

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

August 8, 2024 at 2:00 p.m.

1. <u>24-90343-E-11</u>	MARTINEZ PALLET	STATUS CONFERENCE RE:
<u>CAE-1</u>	SERVICES, INC.	VOLUNTARY PETITION
		6-21-24 [1]

SUBCHAPTER V

Debtor's Atty: Gabriel E. Liberman

Notes:

[GEL-1] Motion to Use Cash Collateral and Grant Adequate Protection; Scheduling Deadlines Relating to a Final Hearing on Use of Cash Collateral filed 7/3/24 [Dckt 15]; Order granting and continuing hearing to 8/29/24 at 10:30 a.m. filed 7/21/24 [Dckt 31]

[GEL-2] *Ex Parte* Application for Extension of Time in Order to File Complete Statements and Schedules filed 7/3/24 [Dckt 13]; Order granting filed 7/8/24 [Dckt 21]

[GEL-3] *Ex Parte* Application of Debtor and Proposed Debtor in Possession to Employ Gabriel E. Liberman as Bankruptcy Counsel filed 7/21/24 [Dckt 28]; Order granting filed 7/24/24 [Dckt 32]

[CAE-1] Status Conference Statement filed 7/29/24 [Dckt 33]

Trustee Report at 341 Meeting lodged 7/31/24

The Status Conference is XXXXXXX
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AUGUST 8, 2024 INITIAL STATUS CONFERENCE

On July 29, 2024, the Debtor/Debtor in Possession filed a Status Conference Statement. Dckt. 33. The Debtor/Debtor in Possession anticipates filing a consensual Subchapter V Plan. At this point, the Debtor/Debtor in Possession is developing its budget and projections for distributions for creditors holding general unsecured claims.

At the Status Conference, XXXXXXX

August 8, 2024 at 2:00 p.m.

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2. [24-90207-E-11](#) **PRIORITY MEDICAL SUPPLY, INC.** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**
[CAE-1](#) **4-19-24 [1]**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/6/24

U.S. Trustee Report at 341 Meeting lodged 6/18/24

The Status Conference is ~~XXXXXXX~~

AUGUST 8, 2024 STATUS CONFERENCE

The U.S. Trustee's 341 Meeting June 16, 2024 Docket Entry Report states that the Meeting of Creditors was conducted and concluded on June 13, 2024. No updated Status Report has been filed.

At the Status Conference, ~~XXXXXXX~~

JUNE 6, 2024 STATUS CONFERENCE

Priority Medical Supply, Inc., the Debtor/Debtor in Possession, commenced this voluntary Subchapter V Case on April 19, 2024. On May 6, 2024 Debtor filed its Schedules and Statement of Financial Affairs. Dckts. 20, 19.

Debtor states having no real property assets, a small inventory, and modest cash in the bank. Schedule A/B; Dckt. 20 at 3-7. Debtor states on Schedule D that it has no creditors with secured claims. Id. at 8. The Debtor lists only general unsecured claims on Schedule E/F, with one claim comprising 73% of the total claims.

On May 26, 2024, the Debtor/Debtor in Possession filed a Status Report. Dckt. 26. In it the Debtor/Debtor in Possession provides a summary of the impacts of the COVID-19 pandemic on its business, as well as injuries to key staff.

The Debtor/Debtor in Possession focus for the ongoing business is in the area of power scooters, power chairs, and similar products which are covered by Medicare. No significant inventory is required, with the Debtor/Debtor in Possession being able to order products when they are prescribed by a physician. The

Debtor/Debtor in Possession does not anticipate any significant litigation or disputes in the prosecution of this Subchapter V Case.

At the Status Conference, counsel for the Debtor/Debtor in Possession provided updated information of how the Debtor/Debtor in Possession was working to recover and have in place

The Status Conference is continued to August 8, 2024 at 2:00 p.m.

3. [24-90209-E-11](#) **JEFFREY MCPHEE** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
4-21-24 [\[1\]](#)

Item #1 on 10:30 calendar

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/6/24

Trustee Report at 341 Meeting lodged 7/5/24

Operating Reports filed: 7/29/24 [April, May, June]

[DCJ-2] Debtor's Motion to Extend Deadline for Filing Chapter 11 Plan filed 7/19/24 [Dckt 29]; set for hearing 8/8/24 at 10:30 a.m.

