UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 10, 2019 at 10:00 a.m.

1.	19-24113-E-7 MOH-1	**TERRY BAKER** **Michael Hays**	**CONTINUED MOTION TO COMPEL ABANDONMENT** **8-13-19 [22]**

Final Ruling: No appearance at the September 10, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 13, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Terry Baker ("Debtor") requests the court to order the Chapter 7 Trustee, Michael Hays ("Trustee") to abandon Debtor's business identified as T & C Carpet Cleaning, and the assets of the business ("Property"). Debtor asserts that the value of the Property (derived from the value of business assets), $7,000.00, has been exempted on Schedule C.

ORDER CONTINUING HEARING

On August 20, 2019, the court issued an Order continuing the hearing to September 10, 2019. Dckt. 27. The hearing was continued to allow Debtor the opportunity to supplement the record, identifying what specific assets of the business are being abandoned.

SUPPLEMENTAL DECLARATION

On August 23, 2019, Debtor filed a Supplement Declaration listing the following assets to be abandoned:

1. 2015 Prochem Karcher Group Legend GT

2. Carpet cleaning wand

3. 150 feet each of a solution hose and vaccum hose.

4. Air blower.

TRUSTEE'S RESPONSE

Trustee entered a Statement of non-opposition on the docket on September 5, 2019.

DISCUSSION

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Tery Baker ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and Debtor's business identified as T & C Carpet Cleaning, and the assets of the

business listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Michael Hays ("Trustee") to Debtor by this order, with no further act of the Trustee required.

2. **18-90029-E-11** **JEFFERY ARAMBEL** **STATUS CONFERENCE RE: VOLUNTARY PETITION**

Reno Fernandez

2 thru 3 **1-17-18 [1]**

Debtor's Atty: Reno F.R. Fernandez; Iain A. Macdonald; Matthew J. Olson

The Status Conference is continued to 2:00 p.m. on xxxxxxxxxxx, 2019.

Notes:
Continued from 3/28/19 to be heard in conjunction with plan confirmation.

Operating Reports filed: 4/16/19, 4/30/19 [2018-amd May, amd Jun, amd Jul, amd Aug, amd Sep, amd Oct, amd Nov, amd Dec; 2019-amd Jan, amd Feb, amd Mar], 5/17/19, 6/17/19, 7/15/19, 8/16/19

[MF-9] Motion for Allowance of Administrative Expense Claim filed 4/19/19 [Dckt 777]; Amended Motion filed 4/30/19 [Dckt 784]; Order denying filed 5/28/19 [Dckt 814]

[MF-38] Order granting Motion to Establish a Bar Date for Requests for Payment of Administrative Expenses filed 4/22/19 [Dckt 780]

[MF-39] Proposed Plan of Reorganization (Dated June 3, 2019) filed 6/3/19 [Dckt 815]; Disclosure Statement filed 6/3/19 [Dckt 816]; Notice of Withdrawal filed 6/6/19 [Dckt 827]

[HCS-1] West Stanislaus Irrigation District's Motion for Allowance of Its Claim as an Administrative Expense filed 6/4/19 [Dckt 818]; Order Denying In Part, Denying In Part filed 7/22/19 [Dckt 866]

[MF-40] Proposed Plan of Reorganization (Dated June 6, 2019) filed 6/6/19 [Dckt 826]; Disclosure Statement filed 6/6/19 [Dckt 824]

[MF-40] Proposed Plan of Reorganization (Dated July 19, 2019) filed 7/19/19 [Dckt 860]; Disclosure Statement filed 7/19/19 [Dckt 861]; Order Approving Disclosure Statement filed 7/22/19 [Dckt 863]; Corrected Notice of Hearing filed 8/9/19 [Dckt 885], set for hearing 9/10/19 at 10:00 a.m.

