

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 19, 2023 at 2:00 p.m.

1. <u>23-90224</u>-E-11	ALLDRIN ORCHARDS, INC. David Johnston	CONFIRMATION OF PLAN 8-22-23 <u>[36]</u>
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Item 1 thru 2

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor's Attorney, Subchapter V Trustee, equity security holders, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2023. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

The Confirmation of Plan of Reorganization is denied.
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Alldrin Orchards, Inc. ("Debtor/Debtor in Possession") seeks confirmation of its Chapter 11 Subchapter V Plan filed on August 8, 2023. The following dates and deadlines relate to the matter now before the court:

August 22, 2023: Plan filed.

August 25, 2023: Order Setting Confirmation Hearing for October 19, 2023, entered. Order; Dckt. 37.

October 5, 2023: Last day to file Objections to Confirmation. *Id.*

October 5, 2023: Last day to file Replies to Objections, Tabulation of Ballots, and Proof of Service. *Id.*

October 12, 2023: Last Day to file the Tabulation of Ballots. Debtor did not file a Tabulation of Ballots.

Table of Classes

Creditor/Class	Treatment	
Class 1: Priority Claims	Claim Amount	Unknown
	Impairment	Unimpaired
	Priority claims will be paid in full, in cash, upon the effective date. Debtor is not aware of any priority claims.	
Class 2: Ally Bank	Claim Amount	\$44,725.90
	Impairment	Unimpaired
	Debtor states that the class will be paid according to the terms of the original loan documents with no modification by this Plan	
Class 3: Yosemite Production Credit, PCA	Claim Amount	\$2,077,823.32
	Impairment	Impaired
	Debtor states that the class will be paid the sum of \$125,000, the value of the collateral owned by the Debtor, together with an interest of 7% annum from the effective date as follows: \$2,700 on the first day of November 2023, and the first day of each successive month until May 1, 2028. The Debtor notes that because the holder of this claim has substantial collateral owned by other entities, it will receive nothing from the Debtor other than the foregoing.	
Class 4: Non-priority unsecured claims	Claim Amount	Estimated \$522,500
	Impairment	Impaired
	Debtor states that the holders of the claims will receive a dividend of 10% of their claims as follows: \$1,000 on the first day of November 2023, and the first day of each successive month until May 1, 2028.	

Class 5: Equity interests in the Debtor	Claim Amount	Unknown
	Impairment	Unimpaired.
	Debtor states that the present shareholder will retain her shares in the Debtor.	

Debtor intends to make monthly payments on the plan from future income, but has not stated any projected future income. Plan, Dckt. 36.

In the court's Order to Set the Hearing on confirmation of the Plan, the Debtor in Possession was to file with the court a tabulation of ballots no later than seven days before the hearing. Order, Dckt. 37. A review of the docket on October 17, 2023 reveals that Debtor in Possession has not filed a Tabulation of Ballots with the court.

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.

No Declaration, supporting documents, or authenticated exhibits have been filed in support of confirmation of the Plan. No creditor has objected to the Plan of Reorganization; however, the Debtor in Possession has not presented evidence in support of confirmation. The court is unable to determine whether the elements of the are in compliance with 11 U.S.C. § 1129(a) and cannot confirm the Plan.

Requirements of 11 U.S.C. § 1129(a)

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

Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

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. xx, pg. x

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.

Only if this section is applicable.

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: Dckt. xx, pg. x

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(I) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Dckt. xx, pg. x

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

This section is inapplicable pursuant to 1191(b).

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Dckt. xx, pg. x

(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: Dckt. xx, pg. x

(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

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(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: Dckt. xx, pg. x

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Not required pursuant to 1191(b).

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: Dckt. xx, pg. x

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Dckt. xx, pg. x

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: Dckt. xx, pg. x

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

Evidence: Dckt. xx, pg. x

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Not required pursuant to 1191(b).