The Status Conference is XXXXXXX
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AUGUST 8, 2024 STATUS CONFERENCE

The Debtor/Debtor in Possession has filed a Motion requesting the court extending the filing deadline for the Subchapter V Plan to August 21, 2024. The Subchapter V Trustee filed a statement of non-opposition.

The Trustee's July 5, 2024 Docket Entry Report states that the 341 Meeting was continued to July 31, 2024.

At the Status Conference, XXXXXXX

August 8, 2024 at 2:00 p.m.

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JUNE 6, 2024 STATUS CONFERENCE

Jeffrey McPhee, the Debtor/Debtor in Possession, commenced this voluntary Subchapter V Case on April 21, 2024. The Schedules and Statement of Financial Affairs were filed on May 9, 2024. Dckts. 15, 16. On Schedule A/B Debtor lists a real estate asset of significant value and modest personal property assets. Dckt. 15 at 3-9. These include an account receivable for Debtor's 2023 almond crop that has not been received. With the secured claims listed on Schedule D for which the real property is collateral, there is approximately a 15% equity cushion. The Debtor has claimed an exemption in the unencumbered portion of the value of the real property.

Debtor lists no priority unsecured claims on Schedule E/F, and modest general unsecured claims, except for one (\$6,042,728) judgment claim, which Debtor lists as Contingent, Unliquidated, and Disputed. Schedule E/F; Id. at 18. It is not clear to the court how a final judgment is contingent, unliquidated, or disputed. Debtor does assert that he is entitled to credits that were not taken into account when the judgment was entered. Additionally, there are two other co-judgment debtors.

On Schedule I, Debtor lists employment at his business, McPhee Masonry, Inc. Id. at 23. While a significant income is shown on Schedule I, on Schedule J, Id. at 25-26, Debtor shows a substantial negative monetary cash flow after expenses.

On May 26, 2024, the Debtor/Debtor in Possession filed a Status Report. Dckt. 22. In it the weedy events leading up to the financial situation and Debtor being conned with respect to an investment are outlined. The Debtor/Debtor in Possession does not identify any significant legal issues or disputes to be addressed in the case, and is working with the Subchapter V Trustee to develop a consensual plan.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the judgment arises from the Debtor's personal guaranty, in which there were other guarantors who have made payments on the debt.

Counsel for judgment creditor projected that the full amount of the judgment is still owing, and they are working on confirming that amount for the filing of a proof of claim.

The Subchapter V Trustee reported that the continued June 27, 2024 Meeting of Creditors.

The Status Conference is continued to August 8, 2024 at 2:00 p.m.

4. [23-90111-E-11](#) **MICHAEL HOFMANN**
[23-9006](#) **CAE-1**
HOFMANN V. HOFMANN ET AL

CONTINUED STATUS CONFERENCE RE:
NOTICE OF REMOVAL
5-14-23 [1]

Item 4 thru 5

Plaintiff's Atty: Brian S. Haddix
Defendant's Atty: unknown

Adv. Filed: 5/14/23
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 6/6/24. The Parties addressed the outstanding Amended Plan, with counsel for the Debtor in Possession stating that the proposed order setting the confirmation hearing would be filed shortly.

The Status Conference is XXXXXXX
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AUGUST 8, 2024 STATUS CONFERENCE

As of the court's August 7, 2024 review of the Docket, no updated Status Reports had been filed.

JUNE 6, 2024 STATUS CONFERENCE

As of the court's June 5, 2024 review of the Docket, no updated Status Report has been filed by the Debtor/Debtor in Possession. In the related Bankruptcy Case, 23-90111, a Final Amended Plan was filed. 23-90111; Dckt. 276. No hearing on confirmation of the Final Amended Plan has been set. The order setting the hearing is to be completed by counsel for the debtor/debtor in possession, and lodged with the court. *See*, EDC Form 6-202, Rev. 1/2023; Order Setting Subchapter V Chapter 11 Status Conference Date; Claims Bar Date; and Other Deadlines, ¶ 4; 23-90111, Dckt. 9.

