

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 29, 2023 at 2:00 p.m.

1. <u>23-23620-E-11</u>	ROBERT P. OBREGON DDS	STATUS CONFERENCE RE:
<u>CAE-1</u>	INC.	VOLUNTARY PETITION
		10-13-23 [<u>1</u>]

SUBCHAPTER V

Debtor's Atty: Gabriel E. Liberman

Notes:

Operating Reports filed: 10/13/23

Trustee Report at 341 Meeting lodged 11/15/23

[CAE-1] Debtor's Subchapter V Status Report filed 11/15/23 [Dckt 50]

The Status Conference is continued to 2:00 p.m. on XXXXXXX , 2024.
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NOVEMBER 29, 2023 STATUS CONFERENCE

On November 15, 2023, the Debtor/Debtor in Possession filed a Subchapter V Status Report. Dckt. 50. In it, the Debtor/Debtor in Possession reports that it is anticipated that a consensual plan will be pursued, and at least one impaired secured class will be paid in full. In light of only one creditor having filed a proof of claim, the Debtor/Debtor in Possession intends to reach out to creditors to develop a consensual plan.

Given the secured claims in this case and the collateral, the Debtor/Debtor in Possession anticipates four motions to value secured claims pursuant to 11 U.S.C. § 506(a).

The latest Monthly Operating Report, for October 2023, shows a positive operating cash flow to date in this Case. Dckt. 52.

At the Status Conference, XXXXXXX

Debtor's Atty: Mark A. Wolff

Notes:

Continued from 9/21/23. The Debtor in Possession reporting that they have been working on a Plan.

[WW-6] Motion to Extend Deadline to Obtain Confirmation of Chapter 12 Plan filed 10/6/23 [Dckt 135]; set for 11/30/23 at 10:30 a.m.

[BRL-1] Creditors Jana Properties, LP and Jack Faraone's Motion for Order Terminating Automatic Stay or Requiring Adequate Protection filed 10/16/23 [Dckt 144]; Order granting motion for relief filed 11/2/23 [Dckt 162]

[GB-2] Motion to Dismiss Case with a Two-Year Bar to Refiling [creditor: Umpqua Bank] filed 10/25/23 [Dckt 151]; set for hearing 11/30/23 at 10:30 a.m.

The Status Conference is continued to xxxxxxx p.m. on xxxxxxx
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NOVEMBER 29, 2023 STATUS CONFERENCE

As the court has addressed at prior hearings and Creditors raise in the Motion to Dismiss and related pleadings, Debtor has long been unsuccessfully prosecuting Chapter 12 Plan in this District. His five prior cases begin in November 2011 and the last prior case being dismissed in January 2023. Most have been prosecuted with the assistance of experienced bankruptcy counsel.

In prior hearings, the court addressed with the Debtor in Possession, Debtor in Possession's counsel, and the creditors the significant loss of exempt equity that the Debtor in Possession was facing through the failure of yet another bankruptcy case.

The Debtor in Possession has moved from an orderly sale of the Property to running a mining operation to fund a Plan. See, Opposition to Motion to Dismiss; Dckt. 165. In it, the Debtor in Possession's assertions include:

- A. On November 14, 2023, the Debtor in Possession recovered a mineral analysis and believes that he has identified tens of millions of dollars of silver, gold, and other minerals on the Property to be recovered.
- B. Debtor in Possession projected having a experts declaration filed to authenticate a mineral report. That has not been filed as of the court's November 27, 2023 review of the Docket.

C. For just 16 years of stockpiled heavy head ore, Debtor in Possession projects a value of \$14,684,976.

While after more than a decade of unsuccessful bankruptcy cases, the Debtor in Possession says that the tens of millions of dollars of mineral production is starting in just days.

16. It is currently estimated that we will be able to mill and concentrate at least 1 ton of head ore per day. The concentrated head ore will then be shipped to a refinery (Elemental Refineries), through Frontier Metals. Elemental Refineries initially pays 80% of the value based upon the XRF readings. Upon completion of the refining process Elemental Refineries pays the remaining amounts based upon the true recovery after refining. I expect to receive the initial 80% within 5 business days of Elemental Refineries receiving the shipped concentrated minerals.

Declaration, ¶ 16; Dckt. 167.

It appears that the Debtor in Possession is but days away from having substantial mineral revenues going into a segregated bank account as “proof” that the assertion of minerals is not a mere delay tactic.

At the Status Conference, **XXXXXXX**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and United States Trustee as stated on the Certificate of Service on November 3, 2023. The court computes that 26 days' notice has been provided.

The court issued an Order to Show Cause seeking an explanation as to why a patient care ombudsman should not be appointed in this case pursuant to 11 U.S.C. § 333(a)(1).

The Order to Show Cause is discharged, the Debtor's and Debtor's principal's medical practice having been closed, without prejudice.

Debtor, Richard E. Silva, Inc. ("Debtor") commenced this voluntary Chapter 7 liquidation on October 10, 2023. Petition; Dckt. 1. On November 3, 2023, the court issued its Order to Show Cause as to Why a Patient Care Ombudsman Should Not Be Appointed. Dckt. 8; discussed below.

On November 16, 2023, Richard Silva, the Debtor's Representative in this Bankruptcy Case, filed his Declaration (Dckt. 15) in response to the Order to Show Cause. In it, Dr. Silva testifies that he has closed his dental practice, presumably that being operated within the Debtor corporation, on October 31, 2023. Dec., ¶ 3; Dckt. 15. He further testifies that all his former patients have been referred to Dr. Thorn at Thorn Family Dental. *Id.*; ¶ 4. His testimony concludes that his practice is permanently closed and Dr. Silva has retired from practicing as a dentist. *Id.* ¶ 6.

Reviewing Schedule A/B, Debtor lists substantial personal property assets, including almost \$400,000 in collectable accounts receivable (having discounted it by approximately 40% for doubtful or uncollectible accounts receivable). Dckt. 1. The assets include the dental equipment and devices. On Schedule D Debtor lists only one secured claim (SBA) of approximately (\$90,000). *Id.* General unsecured claims of approximately (\$149,000) are also listed.

Nikki Farris, the Chapter 7 Trustee, has employed Lorin L. Bakken, Esq., as her counsel in this Bankruptcy Case. Order; Dckt. 18.

At the November 29, 2023 hearing on the Order to Show Cause, **XXXXXXX**

DISCUSSION

11 U.S.C. § 333(a)(1) states:

If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

The statute states the court shall appoint an ombudsman, unless the court decides otherwise. According to Collier,

“Facts that warrant a decision not to appoint an ombudsman could include that the facility’s patient care is of high quality, that the debtor has adequate financial strength to maintain high-quality patient care, that the facility already has an internal ombudsman program in operation or that the situation at the facility is adequately monitored already by federal, state, local or professional association programs so that the ombudsman would be redundant.”

3 COLLIER ON BANKRUPTCY ¶ 333.02(2). Bankruptcy courts have largely adopted a nine-factor test in determining whether appointment of a patient care ombudsman is necessary. These factors are,

1. The cause of the bankruptcy;
2. The presence and role of licensing or supervising entities;
3. Debtor's past history of patient care;
4. The ability of the patients to protect their rights;
5. The level of dependency of the patients on the facility;
6. The likelihood of tension between the interests of the patients and the debtor;
7. The potential injury to the patients if the debtor drastically reduced its level of patient care;
8. The presence and sufficiency of internal safeguards to ensure appropriate level of care; and
9. The impact of the cost of an ombudsman on the likelihood of a successful reorganization.

Id.; see *In re Valley Health System*, 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008) (quoting *In re Alternate Family Care*, 377 B.R. 754, 756 (Bankr. S.D. Fla. 2007). No one factor of this test is determinative; instead, “courts decide the weight to give each factor at their own discretion.” 3 COLLIER ON BANKRUPTCY ¶ 333.02(2).

In this case, no appointment of a patient care ombudsman is necessary because Dr. Richard Silva has permanently closed his medical practice and the Debtor is ceasing operations. Debtor’s Representative has retired from the practice of dentistry. Dr. Silva has also provided evidence of advising his clients of the closing of his practice and a referral dentist, and based on the Schedules the Bankruptcy Estate has substantial assets to administer.

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 Order to Show Cause as to Why a Patient Care Ombudsman Should Not Be Appointed 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 Order to Show Cause is discharged without prejudice and no Patient Care Ombudsman is appointed at this time. This is without prejudice to such appointment in the future as subsequent events and information may warrant such an appointment.