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Review of the Plan

The Debtor in Possession must show that it will have enough cash over the life of the Plan to make the required plan payments. 7 COLLIER ON BANKRUPTCY ¶ 1129.08 (“[T]o confirm its plan, the debtor must also show it can make the payments scheduled in the plan. . .”). Here, the court has not been provided enough evidence from the Debtor in Possession to determine whether it can make plan payments, or whether the Plan has been proposed in good faith and not by any means forbidden by law. In fact, Debtor in Possession admits in its proposed Plan, “[b]ecause Debtor has had no significant operations since the petition was filed, and because it is uncertain what its future income and expenses will be, it is premature to include projections in this Plan.” Plan, Dckt. 36, p. 3. Needless to say, such admission does not provide the court with much confidence that the Plan can be confirmed in its present condition.

At the hearing, **XXXXXXXXXX**

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 Confirmation of Plan filed by Alldrin Orchards, Inc. (“Debtor in Possession”) 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 Plan, as amended at the hearing, is not confirmed, and the Motion is denied.

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2. [23-90224-E-11](#) **ALLDRIN ORCHARDS, INC.** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
5-22-23 [1]

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 7/13/23

Operating Reports filed: 8/4/23 [May & June]

Trustee Report at 341 Meeting lodged 8/1/23; 8/14/23; 8/29/23

Alldrin Orchard, Inc.'s Plan of Reorganization Dated August 22, 2023 filed 8/22/23 [Dckt 36]; set for hearing 10/19/23 at 2:00 p.m.

The Status Conference is continued to 2:00 p.m. on xxxxxxx , 202xxxxxxx

3. [18-90029-E-11](#) **JEFFERY ARAMBEL** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
1-17-18 [1]

Debtor's Atty: Pro Se

Notes:

Continued from 10/5/23 to 10/19/23 by order of the court filed 9/25/23 [Dckt 1919] to be conducted after the evidentiary hearing on 10/17/23.

The Post-Confirmation Status Conference is continued to 2:00 p.m. on xxxxxxx , 2024.

At the Status Conference, the court addressed the status and scheduling of the hearing on the Plan Administrator's Motion to Abandon Property, DCN: FWP-13, which was continued to October 17, 2023, to be conducted in conjunction with the Evidentiary Hearing on the Motion for Order in Aid of Execution

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of Plan in the Filbin Land & Cattle Co., Inc. Case. At the conclusion of the Evidentiary Hearing, the court neglected to address the Motion to Abandon with the Parties.

At the Status Conference, **XXXXXXX**

4. [23-90029-E-11](#) **RAMIL/MELINA ABALKHAD** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
1-27-23 [\[1\]](#)

Debtors' Atty: Matthew D. Resnik; Roksana D. Moradi-Brovia

Notes:

Continued from 8/10/23 as the respective Parties continue to address the issues in this Case.
[CAE-1] Debtors' Chapter 11 Case Status Report filed 10/5/23 [Dckt 152]

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

OCTOBER 19, 2023 STATUS CONFERENCE

On October 5, 2023, the Debtor in Possession filed an updated Status Report. Dckt. 152. The Debtor in Possession reports that the court is issuing an order granting relief from the stay to Deutsche Bank with respect to the most valuable asset in the Estate, the Debtor in Possession is having to reevaluate the possible course of action.

At the Status Conference, **XXXXXXX**

AUGUST 8, 2023 STATUS CONFERENCE

On July 27, 2023, the Debtor in Possession filed an updated Status Report for this Case. Dckt. 127. With respect to the marketing and lease of the Calabasas property, the Debtor in Possession reports that pursuant to this court's order, they have retained COMPASS Real Estate - Beverly Hills for that purpose.

At the Status Conference, counsel for the Debtor in Possession reported that the Calabassas property has not yet been rented. Counsel for two creditors advised the court that it appears that the financial situation of Debtors is deteriorating and there may not be value in the assets and sufficient income to support a plan.

The Status Conference is continued as the respective parties continue to address the issues in this Case.

JUNE 15, 2023 STATUS CONFERENCE

On June 1, 2023, the Debtor in Possession filed an updated Status Report. Dckt. 101. For the Southern California Property, the Debtor in Possession reports that they are still trying to get it lease and will be seeking authorization to employ a new agent and broker. The Turlock Property is currently being leased, debtor Ramil Abalkhad no longer residing there.

