UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, September 29, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. 21-11814-A-11 **IN RE: MARK FORREST**
LKW-4

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
9-3-2021 [43]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Mark Alan Forrest ("DIP"), requests allowance of interim compensation in the amount of $7,265.00 and reimbursement for expenses in the amount of $79.40 for services rendered from July 22, 2021 through August 31, 2021. Doc. #43. Movant also provides a recapitulation of compensation paid prior to the commencement of this chapter 11 case. Ex. B, Doc. #47.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) advising DIP about the administration of a chapter 11 case and DIP's duties as a debtor in possession; (2) preparing for and attending meeting of creditors; (3) reviewing potential tax issues and a notice of postponement of trustee's sale; and (4) communicating with DIP and creditors regarding reorganization and plan treatment. Decl. of Leonard K. Welsh, Doc. #46; Exs., Doc. #47. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of $7,265.00 and reimbursement of expenses in the amount of $79.40. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of

compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

2. 21-11970-A-11 **IN RE: HIGH PLAINS MESA HOLDINGS, LP**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-11-2021 [1]

GARY KAPLAN/ATTY. FOR DBT.

NO RULING.

3. 21-11970-A-11 **IN RE: HIGH PLAINS MESA HOLDINGS, LP**
PJL-2

MOTION FOR AN ORDER EXCUSING TURNOVER OF PROPERTY
9-1-2021 [40]

THOMAS MCNAMARA/MV
GARY KAPLAN/ATTY. FOR DBT.
PAUL LEEDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled unless the motion to dismiss (calendar matter #3) is granted, in which case this matter will be denied as moot.

DISPOSITION: Granted if matter heard.

ORDER: The court will issue an order if the motion is denied as moot. If the matter is heard, the minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

If the motion to dismiss this chapter 11 bankruptcy case (calendar matter #3) is granted, this motion will be denied as moot. If the motion to dismiss is not granted, this motion will be granted based on the following.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on September 15, 2021. Doc. #60. The failure of other creditors or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

This motion to for an order excusing turnover was filed in the chapter 11 bankruptcy case of High Plains Mesa Holdings LP ("HPM Holdings" or "DIP"), case no. 21-11970. Doc. #40. A near identical motion was filed in the chapter 11 bankruptcy case of High Plains Mesa Management LLC ("HPM Mgmt."), case no. 21-11971. When referenced together, HPM Holdings and HPM Mgmt. will be referred to as "the HPM Entities" and their bankruptcies will be the "HPM Bankruptcies."

The movant Thomas McNamara ("Receiver"), a state-court appointed receiver, moves for an order excusing the turnover of property to the HPM Entities. Doc. #40. The court has considered the motion, opposition, and reply. After due consideration, Receiver's motion to excuse turnover will be GRANTED.

Debtor's Objection to Declaration of Thomas McNamara

The HPM Entities object to the Declaration of Thomas McNamara filed in support of Receiver's motion to excuse turnover ("McNamara Declaration"). Obj., Doc. #65; McNamara Decl., Doc. #42. Specifically, the HPM Entities object to paragraphs 21 through 24 of the McNamara Declaration and the attachments referenced by those paragraphs and attached to the declaration as exhibits 11 through 14 (the "Exhibits"). Doc. #65. The HPM Entities object to the admission of that portion of the McNamara Declaration and Exhibits to the extent they purport to establish the truth of the contents of the documents as evidence in this proceeding.

The objection is SUSTAINED only to the extent paragraphs 21 through 24 of the McNamara Declaration and Exhibits 11 through 14 are offered to prove the truth of the allegations contained therein. The Exhibits are admissible to the extent the Exhibits establish the nature and timeline of proceedings in the state court action, discussed in greater detail below. Therefore, the Exhibits are admissible to prove what happened in the state court action, what are the allegations in the state court action, what motions have been filed in the state court action, and how the state court has ruled on those motions.

Further, the orders of the court in the state court action are admissible to establish that the state court ruled a particular way for a particular reason. The rulings, dispositions, and findings of the court in the state court action, to the extent they are contained in the written record, are not subject to reasonable dispute. Pursuant to Federal Rule of Evidence 201(c), the court may take judicial notice on its own. "[C]ourt orders and filings are proper subjects of judicial notice." Carmax Auto Superstores Cal. LLC v. Hernandez, 94 F. Supp. 3d 1078, 1087 (C.D. Cal. 2015) (collecting cases). The court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (quotations and citations omitted). The proceedings and filings of the state court action are the proper subject of judicial notice, and the court takes judicial notice of the orders and related filings in the state court action.

The High Plains Entities

HPM Mgmt is a Texas limited liability company authorized to do business in California. Decl. of Terry Hansen Supporting Chapter 11 Filings ("Hansen Bankr. Decl.") ¶ 1, Doc. #6; Decl. of Terry Hansen Opposing Motion to Excuse Turnover ("Hansen Turnover Decl.") ¶ 1, Doc. #61.

HPM Mgmt. is owned by three members. HPM Mgmt. List of Equity Security Holders, Doc. #31, Case No. 21-11971. Thomas M. Maney ("Maney") holds a 57% equity interest; Justin G. Child ("Child") holds a 33% equity interest; Terry E. Hansen ("Hansen") holds a 10% equity interest. Id. Hansen is the current manager of HPM Mgmt., although Child also has held the title of manager of HPM Mgmt. Hansen Turnover Decl. ¶ 3, Doc. #61. Hansen is responsible for handling day-to-day operations of HPM Mgmt. Id.

HPM Mgmt. scheduled a single asset: a 1% ownership interest in HPM Holdings valued at $40,000. HPM Mgmt. Am. Schedule A/B, Doc. #74, Case No. 21-11971. HPM Mgmt. scheduled no creditors, is not a party to any executory contracts or unexpired leases, and has no codebtors. HPM Mgmt. Schedules D, E/F, G, H, Doc. ##24-27, 75., Case No. 21-11971.

HPM Mgmt. is the general partner of HPM Holdings. Hansen Turnover Decl. ¶ 1, Doc. #61. HPM Holdings is a Texas limited partnership doing business in California. Hansen Turnover Decl. ¶ 3, Doc. #61.

HPM Holdings is owned by four limited partners. HPM Holdings List of Equity Security Holders, Case No. 21-11970, Doc. #27. Maney holds a 56.43% equity interest; Child holds a 21.29% equity interest; Hansen holds a 21.28% equity interest; and HPM Mgmt. holds a 1% equity interest. Id.
According to its bankruptcy schedules, HPM Holdings holds $499.34 cash in a BBVA checking account. HPM Holdings Am. Schedule A/B, Doc. #81. Pre-petition, HPM Holdings deposited $154,451 with Farella Braun + Martel LLP, legal counsel for the HPM Entities, as a retainer. HPM Holdings Am. Schedule A/B, Doc. #81; HPM Holdings Am. Stmt. of Financial Affairs Ques. 11, Doc. #84. HPM Holdings has no accounts receivable, no investments, neither owns nor leases any inventory, office furniture or equipment, machinery, or vehicles. HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings scheduled undivided fee simple interests in residential real properties known as 19790 Remos Ct., California City, CA 93505 APN 305-181-31-00-2 valued at $338,000.00 and 19840 Aloha Way, California City, CA 93505 APN 305-230-38-00-0 valued at $310,000.00 (collectively, the "Residences"). HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings has no interest in any intangibles or intellectual property. HPM Holdings Am. Schedule A/B, Doc. #81. The only other asset scheduled is a cause of action for turnover/avoidance against Receiver to recover the proceeds from the sale of approximately 640 acres of vacant land in unincorporated Kern County, California (the "Vacant Land") valued at $4,160,000. HPM Holdings Am. Schedule A/B, Doc. #81.

The only two scheduled secured creditors of HPM Holdings are (1) the Kern County Treasurer with claims totaling $21,493.18 from unpaid real property taxes on the Residences and Vacant Land, and (2) Accelerated Assets LLC who holds a deed of trust on both Residences and is owed $10,434.11. HPM Holdings, Schedule D, Doc. #29; Proof of Claim #1.

HPM Holdings scheduled one unsecured claim of $419.18 owed for legal services provided by Parker Mills LLP. HPM Holdings Schedule E/F, Doc. #30.