4. [23-21899-E-12](#) **JAKOB/GLADYS WESTSTEYN** **CONTINUED EVIDENTIARY
SCHEDULING CONFERENCE RE:
MOTION TO CONFIRM CHAPTER 12
PLAN
8-17-23 [\[67\]](#)**
[WF-7](#)

Debtors' Atty: Daniel L. Egan, Jason Eldred

Notes:

Continued from 9/21/23 [to 10/31/23] as a evidentiary hearing and scheduling conference for the issues regarding the Estate's interests in the Trust by order filed 9/22/23 [Dckt 111]

Ex Parte Application for Continuance of Evidentiary Hearing Scheduling Conference [to 11/29/23] filed 10/23/23 [Dckt 128]; Order granting filed 10/24/23 [Dckt 130]

Response to Application for Continuance of Evidentiary Hearing Scheduling Conference by Creditors Greg Hawes and GEH Farms filed 10/25/23 [Dckt 131]

The Motion to Confirm Chapter 12 Plan is xxxxxxx
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NOVEMBER 29, 2023 HEARING

On November 22, 2023, Jakob Weststeyn and Gladys Weststeyn, the Debtor in Possession, filed a Scheduling Conference Statement. Dckt. 145. In that Statement, as summarized below, the Debtor in Possession informs the court that much headway has been made in this case, with the Debtor in Possession,

Creditors, and the Chapter 12 Trustee finding ways to advance their positions in a bankruptcy constructive way.

The Debtor in Possession begins by advising the court that a First Amended Plan of Reorganization has been filed, which the Debtor in Possession believes, based on the discussions with the other Parties, will resolve the objections of TA Energy XXXIV LLC (“TA Energy”), Fifth Third Bank, N.A. (“Fifth Third”), and the Chapter 12 Trustee.

Additionally, though there is ongoing claims objection litigation between the Debtor in Possession and creditors Greg Hawes and GEH Farms (collectively, the “Hawes Creditors”), based on ongoing discussions with the Hawes Creditors’ counsel the Debtor in Possession is optimistic that the First Amended Plan addresses the Plan objection issues and there may well be a consensual Chapter 12 Plan being prosecuted to confirmation in this Case.

Request for Scheduling Confirmation Hearing Discovery

If discovery is necessary, the Debtor in Possession proposes that the court establish,

1. An Expert Disclosure Deadline of December 31, 2023;
2. A Non-Expert Discovery Deadline of January 1, 2024; and
3. An expert discovery deadline of January 14, 2024.

Issues, Facts, and Disputes Identified by the Debtor in Possession

The Schedule Conference Statement includes a detailed statement of what are identified as Undisputed Facts relating to the creation and operation of the dairy operations and the Debtor’s creation of the Revocable Trust. (The court does not provide a summary of the detailed statements to avoid creating an appearance that the court so finds the facts undisputed and other Parties perceiving the need to spend time disputing detailed facts at the Scheduling Conference.)

From the Debtor in Possession’s perspective, the only disputed issue will be the amount necessary to fund the Debtors’ post-confirmation standard of living.

Summary of First Amended Plan Filed on November 22, 2023 (Dckt. 147)

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

The Plan is to be funded by the Debtors continued operation of the hay and forage growing operations on the land leased from the 2015 Real Property Trust. The Debtors may conduct a feedlot operation on said leased land, but there will be no dairy operations by the Debtors. The proposed First Amended Plan (§§ 4.03.1 - 4.05) provides for the following payments to be made to fund the Plan:

- A. On or before the Effective Date (the last day of the month following the entry of the order confirming the Plan), \$10,000.
- B. On or before June 30, 2024, the greater of (i) their Net Disposable Farm Income, calculated for the period commencing on June 1, 2023 and ending on December 31, 2023, or (ii) \$100,000.
- C. On or before January 31, 2025, the amount the greater of: (i) their Net Disposable Farm Income, calculated for the period commencing on January 1, 2024 and ending on December 31, 2024, or (ii) \$100,000.
- D. On or before January 31, 2026, the amount greater of (i) their Net Disposable Income calculated for the period commencing on January 1, 2025, and ending on December 31, 2025, or (ii) \$100,000.
- E. On or before February 28, 2027, Debtors shall make a payment of the greater of (i) their Net Disposable Income calculated for the period commencing on January 1, 2026 and ending on the third anniversary of the Effective Date, or (ii) the Final Plan Payment to Trustee (defined in ¶ 4.05 as the amount of \$560,000 less the amount of payments previously made).

The aggregate Plan payments appear to total \$560,000, unless the Net Disposable Farm income paid for the 2023, 2024, 2025, and 2026 Plan funding years exceed \$560,000. The Debtors also have the right to pre-pay the Plan, and not make the annual disposable income payments (if they exceed \$100,000) by making payments totaling in the aggregate \$560,000 to the Chapter 12 Trustee.

For the Claims of Creditors in this Bankruptcy Case, the payment terms, identified by the creditor Classes in the Plan are summarized as follows:

- A. Class 2.1 - California Franchise Tax Board, Secured Claim. The Claim shall be bifurcated into a secured claim and an unsecured claim (which unsecured claim is provided in Class 4). The Debtor in Possession and the California Franchise Tax Board have negotiated a Stipulation by which the lien of the California Franchise Tax Board shall be avoided pursuant to 11 U.S.C. § 547 and the claim in its entirety shall be a Class 4 general unsecured claim
- B. Class 2.2 - Farm Credit Services of America, PCA ("FCSA"), as servicer for AgDirect, Secured Claim.

At this juncture, the court addressed with counsel for the Debtor in Possession whether AgDirect is the actual creditor with a secured claim, and therefore the real party in interest, if FCSA is "merely" a loan servicer. Amended Proof of Claim 7-2 has been filed by FCSA, expressly identifying itself as the "servicer" for AgDirect, asserting that FCSA is the "creditor."

Attached to Amended Proof of Claim 7-2 is a copy of a Default Judgement from the District Court of Douglas County Nebraska in which FCSA is named as the Plaintiff Judgment Creditor (individually and not as the agent, servicer, or assignee for collection of AgDirect). A copy of the California Sister State

Judgment, including FCSA is named as the Judgment Creditor individually is also attached to Amended Proof of Claim 7-2.

At the Scheduling Conference, counsel for the Debtor in Possession and counsel for FCSA,

XXXXXXX

For the Class 2.2 Secured Claim, no interest shall accrue on the secured claim and the collateral securing the claim, an Unverferth 60' Spray Boom S/N D59790294, shall be deemed abandoned to the Class 2.3 claim, and the remaining claim thereafter is a Class 4 general unsecured claim.

C. Class 2.3 - BMO Harris Bank, N.A., Secured Claim. The Class 2.3 claim shall not accrue interest and the collateral securing the claim, a forage harvester, shall be deemed abandoned to BMO upon confirmation, and the remaining claim shall be a Class 4 general unsecured claim. Further, any other liens of BMO shall be deemed avoided pursuant to 11 U.S.C. § 547.

D. Class 2.4 - Fifth Third Bank, N.A., Secured Claim. The Class 2.4 Claim shall accrue interest at 8.25% per annum, Fifth Third Bank, N.A. shall retain its lien in the 2003 Keystone Cougar Trailer, and the Claim may be bifurcated into a secured and a Class 4 unsecured claim if the amount claimed exceeds the value of the collateral.

Fifth Third Bank, N.A. has filed Proof of Claim 10-1 asserting a (\$5,278.01) secured claim. Debtors do not list the Keystone Trailer as an asset on Schedule A/B. Dckt. 1 at 12 - 19. On Schedule D Debtors state that the value of the Trailer as collateral is \$0.00. *Id.* at 32.

E. Class 3 - Unsecured Priority Claims. Debtor in Possession states that there are (\$0.00) in priority unsecured claims. The Internal Revenue Service has filed Amended Proof of Claim 5-2 asserting a (\$1,234,085) priority unsecured claim for taxes or penalties (11 U.S.C. § 507(a)(8)). The Debtor in Possession asserts (First Amended Plan ¶ 2.07.2) that this claim is not a priority claim based on 11 U.S.C. § 1232 and is a general unsecured claim to be provided for in Class 4. The same is asserted for Proof of Claim 6-1 filed by California Franchise Tax Board.

F. Class 4 - General Unsecured Claims. Allowed General Unsecured Claims shall receive a distribution in this case, with no estimate of a minimum percentage distribution stated. A review of the Proof of Claim filed (excluding the Hawes Creditors disputed claims) indicates that the general unsecured claims filed in this Case exceed (\$4,375,000).

Discussion at the November 29, 2023 Scheduling Conference

At the Scheduling Conference, XXXXXXX

REVIEW OF PLAN AND PRIOR PROCEEDINGS

The Debtor in Possession, Jakob and Gladys Weststeyn (“Debtor in Possession”) seeks confirmation of the Chapter 12 Plan. The Plan provides for Class 1 claims of professional fees, postpetition tax claims, postpetition ordinary course claims, and claims for postpetition borrowing. Class 2 consists of secured claims, the California Franchise Tax Board’s claim, Farm Credit Services of America, PCA’s claim, and BMO Harris Bank’s claim. The Plan further provides that BMO Harris Bank’s claim will not accrue interest. Class 3 consists of unsecured priority claims, and Class 4 provides for general unsecured claims.

