

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: AUGUST 29, 2022
CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: "**[Since posting its original rulings, the court has changed its intended ruling on this matter]**".

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-22404](#)-A-11 **IN RE: PAR 5 PROPERTY INVESTMENTS, LLC**
[MF-2](#)

FURTHER ORDER TO SHOW CAUSE REGARDING REVOCATION OF ORDER
AUTHORIZING EMPLOYMENT OF ATTORNEY FOR THE DEBTOR
7-27-2022 [[296](#)]

IAIN MACDONALD/ATTY. FOR DBT.

Final Ruling

This matter is continued to October 3, 2022, at 1:30 p.m. The court needs additional time to review and consider the parties', and in particular Iain MacDonald's, submissions. The record is closed and, absent leave of court, no party is authorized to augment the record. A civil minute order will issue.

2. [21-22404](#)-A-11 **IN RE: PAR 5 PROPERTY INVESTMENTS, LLC**
[MF-2](#)

CONTINUED ORDER TO SHOW CAUSE REGARDING REVOCATION OF THE
ORDER AUTHORIZING EMPLOYMENT OF ATTORNEY FOR THE DEBTOR
6-27-2022 [[271](#)]

IAIN MACDONALD/ATTY. FOR DBT.

Final Ruling

This matter is continued to October 3, 2022, at 1:30 p.m. The court needs additional time to review and consider the parties', and in particular Iain MacDonald's, submissions. The record is closed and, absent leave of court, no party is authorized to augment the record. A civil minute order will issue.

3. [22-20925](#)-A-12 **IN RE: JERRY WATKINS**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
4-13-2022 [[1](#)]

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

The status conference is continued to December 12, 2022, at 1:30 p.m. A civil minute order shall issue.

4. [22-20925](#)-A-12 **IN RE: JERRY WATKINS**
[FEC-1](#)

CONTINUED AMENDED ORDER TO SHOW CAUSE
6-1-2022 [\[29\]](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

The matter is continued to December 12, 2022, at 1:30 p.m. The debtor is cautioned that failing confirmation on that date--or prior thereto if the debtor fails to file further and sufficient evidence in support of confirmation--may result in dismissal of the case and the imposition of a filing bar without further notice or hearing. A civil minute order will issue.

5. [22-20925](#)-A-12 **IN RE: JERRY WATKINS**
[WW-1](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
7-12-2022 [\[51\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The matter is continued to December 12, 2022, at 1:30 p.m. Not later than November 11, 2022, the debtor shall file further briefs and evidence with respect to the issues raised by U.S. Bank, N.A. and the Chapter 12 trustee. Failure to do so or to do so sufficiently may result in summary denial of the motion without further notice or hearing. No later than December 5, 2022, the trustee and creditors may file replies and evidence. No other filings are authorized. A civil minute order will issue.

6. [22-20925](#)-A-12 **IN RE: JERRY WATKINS**
[WW-1](#)

MOTION TO EXTEND TIME
7-12-2022 [\[56\]](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Motion: Extend Time to Confirm Plan

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

DISCUSSION

Chapter 12 plans must be confirmed expeditiously. 11 U.S.C. §§ 1221 (filing of the plan), 1224 (confirmation).

After expedited notice, the court shall hold a hearing on confirmation of the plan. A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan. Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

11 U.S.C. § 1224

Neither the trustee, nor any party in interest, has opposed the motion. The debtor has shown cause, i.e., diligent pursuit of a reverse mortgage on which the plan depends and that he is waiting for the lenders to complete their due diligence, e.g., appraisals. Watkins decl. ¶¶ 6-7, ECF No. 72. The debtor anticipates completion of the loan process and closing not later than November 10, 2022. *Id.* at ¶ 9. Appropriate corroborating documentation has been provided. Exhibits, ECF No. 73.

