

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

September 28, 2023 at 2:00 p.m.

1. <u>23-90111</u> -E-11 MICHAEL HOFMANN <u>23-9006</u> CAE-1 HOFMANN V. HOFMANN ET AL	CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL 5-14-23 [1]	
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Item 1 thru 3

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 7/13/23. The court continued the Status Conference in light of the efforts of the parties to address and solve issues without further litigation (or at least greatly reduce the issues to be litigated).

The Status Conference is XXXXXXX

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, XXXXXXX

JULY 13, 2023 STATUS CONFERENCE

September 28, 2023 at 2:00 p.m.
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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)

2. [23-90111-E-11](#) **MICHAEL HOFMANN** **CONFIRMATION OF PLAN**
[BSH-3](#) **Brian Haddix** **6-19-23 [104]**

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 Subchapter V Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2023. By the court’s calculation, 71 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Plan is denied.
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The debtor, Michael Erich Hofman (“Debtor in Possession”) seeks confirmation of the Chapter 11 Plan. The Plan provides:

1. Debtor does not anticipate any Priority Claims in Class 1. In the event, however, that a Priority Claim is allowed, Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash.
2. Class 2 claims are impaired and shall retain their security interest.
 - a. Debtor in Possession will sell his interest in the Farm Land located at 13330 Valley Home Road, Oakdale, California, through a sale conducted by the Subchapter V Trustee.
 - b. Debtor in Possession will waive their claim to set-off against the Brichettos for any unpaid rents on the Farm Land, and the Brichettos will release their abstract of judgment and their secured claim on the Residence also located at 13330 Valley Home Road, Oakdale, California. Any remainder claim of the Brichettos will be an allowed Class 4 unsecured claim.
3. Class 3 claims are unimpaired and shall retain their security interest.
 - a. Debtor in Possession will surrender his interest in the collateral and the claim will be paid by the co-obligor.
4. Class 4 claims are impaired.
 - a. The claim of Barbara Wagner and Gary & Sharon Hofmann is an allowed claim and shall be paid as the following:
 - i. To the extent Barbra Wagner is entitled to any recovery, it shall first be offset against any credit, claim, or recovery by the Debtor in Possession.
 - ii. To the extent Gary and Sharon Hofmann are entitled to any recover, it shall first be offset against any credit, claim, or recovery by the Debtor in Possession.
 - b. Allowed Class 4 claims shall be paid monthly 22.63% principal payments paid in equal installments commencing 90-days after the effective date of the plan.

Plan, Dckt. 104. 11 U.S.C. § 1123 permits a debtor to amend a plan any time before confirmation.

CREDITOR BRICHETTO’S OPPOSITION

September 28, 2023 at 2:00 p.m.

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Jaqueline, Joseph, and John Brichetto (“Creditor Brichetto”) holding a secured claim filed an Opposition on September 28, 2023. Dckt. 139. Creditor Brichetto opposes confirmation of the Plan on the basis that:

- A. There has been highly contested pending litigation in this case for a number of years beginning around 2014, ultimately resulting in a final judgment from the Superior Court of Stanislaus County awarding Creditor Brichetto’s a 91.66% (their own 75% in addition to Creditor Hofman’s 16.66%) interest in the Farm Land, as well as attorney’s fees. Exhibit 1, Dckt. 141. This decision was ultimately upheld on appeal by the Court of Appeal for the Fifth District.
- B. The state court ruling regarding Debtor in Possession, his siblings (Gary and Sharon Hofman, also creditors in this case), and Creditor Brichetto preclude approval of Debtor in Possession’s Chapter 11 Plan because the Plan is an attempt to convert Creditor Brichetto’s interests in the Residence and Farm Land to unsecured claims. However, the issue of competing interests in the Farm Land and Residence is res judicata.
- C. The proof of claims filed and/or amended by Creditor Brichetto have not been challenged by Debtor in Possession.

Dckt. 139.