Plan, Dckt. 69. 11 U.S.C. § 1223 permits a Debtor in Possession to amend a Plan any time before confirmation.

CHAPTER 12 TRUSTEE’S OPPOSITION

The Chapter 12 Trustee, David Burchard (“Trustee” or “Ch.12 Trustee”), filed an Opposition on September 7, 2023. Dckt. 85. Trustee opposes confirmation of the Plan on the basis that:

- A. The 341 meeting of creditors has not been concluded.
- B. Debtor in Possession’s Chapter 12 Plan has not met the requirements of 11 U.S.C. § 1225(a)(4) because Debtor in Possession is settlor, trustee, and a beneficiary of the 2015 Irrevocable Real Estate Trust, meaning the trust should be a part of the bankruptcy estate. With the full value of the 2015 Irrevocable Real Property Trust (“2015 Trust”) added into the bankruptcy estate, creditors would receive a higher distribution under a Chapter 7 case.
- C. At the least, the Ch. 12 Trustee needs more time and information in determining what assets are owned by the 2015 Trust and which debts are secured by assets in the 2015 Trust.

Dckt. 85.

DEBTOR IN POSSESSION’ REPLY TO CH. 12 TRUSTEE’S OPPOSITION

On September 14, Debtor in Possession filed a Reply in Support of Debtor in Possession’s Motion for Order Confirming Plan of Reorganization (“Reply”). Dckt. 101. Debtor in Possession addresses Ch. 12 Trustee’s objection in its reply, stating:

- A. The Trustee is unable to disregard rights of the other eight beneficiaries of the 2015 Trust, meaning Trustee is only able to reach Debtor in Possession’s beneficial interest in the 2015 Trust. Furthermore, as a health, education, maintenance and support trust, Debtor in Possession’s beneficial interest is limited to monthly distribution of approximately \$10,000 per month.
- B. Trustee’s reliance on *Cutter* is not warranted because the trust in *Cutter* was characterized as a “failed asset protection scheme,” whereas the 2015

Trust in this case was established when the Debtor in Possession was solvent.

Dckt. 101.

CREDITOR FIFTH THIRD BANK'S OPPOSITION

Fifth Third Bank, N.A. holding a secured claim filed an Opposition on August 30, 2023. Dckt. 79. Creditor opposes confirmation of the Plan on the basis that:

- A. Creditor filed a proof of claim in the amount of \$5,278.01, which is secured by collateral described as: 2003 Keystone Cougar M295EFS, vin ending in 3639. Debtor in Possession's Chapter 12 Plan failed to provide for this obligation.

Dckt. 79.

DEBTOR IN POSSESSION'S REPLY TO CREDITOR FIFTH THIRD BANK'S OPPOSITION

In its same Reply, Debtor in Possession addresses Creditor Fifth Third Bank's objection, stating:

- A. Creditor's claim is secured by a recreational vehicle trailer, and Debtor in Possession has reached an agreement with Creditor where the Plan provides Creditor will either be paid the full amount of its claim, or Debtor in Possession will surrender the collateral.

Dckt. 101.

CREDITOR GEH FARMS AND GREG HAWES' OPPOSITION

GEH Farms and Greg Hawes ("Creditor GEH") holding a secured claim filed an Opposition on September 7, 2023. Dckt. 87. Creditor GEH made its Opposition. Creditor opposes confirmation of the Plan on the basis that:

- A. The 341 meeting of creditors has not been concluded.
- B. Debtor in Possession did not state a deadline for filing for approval of administrative claims.
- C. Debtor in Possession failed to include all of the secured claims in the class 2 section in the Plan, and Debtor in Possession also did not estimate what the value of the unsecured portion of the class 2 claim would be when treated as a class 4 claim.
- D. Debtor in Possession states the amount of class 3 claims is \$0, where the IRS has filed a claim for \$1,254,727, and Debtor in Possession has not addressed how they will pay the claim.
- E. Debtor in Possession did not include any estimate of the class 4 claims.

- F. Debtor in Possession did not provide enough information in the liquidation analysis.

Dckt. 87.

DEBTOR IN POSSESSION'S REPLY TO CREDITOR GEH'S OPPOSITION

In its same Reply, Debtor in Possession addresses Creditor GEH's objection, stating:

- A. Creditor GEH's objection is based on no evidence as Creditor GEH never filed a declaration or any documentation in support of its Opposition.
- B. Creditor GEH's objection appears to be motivated by a continuation of harassing tactics employed by Creditor GEH prior to commencement of this bankruptcy case.
- C. Creditor GEH is asking the court for additional time before confirmation of a Plan for unspecified reasons. Any information Creditor GEH should have needed is provided by Debtor in Possession in its filings.
- D. Creditor GEH did not show up to three of the four creditor meetings in which Debtor in Possession was present and fully willing and able to answer creditors' questions.
- E. In the end, Creditor GEH's objection is "nothing more than a vindictive attempt to further bully the Debtors."

Dckt. 101.

CREDITOR TA ENERGY XXXIV, LLC'S OPPOSITION

TA Energy XXXIV, LLC, a wholly owned subsidiary of TRITEC Americas, LLC ("Creditor TA") holding a secured claim filed an Opposition on September 7, 2023. Dckt. 90. Creditor opposes confirmation of the Plan on the basis that:

- A. On or around July 17, 2021 Creditor TA entered into a PowerNow Solar Purchase Agreement ("PPA") with Weststeyn Dairy where Creditor TA would sell Weststeyn Dairy solar generated electric energy from a single-axis tracker system installed by Creditor TA.
- B. Jakob Weststeyn signed the PPA on behalf of Weststeyn Dairy.
- C. The PPA is an executory contract to which Mr. and Mrs. Weststeyn may be parties in their individual capacities.
- D. Debtor in Possession does not state any intention to assume the PPA in their Chapter 12 Plan, meaning Debtor in Possession apparently seeks to reject the PPA.

- E. Debtor in Possession cannot reject the PPA because Debtor in Possession is not a party to the PPA. Instead, the proper party to which the obligation under the PPA rests is with Weststeyn Dairy LP, a non-debtor limited partnership.

Dckt. 90.

DEBTOR IN POSSESSION'S REPLY TO CREDITOR TA'S OPPOSITION

In its same Reply, Debtor in Possession addresses Creditor TA's objection, stating:

- A. There is no such entity as Weststeyn Dairy as listed in the PPA.
- B. Creditor TA appears to be referencing the legal entity JG Weststeyn Dairy, LP, to which Debtor in Possession does not disagree.
- C. If the PPA is with JG Weststeyn Dairy, LP, then the proposed Plan does not effect Creditor TA. Creditor TA would not even be a creditor of the Debtor in Possession because JG Weststeyn Dairy, LP is not a debtor in this bankruptcy case.
- D. In the alternative, if Debtor in Possession is a party to the PPA, then the executory contract is burdensome to the estate and should be rejected.
- E. At this time, it is procedurally premature for the court to determine the issue of whether Debtor in Possession or JG Weststeyn Dairy, LP is the proper party to the PPA.

Dckt. 101.

HANK SPACONE'S REPLY TO CH. 12 TRUSTEE'S OPPOSITION

On September 14, Hank Spacone, manager for the 2015 Trust, submitted a reply to Ch. 12 Trustee's Opposition. In his reply, Mr. Spacone asserts:

- A. Debtor in Possession is the current trustee of the 2015 Trust, but they engaged the services of Mr. Spacone to manage the trust by providing more professional and independent direction and advice.
- B. All ten beneficiaries, including Debtor in Possession and their eight children, have vested rights in the trust.
- C. The trustee of the 2015 Trust is only able to distribute that which is necessary for the health, education, maintenance, and support of the beneficiaries. This standard is cognizable and puts limitations on what the trustee may access in the 2015 Trust.

- D. Mr. Spacone cites to California Probate Code § 15302 to support his contention that trust assets in a health, education, maintenance, and support trust may not be reached by a creditor until a distribution is actually made to the beneficiary. ^{FN.1.}

FN. 1. California Probate Code § 15302 states:

§ 15302. Trust for support

Except as provided in Sections 15304 to 15307, inclusive, if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

Mr. Spacone provides a copy of the Weststeyn 2015 Irrevocable Real Property Trust as Exhibit 1, Dckt. 99. A review of the provisions of the Trust includes the following:

B. Character of Trust Estate. Any community property transferred to the trust shall remain community property after its transfer. Any separate property transferred to the trust shall remain the separate property of the contributing Trustor after its transfer. It is the Trustors' intention that the Trustee shall have no more extensive power over any community property transferred to the Trust Estate than either of the Trustors would have had under California Family Code Sections 1100 and 1102 had this trust not been created, and this Agreement shall be so interpreted to achieve this intention. This limitation shall terminate on the death of either Trustor.

