

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

July 17, 2025 at 11:30 a.m.

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1. [24-20265](#)-E-12 **HARDAVE/SUKHBINDER DULAI** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
1-23-24 [[1](#)]

Debtors' Atty: Ryan C. Wood; Rabiya Timizi

Notes:

Continued from 6/26/25 to be conducted in conjunction with the Confirmation hearing.

Operating Report filed: 6/30/25

[RCW-22] Final Application for Approval of Compensation for Douglas C. Kurz Licensed Appraiser filed 6/24/25 [Dckt 332]; set for hearing 7/17/25 at 10:30 a.m.

The Status Conference is XXXXXXX
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JULY 17, 2025 STATUS CONFERENCE

On July 17, 2025, the court conducted the confirmation hearing for the proposed Chapter 12 Plan.

The court, XXXXXXX

At the Status Conference, XXXXXXX

July 17, 2025 at 11:30 a.m.

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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on June 16, 2025. By the court’s calculation, 31 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days’ notice for opposition). Movant is four days late of the required notice period. At the hearing, **XXXXXXX**

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Confirm the Plan is **XXXXXXX.**

Hardave Singh Dulai and Sukhbinder Kaur Dulai (“Debtor in Possession”) filed their Motion to Confirm Plan on June 16, 2025. Docket 326. Secured creditor HD Owner, LLC (“Creditor”) filed an Opposition to confirmation on July 3, 2025.

This is the Debtor in Possession’s second bankruptcy case filed in the last two years. Debtor in Possession’s previous case, case no. 22-23180, was dismissed on July 21, 2023, for failing to confirm a plan and there being continuous loss or diminution to the Estate. Oder, Docket 101.

In this case, Debtor in Possession’s Plan of Reorganization depended on the court ruling on Debtor in Possession’s Motion to Value Creditor’s collateral. *See* Docket Control No. RCW-12. Creditor’s claim is secured by the following parcels of real property:

1. 943 Center Avenue, Pcl 20, and Pcl 21, Gridley, CA 95948, APNs 024-130-019, 024-130-020; 024-130-021;
2. 1076 Cox Ln, Oroville, CA, APN 027-220-072; and
3. Pcl 37 & 38 Broadway, Live Oak, CA; APNs 010-180-037 and 010-180- 038;

with said Deeds of Trusts encumbering the above Real Properties having been recorded on: (1) April 20, 2020, with the Office of the County Recorder for Sutter County, California, DOC 2020-0005845, and (2) on April 20, 2020, with the County Recorder for Butte County, California, DOC 2020-0016017. (“Property”). The court entered its Order valuing Creditor’s collateral at \$3,081,000.00 on April 10, 2025. Order, Docket 314. The remainder of Creditor’s claim was deemed to be unsecured in the amount of \$854,598.16. *Id.*

**Summary of the Fourth Amended Plan Filed
on June 5, 2025 (Docket 323)**

The court provides the following summary of significant terms of the proposed Fourth Amended Plan. This summary is not a complete statement of all terms of the proposed Fourth Amended Plan. The Fourth Amended Plan provides as follows:

1. The quarterly Chapter 12 Plan payments are estimated to be \$97,267.00 (with trustee fee) per quarter beginning the first month of the first quarter following the Effective Date of the Plan for 20 quarters. All impaired claims shall be paid through the Chapter 12 Plan. The monthly Chapter 12 Plan payments are estimated as follows:
2. Class 1 (Claim of HD Owner, LLC) \$68,938.15 per quarter; principal/interest for 20 quarters. At the conclusion of the Plan, the Debtors shall make remaining quarterly payments directly to the HD Owner, LLC. Debtors will pay HD Owner, LLC, (148) one hundred and forty-eight equal quarterly payments. All impaired claims shall be paid through the Chapter 12 Trustee.
3. Class 2 (Claim of Diversified): \$1,624.00 per quarter (without trustee fee), principal/interest, for sixteen (16) quarters.
4. Class 3 (Claim of School First Federal Credit Union): Shall be paid \$0.00.
5. Class 4 (Claim of Bank of America, N.A.): \$105.00, (without trustee fee) principal/interest, for twenty (20) quarters.
6. Class 5 (Claim of JP Morgan Chase Bank, N.A.): \$2,046.00, principal/interest (without trustee fee), for twenty (20) quarters.
7. Class 6 (Claim of Internal Revenue Service): The priority claim of the Internal Revenue Service shall be paid \$137.69 for twenty (20) quarters.
8. Class 7 A (Claim of Butte County) The secured property tax claim of Butte County shall be paid in 20 equal quarterly payments totaling \$1,555.00 for 20 quarters (without trustee fee).
9. Class 7B (Claim of Sutter County) The secured property tax claim of Sutter County shall be paid in 20 equal quarterly payments totaling \$413.00 for 20 quarters (without trustee fee).

