

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

July 18, 2024 at 2:00 p.m.

1. <u>24-90120</u> -E-11 <u>CAE-1</u>	HUACANA ENTERTAINMENT, INC.	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 3-1-24 [1]
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SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/27/24 to be conducted in conjunction with the Confirmation Hearing.

The Status Conference is XXXXXXX

JULY 18, 2024 STATUS CONFERENCE

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.

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 in Possession's Attorney, Chapter 11 Subchapter V Trustee, attorneys of record who have appeared in the bankruptcy case, creditors and parties in interest, equity security holders, parties requesting special notice, and Office of the United States Trustee on June 2, 2024. By the court's calculation, 46 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)(1) 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). 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).

The Confirmation of Plan of Reorganization is denied.
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The court issued an Order on May 30, 2024, setting the following Service and Filing Requirements for Confirmation:

1. May 29, 2024: Plan filed.
2. June 3, 2024: Plan Proponent to serve a copy of the Plan a ballot for voting on the Plan.
3. July 4, 2024: Last Day for creditors to vote on the Plan.
4. July 4, 2024: Last Day for objections to confirmation of the Plan.
5. July 11, 2024: Last Day to file copies of ballots and a ballot tabulation.
6. July 11, 2024: Last Day to file evidence in support of confirmation and responses to any objections.

Order, Docket 32.

Debtor in Possession's Plan details the following assets of the estate:

1. DIP bank account: \$9,549
2. Inventory of alcohol: \$14,000
3. Night club equipment, tables, and chairs: \$20,000
4. Liquor license: \$25,000
5. Total assets: \$68,549

Plan 2:9-19, Docket 31.

The Plan is an orderly liquidation plan, whereby Debtor in Possession intends to immediately cease operations. The Debtor has entered into an agreement to sell the inventory of alcohol, the nightclub equipment, and the liquor license to 209 Entertainment, Inc., for \$58,000, which will almost cover the secured portion of the U.S. Small Business Administration claim and the priority tax claims. Plan 3:1-4, Docket 31. Debtor in Possession's sole shareholder, Rosaura Quintana, will contribute enough cash to cover any additional administrative and priority claims which are allowed. *Id.* at 2:24-26.

Executory Contract

The Debtor in Possession has an executory contract with Tracy Outlet Partners, a lease of real property for which the Debtor is obligated to pay \$13,500 per month for the next three years. The sale of assets to 209 Entertainment, Inc., requires the buyer to assume the lease with Tracy Outlet Partners, a huge benefit to the Debtor in Possession in light of current operations. Tracy Outlet Partners has indicated it will allow 209 Entertainment, Inc., to assume the lease. *Id.* at 6:15-19.

Table of Classes

Creditor/Class	Treatment	
Class 1: Priority Claims	Claim Amount	\$0
	Impairment	Unimpaired
Class 2: U.S. Small Business Administration	Claim Amount	\$475,863.02
	Impairment	Impaired
	Will be paid the value of its collateral, \$34,000, on September 30, 2024.	

Class 3: Non-priority unsecured claims	Claim Amount	\$416,080
	Impairment	Impaired
	The holders of claims in this class will receive nothing.	
Class 4: Equity interests in the Debtor in Possession	Claim Amount	-----
	Impairment	Unimpaired
	The present shareholder will retain her shares in the Debtor in Possession.	

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 (Impaired)	No Ballots Cast	-----	-----
Class 2 (Impaired)	No Ballots Cast	-----	-----
Class 3 (Impaired)	No Ballots Cast	-----	-----
Class 4 (Unimpaired)	No Ballots Cast	-----	-----

Tabulation of Ballots; Dckt. 38.

Evidence in Support of Confirmation

The Declaration of Rosaura Quintana, the president of the Debtor/Debtor in Possession, has been filed in support of confirmation of the Subchapter V Plan. Dckt. 39. The Declaration includes the following “personal knowledge” of the Declarant (identified by paragraph number used in the Declaration):

3. Ms. Quintana, apparently waiving the attorney-client privilege, testifies that based on communications with the counsel for the Debtor/Debtor in Possession, Ms. Quintana provides her “expert opinion” that “the Plan complies with all applicable provisions of Title 11, United States Code.”

No basis is provided for Ms. Quintana having legal knowledge of the Bankruptcy Code.

4. Ms. Quintana continues, certifying in her expert opinion that everything the “Debtor has done to seek confirmation” is consistent with the Bankruptcy Code, and then further certifies in her expert opinion that “nothing was done which would violate such provisions.”

5. Ms. Quintana then states under penalty of perjury her factual and legal conclusions (freeing the court from having to make findings of fact and conclusions of law) that “The Plan has been proposed in good faith and not by any means forbidden by law.”

