

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 Not Provided. No Certificate of Service was filed, so the court is unable to determine which interest parties were served and when.

35 days’ notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days’ notice for opposition).

The Motion to Confirm the Plan 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Confirm the Modified Plan is ~~XXXXXX~~

November 14, 2024 Hearing

The court continued the hearing on this Motion to allow Debtor to place on the record evidence of increased walnut prices as well as showing Debtor in Possession’s efforts in selling the Lamb Ranch. On November 1, 2024, Debtor in Possession Jeffrey E. Dyer filed a Supplemental Declaration with the court. Docket 508. Mr. Dyer states:

1. Walnut prices were historically low in 2022 and 2023, and agricultural real property prices were at or near a floor. *Id.* at 2:5-11.
2. Walnut prices have recovered in 2024, and land prices will go back up as buyers become more active. *Id.* at 2:12-18.
3. Debtor in Possession has seen an increase of 4% production, although a normal year would see an increased yield of likely 30%. 2024 was plagued with adverse weather conditions. *Id.* at 3:1-4.

4. Debtor in Possession provides the following table in the Declaration depicting walnut yields and prices:

Year	2017	2018	2019	2020	2021	2022	2023	2024
Total lbs	237k	175k	240k	246k	213k	290k	376k	387k
Price	\$1.40	\$.75	\$1.00	\$.60	\$1.05	\$.24	\$.50	\$1.00
Gross Income	\$332k	\$131k	\$255k	\$148k	\$223k	\$70k	\$188k	\$387k

Id. at 3:12-15.

5. Mr. Dyer further testifies he is actively marketing the Lamb Ranch, which is a high value property. Mr. Dyer anticipates a sale completing with creditors paid from escrow at a date not after June 30, 2025. *Id.* at 3:16-21.

Rabo's Supplemental Opposition

Rabo filed a Supplemental Opposition on November 7, 2024. Docket 509. Rabo states:

1. The Court should adopt its October 2, 2024 tentative ruling to deny the Debtors' request to modify the plan because (1) "the Lamb Ranch property has not been timely marketed and sold under the terms of the current Confirmed Modified Plan" and (2) the Motion to Modify does not state with particularity the grounds for the relief sought. *Id.* at 2:1-7.
2. Debtors simply ignored the Court's order at the October 3 hearing to provide creditors with a marketing plan that explains the rationale for the high list price for Lamb Ranch, the Debtor's marketing efforts, and buyer prospects. The Court also directed the Trustee "take a more active role" in the Lamb Ranch sale process. The Supplemental Dyer Declaration is devoid of any evidence that this is happening. There is no evidence of any buyer. *Id.* at 2:9-16.
3. The Lamb Ranch has been listed since May 2024. The Supplemental Dyer Declaration contains no explanation of how Lamb Ranch is being "actively" marketed. The only evidence of marketing is the single advertisement in AG Alert and a brochure, which were submitted with the Sixth Motion to Modify. *Id.* at 2:17-20.
4. There is no sale in place yet nor any offers that shows walnuts at \$1.00 per pound is a reasonable price. *Id.* at 3:3-6.
5. Debtors have not shown unanticipated circumstances supporting modification as the record shows a history of lower walnut prices that should have informed prior plans. *Id.* at 3:9-19.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Review of Minimum Pleading Requirements for a Motion

Before addressing the substance of the Matter before the court, the court first addresses the pleading filed by the Debtor in Possession titled Motion to Modify Confirmed Chapter 12 Plan. Dckt. 482. The grounds stated with particularity in the Motion are:

- A. Debtor in Possession seeks to modify the prior confirmed plan, which was last modified by order of the court entered on October 31, 2024. Motion, p. 1:20-22; Dckt. 482.
- B. The Motion is based on the Notice, Offer of Proof, and Memorandum in Support of Plan Confirmation, and the Declaration of Jeffrey Dyer, as well as everything filed in the bankruptcy case or what may be subsequently argued to or presented to the court. *Id.*; 2:1-4.
- C. The Debtor in Possession seeks to extend the time to make the Plan payments to June 30, 2024, by selling the Lamb Ranch. *Id.*; 2:4-6.

The forgoing are the grounds stated with particularity upon which the Debtor in Possession seeks to have this court modify the prior confirmed Modified Chapter 12 Plan or confirm a further Modified Chapter 12 Plan.

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

The Motion states that grounds are found in:

- A. The Notice of Motion;
- B. Memorandum of Points and Authorities; and
- C. Debtor in Possession's Declaration.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant.