10. Class 8 (General Unsecured Claims) General unsecured claims shall receive approximately 21.70% of their allowed claims with 1-[quarterly Chapter 12 Plan payments totaling \$14,091.03 (without trustee fee) beginning the third (3rd) quarter of the Plan after the effective Date of the Plan.
11. Class 9 (Leases) Assumed leases are not impaired and shall be paid directly by the Debtors. Suver Lease, Order entered May 24, 2024, Docket No. 111. A motion was filed to approve a compromise between the Debtors and AgWest regarding Claim No. 8. If the compromise is approved, Claim No. 8 will be paid \$0.00.

Fourth Am. Plan 6:3-7:2, Docket 323.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 3, 2025. Docket 341. Creditor states:

1. Debtor in Possession's finances do not support Debtor in Possession being able to afford quarterly payments. Debtor in Possession's Monthly Operating Reports ("MORs") establish that the Plan is not feasible. Debtor in Possession's Accounts Receivable in April 2025 was \$3,238. Based on the MORs, the Debtors' financial condition is highly illiquid relative to their multimillion dollar debt to Creditor. Opp'n 6:10-17.
 - a. The MORs show very little crop revenue. The MORs from May 2024-April 2025 (11 reports – the January 2025 MOR is missing) show crop revenue of \$394,000. The Plan states that January 2025 revenues were \$347,000, which would amount to \$741,000 total revenue for the last 12 months (if the numbers are correct). The Plan predicts income for 2025 of \$803,750, increasing to \$2,010,500 by 2029. This revenue appears to be highly overstated. *Id.* at 6:18-22.
 - b. It appears the MORs do not reconcile monthly regarding total farming income. *Id.* at 6:23-7:19.
2. The repayment period suggested of 37 years, 148 months, is not reasonable and is a violation of 11 U.S.C. § 1222(b)(5) and (9). Creditor does not make loans beyond 25 years typically and a time frame of 37 years is not standard practice in the market. *Id.* at 8:23-12:2.
3. The proposed interest rate, 8.5%, is outside the limits authorized in *Till v. SCS Credit Corp.*, 541 US 465 (2004). The prime rate is 7.5%, and because there is a greater risk of default given these Debtors' histories, a 2% adjustment for risk is warranted. The rate should be 9.5%. Opp'n at 12:3-13:13.

Creditor submits the Declaration of Jeremy Rasmussen (Docket 342) and Phillip J. Christensen (Docket 344) in support to authenticate the exhibits (Dockets 343, 345) and authenticate facts alleged in the opposition.

APPLICABLE LAW

As an initial matter, the debtor in a Chapter 12 case must also be an eligible debtor, pursuant to 11 U.S.C. § 109(f), which states “[o]nly a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.” The term “family farmer with regular annual income” is defined in 11 U.S.C. § 101(19) as a “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 term “family farmer” is defined under 11 U.S.C. § 101(18) as an:

[I]ndividual 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. . .

Once a debtor is deemed eligible to file under Chapter 12, to file and confirm a Chapter 12 Plan, the Bankruptcy Code provides:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim

if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)

(i) the plan provides that the holder of such claim retain the lien securing such claim; and

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

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

11 U.S.C. § 1225(a). The contents of a Chapter 12 plan are governed by 11 U.S.C. § 1222(a)(1), and must be satisfied pursuant to 11 U.S.C. § 1225(a)(1). 11 U.S.C. § 1222(a)(1) states:

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless the holder of a particular claim agrees to a different treatment of that claim;

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless

the holder of a particular claim or interest agrees to less favorable treatment;

(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; and

(5) subject to section 1232, provide for the treatment of any claim by a governmental unit of a kind described in section 1232(a).

A debtor bears the burden of showing that a proposed plan complies with the confirmation requirements of 11 U.S.C. § 1225. *In re Perez*, 30 F.3d 1209, 1220 at n. 5 (9th Cir. 1994) ("The burden of proposing a plan that satisfies the requirements of the Code always falls on the party proposing it, but it falls particularly heavily on the debtor-in-possession or trustee since they stand in a fiduciary relationship to the estate's creditors.").