CREDITOR GARY & SHARON HOFMANN’S OPPOSITION

Gary and Sharon Hofmann (“Creditor Hofmann”) holding a secured claim filed an Opposition on September 28, 2023. Dckt. 150. Creditor Hofman opposes confirmation of the Plan on the basis that:

- A. The Plan does not provide for the Submission of Future Earnings to the Subchapter V Trustee.
- B. The Plan language treats Creditor Hofman’s claim as disputed, yet Debtor in Possession has not objected to Creditor Hofman’s claim, nor has Debtor objected to the Superior Court of Stanislaus County’s judgment awarding Creditor Hofman an interest in the Residence and Farm Land and attorney’s fees.
- C. Debtor in Possession overstates his expenses and so does not submit the necessary income to the plan.
- D. The Plan fails to adequately describe the rights of the Creditors and their claim(s) and no liquidation analysis is provided.
- E. The Plan was filed late.

Dckt. 150.

DISCUSSION

It appear that after having his day in state court, Debtor appears to be filing this Bankruptcy Case and prosecute a Plan in an attempt to reopen issues that have already been litigated and decided on its merits, trying to alter or amend the parties' rights as already determined in state court, and deprive other parties of their property rights. As the Supreme Court has held "[i]t is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 81 (1984). The relevant portion of the state court judgment is as follows:

1. Creditor Brichetto is awarded 75% of the Farm Land.
2. Creditor Brichetto is awarded a credit of \$499,709.17 (improvements to the property and payment of taxes and other charges).
3. Creditor Brichetto is awarded \$206,625.40 in costs and attorney's fees.
4. Creditor Hofman is awarded 16.66% of the Farm Land as beneficiaries of the Erich Hofmann Trust. Creditor Hofmann sold this 16.66% interest to Creditor Brichetto, meaning Creditor Brichetto owns a 91.66% interests in the Farm Land.
5. Creditor Hofman is awarded 91.66% of the Residence as beneficiaries of the Erich Hofmann Trust and Lois Hofmann Trust.
6. Creditor Hofmann is awarded \$122,395.81 in attorney's fees.
7. Debtor in Possession is awarded 8.33% of the Farm Land as a beneficiary of the Erich Hofmann Trust.
8. Debtor in Possession is awarded 8.33% of the Residence as a beneficiary of the Erich Hofmann Trust.
9. Debtor in Possession shall distribute all assets of the Erich Hofmann Trust to the beneficiaries.
10. Debtor is surcharged for his occupancy of the Residence in the amount of \$90,576.81.

Second Amended Interlocutory Judgment, Exhibit 1, Dckt. 141.

Creditor Brichetto recorded its abstract of judgment in the Stanislaus County Recorder's Office and obtained a lien on the Residence on March 20, 2020. Exhibit 2, Dckt. 141. Debtor in Possession places Creditor Brichetto in Class 2 in its Plan, claiming that Creditor Brichetto will retain its security interests while also suggesting Creditor Brichetto agrees to release its secured claim on the Residence. Debtor in Possession claims it will waive its set-off claim in exchange, but Debtor in Possession does not point to any set-off claim in existence. The Plan is not feasible as written because it cannot both allow Creditor Brichetto

to retain its security interests while simultaneously requiring Creditor Brichetto to release its security interest in the Residence.

Furthermore, Debtor in Possession claims it will sell only its interest in the Farm Land, whereas the state court judgment requires the sale of the entire Farm Land in which Creditor Brichetto owns more than 90% of the interests in the Property.

As for Creditor Hofman's claims, Debtor in Possession ignores Creditor Hofman's rights in the Residence completely, instead opting to pay Creditor Hofman 22.63% of its claim in monthly installments. This alteration of Creditor Hofman's rights would amount to altering the state court judgment that granted Creditor Hofman a 91.66% interest in the Residence. Debtor in Possession does not explain whether the Residence will be sold at all, and if Debtor in Possession retains possession, how it is entitled to do so with only a 8.33% interest in the Residence and the remainder belonging to Creditor Hofman.

While possibly the Plan calls for the liquidation, by the Subchapter V Trustee, of the Farm Land, it appears that the Plan seeks to have Debtor effectively be the "owner" of the Residence and ignore the fact that Debtor, and the Bankruptcy Estate, have only a 8.33% ownership interest therein. Creditor Hofman seeks to enforce its right as the co-owners to partition the property, which cannot be done physically, but must be sold and the proceeds of the sale "partitioned."

