

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 27, 2022 at 2:00 p.m.

1. <u>20-90349-E-11</u> <u>CAE-1</u>	R. MILLENNIUM TRANSPORT, INC.	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-15-20 [1]
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The Status conference is continued to 2:00 p.m. on XXXXXXX , 2023.
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OCTOBER 27, 2022 STATUS CONFERENCE

No updated status reports have been filed. No motions for allowance of fees have been filed.

At the October 27, 2022 Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported XXXXXXX

JULY 14, 2022 STATUS CONFERENCE

No updated Status Report was filed by the Debtor/Debtor in Possession Plan Administrator. At the Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported that there is one outstanding issue, that being a claim for a lease rejection by Fresno Truck Center. That claim has been partially reduced and additional information is being provided which the Debtor/Debtor in Possession Plan Administrator believes that it will be further reduced.

The Subchapter V Trustee reported that the Debtor/Debtor in Possession Plan Administrator is working diligently to get the secured claims paid and prosecute the Plan.

The Status Conference is continued for case management purposes, counsel for the Debtor/Debtor in Possession Plan Administrator and the Subchapter V Trustee stating that there are fee motions to be filed.

APRIL 21, 2022 STATUS CONFERENCE

The Court overruled the Objections to the Claims of Gina Windorski (POC 2-1) and Jacob Price (3-1). Orders; Dckts. 170, 172.

At the Status Conference, counsel for the Debtor Plan Administrator reported that resolution of the one pending claim objection is in process, with the parties electing to address the “sticking points” through the BDRP process. The court continues the Status Conference to July 14, 2022, to allow sufficient time for that process to evolve.

JANUARY 27, 2022 STATUS CONFERENCE

On January 26, 2022, the Debtor/Plan Administrator filed an Objection to Proof of Claim 2-1 filed by Gina Windorski. Dckt. 151. The hearing on the Objection to Claim is set for March 24, 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that there are several matters to be resolved. The first relates to several claims filed by former employees. Two objections to claim have been filed.

Second, the claim of Fresno Truck Center is at issue. The Parties are working to resolve it. For this creditor, a proof of claim was not filed by the bar date. However, it asserts that its claim was for leases, and by rejection in the plan the bar date runs from that.

The Subchapter V Trustee reports that the Plan is being performed.

The court continues the Status Conference in light of the Subchapter V Trustee continuing the investigation and the U.S. Trustee reviewing the issues and taking such action as appropriate.

SEPTEMBER 30, 2021 STATUS CONFERENCE

Through a Status Report in an unrelated adversary proceeding, the court has learned that counsel for the Debtor has been diagnosed with COVID-19 and has been hospitalized. Also, that counsel for Debtor will be unable to practice law for the period late September 2021 through late November 2021.

At the Status Conference, the Subchapter V Trustee reported that plan payments have been made by Debtor and disbursements on secured claims. No disbursements have been made to unsecured claims. Debtor has obtained a judgment against two creditors.

Also, the claim for several leases relating to the Fresno Truck Center was filed after the Plan was confirmed. Debtor asserts that the Plan allows that.

APRIL 29, 2021 STATUS CONFERENCE

The court Order confirming the Subchapter V Plan in this case was entered on February 11, 2021. Dckt. 133. No post-confirmation status report was filed by the Debtor who administering the confirmed plan.

At the Status Conference, counsel for the Debtor reported that they are working on the mechanics on making the payments under the Plan since not all classes affirmatively voted to accept the Plan.

The Trustee noted that while the Plan does not provide for the Trustee to make the payment, under operation of Subchapter V the Trustee will do so, except for the direct electronic payments already being made pursuant to prior adequate protection orders

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

The court having conducted the October 22, 2022 Status Conference, the Debtor/Debtor in Possession Plan Administrator prosecuting the performance of the Confirmed Plan, motions for approval of fees are to be filed, and good cause appearing,

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

2. [22-90160-E-11](#)
[DDM-15](#)

EAGLE LEDGE FOUNDATION,
INC.