Mr. Abalkhad continues with his business as a self-employed credit counselor. Mrs. Abalkhad is now licensed as a real estate agent, but has not closed any sales yet. Mrs. Abalkhad no longer resides in the Calabassas Property.

Since the prior Status Conference, current counsel for the Debtor in Possession has worked with the Debtors and the Debtor in Possession to bring this case in compliance with the rules and the law. The Debtor in Possession believes that has been accomplished.

On April 28, 2023, the Trustee in the RJ Financial Bankruptcy Case filed a complaint in this Bankruptcy Case seeking to have obligations of the Debtors determined nondischargeable and for the Debtors to be denied a discharge.

The Debtor in Possession will file a proposed plan and disclosure statement when they have a tenant, and the corresponding income from, the Calabassas Property.

Amended Schedules

The Debtors' Amended Schedules were filed on May 16, 2023. Dckt. 98. The substantial portion of their asset value is in the two real properties. On Schedule D, Debtors list (\$10,113,375) +/- as claims secured by the Calabassas Property (some of the judgment debt and liens as listed as disputed). On Schedule A/B, Debtors list this property as having a value of \$2.5MM. On Schedule C (Dckt. 1), Debtors claim homestead exemptions in both the Calabassas Property and the Turlock Property.

At the Status Conference, counsel for the Debtor in Possession reported that the employment application will be filed for family law counsel. The U.S. Trustee reports that the First Meeting of Creditors has been concluded. However, Debtor has not been successful in leasing the property.

MARCH 9, 2023 STATUS CONFERENCE

This voluntary Chapter 11 case was filed on January 27, 2023. The Debtor in Possession in possession filed a Status Report on February 23, 2023. Dckt. 34. Counsel for the Debtor in Possession reports that title reports are being obtained to insure that all possible secured claims are identified. It appears at this time there may be only one secured claim, and that a motion to value is in the offing.

The Debtor in Possession is working to get the monthly operating reports filed, having obtained the court authorized services of a CPS to assist.

The court notes that two applications to employ professional have been filed, but no orders have been entered. In reviewing the court's proposed order inbox, the court does not see proposed orders having been uploaded. These applications have been set for hearing on March 9, 2023.

Looking at Schedule A/B, the most significant asset is real property located in Calabassas, California, which is identified as a single-family home with a value of \$2.5 Million and in which Debtor asserts a homestead exemption. Dckt. 33.

On Schedule D Debtor lists creditors having secured claims against the Calabassas property totaling approximately (\$11,575,000), a portion of which is also secured by real property located in Turlock, California. General unsecured claims totaling approximately (\$461,000) are listed on Schedule F.

Interspersed in the Schedules are forms from the Central District of California and some of the forms stated that they are for filing a case in the Central District of California.

At the Status Conference, counsel for the Debtor in Possession addressed these shortcomings, assuring the court that counsel and his staff are reviewing the Local Rules

5. [23-90129-E-11](#) **G ARATA & SON INC.**
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-28-23 [1]**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 7/13/23

Operating Reports filed: 9/4/23 [April, May, June, July]

[WF-1] Farm Credit Leasing Services Corporation's Motion for an Order Granting Relief from the Automatic Stay filed 8/7/23 [Dckt 80]; Order granting filed 9/11/23 [Dckt 115]

Debtor's Abandonment of Plan of Reorganization Dated June 26, 2023 filed 8/31/23 [Dckt 105]; Order denying confirmation of Plan filed 9/12/23 [Dckt 116]

[BJ-1] Order Further Granting Motion of American AGCredit, PCA for Relief from the Automatic Stay filed 9/20/23 [Dckt 119]

The Status Conference is XXXXXXX
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OCTOBER 19, 2023 STATUS CONFERENCE

At the Status Conference, XXXXXXX

JULY 13, 2023 CONTINUED STATUS CONFERENCE

The Debtor/Debtor in Possession filed an updated Status Report on June 29, 2023. Dckt. 67. The Debtor/Debtor in Possession is pursuing confirmation of a Subchapter V Plan, Dckt. 65, with the confirmation hearing set for September 7, 2023.