The court notes that the central issue to confirmation is feasibility. It is not the only issue. See Chapter 12 trustee's Objection to Confirmation, ECF NO. 75; U.S. Bank N.A. Objection to Confirmation, ECF NO. 77. The court is aware that the debtor has objected to the claim of U.S. Bank. Objection to Claim No. 2, ECF No. 81. The debtor is encouraged to resolve these objections prior to the extended deadline for confirmation. While the court will not prejudge

any further motion to extend time, 11 U.S.C. § 1225, given the debtor's history of filings, as time passes the likelihood of further extensions diminishes.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Jerry Watkins's motion to extend time to confirm Chapter 12 plan has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that the deadline to confirm the plan, 11 U.S.C. § 1224, is extended through and including December 12, 2022.

7. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[GT-6](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-11-2022 [\[582\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
BENJAMIN LEVINSON/ATTY. FOR MV.
LANCE EVIC, ET AL. VS.

Final Ruling

Motion: Renewed Motion for Determination of the Extent of the Stay or in the alternative for Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

Subject: Record Lis Pendens Against 1149 W. Adam Blvd., Los Angeles

This is the movant's second effort to obtain stay relief. The first effort was denied for insufficient service. Civil Minutes, ECF No. 579. The present motion is described as a "renewed motion" for "an order determining the extent and applicability of the automatic stay or, in the alternative, modifying the automatic stay so that [the movants] may record a lis pendens on title to the real property located at 1149 W. Adams Blvd., Los Angeles." Mot. 2:6-9, ECF No. 582.

LAW

11 U.S.C. § 362 provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

...

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if--

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

...

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

11 U.S.C. § 362(a), (d), (j).

The Federal Rules of Bankruptcy Procedure provide:

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);

(3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;

(4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§ 1 727(a)(8), (a)(9), or 1328(f);

(5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;

(6) a proceeding to determine the dischargeability of a debt;

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

(8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;

(9) *a proceeding to obtain a declaratory judgment relating to any of the foregoing; or*

(10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

Fed. R. Bankr. P. 7001 (emphasis added).

DISCUSSION

Here, the movant "renews" its prior motion and seeks declaratory relief as to the extent and applicability of the stay or, in the alternative, stay relief. Procedural deficiencies preclude granting relief.

Renewed Motions

Neither the federal rules, nor local rules, provide for "renewed" motions. Motions for new trial or to alter or amend are permissible. Fed. R. Civ. P. 59, *incorporated by* Fed. R. Bankr. P. 9023. Such a motion must be made within 14 days of entry of judgment. *Id.* Motions for relief from a judgment or order are also permissible. Fed. R. Civ. P. 60, *incorporated by* Fed. R. Bankr. P. 9024. Subdivision (a) addresses clerical mistakes; subdivision (b) address mistake, inadvertence. Neither is appropriate here; the motion was denied for failure service. Concededly, the denial was without prejudice; accordingly, it is a new motion, and not a renewed motion.

Joinder

Here, the movant seeks to different species of relief: declaratory relief and stay relief. Even if declaratory relief could be sought by motion, local rules do not permit joinder of independent relief.

Local rules provide:

- 5) Joinder.
 - A) *Except as otherwise provided herein, every application, motion, contested matter, or other request for an order shall be filed separately from every other request. All requests for relief shall state with particularity the grounds therefor and shall set forth the relief or order sought. Other documents, exhibits, or supporting pleadings shall not be incorporated by reference.*
 - B) Notwithstanding the foregoing, the following requests for relief may be joined in a single motion, Fed. R. Civ. P. 18, incorporated by Fed. R. Bankr. P. 7018, 9014(c):
 - (i) relief in the alternative based on the same statute or rule;
 - (ii) authorization for sale of real property and allowance of fees and expenses for a professional authorized by prior order to be employed for the sale of such property, 11 U.S.C. §§ 327, 328, 330, 363, Fed. R. Bankr. P. 6004;
 - (iii) authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional, 11 U.S.C. §§ 327, 328, 330, 363, Fed. R. Bankr. P. 6004-6005;

- (iv) motion for stay relief and/or abandonment of property of the estate, 11 U.S.C. §§ 362, 554, Fed. R. Bankr. P. 4001, 6007;
- (v) approval of compromise and compensation of special counsel previously authorized to be employed relating to the underlying compromise, Fed. R. Bankr. P. 9019; 11 U.S.C. §§ 327, 328, 330; and
- (vi) as otherwise expressly provided by these Rules.

LBR 9014-1(d) (5) (emphasis added).