MOTION FOR AN ORDER APPROVING
DISCLOSURE STATEMENT AND/OR
MOTION FOR AN ORDER
ESTABLISHING SOLICITATION AND
VOTING PROCEDURES , MOTION FOR
AN ORDER SCHEDULING A
CONFIRMATION HEARING ,
MOTION/APPLICATION FOR AN ORDER
ESTABLISHING NOTICE AND
OBJECTION PROCEDURES
9-15-22 [[143](#)]

2 thru 3

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, and Office of the United States Trustee on September 15, 2022. By the court's calculation, 42 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice).

The Motion to Approve Disclosure Statement was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Approve Disclosure Statement is granted.

INITIAL ISSUE - WHERE IS THE CHAPTER 11 PLAN

In reviewing the Docket, the court noticed a "Notice" entry on the Docket for October 21, 2022. The Notice states that it is the Debtor in Possession's filing of a corrected Chapter 11 Plan. Dckt. 151. The

corrected plan is filed as an exhibit with the Notice. Dckt. 162. The Debtor in Possession has included a blue line version for the ease of comparison so that the corrections are readily identifiable. *Id.*

This Notice is filed using Docket Control Number DDM-17, which does not correlate to any motion, application, objection or other matter before the court. The corrected plan has not been filed and does not appear on the Docket (other than as an exhibit to a document just titled as “Notice” (Dckt. 161).

But for the court being curious about why there was a “Notice” not associated with any motion, application or objection, the existence of a corrected Plan would be undetected by the court.

At the hearing, **XXXXXXX**

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: May 18, 2022

Background: This Chapter 11 case was filed on May 18, 2022, as a result of significant events affected Debtor in Possession Eagle Ledge Foundation, Inc.’s (“Debtor in Possession”) financial standing. Debtor in Possession alleges their filing was as a result of:

1. Foreclosure proceedings on a property located in Chicago, Illinois;
2. An adverse tax lien and foreclosure proceeding initiated by a New Jersey municipality, which has since been resolved;
3. The global COVID-19 pandemic on Debtor in Possession’s consumers; and
4. Debtor in Possession’s failure to generate sufficient cash flow.

Disclosure Statement, Dckt. 140 at p. 7:8-13.

Assets:

Debtor in Possession lists their assets as follows:

Cash on hand.....\$820,734.60

100% Membership Interest of
Urban Ministry Properties, LLC.....\$0.00

Mortgage Loan Assets.....\$335,000.00

TMI Bond Portfolio.....\$529,701.62

Real Estate Assets.....\$1,500,000.00
4130-42 S. Indiana Avenue,
Chicago, Illinois 60653

Internet Domain Name.....\$0.00

Creditor/Class	Treatment	
Class 1: Priority Claims	Claim Amount	\$0.00
	Impairment	Unimpaired
Class 2: Certificate Holder Claims	Claim Amount	\$4,043,000.00
	Impairment	Impaired
	Pro rata distributions estimated at 39% commencing on April 1, 2023 with final distribution of all remaining cash on April 1, 2028.	
Class 3: General Unsecured Claims	Claim Amount	\$8,844.62
	Impairment	Impaired
	Estimated recovery of 100% for the unsecured claim of Carveout to be funded within six months of the “Effective Date” and “distributed Pro Rata as soon practicable thereafter.”	
Unclassified: Administrative Claims	Claim Amount	\$0.00
	Impairment	Unimpaired
Unclassified: Professional Fees and Expenses	Claim Amount	\$100,000.00
	Impairment	Unimpaired
	Estimated claims of professionals to be “[p]aid in full on the Effective Date.”	
Unclassified: United States Trustee Fees	Claim Amount	\$0.00
	Impairment	Unimpaired
	“The Debtor in Possession is current on its U.S. Trustee Fees. U.S. Trustee Fees will continue to accrue and will be timely paid until the case is closed, dismissed, or converted.”	

Unclassified: Priority Tax Claims	Claim Amount	\$0.00
	Impairment	Unimpaired
	“Paid in full on the Effective Date or in regular installment payments over a period not exceeding five years from the Petition Date.”	

