

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

**June 27, 2024 at 2:00 p.m.**

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- |   |             |  |
|---|-------------|--|
| 1. <a href="#"><u>24-90120-E-11</u></a> <b>HUACANA ENTERTAINMENT,</b> | <b>INC.</b> | <b>CONTINUED STATUS CONFERENCE RE:</b> |
| <a href="#"><u>CAE-1</u></a>  |             | <b>VOLUNTARY PETITION</b>              |
|   |             | <b>3-1-24 [1]</b>                      |

<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 27, 2024 STATUS CONFERENCE**

The hearing on confirmation of the Subchapter V Plan is set for July 28, 2024. The Subchapter V Trustee reports that the 341 Meeting was conducted on June 6, 2024, and concluded that day.

At the Status Conference, xxxxxxx

**APRIL 25, 2024 STATUS CONFERENCE**

This voluntary Subchapter V Case as filed on March 1, 2024. In the Status Report filed by the Subchapter V Debtor/Debtor in Possession, it is projected that the Debtor/Debtor in Possession will get a plan filed on or before May 30, 2024. Dckt. 26. The Debtor/Debtor in Possession does not anticipate any serious litigation in this case or any cash collateral issues.

The Schedules in this Case list modest assets and significant debts.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that an offer has been received from a buyer for the assets of the Debtor, and the negotiation process is now ongoing.

**Thursday, June 27, 2024 at 2:00 p.m.**

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2. [23-90021-E-7](#) **MARTHA MENDOZA**  
[24-9005](#)  
CAE-1

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
4-30-24 [1]

**MENDOZA V. FRANCHISE TAX BOARD**

**The Status Conference is XXXXXXXX**

## **JUNE 27, 2024 STATUS CONFERENCE**

### **SUMMARY OF COMPLAINT**

The Complaint filed by Martha Mendoza (“Plaintiff-Debtor”), Dckt. 1, asserts claims for: (1) determination of dischargeability of asserted tax obligations of the California Franchise Tax Board (Defendant-FTB), (2) disallowance in its entirety the proofs of claim filed by Defendant-FTB, and (3) determination of the extent, validity, and priority of any lien asserted by Defendant-FTB.

### **SUMMARY OF ANSWER**

The California Franchise Tax Board (“Defendant-FTB”) has filed an Answer, Dckt. 8, admitting and denying specific allegations in the Complaint. The Answer asserts six Affirmative Defenses.

### **STATUS CONFERENCE STATEMENT**

Plaintiff-Debtor filed a Status Conference Statement on June 21, 2024. Dckt. 9. Plaintiff-Debtor reports that the Parties are currently in negotiations concerning the claims asserted and will be requesting that the court continue the Status Conference sixty days before setting deadlines and a pre-trial conference in this Adversary Proceeding.

### **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff -Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (I), and (K). Complaint ¶¶ 1-3, Dckt. 1. In the Answer, Defendant-FTB admits the allegations of jurisdiction, except as stated in the following sentence, and that this is a core proceeding. Answer ¶¶ 1-3; Dckt. 8. Defendant-FTB asserts that there is not jurisdiction for this court to determine the amount of nondischargeable tax debt because this is a no asset Chapter 7 Bankruptcy Case. *Id.*

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

## ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. Plaintiff -Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (I), and (K). Complaint ¶¶ 1-3, Dckt. 1. In the Answer, Defendant-FTB admits the allegations of jurisdiction, except as stated in the following sentence, and that this is a core proceeding. Answer ¶¶ 1-3; Dckt. 8. Defendant-FTB asserts that there is not jurisdiction for this court to determine the amount of nondischargeable tax debt because this is a no asset Chapter 7 Bankruptcy Case. *Id.*

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

- b. Initial Disclosures shall be made on or before **xxxxxxx, 2024**.
- c. Expert Witnesses shall be disclosed on or before **xxxxxxx, 2024**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2024**.
- d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2024**.
- e. Dispositive Motions shall be heard before **xxxxxxx, 2024**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx, 2024**.