[NAR-4] Motion to Allow Late Filed Claim to Be Treated as Timely Filed filed 8/1/19 [Dckt 872];

Order granting filed 9/2/19 [Dckt 930]

[HSM-2] Motion for Relief from the Automatic Stay [creditor Benjamin Lopex] filed 8/1/19 [Dckt 877]; heard 8/29/19, continued to 9/10/19 at 10:00 a.m.

[DAC-1] Application for Order Shortening Time to Hear Motion to Allow Late Filed Claim to Be Treated as Timely Filed filed 8/13/19 [Dckt 887]; Motion filed 8/13/19 [Dckt 888]; heard 8/2919 at 10:30 a.m.

[STJ-5] Application for Order Authorizing Employment of Special Counsel filed 9/3/19 [Dckt 931]; order pending

3.	**18-90029-E-11** **MF-40**	**JEFFERY ARAMBEL** **Reno Fernandez**	**CONFIRMATION OF PLAN OF REORGANIZATION FILED BY DEBTOR** **7-19-19 [860]**

No 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 creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. By the court's calculation, 42 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) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is xxxxxxxxx.

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

July 30, 2019 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

August 27, 2019 Last Day for Submitting Written Acceptances or Rejections

August 27, 2019 Last Day to File Objections to Confirmation

September 3, 2019 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Class 1: — Secured Claims of Prepetition Lenders; Paid from Plan Assets	**Treatment**	
MetLife	**Claim Amount**	[$6,432,005.57]
	Impairment	
Summit	**Claim Amount**	[$43,411,844.22]
	Impairment	
Carolyn Dilday and Dan Stadtler, Successor Co-Trustees of the Phlip N. Stadtler & Lois C. Stadtler Trust UAD 3/4/1994	**Claim Amount**	$1,722,954.70
	Impairment	
Dorothy M. Arnaud, et al. (POC 27)	**Claim Amount**	$633,422.91
	Impairment	
Dorothy M. Arnaud, et al. (POC 26)	**Claim Amount**	$2,328,909.29
	Impairment	
Irrigation Design & Construction (POC 15)	**Claim Amount**	$277,860.25
	Impairment	
Tom Cazale	**Claim Amount**	$1,229,382.00
	Impairment	

West Valley Agricultural Services, LLC	**Claim Amount**	$3,610,488.70
	Impairment	
Class 2:— Secured Claims of Governmental Units	**Treatment**	
Stanislaus County Tax Collector	**Claim Amount**	$308,233.27
	Impairment	
Class 3:— Secured Claims of Prepetition Lenders; Defaults To Be Cured	**Treatment**	
Chase Bank, N.A.	**Claim Amount**	$173,330.00
	Impairment	
U.S. Bank, N.A.	**Claim Amount**	$784,961.69
	Impairment	
Westlake Financial Services	**Claim Amount**	$0.00
	Impairment	
	this claim was paid in full by the co-borrower	
Class 4:—Secured Claim of LBA RV-Company XXVII, LP	**Treatment**	
LBA RV-Company XXVII, LP.	**Claim Amount**	N/A
	Impairment	None
	This creditor's claim consists of a right of first refusal against certain real property and other ancillary rights.	

Class 5:—Secured Claim of American AgCredit, FLCA	**Treatment**	
American AgCredit, FLCA	**Claim Amount**	
	Impairment	None
	American AgCredit completed a non-judicial foreclosure of its collateral	
Class 6:—General Unsecured Claims.	**Treatment**	
General unsecured claims.	**Claim Amount**	$6,839,436.38
	Impairment	
	The claim of the El Che Corporation is disallowed because it was scheduled as disputed and no proof of claim was timely filed.	
Class 7:—Insider claims.	**Treatment**	
Laura Arambel (Loan)	**Claim Amount**	$451,619.00
	Impairment	
Laura Arambel (Seller Financing)	**Claim Amount**	$1,017,880.00
	Impairment	
Laura Arambel, Trustee of the Credit Trust under the Harold and Laura Arambel Family Trust Dated December 16, 2005 (Sale of Jointly Owned Property)	**Claim Amount**	$2,631,040.48
	Impairment	
Sherry Arambel	**Claim Amount**	$125,150.00
	Impairment	