A. C. WILLIAMS FACTORS PRESENT

- ☐ Y ☐ Incidents that led to filing Chapter 11
- ☐ Y ☐ Description of available assets and their value
- ☐ Y ☐ Anticipated future of Debtor
- ☐ Y ☐ Source of information for D/S
- ☐ Y ☐ Disclaimer
- ☐ Y ☐ Present condition of Debtor in Chapter 11
- ☐ N ☐ Listing of the scheduled claims
- ☐ Y ☐ Liquidation analysis
- ☐ Y ☐ Identity of the accountant and process used
- ☐ Y ☐ Future management of Debtor
- ☐ Y ☐ The Plan is attached

In re A. C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

APPLICABLE LAW

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains “adequate information” to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

“Adequate information” means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g.*, *In re A. C. Williams*, *supra*.

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). “Adequate information” is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide “adequate information.” The term “adequate information” is defined in 11 U.S.C. § 1125(a)(1) to be,

(1) “adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is “adequate information” is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

DISCUSSION

Debtor in Possession estimates a total of \$4,051,844.62 in secured and unsecured claims. Debtor in Possession claims there are no Class 1 Priority Claims. For the remaining claims, Debtor in Possession divides two main categories:

Class 2 Certificate Holders’ Claims, and

Class 3 General Unsecured Claims.

Certificate Holders' Claims

The "Certificate Holders' Claims" of Class 2 are comprised of creditors who hold or are the beneficial owner of a Certificate of Indebtedness issued by Debtor. Plan, Dckt. 138 §§ 2.12-2.13. For the Certificate Holders secured claims, the collective assets are stated to have a value of \$335,000 for Mortgage Loan Assets (amount owed by the borrowers), \$528,701.62 for the TMI Bond Portfolio, \$1,500,000 Real Estate Assets, and a portion of the \$820,734 in cash on hand as of August 31, 2022. Disclosure Statement, Art. III, § A; Dckt. 140, p. 9. These total around \$2,900,000 (the court not knowing what portion of the \$820,734 is cash collateral and how much is projected to be on hand for confirmation).

All of the Certificate Holders are lumped together in one class of claims, without regard to what assets constitute their collateral. The court did not readily identify an affirmative statement that all of the Certificate Holders have *pari passu* liens in all the same collateral, or that specific collateral relates to specific Certificate Holders.

As provided in 11 U.S.C. § 1122 claims may be placed in the same class only if "such claim or interest is substantially similar to the other claims or interests of such class." If a Certificate Holder's claim was secured by the Miami Toxic Waste Dump and another Certificate Holder's claim was secured by Mar-a-Lago, they would not be substantially similar.

The Disclosure Statement states that the Estimated Claims for Certificate Holders is (\$4,043,000) and the "Estimated Recovery" is 39%, which would be approximately \$1,600,000. Such \$1,600,000 represents approximately 55% of the \$2,900,000 value of the assets securing the Certificate Holders' secured claims.

For a court to be able to confirm a Chapter 11 Plan: (1) the classification of claims must comply with 11 U.S.C. § 1122(a); (2) creditor receive the value of the property securing the claim as of the effective date of the plan, 11 U.S.C. § 1129(b)(2)(A); (3) the creditor with a secured claim agrees to other treatment; and (4) and that the Plan complies with the Bankruptcy Code.

In the Liquidation Analysis, Appendix 4 to the Proposed Disclosure Statement, it projects the liquidation value (not present or fair market value) of the Certificate Holders' Collateral to be \$1,435,000. Dckt. 141 at p. 73. In Footnote A to the Liquidation Analysis, it states that the values given for the Certificate Holders' collateral "represents the Debtor in Possession's estimate of the value that could be obtained, net of sales expenses, in a chapter 7 liquidation where a chapter 7 trustee has the duty to convert the assets of the estate to cash as quickly as possible under 11 U.S.C. § 704(a)(1). This does not appear to be the value of the secured claim (the value of the collateral, 11 U.S.C. § 506(a)) as of the effective date).