DISCUSSION

Debtor in Possession's Financial Projections

Creditor's first point of opposition is based on the feasibility requirement of 11 U.S.C. § 1225(a)(6). Creditor asserts that the Plan is simply not feasible, the Plan calling for quarterly payments of \$97,267.00 that Debtor in Possession simply cannot afford. Collier's Treatise on Bankruptcy states regarding feasibility:

Section 1225(a)(6) requires the court to find that the debtor will be able to make all payments under the plan and to comply with the plan. This is a "feasibility" test similar to that found in the confirmation requirements of both chapter 11 and chapter 13.²³ The feasibility test requires the court to analyze the debtor's proposed plan payments in light of the debtor's projected income and expenses and to determine that the debtor is likely to be able to make all payments required by the plan. . .

To satisfy the feasibility test, it will be necessary for the debtor to submit sufficient evidence with regard to the debtor's projected income and expenses to enable the court to determine that the debtor can make all of the payments called for by the plan. If the debtor's schedules contain sufficient information to allow the court to make this determination, it will not be necessary for the debtor to submit additional evidence to substantiate the feasibility of the plan. If, as is more likely, the schedules do not contain sufficient information or if the information is outdated, the debtor may need to introduce evidence at the confirmation hearing that supports the feasibility of the plan.

The evidence relevant to a showing of feasibility will usually take the form of income and expense projections for the term of the plan. For most farming operations this

will entail a monthly cash flow showing the timing of receipts and expenditures and indicating the debtor's ability to service the debtor's anticipated operating expenses and to make the required plan payments. The projections and expenses should be based on the debtor's past experience as supplemented by current market information.

In analyzing the debtor's income projections, the court should examine whether they are consistent with the debtor's prepetition performance. Are the projected crop yields reasonable based on past crop yields? Are projected expenses consistent with historical expenses? Is the projected market price reasonable? The court should also consider whether the assumptions contained in the plan are reasonable. Is the debtor likely to be accepted for participation in any necessary government benefit program? Are the projected benefits from the program reasonable? Will the debtor be able to obtain necessary crop insurance? Does the debtor have access to sufficient supplies and equipment to produce the debtor's crop or operate the debtor's livestock operation?

8 COLLIER ON BANKRUPTCY ¶ 1225.02[5].

Debtor in Possession testifies that they will be able to afford the quarterly plan payments. Decl. ¶ 7e, Docket 328. Attachment 1 to the Fourth Amended Plan is a statement of feasibility. Plan at 9, Docket 323. There are detailed charts of income and expenses listed in Attachment 1. Debtor in Possession predicts total farm income and expenses of:

Year	Income	Expenses	Net Income/(Loss)
2025	\$803,750.00	(\$318,776.84)	\$484,973.16
2026	\$937,800.00	(\$469,235.84)	\$468,564.16
2027	\$1,464,475.00	(\$483,758.09)	\$980,716.91
2028	\$1,804,100.00	(\$498,210.09)	\$1,305,889.91
2029	\$2,010,500.00	(\$623,373.29)	\$1,387,126.71

Id. at 13.

The farming income increase results from a slight year-over-year income increase in walnuts and peaches. The bulk of the income increase is expected from sales of pistachios and kiwifruits. *Id.* at 11-12. For example, farming income from pistachios in 2025 is predicted to be \$117,000. *Id.* at 12. However, farming income from pistachios in 2025 increases to \$926,250. *Id.*

Debtor in Possession has not provided any evidence to the court to support a finding that the farm income from pistachios and kiwifruits will increase so dramatically in five years. Debtor in Possession's Declaration filed in support of confirmation at Docket 328 is completely silent as to the reasons behind this dramatic increase. The only statement the court could find relating to the increase in prices was found in the notes section appended to the Five Year Income Projections where Debtor in Possession states: "steady

income rise is due to increased production of pistachio crops. Yields will increase as the trees mature.” Plan at 19. The court does not find this statement alone to be sufficient evidence to support a finding that there will be such a dramatic increase in farm income from pistachios.

There also do not appear to be expenses listed for replacing old dying orchards. According to the court’s findings of fact and conclusions of law in its Memorandum Decision valuing the Property, these pistachio orchards have an economical life of 50 years and peach orchards have an economical life of 23 years. Mem. at 12, Docket 313. It appears the economical life of certain peach orchards in this case will actually expire in 2027. *Id.* at 22. There are no expenses listed for replacing the peach orchards while Debtor in Possession projects a slight increase in farming income from the peach orchards over five years. Plan at 11, Docket 323.