The rule in subdivision (a) applies; none of the exceptions in subdivision (b) applies.

Declaratory Relief

As to the first request, declaratory relief as to the extent and applicability of the stay, Rule 7001(9) provides that declaratory relief must be sought by adversary proceeding, not by motion. The only exception is a motion to confirm the absence of the stay. 11 U.S.C. § 362(j). Moreover, relief under § 362(d) is narrow ("On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay"). The statute makes no provision for declaratory relief as to its scope. So, declaratory relief may not be granted by motion. This resolves the first request in the motion.

Stay Relief

Procedural deficiencies exist with respect to the second species of requested relief. First, service is not sufficient as to the U.S. Small Business Administration. As this court explained at the first hearing of this motion.

The motion is denied without prejudice. Stay relief is required. 11 U.S.C. § 362(a)(4). Service is insufficient. Fed. R. Bankr. P. 4001(a)(1). *Service of a motion for stay relief must be made on any committee appointed or, in the absence of such a committee, on the 20 largest unsecured creditors. Id. It must be accomplished in the manner described under Federal Rule Bankruptcy Procedure 7004. In re LSSR, LLC, 2013 WL 2350853 (9th Cir. BAP May 29, 2013).* Here, the 20 largest unsecured contains only three such creditors: GV/HI Park Tower; Pacific Gas & Electric Company, and U.S. Small Business Administration. List of 20 Largest Unsecured Creditors, ECF No. 31. Neither the original Certificate of Service, ECF No. 553, nor the Amended Certificate of Service, ECF No. 564, reflect service on these creditors. A civil minute order will issue.

Civil Minutes, ECF No. 570 (emphasis added).

Here, service on the U.S. Small Business Administration was made on the "General Counsel." Proof of Service, ECF No. 585. This is insufficient. Service must comply with Federal Rule of Bankruptcy Procedure 7004(b)(5). That rule requires both the service specified in Rule 7004(b)(5) and also the service required in Rule 7004(b)(4). Where Rule 7004 service is required (as it is here) and was not affected it is per se reversible error to grant relief. *Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88 (9th Cir. BAP 2004) (motion to avoid lien). Rule 7004(b)(4) is clear:

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

...

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the [1] civil process clerk at the office of the United States attorney for the district in which the action is brought and [2] by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

Fed. R. Bankr. P. 7004 (emphasis added).

Service on the general counsel does not satisfy this requirement.

Moreover, service must be accomplished on the debtor and counsel. Fed. R. Bankr. P. 4001, 9013.

Second, no stay relief information sheet was filed. LBR 4001-1(a)(3). Violations of local rules are grounds to deny a motion. LBR 1001-1(g).

Third, the movant is recycling docket control numbers in violation of LBR 9014-1(c).

The motion will be denied without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Jeffrey Scott Bleecker et al.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice.

8. [17-20731](#)-A-11 **IN RE: CS360 TOWERS, LLC**
[TBG-4](#)

CONTINUED MOTION TO COMPEL ABANDONMENT
11-11-2021 [[819](#)]

STEPHAN BROWN/ATTY. FOR DBT.
WITHDRAWN BY M.P.

Final Ruling

The motion having been withdrawn on August 15, 2022, ECF No. 864, the matter is dropped as moot.

9. [22-20632](#)-A-11 **IN RE: SOUTHGATE TOWN AND TERRACE HOMES,**
INC.
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
3-16-2022 [[1](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

Final Ruling

The status conference is continued to September 26, 2022, at 1:30 p.m. to coincide with the hearing on the motion to approve the disclosure statement. A civil minute order will issue.

10. [22-21669](#)-A-12 **IN RE: LINDSAY/LISA BRAKEL**
[CAE-1](#)

STATUS CONFERENCE RE: VOLUNTARY PETITION
7-5-2022 [[1](#)]

MARK BRIDEN/ATTY. FOR DBT.