THE MOTION

Chapter 12 Debtor in Possession, Jeffrey E Dyer and Jan E Wing-Dyer ("Debtor in Possession") seek confirmation of the Modified Plan. The Modified Plan seeks to extend the time to make payments to June 30, 2025, and using proceeds from the sale of the Lamb Ranch (real property located at 10973 Cranmore Road, Meridian, California) to pay all allowed claims in full. Mot. 2:4-6, Docket 482. Mr. Dyer testifies in his Declaration in support:

- 1. The Modified Plan seeks to sell the Lamb Ranch Property and use payments from the sale to complete the Chapter 12 Plan. Decl. 2:8-12, Docket 484.
- 2. Walnuts are grown on the Lamb Ranch. Prices for walnuts have been historically low, but Mr. Dyer believes the price is at its floor. Buyers will become more interested in this type of agricultural property when the floor has been reached. Indeed, the prices for walnuts are projected to be between \$.70 and \$.90 cents per pound in 2024, up from \$.24 and \$.50 cents per pound in 2022 and 2023. *Id.* at 2:14-3:4.
- 3. Mr. Dyer is a real estate broker who specialized in agricultural properties and has determined the price of \$4,400,000 is reasonable for the Lamb Ranch. Mr. Dyer has been marketing the Lamb Ranch for three months now. Mr. Dyer will not be seeking a broker's commission for himself related to the sale. *Id.* at 3:5-14.
- 4. 11 U.S.C. § 1225(a) and (b) are being complied with.
- 5. Debtor in Possession has made all payments required under the confirmed Plan except for the July 31, 2024 payment.

Debtor in Possession offers no reason for the proposed modification and offers no justification in missing the July 31, 2024 payment.

CREDITOR RABO AGRIFINANCE LLC'S OPPOSITION

Rabo Agrifinance LLC (“Rabo”) filed n Opposition on September 19, 2024. Docket 492. Rabo states:

1. Debtor in Possession has never made a plan payment on time, this time failing to make the \$266,630.55 payment due to Rabo on July 30, 2024. *Id.* at 2:2-5. Debtor in Possession instead proposes a sixth Modified Plan.
2. Debtor in Possession has shown no unanticipated change in circumstances to justify their failure to make the final plan payment and request to delay such payments for almost another year, while making payments to junior priority lenders outside the Fifth Amended Plan. *Id.* at 2:10-12. Rabo asserts that this is particularly brazen because the Fifth Amended Plan, and its predecessors, provide for the sale of the Lamb Ranch in the event of a default.
3. Debtor in Possession should not be allowed to further extend the deadline to repay creditors and avoid the inevitable sale of the Lamb Ranch. *Id.* at 2:15-16.
4. Debtor in Possession’s currently confirmed Plan calls for the Chapter 12 Trustee to market and sell the Lamb Ranch in the event of a default. The default has occurred. *Id.* at 6:10-21.
5. Post-confirmation changes should only be warranted when there has been an unanticipated change in circumstances. No such circumstances are present here. *Id.* at 7:16-26.
6. 11 U.S.C. § 1229(c) requires Debtor in Possession to show cause for modification in this case, and Debtor in Possession has not met this burden. *Id.* at 8:11-27.
7. Debtor in Possession is not committing all of their projected disposable income to the Plan, the Monthly Operating Reports showing Debtor in Possession is servicing unauthorized postpetition debt, in violation os 11 U.S.C. § 1225(b)(1). *Id.* at 9:6-26.

**CREDITOR CITIZENS BUSINESS BANK’S RESPONSE
IN SUPPORT OF A MODIFICATION TO THE PLAN**

On September 19, 2024, Creditor Citizens Business Bank (“Citizens”) filed an Opposition. Docket 494. Citizens opposes on the following grounds:

1. Citizens supports a sale of the Lamb Ranch, but Debtor in Possession has not shown cause to extend time for plan payments through June 30, 2025, as required by 11 U.S.C. § 1229(c). Opp’n 1:25-26, Docket 494.

2. The court should extend the deadline for the final plan payment to December 31, 2024, without prejudice to Debtor in Possession's right to seek a further extension. *Id.* at 2:28-3:1.
3. Citizens supports Debtors' decision to sell Lamb Ranch and, for the moment, believes that having Debtors sell Lamb Ranch is preferable to having the Chapter 12 Trustee employ a broker for the sale (as would be permissible under the existing Plan, given Debtors' payment defaults). *Id.* at 3:18-21.
4. However, as Debtor in Possession has been marketing the Lamb Ranch since May of 2024, it should not take over a year to complete the sale and pay creditors as proposed under the Modified Plan.
5. Debtor in Possession should provide the parties with more concrete evidence of the status of the sale, including a copy of the appraisal referenced in the proposed modified Plan, information about the comparable sale which Mr. Dyer testifies also supports the listing price for Lamb Ranch, and copies of any offers received and counter-offers made. *Id.* at 4:4-7.