On July 6, 2023, American AgCredit, PCA, filed its Status Report as a creditor in this case. American AgCredit asserts that the Debtor was not engaged in business prior to the filing of this Subchapter V Case and the Subchapter V Plan provides for the liquidation of personal property assets and prosecution of litigation against a family member and the family member's company. Thus, American AgCredit asserts that the absence of any ongoing business makes the Debtor ineligible for SubChapter V relief.

Additionally, American AgCredit asserts that if there are claims against family members of the Debtor's principals, then an independent, neutral fiduciary, such as a Chapter 7 Trustee, should prosecute such litigation.

At the Status Conference, counsel for the Debtor/Debtor in Possession, updated the court as to issues in this case. He reported that there is a buyer for one of the shredders, which sale will provide for paying Farm Credit Leasing in full, and have proceeds for another creditor. With respect to the claims and litigation against the son of Debtor's principals, the Debtor/Debtor in Possession does not oppose it.

On the issue of eligibility for Subchapter V, the Debtor/Debtor in Possession directs the court to *NetJets Aviation, Inc. v. RS Air, LLC (In re RS Air, LLC)*, 638 B.R. 403 (B.A.P. 9th 2022).

Walter Dahl, the Subchapter V Trustee reported that he is reviewing these matters. With respect to litigation against the son, then the court will need to consider whether there can be a "partial removal" for this type of claim.

6. [13-90435-E-7](#) SEAN AMIN
[23-9010](#) CAE-1
NEVAREZ V. ELLIOTT ET AL

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

Plaintiff's Atty: unknown

Defendant's Atty:

David C. Johnston [Sean Afshin Amin]

Unknown [Kevin Amin; California Shade, Inc.; David Elliott]

Adv. Filed: 6/13/23

Answer: none

Nature of Action:

Determination of removed claim or cause

Declaratory judgment

Notes:

Continued from 8/10/23. Counsel for Defendant-Debtor reported that there are ongoing discussions to resolve this dispute, which is related to the Adversary Proceeding in *Elliott v. Nevarez*, 22-9002.

The Status Conference is XXXXXXX

OCTOBER 19, 2023 STATUS CONFERENCE

The court's review of the Docket reflects that no updated Status Report has been filed and no appearances made by any other party to this Adversary Proceeding.

At the Status Conference, XXXXXXX

AUGUST 10, 2023 STATUS CONFERENCE

On June 13, 2023, Debtor-Defendant Sean Afshin Amin filed a Notice of Removal of this State Court Action. Dckt. 1. In the State Court Action Defendant-Debtor has been sued for an obligation that is asserted to have been discharged in his 2013 Chapter 7 Bankruptcy Case. Defendant-Debtor seeks now to not only defend the State Court Action based on his having obtained a discharge, but to also assert that the naming of Defendant-Debtor in the State Court Action violates the Discharge Injunction, and he will seek damages relating thereto.

The Ninth Circuit has addressed the enforcement of the Discharge Injunction, treating it as a statutory injunction for which the violation may be sought and the injunction enforced by "simple" motion for contempt rather than an adversary proceeding. *Barriento v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189-1191 (9th Cir. 2011); *ZiLOG, Inc. V. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006); *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002). See also, *Bayati v. Musharbash (In re*

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Bayati), 2015 Bankr. LEXIS 3624 (B.A.P. 9th Cir. 2015), discussing when additional relief to the “mere” violation of the automatic stay would require an adversary proceeding.

At the Status Conference, counsel for Defendant-Debtor reported that there are ongoing discussions to resolve this dispute, which is related to the Adversary Proceeding in *Elliott v. Nevarez*, 22-9002. He indicated that the issues concerning the bankruptcy case and the automatic stay have been highlighted for the person filing the cross-complaint that is the subject of this removed action.

7. [20-90479-E-12](#) **JOE MACHADO** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
7-9-20 [[1](#)]

Final Ruling: No appearance at the October 19, 2023 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/15/23

[DCJ-7] First and Final Motion for Allowance of Compensation of Attorney for Debtor in Possession filed 7/19/23 [Dckt 159]; Order granting filed 8/11/23 [Dckt 166]

Trustee's Final Report and Account filed 10/6/23 [Dckt 167]

Scheduling Order Regarding Procedure for Entry of Discharge and Closing Chapter 12 Case filed 10/10/23 [Dckt 169]

The Status Conference is continued to 2:00 p.m. on December 7, 2023.

