

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 7, 2025 at 11:30 a.m.

1.	25-20969 -E-11 DCJ-3	AZUCAR RESTAURANTS LLC David Johnston	CONFIRMATION OF PLAN 6-22-25 [34]
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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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on June 25, 2025. By the court’s calculation, 43 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). 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. LOCAL BANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is XXXXXXX.
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Plan proponent, Debtor and Debtor in Possession Azucar Restaurants LLC (“Debtor in Possession”) has set its Chapter 11 Subchapter V Plan of Reorganization for hearing. The Plan provides for:

- a. one class of priority claims;
- b. two classes of secured claims;
- c. one class of non-priority (general) unsecured claims; and

- d. one class of equity security holders.

**Table of Classes and
Proposed Treatment**

Creditor/Class	Treatment	
Class 1: Priority tax claims	Claim Amount	IRS: \$23,503.66; California Dept. of Tax and Fee Administration: \$11900.86; FTB: \$5,800.00
	Impairment	Unimpaired
	This class is unimpaired by this Plan, and each holder of a Class 1 claim will be paid in full, in cash, with interest at 7% per annum from the effective date, in 36 equal monthly payments of \$820, commencing on the effective date. Distribution to holders of Class 1 claims will be on a pro rata basis.	
Class 2: Secured claim of Ford Motor Credit Company, LLC	Claim Amount	\$68,755.22
	Impairment	Unimpaired
	This class is unimpaired by this Plan and will be paid according to the original documents with no modification by this Plan.	
Class 3: Secured claim of Robby Lee Christie	Claim Amount	\$30,000.00
	Impairment	Impaired
	The holder of the claim in this class will be paid \$19,164 without interest, at the rate of \$1,597 per month for 12 months commencing on the effective date. The holder of the claim in this will retain his security interest in the assets in the Murphys restaurant until the 12th payment has been made.	
Class 4: Non-priority (general) unsecured claims	Claim Amount	\$26,020.00
	Impairment	Impaired
	The claims in this class will receive a dividend of 5%, in 36 equal monthly payments of \$800 commencing on the effective date. No interest will be paid on Class 4 claims. Distribution to holders of Class 4 claims will be on a pro rata basis.	
Class 5: Equity Security Holders	Claim Amount	
	Impairment	Unimpaired
	The holder of an interest in this class (Alonzo, the sole member) will retain her membership interest in the Debtor without modification.	

Creditor Labor Commissioner's Opposition

Creditor Labor Commissioner of the State of California ("Labor Commissioner") filed an Opposition on July 24, 2025. Docket 44. Labor Commissioner states:

1. Labor Commissioner is a Creditor in this bankruptcy proceeding and filed a Proof of Claim dated May 12, 2025. Labor Commissioner is also Plaintiff in Adversary Proceeding Number 25-02069 filed herein.
2. Labor Commissioner is the head of California's Division of Labor Standards Enforcement, Department of Industrial Relations. The Labor Commissioner's Office is the state agency with primary responsibility for enforcing all provisions of the Labor Code and Industrial Welfare Commission Wage Orders governing wages, hours, and working conditions of California employees whose enforcement is not specifically delegated to another agency or division. Opp'n 1:26-2:2.
3. Labor Commissioner holds judgments against J.R.A. Restaurant, Inc. ("J.R.A.") and its principal, Juan Jose Alonso ("Mr. Alonso" or "Juan Alonso") as assignee for unpaid wages and penalties owed to workers Roberto Santillan and Adilia Gomez. The total judgment amount is \$492,161.43; with post-judgment interest calculated to the date Labor Commissioner's Proof of Claim was filed, the amount owed to the workers is \$576,166.00. *Id.* at 2:4-8.
4. Debtor is a successor to J.R.A. under California Labor Code section 200.3 and the "same employer" as J.R.A. under Labor Code section 238(e). Opp'n 2:9-10.
5. Because Debtor is the "same employer" as J.R.A., the Labor Commissioner issued a stop work order on Debtor under Labor Code section 238.1, which prevents it from continuing to operate with employee labor unless and until it posts the bond required by Labor Code section 238. Opp'n 2:20-22.
6. In the pending Adversary Proceeding, Labor Commissioner alleges that Debtor Azucar Restaurants LLC ("Debtor" or "Azucar") is liable for the judgments against J.R.A. and Mr. Alonso because Azucar was a knowing recipient of an intentionally-fraudulent transfer of J.R.A.'s and Mr. Alonso's assets. *Id.* at 2:26-3:2.
7. The liquidation analysis attached as Exhibit A to the Plan vastly understates the value of Debtor's restaurant-related assets. *Id.* at 3:9-10.
8. Because California state law prevents Debtor from continuing to operate a business irrespective of this bankruptcy proceeding, the Plan is not feasible. Under California Labor Code section 238, Debtor's businesses cannot legally operate until it either posts a bond with the Labor Commissioner in the amount of \$150,000 or ensures that its predecessor, J.R.A., satisfies its