At the Status Conference, the parties addressed the outstanding Amended Plan, with counsel for the Debtor in Possession stating that the proposed order setting the confirmation hearing would be filed shortly.

The Status Conference is continued to 2:00 p.m. on August 8, 2024.

APRIL 25, 2024 STATUS CONFERENCE

The court's review on April 24, 2024, disclosed that no Updated Status Reports have been filed. Though it was reported at the last Status Conference that an amended plan had been worked out and it was out for signatures, a review of the Bankruptcy Case Docket (23-90111) discloses that no amended plan has been filed in the three months since the prior January 25, 2024 Status Conference.

At the April 25, 2024 Status Conference, the Parties advised the court that upon completion of the sale of the residential property the dispute may be resolved, or at least the issues reduced and the Parties will be able to advise the court on how further proceedings can be effectively conducted for any remaining issues.

The Status Conference is continued to 2:00 p.m. on June 6, 2024.

JANUARY 25, 2024 STATUS CONFERENCE

The court has authorized the sale of the Debtor's interest in the two farmland properties. At the Status Conference, the counsel for the Debtor in Possession reported that an amended plan is being circulated and it is anticipated that this should have the sign-off of all parties shortly.

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

SEPTEMBER 28, 2023 STATUS CONFERENCE

In the Michael Hoffman Chapter 11 Case, the court is addressing the Debtor in Possession Motion to Confirm the proposed Plan and address the opposition to confirmation.

At the Status Conference, reported that this is still in a "holding pattern" while the Subchapter V Trustee is pursuing a sale of the Property.

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

JULY 13, 2023 STATUS CONFERENCE

On May 14, 2023, the Debtor/Debtor in Possession removed a State Court Action involving substantial interests in real estate, litigated offsets, and the dissolution of common interests of family members. While the State Court litigation has been a long, expensive slog, it appears that in the related Bankruptcy Case, 23-90111, the Debtor/Debtor in Possession, the family member and non-family member opponents, and the Subchapter V Trustee appear to have found a process, using the Bankruptcy Code, to afford all parties in interest their fair "day in court," compliance with orders of the State Court, and preservation of their respective values in the real properties at the center of their dispute and extensive litigation.

The court continues the Status Conference to September 28, 2023, in light of the efforts of the parties to address and resolve these issues without future litigation (or at least greatly reduce the issues to be litigated).

5. [23-90111](#)-E-11 MICHAEL HOFMANN CONTINUED STATUS CONFERENCE RE:
[CAE](#)-1 VOLUNTARY PETITION
3-20-23 [\[1\]](#)

Debtor's Atty: Brian S. Haddix

Notes:

Continued from 6/6/24. The Parties addressed how moving the Plan forward, which appears to be agreed to by creditors, will allow for the orderly performance of such plan.

AUGUST 8, 2024 POST-CONFIRMATION STATUS REPORT

On August 6, 2024, the Debtor/Debtor in Possession filed his Post-Confirmation Status Report. In it the Debtor/Debtor in Possession recounts further disputes concerning the sale of Property and the grain bins which are located on the Property.

At the Status Conference, **XXXXXXXX**

6. [24-90120](#)-E-11 HUACANA ENTERTAINMENT, CONTINUED STATUS CONFERENCE RE:
[CAE](#)-1 INC. VOLUNTARY PETITION
3-1-24 [\[1\]](#)

Item 6 thru 7

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 7/18/24 to be conducted in conjunction with the continued Confirmation hearing.

The Status Conference is xxxxxxx
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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 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 xxxxxxx.
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August 8, 2024 Hearing

The court continued the hearing on this matter due to the court expressing concerns over Debtor's evidence in support of confirmation. In continuing the hearing, the court set a deadline of August 1, 2024 for supplemental evidentiary pleadings. Order, Docket 44. On August 5, 2024, Debtor in Possession submitted a supplemental Declaration of its president, Rosaura Quintana, in support of confirmation. Docket 45. Ms. Quintana states:

1. Plan has been proposed in good faith and not by any means forbidden by law. The Debtor in Possession's attorney and I spent a great deal of time exploring various options and types of plans. Continuing in business was not feasible in view of continuing losses and the very large (\$13,500 per month) lease obligation for premises which are much too large for our current level of business. A liquidating plan with a sale of the business to

a new operator who would assume the lease obligation made the most sense. Decl. 2:7-12, Docket 45.