Class 8: —Unimpaired Equity Interest	**Treatment**	
Equity Interests of Debtor in Possession	**Claim Amount**	N/A
	Impairment	None

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 (Impaired)	For: 4 Against: 0	100%	100%
Class 2 (Impaired)	For: 0 Against: 0	0%	0%
Class 3 (Impaired)	For: 0 Against: 1	0%	0%
Class 4	For: 0 Against: 0	0%	0%
Class 5	For: 0 Against: 0	0%	0%
Class 6 (Impaired)	For: 6 Against: 0	100%	100%
Class 7 (Impaired)	For: 3 Against: 0	100%	100%
Class 8	For: 0 Against: 0	0%	0%

The Declaration of Jeffery Arambel filed in support of confirmation provides evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Dckt. 939, at p. 1:22-4:10; Declaration, Dckt. 942.

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

Evidence: Order, Dckt. 863; Proof of Service, Dckt. 871; Declaration, Dckt. 942 at ¶ 5.

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

Evidence: Dckt. 939, at p. 5:6-23.

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: Dckt. 939, at p. 6:9.5-19.5; Declaration, Dckt. 942 at ¶ 7.

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.

Evidence: Dckt. 939 at p. 6:1-6; Declaration, Dckt. 942 at ¶ 8.

6. 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: Declaration, Dckt. 942 at ¶ 11; Declaration, Dckt. 943 at ¶ 3; Declaration, Dckt. 952 at ¶ 3.

7. 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.

Evidence: N/A

8. 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: Declaration, Dckt. 942 at ¶ 12; Dckt. 939 at p. 9:14-17.

(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: *Id.*

(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: *Id.*

9. 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.

Evidence: Dckt. 940; Dckt. 939 at p. 10:1-2. .

10. 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.

Evidence: Declaration, Dckt. 942 at ¶ 14; Dckt. 939 at p. 10:19-13:9.

11. 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: Declaration, Dckt. 942 at ¶ 15.

12. 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: Declaration, Dckt. 942 at ¶ 16.

13. 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.

Evidence: Declaration, Dckt. 942 at ¶ 17.

14. 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.

Evidence: Plan, Dckt. 860; Dckt. 939 at p. 14:2-6.

15. 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: Plan, Dckt. 860; Dckt. 939 at p. 14:8-10.

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph 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.

Evidence: Dckt. 939 at p. 14:12-15:15.

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides–

(i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

Evidence: *Id.* at p. 14:14-16.

(B) With respect to a class of unsecured claims–

> (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
>
> (ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Evidence: *Id.* at p. 14:16-18.

(C) With respect to a class of interests–

> (i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or
>
> (ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

Evidence: Dckt. 939 at p. 14:12-15:15.

OBJECTIONS AND RESPONSES TO PLAN CONFIRMATION

Objection of Creditor Filbin Trust

Creditors Dorothy M. Arnaud, individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA, dated December 30, 1973; Helen F. Jacobson, individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA, dated December 30, 1973; Deborah DeWolf; and Garry DeWolf ("Filbin Trust") filed an Objection on August 27, 2019. Dckt. 909. Filbin Trust objects to confirmation on several grounds, summarized as follows:

1. The proposed plan has not been shown to be feasible because the proposed sale of real estate is speculative, and no time frame or other details have been given for refinancing.

2. The proposed plan is not fair and equitable because secured creditors bear all the risk in waiting 16 months for the real property to be

liquidated. There is a risk that the collateral securing claims will diminish in value. Furthermore, little information has been presented as to the proposed sales and refinancing.