3. [13-90435-E-7](#) SEAN AMIN  
[23-9010](#)  
CAE-1

CONTINUED STATUS CONFERENCE RE:  
NOTICE OF REMOVAL  
6-13-23 [1](#)

NEVAREZ V. ELLIOTT ET AL

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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#### **JUNE 27, 2024 STATUS CONFERENCE**

On May 10, 2024, Cross-Defendant Debtors filed a Supplemental Notice of Removal. Dckt. 23. It includes a statement that Debtor Kevin Amin in Bankruptcy Case 12-92013 intends to file a counterclaim asserting that the Cross-Claims were discharged in his Bankruptcy Case.

The court has ordered the Defendant-Debtor, counsel for the Defendant-Debtor, counsel for the cross-complainant, and the cross-complainant to appear at the June 27, 2024 Status Conference.

At the Status Conference, XXXXXXX

#### **APRIL 25, 2024 STATUS CONFERENCE**

As of the court's April 24, 2024 review of the Docket, no updates status reports have been filed. The review of the Docket discloses that nothing further has been filed by any of the Parties Other than the Notice of Removal by the Debtor on June 13, 2023. This matter was removed to this court three hundred and seventeen (317) days prior to the April 24, 2024.

While there have been representations of a settlement being near, almost a years worth of federal court history show little good faith prosecution of this Adversary Proceeding. It may be that both Parties are nesting comfortably in federal court, the judge having allowed them too much leeway.

It appears that this is a situation in which the court should remand this Adversary Proceeding to State Court and allow the Parties to experience the leeway of the State Court Judge. Additionally, the Debtor could have simply filed a Motion for Violation of the Automatic Stay which would have been set for an evidentiary hearing (if there are any actual disputed factual issued) and had this matter resolved about six months ago.

At the Status Conference, counsel for the Defendant-Debtor reported that Plaintiff now has new counsel and a new Cross-Complaint by them has been refiled in the State Court Action notwithstanding removal of the Cross-Complaint.

Defendant-Debtor shall filed with the court a supplemental pleading to which a copy of the new Cross-Complaint identifying the new counsel representing Plaintiff.

The court continues the hearing to 2:00 p.m. on June 27, 2024.

The court issue a separate order requiring all parties in interest and their respective counsel to appear at the continued Status Conference.

### **JANUARY 25, 2024 STATUS CONFERENCE**

No updated Status Conference Reports have been concerning any settlement of this Adversary Proceeding or whether it will proceed to litigation.

At he Status Conference, Counsel for the Debtor reported that a settlement is getting closer but has not been finalized. The present settlement has been agreed by all of the multiple parties, and they are waiting for the concurrence of only one person.

The Status Conference is continued to 2:00 p.m. on April 25, 2024.

### **OCTOBER 19, 2023 STATUS CONFERENCE**

The court's review of the Docket reflects that no updated Status Report has been filed and no appearances made by any other party to this Adversary Proceeding.

At the Status Conference, counsel for the Debtor reported that a settlement is anticipated in the near future, and requests a further continuance.

### **AUGUST 10, 2023 STATUS CONFERENCE**

On June 13, 2023, Debtor-Defendant Sean Afshin Amin filed a Notice of Removal of this State Court Action. Dckt. 1. In the State Court Action Defendant-Debtor has been sued for an obligation that is asserted to have been discharged in his 2013 Chapter 7 Bankruptcy Case. Defendant-Debtor seeks now to not only defend the State Court Action based on his having obtained a discharge, but to also assert that the naming of Defendant-Debtor in the State Court Action violates the Discharge Injunction, and he will seek damages relating thereto.

The Ninth Circuit has addressed the enforcement of the Discharge Injunction, treating it as a statutory injunction for which the violation may be sought and the injunction enforce by "simple" motion for contempt rather than an adversary proceeding. *Barriento v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189-1191 (9th Cir.2011); *ZiLOG, Inc. V. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006); *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002). *See also, Bayati v. Musharbash (In re Bayati)*, 2015 Bankr. LEXIS 3624 (B.A.P. 9th Cir. 2015), discussing when additional relief to the "mere" violation of the automatic stay would require an adversary proceeding.