CREDITOR SUTTER COUNTY TAX COLLECTOR'S RESPONSE

Sutter County Tax Collector ("Sutter") filed a Response on September 19, 2024. Docket 496. Sutter states:

1. During the term of the Confirmed Plan, the 2023 real property taxes have accrued and have been billed for the Lamb Ranch. The second installment for these 2023 real property taxes is past due. The current payoff for the past due 2023 taxes good through September 30, 2024, is \$14,380.59. *Id.* at 2:6-10.
2. Sutter assumes the Modified Plan includes its past due 2023 taxes and files the Response in an abundance of caution to preserve its rights with respect to payment and related liens for the Past Due 2023 Taxes and any other unpaid real property taxes that have accrued post-confirmation, and for taxes on the Debtors' other real properties that will continue to accrue in the future, including but not limited to taxes that have accrued but have not yet been billed or that will accrue during the term of the Modified Plan. *Id.* at 2:19-24.

DEBTOR IN POSSESSION'S REPLY

On September 30, 2024, Debtor in Possession filed a Reply to the creditors' oppositions. Docket 500. Debtor in Possession states:

1. Cause exists to allow a plan modification in this case. Projected income was not sufficient to make the Plan payments due under the existing plan. Reply 2:1-2, Docket 500.
2. The proposed Plan contemplates paying all creditors in full. While this case has required modifications over time Debtors have also paid \$1,383,012.98 to the Chapter 12 Trustee, creditors of the estate received \$761,766.03 from the sale of 1575 Bay Flat Road, Bodega Bay, California and \$789,037.78 from the sale of 175 West Main Street, Woodland, California for a total of \$2,945,814.38 paid to creditors to date. *Id.* at 2:4-7.
3. Debtors will pay the outstanding Sutter County property taxes from 2024 crop proceeds in December 2024. *Id.* at 2:8-9.
4. The increases in the price for walnuts and the reduction in interest rates all support the feasibility of the proposed plan modifications. An extension to June 30, 2025 is reasonable under the circumstances, especially as marketing reports will be provided to Rabo AgriFinance and the Trustee. *Id.* at 2:9-11.

Mr. Dyer submits a Declaration in support of the Reply. Docket 501. He states he is actively marketing the Lamb Ranch, and the market is trending upward. He also states the payments he made to Jason Bryson and Megan Cearley in December 2023 were repayments of short-terms loan made to support the farming operation.

DISCUSSION

11 U.S.C. § 1229(a) permits modification of a Chapter 12 Plan, stating (emphasis added):

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) **extend or reduce the time for such payments;**

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

(4) provide for the payment of a claim described in section 1232(a) that arose after the date on which the petition was filed.

(b)

(1) Sections 1222(a), 1222(b), and 1223(c) of this title and the requirements of section 1225(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) **A plan modified under this section** may not provide for payments **over a period that expires after three years after the time that the first payment under the original confirmed plan was due**, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

(d) A plan may not be modified under this section—

(1) to increase the amount of any payment due before the plan as modified becomes the plan;

(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.

Modification of Chapter 12 Plans is discussed in the Collier on Bankruptcy treatise, providing the following insight:

Although the confirmation requirements for a modified plan are essentially the same as those applicable to the initial confirmation of a plan, **the plan may not provide for payments extending beyond three years after the date of confirmation of the original plan unless the court for cause approves a longer period**. In no event, however, can the term for payments extend beyond five years after confirmation of the original plan.

...

Although section 1229 explicitly authorizes modification of the plan, it contains no indication of the circumstances under which modification may be requested or the standards for determining whether to grant such a request other than the limitations imposed by section 1229(d). **At a minimum, the party requesting modification should show some change in circumstances from the date of the original confirmation hearing**. If the debtor's net income was less than projected, and the debtor is not able to meet the debtor's payment obligations under the plan, the debtor may seek a modification to reduce the amount of the debtor's payments under the plan. Conversely, if the debtor's net income was greater than that projected by the plan, modification may be sought by the trustee or a creditor to increase the amount of payments to be made under the plan so long as such modification complies with section 1229(d).

8 COLLIER ON BANKRUPTCY ¶ 1229.01[1] & [3] (emphasis added).

The court appreciates creditors' concerns regarding the Modified Plan. The numerous modified plans call into question the feasibility of the currently proposed Modified Plan. Here, Debtor in Possession is now proposing to sell the Lamb Ranch.

The currently confirmed Plan explicitly states the Chapter 12 Trustee will market and sell the Lamb Ranch in the event of a default. Plan § 2.01.(b), Docket 407. A default has occurred. Debtor in Possession makes no mention of this provision whatsoever, instead opting to take it upon themselves to market and sell the Lamb Ranch seemingly in violation of the terms of the confirmed Plan. Although Debtor in Possession states land prices are trending upward, Debtor in Possession offers no evidence of any offers it has received in the months that Debtor in Possession has been marketing the Lamb Ranch.