HPM Holdings scheduled two unexpired leases. HPM Holdings Schedule G, Doc. #31. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch & Club Inc. rents the Residences. HPM Holdings Schedule G, Doc. #31. The rent received is HPM Holdings' sole source of revenue. Am. Form 207, Doc. #84.

HPM Holdings scheduled Silver Saddle Ranch & Club Inc. as a codebtor to the debt owed to the Kern County Treasurer and Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32. HPM Holdings scheduled MCQ Corporation as a codebtor with respect to Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32.

To summarize, the HPM Entities' schedules show that HPM Mgmt. is the manager and 1% owner of HPM Holdings. Both HPM Entities are majority owned by Maney, with Child and Hansen holding minority interests in both entities. HPM Holdings scheduled ownership in real property, the Residences and, previously, the Vacant Land, the proceeds from the sale of which may be the subject of a

turnover or avoidance action. The Residences are leased to Silver Saddle Ranch, and the rent collected is HPM Holdings' sole source of revenue.

State Court Proceedings, Generally

On September 9, 2019, the California Commissioner of Business Oversight, also referred to by the parties as the California Commissioner of Financial Protection and Innovation, (hereafter, the "State"), filed a complaint against Maney, Silver Saddle Commercial Development LP ("Silver Saddle Development"), Silver Saddle Ranch & Club Inc. ("Silver Saddle Ranch"), the Galileo Commercial Property Owners Association Inc. ("Galileo"), and related entities (collectively the "Securities Defendants") initiating People of the State of California v. Silver Saddle Commercial Development, LP, Case No. 37-2019-00049151-CU-MC-CTL, Superior Court of California, County of San Diego (the "State Court Action"). McNamara Decl. ¶¶ 2, 14, Doc. #42; Ex. 4, Doc. #43. The allegations in the complaint centered around real estate investments called "LandBanking Plus" or "The Galileo Project" (collectively referred to as "Galileo Project"). Hansen Turnover Decl. ¶ 12, Doc. #68; Ex. 4, Doc. #43. The State alleges that Securities Defendants, through the Galileo Project, sold "overpriced fractionalized interests in vacant desert land in rural Kern County" in a scheme to defraud unsophisticated investors. Ex. 4, Doc. #43.

The state court issued a receivership order on October 30. 2019, appointing Receiver in the State Court Action (the "Receivership Order"). McNamara Decl. ¶¶3, 15, Doc. 42; Receivership Order, Ex. 1, Doc. #43.

Per the Receivership Order, the state court found good cause to believe that Securities Defendants violated the Corporate Securities Law of 1968, specifically California Corporations Code sections 25401 and 25110, fraud in the offer and sale of securities and the offer and sale of unqualified securities, respectively. Receivership Order 2:12-26. Ex. 1, Doc. #43. The Receivership Order authorized and directed Receiver to

> take possession of all real and personal property and assets of Defendants SILVER SADDLE COMMERCIAL DEVELOPMENT, LP; SILVER SADDLE RANCH & CLUB, INC.; THE GALILEO COMMERCIAL PROPERTY OWNERS ASSOCIATION, INC. as well as any other entity that has conducted any business related to Defendants' offering and selling of the Galileo Project investment contracts, including receipt of assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant (hereinafter "Receivership Defendants"), and their respective subsidiaries and affiliates, and their successors and assigns wherever situated, or to which Receivership Defendants have any right of possession, custody or control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such assets which Receivership Defendants carry or maintain, or which may be received during the pendency of this receivership, in order to obtain an adequate accounting of Receivership Defendants' assets and liabilities and to secure a marshalling of said assets.

Receivership Order 5:7-20, Ex. 1, Doc. #43. The Receivership Order further empowered Receiver to identify nonparty entities as Receivership Defendants, and upon so doing required Receiver to promptly notify the entity that it could challenge Receiver's determination by filing a motion in the State Court Action. Receivership Order 10:16-22, Ex. 1, Doc. #43.

Pursuant to the Receivership Order, on October 2, 2020, Receiver notified the HPM Entities of Receiver's determination that they qualified as Receivership

Defendants. McNamara Decl. ¶ 20, Doc. #42; Ex. 10, Doc. #44. On January 8, 2021, the HPM Entities, acting in concert through counsel, moved for an order to show cause challenging Receiver's determination in the State Court Action. McNamara Decl. ¶ 21, Doc. #42. Receiver responded. McNamara Decl. ¶ 21, Doc. #42. On February 11, 2021, after receiving argument from all parties, the state court determined that the HPM Entities were properly classified as Receivership Defendants, stating that Receiver presented "uncontroverted evidence" that

> the HPM entities have conducted business related to the Galileo Project investment scheme, received assets derived from activity that is the subject of the Complaint in this matter, and are controlled or owned by a Defendant. In fact, Defendant Maney presently holds a 56.43% interest in HPM Holdings, and until recently was employed by the HPM entities as an officer and manager. The HPM entities own real property utilized as part of the investment scheme. HPM entity expenses were paid with Silver Saddle investment funds. Defendant Maney used HPM Entities' property as collateral for the sale of Silver Saddle investment funds. Defendant Maney used HPM entity property as collateral for the sale of Silver Saddle investor promissory notes to Accelerated Assets. This agreement specifically states that HPM Holding is "an affiliated or controlled entity of Seller or Seller's principals."

Minute Order, Ex. 12, Doc. #44. Having assumed possession and control of the HPM Entities' real property pursuant to the Receivership Order and the determination of HPM Entities as Receivership Defendants, on May 13, 2021, Receiver sought state court approval to sell the Vacant Land, owned by HPM Holdings, to 69SV 8ME LLC for the purchase price of approximately $4.1 million in accordance with the terms of a pre-receivership purchase option contract between 69SV 8ME LLC and HPM Holdings. McNamara Decl. ¶ 23, Doc. #42; Hansen Turnover Decl. ¶ 11, Doc. #61.

The HPM Entities did not oppose Receiver's motion, and on June 11, 2021, Receiver's motion was granted in the State Court Action (the "Sale Order"). McNamara Decl. ¶ 24, Doc. #42; Sale Order, Ex. 14, Doc. #44. On August 10, 2021, the sale closed and the HPM Entities timely appealed the Sale Order. McNamara Decl. ¶¶ 25-26, Doc. #42; Hansen Turnover Decl. ¶¶ 16-17, Doc. #61. The proceeds from the sale, approximately $4,155,000, are currently being held in escrow by Stewart Title. McNamara Decl. ¶ 27, Doc. #42; Hansen Turnover Decl. ¶ 17, Doc. #61. The Sale Order states that the net proceeds of escrow should be disbursed to the receivership estate. Ex. 14, Doc. #44.

On August 11, 2021, HPM Holdings and HPM Mgmt. filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The HPM Entities do not oppose the sale of the Vacant Land and intend to proceed with the sale to 69SV 8ME LLC. Hansen Bankr. Decl. ¶ 12, Doc. #6. The HPM Bankruptcies were filed so that the proceeds from the sale of the Vacant Land and the value of the Residences would inure to the HPM Entities' "stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6.

Receiver states that, but for the HPM Bankruptcies, Receiver would move to sell the Residences in the State Court Action and would use the proceeds to pay in full the secured claim of Accelerated Assets LLC and all outstanding property taxes and fees. McNamara Decl. ¶28, Doc. #42; Ex. 16, Doc. #44.

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Players Common to Bankruptcy Proceedings and State Court Action

In the State Court Action, the State identifies numerous named and unnamed defendants who have allegedly participated in a scheme to defraud investors that, broadly stated, involves the sale of unqualified securities, undeveloped desert land in Kern County, California, and membership in the Silver Saddle Ranch & Club. Complaint, Ex. 4, Doc. #43; Hansen Bankr. Decl. ¶ 6, Doc. #6.

Maney, majority equity holder in both HPM Mgmt. and HPM Holdings, is a named defendant in the State Court Action. Maney is the central figure of the State's case, and the allegations against Maney are generally that Maney controls all of the named Securities Defendants and Maney used the Securities Defendants to violate California law and commit securities fraud. Complaint, Ex. 4, Doc. #43.