3. The proposed plan makes no provision for payments of principal or interest to Creditors during the 16 months in which the DIP will be permitted to seek a refinance or sale of the real property collateral, nor account for the last 20 months since the bankruptcy filing. However, unsecured and insider claims will receive periodic pro rata distributions.

4. The proposed plan prevents creditors from seeking relief from the automatic stay for 1.5 years, which is an excessive time period.

5. The proposed plan limits relief from stay to where a "material default" has occurred. However, it is unclear whether "material default" includes some obligations, including to pay insurance and taxes on collateral. Even if those obligations are included in "material default," then material default would have already occurred because Debtor in Possession has already defaulted on taxes owing.

6. The Filbin Available Cash (cash received from the sale of real property secured by Filbin Trusts' claim) should be paid to the Filbin Trust according to the agreement underlying Filbin Trust's claim.

Debtor in Possession's Reply

The Debtor in Possession responded to the Filbin Trust arguing that (1) periodic installment payments are not necessary given large equity cushions on the property securing Filbin Trust's claim, (2) the proposed plan does not disallow periodic payments, and (3) the Filbin Available Cash is solely the cash collateral of Summit.

Review of Plan Terms as Relating to Objection

Upon confirmation of the Chapter 11 Plan, the property of the bankruptcy estate will not revest in the Debtor. Plan ¶ 7.21. Plan, Dckt. 860. It will only revest upon the entry of a final decree. *Id.*, ¶ 7.2.2. Thus, it appears that there will be a bankruptcy estate continued under the Plan.

The initial Plan Administrator is Focus Management Group, USA, Inc. *Id.*, ¶ 7.3.1. A Plan Administrator may be terminated only: (1) by the unanimous consent of the Reorganized Debtor and the Oversight Committee; (2) for cause by order of the bankruptcy court; (3) completion of the duties under the plan, or (4) the Plan Administrator giving notice to terminate appointment. *Id.*

The duties and powers of the Plan Administrator are specified in ¶¶ 7.3.2 and 7.3.3 of the Plan. *Id.* The Plan Administrator is responsible for implementation of the Plan and administration of Plan Assets.

In reviewing the provisions of the Plan providing for the Class 1 Claims (which include's this Objecting Creditors' claims), in ¶ 6.1 it states that the "Reorganized Debtor" shall use commercial

reasonable efforts to cause the Class 1 claims to be paid as soon as practical. *Id.* That appears to be a legal impossibility, as it is the Plan Administrator who has the fiduciary responsibility to perform the Plan and pay claims.

This provision further states that the Reorganized Debtor "reaffirms all objections owed to Allowed Secured Claims in Class 1." *Id.* In ¶ 4.1 of the Plan, the Claims of Dorothy M Aarnaud, et al (POC 26, 27) are identified as disputed and not "allowed."

In Paragraph 6.1, the Plan states that creditors holding Allowed Secured Class 1 Claims shall be paid from the sale of their collateral, or from other refinancing. The stay will remain in effect and the creditors holding Allowed Secured Class 1 Claims shall not seek relief from the stay for sixteen months after the effective date or a Material Default under the Plan.

Thus, on its face, it appears that if the secured claim is disputed, then there is no sixteen month prohibition on such a creditor seeking relief from the automatic stay.

The Plan further provides, ¶ 7.8.7, that the Plan Administrator shall set up a reserve for "Disputed Claims." *Id.* Once a Disputed Claim becomes an Allowed Claim, then the monies will be disbursed to that creditor.

With respect to claims, the Plan provides that objections to disputed claims may be filed by the Plan Administrator, the Reorganized Debtor, or any other parties in interest within sixteen months of the Effective Date. On its face, it appears that if the claim is designated as "disputed" in the plan, there is a sixteen month period during which nothing needs be done with respect to promptly adjudicating

Possibly, the sixteen month hiatus is mitigated by the ability of the creditor having a Disputed Secured Class 1 Claim to immediately seek relief from the automatic stay.