As Creditor Hofman notes, Debtor's "necessary expenses" appear to be quite high and lavish for someone driven to seeking the extraordinary relief under the Bankruptcy Code.

In looking at Exhibit A to the Plan, which is Amended Schedule I filed in this Case, (Dckt. 104 at 8-9) Debtor states he is a self employed consultant, but then states that he is paid wages and has withholding against his wages. If Debtor is actually "self-employed," then he does not get paid wages, but has profits from his business, pays self-employment taxes, and funds all of this Social Security and Medicare payments.

No income from operating his business is shown on Amended Schedule I (¶ 8) and there is no attachment showing Debtor's self-employment income and expenses.

On Amended Schedule J attached to the Plan (Dckt. 104 at 10-11) Debtor lists some large, and questionable, expenses. These include:

- A. (\$1,000) for electricity and natural gas, for his one person household.
- B. (\$1,960) for food and housekeeping supplies for his one persons household.
- C. (\$1,000) a month for medical expenses for his one person household. This is in addition to monthly health insurance premiums of (\$430 a month).
- D. (\$1,000) a month "expense for "LLC." It is unclear why Debtor is funding an LLC for (\$1,000) a month when there is no "LLC" income. ^{FN.1..}

FN. 1. The court notes that on original Schedule J Debtor stated under penalty of perjury that he has a (\$4,000) a month "LLC" expense. Dckt. 32 at 36.

Looking at Schedule A/B, Debtor lists owning a 49% interest in “Valley Home Rice Company.” Dckt. 32 at 11. Amended Schedule I expressly states that Debtor has \$0.00 income from any business, farm, or other source. Only his “self-employment wages” are listed as income on Amended Schedule I.

On the Statement of Financial Affairs, Debtor states having only the following Wage Income:

- A. 2023 Year to Date of Filing.....\$4,800 (Debtor’s Bankruptcy Case was filed on March 20, 2023, so this represents approximately 20% of Debtor’s annual income (January 1 through March 20, 2023)).
- B. 2022.....\$277,983
- C. 2021.....\$263,229

Stmnt of Fin Affairs, ¶ 4; Dckt. 32.

The only other income Debtor lists are Social Security benefits received in 2023, 2022, and 2021. *Id.*, ¶ 5.

In response to the questions posed in ¶ 27 of the Statement of Financial Affairs, Debtor states that he is a member of a limited liability company or a limited liability partnership. *Id.*

Debtor identifies the entities as Valley Home Rice Company (food processing business) and Acres Verde Foundation (Non-Profit Ag Education).

Additionally, as Creditor Hofman notes, 11 U.S.C. § 1189(b) requires a Plan to be filed within 90 days of the bankruptcy case being filed. 11 U.S.C. § 1189(b) also authorizes the court to “extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.” The statute does not state that the extension must be granted before the time period expires. See 11 U.S.C. § 1121(e).

This Bankruptcy Case was filed on March 20, 2023. The Subchapter V Small Business Plan was filed on June 19, 2023 (a Monday). The court computes 90 days from the March 20, 2023 as follows:

March 21 - 31	11	Days
April 1 - 30	30	Days
May 1 - 31	31	Days
June 1 - 18	18	Days
	=====	
	90	Days

The ninetieth day after the March 20, 2023 filing is Sunday June 18, 2023. Federal Rule of Bankruptcy Procedure 9006(a) provides that in computing time, when a period is stated in a number of days:

(1) Period stated in days or a longer unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Here, the last day of the ninety (90) day period was Sunday June 18, 2023, and therefore the end of the ninety (90) day period expired on June 19, 2023, which is the day that the Subchapter V Small Business Plan was filed. Thus it appears that the filing of Plan was just under the wire, but done timely.

At the hearing, **XXXXXXX**

The Plan does not comply with 11 U.S.C. §§ 1122, 1123, and 1125(a) and is not confirmed.

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 Motion to Confirm the Chapter 11 Plan filed by the debtor, Michael Erich Hofman (“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 Confirm the Plan is denied, and the proposed Chapter 11 Plan is not confirmed.