The Analysis does not appear to address that a trustee cannot force a creditor to have its collateral liquidated without the creditor's consent merely because a trustee wants to sell the collateral and get paid fees from the proceeds of the sale. See 11 U.S.C. § 362(f).

Thus, it appears questionable whether the statement of the value of the Certificate Holders collective collateral is consistent with the valuation of a secured claim as required by 11 U.S.C. § 506(a).

The court has not conducted an exhaustive review of the proposed Plan's compliance with the Bankruptcy Court. The court highlights these points in recognition of the admonition of the United States

Supreme Court in *United Student Air Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), that federal trial court judges are not mere rubber stamps for what is requested even if nobody objects, and those federal trial court judges must make sure their orders and judgments comply with federal law.

Thus, the Debtor in Possession can consider whether the disclosure statement properly and fully states what can be done through a Chapter 11 Plan, whether creditor claims are properly classified, whether consent/affirmative vote is required for the class, and whether the Plan terms when considered at the confirmation hearing will be found to comply with the law.

General Unsecured Claims

The Certificate Holders' general unsecured claims are lumped in with the secured claims, to be paid pro rata, apparently without regard to each Certificate Holder's specific collateral.

For General Unsecured Claims, the Debtor in Possession has created a convenience class to be paid 100% of the General Unsecured Claims. The amount of such General Unsecured Claims in the convenience class is stated to be \$8,844.62. Disc. Stmt., Art. IV, § B, p. 13.

The "General Unsecured Claims" of Class 3 are unrelated to the Certificate Holders' Claims, and, as such, are treated in a separate class. Disclosure Statement, Dckt. 140 at p. 11 ¶ C.

Based on Debtor in Possession's Schedules, there are four unsecured claims:

Church Mutual Insurance

Schedule E/F, Dckt. 24 § 3.7

Insurance Premium.....\$624.66

Jim Wren

Schedule E/F, Dckt. 24 § 3.113

Accounting Services.....\$500.00

Mauck & Baker, LLC

Schedule E/F, Dckt. 24 § 3.115

Legal Fees.....\$7,219.96

Raymond K. Jones

Schedule E/F, Dckt. 24 § 3.117

Bookkeeping Services.....\$500.00

Total.....\$8,844.62

However, in reviewing the Proofs of Claim filed in this Bankruptcy Case, the court identifies the following as having been filed as general unsecured claims (some of which may have been filed in error by the creditor not appreciating the lien they have as a Certificate Holder):

Proof of Claim 2-1

Richard F. Page, Jr., by Tom Caldwell, Esq.

October 27, 2022 at 2:00 p.m.

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Claim.....(\$30,000)

Proof of Claim 3-1

Meyner and Landis, LLP

Claim.....(\$5,500)

Proof of Claim 4-1

Chester Reid

Claim.....(\$2,148)

Proof of Claim 5-1

Ralph and Mary Marra, by Michael Jay Berger, Esq.

Claim.....(\$25,601.69)

Proof of Claim 6-1

Gene Benson, by Michael Jay Berger, Esq.

Claim.....(\$60,641.65)

Proof of Claim 7-1

Peter and Brenda Barno, by Michael Jay Berger, Esq.

Claim.....(\$10,240.68)

Proof of Claim 8-1

Al Stone, by Michael Jay Berger, Esq.

Claim.....(\$6,400.42)

Proof of Claim 9-1

Linda Smith, by Michael Jay Berger, Esq.

Claim.....(\$6,400.42)

Proof of Claim 10-1

Larry Smith, by Michael Jay Berger, Esq.

Claim.....(\$25,601.69)

Proof of Claim 11-1

Sock Monkey Ministries, by Michael Jay Berger, Esq.

Claim.....(\$6,400.42)

Proof of Claim 12-1

Ernest Roberts, by Michael Jay Berger, Esq.

Claim.....(\$24,255.27)

Proof of Claim 13-1

Patricia Ann Roberts, by Michael Jay Berger, Esq.