OCTOBER 19, 2023 STATUS CONFERENCE

On October 10, 2023, a Scheduling Order Regarding Procedure for Entry of Discharge and Closing of Chapter 12 Case was entered. Dckt. 169. The Chapter 12 Trustee's Final Report and Account was filed on October 8, 2023. The Debtor is to file a Motion for Entry of Discharge within 30 days from October 10, 2023.

The court continues the Status Conference to afford Debtor the opportunity to continue in the prosecution of this case.

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 Post-Confirmation Status Conference having been scheduled, the Chapter 12 Trustee's Final Report and Account having been filed, the deadline for Debtor to file a Motion for Entry of Discharge having been set (Dckt. 169), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Post-Confirmation Status Conference is continued to **2:00 p.m. on December 7, 2023**.

8. [23-90283-E-11](#) **BRUNK INDUSTRIES**
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-26-23 [1]**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:
Continued from 8/10/23

Trustee Report at 341 Meeting lodged 8/28/23; 9/15/23

[UST-1] Motion of the United States Trustee to Convert or Dismiss Chapter 11 Case filed 9/20/23 [Dckt 39], set for hearing 11/9/23 at 10:30 a.m.

Adversary Proceeding 23-9018: Complaint to Bar Discharge of Debt filed 10/2/23

The Status Conference is continued to XXXXXXX , 202XXXXXXX

OCTOBER 19, 2023 STATUS CONFERENCE

On September 20, 2023, the U.S. Trustee filed a Motion to Convert or Dismiss this Bankruptcy Case. Dckt. 39. The basic grounds asserted with particularity in the Motion to Convert or Dismiss include: (1) the Debtor/Debtor in Possession representative failed to appear at the August 28 and the September 14, 2023 341 Meetings of Creditors; (2) Debtor/Debtor in Possession has not filed monthly operating reports; and (3) Conversion to Chapter 7 is proper because there are unencumbered assets to be administered. *Id.*

The Motion to Convert or Dismiss is set for hearing on November 9, 2023.

On October 2, 2023, S.C. Anderson, Inc. (“Plaintiff”) commenced an Adversary Proceeding, 23-9018, seeking a judgment determining that the obligation owed to Plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6). The claim is asserted to be in the amount of (\$174,876.90).

At the Status Conference, **XXXXXXX**

AUGUST 10, 2023 STATUS CONFERENCE

This voluntary Chapter 11 Subchapter V cases was filed by Brunk Industries, the Debtor/Debtor in Possession, on June 26, 2023. The Debtor/Debtor in Possession filed its Status Report on July 27, 2023. Dckt. 32. It reports that the Debtor/Debtor in Possession is working to assemble various “small business documents” for the Subchapter V Trustee, but that process has been inhibited by the illness of the bookkeeper for the Debtor/Debtor in Possession.

As of the filing of the Status Report, the Debtor’s contractor’s license had been suspended due to unpaid “prevailing wage” claims, but with the filing of this Chapter 11 Case, the Debtor/Debtor in Possession anticipates that it will be promptly reinstated.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that until the contractor’s license board reactivates the contractor’s license, no new work can be done.

The Subchapter V Trustee questions that with a suspended license and the tax claims, it appears that this subcontractor will be limited in its ability to obtain work from a general contractor.

The U.S. Trustee reports that the First Meeting has been continued to allow for the Debtor/Debtor in Possession to provide additional documentation.

9. [23-90189-E-7](#) MARK/AMANDA SMITH
[23-9013](#) CAE-1
CENTRAL STATE CREDIT UNION V.
SMITH

STATUS CONFERENCE RE:
COMPLAINT
8-4-23 [\[1\]](#)

Plaintiff's Atty: John Mendonza
Defendant's Atty: Pauldeep Bains

Adv. Filed: 8/4/23
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud

Notes:

Stipulation for Entry of Judgment of Non-Dischargeability of Debt filed 10/4/23 [Dckt 7]

Stipulated Judgment of Non-Dischargeability of Debt filed 10/4/23 [Dckt 8]

Judgment having been entered in this Adversary Proceeding (Dckt. 8), **the Status Conference is concluded and removed from the Calendar.**

The Clerk of the Court may close the file for this Adversary Proceeding.