The Debtor in Possession may face a stumbling block for the requested modification – the time limitations imposed by 11 U.S.C. § 1229(c). For the present case, the court computes the 11 U.S.C. § 1229(c) time limitations as follows:

(c) A plan modified under this section may not provide for payments over a period that:

- A. Expires after three years after the time that the first payment under the original confirmed plan was due -
 - 1. The Second Amended Chapter 12 Plan, which is the original plan confirmed in this Bankruptcy Case, was confirmed by order entered on December 10, 2019. Order; Dckt. 173, with a copy of the Second Amended Plan attached to the Order.
 - 2. Exhibit 1 to the Second Amended Chapter 12 Plan provides for the plan payments to be made by the Debtor. *Id.*; Second Amd Plan; ¶ 1.02. The first Plan payment of \$144,766.02 was due to be paid by Debtor in July 2020. Exhibit 1; *Id.* at p. 20.
 - 3. The proposed extension to June 30, 2025, is more than three years after July 2020.
- B. Unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.
 - 1. The June 30, 2025 proposed payment date is exactly five years after the original Plan payment date of July 2020.

Such an extension may be granted, but it must be for cause. Here, the evidence of cause begins with debtor Jeffrey Dyer's testimony that during the last two years walnut prices had been lower than they are now. With this increase, the value of the Lamb Ranch should increase. Dec., p. 1:14 - 2:4; Dckt. 484. In his Declaration, Mr. Dyer provides testimony of the walnut prices for the 2018 through projected 2024, with 2022 being the aberration at \$0.24 per pound. *Id.*; p. 3:20-22.

He further testifies that he, as a licensed real estate broker, has been marketing the Lamb Ranch for three months, and based on a comparable property believes that the current \$4,400,000 asking price for which he has listed the Lamb Ranch is reasonable. *Id.*; 3:5-14.

In the Declaration Mr. Dyer does not explain how he is marketing the Lamb Ranch.

In the Points and Authorities, though not stated as grounds in the Motion, the Debtor in Possession states that so far in this Bankruptcy Case Plan payments of \$1,383,012.98 have been made to the Chapter 12 Trustee. In addition, through the sale of assets creditors have been paid \$1,418,453.10 directly from the sale escrows. P&A, p. 3:11-12. It also states that the Debtor has been making the direct payments as provided in the most current Confirmed Modified Chapter 12 Plan (Dckt. 442, attached to Confirmation Order) for the Class 6 secured claim of Banner Bank and the Class 6 claim of Yolo County Realty. *Id.*, p. 13.

This is not a bankruptcy case where the debtor merely promises creditors will be paid, but keeps delaying the payment.

However, in the Rabo Bank Opposition, it is noted that the Debtor in Possession has been unable to timely perform prior Chapter 12 Plan and there have been multiple modified Plans in this Bankruptcy Case.

In reviewing the present Motion, the point not addressed by the Debtor in Possession is why the Lamb Ranch property has not been timely marketed and sold under the terms of the current Confirmed Modified Plan (Dckt. 442). The Confirmed Modified Plan provides in § 2.01(b) for the sale of the Lamb Ranch, stating:

2.01.(b) In the event Debtors fail to make any payment required by this Plan, the Chapter 12 Trustee shall market and sell 10973 Cranmore Road, Meridian, California ("Lamb Ranch"). Trustee shall use his best business judgment with regard to employing professionals to market and sell the Property, determining a listing price and bringing a Motion to Approve Sale pursuant to 11 U.S.C. §§ 363 and 1206. . . Sale of Lamb Ranch is to occur within six months of the missed payment, which deadline may be extended on stipulation of the Trustee and the senior secured lienholder, Rabo Agrifinance LLC ("RaboAG") or further court order.

Rabo Bank states that the default, failure of Debtor to make a payment required by the Confirmed Modified Plan, occurred on July 20, 2024 - approximately two month prior to the hearing on this Motion.

At the hearing, an extended discussion between the Parties and the court addressing the commercially reasonable marketing and sale of the Lamb Property.

In light of the information concerning the 2024 crop that will arrive shortly and how that impacts the immediate cash flow for the Debtor in Possession , the court continues the hearing to 11:30 a.m. on November 14, 2024.

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 12 Plan filed by Jeffrey E Dyer and Jan E Wing-Dyer (“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 hearing on the Motion is **XXXXXXX**.