Claim.....(\$25,601.69)

Proof of Claim 14-1

Angela Mericle, by Michael Jay Berger, Esq.

Claim.....(\$6,433.52)

Proof of Claim 15-1

Gary Jacquette, by Michael Jay Berger, Esq.

Claim.....(\$12,800.84)

Proof of Claim 16-1

Betty Adams, by Michael Jay Berger, Esq.

Claim.....(\$12,800.84)

Proof of Claim 17-1

Thomas A. Goggs & Patty Sue Boggs, by Michael Jay Berger, Esq.

Claim.....(\$64,004.23)

Proof of Claim 18-1

Linda Sue Wirt, by Michael Jay Berger, Esq.

Claim.....(\$77,020.29)

It appears that some, and possibly all, of these claims have been misfiled as unsecured claims, and that counsel for the Debtor in Possession will have to reach out to Attorney Berger to get this corrected.

On Schedule D (Dckt. 24 at 8) only C3 Servants, LLC as Collateral Agent for Certificate Holders is listed a “creditor with a secured claim” and that is for an unknown amount of claim. Thus, there are no creditors listed having undisputed secured claims for those creditors to have deemed allowed secured claims (11 U.S.C. § 1111(a)).

Thus, there are really no claims to be paid through a Chapter 11 Plan in this case.

In looking at the List of Creditors with the 20 largest unsecured claims, there is only “Goldstar Trust Company Cust.” list as being “FBO” for various persons, and having unsecured claims totaling \$1,765,750. Dckt. 5. These are stated **under penalty of perjury** by Chester L. Reid, President of the Debtor, to be wholly unsecured claims, and not merely an unsecured portion of a partially secured claim.

Thus, the \$1,765,750 in completely unsecured claims as stated by under penalty of perjury by Chester L. Reid, President of the Debtor, would render the proposed Plan that requires a 100% dividend to creditors with only unsecured claims (not the Certificate Holders who are at least partially secured) unconfirmable.

OCTOBER 27, 2022 HEARING

At the October 27, 2022 hearing, **XXXXXXX**

On its face the disclosure statement shows/does not show ~~that adequate information has been provided.~~

~~_____ The Disclosure Statement is approved. The court shall issue an order approving the Disclosure Statement, which shall also set the following dates and deadlines:~~

- ~~_____ A. Eagle Ledge Foundation, the “Plan Proponent” Debtor in Possession, shall serve the approved disclosure statement, proposed plan, notice of confirmation hearing, a copy of this order approving the disclosure statement, and ballot on or before ~~xxxxxx, 202x.~~~~
- ~~_____ B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before ~~xxxxxx, 202x.~~~~
- ~~_____ C. The Ballot Tabulation Summary, evidence in support of confirmation, and Responses to objections to confirmation, if any, shall be filed and served on or before ~~xxxxxx, 202x.~~~~
- ~~_____ D. The Confirmation Hearing shall be conducted at ~~11:30 a.m.~~ on ~~xxxxxx, 202x.~~~~

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on September 21, 2022. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Extension of Exclusive Period 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.

The Motion to Extend Exclusivity is XXXXXXX.

Eagle Ledge Foundation, Inc., Debtor in Possession ("Debtor in Possession"), moves to extend the exclusive period of time for the Debtor in Possession to solicit acceptances of and confirm a Chapter 11 plan of reorganization on the basis that cause exists to grant such an extension based on the particular circumstances encountered by Debtor in Possession.

The current deadline for the Debtor in Possession to confirm a plan prior to expiration of the exclusivity period as provided in 11 U.S.C. § 1121(c) is November 14, 2022. The Motion requests that the exclusive period of time for soliciting acceptances and confirm a plan be extended to February 13, 2023.

APPLICABLE LAW

Section 1121(d)(1) of the Bankruptcy Code provides:

Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the Court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1). Bankruptcy Code section 1121(d)(2) provides that any such extension cannot extend beyond 18 months after the petition date for the 120-day period and 20 months after the petition date for the 180-day period. See 11 U.S.C. § 1121(d)(2).