Article 1.

ARTICLE 3

DISPOSITION OF INCOME AND PRINCIPAL DURING TRUSTORS' LIVES

A. Disposition of Income and Principal From Community Estate.

1. Distributions to Husband and/or Wife. During the joint lifetimes of the Trustors, the Trustee shall [the two Debtors and Debtors in Possession] pay to Husband or Wife for the account of the community, or shall apply for the Trustors' benefit, as much of the net income and principal of the community estate as is necessary in the Trustee's [Debtor's and Debtor's in Possession] discretion for the Trustors' proper health, education, support and maintenance in accordance with their accustomed manner of living at the date of this Agreement, and taking into account, to the extent the Trustee deems advisable, any income or other resources of the Trustors known to the Trustee and reasonably available for these purposes. The spouse receiving payments shall have the same duty to use community income and principal received under this Agreement for the benefit of the Trustors as he or she has with respect to any other community property.

Article 3

The Purchase Agreement signature page states that the purchaser is “Weststeyn Dairy” and is signed by Jakob Weststeyn, who title is “Owner.” The Credit Information Page (Exhibit 3 to the Agreement) is signed by Jakob Weststeyn, with no title stated. The Solar Power Purchase Agreement General Terms and Conditions [Exhibit 5 to the Agreement] is signed by Jakob Weststeyn, whose title is Owner.

The Easement Agreement [Exhibit 6 to the Agreement] states that Weststeyn Dairy grants an easement to Creditor TA on the 5907 Co Rd 65 Willows, California property. It is signed by Jakob Weststeyn, whose title is owner.

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- E. It is difficult to give an accurate valuation of Debtor in Possession’s interest in the 2015 Trust; however, \$10,000 per month for the next five years is a good valuation because this number equals or exceeds what the Debtor in Possession can reasonably expect in payments from the 2015 Trust. Therefore, \$470,653.00 is a good valuation.

Dckt. 98.

DISCUSSION

Failure to Include all Relevant Assets in the Bankruptcy Estate

The Chapter 12 Trustee asserts that Debtor in Possession is one of the beneficiaries in the Weststeyn 2015 Trust, and Debtor in Possession did not list the full value of the 2015 Trust as property of the bankruptcy estate. As well as being a beneficiary of the 2015 Trust, Debtor in Possession established this trust and is the trustee. Therefore, the Ch. 12 Trustee asserts the full, present value of the trust should be included as property of the bankruptcy estate. Debtor in Possession holds a beneficial interest in the trust as noted in the Status Statement section (E)(1)(e)(1), Dckt. 51, enabling Debtor in Possession, under its own discretion, to distribute as much of the net income or principal of the 2015 Trust to themselves.

Where Debtor in Possession is the trustee and is able to exercise rights within the 2015 Trust that benefits Debtor in Possession itself, the assets in the 2015 Trust become property of the bankruptcy estate. *In re Cutter*, 398 B.R. 6, 19 (B.A.P. 9th Cir. 2008) (citing *Askanase v. LivingWell, Inc.*, 45 F.3d 103, 106 (5th Cir.1995)). The Supreme Court has interpreted 11 U.S.C. § 541(c)(1) & (2) to mean that a Debtor in Possession may only “exclude property of the estate in any interest in a Plan or trust that contains a transfer restriction enforceable under any relevant nonbankruptcy law.” *In re Bogetti*, 73 Fed. App’x. 266, 268 (9th Cir. 2003) (quoting *Patterson v. Shumate*, 504 U.S. 753, 758 (1992)). California Probate Code § 15304, the relevant nonbankruptcy law in California, states that:

- (a) If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(b) If the settlor is the beneficiary of a trust created by the settlor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal or both to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

Cal. Prob. Code § 15304 (a) & (b).

As can be seen here, the relevant nonbankruptcy law does not permit a Debtor to exclude a self-settled trust from the estate, nor does the law permit restraints on alienation in a trust when the settlor is also the beneficiary. Furthermore, this section of the Code provides that if the settlor of the trust is the beneficiary, then whatever the trustee has the power to distribute, the creditors may collect. In deciding what the trustee has ability to distribute, the court looks to the trust instrument, which states as follows:

1. Distributions to Husband and/or Wife. During the joint lifetime of the Trustors, the Trustee shall pay to Husband or Wife for the account of the community, or shall apply for the Trustors' benefit, as much of the net income and principal of the community estate as is necessary in the Trustee's discretion for the Trustors' proper health, education, support and maintenance in accordance with their accustomed manner of living at the date of this Agreement, taking into account, to the extent the Trustee deems advisable, any income or other resources of the Trustors known to the Trustee and reasonably available for these purposes.

Status Statement section (E)(1)(e)(1), Dckt. 51. Trustee, also Debtor in Possession in this case, may pay to beneficiaries whatever is necessary from both principal and income of the 2015 Trust, at trustee's discretion, for the health, education, support and maintenance of beneficiaries. The controlling language of this trust is discretionary, apparently placing no actual limits on the trustee's ability to make distributions from the trust.

Mr. Spacone cites to California Probate Code § 15302 to support his contention that trust assets in a health, education, maintenance, and support trust may not be reached by a creditor until a distribution is actually made to the beneficiary. Dckt. 98. His reliance on this code section is misplaced; § 15302 states "Except as provided in Sections 15304. . ." thereby subjecting § 15302 to the provisions of § 15304. Cal Prob. Code. § 15302. Therefore, even a health, education, maintenance, and support trust is subject to creditor judgments if the trust was self-settled, up to the limits the trustee may access in the trust. Cal Prob. Code. § 15304(b).

Debtor in Possession, realizing the hurdle it must overcome, attempts to focus the court's attention on language in the trust instrument such as "is necessary" for "health, education, support, and maintenance." Dckt. 101. However, Debtor in Possession is not addressing the problem of the controlling term "discretionary" regarding the trustee's powers of distribution. By the court's interpretation of the 2015 Trust instrument, Debtor in Possession settled the 2015 Trust, retained beneficial rights in the real property placed into the trust, retained legal title over the real estate by naming themselves as trustees, and indeed placed no limits on its ability to withdraw from the "net income and principal of the community estate." Status Statement section (E)(1)(e)(1), Dckt. 51. The only purported limitation Debtor in Possession points to is the language of "necessary for... health, education, support and maintenance," an HEMS standard. *Id.*

However, what is “necessary” is whatever the Debtor in Possession as trustee impose on themselves, in their discretion.

Without any guardrails or safeguards in place to define the HEMS standard, the trustee could theoretically decide any amount is necessary for maintenance or support, within its sole discretion, giving the trustee what amounts to unfettered access to both the trust corpus and net income generated.

The court disagrees with Debtor in Possession and finds *Cutter* to be a helpful case. The important language from the trust instrument in *Cutter* stated,

No distributions shall be made out of the trust except in the sole discretion of the trustee, in an amount to provide for the health, the education, or the support and maintenance in the customary manner of living of the trustor, prior to the death of the trustor. At the time of the death of the trustor, outright distributions shall be made to the beneficiaries of the trust subject to the limitation in Paragraph 6.

In re Cutter, 398 B.R. at 12. There, the Debtor was similarly settlor, trustee, and beneficiary of the trust. With a few minor differences, the controlling language from the trust instrument in *Cutter* largely resembles the trust instrument in this case. Both trusts are HEMS trusts but left power of distributions to the trustee’s discretion. In fact, the trust in *Cutter* may have been even more restrictive regarding distributions because it only allowed the trustee to invade the trust corpus for emergencies, whereas in our case, the trust instrument allows the trustee to invade the trust corpus merely to support their standard of living. *In re Cutter*, 398 B.R. at 22. The discussion by the Bankruptcy Appellate Panel in *Cutter* includes the following:

We agree with the bankruptcy court's conclusion. Debtor had access to potentially all of the Trust's assets and income in order to maintain his standard of living. Debtor possessed the power to "invade" the corpus of the Trust for emergencies relating to his health, education, support and/or maintenance. See P 7.13 of the Trust. Debtor possessed the right, at his sole discretion, to make distributions in order to provide for his health, education, or "support and maintenance in [his] customary standard of living." See P 5.00 of the Trust.