3. [24-21092-E-12](#) **RHETT BURGESS** **CONTINUED MOTION TO CONFIRM**
[DCJ-4](#) **David Johnston** **CHAPTER 12 PLAN**
7-25-24 [43]

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, Debtor’s Attorney, Chapter 12 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2024. By the court’s calculation, more than 70 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days’ notice for opposition).

The Motion to Confirm the Plan 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Confirm the Plan is **XXXXXXX.**

November 14, 2024 Hearing

The court continued the hearing on this Motion to allow Debtor in Possession to acquire the sums to fund the Plan. A review of the Docket on November 12, 2024 shows nothing new has been filed with the court.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Rhett Sterling Burgess (“Debtor in Possession”) filed their Motion to Confirm Plan on July 25, 2024. Docket 43. The following parties all launched Oppositions to the initial Motion: Lilian G. Tsang, the Chapter 12 Trustee (“Trustee”). Docket 60.

The Plan was filed on July 25, 2024. Docket 45. The parties requested multiple extensions on this hearing, which the court granted. Orders, Docket 49, 58.

Summary of the Second Amended Plan Filed on July 25, 2024 (Docket 45)

The court provides the following summary of significant terms of the proposed Plan. This summary is not a complete statement of all terms of the proposed Plan. The Plan provides as follows:

1. The only administrative claims in Class 1 are Debtor in Possession’s counsel’s fees and the Chapter 12 Trustee’s compensation, estimated to be \$24,614. Plan 2:23-3:3, Docket 45.
2. The only priority claim in Class 2 is the Franchise Tax Board, whose community claim is expected to be approximately \$4,500. *Id.* at 3:4-8.
3. There are two secured claims, one of Wells Fargo in the amount of \$30,070 in Class 3, and one of Deere in the amount of \$44,721 in Class 4. *Id.* at 3:9-17.
4. Class 5 is claims of various landlords for arrears, estimated to be in the amount of \$30,000. *Id.* at 3:18-24.
5. The general unsecured claims in Class 6 amount to \$5,850. *Id.* at 3:25-4:1.
6. The Plan calls for a single payment of \$146,136, which is expected to pay all claims in full, including interest. The payment will come from Debtor in Possession’s Bank of Stockton account containing proceeds of the sale of community real property and proceeds from the sale of almonds grown by the Debtor in 2023. The two trustees are the attorneys involved in the dissolution of marriage action. (The balance on July 25, 2024 is \$770,229.)

TRUSTEE’S OPPOSITION

On October 10, 2024, Trustee filed an Opposition to the Plan. Docket 60. Trustee’s main objection to the Plan is she cannot assess its feasibility, being unable to confirm Debtor has access to the funds in the bank account. Trustee states:

Debtor’s counsel has indicated that negotiations are on-going with the ex-spouse’s attorney for the turnover of funds. However, the status of these negotiations is unknown, and it is also unclear whether Debtor is able to access funds that he claims to be his. The lump sum payment anticipated in the Plan requires that submission of

\$146,136 plus any additional funds needed for full repayment of creditors plus interest rate of 5.01% prior to the Effective Date of the Plan. Without further clarification and confirmation that the funds are forthcoming and ready to be remitted to the Trustee, the Trustee cannot assess whether the plan complies with 11 U.S.C. § 1225(a)(1) and (a)(6) and therefore, cannot recommend its confirmation.

Id. at 2:13-21.

APPLICABLE LAW

As an initial matter, the debtor in a Chapter 12 case must also be an eligible debtor, pursuant to 11 U.S.C. § 109(f), which states “[o]nly a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.” The term “family farmer with regular annual income” is defined in 11 U.S.C. § 101(19) as a “family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.” The term “family farmer” is defined under 11 U.S.C. § 101(18) as an:

[I]ndividual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$10,000,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual’s or such individual and spouse’s gross income for—

- (i) the taxable year preceding; or
 - (ii) each of the 2d and 3d taxable years preceding;
- the taxable year in which the case concerning such individual or such individual and spouse was filed. . .

Once a debtor is deemed eligible to file under Chapter 12, to file and confirm a Chapter 12 Plan, the Bankruptcy Code provides:

- (a) Except as provided in subsection (b), the court shall confirm a plan if—
 - (1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;
 - (2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;
 - (3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)

(i) the plan provides that the holder of such claim retain the lien securing such claim; and

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

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

11 U.S.C. § 1225(a). The contents of a Chapter 12 plan are governed by 11 U.S.C. § 1222(a)(1), and must be satisfied pursuant to 11 U.S.C. § 1225(a)(1). 11 U.S.C. § 1222(a)(1) states:

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless the holder of a particular claim agrees to a different treatment of that claim;

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment;

(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; and

(5) subject to section 1232, provide for the treatment of any claim by a governmental unit of a kind described in section 1232(a).