Tentative Ruling

This case was filed on July 5, 2022. On July 12, 2022, the court issued the following order:

The court also intends to review the issue of Chapter 12 eligibility. Before the court can confirm a Chapter 12 plan, the court must make a finding that the plan complies with the provisions of Chapter 12 and the other applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1225(a)(1). One of those provisions is 11 U.S.C. § 101(18), which defines who is a "family farmer" eligible for relief under Chapter 12. Eligibility is a necessary requirement to confirmation of a Chapter 12 plan under § 1225(a)(1). In re Garako Farms, Inc., 98 B.R. 506, 508 (Bankr. E.D. Cal. 1988). *The Debtor has the burden of proof to convince the court that the requirements of § 1225 have been met.* Id. at 509. On or before 8/15/22, the Debtor(s) shall file and serve on the Chapter 12 Trustee a *status report together with evidence and legal authority to establish that these Debtor(s) are a "family farmer" as that term is defined in § 101(18)(A).* Said evidence shall include, but not be limited to, documentation which illustrates the nature of and parties to each of the farm related secured debts listed in Schedule D. The parties shall also file and serve evidence to show the terms of any partnership agreements, real property leases, crop sharing agreements or other documents which tend to show who owns and operates the farming operation of the Debtors' property. The Trustee is

invited to file his report and analysis regarding the issue of eligibility.

Order Setting Chapter 12 Status Conference, ECF No. 6, (emphasis added).

Chapter 12 plan confirmation is governed by 11 U.S.C. §§ 1222, 1225, 1227 and by Federal Rule of Bankruptcy Procedure 2002(a)(8). The debtor bears the burden of proof as to each element. See *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994) (a chapter 13 case applicable by analogy).

The chapter 12 trustee has filed a report contending the debtors are not eligible for chapter 12 relief as they do not meet the requirements of 11 U.S.C. § 101(18). See *Chapter 12 Trustee's Report Regarding Eligibility Report*, ECF No. 26.

Specifically, the trustee argues that the debtors: 1) are not engaged in a farming operation; 2) do not meet the income requirements of 11 U.S.C. § 101(18); and 3) do not meet the debt requirements of Section 101(18).

The debtors also filed a status report, a declaration and exhibits. See *Status Report*, ECF No. 23. The debtors contend they meet the requirements of Section 101(18).

FACTS

The court takes judicial notice of the debtor's bankruptcy schedules which appear on its docket. Fed. R. Evid. 201(b)(2).

The debtors reside at 18480 Bowman Road Cottonwood, California and own multiple additional parcels of real property located in: Cottonwood, California; Haines, Oregon; and Baker City, Oregon. See *Amended Schedules A/B*, ECF No. 31.

The debtors currently operate Brakel & Sons Bulls at Brakel Ranch 20135 Gas Point Road Cottonwood, California. This business has been operating since 2015. See *Statement of Financial Affairs*, ECF No. 1.

INCOME

Schedule I and Attachment

The debtors project the following *monthly* income: Social Security (debtors) \$1,018.80; Social Security \$818.00 (attributable to debtors' son); Net proceeds from operation of business \$333.00; Teaching Income (Employment) \$592.00; Sales and Marketing Income (Employment) \$2,914.00; Pasture Rental \$1,583.00. No changes to income were forecast in the debtors' schedules. See *Schedule I*, ECF No. 1. The debtors' projected their future gross monthly income from the operation of their business at \$1,833.00. See *Business Income and Expense Attachment to Schedule I*, ECF No. 1. There is no evidence explaining how the debtors will achieve this amount per

month and it is inconsistent with the year-to-date information provided in the Statement of Financial Affairs.

Statement of Financial Affairs

The debtors list Pasture Rental income of \$19,000.00 for the year 2021; and \$19,000.00 for 2022. See *Statement of Financial Affairs*, Item 5, ECF No. 1. There is no pasture rental income listed in 2020. According to the trustee the pasture rental income is derived from rental of property in Oregon. This is supported by the lease agreement submitted by the debtors. See *Exhibit 2*, ECF No. 24.