The State's complaint also named Silver Saddle Development and Silver Saddle Ranch. Complaint, Ex. 4, Doc. #43. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch rents the Residences. HPM Holdings Am. Schedules A/B, Doc. #28, and Schedule G, Doc. #31; Hansen Turnover Decl. ¶ 8, Doc. #61. Pursuant to the unwritten lease agreements, Silver Saddle Ranch is responsible for all maintenance, insurance, and property taxes for the Residences. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen Turnover Decl. ¶ 8, Doc. #61. Silver Saddle Ranch also is responsible for paying franchise fees for both HPM Holdings and HPM Mgmt. and must pay the property taxes for the Vacant Land. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen Turnover Decl. ¶ 8, Doc. #61. In 2010, HPM Holdings pledged the Residences as security for the obligations of Silver Saddle Ranch and MCQ Corporation to Accelerated Assets LLC. Hansen Turnover Decl. ¶ 9, Doc. #61. HPM Holdings scheduled Silver Saddle Ranch as a codebtor to debt owed to the Kern County Treasurer and to Accelerated Assets LLC. Schedule H, Doc. #32.

In addition to the equity interests stated above, Hansen is the manager of HPM Mgmt., which in turn is the sole general partner of HPM Holdings. Hansen Turnover Decl. ¶ 1, Doc. #61; HPM Holdings List of Equity Security Holders, Doc. #27. Hansen is not a named defendant in the State Court Action. Hansen Turnover Decl. ¶ 14, Doc. #61. Hansen has assisted in preparing financial reports and tax returns for HPM Holdings, HPM Mgmt., Silver Saddle Ranch, MCQ Corporation, and Silver Saddle Development. Hansen Turnover Decl. ¶ 10, Doc. #61. For this work, Hansen was paid a "minimum salary" to support Hansen's health insurance coverage. Hansen Turnover Decl. ¶ 10, Doc. #61. Hansen states that his services were unrelated to the sale of Galileo Project investments and terminated more than two years ago. Hansen Turnover Decl. ¶ 10, Doc. #61.

Child, in addition to the equity interests stated above, was previously the manager of HPM Mgmt., though both Child and Hansen state that Hansen has always been responsible for day-to-day managerial duties of HPM Mgmt. Decl. of Justin S. Child Opposing Motion to Excuse Turnover ("Child Decl.") ¶ 1, Doc. #63; Hansen Turnover Decl. ¶ 3, Doc. #61. Child was employed by Silver Saddle Ranch until approximately 2008 or 2009. Child Decl. ¶ 4, Doc. #63. Silver Saddle Development is indebted to Child in the amount of $1,000,000 for a promissory note ("Note") that consolidated debts owed to Child by Silver Saddle Ranch and MCQ Corporation. Child Decl. ¶ 4, Doc. #63. Payments on the Note continued to be funded through Silver Saddle Ranch's and/or Silver Saddle Development's payroll system after Child retired approximately thirteen years ago. Child Decl. ¶ 4, Doc. #63. Child claims that the Note, based on monies Child loaned, is unrelated to the sale of Galileo Project investments giving rise to the State Court Action. Child Decl. ¶ 4, Doc. #63.

Both Child and Hansen state that "[a]lthough Thomas Maney also holds equity interests in each of [HPM Holdings] and [HPM Mgmt.] . . . he is neither a general partner of [HPM Holdings], nor a manager of [HPM Mgmt.], nor an officer or director of either [HPM Holdings] or [HPM Mgmt.]." Child Decl. ¶ 3, Doc. #63; Hansen Turnover Decl. ¶ 3, Doc. #61.

Standard under § 543(d)

Section 543(d) of the Bankruptcy Code allows the court to excuse compliance with the turnover requirements of § 543(a), (b), and (c) "if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property." 11 U.S.C. § 543(d)(1). A state-court appointed receiver is a custodian. 11 U.S.C. § 101(11).

"Reorganization policy generally favors turnover of business assets to the debtor in a chapter 11 case." In re Orchards Vill. Invs., LLC, 405 B.R. 341, 352-53 (Bankr. D. Or. 2009). The party seeking relief from turnover pursuant to § 543(d) has the burden of demonstrating such relief is warranted. In re Skymark Props. II, LLC, 597 B.R. 391, 397 (Bankr. E.D. Mich. 2019).

By the motion, Receiver cites to Orchards Village to provide some guiding factors bankruptcy courts consider in determining whether to excuse turnover. Doc. #40. The HPM Entities counter with citation to Skymark to provide a more expansive list of factors appropriately considered by bankruptcy courts deciding whether to excuse turnover under 11 U.S.C. § 543(d). Doc. #60. Both Orchards Village and Skymark demonstrate that the issue of excusing turnover under § 543 is determined on a case-by-case basis in consideration of a number of factors, and "[t]he bankruptcy court has discretion under § 543(d)(1) to excuse a state court receiver from its mandatory turnover obligation[s.]" Skymark, 597 B.R. at 397. The Skymark factors, listed in order of relevance in this case, are:

(1) whether turnover would be injurious to creditors;

(2) whether the debtor will use the turned over property for the benefit of its creditors;

(3) whether or not there are avoidance issues raised with respect to property retained by a receiver, because a receiver does not possess avoiding powers for the benefit of the estate;

(4) the likelihood of reorganization;

(5) the probability that funds required for reorganization will be available;

(6) the fact that the bankruptcy automatic stay has deactivated the state court receivership action; and

(7) whether there are instances of mismanagement by the debtor.

Skymark, 597 B.R. at 397. After considering the facts of this case, the court finds that Receiver may properly be excused from compliance with § 543.

In Skymark, the bankruptcy court found that the interests of creditors and equity security holders would be better served by allowing the state court appointed receiver to continue. Skymark, 597 B.R. at 403. There, the debtor's tenant, in response to the debtor's mismanagement of certain properties,

commenced a lawsuit in state court and obtained the appointment of the state court receiver. Id. at 401. The bankruptcy court stated that the most important factor in that case was that the debtor had no income, but the bankruptcy court also noted that the debtor had no clear prospects of obtaining capital, the debtor's tenants favored continued control by the receiver, the debtors could protect their interests in the state court action, and the debtor would not be able to obtain more relief in bankruptcy than out of bankruptcy. Id. at 400-02.

Although the facts giving rise to the receivership in Skymark are distinguishable, the court finds the considerations of the bankruptcy court in that opinion persuasive. As in Skymark, HPM Mgmt. has no income and the only income of HPM Holdings comes from renting the Residences to Silver Saddle Ranch, a named Securities Defendant. Any money the HPM Entities may be entitled to would come from Receiver as part of the State Court Action. Further, no creditors have opposed Receiver's motion. Should Receiver maintain possession and control of the HPM Entities' scheduled assets under the supervision of the State Court Action, all secured creditors in the HPM Bankruptcies will be paid in full. Although the HPM Entities assert a possible avoidance action against Receiver to recover the net proceeds from the sale of the Vacant Land, the HPM Entities do not oppose the sale itself. The distribution of the sale proceeds has not been finalized in the State Court Action, and the HPM Entities and their equity holders can continue to protect their interests in the State Court Action.

The HPM Entities rely heavily on the statutory mandate to consider the interests of equity security holders as part of the analysis excusing compliance with § 543. However, in the cases cited in the opposition, the circumstances giving rise to state court appointed receivers can generally be described as disputes between creditors (or stakeholders) and management. Under those circumstances, the interests of equity security holders are an obvious concern because, like creditors, the continued successful operation of the business of the debtor will provide the most benefit. When the continued operation of the debtor's business is not in question, however, the calculus changes.

For example, in In re Bryant Manor, LLC, 422 B.R. 278 (Bankr. D. Kan. 2010), the bankruptcy court found "that the fact that Debtor itself is not looking to operate and manage its business affairs in the course of this Chapter 11 proceeding reduces, at least a bit, the presumption that the property should be returned from the custodian to the Debtor under § 543(a)." In Bryant Manor, the debtor sought turnover to do the same thing the receiver was doing, which, in that case, was employing a third party to operate a business. Bryant Manor, 422 B.R. at 289-90. Here, the most significant asset in the HPM Bankruptcies is the Vacant Land, specifically the proceeds from the sale of the Vacant Land, approximately $4,155,000. The HPM Entities do not seek the return of the Vacant Land so that it can operate and manage the Vacant Land in the course of their chapter 11 proceedings. Instead, the HPM Entities, like Receiver, would sell the Vacant Land to 69SV 8ME LLC for the same price and are only seeking chapter 11 protection so that the individual equity security holders of the HPM Entities will receive a bigger payout than they are likely to receive from Receiver in the State Court Action. And while the parties hardly address the impact of turnover as it relates to the Residences, the Residences themselves are rented out to Securities Defendants pursuant to unwritten leases. Because the leases are unwritten, they must be for a period of less than one year. Cal. Civ. Code § 1624(a). In the State Court Action, Receiver has obtained authority to sell the Residences, and proceeds of those sales will satisfy all of secured claims the HPM Entities. Ex. 16, Doc. #44. Further, the HPM Entities have no employees, no vendors, and no other tenants. There is essentially no

business for the HPM Entities to manage or operate in the course of their chapter 11 cases; the real dispute is over the distribution of sale proceeds.