B. The Bankruptcy Court Did Not Err In Applying California Law on Self-Settled Spendthrift Trusts

Debtor had a beneficial and equitable interest in the Trust which became property of the estate under section 541(a). California law invalidating efforts of a settlor from using a trust to shield property from his or her creditors applies "even where the settlor is not a nominal beneficiary, as where a settlor attempts to create a spendthrift trust for the benefit of his or her minor children, to be managed by the settlor and revocable at his or her pleasure." 60 Cal. Jur. 3d Trusts § 134 (2008)(emphasis added), citing *Sheean v. Michel*, 6 Cal.2d 324, 57 P.2d 127 (1936).

To the extent Debtor was the trustor and beneficiary of the Trust, it is a self-settled trust. While California law recognizes the validity of spendthrift trusts, any spendthrift provisions are invalid when the settlor is a beneficiary. *Brooks-Hamilton v. City of Oakland (In re Brooks-Hamilton)*, 348 B.R. 512, 521 (Bankr. N.D. Cal. 2006); see also Restatement (Third) of Trusts § 58(2) (2003) ("A

restraint on the voluntary and involuntary alienation of a beneficial interest retained by the settlor of a trust is invalid."). As noted by the Ninth Circuit:

The critical inquiry in determining whether a spendthrift trust is valid under California law is whether the trust's beneficiaries exercise excessive control over the trust. *See In re Witwer*, 148 B.R. 930, 937 (Bankr. C.D. Cal. 1992). California law does not allow a participant with excessive control over his or her trust to shield that trust with an anti-alienation provision lacking true substance.

Ehrenberg v. S. Cal. Permanente Med. Group (In re Moses), 167 F.3d 470, 473 (9th Cir. 1999) (emphasis added).

As the Ninth Circuit observed in *Moses*, citing California Probate Code section 15304(a), "under California law, a settlor of a spendthrift trust cannot also act as beneficiary of that trust (i.e., California law prohibits 'self-settled' trusts)." *Id.* "California law voids self-settled trusts to prevent individuals from placing their property beyond the reach of their creditors while at the same time still reaping the bounties of such property." *Id.*, citing *Nelson v. California Trust Co.*, 33 Cal.2d 501, 202 P.2d 1021 (Cal. 1949). The *Nelson* court succinctly described why California law prohibits a trustor from benefitting from trust property he is attempting to shield from creditors:

It is against public policy to permit a man to tie up his property in such a way that he can enjoy it but prevent his creditors from reaching it, and where the settlor makes himself a beneficiary of a trust any restraints in the instrument on the involuntary alienation of his interest are invalid and ineffective.

Nelson, 202 P.2d at 1021.

The California Legislature confirmed the rule of *Nelson* in Probate Code section 15304(a):

If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

Cal. Prob. C. § 15304(a) (emphasis added). Moreover, subsection (b) of Probate Code section 15304 states that if the settlor is the beneficiary of a trust that he created and the trust instrument provides that a trustee may or shall pay income or principal for the support of the settlor, a creditor of that settlor can reach "the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust." Cal. Prob. C. § 15304(b).

Under the Trust Agreement, Debtor as Trustee could potentially use all of the Trust's principal and income to maintain his standard of living; no limitation is placed on the amount that he can use for that purpose. Thus, under California Probate Code section 15304(b), a creditor of Debtor could reach all of the Trust assets contributed by Debtor. Therefore, under California law, Trustee (as a hypothetical lien creditor) can likewise recover those assets under section 544(a)(1). The court did not err in holding that the Trust Properties were property of the estate.

C. The Bankruptcy Court Should Have Granted Summary Judgment As to the Entire Trust Corpus, Including the Ermatinger Third

While the bankruptcy court correctly vested title to the Trust Properties in Trustee pursuant to section 544(a)(1) and California Probate Code section 15304(b), it could have held, as a matter of law, that the entire Trust corpus was property of the estate by virtue of section 541 alone. Ordinarily, if only a portion of a spendthrift trust's corpus is contributed by a beneficiary-debtor, only that portion becomes property of the beneficiary-debtor's estate. *Osherow v. Porras (In re Porras)*, 312 B.R. 81, 131 (Bankr. W.D. Tex. 2004). If, however, the trust agreement allows the debtor-beneficiary to exercise control over and reach trust property contributed by others, the estate is entitled to the maximum amount that the trust could pay or distribute to the debtor-beneficiary. *Id.* at n.30. Therefore, the bankruptcy court could have, and should have, granted summary judgment granting Trustee title to all of the Trust corpus.

As trustee of the Trust, Debtor had the sole discretion to use Trust assets and income for his benefit. Under paragraph 5.00, Debtor had the power, as trustee, to make distributions from the Trust to himself in order to maintain his customary standard of living. Under paragraph 7.13, he had the power to invade the Trust corpus for "emergencies related to [his] health, education, support and/or maintenance." Debtor had unfettered access to and dominion and control over the Trust and its assets; he could use the Trust income and corpus for whatever he deemed necessary for his support and maintenance.

Consequently, under section 541(a)(1) itself, Debtor's beneficial interest in all of the Trust corpus became property of the estate and Debtor's power to use Trust assets for his benefit became property of the estate. *See Askanase*, 45 F.3d at 106 ("what comes to the bankruptcy estate is not only the property in which debtor has an interest, but also, the powers the debtor can exercise for its own benefit over property regardless of the title debtor may be acting under"), quoting and citing *In re Gifford*, 93 B.R. 636, 638-40 (Bankr. N.D. Ind. 1988) (observing public policy "against allowing anyone to place their assets in trust, for their own benefit, and simultaneously shielding them from the claims of their creditors" and holding that where debtor had authority to exercise dominion over trust assets for his own benefit, the bankruptcy trustee assumes that authority and can acquire access to the funds for the benefit of creditors). *See also Robbins v. Webster (In re Robbins)*, 826 F.2d 293, 295 (4th Cir. 1987) (where trust trustee was authorized to apply entire corpus of trust for support and maintenance of settlors, entire corpus was property of estate which debtors could not exempt); *Miller v. Lincoln Nat'l Bank & Trust Co. (In re Cook)*, 43

B.R. 996, 1001 (N.D. Ind. 1984) (where debtor had present access to trust corpus for hardship purposes such as health or education, the debtor's right of withdrawal and his interest in the trust became property of the estate).

In summary, to the extent Debtor was the trustee of the Trust, he possessed the power (at his sole discretion) to invade the corpus and make distributions from the Trust for his own benefit. The entire corpus, including the Ermatinger Third, is therefore property of the estate. The bankruptcy court should have granted summary judgment in favor of Trustee as to the entire trust corpus.

Cutter v. Seror (In re Cutter), 398 B.R. 6 at 20-22.

In reviewing California Probate Code § 15304 cited by the Bankruptcy Appellate Panel, the court emphasizes these provisions that may need to be considered at the September 21, 2023 hearing:

§ 15304. Where settlor is a beneficiary

(a) **If the settlor is a beneficiary of a trust** created by the settlor and the settlor's interest is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, **the restraint is invalid against transferees or creditors of the settlor**. The invalidity of the restraint on transfer does not affect the validity of the trust.

(b) **If the settlor is the beneficiary of a trust created by the settlor** and the trust instrument **provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal or both to be paid to or for the benefit of the settlor**, a transferee or **creditor of the settlor may reach the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument**, not exceeding the amount of the settlor's proportionate contribution to the trust.

(c) For purposes of this chapter, the settlor shall not be considered to be a beneficiary of an irrevocable trust created by the settlor solely by reason of a discretionary authority vested in the trustee to pay directly or reimburse the settlor for any federal or state income tax on trust income or principal that is payable by the settlor, and a transferee or creditor of the settlor shall not be entitled to reach any amount solely by a reason of that discretionary authority.

Cal Prob. Code § 15304 (emphasis added).

The Ninth Circuit is certainly not alone in holding that self-settled trusts, where the debtor is settlor, trustee, and beneficiary of the trust, belong in the bankruptcy estate. *See in re Cameron*, 223 B.R. 20, 25 (Bankr. S.D. of Fla. 1998); *In re Schultz*, 324 B.R. 712, 718 Bankr. (E. D. of Ark. 2005) (limiting trustee's control over trust assets to only those which the debtor retained beneficial interests); *Matter of Shurley*, 115 F.3d 333, 339 (5th Cir. 1997).

Asserted Executory Contract

The Creditor TA Opposition focuses on an alleged executory contract. A copy of the Agreement is provided as Exhibit 1; Dckt. 93. The Agreement is titled “PowerNow Solar Power Purchase Agreement. It states, “This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in Exhibit 2 [to the Agreement].”

The term of the Agreement is stated to be for 25 years and there is an option to purchase the system. Weststeyn Dairy is identified as the “Purchaser” with no information given about what or who Weststeyn Dairy is.

The Agreement states it is for the purchase and sale of Electricity.

Neither the Debtor in Possession nor Creditor TA provide the court with an analysis of what constitutes an executory contract and whether a contract to purchase electricity is an executory contract.