The debtors list the total amount of income from the operation of their business in 2022 - \$3,000.00; in 2021 - \$39,840.00; in 2020 - \$38,689.00. *Statement of Financial Affairs*, ECF No. 1, Item 4. The amounts for 2021 and 2020 substantially correspond to the information provided in tax returns submitted by the debtors. Schedules A/B

The debtors list ownership interests in the following livestock/animals in Schedules A/B: cows and calves; bulls; horse. See *Amended Schedule A/B*, ECF No. 31. The debtors' declaration filed August 24, 2022, states that the debtors derive income from breeding golden retriever dogs, yet no dogs are listed in the debtors' schedules. See *Declaration*, ECF No. 34. Moreover, the income from the operation of the dog breeding business is not detailed in any of the documents provided by the debtors, nor is any argument presented by the debtors contending that the dog breeding business is a farming operation.

Tax Returns

The debtors submitted partial copies of filed tax returns for 2019 and 2020. The debtors submitted an unfiled draft copy of their proposed 2021 tax return which has not yet been filed. See *Exhibits*, ECF No. 33. The tax returns show income as follows:

| Tax Year | Employment | Social Security | Farming Sales of Livestock | Farming Other | Total Farming |
|----------|-------------|-----------------|----------------------------|---------------|---------------|
| 2019 | \$24,823.00 | \$13,354.00 | \$3,592.00 | \$38,226.00 | \$41,818.00 |
| 2020 | \$26,438.00 | \$13,563.00 | \$3,417.00 | \$36,845.00 | \$40,262.00 |
| 2021 | \$39,885.00 | \$13,757.00 | \$6,000.00 | \$33,120.00 | \$39,120.00 |

The court infers that the sale of livestock is the income generated at the farm operated by the debtors in California. The court also infers that the lease income in 2021 of \$19,000.00, as shown in the Statement of Financial Affairs and discussed above, is included in the "Other Farming" category on the tax return as it does not appear elsewhere in the documents provided by the debtors. The sources of other farming income in general are unclear as there is no declaration by the debtors or any additional information in the schedules which analyses and explains the structure of the debtors' farming operation.

CHAPTER 12 ELIGIBILITY

Generally

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

11 U.S.C. § 109(f).

To qualify for relief under Chapter 12 the debtors must prove they are a family farmer as defined under 11 U.S.C. § 101(18).

(18) The term "family farmer" means--

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$11,097,350 [originally "\$10,000,000", adjusted effective April 1, 2022] 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;

. . .

11 U.S.C. § 101(18) (A).

Farming Operation

(21) The term "farming operation" *includes* farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

11 U.S.C. § 101(21) (emphasis added).

While the use of the word "includes" indicates that section 101(21) is not meant to be an exhaustive definitional list, to be considered a farmer a debtor must be engaged in an activity that subjects the debtor to the risks traditionally associated with farming. See *Armstrong v. Corn Belt Bank (In re Armstrong)*, 812 F.2d 1024 (7th Cir.1986) (rental of farmland is not considered a farming operation because

the debtor bore none of the traditional risks associated with farming).

In re Gibson, 355 B.R. 807, 809-10 (Bankr. E.D. Cal. 2006).

Debtors' Farming Income and Operation

Because the case was filed in 2022, the debtors must prove that at least 50% of their income in 2021 was derived from farming income. A review of the draft tax return provided by the debtors shows that they did not earn 50% of their income from farming. Combined Social Security and Employment Income in 2021 total \$53,642.00. Farming Income totals \$39,120.00. Farming income represents 42% of the debtors' income in 2021. Therefore, the debtors do not meet the income test under 11 U.S.C. § 101(18)(A)(i).

The court does not conclude that the lease income of \$19,000.00 in 2021, as identified in the Statement of Financial Affairs, is farming income but includes it in this analysis which presents the facts in the light most favorable to the debtors.

Section 101(18)(A)(ii)

Section 101(18)(A)(ii) provides an alternative means of calculating farm income and thereby proving Chapter 12 eligibility. The debtors may prove income eligibility by showing that their income from farming for each of the years 2019 and 2020 equals more than 50% of their income.

The debtors' income derived from the rental of the property in Oregon is not farming income under *Gibson*.

[I]n most instances where rental income was considered farm income, the debtor had some operational involvement, either before or after the lease, with the farming operation occurring on the farmland, or the debtor had an ownership interest in the crops grown by the tenant. See *Otoe County Nat'l Bank v. Easton (In re Easton)*, 883 F.2d 630 (8th Cir.1989).