While sixteen months for a Plan Administrator fulfilling its fiduciary duties to market and sell property or refinance may not be unreasonable, this Plan contains a cross of the Plan Administrator performing the Plan and the Reorganized Debtor (who is not the owner of the estate property post-confirmation) seeing that creditors' claims are paid.

The more the court reads the Plan, the court is convinced that the "Plan Administrator" is merely a figurehead position, with the real power and control wielded by the Reorganized Debtor. In ¶ 7.4.1 the Duties of the Reorganized Debtor with Regard to Plan Assets include:

A. During the sixteen months after the effective date it is the Reorganized Debtor who shall "serve and perform services with regard to the Plan as provided in the Plan."

B. The Reorganized Debtor shall be a fiduciary to the Estate.

C. The Plan Administrator shall have final authority regarding disposition of plan assets (but it appears that it is the Reorganized Debtor who is in control to implement the Plan).

D. The Reorganized Debtor shall be responsible for control and operation of the Farm Assets. The Reorganized Debtor shall control the expense accounts for the Farm

Assets operation.

E. The Reorganized Debtor shall use his "expertise and knowledge of the Plan Assets to price, market, and recommend terms of final disposition of the Plan Assets."

On this point, the Debtor, serving as Debtor in Possession, has demonstrated his lack of expertise and lack of knowledge in pricing, marketing, and selling property of the bankruptcy estate. It has been necessary for him to surround himself with a cadre of highly paid professionals to fulfill these basic tasks. As the fiduciary Debtor in Possession, he sought to market and sell property of the bankruptcy estate without the "need" for a Realtor and marketing, just based on his personal knowledge and belief.

F. In doing the work for the marketing and sale of property, this paragraph further provides that the Reorganized Debtor will have to take any offer, counteroffer, change in listing, change in pricing, to the Plan Administrator for approval.

If the Reorganized Debtor had such "expertise and knowledge," he would not have to seek approval for such basic tasks to be performed. It may be that this check is required by other creditors, who do not trust the Reorganized Debtor's ability, but are willing to leave him in control based on the deals cut with him.

If there was to be a real Plan Administrator who would exercise its fiduciary duties and responsibilities, then the Plan Administrator would perform the Plan, not merely be answering to the Reorganized Debtor. *Id.*

Even though this Plan is to be performed within a relatively short period of time - Sixteen Months - there is to be an Oversight Committee consisting of:

A. The four creditors with an Allowed Class 1 Secured Claim

B. The one creditor holding an Allowed Class 2 Secured Claim

C. One creditor with an Allowed General Unsecured Claim

D. Two Plan Funding Lenders

Plan ¶ 75., *Id.* Thus, in addition to having the Reorganized Debtor who purports to be a fiduciary, a Plan Administrator that purports to be administering the Plan, it is necessary to have an Oversight Committee overseeing the two other fiduciaries for the sixteen months that the Plan is to be performed. This appears to speak volumes about the creditors' sense as to the actual abilities of the Debtor to serve as the Reorganized Debtor and the Plan Administrator.

With respect to this Objection, xxxxxxxxxxxxxxxxxxx

Objection of Creditor Chase

JP Morgan Chase Bank, N.A. ("Chase") filed a limited Objection on August 27, 2019. Dckt. 913. Chase objects to plan confirmation on the grounds that its claim, totaling $180,245.83 with arrearages totaling $15,005.22, is not being fully provided for.

Debtor in Possession's Reply

The Debtor in Possession states this objection has been resolved through agreement to amend the proposed plan to provide the correct claim and arrearage amounts. Dckt. 939 at 20:12-14.

A Stipulation was filed on September 9, 2019, in which Chase and the Debtor in Possession propose to:

A. Allow Chase's Secured Claim in the amount of $175,630.78.

B. The Debtor in Possession is to make monthly payments at the regular contractual amount. It appears that the "Debtor in Possession" is to make such payments notwithstanding confirmation of a Plan.