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

- (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee “acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate” and should approve rejection unless the “conclusion that rejection would be ‘advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.’” *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate’s prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009). However, if the debtor is not a party to the contract, 11 U.S.C. § 365(a) is inapplicable.

At the hearing, counsel for the Debtor in Possession and counsel for Creditor TA advised the court that they have reached an agreement for amendments to the Plan to address this Opposition,

Need for Determination of Estate’s Interest in the Trust Before Determining Whether Confirmation is Proper

A fundamental dispute in this case concerns what is the extent and value of the Estate’s interest in the 2015 Trust. Debtor in Possession argues it is very modest. The Ch. 12 Trustee argues it is everything in the 2015 Trust. It seems that there will be a need for an evidentiary hearing to determine the Estate’s interest in the Trust. Such determination appears to require an adversary proceeding as stated in Federal

Rule of Bankruptcy Procedure 7001(2), or conducted as an evidential hearing within the Motion to Confirm if consented to by the Parties.

While the Debtor in Possession asserts that certain creditors are attempting to delay, disrupt, and vindictively bully the Debtor in Possession, the need for a determination of the interests of the Estate in the Trust will afford such creditors the time to engage in *bona fide*, good faith discovery as is necessary and appropriate.

September 21, 2023 Hearing

Counsel for the Debtor in Possession reported that it appears that three of the four objections have been resolved, with only the Trustee's Objection as to the value of the Estate's interest in the Trust. The Plan provides for the Debtor to pay the projected disposable income over three years, with a minimum of \$675,000. The \$675,000 is what the Debtors compute their interest in the Trust to be.

The Trustee stated that he needs time to do discovery and see what economic resolution can be reached.

Counsel for GEH Farms concurs with the bifurcation and time to conduct discovery.

The court will schedule an evidentiary hearing on the issue of the Estate's interest in the Trust (all parties in interest consenting to an evidentiary hearing rather than a separate adversary proceeding). The court bifurcates the issues, with the evidentiary hearing being conducted first to determine the Estate's interest in the Trust and then when that issue is determined, proceed with the balance of the confirmation issues, if any.

The Parties discussed amending the Plan to provide for the litigation of the Estate's interest in the Trust, and also providing for the claims of creditors pending that litigation being resolved. Additionally, they discussed that with some further discovery, the dispute over the value of the Estate's interest in the Trust could be resolved by agreement.

The court continues this matter for an hearing scheduling conference to be conducted at 1:30 p.m. on October 31, 2023.

Debtors' Atty: Daniel L. Egan, Jason Eldred

Notes:

Set by order of the court filed 11/2/23 [Dckt 135]. Opposition shall be filed and served on or before 11/13/23. Discovery shall commence immediately in this contested matter.

Response to Debtors' Objection to Claim of GEH Farms filed 11/13/23 [Dckt 139]

The Objection to the Claim of GEH Farms is XXXXXXX
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NOVEMBER 29, 2023 STATUS CONFERENCE

Response Pleadings Filed by GEH Farms

On November 13, 2023, GEH Farms filed it's Response (Dckt. 139) to the Objection to Amended Proof of Claim 13-2. In summary, GEH Farms asserts that it had no knowledge that the Debtors were operating a business in a separate business entity and believed that the dairy operation was the Debtor's sole proprietorship. Exhibits have been provided listing the orders for the period June 2022 through October 2022, the payments made, and that the claim of (\$31,180.55) is for purchases made during the period September 28, 2022, through October 11, 2022.

The Declaration of Nikola Hawes, who is identified as the primary record keeper for Greg Hawes (who has also filed a proof off claim) and GEH Farms. Dckt. 140. Declarant states that orders were initially placed in June 2022, and that the Debtors didn't disclose that the dairy operation was a separate business entity and not a sole proprietorship. *Id.*, ¶ 4. Payments for the purchases were made either immediately by check or point of sale, or within two weeks of delivery. Copies of checks and invoices are attached to the Declaration.

The Declaration also states that the orders were placed mainly by phone by a person named ["BE"]. Further, testimony is made that BE is asserted to have makes references to a person named Blake who made additional orders, that he delivered the orders, he accepted the payment, and then he embezzled some the payment monies for such orders.

GEH Farms then requests that he court set a discovery schedule for this Contested Matter.

At the Status Conference, XXXXXXX

REVIEW OF OBJECTION AND PROCEEDINGS

Jakob and Gladys Weststeyn, the Debtor in Possession (“Objector,” “Debtor in Possession”) requests that the court disallow the claim of Claim of GEH Farms, dba Hawes Ranch and Farm Supply, (“Creditor) Proof of Claim 13-2. There is a parallel Objection to Proof of Claim 13-2 filed by Greg Hawes in this case. The Claim of Creditor is asserted to be entirely unsecured in the amount of \$31,180.55. Objector asserts that:

1. Beginning in 2014 and culminating in 2015 the two Debtors created the current structure of their dairy and farming business. This is stated as:
 - a. Debtors formed JG Weststeyn Dairy, LP (“Dairy LP”) to conduct the dairy operations.
 - i. Identity of General Partner
 - (1) The original general partner of Dairy LP was JG Weststeyn Dairy, Inc.
 - (2) At some later date, JG Weststeyn, LLC was substituted in as the general partner.
 - ii. Identity of limited partner
 - (1) The limited partnership interests, totaling 99% of the partnership interests of Dairy LP, are held in the 2015 Weststeyn Revocable Trust.
 - (a) The 2015 Weststeyn Revocable Trust was created by the Debtors for estate planning purposes.
2. Beginning in 2016, Dairy LP farmed approximately 2,200 acres of farm land producing feed for its dairy cattle, in addition to operating the dairy.
 - a. This dairy operation was managed by Debtor Jakob Weststeyn. Other family members worked on the dairy business, including Debtor Gladys Weststeyn.
3. The Debtors never operated the dairy in their own names, but it was operated by Dairy LP.
4. During the last half of 2022, Dairy LP purchased feed for its dairy cattle from Greg Hawes (“Hawes”) and GEH Farms, dba Hawes Ranch and Farm Supply.

- a. It is asserted that Hawes and GEH Farms were contracting with Dairy LP.
 - i. The invoices issued by Hawes and GEH Farms were to “JG Weststeyn Dairy.”
 - ii. No invoices were issued in the names of either of the two Debtors.
5. At the end of 2022, Dairy LP liquidated its assets and the obligations owed to Hawes and GEH Farms went unpaid.
6. It is alleged that Hawes or GEH Farms, or their employees, took improper actions to try and induce payment of the obligations for the feed.
7. The basis for the Objection to the Claim
 - a. The obligation is owed by Dairy LP, and not either of the two Debtors.
 - b. The California Commercial Code, § 2201, requires that a contract be in writing for the sale of goods, such as the feed that is the subject of the invoices upon which Hawes and GEH Farms assert their claims.
 - c. The goods at issue were not received by the Debtors personally, but by Dairy LP. Thus, as provided in California Commercial Code § 2202(2)(c), the obligation cannot be owed by Debtors.
 - d. Debtor in Possession never operated the dairy farm under its own name, and GEH Farms’ Claim is actually with the dairy farm. Rather, the dairy farm always operated under JG Weststeyn Dairy, LP (Dairy LP), with JG Weststeyn, LLC acting as the general partner and the 2015 Weststeyn Revocable Trust acting as the limited partner of the Dairy LP. Therefore, GEH Farms has filed its Claim against the wrong party.
8. The statute of frauds under California Commercial Code § 2201 bars recovery. There is no contract in writing signed by the Debtor in Possession for the sale of the goods alleged in the Claim, and the goods were not received by the Debtor in Possession, but were received by the Dairy LP.

Objection, Dckt. 120.

The Declaration of Debtor in Possession Gladys Weststeyn is provided in support of the Objection to Claim. Dckt. 122. Her testimony is almost word for word the grounds as stated by counsel for the Debtor in Possession in the Objection. Some key points noted by the court includes the following (identified by paragraph number in the Declaration):

8. She testifies that Hawes and GEH Farms contracted with Dairy LP, and did not deliver any feed to the Debtors individually. She includes her legal opinion that there is no contract or agreement that is enforceable against the Debtors and that an objection to claim is proper pursuant to 11 U.S.C. § 502(b)(1).

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

California Commercial Code § 2201

The State Law cited to by the Debtor in Possession is the California Commercial Code, specifically § 2201 which currently provides:

§ 2201. Formal requirements; Statute of frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars (\$500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subdivision (1) but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2606).

(4) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

The terms "Merchant" and "Between Merchants" are statutorily defined in California Commercial Code § 2104(1) and (3) as:

§ 2104. Definitions: "Merchant"; "Between merchants"; "Financing agency"

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

...