At the Status Conference, counsel for Defendant-Debtor reported that there are ongoing discussions to resolve this dispute, which is related to the Adversary Proceeding in *Elliott v. Nevarez*, 22-9002. He indicated that the issues concerning the bankruptcy case and the automatic stay have been highlighted for the person filing the cross-complaint that is the subject of this removed action

**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.

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

Sufficient Notice not Provided. The court ordered Debtor / Debtor in Possession to serve a copy of the scheduling Order, a copy of the Subchapter V Plan, a ballot for voting on the Subchapter V Plan, and a copy of the notice of confirmation hearing to all parties in interest on or before May 8, 2024. *See* Order, Docket 235. No certificate of service has been filed by that deadline, so the court cannot determine which parties were served and when.

At the hearing, **XXXXXXX**

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). No written opposition was required. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Confirmation of the Modified Plan of Reorganization is <b>XXXXXXX</b>.</b>
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R. Millennium Transport, Inc., the Subchapter V Debtor and Debtor in Possession in this case was set for hearing confirmation of its Modified Subchapter V Plan (Docket 235). The Debtor/Debtor in Possession has not complied with the Service and Filing Requirements for Confirmation. The court set the following dates material to this Motion:

May 8, 2024: Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

June 10, 2024: Last Day for Submitting Written Acceptances or Rejections

June 10, 2024: Last Day to File Objections to Confirmation

June 20, 2024: Last day to file copies of all ballots and a ballot tabulation showing the percentages of acceptances and rejections for each impaired class, in number and dollar amount.

June 20, 2024: Last day to file responses to Objections to the Plan, if any, and last day to file and serve evidence in support of confirmation.

Docket 235. As the court noted above, Debtor / Debtor in Possession has not complied with these deadlines as set by the court. There has been nothing by way of supporting evidence or tabulation of ballots (if any) filed. Furthermore, the Plan has not been properly served. Debtor / Debtor in Possession has not filed anything with the court since this Modified Plan was filed on April 10, 2024. It appears to the court that Debtor / Debtor in Possession does not wish to move forward with this Plan at this time.

At the hearing, **XXXXXXX**

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

Class	Voting	Claim Amount	Claim Treatment/ Percentage Calculation
Class 1 (Unimpaired): Priority Claims	<b>XXXXXXX</b>	N/A	100% Upon Confirmation
Class 2 (Impaired): Secured claim of Crossroads Equipment Lease & Finance	<b>XXXXXXX</b>	\$315,184.96 (POC 13-1)	100% plus 5% interest, \$5,900 monthly for 19 months
Class 3 (Impaired): Secured claim Sumitomo Mitsui Finance and Lease Company	<b>XXXXXXX</b>	\$246,240.91 (POC 8-1)	100% plus 5% interest, \$4,650 monthly for 60 months
Class 4 (Impaired): Non-priority unsecured claims	<b>XXXXXXX</b>		\$1,196 per month for 19 months commencing June 1, 2024;  and \$12,185 per month for 29 months commencing January 1, 2026.  The estimated dividend is 42%,
Class 5 (Impaired): Non-priority unsecured claims by insiders	<b>XXXXXXX</b>	\$819,000	\$0 dividend
Class 6 (Unimpaired): Equity interests in the Debtor	<b>XXXXXXX</b>		Class 6 is unaffected by the Modified Plan

There has been no evidence filed in support of confirmation. Without supporting evidence, the court cannot make determinations that the Modified Plan is in compliance with the necessary elements for confirmation under 11 U.S.C. § 1129 applicable under 11 U.S.C. § 1191:

**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: XXXXXXXX.**

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

The court's review of the Plan at the confirmation hearing.

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

**Evidence: XXXXXXXX.**

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: XXXXXXXX.**

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: XXXXXXXX.**

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

**Evidence:** Not applicable.

7. With respect to each impaired class of claims or interests—



(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

**Evidence: XXXXXXXX.**

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

**This section is not required pursuant to 1191(b).**

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

**Evidence: XXXXXXXX.**

(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: XXXXXXXX.**

(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: XXXXXXXX.**

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

**Not required pursuant to 1191(b).**

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

**Evidence: XXXXXXXX.**

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: XXXXXXXX.**

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

**Evidence:** Not applicable.

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

**Evidence:** Not Applicable

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

**Not required pursuant to 1191(b).**

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

**This section is not applicable.**

## **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. However, Debtor / Debtor in Possession has not presented evidence in support of confirmation.