C. The payments on the Secured Claim are current through September 15, 2019.

1. Except that there are outstanding fees and costs of ($5,911.78) that shall be cured before the effective date of the Plan.

Dckt. 955.

At the hearing, xxxxxxxxxxxxxxxxxxx

Objection of Creditor LBA

Creditor LBA RV-COMPANY XXVII, LP ("LBA") filed an Objection on August 27, 2019. Dckt. 18. LBA argues the following:

1. Oversight and access to information is primarily limited to the Plan Administrator, Debtor, Summit, and MetLife. For example, LBA may not be notified of offers to purchase real property, which would erode LBA's right of first refusal.

2. The proposed plan has not been shown to be feasible because it does not include adequate information about the proposed sales and refinancing; the claims of Summit and MetLife have merely received an extension on maturity date; no evidence has been provided to show the value of real property or feasibility of their sale; and the plan is silent as to real property held by JEA2, LLC.

3. The plan does not appear to include real property held by JEA2, LLC.

Debtor in Possession's Reply

Debtor in Possession replies to LBA noting at outset the LBA's claims are unimpaired, and LBA is objecting solely to receive greater treatment as to its disputed right to receive $750,000.0 held in an escrow account. Dckt. 939 at p. 17:5-11.

Debtor in Possession goes on to explain that real property held by JEA2, LLC is described and treated in the proposed plan as "Farm Assets." *Id*. at 17:14-21.

At the hearing, xxxxxxxxxxxxxxxx

Objection of Creditor Ben Lopez

Creditor Ben Lopez ("Lopez") asserting a disputed claim of $2,400,000.00 filed an Objection on August 27, 2019. Dckt. 916. Lopez makes the following arguments:

1. The proposed plan has not been shown to be feasible because evidence has not been filed in support of valuations of real property proposed to be sold or used to obtain refinancing, or to show efforts at marketing and selling. It is unclear whether the plan administrator would be able to sell the property within the 16 month time frame given, and whether sufficient monies would be generated from sales.

   While the proposed plan allows the sale of JEA2, LLC properties if necessary, no standards are set for when sale would be necessary, and it is possible that delaying too long will diminish that value achievable through sale of those properties.

2. The proposed plan is not in the best interest of creditors because the plan is not feasible, and the Debtor in Possession's liquidation analysis understates what would actually be achieved through a liquidation of Estate assets.

3. The proposed plan is not fair and equitable to Lopez because specifics on sale efforts and periodic payments are not provided, leaving them discretionary.

4. The proposed plan discriminates against Class 6 creditors because Class 1 creditors have an immediate right to relief from stay, but Class 6 creditors are forced to show "Material Default," which is not clearly defined.

5. The proposed plan relies on funding from MetLife which is not certain.

6. Section 7.8.5 of the proposed plan should be clarified to state whether 11 U.S.C. § 346(f) is applicable.

7. The plan speaks to assumption and rejection of leases, but does not specify what is being assumed or rejected.

8. The Debtor should include in proposed quarterly reports information concerning the dates of listing of properties and sales status.

Debtor in Possession's Reply

Debtor in Possession notes the Lopez's claim is disputed (Objection to Claim filed on September 4, 2019 - a mere three (3) working days before the confirmation hearing), and not an Allowed Claim as set forth in the Disclosure Statement, and Lopez is not entitled to vote on the proposed plan. Debtor in Possession also adds:

1. The proposed plan funding of MetLife was carefully negotiated and additional funding will only follow if its claim is paid in full.

2. The correct statutory reference was 11 U.S.C. § 346(h).

3. The Debtor in Possession is not aware of any claims that will trigger rejection damages claims. Moreover, a preconfirmation administrative expense bar date was set for holders of administrative expense claims, such as counter parties to executory contracts, and has passed.