In re Gibson, 355 B.R. 807, 810 (Bankr. E.D. Cal. 2006).

This court agrees with the analysis presented in *Gibson* and concludes that pasture rental income in this case is not income derived from the debtors' farming operation. The debtors have proffered no argument or authority in support of the position that the lease income is farming income. Neither have the debtors provided any factual assertions which would allow the court to distinguish this case from *Gibson* such as the debtors' involvement in the operation of the grazing business or any current interests which the debtors have in crops or livestock raised by the tenants of the Oregon property.

The following evidence, proffered by the debtors, supports a change in the income as offered in the 2019 and 2020 tax returns. Exhibit

1, ECF No. 24 (a spreadsheet submitted by the debtors providing income data) indicates that pasture rents in 2020 totaled \$17,000.00 and the same amount in 2017.

Subtracting the \$17,000.00 lease income reduces the 2020 total farming income to \$23,262.00 and increases the other sources of income to \$43,438.00. Because farming income equals only 35% of the debtors' total income in 2020 the debtors' do not meet the farming income test under 11 U.S.C. § 101(18) (A) (ii).

Similarly, 2019 farming income is reduced to \$24,818.00 and other sources of income increased to \$41,823.00. Because farming income equals only 37% of the debtors' total income in 2019 the debtors do not meet the farming income test under 11 U.S.C. § 101(18) (A) (ii).

Because farming income in 2019 and 2020 is less than 50% of the debtors' total income the debtors are not family farmers under 11 U.S.C. § 101(18) (i) or (ii). Therefore, the court finds that the debtors are not eligible under 11 U.S.C. § 109(f).

Given the court's ruling regarding the debtors' eligibility under the farming income analysis it need not reach the trustee's argument regarding the debtors' debts under 11 U.S.C. § 101(18) (A).

Because court has ruled that the debtors are not eligible for relief under Chapter 12 the court intends to dismiss this case at the status conference.

11. [22-21692](#)-A-11 **IN RE: EVERGREEN ARBORISTS, INC.**
[GEL-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL
7-19-2022 [\[27\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

This matter is continued to September 26, 2022, at 1:30 p.m. to allow the parties to address unresolved issues. First, the movant has not yet accomplished service on the Small Business Administration. Certificate of Service, ECF No. 62 ("Attn. District Counsel); see Fed. R. Bankr. P. 7004(b) (5); see also Civil Minutes ¶ 3, ECF No. 54.

Second, significant portions of the stipulation for use of cash collateral violate applicable local rules. Stipulation for Use of Cash Collateral, ECF No. 64. See Stipulation ¶¶ d, e, f, 2.5 (unreasonable reporting in light of budget), 3, 5, 6. LBR 4001-1(c) (3)-(4). Not later than September 12, 2022, the debtor and Commercial Creditor Group, Inc. may file briefs in support of the stipulation or may submit a revised stipulation consistent with applicable provisions of the code, federal rules and local rules.

Not later September 19, 2022, other parties may respond. Absent a strong showing by the debtor and/or Commercial Credit the court intends to disapprove the stipulation in its entirety.

Third, the debtor has not adequately addressed the issue of adequate protection for junior secured creditors. Compare, Civil Minutes ¶ 4 with brief and declaration, ECF No. 66-67. The debtor has provided argument, but not evidence on these issues. Since the debtor has been given an opportunity to address the issue and has not done so to the satisfaction of the court, at the continued hearing the court intends to require adequate protection to these creditors. If the debtor contends that adequate protection payments will resolve the issue, the debtor must submit a revised budget, including those payments, not later than September 12, 2022.

Fourth, the National Electrical Benefit Fund has not identified the statutory basis for their argument that any use of cash collateral must be conditioned on payment of fringe benefits for post-petition work. Fed. R. Bankr. P. 9013. "Motion or Other Request for Relief. The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." LBR 9014-1(d)(3)(A). Nor has that party filed a memorandum of points and authorities. "Memorandum of Points and Authorities. If filed, the memorandum of points and authorities shall be a succinct and reasoned explanation of the moving party's entitlement to relief. Memorandum of points and authorities in excess of 10 pages shall include a table of contents and table of authorities." LBR 9014-1(d)(3)(C).