A debtor bears the burden of showing that a proposed plan complies with the confirmation requirements of 11 U.S.C. § 1225. *In re Perez*, 30 F.3d 1209, 1220 at n. 5 (9th Cir. 1994) (“The burden of proposing a plan that satisfies the requirements of the Code always falls on the party proposing it, but it falls particularly heavily on the debtor-in-possession or trustee since they stand in a fiduciary relationship to the estate’s creditors.”).

DISCUSSION

Here, the court finds that the Debtor in Possession is an eligible debtor under Chapter 12. No party in interest has contested this fact and the court finds it clear from the evidence that Debtor in Possession fulfills the definitions of “family farmer” and “family farmer with regular income” as prescribed by 11 U.S.C. §§ 109(f), 101(18) &(19).

However, if the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.

(2) For purposes of this subsection, “disposable income” means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor’s business.

11 U.S.C. § 1225(b).

Trustee objects on the basis of whether the funds are readily available to be paid in accordance with the Plan upon confirmation. Debtor in Possession has not submitted any pleading or evidence to rebut Trustee’s objection, or otherwise made a showing that the Plan complies with 11 U.S.C. § 1225(b).

OCTOBER 24, 2024 HEARING

At the hearing, Debtor in Possession says that they are close to getting the Plan funded. Counsel for the Debtor in Possession requested a continuance to 11:30 a.m. on November 14, 2024. The Chapter 12 Trustee concurred with the requested continuance.

The hearing on the Motion is continued to 11:30 a.m. on November 14, 2024.

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 12 Plan filed by Rhett Sterling Burgess (“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 is **XXXXXXX**.

FINAL RULINGS

4. [21-21429-E-7](#) **JAMIE HOWELL** **CONTINUED STATUS CONFERENCE RE:**
[22-2099](#) **COMPLAINT**
CAE-1 **7-26-22 [1]**
FARRIS V. HOWELL

Final Ruling: No appearance at the November 14, 2024 Status Conference is required.

Plaintiff's Atty: J. Russell Cunningham; Benjamin C. Tagert
Defendant's Atty: Stacie L. Power

Adv. Filed: 7/26/22
Answer: 8/4/22

Nature of Action:
Recovery of money/property

Notes:
Continued from 10/3/24. The Parties requested the court continue the status conference to allow for final compliance with the Judgment.

[CAE-1] Trustee's Status Report filed 11/7/24 [Dckt 41]

The Status Conference is concluded and removed from the Calendar.

NOVEMBER 14, 2024 STATUS CONFERENCE

On November 7, 2024, the Plaintiff-Trustee filed an updated Status Report. Dckt. 41. The Plaintiff-Trustee concludes that it appears that the Debtor has complied with the terms of the Judgment and the Status Conference may be concluded.

The Status Conference is concluded and removed from the Calendar.

OCTOBER 3, 2024 STATUS CONFERENCE

As of the court's October 2, 2024 review of the Docket, no updated status reports had been filed. At the Status Conference, counsel for the Plaintiff-Trustee reported that the Debtor has vacated the premises and her estranged spouse is in the process of vacating the property.

The Trustee's Realtor will be reinspecting the property.

Hardave Singh Dulai and Sukhbinder Kaur Dulai (“Debtor in Possession”) filed their Second Amended Chapter 12 Plan and Motion to Confirm Plan on July 10, 2024. Dockets 137, 143. Objecting Creditors, the Chapter 12 Trustee, and Debtor in Possession agreed to continue the hearing on this Motion and Plan to November 14, 2024, by stipulation. Docket 162. It became clear a third Amended Plan would be necessary, and such Plan could only be considered after valuing creditor HD Owner LLC’s secured claim. That Motion to Value is being heard on November 14 at 10:30 a.m.

The court issued an Oder on September 9, 2024, continuing the hearing on this Motion to November 14, 2024, as well as ordering Debtor in Possession to file and serve the Third Amended Plan and supporting pleadings prior to the November 14, 2024 Hearing. Order, Docket 163.