3. [23-90111-E-11](#)
[CAE-1](#)

MICHAEL HOFMANN
VOLUNTARY PETITION

CONTINUED STATUS CONFERENCE RE:
3-20-23 [1]

SUBCHAPTER V

Debtor's Atty: Brian S. Haddix

Notes:
Continued from 6/29/23

Operating Reports filed: 8/14/23 [ending 6/30/23]; 8/14/23 [ending 7/31/23]

[BSH-3] Amended Confirmation Hearing Scheduling Order [setting 9/28/23 hearing] filed 7/18/23 [Dckt 120]

Motion for Relief From the Automatic Stay [by Rural Community Assistance Corporation] filed 7/24/23 [Dckt 122]; Order granting filed 9/11/23 [Dckt 159]

Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions (re fees) filed 8/7/23 [Dckt 128]; Order discharging order to show cause with no sanctions ordered filed 9/12/23 [Dckt 161]

[DL-2] Motion by Subchapter V Trustee for Authorization to Employ Real Estate Broker filed 8/7/23 [Dckt 129]; Order granting filed 8/9/23 [Dckt 133]

[BD-1] Order dismissing without prejudice Sharon Hofmann's and Gary Hofmann's Motion for Relief from Automatic Stay filed 9/11/23 [Dckt 160]

The Status Conference is XXXXXXX
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SEPTEMBER 28, 2023 STATUS CONFERENCE

At the Status Conference, XXXXXXX

JUNE 29, 2023 STATUS CONFERENCE

On June 22, 2023, Michael Hofmann, the Debtor/Debtor in Possession filed his Status Report. Dckt. 108. In it Debtor/Debtor in Possession states his intention to purchase the real property that is the subject of the State Court partition action. As this court has raised in connection with the Subchapter V Trustee's request to have control of that property removed from the Debtor/Debtor in Possession and given to the Subchapter V Trustee, Debtor/Debtor in Possession's desire to competitively bid on and purchase the

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real property raises a conflict of interest with respect to his fiduciary duties as the Debtor/Debtor in Possession (exercising the powers of a bankruptcy trustee for the benefit of the Bankruptcy Estate) with respect to him wanting to purchase property of the bankruptcy estate rather than having it sold to someone else.

In the Status Report Debtor/Debtor in Possession states that it is not anticipated that there will be a sale of any property in this case.

A Subchapter V Small Business Plan was filed on June 19, 2023. Dckt. 104. For the Class 2 secured claim of the Brichetto, it states that the Debtor/Debtor in Possession will sell his interest in the farmland pursuant to a sale conducted by the Subchapter V Trustee.

From a review of the Subchapter V Plan, it is not clear how the Debtor/Debtor in Possession is addressing the rights of the co-owners of the real properties.

The court and Parties discussed a multitude of issues concerning this case and its effective administration in the course of addressing the Subchapter V Trustee's Motion to partially remove the Debtor from his position as the debtor in possession for one property of the Bankruptcy Estate. For the Debtor/Debtor in Possession and Creditors, they were unanimous in agreeing that this should be done. The US Trustee addressed with the court the court's concern about whether such a partial removal was proper. The court concluded that it was based on the provisions of 11 U.S.C. § 1159 (1) and (2), which expressly allows for the reinstatement of the Debtor as the Debtor/Debtor in Possession in a Subchapter V case.

MAY 18, 2023 STATUS CONFERENCE

Michael Hoffman, the Debtor/Debtor in Possession, commenced this voluntary Chapter 11 Subchapter V case on March 20, 2023. On Schedule A/B Debtor lists having a joint tenant interest in the following properties (the court computes the percentage of Debtor's interest based on the stated dollar value of his interest as a percentage of the stated total dollar value of the property:

13330 Valley Home Road, parcel -049	\$42,600	8% Joint Tenant Interest
13330 Valley Home Road, parcel -051	\$28,000	8% Joint Tenant Interest
13330 Valley Home Road, parcel -055	\$12,000	8% Joint Tenant Interest