Civil Minute Order

This matter is continued to September 26, 2022, at 1:30 p.m. It is further ordered that: (1) not later than September 5, 2022, the debtor shall serve notice of the continued hearing on all creditors and U.S. Trustee; (2) not later than September 5, 2022, the debtor shall serve the motion, as well as all supporting documents, on the U.S. Small Business Administration in the manner required by Fed. R. Bankr. P. 7004(b)(5) and shall file a Certificate of Service so indicating; (3) not later than September 12, 2022, the debtor and Commercial Creditor Group, Inc. may file briefs in support of the stipulation or may submit a revised stipulation consistent with applicable provisions of the code, federal rules and local rules. Not later September 19, 2022, other parties may respond. Absent a strong showing by the debtor and/or Commercial Credit the court intends to disapprove the stipulation in its entirety; (4) the debtor may submit a revised budget, including adequate protection payments not later than September 12, 2022; absent a showing of sufficient adequate protection the court will deny the use of cash collateral at the hearing on September 26, 2022; (5) not later than September 12, 2022, the National Electrical Benefit Fund shall file memorandum of points and authorities describing the statutory and/or

case authority for their position; other parties may file replies by September 19, 2022; (6) use of cash collateral on an interim basis, Order, ECF No. 58, is extended through and including the earlier of final resolution of this matter or September 30, 2022; and (7) failure to comply full and in a timely fashion may result in summary denial of relief and an order denying the debtor the further use of cash collateral.

12. [22-21692](#)-A-11 **IN RE: EVERGREEN ARBORISTS, INC.**
[GEL-3](#)

MOTION TO EMPLOY GABRIEL E. LIBERMAN AS ATTORNEY(S)
7-25-2022 [\[40\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

This matter has been resolved by order of this court. Order, ECF No. 47.

13. [20-24098](#)-A-11 **IN RE: SLIDEBELTS, INC.**
[RLC-30](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
7-29-2022 [\[391\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 11/18/2021; RESPONSIVE PLEADING

Final Ruling

Motion: Approve Compromise of Controversy

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

Debtor Slidebelts, Inc. moves to approve a compromise with its former counsel Parsons Behle & Latimer and its financial advisor Brinkman Portillo Ronk, APC for \$5,000. Pursuant to this court's fee orders these professionals received an aggregate of 48,427.81. Later when the case became administratively insolvent this court made an equalizing order as between administrative professionals, including Parsons Behle & Brinkman. Those equalizing payments have not been made; instead, the debtor seeks those claims with Parsons Behle & Brinkman for \$5,000. Brinkman Law Group, an aggrieved professional, opposes the motion.

LAW

Post-confirmation, the debtor's ability to settle claims is determined by the substantive and procedural rights afforded creditors under the terms of the plan. *In re Oakhurst Lodge, Inc.*, 582 B.R. 784, 788 (Bankr. E.D. Cal. 2018); *In re Eliminator Custom Boats, Inc.*, No. BAP CC-19-1003-KUFL, 2019 WL 4733525, at *1 (B.A.P. 9th Cir. Sept. 23, 2019). Here, the plan is somewhat cryptic as to whether settlement of a preference/*Jevic* claim requires court approval. Plan §§ VII.5 (pertaining only to "Disputed Claim[s]"), II.4(c) (pertaining to recovery of preferences and *Jevic* claims without specifying mechanism for settlement).

Because the debtor assumes in its motions that court approval under Rule 9019 is required, this court similarly so assumes.

Rule 9019 provides: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

DISCUSSION

Service and Notice

Ordinarily, motions to approve a compromise must be served on all creditors. Fed. R. Bankr. P. 2002(a)(3); LBR 2002-4 (not applicable to cases without committees). A certificate of service must be filed in support of each motion. LBR 9014-1(e). The docket does not reflect a certificate of service, from which the court infers lack of service on all creditors.

Burden of Proof

The proponent of the settlement bears the burden of proof. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). Here, the sole evidence in support of the motion is the declaration of Stephen Reynolds. Reynolds decl., ECF No. 393. That declaration does not address the *A & C* factors.

For these reasons, the motion will be denied.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Slidebelts, Inc.'s motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied.