UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

December 7, 2023 at 2:00 p.m.

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1. 23-90300-E-7 TIMOTHY/SARAH BARNES
23-9019 CAE-1
BARNES V. LVNV FUNDING

STATUS CONFERENCE RE: COMPLAINT
10-9-23 [1]

Plaintiff's Atty: Ryan Keenan
Defendant's Atty: unknown

Adv. Filed: 10/9/23
Reissued Summons: 10/26/23
Answer: none

Nature of Action:
Recovery of money/property - preference

The Status Conference is xxxxxxx

SUMMARY OF COMPLAINT

The Complaint filed by Thomas Ray Barnes, ("Plaintiff-Debtor"), Dckt. 1, asserts claims to recovered garnished wages. Plaintiff-Debtor asserts the right to recover the garnished wages pursuant to 11 U.S.C. § 547(b) and 11 U.S.C. § 522(h). The amount sought to be recovered is $5,507.00, which the Plaintiff-Debtor has claimed as exempt in his Chapter 7 Bankruptcy Case. for xxxxxxx

SUMMARY OF ANSWER

No Answer or Responsive Pleading has been filed.

ISSUANCE OF ALIAS SUMMONS

On October 26, 2023, the Plaintiff-Debtor requested that the Summons be reissued as the time for filing the original summons had expired. Dckt. 6. A Reissued Summons was issued by the Clerk of the Court on October 26, 2023. Dckt. 7.

No Certificate of Service has been filed. No further pleadings or status report has been filed by Plaintiff-Debtor.

DECEMBER 7, 2023 STATUS CONFERENCE

At the Status Conference, counsel for Plaintiff-Debtor reported, **xxxxxxx**

2. 23-90224-E-11 ALLDRIN ORCHARDS, INC. CONTINUED CONFIRMATION OF PLAN 8-22-23 [36]

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

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

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

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

The Confirmation of Plan of Reorganization is xxxxx.

December 7, 2023 Hearing

A Review of the Docket on December 6, 2023 reveals no new supporting documents or pleadings have been filed in this case to support a Plan's confirmation. At the hearing, **xxxxxxxxxx**

A REVIEW OF THE MOTION

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

August 22, 2023: Plan filed.

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

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

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

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

Table of Classes

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

Class 4: Non-priority unsecured claims	**Claim Amount**	Estimated $522,500
	Impairment	Impaired
	Debtor states that the holders of the claims will receive a dividend of 10% of their claims as follows: $1,000 on the first day of November 2023, and the first day of each successive month until May 1, 2028.	
Class 5: Equity interests in the Debtor	**Claim Amount**	Unknown
	Impairment	Unimpaired.
	Debtor states that the present shareholder will retain her shares in the Debtor.	

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

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

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

> The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

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

Requirements of 11 U.S.C. § 1129(a)

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

   Evidence: Dckt. xx, pg. x

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

   Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: Dckt. xx, pg. x

5. (A)(I) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Only if this section is applicable.

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

Evidence: Dckt. xx, pg. x

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

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

(I) has accepted the plan; or

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

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

Evidence: Dckt. xx, pg. x

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

(A) such class has accepted the plan; or

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

This section is inapplicable pursuant to 1191(b).

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

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

Evidence: Dckt. xx, pg. x

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive–

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Dckt. xx, pg. x

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash–

(I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: Dckt. xx, pg. x

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

Not required pursuant to 1191(b).

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

Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts

payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

Evidence: Dckt. xx, pg. x

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

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

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

Not required pursuant to 1191(b).

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

Review of the Plan

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

At the hearing, counsel for the Debtor/Debtor in Possession reported that there have been no oppositions and no ballots, either yes or no presented to the Debtor/Debtor in Possession. Counsel for the Debtor/Debtor in Possession discussed the challenges with "bringing in" the 2023 crop and having the financial information relating thereto.

Debtor/Debtor in Possession requested a continuance of the hearing. The Subchapter V Trustee did not oppose such a continuance to afford Debtor/Debtor in Possession the opportunity to get the crop in and have current financial information for the 2023 crop.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Confirmation of Plan filed by Alldrin Orchards, Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Confirmation of Plan of Reorganization is **xxxx**.

3. 23-90224-E-11 CAE-1 — ALLDRIN ORCHARDS, INC. — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-22-23 [1]

Debtor's Atty: David C. Johnston

Notes:
Continued from 10/19/23 to be conducted in conjunction with the continued hearing on confirmation of the Subchapter V Plan.

The Status Conference is xxxxxxx

DECEMBER 7, 2023 STATUS CONFERENCE

At the Continued Status Conference, **xxxxxxx**

JULY 13, 2023 STATUS CONFERENCE

This Subchapter V case was commenced on May 22, 2023. The Status Conference Report filed by the Debtor/Debtor in Possession states that the business of Debtor is to provide management and cultivation services to other persons who own almond orchards. Debtor's assets of significant value consist of farm equipment.

At the Status Conference, counsel for the Debtor in Possession reported that the First Meeting of Creditors should be concluded shortly.

The Subchapter V Trustee reported that he is reviewing the information provided. He stated that it appears that the IRS claim appears to be due to a clerical issue and that claim should drop away.

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

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

Notes:
Continued from 10/19/23. Counsel for the Debtor in Possession stated they were proceeding with and would have a plan and disclosure statement on file, and a hearing set for approval of the disclosure statement. [Plan not filed as of 12/06/23]

[RMB-4] First Interim Application by Penny M. Fox and Penny M. Fox CPA, APC, Accountant for the Debtor, for Allowance of Feed for the Period February 8, 2023 Through August 6, 2023 filed 11/14/23 [Dckt 158], set for hearing 1/4/24 at 10:30 a.m.

The Status Conference is xxxxxxx

DECEMBER 7, 2023 STATUS CONFERENCE

As of the court's December 6, 2023 review of the Docket, the Debtor in Possession has not filed a proposed plan and disclosure statement.

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

OCTOBER 19, 2023 STATUS CONFERENCE

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

At the Status Conference, counsel reported that the Debtor in Possession was proceeding with and will have a plan and disclosure statement on file, and a hearing set for approval of the disclosure statement.

AUGUST 8, 2023 STATUS CONFERENCE

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

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

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

JUNE 15, 2023 STATUS CONFERENCE

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

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

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

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

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

Amended Schedules

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

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

MARCH 9, 2023 STATUS CONFERENCE

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

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

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

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

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

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

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

5.	**22-90160-E-11** **DDM-27**	**EAGLE LEDGE FOUNDATION, INC.** **Kathleen DiSanto**	**MOTION FOR AN ORDER APPROVING AMENDED DISCLOSURE STATEMENT** **11-1-23 [301]**

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. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, 20 largest creditors, parties requesting special notice, attorneys of record who have appeared in the bankruptcy case, and Office of the United States Trustee on November 1, 2023. By the court's calculation, 36 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Eagle Ledge Foundation, Inc. ("Debtor in Possession") is six days sort of the required notice. Failure to comply with the Federal Rules of Bankruptcy and the Local Bankruptcy Rules is grounds to deny the Motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l). At the hearing, **xxxxxxxxxxx**

The Motion to Approve Disclosure Statement 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 Approve Amended Disclosure Statement is xxxxx.

REVIEW OF THE AMENDED DISCLOSURE STATEMENT

Case filed: May 18, 2022, Dckt. 1.

Background: Debtor in Possession is a California not-for-profit religious corporation. Debtor in Possession launched a loan fund focused on serving the small local church. Debtor in Possession issued bond certificates to individuals who made contributions. Certificate holders are the largest class of creditors in this case, accounting for almost all the debt now owed. Debtor in Possession initiated this bankruptcy case as a result of foreclosure proceedings and an inability to generate sufficient cash flow. On September 15, 2022, Debtor in Possession filed an initial Plan and Disclosure Statement. Dckts. 138, 140. This court denied approving the original Plan and Disclosure statement by Order on October 31, 2022. Dckt. 166. The creditors and their claims and classification are as follows:

Creditor/Class	Treatment	
Unclassified: Ordinary Course Administrative Claims	**Claim Amount**	$0.00
	Impairment	Unimpaired
	Not entitled to vote.	
Unclassified: Professional Compensation and Expense Reimbursement	**Claim Amount**	$205,000.00 (estimated)
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date.	
Unclassified: United States Trustee Fees	**Claim Amount**	$0.00
	Impairment	Unimpaired
	Not entitled to vote. Debtor in Possession is, and will continue to be, current on U.S. Trustee's fees.	
Unclassified: Priority Tax Claims	**Claim Amount**	$0.00
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date or in regular installment payments over a period not exceeding five years from the Petition Date.	
Class 1: Priority Claims	**Claim Amount**	$0.00
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date. The scheduled priority claims of Chester Reid and Thomas Fontana were paid and satisfied pursuant to the Final Order Granting Debtor's Emergency Motion for Authority to Pay Affiliate Officers' Salaries, Compensation, and Benefits (Dckt. 99).	
Class 2: General Unsecured Claims	**Claim Amount**	$4,125,251.27
	Impairment	Impaired
	Entitled to vote. Pro Rata distributions of $350,000.00 on the Effective Date, followed by annual distributions of Available Cash to commence on April 1, 2025 and continue for four consecutive years. Final distribution of all remaining Cash shall be made April 1, 2028, and distributed Pro Rata as soon practicable thereafter.	

Plan, Dckt. 305 p. 2-3.

Assets:

- Cash on hand, as of September 30, 2023: $674,369.57
- Mortgage Loan Assets: $335,000.00
- TMI Bond Portfolio: $529,701.62
- Real Estate Assets: $750,000.00
- 100% of Membership interests of Urban Ministry Properties, LLC: $0.00
- Internet Domain Name: $0.00

A. C. WILLIAMS FACTORS PRESENT

__Y__Incidents that led to filing Chapter 11

__Y__Description of available assets and their value

__Y__Anticipated future of Debtor

__Y__Source of information for D/S

__Y__Disclaimer

__Y__Present condition of Debtor in Chapter 11

__Y__Listing of the scheduled claims

__Y__Liquidation analysis

__Y__Identity of the accountant and process used

__Y__Future management of Debtor

__Y__The Plan is attached

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

OBJECTIONS / REPLY

Tracy Hope Davis, the United States Trustee ("US Trustee"), objects to confirmation of this Amended Disclosure Statement on the following grounds:

1. Notice of the confirmation hearing is not properly provided for here. Debtor in Possession plans to only send the Amended Disclosure statement to certificate holders with an available address. Certificate holders without an available address will be served through TMI or Goldstar. However, Fed. R. Bankr. P. 2002(b) affirmatively requires notice by mail to creditors of the confirmation hearing and the deadline to object. Accordingly, the DIP should be required to provide Certificate Holders with direct notice of the confirmation hearing and the deadline to object to confirmation.

2. The Amended Disclosure Statement does not provide adequate information about the payment of quarterly fees. Fees assessed pursuant to 28 U.S.C. § 1930(a)(6) are not synonymous with administrative expenses allowed pursuant to 11 U.S.C. § 503(b), and so fees pursuant to 28 U.S.C. § 1930(a)(6) are not subject to an allowance procedure under 11 U.S.C. § 503(b). The Amended Plan appears to improperly group fees into the definition of "Administrative Claim," which would violate 28 U.S.C. § 1930(a)(6).

Dckt. 315.

Debtor in Possession filed a Reply to US Trustee's Objections on November 29, 2023. Dckt. 325. Debtor in Possession argues:

1. Notice of the confirmation hearing is sufficient in this case because, throughout the course of its operations, Debtor in Possession has delivered funds to Goldstar who delivers those funds to certificate holders. Therefore, Debtor in Possession has met its obligation under Fed. R. Bankr. P. 2002 by delivering notice to Goldstar who will then send that notice to the certificate holders.

2. Debtor in Possession does not have addresses for the certificate holders whose accounts are managed by Goldstar because Goldstar was the entity making the certificate purchases and only provided the account owner's name for purposes of identifying and tracing the account.

3. Debtor in Possession intends to comply with paying professional fees as required by 28 U.S.C. § 1930(a)(6).

APPLICABLE LAW

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

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

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

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

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

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

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

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

Regarding sufficient notice, the Federal Rules of Bankruptcy Procedure provides:

> Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under §1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing

objections and the hearing to consider confirmation of a chapter 9, or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

FED. R. BANKR. P. 2002(b). Generally, notice must be provided for by mail; however, notice may be provided for by other means, such as publication, if notice by mail is impracticable. FED. R. BANKR. P. 2002(l) ("The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.").

Congress' 1983 advisory committee note to R. 2002 provides the following general situations where notice by publication may be advisable:

1. the debtor has disappeared;
2. the debtor's records have been destroyed, together with the names and addresses of creditors; or
3. the number of nominal creditors is large, and the assets are insufficient to defray the costs of mailing notices.

9 COLLIER ON BANKRUPTCY ¶ 2002.13. The Supreme Court has weighed in on this issue, holding, "[n]otice by publication is a poor and sometimes a hopeless substitute for actual service of notice. Its justification is difficult at best. But when the names, interests and addresses of persons are unknown, plain necessity may cause a resort to publication." *City of New York v. New York, N. H. & H. R. Co.*, 344 U.S. 293, 296 (1953).

The court in *In re Purdue Pharma L.P.* was tasked with the issue of giving proper notice to millions of individuals whose addresses were not and could not be known by the Debtor. *In re Purdue Pharma L.P.*, 633 B.R. 53 (S.D. N.Y. Bankr. 2021). In that case, service to each individual address by mail was impracticable because it was impossible to know each individual that was eligible to appear and contest the confirmation hearing. However, the court found notice was proper because the Debtor implemented a noticing scheme that reached 98% of the general American public. *Id.* at 59 (holding notice was sufficient by publishing notice via TV, radio, billboards, outreach groups, and other various publications). Therefore, notice may be achieved by means other than mail if mailing notice would be impracticable.