Dckt. 32. For personal property, Debtor's assets of significant value are a vehicle, bank account deposits, a setoff against siblings/Trust, and another setoff for non-payment of rent. Debtor also lists having a 49% interest in a business, but that its value is unknown. *Id.*

On Schedule I Debtor lists substantial monthly income, but on Schedule J substantial necessary monthly expenses. Some items of note with respect to Schedule J include:

- A. No expense for rent or mortgage.
- B. No expense for property taxes or homeowner's/renter's insurance

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- C. Water, sewer, and garbage expense of \$30 a month.
- D. Electricity, heat, natural gas expense of \$0.00 a month.
- E. No expense for phone, cell phone, cable, or satellite services.
- F. \$2,000 a month for food and housekeeping for a family unit of just the Debtor.
- G. Gas, vehicle maintenance, repairs, and registration for his vehicle of \$300 a month. If Debtor has purchases a maintenance policy for his Mercedes Benz, after allow \$25 a month for registration, that would leave \$250 a month for gas. At \$4.50 a gallon, that allows Debtor to purchase 55 gallons a month. Assuming an average of 25 miles to the gallon, that give Debtor a driving range of 335 miles a week.
- H. An expenses to “LLC” of \$4,000 a month.

Schedules I and J; Dckt. 32 at 33-36.

On the Statement of financial affairs Debtor lists substantial gross income for wages/commission for 2022 and 2021, but little for the first three months of 2023. *Id.* at 38-39.

In response to Question 17 on the Statement of Financial Affairs, Debtor discloses having paid Freedom Debt Relief monthly payments in the amount \$20,000.00 in the year preceding the filing of this case. (It may be that this is a typo and the monthly payment were less than \$20,000.00 and in the aggregate total \$20,000.00.) *Id.* at 42.

In response to Question 27 on the Statement of Financial Affairs, Debtor states that he is current an LLC member or LLP member in Valley Home Rice Co. and Acres Verde Foundation. *Id.* at 44. Valley Home Rice Company is listed on Schedule A/B, but Acres Verde Foundation is not.

Notice of Removal

On May 14, 2023, Debtor/Debtor in Possession filed a Notice of Removal removing the pending post-judgment State Court Litigation *Hoffman v. Hoffman, and related Cross complaint, et al*, California Superior, for the County of Stanislaus, Case No. 2200623 to this court. In the removal filings Debtor/Debtor in Possession has provided a copy of the Second Amended Interlocutory Judgment entered in the State Court Action. Exhibit 71, docketing pending in adversary proceeding to be opened.

The Second Amended Interlocutory Judgment includes that it determines the percentage ownership interests in the 13330 Valley Home Road property (8 1/3% for Debtor/Debtor in Possession); a monetary surcharge of (\$90,576.81), plus additional interest, for Debtor/Debtor in Possession’s occupancy of the residential portion of the Property; against Debtor/Debtor in Possession on his cross complaint against Sharon, Gary, and the Brichettos; judgment in favor of Debtor/Debtor in Possession for the interference of contract claim; judgment for the Brichettos for partition of the Property, with such Property to be sold and the monies divided; Debtor/Debtor in Possession is entitled to a \$142,122 credit if he leave the grain tanks on the Property or a \$62,269 credit if he removes them; and Sharon, Gary, and the Brichettos are the prevailing parties and costs are awarded, in addition to being awarded attorney’s fees to be paid by

Debtor/Debtor in Possession. Additional relief is granted between the other parties to the State Court Action that does not directly include Debtor/Debtor in Possession.

Also included is the State Court's detailed thirty-three (33) page Ruling.

In the Notice of Removal Debtor/Debtor in Possession provides information concerning his removal of the post-judgment State Court Action, there remaining the enforcement of the partition of the Property, which includes (identified by paragraph number used in the Notice of Removal):

3. Sharon and Gary Hofmann, petitioners in the state court action and creditors in this matter, seek to enforce the final state court judgment by selling estate property while other creditors, one secured, one claiming to be secured, seek to be paid from the proceeds of the sale of estate property.