It seems critical to acknowledge that Receiver gained pre-petition custody and control of the HPM Entities' scheduled assets through a lawsuit initiated by the California Commissioner of Financial Protection and Innovation on behalf of the people of the state of California, specifically certain allegedly defrauded investors. This is not a case where a receiver was appointed to oversee the management of a distressed company or to resolve a dispute between stakeholders. Requiring Receiver to turn over assets of Receivership Defendants would directly interfere with the State's authority to address securities fraud. There is no dispute that the HPM Entities are Receivership Defendants, that Maney is the majority equity security holder in both HPM Entities, and that Maney is the man at the center of all of the State's allegations in the State Court Action. Receiver should not be required to turn over assets that have been determined by the state court to be part of the receivership estate pursuant to a state court action commenced by the State to enforce State corporate securities law. Cf. In re NRA of Am., 628 B.R. 262, 281-82 (Bankr. N.D. Tex. 2021) ("While bankruptcy courts can, in some circumstances, apply state regulatory law, a bankruptcy case filed for the purpose of avoiding a regulatory scheme is not filed in good faith and should be dismissed."); Commodity Futures Trading Com. v. Co Petro Mktg. Grp., Inc., 700 F.2d 1279, 1283 (9th Cir. 1983) (regarding the automatic stay, acknowledging a policy of preventing "the bankruptcy court from becoming a haven for wrongdoers"); In re Charter Co., 913 F.2d 1575, 1579 (11th Cir. 1990) (explaining that turnover applies "only to those [funds] not in dispute" and that turnover principles should not applied to permit a bankruptcy debtor to recover property subject to a state law dispute).

In this case, Receiver will pay all secured creditors in full as part of a sale of the Residences. The HPM Entities will not use the turned over property for the benefit of creditors. Should this court deny Receiver's motion, there is no property that the HPM Entities would be able to recover through the use of avoiding powers that Receiver would not be able to recover. There is no greater likelihood of reorganization should Receiver be excused from turnover. All secured creditors will be paid by Receiver if Receiver is permitted to remain in place, so excusing turnover will not deprive the HPM Entities of funds necessary to pay secured creditors. The HPM Entities are Receivership Defendants.

Accordingly, the motion to excuse turnover will be GRANTED.

Property in Dispute

Receiver and the HPM Entities assume that the proceeds from the sale of the Vacant Land and the Residences, if sold, would be subject to the mandatory turnover obligations of 11 U.S.C. § 543. Although not raised by either party, the court will provide an additional explanation why, should the preceding application of the law be insufficient, the turnover of property by Receiver should not be required.

The mandatory turnover provisions of the Bankruptcy Code are not properly used to liquidate disputed state law claims. Charter Crude Oil Co. v. Exxon Co., U.S.A. (In re Charter Co.), 913 F.2d 1575, 1579 (11th Cir. 1990); MCI Telecomms. Corp. v. Gurga (In re Gurga), 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994); In re Even St. Prods. Ltd., No. LACV 17-1756, 2020 U.S. Dist. LEXIS 141267 *1, at *21-22 (C.D. Cal. Aug. 6, 2020). "[T]urnover proceedings involve return of *undisputed* funds." Gurga, 176 B.R. at 199.

The court is persuaded by the reasoning in In re Even St. Prods. Ltd., No. LACV 17-1756, 2020 U.S. Dist. LEXIS 141267 *1 (C.D. Cal. Aug. 6, 2020). In that case, the district court reversed the decision of the bankruptcy court requiring the turnover of royalties where the ownership of the royalties was not established and, consequently, ownership the royalty funds were in dispute. Even St., 2020 U.S. Dist. LEXIS 141267 at *27. The royalties to be turned over were the subject of ongoing state court litigation, and the state court had not determined that the debtors were entitled to the royalties. Id. at *20. Because the state court had not determined which party was entitled to the royalties, the district court determined that requiring turnover of the disputed property was "incorrect." Id. at *21-22. While the district court acknowledged that the debtors may have had an interest in a cause of action to recover the royalties, the debtors were seeking turnover of the funds in controversy, not the rights to a cause of action. Id. at *24-25. Reasoning that contingent litigation claims cannot be liquidated by a bankruptcy court prior to the entry of judgment in the state court action by means of a turnover order, the district court found the order to release the royalties to the debtors was in error. Id. at *26-27

Here, the HPM Entities have been designated Receivership Defendants in the State Court Action. The state court authorized Receiver to sell the Vacant Land, and that sale has closed with funds currently held in escrow. The HPM Entities do not want the Vacant Land, they want the proceeds from the sale of the Vacant Land. The Sale Order states that the net proceeds of escrow should be disbursed to the receivership estate, and the HPM Entities have appealed the Sale Order. As Hansen stated, the sale proceeds are "in escrow based on the dispute between HPM Holdings and the Receiver Regarding the entitlement to such funds." Hansen Turnover Decl. ¶ 17, Doc. #61. In his reply, Receiver suggests that the net proceeds from the sale of the Vacant Lot will be held in escrow pending a final determination in the State Court Action, although it is not clear from the record how or when Receiver would be authorized to distribute the receivership estate if the net proceeds of the sale of the Vacant Lot were turned over to the receivership estate as provided for in the Sale Order. Receiver was appointed in the State Court Action at the same time the state court issued a preliminary injunction and freezing of assets, and the State Court Action remains pending. The sale or disposition of any additional assets of the HPM Entities, as Receivership Defendants, has not been determined in the State Court Action.

Therefore, the court finds that proceeds from the sale of Vacant Land and the rights to the Residences are in dispute in the State Court Action. The state court, in naming the HPM Entities as Receivership Defendants, brought into question the rights of HPM Entities in the Vacant Land and Residences. The state had authority to do so, because "[p]roperty interests are created and defined by state law." Butner v. United States, 440 U.S. 48, 55 (1979). What rights, if any, the HPM Entities have in the Residences and the net proceeds of the Vacant Lot is in dispute in the State Court Action. To adopt the reasoning of the Eleventh Circuit:

> To apply turnover principles to the dispute between [Receiver] and [the HPM Entities] would allow [the HPM Entities] to recover monies under the Bankruptcy Code from disputed claims based strictly on state law. "Certainly such procedure could not be sanctioned outside bankruptcy and there is no just reason why it should be sanctioned just because the entity seeking to collect disputed funds happens to be a Debtor under the Bankruptcy Code."

Charter Co., 913 F.2d at 1589 (quoting In re Chick Smith Ford, Inc., 46 B.R. 515, 518 (Bankr. M.D. Fla. 1985)). The HPM Entities do not have an undisputed

right to the Vacant Land, the Residences, or the net proceeds from the sale of any assets. Requiring turnover of disputed property at this time is not proper.

Conclusion

Accordingly, the motion to excuse turnover will be GRANTED.

4. 21-11970-A-11 **IN RE: HIGH PLAINS MESA HOLDINGS, LP**
PJL-3

MOTION TO DISMISS CASE
9-1-2021 [46]

THOMAS MCNAMARA/MV
GARY KAPLAN/ATTY. FOR DBT.
PAUL LEEDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on September 15, 2021. Doc. #67. The United States Trustee for Region 17 filed a reservation of rights should the court deny this motion to dismiss. Doc. #56. The failure of other creditors or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

This motion to dismiss was filed in the chapter 11 bankruptcy case of High Plains Mesa Holdings LP ("HPM Holdings"), case no. 21-11970. Doc. #46. A near identical motion was filed in the chapter 11 bankruptcy case of High Plains Mesa Management LLC ("HPM Mgmt."), case no. 21-11971. When referenced together, HPM Holdings and HPM Mgmt. will be referred to as "the HPM Entities" and their bankruptcies will be the "HPM Bankruptcies."

The movant Thomas McNamara ("Receiver"), a state-court appointed receiver, moves to dismiss the HPM Bankruptcies under 11 U.S.C. § 1112(b) or, alternatively, to dismiss the HPM Bankruptcies under 11 U.S.C. § 305(a)(1). Doc. #46. The court has considered the motion, opposition, and reply. After due consideration, Receiver's motion to dismiss will be GRANTED pursuant to 11 U.S.C. § 1112(b). Even if dismissal is not warranted under § 1112(b), dismissal under § 305(a) would be appropriate.

Debtor's Objection to Declaration of Thomas McNamara

The HPM Entities object to the Declaration of Thomas McNamara filed in support of Receiver's motion to dismiss or abstain ("McNamara Declaration"). Obj., Doc. #72; McNamara Decl., Doc. #48. Specifically, the HPM Entities object to paragraphs 21 through 24 of the McNamara Declaration and the attachments

referenced by those paragraphs and attached to the declaration as exhibits 11 through 14 (the "Exhibits"). Doc. #72. The HPM Entities object to the admission of that portion of the McNamara Declaration and Exhibits to the extent they purport to establish the truth of the contents of the documents as evidence in this proceeding.

The objection is SUSTAINED only to the extent paragraphs 21 through 24 of the McNamara Declaration and Exhibits 11 through 14 are offered to prove the truth of the allegations contained therein. The Exhibits are admissible to the extent the Exhibits establish the nature and timeline of proceedings in the state court action, discussed in greater detail below. Therefore, the Exhibits are admissible to prove what happened in the state court action, what are the allegations in the state court action, what motions have been filed in the state court action, and how the state court has ruled on those motions.

Further, the orders of the court in the state court action are admissible to establish that the state court ruled a particular way for a particular reason. The rulings, dispositions, and findings of the court in the state court action, to the extent they are contained in the written record, are not subject to reasonable dispute. Pursuant to Federal Rule of Evidence 201(c), the court may take judicial notice on its own. "[C]ourt orders and filings are proper subjects of judicial notice." Carmax Auto Superstores Cal. LLC v. Hernandez, 94 F. Supp. 3d 1078, 1087 (C.D. Cal. 2015) (collecting cases). The court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (quotations and citations omitted). The proceedings and filings of the state court action are the proper subject of judicial notice, and the court takes judicial notice of the orders and related filings in the state court action.

The High Plains Entities

HPM Mgmt. is a Texas limited liability company authorized to do business in California. Decl. of Terry Hansen Supporting Chapter 11 Filings ("Hansen Bankr. Decl.") ¶ 1, Doc. #6; Decl. of Terry Hansen Opposing Motion to Dismiss ("Hansen MTD Decl.") ¶ 3, Doc. #68.

HPM Mgmt. is owned by three members. HPM Mgmt. List of Equity Security Holders, Doc. #31, Case No. 21-11971. Thomas M. Maney ("Maney") holds a 57% equity interest; Justin G. Child ("Child") holds a 33% equity interest; Terry E. Hansen ("Hansen") holds a 10% equity interest. Id. Hansen is the current manager of HPM Mgmt., although Child also has held the title of manager of HPM Mgmt. Hansen MTD Decl. ¶ 3, Doc. #68. Hansen is responsible for handling day-to-day operations of HPM Mgmt. Id.

HPM Mgmt. scheduled a single asset: a 1% ownership interest in HPM Holdings valued at $40,000. HPM Mgmt. Schedule A/B, Doc. #23, Case No. 21-11971. HPM Mgmt. scheduled no creditors, is not a party to any executory contracts or unexpired leases, and has no codebtors. HPM Mgmt. Schedules D, E/F, G, H, Doc. ##24-27, Case No. 21-11971.

HPM Mgmt. is the general partner of HPM Holdings. Hansen MTD Decl. ¶ 1, Doc. #68. HPM Holdings is a Texas limited partnership doing business in California. Hansen MTD Decl. ¶ 3, Doc. #68.

HPM Holdings is owned by four limited partners. HPM Holdings List of Equity Security Holders, Case No. 21-11970, Doc. #27. Maney holds a 56.43% equity

interest; Child holds a 21.29% equity interest; Hansen holds a 21.28% equity interest; and HPM Mgmt. holds a 1% equity interest. Id.

According to its bankruptcy schedules, HPM Holdings holds $499.34 cash in a BBVA checking account. HPM Holdings Am. Schedule A/B, Doc. #81. Pre-petition, HPM Holdings deposited $154,451 with Farella Braun + Martel LLP, legal counsel for the HPM Entities, as a retainer. HPM Holdings Am. Schedule A/B, Doc. #81; HPM Holdings Am. Stmt. of Financial Affairs Ques. 11, Doc. #84. HPM Holdings has no accounts receivable, no investments, neither owns nor leases any inventory, office furniture or equipment, machinery, or vehicles. HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings scheduled undivided fee simple interests in residential real properties known as 19790 Remos Ct., California City, CA 93505 APN 305-181-31-00-2 valued at $338,000.00 and 19840 Aloha Way, California City, CA 93505 APN 305-230-38-00-0 valued at $310,000.00 (collectively, the "Residences"). HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings has no interest in any intangibles or intellectual property. HPM Holdings Am. Schedule A/B, Doc. #81. The only other asset scheduled is a cause of action for turnover/avoidance against Receiver to recover the proceeds from the sale of approximately 640 acres of vacant land in unincorporated Kern County, California (the "Vacant Land") valued at $4,160,000. HPM Holdings Am. Schedule A/B, Doc. #81.

The only two scheduled secured creditors of HPM Holdings are (1) the Kern County Treasurer with claims totaling $21,493.18 from unpaid real property taxes on the Residences and Vacant Land, and (2) Accelerated Assets LLC who holds a deed of trust on both Residences and is owed $10,434.11. HPM Holdings, Schedule D, Doc. #29; Proof of Claim #1.

HPM Holdings scheduled one unsecured claim of $419.18 owed for legal services provided by Parker Mills LLP. HPM Holdings Schedule E/F, Doc. #30.

HPM Holdings scheduled two unexpired leases. HPM Holdings Schedule G, Doc. #31. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch & Club Inc. rents the Residences. HPM Holdings Schedule G, Doc. #31. The rent received is HPM Holdings' sole source of revenue. Am. Form 207, Doc. #84.

HPM Holdings scheduled Silver Saddle Ranch & Club Inc. as a codebtor to the debt owed to the Kern County Treasurer and Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32. HPM Holdings scheduled MCQ Corporation as a codebtor with respect to Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32.

To summarize, the HPM Entities' schedules show that HPM Mgmt. is the manager and 1% owner of HPM Holdings. Both HPM Entities are majority owned by Maney, with Child and Hansen holding minority interests in both entities. HPM Holdings scheduled ownership in real property, the Residences and, previously, the Vacant Land, the proceeds from the sale of which may be the subject of a turnover or avoidance action. The Residences are leased to Silver Saddle Ranch, and the rent collected is HPM Holdings' sole source of revenue.

State Court Proceedings, Generally

On September 9, 2019, the California Commissioner of Business Oversight, also referred to by the parties as the California Commissioner of Financial Protection and Innovation, (hereafter, the "State"), filed a complaint against Maney, Silver Saddle Commercial Development LP ("Silver Saddle Development"), Silver Saddle Ranch & Club Inc. ("Silver Saddle Ranch"), the Galileo Commercial Property Owners Association Inc. ("Galileo"), and related entities (collectively the "Securities Defendants") initiating People of the State of

California v. Silver Saddle Commercial Development, LP, Case No. 37-2019-00049151-CU-MC-CTL, Superior Court of California, County of San Diego (the "State Court Action"). McNamara Decl. ¶¶ 2, 14, Doc. #48; Ex. 4, Doc. #49. The allegations in the complaint centered around real estate investments called "LandBanking Plus" or "The Galileo Project" (collectively referred to as "Galileo Project"). Hansen MTD Decl. ¶ 12, Doc. #68; Ex. 4, Doc. #49. The State alleges that Securities Defendants, through the Galileo Project, sold "overpriced fractionalized interests in vacant desert land in rural Kern County" in a scheme to defraud unsophisticated investors. Ex. 4, Doc. #49.