DISCUSSION

US Trustee Objection re Fees

Concerning US Trustee's objection regarding fees, the Debtor in Possession does not dispute that professional fees should be paid pursuant to U.S.C. § 1930(a)(6). Debtor in Possession suggests that the Amended Plan and Disclosure Statement provide for exactly that. At the hearing, **xxxxxxxxx**

U.S. Trustee Objection re Notice on Certificate Holder Creditors

US Trustee's objection that notice is not sufficient by sending notice to Goldstar on behalf of certain certificate holders raises interesting questions of law. The court's research indicates that notice can be sufficiently achieved by means other than by mail, so long as the Debtor in Possession can show that notice by mail would be impracticable.

Debtor in Possession argues that it has no knowledge or any way of discovering certain certificate holders' mailing addresses because those certificate holders have dealt with Goldstar. According to Debtor in Possession, Goldstar made the certificate purchases on behalf of the certificate holders, and all certificate distributions have been sent to Goldstar who sends the money to the individual certificate holders. Reply, Dckt. 325 ¶ 7.

The Debtor in Possession does not assert that Goldstar refuses to provide the required address information or that Goldstar is outside of the jurisdiction of a United States Federal Court that it would be free from sanctions (not only the "mere" corrective sanction power of a Bankruptcy Judge, but also the corrective and punitive sanction power of an Article III United States District Court judge).

The Debtor in Possession argues that based on a bankruptcy court decision from the Northern District of New York, sending notices required under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure to an address where the Debtor mailed checks to some creditors is sufficient. No other legal authority is provided. No review of any of the Federal Rules with respect to this service requirement or citation to any federal law or procedures treatises (such as Collier on Bankruptcy or Moore's Federal Practice - Civil) is provided by the Debtor in Possession .

Federal Rule of Bankruptcy Procedure provides with respect to notices of proposed disclosure statements and plan confirmations:

> Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee
>
> **(b) Twenty-eight-day notices to parties in interest**. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

Fed. R. Bankr. P. 2002(b).

The term "Creditor," to whom the required disclosure statement and confirmation notice must be given is defined by Congress in 11 U.S.C. § 101(10) to be:

> (10) The term "creditor" means—
>
> (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim.

This does not state that a "creditor" is a mail drop to which the debtor sent mail.

Reviewing the Proofs of Claim that have been filed in this case, out of the more than ($4,000,000) in certificate holder debt, proofs of claim totaling less than ($416,000) [only about 10% of the unsecured claims as computed by Debtor) have been filed. This would indicate that there may be a wholesale defect in how the Debtor in Possession has been sending out notices, given that an experienced bankruptcy practitioner in these type of loan cases knows that the claims come flying in by the thousands if the lender creditors have actual knowledge of the bankruptcy case.

Information re Unperfected Liens of Certificate Holders

In reviewing the proposed Amended Disclosure Statement, it discloses that the Debtor in Possession has now taken a turn in its belief that the certificate holders had secured claims, and instead now asserts that they have unsecured claims. The court notes that for the proofs of claims filed, none have been filed as secured claims.

The explanation of the legal principles upon which the Debtor in Possession advises certificate creditors that they hold unsecured claims includes (with the court's comments show in [courier font]):

> Prior to an uncured Event of Default, the Certificate Holders had no security interest, or at best, had an unperfected security interest held by the Collateral Agent for their benefit. As noted above, both the Prospectus and the Security Agreement stated ELF [the Debtor who was borrowing the money from the Certificate Holders] was granting a security interest to the Collateral Agent. However, the Prospectus was not signed by ELF. Under Florida law, one element to establishing an enforceable security agreement is that the debtor signed it. *In re Michelle's Hallmark Cards & Gifts, Inc.*, 219 B.R. 316, 319 (Bankr. M.D. Fla. 1998). The Security Agreement provides that Florida law applies. [Question: if the security agreement contract is not signed, then how do the terms bind the parties?] Appendix, Security Agreement, section 11.05. Since ELF did not sign the Prospectus, it could not create an enforceable security agreement. The Security Agreement also fails to qualify as an enforceable security interest. Under Florida law, one element to create an enforceable security agreement is that the collateral is identified. The Security Agreement defines the "Collateral" as "[t]he property as described on Exhibit B, whether now existing or hereafter acquired." Exhibit B was never completed and, thus, no enforceable security agreement exists. *In re Hintze*, 525 B.R. 780, 785 (Bankr. N.D. Fla. 2015).
>
> In the event the Bankruptcy Court finds to the contrary, any security interest granted to the Certificate Holders was unperfected. No UCC-1 financing statement was filed in California or Florida. There was not a deposit account control agreement in place, thus, all cash held by ELF at filing was unencumbered by any security interest. The UCC-1 filing was also necessary to perfect the security interest in the bonds. The loans were not assigned to the Collateral Agent. All of ELF's Collateral at filing was unencumbered.

> In an excess of caution, C3 Servants was scheduled as a secured creditor but with no debt owed. C3 Servants did not file a proof of claim. As noted above, C3 Servants did not obtain an enforceable security interest, and if it did, it was unperfected.

Proposed Amd. Disc. Stmt., p. 8:17 - 9:4.

The court notes that the Debtor in Possession just cites to a couple of Florida Bankruptcy Court decisions and no Florida appellate or Supreme Court decisions interpreting Florida law. When cite checking the *Michelle's Hallmark* decision, there are other bankruptcy court decisions rejecting portions of the legal rationale in that decision.

The information provided to the Certificate Holder creditors is that even if the Court should conclude that a security interest was granted by the Debtor, it was not perfected, thus such unperfected security interest could not exist. The court notes that Congress expressly provides in 11 U.S.C. § 544 that the bankruptcy trustee, or the Debtor in Possession as the fiduciary exercising the powers of a trustee, may avoid an unperfected lien, not that such lien does not exist. Then, when avoided, that lien is preserved for the benefit of the Bankruptcy Estate. See 11 U.S.C. § 551. Given the nature of claims stated by the Debtor in this case, such preservation of the lien may be of little consequence. However, it appears that the law as represented by the Debtor in Possession is inaccurate.

At the hearing, **xxxxxxx**

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Approval of the Disclosure Statement filed by Eagle Ledge Foundation, Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxx.**

FINAL RULINGS

6. 20-90479-E-12 CAE-1 **JOE MACHADO**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-9-20 [1]

Final Ruling: No appearance at the December 7, 2023 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:
Continued from 10/19/23. Chapter 12 Trustee's Final Report and Account was filed on 10/8/23. The Debtor was to file a Motion for Entry of Discharge within 30 days from 10/10/23. Status conference continued to afford the Debtor the opportunity to continue in the prosecution of this case.
[Motion for Entry of Discharge not filed as of 11/29/23]

The Status Conference is continued to 10:30 a.m. on January 4, 2024 (Specially Set Time) to be conducted in conjunction with the hearing on the Motion for Entry of Discharge in this Case.

DECEMBER 7, 2023 CONTINUED
POST-CONFIRMATION STATUS CONFERENCE

On December 4, 2023, the Debtor filed a Motion for Entry of Chapter 12 Discharge, for which the hearing is set for 10:30 a.m. on January 4, 2024. Dckt. 173.

The Status Conference is continued to be heard in conjunction with the Motion for Entry of Discharge.

OCTOBER 19, 2023 STATUS CONFERENCE

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

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

The court shall issue an order substantially in the following form holding that:

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

The Continued Status Conference having been scheduled, the Debtor having filed a Motion for Entry of Discharge, and upon review of the pleadings and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **10:30 a.m. on January 4, 2024** (Specially Set Time) to be conducted in conjunction with the hearing on the Motion for Entry of Discharge in this Case.

7. 23-90283-E-7 BRUNK INDUSTRIES STATUS CONFERENCE RE:
23-9018 CAE-1 COMPLAINT
S.C. ANDERSON, INC. V. BRUNK INDUSTRIES 10-2-23 [1]

Final Ruling: No appearance at the December 7, 2023 Status Conference is required.

This Adversary Proceeding having been dismissed (Stipulation, Dckt. 8), **the Status Conference is concluded and removed from the Calendar.**

DECEMBER 7, 2023 STATUS CONFERENCE

On November 30, 2023, the Plaintiff S.C. Anderson, Inc. and the named Defendant, Brunk Industries, the former debtor in possession (the related Bankruptcy Case having been converted to one under Chapter 7), filed their Stipulation to dismiss this Adversary Proceeding. Dckt. 8. The Complaint seeking a determination of nondischargeability of a debt as provided in 11 U.S.C. § 523, the Defendant Debtor remains the correct party in interest to this litigation, no relief having been sought against the Bankruptcy Estate (for which the Chapter 7 Trustee is the successor representative to the Debtor in Possession).

The Status Conference is concluded and removed from the Calendar.