DISCUSSION

Subsection 1121(d) provides that upon the request of a party in interest made within the 120-day period for filing a plan or within the extended 180-day period, if a plan is filed, the court “for cause,” after notice and a hearing, may reduce or increase the 120-day period or the 180-day period. Courts have disagreed on the question of whether the extension of the 120-day time period for filing a chapter 11 plan automatically extends the 180-day period for securing acceptances of the plan. *Compare In re Judd*, 173 B.R. 941, 943 (Bankr. D. Kan. 1994) (automatically extending period for obtaining acceptances), with *In re Ravenna Indus., Inc.*, 6 C.B.C.2d 1015, 20 B.R. 886, 891 (Bankr. N.D. Ohio 1982) (same), and *In re Trainer’s, Inc.*, 5 C.B.C.2d 1623, 17 B.R. 246, 248 (Bankr. E.D. Pa. 1982). *See also In re Hermanos Torres Perez, Inc.*, 63 C.B.C.2d 1448, 491 B.R. 316 (Bankr. D.P.R. 2010) (reviewing relevant legislative history and finding that the 180-day exclusivity period is not automatically extended).

Any request for extension of the 120-day or 180-day period must be made before those periods have expired. *See In re Perkins*, 71 B.R. 294, 297 (W.D. Tenn. 1987); *In re Cramer, Inc.*, 105 B.R. 433 (Bankr. W.D. Tenn. 1989); *In re Century Inv. Fund VII Ltd. P’ship*, 96 B.R. 884, 892 (Bankr. E.D. Wis. 1989). The party seeking the change in the statutory time bears the burden of establishing that cause exists. *See In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989); *In re Washington-St. Tammany Elec. Co-op., Inc.*, 97 B.R. 852, 854 (E.D. La. 1989); *In re Newark Airport/Hotel Ltd. P’ship*, 155 B.R. 93, 101 (Bankr. D.N.J. 1993).

The determination of whether cause exists to warrant an extension or reduction of the statutory time periods is fact specific. 7 Collier on Bankruptcy P 1121.06 (16th 2020). Several courts have enumerated the following factors (also known as the “Downing Factors”) to be considered in determining whether cause exists to warrant an extension:

- (1) the size and complexity of the case;
- (2) the necessity of sufficient time to negotiate and prepare adequate information;
- (3) the existence of good faith progress toward reorganization;
- (4) whether the debtor is paying its debts as they come due;
- (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (6) whether the debtor has made progress in negotiating with creditors;
- (7) the length of time the case has been pending;
- (8) whether the debtor is seeking the extension to pressure creditors; and
- (9) whether unresolved contingencies exist.

See In re GMG Capital Partners III, L.P., 503 B.R. 596 (Bankr. S.D.N.Y. 2014); *In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 487 (Bankr. D. Conn. 2007); *In re Adelpia Communications Corp.*, 352 B.R. 578, 587–90 (Bankr. S.D.N.Y. 2006) (conducting a detailed review of each of the nine factors as applied to the facts of

the case and granted an extension); *In re Express One Int'l, Inc.*, 35 C.B.C.2d 1045, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (finding cause to extend the exclusive period where the debtor had been diligent in its attempts to reorganize and extension was not sought for an indefinite period).

Here, Debtor in Possession argues that cause exists to grant the extension because the factors have, as a whole, been met. Debtor in Possession asserts diligently working towards proposing a viable Chapter 11 Plan and making good faith progress to reorganization. Debtor needs additional time to obtain court approval of a Disclosure Statement.

Debtor in Possession asserts an extension “is realistic and necessary, will not prejudice the legitimate interest of creditors and other parties in interest, and will afford a meaningful opportunity for the Debtor in Possession to pursue a confirmable and consensual plan.” Motion, Dckt. 150 ¶ 16.

Debtor in Possession’s request is modest, requesting only a ninety day extension.