2. No creditors voted on the Plan. *Id.* at 2:23-3:6.
3. As of June 30, 2024, the Debtor had cash of \$12,649 in the Debtor in Possession accounts. Although this number fluctuates as expenses are paid and in addition, the sale of assets contemplated by the Plan will generate gross revenue of \$58,000, more than sufficient to pay the claims required to be paid upon confirmation. Under the terms of the Plan, Ms. Quintana has agreed to cover any shortfall in paying the claims provided for under the Plan. *Id.* at 3:9-14.

Review of the Plan and Evidence in Support

1. The plan complies with the applicable provisions of the Bankruptcy Code Chapter 11, Subchapter V.

Evidence: Decl., Dockets 39, 45.

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

The proponent has complied with the applicable provisions of the Code in this case. Decl. ¶ 4, Docket 45.

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

The court finds, based on all pleadings and evidence in the case, that the plan has been proposed in good faith and not by any means forbidden by law. Decl. ¶ 5, Docket 45.

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: Decl. ¶ 6, Docket 45.

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.

This section is not applicable. Decl. ¶ 7, Docket 45.

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: Decl. ¶ 8, Docket 45.

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: Decl. ¶ 10, Docket 45.

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 inapplicable 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: Decl. ¶ 11, Docket 45.

(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: Decl. ¶ 11, Docket 45.

(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: Decl. ¶ 11, Docket 45.

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.

The court finds this requirement is met as the Plan is a liquidation Plan, and the business is to wind up. Decl. ¶ 13, Docket 45.

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: Decl. ¶ 14, Docket 45.

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: Decl. ¶ 15, Docket 45.

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 in this case, Debtor not being required to pay any domestic support obligation.

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.

Evidence: XXXXXXXX

~~As evidenced above, the court determines the consensual Plan of reorganization is in compliance with 11 U.S.C. §§ 1190, 1191(b), and 1129(a). The Plan is confirmed. Counsel for the Debtor in Possession shall lodge with the court a proposed order confirming the Second Amended Plan, with a copy of the Second Amended Plan attached to the proposed order. The proposed order shall expressly state that the Plan is confirmed pursuant to 11 U.S.C. § 1191(a).~~

REVIEW OF THE MOTION

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

August 8, 2024 at 2:00 p.m.

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

July 18, 2024 Hearing

This “testimony” of Ms. Quintana concerns the court greatly. At the July 18, 2024 hearing counsel for the Debtor/Debtor in Possession addressed these concerns and requested a short continuance to allow for the filing of supplemental evidence. The Subchapter V Trustee concurred with the request for a continuance.

The hearing on Confirmation of Plan of Reorganization is continued to 2:00 p.m. on August 8, 2024. The Debtor/Debtor in Possession shall file and serve supplemental evidentiary pleadings on or before August 1, 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 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 Plan of Reorganization is
XXXXXXX.

8. [13-90435-E-7](#) SEAN AMIN
[23-9010](#) CAE-1
NEVAREZ V. ELLIOTT ET AL

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

Plaintiff's Atty: Bryan Carney

Defendant's Atty:

David C. Johnston [Sean Afshin Amin; Kevin Amin]
unknown [California Shade, Inc.; David Elliott]

Adv. Filed: 6/13/23

Answer: none

Nature of Action:

Determination of removed claim or cause

Declaratory judgment

Notes:

Continued from 6/27/24, the Parties requesting the court continue the Status Conference so the Parties may draft, sign, and file their stipulation in this Adversary Proceeding, and lodge with the court a proposed judgment pursuant thereto.

The Status Conference is XXXXXXX
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AUGUST 8, 2024 STATUS CONFERENCE

As of the court's August 7, 2024 review of the Docket no updated Status Reports, the reported stipulation has not been filed, and no proposed judgment has been lodged with the court.