At the hearing, **XXXXXXX**

Debtor in Possession’s Profit and Loss Statement for 2025 through April of 2025 results in total profits of \$311,320.99. *Id.* at 10. Debtor in Possession’s MORs for May 2025 (Docket 340), April 2025 (Docket 322), March 2025 (Docket 319), and February 2025 (Docket 312) appear to support the Profit and Loss Statement financials and the ongoing quarterly payments. The court could not locate a MOR for January of 2025.

At the hearing, **XXXXXXX**

For example, the operating report for June of 2025 depicts total funds on hand in the amount of \$370,072.64, which is up from \$154,964.25 for the month of April of 2025. MOR at 1, Docket 340.

As it stands, the court does not have enough evidence on file to support a finding that Debtor in Possession can make the quarterly payments.

Creditor’s Treatment in the Plan Regarding Repayment Term of 37 Years

Creditor next objects on the basis that the Plan proposes a repayment period of 37 years, and that is not reasonable. Collier’s Treatise states regarding an amortization schedule of a secured creditor’s claim in Chapter 12:

Real property is often the subject of 20- or 30-year loans, and the plan may provide for payment of a claim secured by real property over a 20- or 30-year period.¹⁸ This may not be appropriate if part of the property value is attributable to improvements, such as orchards or vineyards, having a shorter useful life. In such circumstances, the appropriate period of time may be the standard length of time over which lenders make orchard or vineyard loans.

Another consideration is the debtor’s need for the particular amortization proposed. The court should not approve a 30-year amortization if the debtor is capable of paying the claim over a 20-year period. A long-term payment should be permitted only to the extent that it is necessary to preserve the debtor’s farming operation. It would be inequitable for the court to permit the debtor to lock in a long-term fixed interest secured loan if the result of doing so is to provide the debtor with a windfall.

One way to overcome this potential inequity is to permit the plan to provide for a long-term amortization but to impose a balloon payment at the end of a specified period. Another is to impose a due-on-sale clause as part of the plan. This would prevent the debtor from transferring the benefit of the chapter 12 plan to a third party.

Another relevant consideration is the length of time over which the original loan was made. The shorter the original term of the loan, the more scrutiny the court should give to a proposed long-term payout. A loan originally made for a one-year term should not be subjected to a 30-year amortization except in unusual circumstances.

8 COLLIER ON BANKRUPTCY ¶ 1225.03[4][b][i].

Indeed, in this case, there are two issues with the proposed time limit for repayment: first, 37 years is beyond the recognized 20 to 30 year repayment schedule used with real property; second, Collier's mentions that a longer repayment schedule may not be appropriate when, as is the case here, the real property is improved by orchards that have a shorter useful life. Here, the court considers the fact that much of the real property's value is derived from fruit orchards on the Property, and the orchards have a shorter life span. Indeed, some of the orchards on the Property now are old and will be past their useful life in the coming years. Peaches in particular will likely need replacement as early as 2027. Mem. at 22, Docket 313.

The court also considers the life of the loan under the original terms of the Promissory Note. See B-1, Promissory Note, Attachment to POC 16-2. The original loan was for 25 years, being executed on April 14, 2020, and maturing on January 10, 2045. *Id.* at 1. The term of Creditor's treatment in this Plan is 12 years longer than the term of the original note and would extend the entire length of the loan to 42 years. Creditor provides testimony evidence from Jeremy Rasmussen that states that MetLife, Creditor's assignor to the deed of trust, never makes loans for 37 years, and neither do typical agricultural lenders. Decl. ¶ 7, Docket 342.

Collier's suggests a work-around can be implemented in this type of case where there is a balloon payment option at the end of a specified period, perhaps funded by a possible refinance.

At the hearing, **XXXXXXX**

Interest Rate

Creditor objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor in Possession to 8.5%. 8.5% would be prime rate plus a 1% risk adjustment. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. There are risk factors in play that would support 2% adjustment upward for risk factors. For example, the Plan suggests extending the life of

this loan to 37 years, which is beyond the economic viability for many of the orchards. Similarly, there are not expenses budgeted for replacing these orchards. Therefore, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 7.5%, plus a 2% risk adjustment, for a 9.5% interest rate.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 12 Plan filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm is **XXXXXXX**.

3. 24-20265 -E-12 RCW -9	HARDAVE/SUKHBINDER DULAI Ryan Wood	CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN 11-7-24 [215]
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Item 8 on the 10:30 Calendar

The Debtor in Possession having filed a subsequent Amended Plan and Motion to Confirm (Dckts. 323, 326), the hearing for Motion to Confirm the Plan filed on October 21, 2024 (Dckt. 215) is removed from the Calendar, it having been replaced by the Motion to Confirm filed on June 16, 2025 (Dckt. 326).