However, as the court discusses in the ruling on the Motion to Approve Disclosure Statement, there appears to be inconsistent information being provided in the proposed Disclosure Statement, improper statements of valuation of secured claims, non-disclosure of creditors on Schedule D, and inconsistent statements made under penalty of perjury.

~~Under the facts and circumstances, the court recognizing Debtor in Possession’s diligent efforts to work with creditors and propose a viable Plan, this Motion is granted.~~

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 for Extension of Exclusive Period filed by Russell Wayne Lester, an individual, dba Dixon Ridge Farms, Debtor in Possession ("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 Motion to Extend Exclusivity is/is not ~~granted~~ and the Exclusivity Period for the Debtor in Possession is ~~extended through and including 11:59 p.m. on February 13, 2023.~~

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

OCTOBER 27, 2022 STATUS CONFERENCE

No updated status report has been filed. At the Status Conference, counsel for the Chapter 12 Debtor/Plan Administrator reported xxxxxxx

JUNE 30, 2022 STATUS CONFERENCE

The Chapter 12 Debtor/Plan Administrator filed an Updated Status Report on June 27, 2022. Dckt. 142. He indicates that the tax issues have been addressed, that the California Franchise Tax Board has been requested to get its claim on file so that the Chapter 12 Trustee can get monies disbursed, and suggests that the Status Conference be continued for ninety (90) days.

The Chapter 12 Trustee's report, filed on June 24, 2022, states that all of the property has been liquidated, and that the Debtor/Plan Administrator reports that the only remaining property consists of pigeons. The Trustee raises a question whether the provisions of 11 U.S.C. § 1232(d)(2) has been followed and if amended tax returns are required.

The Trustee states that the question of whether 11 U.S.C. § 1232(d)(2) has been satisfied (directing that the court should *sua sponte* investigate this), the court should *sua sponte* order the Debtor/Plan Administrator to sell unidentified remaining assets, and that counsel for the Debtor/Plan Administrator needs to get a fee application on file.

At the Status Conference, counsel for the Debtor/Plan Administrator reported that this should be wrapped up in the next 90 days.

The Chapter 12 Trustee reported that the pigeons and a mower need to be sold, the final fee application filed, and the FTB tax claim filed.

Counsel for the Debtor/Plan Administrator will affirmatively reach out to the FTB, including specific counsel who have represented it in other cases, to get a proof of claim filed by the FTB so the Trustee can disburse the \$50,000 on that tax obligation.

<p>The Status Conference is continued to 2:00 p.m. on xxxxxxx , 2023.</p>

OCTOBER 27, 2022 STATUS CONFERENCE

the Debtor/Debtor in Possession filed a Statu Report on October 13, 2022. Dckt. 39. The business of the bankruptcy estate is providing in home assistance, such as bathing and feeding for persons needing assistance.

The Debtor/Debtor in Possession anticipates filing a Plan before November 27, 2022. The only secured claims are for creditors who have financed vehicles for the Debtor's business.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported xxxxxxx

FINAL RULINGS

6. [22-90128-E-12](#)
[CAE-1](#)

JEA2, LLC

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
4-19-22 [1]

Final Ruling: No appearance at the October 27, 2022 Status Conference is required.

The Status Conference is continued to 2:00 p.m. on January 26, 2023.

The court having continued the hearing on the Motion to Confirm the Chapter 12 Plan (Order, Dckt. 65) , the Status Conference is continued to the same date and time.

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 Chapter 12 Status Conference having been presented to the court, the Court having continued the hearing on the confirmation of the Chapter 12 Plan, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on January 26, 2023.

7. [22-90128](#)-E-12 JEA2, LLC
[RLC](#)-2

**MOTION TO CONFIRM CHAPTER 12
PLAN**
9-4-22 [[40](#)]

Final Ruling: No appearance at the October 27, 2022 Hearing is required.

Pursuant to the court's October 19, 2022 Order, Dckt. 65, the hearing on the Motion to Confirm the First Amended Chapter 12 Plan is continued to January 26, 2023 at 2:00 p.m.