The state court issued a receivership order on October 30. 2019, appointing Receiver in the State Court Action (the "Receivership Order"). McNamara Decl. ¶¶3, 15, Doc. #48; Receivership Order, Ex. 1, Doc. #49.

Per the Receivership Order, the state court found good cause to believe that Securities Defendants violated the Corporate Securities Law of 1968, specifically California Corporations Code sections 25401 and 25110, fraud in the offer and sale of securities and the offer and sale of unqualified securities, respectively. Receivership Order 2:12-26. Ex. 1, Doc. #49. The Receivership Order authorized and directed Receiver to

> take possession of all real and personal property and assets of Defendants SILVER SADDLE COMMERCIAL DEVELOPMENT, LP; SILVER SADDLE RANCH & CLUB, INC.; THE GALILEO COMMERCIAL PROPERTY OWNERS ASSOCIATION, INC. as well as any other entity that has conducted any business related to Defendants' offering and selling of the Galileo Project investment contracts, including receipt of assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant (hereinafter "Receivership Defendants"), and their respective subsidiaries and affiliates, and their successors and assigns wherever situated, or to which Receivership Defendants have any right of possession, custody or control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such assets which Receivership Defendants carry or maintain, or which may be received during the pendency of this receivership, in order to obtain an adequate accounting of Receivership Defendants' assets and liabilities and to secure a marshalling of said assets.

Receivership Order 5:7-20, Ex. 1, Doc. #49. The Receivership Order further empowered Receiver to identify nonparty entities as Receivership Defendants, and upon so doing required Receiver to promptly notify the entity that it could challenge Receiver's determination by filing a motion in the State Court Action. Receivership Order 10:16-22, Ex. 1, Doc. #49.

Pursuant to the Receivership Order, on October 2, 2020, Receiver notified the HPM Entities of Receiver's determination that they qualified as Receivership Defendants. McNamara Decl. ¶ 20, Doc. #48; Ex. 10, Doc. #50. On January 8, 2021, the HPM Entities, acting in concert through counsel, moved for an order to show cause challenging Receiver's determination in the State Court Action. McNamara Decl. ¶ 21, Doc. #48. Receiver responded. McNamara Decl. ¶ 21, Doc. #48. On February 11, 2021, after receiving argument from all parties, the state court determined that the HPM Entities were properly classified as Receivership Defendants, stating that Receiver presented "uncontroverted evidence" that

> the HPM entities have conducted business related to the Galileo Project investment scheme, received assets derived from activity that is the subject of the Complaint in this matter, and are controlled or

> owned by a Defendant. In fact, Defendant Maney presently holds a 56.43% interest in HPM Holdings, and until recently was employed by the HPM entities as an officer and manager. The HPM entities own real property utilized as part of the investment scheme. HPM entity expenses were paid with Silver Saddle investment funds. Defendant Maney used HPM Entities' property as collateral for the sale of Silver Saddle investment funds. Defendant Maney used HPM entity property as collateral for the sale of Silver Saddle investor promissory notes to Accelerated Assets. This agreement specifically states that HPM Holding is "an affiliated or controlled entity of Seller or Seller's principals."

Minute Order, Ex. 12, Doc. #50. Having assumed possession and control of the HPM Entities' real property pursuant to the Receivership Order and the determination of HPM Entities as Receivership Defendants, on May 13, 2021, Receiver sought state court approval to sell the Vacant Land, owned by HPM Holdings, to 69SV 8ME LLC for the purchase price of approximately $4.1 million in accordance with the terms of a pre-receivership purchase option contract between 69SV 8ME LLC and HPM Holdings. McNamara Decl. ¶ 23, Doc. #48; Hansen MTD Decl. ¶ 11, Doc. #68.

The HPM Entities did not oppose Receiver's motion, and on June 11, 2021, Receiver's motion was granted in the State Court Action (the "Sale Order"). McNamara Decl. ¶ 24, Doc. #48; Sale Order, Ex. 14, Doc. #50. On August 10, 2021, the sale closed and the HPM Entities timely appealed the Sale Order. McNamara Decl. ¶¶ 25-26, Doc. #48; Hansen MTD Decl. ¶¶ 16-17, Doc. #68. The proceeds from the sale, approximately $4,155,000, are currently being held in escrow by Stewart Title. McNamara Decl. ¶ 27, Doc. #48; Hansen MTD Decl. ¶ 17, Doc. #68. The Sale Order states that the net proceeds of escrow should be disbursed to the receivership estate. Ex. 14, Doc. #50.

On August 11, 2021, HPM Holdings and HPM Mgmt. filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The HPM Entities do not oppose the sale of the Vacant Land and intend to proceed with the sale to 69SV 8ME LLC. Hansen Bankr. Decl. ¶ 12, Doc. #6. The HPM Bankruptcies were filed so that the proceeds from the sale of the Vacant Land and the value of the Residences would inure to the HPM Entities' "stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6.

Receiver states that, but for the HPM Bankruptcies, Receiver would move to sell the Residences in the State Court Action and would use the proceeds to pay in full the secured claim of Accelerated Assets LLC and all outstanding property taxes and fees. McNamara Decl. ¶28, Doc. #48; Ex. 16, Doc. #50.

Players Common to Bankruptcy Proceedings and State Court Action

In the State Court Action, the State identifies numerous named and unnamed defendants who have allegedly participated in a scheme to defraud investors that, broadly stated, involves the sale of unqualified securities, undeveloped desert land in Kern County, California, and membership in the Silver Saddle Ranch & Club. Complaint, Ex. 4, Doc. #49; Hansen Bankr. Decl. ¶ 6, Doc. #6.

Maney, majority equity holder in both HPM Mgmt. and HPM Holdings, is a named defendant in the State Court Action. Maney is the central figure of the State's case, and the allegations against Maney are generally that Maney controls all of the named Securities Defendants and Maney used the Securities Defendants to violate California law and commit securities fraud. Complaint, Ex. 4, Doc. #49.

The State's complaint also named Silver Saddle Development and Silver Saddle Ranch. Complaint, Ex. 4, Doc. #49. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch rents the Residences. HPM Holdings Am. Schedules A/B, Doc. #81, and Schedule G, Doc. #31; Hansen MTD Decl. ¶ 8, Doc. #68. Pursuant to the unwritten lease agreements, Silver Saddle Ranch is responsible for all maintenance, insurance, and property taxes for the Residences. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen MTD Decl. ¶ 8, Doc. #68. Silver Saddle Ranch also is responsible for paying franchise fees for both HPM Holdings and HPM Mgmt. and must pay the property taxes for the Vacant Land. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen MTD Decl. ¶ 8, Doc. #68. In 2010, HPM Holdings pledged the Residences as security for the obligations of Silver Saddle Ranch and MCQ Corporation to Accelerated Assets LLC. Hansen MTD Decl. ¶ 9, Doc. #68. HPM Holdings scheduled Silver Saddle Ranch as a codebtor to debt owed to the Kern County Treasurer and to Accelerated Assets LLC. Schedule H, Doc. #32.

In addition to the equity interests stated above, Hansen is the manager of HPM Mgmt., which in turn is the sole general partner of HPM Holdings. Hansen MTD Decl. ¶ 1, Doc. #68; HPM Holdings List of Equity Security Holders, Doc. #27. Hansen is not a named defendant in the State Court Action. Hansen MTD Decl. ¶ 14, Doc. #68. Hansen has assisted in preparing financial reports and tax returns for HPM Holdings, HPM Mgmt., Silver Saddle Ranch, MCQ Corporation, and Silver Saddle Development. Hansen MTD Decl. ¶ 10, Doc. #68. For this work, Hansen was paid a "minimum salary" to support Hansen's health insurance coverage. Hansen MTD Decl. ¶ 10, Doc. #68. Hansen states that his services were unrelated to the sale of Galileo Project investments and terminated more than two years ago. Hansen MTD Decl. ¶ 10, Doc. #68.