This Adversary Proceeding was commenced with the June 13, 2023 removal of the state court action. Though the removal was hoped to be a vehicle to address the issues, such has not occurred. It may well be that removal is not productive, the matter should be remanded, and the Debtor swiftly and directly addresses any violations of the discharge injunction using the law and motion contempt proceeding process.

At the Continued Status Conference, XXXXXXX

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.

August 8, 2024 at 2:00 p.m.

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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, the Parties reported that they intend to enter into a Stipulation in the form in Adversary Proceeding 22-09002 in which the court entered judgment that the obligation of Debtor Sean Amin (13-90435) and Debtor Kevin Amin (12-90213) have obtained their respective discharges of personal liability for the claims asserted, but that such discharges do not apply to third-parties, such as insurance companies, who may have provided insurance coverage for the asserted damages. Adv. 22-09002; Stipulation, Dckt. 14, and Judgment, Dckt. 15.

Counsel for Nevarez reported that some issues arises from when the first adversary proceeding was removed, but Counsel and his client had not been notified of the status conference or aware of the settlement being reached with the Plaintiffs in the State Court Action.

The Parties requested the court continue the Status Conference so the Parties may draft, sign, and file their Stipulation in this Adversary Proceeding, and lodge with the court a proposed judgment pursuant thereto.

The Status Conference is continued to 2:00 p.m. on August 8, 2024.

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

9. [20-90349-E-11](#) **R. MILLENNIUM TRANSPORT,** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **INC.** **VOLUNTARY PETITION**
5-15-20 [\[1\]](#)

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/27/24. A representative of the U.S. Trustee and the Subchapter V Trustee David Souza ordered to appear at the continued status conference set for 8/8/24 at 2:00 p.m. Surjit Singh Malhi and Rajwant Kaur Malhi ordered to appear in person - no telephonic appearances permitted - at the continued status conference set for 8/8/24 at 2:00 p.m. and at all other hearings, status conferences, or other proceedings in this bankruptcy case.

[CAE-1] Order Continuing Status Conference and Order to Appear filed 6/28/24 [Dckt 246]

7/22/24 - dckts 249 & 250 - undeliverable mail notices for Surjit Malhi and Rajwant Malhi

The Status Conference is XXXXXXX
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AUGUST 8, 2024 STATUS CONFERENCE

The court continued the Status Conference to August 8, 2024, and ordered the Responsible Representatives of the Debtor/Debtor in Possession, who is the Plan Administrator, to appear at the August 8, 2024 Status Conference. The court's order, Dckt. 246, states as follows:

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

The Post-Confirmation Status Conference having been presented to the court, the Responsible Representatives of the Debtor/Debtor in Possession Plan Administrator not having provided any evidence in support of the Modified Subchapter V Plan they filed and set for hearing, confirmation of the Modified Subchapter V Plan having been denied, creditors appearing at the June 27, 2024 Confirmation Hearing and the Post-Confirmation Status Conference raising issues concerning the accuracy of information provided by the Debtor/Debtor in Possession Plan Administrator and its Responsible Representative, the creditor indicating that they will be contacting the U.S. Trustee concerning the information they have, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on August 8, 2024.**

The Civil Minutes for the March 28, 2024 Status Conference include the following relating to the Responsible Representatives and the Debtor/Debtor in Possession Plan Administrator in performing their duties and obligations as fiduciaries under the Confirmed Subchapter V Plan:

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.

Civil Minutes, p. 1-2; Dckt. 226.

IT IS FURTHER ORDERED that a representative of the U.S. Trustee and Subchapter V Trustee David Souza, and each of them, appear at the August 8, 2024 Continued Status Conference and inform the court whether they are investigating the prosecution of this case and the conduct of the fiduciary Debtor/Debtor in Possession Plan Administrator and its Responsible Representative. (The court recognizes that the Subchapter V Trustee does not have a source of funding independent of the Plan Estate, but the U.S. Trustee's Office is independently funded by the U.S. Taxpayers and has such resources.)

IT IS FURTHER ORDERED that 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 shall appear in person at Continued Post-Confirmation Status Conference at 2:00 p.m. on August 8, 2024, and **ALL OTHER HEARINGS, STATUS CONFERENCES, OR**

August 8, 2024 at 2:00 p.m.