Section 1191(b) which governs the confirmation of a subchapter V plan, requires confirmation of the plan “notwithstanding the requirements of [section 1129(a) paragraphs] if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.” The court is unable to determine if 11 U.S.C. § 1191(b) has been complied with.

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 Confirmation of the Proposed Modified Chapter 11 Subchapter V Plan of Reorganization, 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 Proposed Modified Chapter 11 Subchapter V Plan of Reorganization is **XXXXXXX**.

5. [20-90349-E-11](#)      **R. MILLENNIUM TRANSPORT,**      **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#)                      **INC.**                      **VOLUNTARY PETITION**  
5-15-20 [[1](#)]

<b>The Status Conference is <b>XXXXXXX</b></b>
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#### **JUNE 27, 2024 STATUS CONFERENCE**

A review of the court's Docket on June 25, 2024, discloses that nothing further has been filed by the Debtor/Debtor in Possession.

At the Status Conference, **XXXXXXX**

#### **MARCH 28, 2024 STATUS CONFERENCE**

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that nothing further has been developed. Counsel states that the principal of the Debtor has not participated in efforts to modify the Plan.

The Subchapter V Trustee reports the principal of the Debtor/Debtor in Possession has not communicated with the Trustee. The two responsible representative of the Debtor in this Bankruptcy Case are Surjit Singh Malhi and Rajwant Kaur Malhi. From the information provided at the Status Conference, it appears that Surjit Singh Malhi and Rajwant Kaur Malhi are not fulfilling their fiduciary duties as the Debtor/Debtor in Possession and Plan Administrator to pay the last two remaining creditors in this case.

The two remaining claims are those of former employees of Debtor. The court overruled the objections of Debtor to each of these two claims. Civ. Minutes, Dckts. 165, 166; and Orders, Dckts. 170, 172.

What was presented at the Status Conference created a picture that Surjit Singh Malhi and Rajwant Kaur Malhi are intentionally not performing the Plan, which was approved by an order of this court, and are diverting plan payment monies from the Subchapter V Trustee.

It appears to the court that the in person participation of Surjit Singh Malhi and Rajwant Kaur Malhi, as the responsible representative of the Debtor/Debtor in Possession and who have fiduciary duties arising under the Bankruptcy Code and the confirmed Subchapter V plan is required before the court considers entering further Orders to Show Cause in this Case.

The court ordered Surjit Singh Malhi and Rajwant Kaur Malhi, and each of them, who are the responsible representatives for the Debtor/Debtor in Possession and have fiduciary duties arising in this case and under the Confirmed Subchapter V Plan that was confirmed by Order of this court, and David Johnston, Esq. shall appear in person at Continued Post-Confirmation Status Conference at 2:00 p.m. on April 11, 2024. The court further ordered that no telephonic appearances were permitted for the forgoing persons ordered to appear. Order; Dekt. 227.

The court further ordered that:

If Surjit Singh Malhi or Rajwant Kaur Malhi, or both of them fail to appear at the April 11, 2024 Continue Post-Confirmation Status Conference, and thereby forcing the court to further continue the Post-Confirmation Status Conference, in addition to issuing any orders to show cause for failure to comply with this order, the court shall issue a Writ for the United States Marshal to take into custody the person or persons failing to comply with this order to appear at the Continued Post-Confirmation Status Conference and present them at the further continued date. The Writ shall further provide that the U.S. Marshal shall take such person or persons into custody sufficiently in advance of the further continued Post-Confirmation Status Conference to insure that they will be present (which may include having to provide jail holding facilities for such persons in advance of the further continued Post-Confirmation Status Conference).

*Id.*

As shown in the Civil Minutes for the Post-Confirmation Status Conferences, the responsible representatives have been “missing in action” and not appearing in court. They have also failed in providing the court with updated Status Reports.

One of the issues arising is that the Debtor/Debtor in Possession is not making the monthly plan payments to the Subchapter V Trustee for disbursement to creditors and payment of administrative expenses. 11 U.S.C. § 1194(b) provides that in a non-consensual confirmation of a Subchapter V Plan, the disbursements to creditors/administrative expenses will be made through the Subchapter V Trustee and not directly by the Debtor/Debtor in Possession.

§ 1194. Payments

...