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Objector argues that the Claim premised on the "person" named on the invoice is not one or both of the Debtors. As provided in California Commercial Code § 2201(2), the statute of frauds is satisfied as:

Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

California Commercial Code § 2201(2). A “merchant” is defined as a “ person who deals in goods of the kind.” California Commercial Code § 2104(1). California courts hold that an invoice will bring a contract outside the statute of frauds as between merchants for purposes of § 2201(2). *See Dairyman’s Cooperative Creamery Association v. Leipold*, 34 Cal. App. 3d 184, 187 (Cal. Ct. App. 1973) (holding an invoice that confirmed the terms and conditions of the sale satisfied the statute of frauds where the purchaser did not object within ten days).

The question arises as to who the “person” is named on those invoices.

Review of Proof of Claim 13-2

Creditor states in ¶ 7 of Amended Proof of Claim 13-2 that the claim is in the amount of \$31,180.55 and that a statement itemizing the interest, fees, or other charges is attached. In ¶ 8 of Amended Proof of Claim 13-2, it is stated that the claim is based on “feed delivered.”

Attached to Amended Proof of Claim 13-2 are several Invoices which provide the following information, as identified by each Invoice:

A. Invoice 702343

1. Invoice date 09/28/2022
2. Hawes Ranch & Farm listed at the top of the Invoice.
3. JG Weststeyn Dairy listed as to whom the product was sold to.
4. Total is stated to be \$9,458.55
5. Invoice total due by 09/28/2022.

B. Invoice 702345

1. Invoice date 09/28/2022
2. Hawes Ranch & Farm listed at the top of the Invoice.
3. JG Weststeyn Dairy listed as to whom the product was sold to.
4. Total is stated to be \$9,615.65
5. Invoice total due by 09/28/2022.

C. Invoice 702349

1. Invoice Date 09/28/2022
2. Hawes Ranch & Farm listed at the top of the Invoice.

3. JG Weststeyn Dairy listed as to whom the product was sold to.
 4. Total is stated to be \$4,783.85
 5. Invoice total due by 09/28/2022.
- D. Invoice 702351
1. Invoice Date 09/28/2022
 2. Hawes Ranch & Farm listed at the top of the Invoice.
 3. JG Weststeyn Dairy listed as to whom the product was sold to.
 4. Total is stated to be \$4,804.20
 5. Invoice total due by 09/28/2022.
- E. Invoice 702948
1. Invoice Date 10/11/2022
 2. Hawes Ranch & Farm listed at the top of the Invoice.
 3. JG Weststeyn Dairy listed as to whom the product was sold to.
 4. Total is stated to be \$9,615.00
 5. Invoice total due by 10/11/2022.

Notice of Opposition by Hawes and GEH Farms

On October 25, 2023, Hawes and GEH Farms filed a Response to an Application by Debtor in Possession to continue the Scheduling Conference for an Evidentiary Hearing for the Debtor in Possession's Motion to Confirm the Chapter 12 Plan. Response; Dckt. 313. In it Hawes and GEH Farms make it clear that they will contest the two claims objections. Hawes and GEH Farms anticipate discovery in connection with the confirmation process, and it appears these claims objections.

NOVEMBER 2, 2023 HEARING

At the hearing, opposition was stated. The court continues the hearing to allow for an opposition to be filed and discovery to commence immediately. A status and scheduling conference will be conducted at 2:00 p.m. on November 29, 2023.

Debtors' Atty: Daniel L. Egan, Jason Eldred

Notes:

Continued from 11/2/23 as a scheduling and status conference by order filed 11/2/23 [Dckt 136]; Opposition to be filed and served on or before 11/13/23.

Response to Debtors' Objection to Claim of Greg Hawes filed 11/13/23 [Dckt 137]

The Objection to the Claim of Greg Hawes is xxxxxxx

NOVEMBER 29, 2023 STATUS CONFERENCE

Response Pleadings Filed by Greg Hawes Farms

On November 13, 2023, Greg Hawes filed his Response (Dckt. 137) to the Objection to Amended Proof of Claim 12-2. In summary, Greg Hawes asserts that he had no knowledge that the Debtors were operating a business in a separate business entity and believed that the dairy operation was the Debtor's sole proprietorship. Exhibits have been provided listing the orders for the period June 2022 through October 2022, the payments made, and that the claim of (\$30,417.65) is for purchases made during the period September 20, 2022, through September 28, 2022.

The Declaration of Nikola Hawes, who is identified as the primary record keeper for Greg Hawes and GEH Farms (which has also filed a proof of claim in this Case). Dckt. 138. Declarant states that orders were initially placed in June 2022, and that the Debtors didn't disclose that the dairy operation was a separate business entity and not a sole proprietorship. *Id.*, ¶ 4. Payments for the purchases were made either immediately by check or point of sale, or within two weeks of delivery. Copies of checks and invoices are attached to the Declaration.

The Declaration also states that the orders were placed mainly by phone by a person named ["BE"]. Further, testimony is made that BE is asserted to have makes references to a person named Blake who made additional orders, that he delivered the orders, he accepted the payment, and then he embezzled some the payment monies for such orders.

Greg Hawes then requests that he court set a discovery schedule for this Contested Matter.

At the Status Conference, xxxxxxx

REVIEW OF OBJECTION AND PROCEEDINGS

Jakob and Gladys Weststeyn, the Debtor in Possession (“Objector,” “Debtor in Possession”) requests that the court disallow the claim of Greg Hawes (“Creditor”), Proof of Claim No. 12-2 (“Claim”) in this case. There is a parallel Objection to Proof of Claim 13-2 filed by GEH Farms, dba Hawes Ranch and Farm Supply. The Claim is asserted to be unsecured in the amount of \$30,417.65. Objector asserts that:

1. Beginning in 2014 and culminating in 2015 the two Debtors created the current structure of their dairy and farming business. This is stated as:
 - a. Debtors formed JG Weststeyn Dairy, LP (“Dairy LP”) to conduct the dairy operations.
 - i. Identity of General Partner
 - (1) The original general partner of Dairy LP was JG Weststeyn Dairy, Inc.
 - (2) At some later date, JG Weststeyn, LLC was substituted in as the general partner.
 - ii. Identity of limited partner
 - (1) The limited partnership interests, totaling 99% of the partnership interests of Dairy LP, are held in the 2015 Weststeyn Revocable Trust.
 - (a) The 2015 Weststeyn Revocable Trust was created by the Debtors for estate planning purposes.
2. Beginning in 2016, Dairy LP farmed approximately 2,200 acres of farm land producing feed for its dairy cattle, in addition to operating the dairy.
 - a. This dairy operation was managed by Debtor Jakob Weststeyn. Other family members worked on the dairy business, including Debtor Gladys Weststeyn.
3. The Debtors never operated the dairy in their own names, but it was operated by Dairy LP.
4. During the last half of 2022, Dairy LP purchased feed for its dairy cattle from Greg Hawes (“Hawes”) and GEH Farms, dba Hawes Ranch and Farm Supply.
 - a. It is asserted that Hawes and GEH Farms were contracting with Dairy LP.

- i. The invoices issued by Hawes and GEH Farms were to “JG Weststeyn Dairy.”
 - ii. No invoices were issued in the names of either of the two Debtors.
5. At the end of 2022, Dairy LP liquidated its assets and the obligations owed to Hawes and GEH Farms went unpaid.
6. It is alleged that Hawes or GEH Farms, or their employees, took improper actions to try and induce payment of the obligations for the feed.
7. The basis for the Objection to the Claim
 - a. The obligation is owed by Dairy LP, and not either of the two Debtors.
 - b. The California Commercial Code, § 2201, requires that a contract be in writing for the sale of goods, such as the feed that is the subject of the invoices upon which Hawes and GEH Farms assert their claims.
 - c. The goods at issue were not received by the Debtors personally, but by Dairy LP. Thus, as provided in California Commercial Code § 2202(2)(c), the obligation cannot be owed by Debtors.
 - d. Debtor in Possession never operated the dairy farm under its own name, and GEH Farms’ Claim is actually with the dairy farm. Rather, the dairy farm always operated under JG Weststeyn Dairy, LP (Dairy LP), with JG Weststeyn, LLC acting as the general partner and the 2015 Weststeyn Revocable Trust acting as the limited partner of the Dairy LP. Therefore, GEH Farms has filed its Claim against the wrong party.
8. The statute of frauds under California Commercial Code § 2201 bars recovery. There is no contract in writing signed by the Debtor in Possession for the sale of the goods alleged in the Claim, and the goods were not received by the Debtor in Possession, but were received by the Dairy LP.