6., 7., 8. Ms. Quintana testifies that all payments made by the Debtor (and not for the fiduciary Debtor/Debtor in Possession) have been approved or are subject to approval by the court prior to payment. Additionally in the Plan the Debtor (not the fiduciary Debtor/Debtor in Possession whose attorney may be paid from the Bankruptcy Estate) has identified in the Plan all insiders who will be employed or retained by the Reorganized Debtor.

In the following paragraphs Ms. Quintana states her further testimony identifying specific Bankruptcy Code provisions and stating her conclusions of how they comply with the Bankruptcy Code.

Ms. Quintana provides little, if any personal knowledge testimony of facts of which she has personal knowledge (as required by Federal Rules of Evidence 601, 602), but rather her legal conclusions and her personal findings of fact.

Her testimony concludes with Ms. Quintana stating under penalties of perjury that she has been advised, apparently again waiving the attorney-client privilege, that her expert legal opinion is that all of the requirements of 11 U.S.C. § 1191(a) have not been met. Dec. ¶ 8; Dckt. 39. However, again apparently waiving the attorney-client privilege, testifies that he has been advised, and therefore believes that the requirements of 11 U.S.C. § 1191(b) have been met.

DISCUSSION

This “testimony” of Ms. Quintana concerns the court greatly. It appears that rather than it being her personal knowledge as required by the Federal Rules of Evidence. Rather, Ms. Quintana will purport to give testimony under penalty of perjury of whatever is put in front of her so long as she believes it is in the Debtor’s (and her’s) financial advantage.

Given the only “evidence” presented in support of confirmation being this Declaration in which Ms. Quintana dictates to the court her personal expert legal conclusions and then dictates her personal findings of fact, rather than providing the court with factual testimony, for the court to just adopt.

The Debtor/Debtor in Possession not providing the court with competent evidence, which complies with the Federal Rules of Evidence, the court cannot confirm this Plan.

The Debtor/Debtor in Possession has not provided the court with evidence, and a basis, to determine that the grounds for confirmation required by 11 U.S.C. § 1191, which incorporates portions of 11 U.S.C. § 1129, has been satisfied.

Confirmation of the Plan is denied.

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 hearing on confirmation of the Debtor/Debtor in Possession's Subchapter V Plan having been conducted,, and upon review of the pleadings, evidence (and lack thereof), arguments of counsel, and good cause appearing,

IT IS ORDERED that the confirmation of the Plan is denied.

3. [18-90029-E-11](#) **JEFFERY ARAMBEL** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
1-17-18 [1](#)

Debtor's Atty: Pro Se

Notes:

Continued from 1/25/24. Counsel for the Plan Administrator requesting the Status Conference be continued six months.

Operating Report filed: 4/19/24

[FWP-28] Stipulation Regarding Use of Other Cash Collateral filed 3/14/24 [Dckt 1968]; Interim Order granting filed 4/18/24 [Dckt 1978]; Status Report re use of cash collateral filed 5/13/24 [Dckt 1988]; Stipulation Regarding Use of Other Cash Collateral filed 6/20/24 [Dckt 1994]

[FWP-30] Motion for Entry of an Order Authorizing Plan Administrator to Make a Post-Confirmation Distribution to Secured Creditor Pursuant to 11 U.S. C. § 105(a) and Plan filed 5/23/24 [Dckt 1981]

Notice of Plan Administrator's Post-Confirmation Monthly Compensation Report for Payment of Professional Fees for Services During the Month of June 2024 filed 7/9/24 [Dckt 2005]

The Status Conference is XXXXXXX
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JULY 18, 2024 STATUS CONFERENCE

At the Status Conference, XXXXXXX

FINAL RULINGS

4. [19-90461](#)-E-7 LORRAINE ESCOBAR CONTINUED STATUS CONFERENCE RE:
[19-9014](#) AMENDED COMPLAINT
CAE-1 9-30-19 [\[25\]](#)

REYES V. ESCOBAR

Final Ruling: No appearance at the July 18, 2024 Status Conference is required.

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

Adv. Filed: 8/12/19
Answer: 9/4/19
Amd. Answer: 9/6/19
Amd. Cmplt Filed: 9/30/19
Answer: none

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 2/22/24. At the Status Conference, Defendant Lorraine Escobar appeared and advised the court that the State Court Trial is set for May 17, 2024.

The Status Conference is continued to 2:00 p.m. on November 21, 2024.
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JULY 18, 2024 STATUS CONFERENCE

The Parties have reported that the State Court Action will have further proceedings in October 2024, and request that this Status Conference be continued. Dckt. 104.

The Status Conference is continued to 2:00 p.m. on November 21, 2024.

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 Status Conference having been continued, the Parties notifying the court that the State Court Action proceedings will continue to be conducted in October 2024, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on November 21, 2024**. The Parties shall file a Joint Updated Status Report or their separate Updated Status Reports on or before November 14, 2024,