outstanding wage judgment. If Debtor's businesses stop operating, as legally they must, then Debtor will not be able to make the payments contemplated by the Plan. *Id.* at 5:4-9.

Debtor in Possession's Reply

Debtor in Possession filed a Status Report in reply on August 2, 2025. Docket 46. Debtor in Possession states:

1. Debtor contends that nothing is due to the Labor Commissioner by this debtor, the awards being against unrelated parties and the Debtor's appeal being dismissed in violation of the automatic stay. *Id.* at 1:22-24.
2. The status conference in the adversary proceeding is set for August 20, 2025 at 2:00 p.m. Counsel are exploring the possibility of trying to resolve the adversary proceeding through the Bankruptcy Dispute Resolution Program (the "BDRP") and are likely to suggest a referral to the BDRP at the upcoming status.
3. conference. Counsel also expect to seek the involvement of the Subchapter V in trying to resolve disputes. *Id.* at 2:3-8.
4. If the adversary proceeding is not resolved, the Debtor expects to object to the Labor Commissioner's claim, and believes the claims objection would be consolidated with the adversary proceeding. *Id.* at 2:9-11.
5. If the Labor Commissioner's claim is disallowed, as the Debtor believes it will be, an amended plan would be able to provide for payment of all claims, which are relatively modest. The Labor Commissioner's award of \$576,166 against unrelated parties in a proceeding where the Debtor was not a party prevents confirmation of a plan of reorganization unless the validity of the claim is resolved. *Id.* at 2:12-16.

DISCUSSION

It is clear that the court will not be considering confirmation of this Plan during this hearing. Labor Commissioner presents arguments that the Plan is either not feasible, or Debtor in Possession has undervalued its assets. Debtor in Possession consents that the Plan is not feasible in its current state with the related adversary proceeding, Adversary Proceeding Number 25-02069, ongoing.

Labor Commissioner argues Debtor in Possession cannot continue to run its business, as Debtor is a successor to J.R.A. and has inherited J.R.A.'s liabilities. Cal. Labor Code § 200.3 states:

- (a) A successor to a judgment debtor shall be liable for any wages, damages, and penalties owed to any of the judgment debtor's former workforce pursuant to a final judgment, after the time to appeal therefrom has expired and for which no appeal therefrom is pending. Successorship is established upon meeting any of the following criteria:

(1) Uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the judgment debtor. This factor does not apply to employers who maintain the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3.

(2) Has substantially the same owners or managers that control the labor relations as the judgment debtor.

(3) Employs as a managing agent any person who directly controlled the wages, hours, or working conditions of the affected workforce of the judgment debtor. The term managing agent has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(4) Operates a business in the same industry and the business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor.

(b) This section shall not be construed to limit other means of establishing successor liability for wages, damages, and penalties.

Cal. Labor Code section 238(e) states:

(e) Subject to subdivision (f), an employer similar in operation and ownership to an employer with an unsatisfied final judgment for unpaid wages, upon receiving written notice of the unsatisfied judgment, shall be deemed the same employer for purposes of this section if (1) the employees of the successor employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors or (2) if the new entity has substantially the same production process or operations, produces substantially the same products or offers substantially the same services, and has substantially the same body of customers.

August 7, 2025 Hearing

Both the Debtor in Possession and the Labor Commissioner raise good points concerning this Bankruptcy Case and the ability of the Debtor in Possession to prosecute it. If there is successor liability, substantial issues arise.

At this juncture, something that is more unique to “Chapter 11 World” is whether there is a Plan, through which the Labor Commissioner can seek redress at least some of the monetary amounts and a properly run business continue to operate and employ people, rather than having everything shut down, the jobs lost, and there being no income stream in place to pay the obligation owed.

A Chapter 11 Plan could provide such a operating structure, with sufficient oversight and required payments.

At the hearing, **XXXXXXX**