Objection, Dckt. 115

The Declaration of Debtor in Possession Gladys Weststeyn is provided in support of the Objection to Claim. Dckt. 117. Her testimony is almost word for word the grounds as stated by counsel for the Debtor in Possession in the Objection. Some key points noted by the court includes the following (identified by paragraph number in the Declaration):

8. She testifies that Hawes and GEH Farms contracted with Dairy LP, and did not deliver any feed to the Debtors individually. She includes her legal opinion that there is no contract or agreement that is enforceable against the Debtors and that an objection to claim is proper pursuant to 11 U.S.C. § 502(b)(1).

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

California Commercial Code § 2201

The State Law cited to by the Debtor in Possession is the California Commercial Code, specifically § 2201 which currently provides:

§ 2201. Formal requirements; Statute of frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars (\$500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subdivision (1) but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2606).

(4) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

The terms "Merchant" and "Between Merchants" are statutorily defined in California Commercial Code § 2104(1) and (3) as:

§ 2104. Definitions: "Merchant"; "Between merchants"; "Financing agency"

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

...

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Objector's argument that the Claim is premised on the "person" named on the invoice is not one or both of the Debtors. As provided in California Commercial Code § 2201(2), the statute of frauds is satisfied as:

Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

California Commercial Code § 2201(2). A “merchant” is defined as a “ person who deals in goods of the kind.” California Commercial Code § 2104(1). California courts hold that an invoice will bring a contract outside the statute of frauds as between merchants for purposes of § 2201(2). *See Dairyman’s Cooperative Creamery Association v. Leipold*, 34 Cal. App. 3d 184, 187 (Cal. Ct. App. 1973) (holding an invoice that confirmed the terms and conditions of the sale satisfied the statute of frauds where the purchaser did not object within ten days).

The question arises as to who the “person” is named on those invoices.

Review of Proof of Claim 12-2

Creditor states in ¶ 7 of Amended Proof of Claim 12-2 that the claim is in the amount of \$30,417.65 and that a statement itemizing the interest, fees, or other charges is attached. In ¶ 8 of Amended Proof of Claim 13-2, it is stated that the claim is based on “feed delivered.”

Attached to Amended Proof of Claim 13-2 are several Invoices which provide the following information, as identified by each Invoice:

- a. Invoice 523
 - i. Invoice date 09/20/2022
 - ii. Greg Hawes listed at the top of the Invoice.
 - iii. JG Weststeyn Dairy listed as “Bill To.”
 - iv. Total is stated to be \$11,863.36. (The invoice amounts are of questionable legibility.)
- b. Invoice 525
 - i. Invoice date 09/28/2022
 - ii. Greg Hawes listed at the top of the Invoice.
 - iii. JG Weststeyn Dairy listed as to “Bill To.”
 - iv. Total is stated to be \$18,534.40. (The invoice amounts are of questionable legibility.)

Notice of Opposition by Hawes and GEH Farms

On October 25, 2023, Hawes and GEH Farms filed a Response to an Application by Debtor in Possession to continue the Scheduling Conference for an Evidentiary Hearing for the Debtor in Possession’s Motion to Confirm the Chapter 12 Plan. Response; Dckt. 313. In it Hawes and GEH Farms make it clear that they will contest the two claims objections. Hawes and GEH Farms anticipate discovery in connection with the confirmation process, and it appears these claims objections.

NOVEMBER 2, 2023 HEARING

At the hearing, opposition was stated. The court continues the hearing to allow for an opposition to be filed and discovery to commence immediately. A status and scheduling conference will be conducted at 2:00 p.m. on November 29, 2023.

7. [23-21899-E-12](#) **JAKOB/GLADYS WESTSTEYN** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
6-9-23 [\[1\]](#)

Debtors' Atty: Daniel L. Egan, Jason Eldred

Notes:

Operating Reports filed: 8/11/23; 9/14/23; 10/14/23; 11/14/23

Trustee Report at 341 Meeting lodged: 8/15/23; 9/14/23

[WF-8] Debtors' Motion for Order Approving Stipulation with the California Franchise Tax Board filed 8/17/23 [Dckt 73] (stipulation filed 8/17/23 [Dckt 76]); Order granting filed 9/24/23 [Dckt 113]

Application for Pro Hac Vice and Proposed Order filed 9/20/23 [Dckt 106]

The Status Conference is continued to 2:00 p.m. on xxxxxxx , 2024.
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NOVEMBER 29, 2023 STATUS CONFERENCE

The court has discussed in the Civil Minutes for the November 29, 2023 Scheduling Conference on the Motion to Confirm the Chapter 12 Plan in this case the reported resolution of disputes and filing of an Amended Chapter 12 Plan. The court has also discussed in the Civil Minutes for the November 20, 2023 Status Conferences for the Objections filed by the Debtor in Possession to the Proofs of Claim filed by Greg Hawes and GEH Farms the prosecution of discovery in those Objections. The court does not repeat that information here.

The Status Conference is continued.

AUGUST 8, 2023 STATUS CONFERENCE

Jakob and Gladys, the two debtors who are now also the Debtor in Possession, filed a Status Report on July 31, 2023. Dckt. 51. The business of the Debtor are dairy and farming operations. The real property on which the dairy and farming operations occur were transferred into an Irrevocable Trust, for which the two debtors and their children are beneficiaries, in 2016 (corrected deeds recorded for deeds recorded in 2015).

The dairy operations are conducted by a limited partnership identified as Dairy LP. 99% interest in Dairy LP is owned by the irrevocable trust.

To build a “state of the art dairy facility” in 2016/2017, financing was obtained from the Bank of the West. The financing was obtained by Dairy LP, with personal guaranties given by the two debtors and the Irrevocable Trust.

The Status Reports recounts a series of financial setbacks for Dairy LP due to the default in payments made by purchasers of dairy products from Dairy LP. The obligation owed to Bank of the West were in default by May 2020.

Portions of the property were sold to make payments to Bank of the West and other lien creditors in 2020 and 2021. Bank of the West was paid more than \$27,000,000 on the financing it provided.

The two debtors, and now the Bankruptcy Estate, seek to continue their farming operations on the property leased from the Irrevocable Trust.

The assets as of the commencement of this case included a modest amount of cash, crops of approximately \$250,000, and Debtor’s interests in the Irrevocable Trust.

For creditors, there is a substantial federal and state tax claim arising from the sale of the real properties.

The Debtor in Possession provides an analysis of why the two debtors qualify for relief under Chapter 12. The Declaration of Debtor in Possession Jakob Weststeyn is provide in support of the Status Report. Dec.; Dckt. 52.

Debtor in Possession reports that the Chapter 12 Plan will be filed by mid-August 2023 and that the confirmation hearing will be set for late September 2023.

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 Status Conference having been conducted on November 29, 2023, and upon review of the pleadings, statements of counsel and the Chapter 12 Trustee, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on **XXXXXX**, 2024.

FINAL RULINGS

8. [23-21407](#)-E-11 BELLA VIEW CAPITAL, LLC CONTINUED STATUS CONFERENCE RE:
[CAE-1](#) VOLUNTARY PETITION
4-28-23 [[1](#)]

Final Ruling: No appearance at the November 29, 2023 Status Conference is required.

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 10/18/23, the Debtor in Possession reporting that sale proceeds will pay claims in full.

[PGM-3] Motion to Convert Case from Chapter 11 to Chapter 7 [filed by Debtor] filed 11/3/23 [Dckt 179];
Order granting filed 11/13/23 [Dckt 188]

Appointment of Interim Trustee and Notice of Selection filed 11/15/23 [Dckt 189]

Notice of Reconversion to Chapter 7, Meeting of Creditors & Deadlines filed 11/15/23 [Dckt 190]

The Case having been converted to one under Chapter 7 (Order; Dckt. 188), **the Chapter 11 Status Conference is concluded and removed from the Calendar.**

9. [14-29391-E-7](#) ENRIQUE QUILES
[23-2068](#)
CAE-1
HOPPER V. ARROYO

STATUS CONFERENCE RE:
COMPLAINT
9-7-23 [1](#)

Final Ruling: No appearance at the November 29, 2023 Status Conference is required.

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: unknown

Adv. Filed: 9/7/23
Answer: none

Nature of Action:
Declaratory judgment

Notes:
Request for Entry of Default by Plaintiff filed 11/7/23 [Dckt 7]

Entry of Default and Order Re: Default Judgment Procedures filed 11/8/23 [Dckt. 9]

<p>The Default of Defendant having been entered, the Status Conference is continued to 2:00 p.m. on January 17, 2024 to allow the Plaintiff-Trustee to prosecute a motion for entry of default judgment.</p>

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 Initial Status Conference having been scheduled for November 29, 2023, the court entering the default of the Defendant on November 8, 2023, the Plaintiff-Trustee having thirty days therefrom to file a Motion for Entry of Default Judgment, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on January 17, 2024.**