4. The claim of the creditor claiming to be secured, Debtor's former spouse, is based on an abstract of judgment for support that is incongruous with an earlier, separate, notarized agreement she entered into with Debtor regarding said claim.

5. If the matter is remanded back to state court, some creditors will be paid outside the framework of the Bankruptcy Code, thus allowing certain creditors, some with dubious claims, to obtain payment from estate assets to the detriment of other creditors. Removal of this action is, therefore, proper under Section 1442 of Title 28 of the United States Code because a claim in this civil action arises under the Bankruptcy Code.

Debtor/Debtor in Possession Status Report

On May 15, 2023, the Debtor/Debtor in Possession's Supplemental Status Report was filed. Dckt. 67. The Debtor/Debtor in Possession reports that Michael Hudson breached the purchase agreement for the sale of the residence ordered by the State Court judge pursuant to the State Court Judgment.

Then, after this case was filed, other parties moved in the State Court for an Amended Order for the Sale of the Residence.

Debtor/Debtor in Possession asserts that when the buyer for Michael Hudson's property, the sale of which was a condition of the sale of the Residence Property to Michael Hudson, he, as one of the sellers was not given notice thereon and deprived of his right to cancel the sale to Michael Hudson.

Debtor/Debtor in Possession also reports that his former spouse is wrongly asserting a \$501,693.31 claim pursuant to a 1998 dissolution judgment, asserting that it is secured by a 2013 abstract of judgment. Debtor/Debtor in Possession asserts that the dollar amount is incorrect and that it is not secured (but does not state why he asserts that a 2013 abstract of judgment does not create a lien on real property that Debtor owns).

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 7/13/23

[CCR-1] Motion to Annul the Automatic Stay and for Relief from Stay to Proceed with State Court Litigation; Memorandum on Points and Authorities in Support filed 7/24/23 [Dckt 209]; Order granting filed 8/11/23 [Dckt 219]

The Status Conference is XXXXXXX
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SEPTEMBER 28, 2023 POST CONFIRMATION STATUS CONFERENCE

The Subchapter V Plan was confirmed in this case by order entered on February 11, 2023 (Dckt. 133). On August 11, 2023, the court entered its order annulling the automatic stay provisions to allow for the State Court Litigation, *Kim v. Dhillon et al*, to proceed in state court.

At the Status Conference, XXXXXXX

JULY 13, 2023 POST-CONFIRMATION STATUS CONFERENCE

A review of the Docket discloses nothing has been filed since the May 22, 2023 updated Status Report filed by the Debtor/Debtor in Possession. At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the claim of Fresno Truck Center has been resolved by a stipulation that provides for payment of the claim through installments.

MAY 23, 2023 POST-CONFIRMATION STATUS CONFERENCE

On May 22, 2023, the Debtor/Debtor in Possession filed an updated Status Report. Dckt. 2023. The updated information includes the following:

- A. A Modified Plan will be filed to address that the claim for lease for rejection damages by Fresno Truck Center were not provided for in the now confirmed Plan because the rejection was made by the confirmation of the Plan and the Creditor's claim was subsequently filed.

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- B. The Modified Plan will also address the direct payments to creditors by the Debtor/Debtor in Possession as Plan Administrator and not through the Subchapter V Trustee.

The Subchapter V Debtor/Debtor in Possession addressing (a bit belatedly) the concerns identified by the Subchapter V Trustee, continuance of the Status Conference is proper.

MAY 18, 2023 POST-CONFIRMATION STATUS CONFERENCE

In reviewing the Docket, the court notes that nothing has been filed since the April 6, 2023 Post-Confirmation Status Conference. As shown in the Minutes below from two prior Post-Confirmation Status Conference, the Subchapter V Trustee states that the Subchapter V Debtor/Debtor in Possession is making direct payments to creditors on their claims and not through the Subchapter V Trustee.

No updated Status Report has been filed by the Debtor/Debtor in Possession for the May 18, 2023 Status Conference, and none have been filed since the February 11, 2021 confirmation of the Plan in this case.