OTHER PROCEEDINGS IN THIS BANKRUPTCY CASE – NO TELEPHONIC APPEARANCES permitted for the forgoing persons ordered to appear.

If Surjit Singh Malhi or Rajwant Kaur Malhi, or both of them fail to appear at the August 7, 2024 Continue Post-Confirmation Status Conference or any other Hearing, Status Conference, or Other Proceeding in this Bankruptcy Case, 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).

In addition to service on all parties in interest, the Clerk of the Court shall serve by U.S. Mail a copy of this Order on each of the following persons:

Surjit Singh Malhi
1670 Fulkerth Road
Turlock, CA 95380

and

Rajwant Kaur Malhi
1670 Fulkerth Road
Turlock, CA 95380

The mail sent to Surjit Malha and Rajwant Malhi were returned to the court as undeliverable, with the statement “not at this address” written on them. Dckts. 249, 250.

The 1670 Fulkerth Road, Turlock, California address is the one listed as the address for the Debtor/Debtor in Possession. No amended address has been filed for the Debtor/Debtor in Possession. It is unclear how mail sent to the business address for the Debtor/Debtor in Possession is an address at which the Responsible Representative being served in their fiduciary duty positions are “not at this address.”

A check on the California Secretary of State’s website reports that R. Millennium Transport, Inc., is a corporation in good standing and its principal address and mailing address is 1670 Fulkerth Road, Turlock, California 95380. ^{FN.1.}

FN. 1. <https://bizfileonline.sos.ca.gov/search/business>.

On the Petition Surjit Singh Malhi states under penalty of perjury, as President of the Debtor, that the Debtor’s address is 1670 Fulkerth Road, Modesto, California 95380. Dckt. 1. With respect to Surjit

Singh Malhi, service of the court's order requiring his appearance was properly made to the address which he provides under penalty of perjury. That Surjit Singh Malhi chose to ignore the service and apparently not read the order does not render the service on him deficient.

Rajwant Kaur Malhi executed as a Director or the Debtor that the filing of the Bankruptcy Case was authorized. On the Statement of Financial Affairs Rajwant Kaur Malhi is stated under penalty of perjury to be the "Treasurer, director, shareholder" of the Debtor. Dckt. 36 at 27

The Debtor/Debtor in Possession, as Plan Administrator, has failed to pay the Subchapter V Trustee funds to pay claims as required under the Subchapter V Plan. The Responsible Representatives for the Debtor/Debtor in Possession have appeared to have abandoned their positions and are no longer at the Debtor/Debtor in Possession's business location.

In light of these defaults, failure to perform the Subchapter V Plan, the Responsible Representatives having abandoned the Debtor, and the Responsible Representatives not participating in this Bankruptcy Case, conversion of this case to one under Chapter 7 is necessary and appropriate. See, 11 U.S.C. § 1112, which includes nonexclusive "for cause grounds," including:

(4) For purposes of this subsection, the term "cause" includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

...

...

(E) failure to comply with an order of the court;

...

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan; . . .

At the Status Conference, **XXXXXXX**

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, counsel for the Debtor/Debtor in Possession Plan Administrator reported that they would not be proceeding with confirmation of this Plan. Counsel for the Debtor/Debtor in Possession Plan Administrator that the responsible representative of the Debtor/Debtor in Possession Plan Administrator had obtained a Small Business Administration Loan in 2021 without court authorization.

Two creditors appeared at the hearing, reporting that they believe information being provided by the Debtor/Debtor in Possession Plan Administrator is inaccurate. The court noted for all parties that such information may be presented to the Subchapter V Trustee and the U.S. Trustee.

August 8, 2024 at 2:00 p.m.

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The Debtor/Debtor in Possession Plan Administrator confirmed that it was not proceeding with confirmation and that confirmation of the Plan may be denied.

The Debtor/Debtor in Possession Plan Administrator and its Responsible Representatives failed to provide any evidence in support of confirmation.

The Responsible Representatives of the Debtor/Debtor in Possession Plan Administrator failed to appear at the Confirmation Hearing or the Status Conference.

The Status Conference is continued to 2:00 p.m. on August 8, 2024.

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; Dckt. 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.