10. [18-90090-E-7](#) CLIFFORD BARBERA
[18-9010](#) CAE-1
BOWERS ET AL V. BARBERA

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-11-18 [\[1\]](#)

Plaintiff's Atty: Bryan Silverman
Defendant's Atty: Pro Se

Adv. Filed: 6/11/18
Answer: 7/18/18

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:
Continued from 2/16/23. Plaintiffs requested that the status conference be continued at least six months to allow the State Court actions to go to trial. Counsel for Plaintiff reported that the trial date is now 8/15/23.

The Status Conference is XXXXXXX
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OCTOBER 19, 2023 STATUS CONFERENCE

No updated Status Reports have been filed. At the Status Conference, XXXXXXX

FEBRUARY 16, 2023 STATUS CONFERENCE

On February 1, 2023, Plaintiffs filed an Updated Status Report. Dckt. 56. The Status Reports provides update of the *Bower, et al. v. Priceless Kitchen & Bank, Inc., et al.* State Court litigation (for which there is a settlement that is still be performed and must be completed before dismissal), and *Chekene v. Bowers et al. State Court litigation* (the trial has been continued to March 3, 2023).

Plaintiffs request that this Status Conference be continued at least six months to allow the State Court Actions to go to trial.

At the Status Conference, counsel for Plaintiff reported that the trial date is now August 15, 2023.

AUGUST 4, 2022 STATUS CONFERENCE

Plaintiff filed an Updated Status Report on July 19, 2022. Dckt. 52. The *Bowers, et al. v. Priceless Kitchen & Bath, Inc., et al.* State Court Action in which fraud claims are asserted against

Defendant-Debtor is set for trial on October 10, 2022. Defendant-Debtor is actively defending against such fraud claims.

In the *Chekene et al. v. Bowers et al.* State Court Action, Plaintiff's cross-complaint against Defendant-Debtor is set for trial on March 3, 2023.

Plaintiff requests that the Status Conference be continue six months to allow the Parties to focus on the State Court Actions.

JANUARY 27, 2022 STATUS CONFERENCE

On July 11, 2021, this court entered an order authorizing Diana J. Cavanaugh to withdraw as counsel for Defendant Clifford Barbera. Dckt. 45.

On January 20, 2022, Plaintiff filed an Updated Status Report. Dckt. 48. Fact discovery in the State Court Action closed on December 31, 2021 in *Bowers et al. v. Priceless Kitchen & Bank, Inc., et al.* A mandatory settlement conference is set in that State Court Action for February 23, 2022. No trial date has be set.

In the *Chekene et al. v. Bowers et al.* State Court Action,, for which a cross complaint has been filed against Defendant-Debtor, a mandatory settlement conference was held on December 15, 2021, but that Action did not settle. Fact discovery closes on February 28, 2022, and a case management conference is set for March 8, 2022, with an estimated trial date being in the Fall of 2022.

Plaintiffs request a six month continuance of the Status Conference to allow the Parties to concentrate on the State Court litigation for which the automatic stay has been modified.

AUGUST 6, 2020 STATUS CONFERENCE

The Parties filed their Joint Status Report on July 23, 2020. Dckt. 35. They report that the State Court Actions are still being prosecuted and they request further continuance. The parties will file an updated status report prior to the January 28, 2021 continued Conference.

FEBRUARY 6, 2020 STATUS CONFERENCE

By prior order, the court has stayed this Adversary Proceeding to allow the parties to complete their state court litigation to final judgment. Order, Dckt. 28. By that Order, updated status reports were to be filed by January 13, 2020.

No Status Reports have been filed by either Party, and each of the Parties are in violation of the court's prior order.

One of the related actions has proceeded to arbitration in August 2019. The arbitrator has prepared, but has not yet issued the final award.

The second action, in state court, has a case management conference on February 24, 2020, but no trial date has been set.