4. The Debtor in Possession is amenable to reasonable modifications to the notice procedures.

5. The present process for seeking relief upon material default is appropriate.

At the hearing, xxxxxxxxxxxxxxxx

Reply of Creditor Summit

SBN V Ag I LLC ("Summit") filed a Reply in support of confirmation on September 3, 2019. Dckt. 934. Summit argues the objection of Filbin Trust should be overruled on the basis that there is an equity cushion in property securing its claim, and because the agreement underlying its claim does not entitle Filbin Trust to the Filbin Available Cash.

Summit argues further Lopez's objection should be overruled because the Disclosure Statement provided adequate information, and because a liquidation would result in a "free fall" for the value of the real estate properties.

Response of Creditor MetLife

Metropolitan Life Insurance Company ("MetLife") filed a Statement In Support of Confirmation on September 3, 2019. Dckt. 936. MetLife asserts that all or substantially all of Debtor's real estate assets are already listed for sale, with Braun International assisting the marketing process. MetLife further notes that the Plan Administrator is providing significant oversight to the sales.

MetLife argues it is a potential funding source, even though funding is contingent, and that the Debtor in Possession has already had success selling properties in a related Chapter 11 case. MetLife argues further that the proposed plan provides for controlled liquidation with protections a Chapter 7 would not have, and that the oversight of the Plan Administrator ensures the plan is fair and equitable.

Proposed Amendments

Debtor in Possession proposes the following amendments to the proposed plan:

1. Debtor in Possession will amend the plan prior to confirmation to allow for the late claim of CNH Industrial Capital as a new Class 5(d) Claim, with the claim to be paid through the surrender of CNH's collateral (certain personal property assets) and allowing CNH to submit a deficiency claim, if any, by a post-confirmation deadline.

2. The Debtor in Possession has agreed to correct the amounts outstanding in the Plan on account of the Class 3(a) claim of JPMorgan Case, including the amount of prepetition arrears.

3. Debtor in Possession will amend the Plan to provide that holders of Class 6 claims must be paid in full within 22 months of the Effective Date. Failure to meet this deadline will be a Material Default under the Plan.

4. Debtor in Possession will amend the plan to allow for those parties who have requested special notice to be included on the PostConfirmation Service List (automatically including LBA and Lopez). The proposed plan will also be amended to provide for dissemination of the monthly Oversight Committee reporting and quarterly U.S. Trustee Reports to those parties on the Post-Confirmation Service List.

5. Section 7.8.4 of the Plan will be amended to correct the statutory reference to Section 346(h) of the Code.

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

At the hearing, xxxxxxxxxxxxxx.

4.	**19-22653-E-11** **DNL-2**	**REECE/RODINA VENTURA** **Peter Macaluso**	**CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7** **8-13-19 [153]**

Final Ruling: No appearance at the September 10, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2019. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 11 bankruptcy case of the debtors, Reece Ventura and Rodina Cordero Ventura ("Debtor") has been filed by Geoffrey Richards ("Movant"), the Chapter 11 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Reorganization is not necessary to wind up the Debtor's businesses.

B. No ongoing business operations require reorganization.

C. Conversion to Chapter 7 will result in expeditious payment to creditors.

The Motion is supported by Movant's Declaration. Dckt. Dckt. 155. Movant testifies that the business licenses for Debtor's two childrens' homes have been cancelled, all residents have been transferred, and the facilities have closed. *Id*.

CONTINUED HEARING

On August 20, 2019, the court issued an Order continuing the hearing. Dckt. 178. The continuance was to require any oppositions to be made in writing.

DEBTOR'S RESPONSE

Debtor filed a Response on August 22, 2019 indicating non-opposition. Dckt. 188.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

Here, Movant has presented testimony that Debtor's businesses are closed and there is nothing left for reorganization.

Cause exists to convert this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is converted to a case under Chapter 7.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Chapter 11 case filed by Geoffrey Richards ("the Chapter 11 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.