Debtor in Possession filed the Third Amended Plan on October 21, 2024. Docket 187. Debtor in Possession then filed a Motion to confirm with supporting evidence and set the hearing for December 19, 2024. Dockets 215-218. At the hearing, **XXXXXXX**

THIRD AMENDED PLAN

The court provides the following summary of significant terms of the proposed Third Amended Plan. This summary is clearly not a complete statement of all terms of the proposed Third Amended Plan. The Third Amended Plan provides as follows:

Creditor/Class	Treatment	
Class 1: HD Owner LLC	Claim Amount	\$3,935,598.74
	Impairment	Impaired
	The holder of the Class 1 claim shall be paid the value of their collateral totaling \$2,450,000.00 at 8.0% with a term of (20) Twenty years . Plan payments to HD Owner, LLC, s hall be quarterly. Quarterly payments shall be \$56,728.50 (without Chapter 12 Trustee fee), beginning the first month of the first quarter, after the Effective Date of this Plan.	
Class 2: Diversified Financial Services, LLC	Claim Amount	\$23,580.40
	Impairment	Unimpaired
	The secured claim of Diversified Financial Services, LLC, is not impaired and shall be paid the full four years or 48 equal payments totaling \$23,580.40 with an interest rate of 4 .76% .	
Class 3: School First Federal Credit Union	Claim Amount	\$2,510.72
	Impairment	Unimpaired

	The secured claim of School First Federal Credit Union, will be satisfied in full through surrender of the collateral if the Motion to Compromise Controversy and Use of Proceeds is granted. The Motion will be filed as soon as possible, and the Order Approving Compromise and Use of Funds will become part of this Plan and incorporated herein. The full value of the secured claim totaling \$2,510.72 with an interest rate of 0.00% will be satisfied in full by surrender of the collateral.	
Class 4: Bank of America, N.A.	Claim Amount	\$2,062.74
	Impairment	Unimpaired
	The secured claim of Bank of America, N.A. is not impaired and shall be paid the full value of the alleged secured claim totaling \$2,062.74 with an interest rate of 0.00%.	
Class 5: JP Morgan Chase Bank, N.A.	Claim Amount	\$40,885.73
	Impairment	Unimpaired
	The secured claim of JP Morgan Chase Bank, N.A., is not impaired and shall be paid the full value of the alleged secured claim totaling \$40,885.73 with an interest rate of 0.00%.	
Class 6: Internal Revenue Service	Claim Amount	\$86,364.91
	Impairment	Impaired
	Internal Revenue Service 's alleged tax priority claim shall be paid \$0.00 and if not reduced to \$0.00 Debtor's may have to object to the IRS claim.	
Class 7: Butte County Tax Collector	Claim Amount	\$20,044.27
	Impairment	Unimpaired
	Butte County Tax Collector 's secured tax claim shall be paid \$20,044.27 at 18% interest; Claim No. 9. Claims 17 and 18 filed by Sutter County Tax Collector are duplicates and the alleged secured taxes were paid; Debtors' will object to Claims 17 and 18 if is not timely withdrawn.	
Class 8: General Unsecured Claims	Claim Amount	Estimated \$1,797,228.32
	Impairment	Impaired

	The holders of Class 8 claims shall be paid pro-rata after priority and administrative claims are paid in full (Estimated general unsecured claims total \$1,797,228.32). The amount to be paid to this class shall be approximately 22.79% of their allowed claims. Debtors estimate that holders of the allowed general unsecured claims would receive the sum of \$409,658.00 (Estimated Chapter 7 Trustee fee \$26,295.00 deducted) if the estate were liquidated under Chapter 7 of the Code.	
Class 9: Leases	Claim Amount	
	Impairment	Unimpaired
	The holders of Class 9, assumed leases my motion or addressed by compromise. The Jim Suver lease agreement was assumed and order entered and incorporated herein, Docket No. 111. The Jim Suver lease shall be paid outside the Chapter 12 Plan ; Order entered Docket No. 111 . A Motion to Compromise is pending, and if granted the Order Approving Compromise will become part of this Plan regarding the Ag West lease agreement and will be paid according to the entered order and outside this Plan.	

Debtor in Possession submits the Declaration of Debtors/ Debtors in Possession, Hardave Singh Dulai and Sukhbinder Kaur Dulai. Docket 217. Debtors testify as to the requirements of confirmation under 11 U.S.C. § 1225(a).

CREDITOR’S OPPOSITION

Creditor HD Owner LLC (“Creditor”) filed an Objection to Confirmation, which this court construes as an opposition to confirmation of the Third Amended Plan. Docket 203. Creditor states:

1. The Loan is in default because, among other things, the Debtors failed to pay installments due under the Note on January 10, 2022 and July 10, 2022, each in the amount of \$147,823.52, and failed to pay certain real estate taxes owing for the year 2021. Mot. 3:13-15, Docket 203.
2. The Note has been accelerated and the Borrowers were informed that the default interest rate applied from and after October 3, 2022. *Id.* at 3:16-17.
3. Since the prior 2022 Bankruptcy Case was initiated, the Debtors have made no payments on the Loan. *Id.* at 18-19.
4. HDO disputes the Debtors’ value of HDO’s collateral. As set forth in its amended proof of claim filed concurrently with this Objection, HDO values its collateral at \$3,930,000. This valuation is based upon the Appraisal attached as Exhibit 1 to the Declaration of Benjamin E. Holt. *Id.* at 4:17-19.

