent part:

(a) In a proceeding for dissolution of marriage, the court, upon noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.

Cal. Fam. Code § 2337(a). Other provisions of this section continuing spousal obligations and liabilities between the "status dissolution" parties.

statement as of the October 29, 2020 filing of this case. Also, filing this Exhibit 2 does not comply with the requirements of Schedule I. On Exhibit 2 Debtor states having in gross income from her law practice. However, she lists here total expenses to be , yielding only a profit, which appears to be seriously low for the risks and rewards of a law practice. Additionally, Debtor is not shackled to a large firm, but has a nimble solo practice in which she can squeeze her expenses to keep them legitimately low (but not over pay taxes). Debtor's 2020 legal expenses do include , which appear to relate to the judgment obtained by a creditor against Debtor. Two other line items the court notes. First, for her solo practice, Debtor has wages of in contract labor. Second, Debtor has she pays, in addition toin other expenses that are listed on the attachment to the Schedule C, which include in expert witness fees, in "merchant fees," and -in "credit card charges." It appears that the financial and time drain from fighting the judgement that her creditor had obtained is over; 2021 and forward can be substantially greater financial years, with her law practice net profit rising to around profit on her gross income. It does not appear that the stale , a modest 2020 information, including expenses that clearly no longer will be incurred, is accurate to state the going

forward income that has to be considered by the court, the Chapter 12 Trustee, and creditors.

Exhibit 2 is Debtor's 2020 Schedule C, Profit or Loss from Business for her law practice Dckt.

142 at 3-5. This was historical 2020 and not stated to be the Debtor's current, actual profit and loss business

At the hearing, **XXXXXXX**

FINAL RULINGS

4. <u>21-90006</u>-E-7 JANAY VILLARREAL <u>21-9003</u>

ANDERSON V. VILLARREAL

STATUS CONFERENCE RE: COMPLAINT 4-13-21 [1]

ADVERSARY PROCEEDING DISMISSED: 5/21/21

Plaintiff's Atty: Pro Se Defendant's Atty: unknown

Adv. Filed: 4/13/21 Answer: none

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Notes:

Notice of Payment Due filed 4/20/21 [Dckt 8]

Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions filed 4/27/21 [Dckt 10]

Order sustaining Order to Show Cause and dismissing case filed 5/21/21 [Dckt 16]

The Adversary Proceeding having been dismissed by prior order of the court, the Status Conference is concluded and removed from the Calendar.

5. <u>20-90607</u>-E-7 BIMLESH SINGH <u>21-9004</u> SINGH V. MOREHOUSE HOMES ET AL

STATUS CONFERENCE RE: COMPLAINT L 4-19-21 [1]

Plaintiff's Atty: Pro Se

Defendant's Atty:

Steven M. Dailey [JP Morgan Chase Bank; Select Portfolio Services]

Unknown [Morehouse Homes]

Adv. Filed: 4/19/21 Answer: none

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:

Application to Have the Chapter 7 Filing Fee Waived filed 4/19/21 [Dckt 6]

[KTK-1] Motion to Dismiss Plaintiff's Adversary Complaint filed 5/19/21 [Dckt 10], set for hearing 6/24/21 at 10:30 a.m.

The court having dismissed the Adversary Proceeding without prejudice, the Status Conference is concluded and removed from the Calendar.