Child, in addition to the equity interests stated above, was previously the manager of HPM Mgmt., though both Child and Hansen state that Hansen has always been responsible for day-to-day managerial duties of HPM Mgmt. Decl. of Justin S. Child in Opposition to Motion to Dismiss ("Child Decl.") ¶ 1, Doc. #70; Hansen MTD Decl. ¶ 3, Doc. #68. Child was employed by Silver Saddle Ranch until approximately 2008 or 2009. Child Decl. ¶ 4, Doc. #70. Silver Saddle Development is indebted to Child in the amount of $1,000,000 for a promissory note ("Note") that consolidated debts owed to Child by Silver Saddle Ranch and MCQ Corporation. Child Decl. ¶ 4, Doc. #70. Payments on the Note continued to be funded through Silver Saddle Ranch's and/or Silver Saddle Development's payroll system after Child retired approximately thirteen years ago. Child Decl. ¶ 4, Doc. #70. Child claims that the Note, based on monies Child loaned, is unrelated to the sale of Galileo Project investments giving rise to the State Court Action. Child Decl. ¶ 4, Doc. #70.

Both Child and Hansen state that "[a]lthough Thomas Maney also holds equity interests in each of [HPM Holdings] and [HPM Mgmt.] . . . he is neither a general partner of [HPM Holdings], nor a manager of [HPM Mgmt.], nor an officer or director of either [HPM Holdings] or [HPM Mgmt.]." Child Decl. ¶ 3, Doc. #70; Hansen MTD Decl. ¶ 3, Doc. #68.

Receiver has Standing

The HPM Entities contend that Receiver's motion must be dismissed because Receiver is not a party in interest and thus lacks legal standing to bring the motion. Doc. #67. The HPM Entities argument focuses on whether Receiver is a party in interest under 11 U.S.C. §§ 1109(b) and 1112(b).

Section 1112(b) of the Bankruptcy Code states that a motion to dismiss a chapter 11 case under this subsection must be brought "on request of a party in interest." 11 U.S.C. § 1113(b)(1).

Section 1109(b) provides that "[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). The statutory "list is illustrative, and not exhaustive." Hughes v. Tower Park Props., LLC (In re Tower Park Props., LLC), 803 F.3d 450, 457 (9th Cir. 2015). The Ninth Circuit has "observed that the party-in-interest standard has 'generally been construed broadly,' and that '[c]ourts must determine on a case by case basis whether the prospective party has a sufficient stake in the proceedings so as to require representation.'" Tower Park, 803 F.3d at 457 (quoting Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d 869, 884 (9th Cir. 2012)).

However, "an entity 'that may suffer collateral damage' but does not have a legally protected interest does not have standing under § 1109(b). Such interests are 'too remote to entitle the entity to intervene in a bankruptcy case.'" Id. (quoting In re C.P. Hall Co., 750 F.3d 659, 661 (7th Cir. 2014)).

Some courts have found pre-petition receivers to lack standing as a party in interest. In In re Rimsat, Ltd., 193 B.R. 499 (Bankr. N.D. Ind. 1996), cited by the HPM Entities, the bankruptcy court found the pre-petition receiver lacked standing as a party in interest because the receiver had not been relieved of the obligation to comply with the turnover requirements of 11 U.S.C. § 543. Rimsat, 193 B.R. at 502. The Rimsat court indicated that, had the receiver been excused from compliance with § 543, "the excused custodian would be a party in interest." Id. at 502 n.2, 503. Additionally, the Rimsat bankruptcy court determined that even if the receiver were a party in interest under § 1109(b), the receiver did not have any interests protected by § 1112(b), again, because the receiver had not attempted to be excused from the obligations of § 543(a) and (b) and had thus lost any protectable interest he may have had as a pre-petition receiver. Id. at 503.

Other courts have acknowledged that "[w]here the petition has been filed to allegedly end-run [a nonbankruptcy court's] liquidation order, the Receiver has a sufficient interest to qualify him as a real party in interest with standing for purposes of" motions brought under § 1112(b) and § 305(a). In re Ofty Corp., 44 B.R. 479, 482 (Bankr. D. Del. 1984); accord El Torero Licores v. Raile (In re El Torero Licores), No. SACV 13-08875-VAP, 2013 WL 6834609, 2013 U.S. Dist. LEXIS 179953 *1 (C.D. Cal. Dec. 20, 2013). This is true where the pre-petition receiver was appointed to liquidate the debtor's assets and the filing of the bankruptcy petition stayed the receiver's ability to carry out this function and put the debtor under the same control as when the receiver was first appointed. Ofty, 44 B.R. at 481-82.

Here, Receiver has standing to pursue this motion. Unlike Rimsat, where the receiver neither sought nor obtained a court order excusing compliance with § 543, Receiver has moved for an order excusing turnover. Doc. #40. More importantly, in consideration of Rimsat, it is significant to acknowledge that the HPM Entities and Receiver stipulated to defer Receiver's obligations under § 543 until the court rules on this motion. Doc. #25; Order, Doc. #37. The HPM Entities' reliance on Rimsat is specious given that they have consented to excuse Receiver's obligations under § 543 until this motion is resolved.

The facts presented in this case are strikingly similar to those in Ofty. As in Ofty, Receiver alleges that this bankruptcy was filed solely so the HPM Entities could avoid the consequences of an unfavorable state court proceeding. The HPM Entities agree, having repeatedly stated that the HPM Entities intend to use the protections of the Bankruptcy Code "so that

proceeds of [the sale of the Vacant Land] inure to [HPM Holding]'s stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6. The Receivership Order requires Receiver, in the event that an entity designated as a Receivership Defendant files bankruptcy, to continue to collect any rents and other income and make disbursements to preserve and protect the assets while Receiver awaits a decision from the State as to whether it intends to seek relief from the requirement to turnover assets to the debtor in possession. The State has objected to any turnover and requested Receiver remain in possession and preserve the assets in issue. McNamara Decl. ¶¶ 11-12, Doc. #48. As in Ofty, the filing of this bankruptcy case has stayed Receiver's ability to carry out his duties and subjects Receiver to competing, inconsistent obligations.

Accordingly, the court finds that Receiver has standing as a party in interest under 11 U.S.C. §§ 1109(b) and 1112(b).

Dismissal under § 1112(b): Bad Faith Filing

Receiver argues that the HPM Bankruptcies should be dismissed for cause under 11 U.S.C. § 1112(b) because they were not filed in good faith. Doc. #46. "Dismissal for a lack of good faith in filing is a matter for the bankruptcy court's discretion." In re Stolrow's, Inc., 84 B.R. 167, 170 (B.A.P. 9th Cir. 1988). A bankruptcy court "may consider any factors which evidence an intent to abuse the judicial process and the purposes of" reorganization. Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1048 (9th Cir. 2013) (quoting Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.), 849 F.2d 1393, 1394 (11th Cir. 1988)). The debtor bears the burden of proving that the bankruptcy petition was filed in good faith. Id. (citations omitted).

"Dismissal of a chapter 11 case under 11 U.S.C. § 1112(b) requires a two-step analysis." Moore v. United States Tr. for Region 16 (In re Moore), 583 B.R. 507, 511 (C.D. Cal. 2018). It must first be determined that there is "cause" to act, and it then must be determined that dismissal, rather than conversion to chapter 7 or appointment of a trustee, is in the best interests of the creditors and the estate. Id. (citing Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006)). While § 1112(b)(4) of the Bankruptcy Code identifies specific conduct constituting cause, "bankruptcy courts may look beyond 11 U.S.C. § 1112(b)(4) and 'consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" Id. at 512 (quoting Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000)).

Both the HPM Entities and Receiver recite a number of factors typically present when a bankruptcy court determines that a bankruptcy petition is not filed in good faith. These factors seemingly appear in case law from every circuit, and for the sake of consistency will be repeated in the same manner set forth in Receiver's motion:

(1) the debtor has only one asset

(2) the pre-petition conduct of the debtor has been improper;

(3) there are only a few unsecured creditors;

(4) the debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court;

(5) the debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford;

(6) the filing of the petition effectively allows the debtor to evade court orders;

(7) the debtor has no ongoing business or employees; and

(8) the lack of possibility of reorganization.

Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd. P'ship), 30 F.3d 734, 738 (6th Cir. 1994); see also St. Paul Self Storage Ltd. P'ship v. Port Auth. (In re St. Paul Self Storage Ltd. P'ship), 185 B.R. 580, 582-83 (B.A.P. 9th Cir. 1995). It matters not whether all the factors listed are present, and it may be the case that only a few factors weigh so heavily as to be determinative. Can-Alta Props., Ltd. v. State Sav. Mortg. Co. (In re Can-Alta Props., Ltd.), 87 B.R. 89, 91-92 (B.A.P. 9th Cir. 1988).