The Civil Minutes from the Confirmation Hearing state that there were four of the thirteen classes of claims that voted to confirm the Plan. Dckt. 130. No other ballots were cast in the other nine classes of claims, and for the four accepting classes, no ballots were cast against confirmation. *Id.*

The Bankruptcy Code provides in 11 U.S.C. § 1194(b) that if the Plan is confirmed under 11 U.S.C. § 1191(b), then the Subchapter V Trustee will make all payments to creditors under the Plan, unless the Plan proves otherwise. 11 U.S.C. § 1191(b) provides that if the requirements for confirmation provided in 11 U.S.C. § 1129(a)(8) [all impaired classes accept], (a)(10) [at least one impaired class votes to accept if there are any impaired classes of claims], and (a)(15) [distribution amount if a holder of an unsecured claim objects].

As shown in the Civil Minutes for the confirmation of this Subchapter V Plan, no all impaired classes voted to accept the Plan and it was confirmed pursuant to 11 U.S.C. § 1129(b).

The judge to whom this case is assigned will not be able to attend the May 18, 2023 Status Conference due to a last minute schedule change. Rather than having the judge covering the May 18, 2023 calendar conduct the Status Conference, the court continues it to 1:30 p.m. on May 23, 2023, specially set to the Sacramento Division Courthouse – Telephonic Appearances Permitted.

The court does this so that it may address with the SubChapter V Trustee and counsel for the Debtor/Debtor in Possession whether the payments are being made through the SubChapter V Trustee, the Plan needs to be modified to provide for the Debtor/Debtor in Possession to make the payments, or the Subchapter V Trustee and Debtor/Debtor in Possession now agree that payments are to be made directly by the Debtor/Debtor in Possession.

If the Subchapter V Trustee and the Debtor/Debtor in Possession have resolved this payment issue, they may file a joint status report advising the court of such resolution and the basis therefore, which joint status report may also request that the court continue the Post-Confirmation Status Conference.

APRIL 6, 2023 POST-CONFIRMATION STATUS CONFERENCE

September 28, 2023 at 2:00 p.m.

Since the January 26, 2023 Status Conference, the court has entered an order approving interim fees and expenses for David M. Souza, the Subchapter V Trustee. Order; Dckt. 195. No updated Status Report has been filed by the Debtor/Debtor in Possession Plan Administrator.

At the Status Conference, counsel for the Debtor Plan Administrator reported that the disputed claim over the truck leasing claim are still the subject of ongoing discussions.

The Trustee reported that Debtor Plan Administrator has been making the Plan payments directly to creditors with secured claims, and not making them through the Subchapter V Trustee.

JANUARY 26, 2023 POST-CONFIRMATION STATUS CONFERENCE

No updated status reports have been filed and no post-confirmation fee applications have been filed. By the end of March 2022, the final orders were entered on the Debtor/Debtor in Possession Plan Administrator's objections to claims. There has been nothing filed in connection with the administration of this case and the Confirmed Plan since March 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported that the dispute over rejection damages is ongoing with Fresno Truck Center, dba Lee Financial Services.

The court continues the Status Conference to allow the Debtor/Debtor in Possession Plan Administrator to reach a resolution of this ongoing dispute or commence the necessary claim objection litigation.

5. [23-90166-E-11](#) **CUSTOM SPRAY SYSTEMS,** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **INC.** **VOLUNTARY PETITION**
4-18-23 [1]

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/15/23

Plan of Reorganization for Small Business Under Chapter 11 - Custom Spray Systems, Inc.'s Plan of Reorganization Dated July 17, 2023 filed 7/17/23 [Dckt 31]; Order Setting Confirmation Hearing and Related Deadlines filed 7/21/23 [Dckt 32]

Debtor's Abandonment of Plan of Reorganization Dated July 17, 2023 filed 8/31/23 [Dckt 42]

Order denying proposed Plan of Reorganization Dated July 17, 2023 filed 9/12/23 [Dckt 44]

The Status Conference is XXXXXXX
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SEPTEMBER 28, 2023 STATUS CONFERENCE

The Debtor/Debtor in Possession's proposed Subchapter V Plan was denied confirmation on September 12, 2023. Order; Dckt. 44. The Debtor/Debtor in Possession elected to not pursue confirmation of that proposed Subchapter V Plan, but intends to file and prosecute a modified Plan.