(b) Other plans. If a plan is confirmed under section 1191(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, **the trustee shall make payments to creditors under the plan.**

11 U.S.C. § 1194(b) [emphasis added].

In 11 U.S.C. § 1191, the section addressing confirmation of Subchapter V Plans, Congress provides for confirmation of Subchapter V Plans

(b) Exception. Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8) [each class has accepted the plan or is unimpaired], (10) [at least one impaired class have accepted the plan], and (15) [individual debtor plan required term] of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

As set forth in the Civil Minutes for the hearing on confirmation of the Amended Plan, impaired Classes 2, 4, 5, 7, 9, 10, and 12 did not accept the Plan. Dckt. 130 at 2-3. Neither the Order Confirming the Amended Plan or the Amended Plan attached thereto override the provisions of 11 U.S.C. § 1191(b) providing for the Subchapter V Trustee to make the disbursement to the creditors/administrative expenses.

### **Modified Plan Filed**

On April 9, 2024, the Debtor/Debtor in Possession filed a proposed Modified Plan. Dckt. 231. In the Modified Plan Debtor/Debtor in Possession states that the Debtor/Debtor in Possession has paid all but two of the secured claims and is current in payments to those remaining two secured claims, but

However, the [Debtor/Debtor in Possession] failed to make all required payments to the Subchapter V Trustee to pay priority and general unsecured claims, which have turned out to be much higher than expected.

Modified Plan, p. 2:22-26; Dckt. 231.

The provisions of 11 U.S.C. § 1194(b) does not provide for the Subchapter V Trustee to merely make disbursements to creditors having unsecured claims and administrative expenses, but states that it is the Subchapter V Trustee who will make the payments to creditor. (In the Amended Plan, administrative expenses are stated as “administrative expense claims.”

8 Collier on Bankruptcy ¶ 1194.02 discusses when the Subchapter V Trustee is the person making the plan payment disbursements, which discussion includes:

When the court confirms a plan under the cramdown provisions of section 1191(b), however, section 1194(b) requires the trustee to make payments to creditors under the plan unless the plan or the confirmation order provides otherwise. Chapters 122 and 133 have identical provisions.

Because only the debtor may propose a plan, the debtor in the first instance controls whether the debtor or the trustee makes payments to creditors in the cramdown situation. Nevertheless, the court controls confirmation, and who makes the plan payments may be a crucial factor in whether the court will confirm the plan. Alternatively, a court might condition confirmation on modification of the plan to require that the trustee make payments.

The court cannot identify any provisions in the confirmed Amended Plan or the proposed Modified Plan that change the provisions of 11 U.S.C. § 1194(b) that requires the Subchapter V Trustee to make the plan disbursements to creditors.

6. [21-90484-E-11](#) [CAE-1](#) **TWISTED OAK WINERY, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**  
10-4-21 [1]

The Status Conference is **XXXXXXX**

#### **JUNE 27, 2024 STATUS CONFERENCE**

At the Status Conference, **XXXXXXX**

#### **MAY 16, 2024 STATUS CONFERENCE**

On May 8, 2024, the Debtor/Debtor in Possession and the Subchapter V Trustee filed their Joint Post-Confirmation Status Report. Dckt. 232. They report that post-confirmation motions are being drafted and request that the Status Conference be continued to 2:00 p.m. on June 20, 2024. Additionally, that parties be authorized to set the hearings on the post-confirmation motions for 2:00 p.m. on June 20, 2024.

The Status Conference is so continued and the special setting of post-confirmation motions authorized.

7. [22-90296-E-11](#) [CAE-1](#) **PROVIDENT CARE, INC.** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**  
8-29-22 [1]

The Post-Confirmation Status Conference is **XXXXXXX**

### **JUNE 27, 2024 POST-CONFIRMATION STATUS CONFERENCE**

The court's June 25, 2024 review of the Docket indicates that nothing further has been filed in this case since the court allowed the fees of the Subchapter V Trustee.

At the Status Conference, **XXXXXXX**

### **MARCH 28, 2024 POST-CONFIRMATION STATUS CONFERENCE**

On January 26, 2024, the court entered its order allowing compensation for the Subchapter V Trustee. Dckt. 146. No compensation has been allowed for counsel for the Debtor/Debtor in Possession.