5. The Debtors have offered no evidence in support of their valuation of the Dulai Property, the Gridley Property, and/or the Live Oak Property. *Id.* at 4:25-26.
6. The proposed Plan is completely lacking in evidence to support feasibility. The Debtors have offered no evidence that they are able to cash flow their operation and make the proposed Plan payments; all they have done is estimate revenue, without considering the expenses it takes to grow and harvest these crops. The Debtors have offered no current or projected income and expense figures, only revenue, which does not contain the detail such as acres farmed and yields per acre that would be needed to determine feasibility. The Debtors have provided no historical financial information showing income statements for their farming operation and whether they have ever been able to generate enough profit to service the payments proposed under the Plan. Feasibility is a requirement of 11 U.S.C. § 1225(a). *Id.* at 7:1-8.
7. The Monthly Operating Reports reflect inconsistent information. *Id.* at 7:9-17.
8. There are typographical errors in the Plan. *Id.* at 8:6-13.
9. The Plan proposes to alter Creditor's rights under the Loan by reducing the default interest rate that was in effect as of the Petition Date and by allowing the Debtors to pay the Loan over the Plan term notwithstanding that the Loan was accelerated and the entire amount of the Loan became due before the Petition Date. To cramdown the Plan on Creditor, the Debtors must pay a market rate of interest to Creditor. The Plan does not provide for any risk adjustments to the interest rate. *Id.* at 9:4-8.
10. Debtors have not provided a liquidation analysis to show whether the Plan is in the best interest of creditors. The Plan therefore fails to meet that confirmation requirement and confirmation should be denied. *Id.* at 10:1-4.

The Declaration of Benjamin E. Holt is submitted in support. Docket 204. Mr. Holt is the sole proprietor of Holt Agricultural Appraisal. Attached to his Declaration as an authenticated exhibit is Mr. Holt's appraisal report, valuing the property securing Creditor's claim at \$3,930,000. *Id.* at 4:13.

Creditor also submits the Declaration of Jeremy Rasmussen in support of the Opposition. Docket 205. Mr. Rasmussen authenticates the facts alleged in the Opposition.

APPLICABLE LAW

As an initial matter, the debtor in a Chapter 12 case must also be an eligible debtor, pursuant to 11 U.S.C. § 109(f), which states “[o]nly a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.” The term “family farmer with regular annual income” is defined in 11 U.S.C. § 101(19) as a “family farmer whose annual income is sufficiently stable and regular

to enable such family farmer to make payments under a plan under chapter 12 of this title.” The term “family farmer” is defined under 11 U.S.C. § 101(18) as an:

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(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed. . .

Once a debtor is deemed eligible to file under Chapter 12, to file and confirm a Chapter 12 Plan, the Bankruptcy Code provides:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

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(i) the plan provides that the holder of such claim retain the lien securing such claim; and

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(C) the debtor surrenders the property securing such claim to such holder;

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11 U.S.C. § 1225(a). The contents of a Chapter 12 plan are governed by 11 U.S.C. § 1222(a)(1), and must be satisfied pursuant to 11 U.S.C. § 1225(a)(1). 11 U.S.C. § 1222(a)(1) states:

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(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless the holder of a particular claim agrees to a different treatment of that claim;

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(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; and

(5) subject to section 1232, provide for the treatment of any claim by a governmental unit of a kind described in section 1232(a).

A debtor bears the burden of showing that a proposed plan complies with the confirmation requirements of 11 U.S.C. § 1225. *In re Perez*, 30 F.3d 1209, 1220 at n. 5 (9th Cir. 1994) (“The burden of proposing a plan that satisfies the requirements of the Code always falls on the party proposing it, but it falls particularly heavily on the debtor-in-possession or trustee since they stand in a fiduciary relationship to the estate’s creditors.”).

DISCUSSION

Here, the court finds that the Debtor in Possession is an eligible debtor under Chapter 12. No party in interest has contested this fact and the court finds it clear from the evidence that Debtor in Possession fulfills the definitions of “family farmer” and “family farmer with regular income” as prescribed by 11 U.S.C. §§ 109(f), 101(18) &(19).

However, there is opposition to the Third Amended Plan. The crux of Creditor’s Opposition lies in the valuation of the real property securing its claim. The Motion to Value is being heard on November 14, 2024 at 10:30 a.m. Like two ships passing in the night, Creditor filed this opposition on the same day Debtor in Possession filed its Motion to Value and supporting evidence on October 31, 2024. At the hearing, **XXXXXXX**

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 12 Plan filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai (“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 hearing on the Motion to Confirm the Plan shall be held on December 19, 2024 at 11:30 a.m.