At the Status Conference, **XXXXXXX**

JUNE 15, 2023 STATUS CONFERENCE

This Subchapter V Case was commenced on April 18, 2023. The Debtor/Debtor in Possession filed its Status Report on June 1, 2023. Dckt. 20. It is reported that following the death of one of the two principals of Debtor, the business operation focused on completing the existing projects and not seeking new business. There are payroll tax liabilities to address through the Bankruptcy Case.

A review of Schedule A/B reflects that the substantial assets of the Debtor, and now the Bankruptcy Estate, are accounts receivable. Dckt. 17. Debtor states on Schedule D that there are no creditors with secured claims. Id. On Schedule E/F, there is listed a substantial tax claim that would appear to consume all of the accounts receivable value, leaving little, if anything, for non priority claim creditors.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the First Meeting of Creditors has been concluded.

The Subchapter V Trustee reports that this is a little different case in light of there being no operating business. The late former owner was the one who had the financial information from the operation of the business.

FINAL RULINGS

6. [23-90375-E-11](#) AMERICAN REAL ESTATE STATUS CONFERENCE RE:
[CAE-1](#) GROUP, INC VOLUNTARY PETITION
8-14-23 [\[1\]](#)
DEBTOR DISMISSED: 09/01/23

Final Ruling: No appearance at the September 28, 2023 Status Conference is required.

Debtor's Atty: Pro Se

Notes:

Order Dismissing Case for Failure to Timely File Document(s) filed 9/1/23 [Dckt 19

This Bankruptcy Case having been dismissed on September 1, 2023 (Order, Dckt. 19), **the Status Conference is concluded and removed from the Calendar.**

September 28, 2023 at 2:00 p.m.

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7. [23-90103-E-7](#) **PORSCHA LEWALLEN**
[23-9009](#) **CAE-1**
LEWALLEN V. UNITED STATES
DEPARTMENT OF EDUCATION ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-9-23 [1]

Final Ruling: No appearance at the September 28, 2023 Status Conference is required.

Plaintiff's Atty: Jeffrey D. Rowe
Defendant's Atty: unknown

Adv. Filed: 6-9-23
Reissued Summons: 6/16/23
Answer: none
Amd Cmpl. Filed: 9/14/23
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:

Continued from 8/10/23, Plaintiff-Debtor reported that an amended complaint will be filed and the service issues addressed with the service of the amended complaint and reissued summons.

First Amended Complaint to Determine Dischargeability of Student Loan filed 9/14/23 [Dckt 12]

The Status Conference is continued to 2:00 p.m. on November 9, 2023.

SEPTEMBER 28, 2023 STATUS CONFERENCE

On September 14, 2023, an Amended Complaint was filed and on September 19, 2023, the Reissued Summons and Amended Complaint were served. Dckts. 12, 14, 15. The Certificate of Services states the persons served include the U.S. Department of Education in San Francisco, the U.S. Attorney General, the U.S. Attorney for the Eastern District of California, and the Nelnet, Inc., via the agent for service of process, were served. Dckt. 15.

The First Amended Complaint seeks a determination that the Student Loan Obligation is dischargeable, and the short and plain statement of the claim showing that the pleader is entitled to relief (Fed. R. Civ. P. 8(a), Fed. R. Bankr. P. 7008) stated in the Amended Complaint include the following. The Student Loan debt is \$27,075.73 (with the original loan amount being \$26,223.00). The Plaintiff-Debtor has no disposable income to make payments on the Student Loan debt. Plaintiff-Debtor has one child in her household and is a single parent.

The First Amended Complaint having been served on September 19, 2023, the time to file a responsive pleading has not expired as of the September 28, 2023 continued Status Conference.

The Status Conference is continued to 2:00 p.m. on November 9, 2023, to afford the parties the opportunity to review the responsive pleading and to meet and confer in advance of the Status Conference.

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 September 28, 2023 Status Conference having been scheduled, the First Amended Complaint having been served on February 19, 2023, the period for filing of responsive pleadings not have expired as of the September 28, 2023 Status Conference, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on November 9, 2023.**