Some bankruptcy courts must go great lengths to determine why an entity filed for relief under the Bankruptcy Code. See, e.g., In re NRA of Am., 628 B.R. 262 (Bankr. N.D. Tex. 2021) (ruling on § 1112(b) motions to dismiss after a twelve-day hearing with twenty-three witnesses). Here, the HPM Bankruptcies were filed "to ensure that the proceeds of the sale of [the Vacant Land], as well as the value of the [Residences] inure to [the HPM Entities'] estate and its stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen MTD Decl. ¶ 19, Doc. #68. The HPM Entities' stakeholders are Maney, Child, and Hansen. Maney is the central figure in the State's case, and one of the specifically named Securities Defendants in the State Court Action. If the HPM Bankruptcies were not dismissed and the net proceeds from the sale of the Vacant Land as well as the net value of the Residences were distributed to Maney, Child, and Hansen as the ultimate equity holders of the HPM Entities, Maney would receive nearly $2.7 million. This number is calculated by taking 56.43% of the estimated net sale proceeds from the Vacant Land (.5643 x $4,155,000 = $2,344,666.50) and the Residences (.5643 x .90($648,000-$620,000) = $314,879.40) plus 57% of HPM Mgmt.'s 1% interest in HPM Holdings (.57 x $47,130 = $26,864.10), which equals $2,686,410.00.

Also telling are the arguments and facts relied on by the HPM Entities against dismissal. The declarations of Child and Hansen filed in opposition to Receiver's motion emphasize the HPM Entities' position that the HPM Entities were not involved in the Galileo Project and are not named defendants in the State Court Action. Yet the state court determined the HPM Entities to be Receivership Defendants in February 2021 in response to an objection filed by the HPM Entities. The declarations also state that, despite their personal connections to Securities Defendants, neither Child nor Hansen have any continued personal involvement with the businesses of the Securities Defendants (although payments from Silver Saddle Development to Child may be ongoing). Neither declaration sets forth any additional facts, separate from the State Court Action, demonstrating that the HPM Bankruptcies were filed in good faith, that a reorganization is possible, or that creditors (as distinguished from equity security holders) would benefit from bankruptcy protection. In essence, the HPM Entities seek to demonstrate that the HPM Entities should not be Receivership Defendants. This issue has been argued and determined in the State Court Action, and the HPM Entities are now attempting to use the Bankruptcy Code to avoid the consequences of the State Court Action.

Other factors also weigh in favor of dismissal. The HPM Entities, combined, have one unsecured creditor with a scheduled claim of less than $500, and two secured creditors with aggregate claims of less than $35,000 against the Residences and Vacant Land. The Residences are valued at a combined $648,000. There are no employees for either entity. HPM Mgmt. has only one asset, its 1% ownership interest in HPM Holdings. HPM Holdings has more than one asset, but those assets may be subject to the receivership estate. The primary asset, the Vacant Land, was sold by Receiver in the State Court Action, and Receiver intends to sell the Residences. There are no significant assets that have not been incorporated into the State Court Action. Whatever the number of assets, these bankruptcy cases are essentially two-party disputes, Receiver against the HPM Entities, that will be better resolved outside of the bankruptcy court's jurisdiction. Resolution outside of the bankruptcy court's jurisdiction, in fact, is already happening in the context of the ongoing State Court Action and related appeals.

Taking all the circumstances into consideration, it is evident from the record before this court that the HPM Bankruptcies were filed to prevent Receiver from complying with the Sale Order, to renew unsuccessful state court arguments pertaining to the HPM Entities' status as Receivership Defendants, to prevent sale proceeds from being distributed in the manner required by the State Court Action, and to funnel nearly $2.7 million to Maney, the central figure in the State Court Action. The HPM Bankruptcies were filed in bad faith and there is cause for dismissal under 11 U.S.C. § 1112(b).

Dismissal is in the best interest of creditors and the estate. There are no creditors with claims secured by the Vacant Land that would be in a better position if the proceeds from the sale of the Vacant Land went to the HPM Entities rather than Receiver. The Kern County Tax Commissioner will be paid from the sale proceeds no matter who ultimately claims the pot. Additionally, dismissing the HPM Bankruptcies to permit Receiver to continue under the authority of the State Court Action will likely result in the full satisfaction of Accelerated Assets' secured claim against the Residences and the payment in full of all outstanding property taxes, thus satisfying all secured claims against the HPM Entities.

Accordingly, Receiver's motion to dismiss under 11 U.S.C. § 1112(b) will be granted. The HPM Bankruptcies will be dismissed.

Dismissal under § 305(a)(1)

Even if dismissal is not warranted under § 1112(b), dismissal under § 305(a) would be appropriate.

Section 305(a) of the Bankruptcy Code allows the court to dismiss or suspend bankruptcy proceedings if "the interests of creditors and the debtor would be better served by such dismissal or suspension." 11 U.S.C. § 305(a)(1).

In the Ninth Circuit, dismissal under § 305(a)(1) most frequently arises in involuntary cases. See Wechsler v. Macke Int'l Trade, Inc. (In re Macke Int'l Trade, Inc.), 370 B.R. 236, 252 (B.A.P. 9th Cir. 2007) (stating that § 305(a)(1) is "intended to deal with involuntary petitioners who . . . improperly seek to impose the consequences of bankruptcy on an unwilling debtor"); Marciano v. Fahs (In re Marciano), 459 B.R. 27, 49-50 (B.A.P. 9th Cir. 2011) (holding the two-step process for dismissal under § 1112(b) "is appropriate in the context of deciding a § 305(a) motion with respect to a pending Involuntary Petition"). Courts have also held that dismissal under § 305(a) is not confined to involuntary cases, see In re Honolulu Affordable Hous. Partners, LLC, No. 15-00146, 2015 Bankr. LEXIS 1558 *1 (Bankr. D. Haw.

May 7, 2015), In re Law Offices of T. Robert Hill, P.C., No. 17-10597, 2017 Bankr. LEXIS 4321 *1 (Bankr. W.D. Tenn. June 20, 2017), and the HPM Entities do not argue that § 305(a) is inapplicable to this proceeding. Therefore, the court will address the § 305(a) arguments of the parties.

"Dismissal under § 305(a)(1) is appropriate 'only in the situation where the court finds that both creditors and the debtor would be better served by a dismissal.'" Marciano, 459 B.R. at 46 (quoting Eastman v. Eastman (In re Eastman), 188 B.R. 621, 624 (9th Cir. 1995)). As with the motion to dismiss under § 1112(b), both Receiver and the HPM Entities recite and apply various factors that courts frequently apply. The parties recite the following seven factors set forth in Marciano:

(1) the economy and efficiency of administration;

(2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;

(3) whether federal proceedings are necessary to reach a just and equitable solution;

(4) whether there is an alternative means of achieving an equitable distribution of assets;

(5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;

(6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and

(7) the purpose for which bankruptcy jurisdiction has been sought.

Marciano, 459 B.R. at 44-45. "While a court may afford more weight to any factor it deems most relevant, many courts have held that the first factor, the economy and efficiency of administration, is the paramount concern when determining if abstention under § 305(a) is appropriate." Law Offices of T. Robert Hill, P.C., 2017 Bankr. LEXIS 4621 at *9.

The economy and efficiency of administration favor dismissal of this case. The HPM Entities do not seek to avoid the sale of the Vacant Land, they only seek to retain the proceeds from the sale. The HPM Entities have repeatedly stated that chapter 11 protection has been sought so that the Vacant Land sale proceeds and the value of the Residences are distributed among HPM Entities' equity holders, including Maney, rather than to the receivership estate. The dispute over the validity of the sale of Vacant Land by Receiver is ongoing in the State Court Action, as the HPM Entities have appealed the Sale Order. The State Court Action alleges violations of state corporate law against numerous Securities Defendants on behalf of many individual investors, and decisions impacting the HPM Entities would be more efficiently resolved by the state court that has expertise and jurisdiction over all parties in the State Court Action. Additionally, the State Court Action likely would need to be resolved in full to settle disputes over the assets of the HPM Bankruptcies' estates. Dismissal favors economy and efficiency of administration for creditors and the HPM Entities.

There already is a pending proceeding, the State Court Action, that has been pending in state court for two years. The proceedings in the State Court Action

can adequately protect the interests of the HPM Entities, Receiver, and HPM Entities' creditors. The HPM Entities were designated Receivership Defendants seven months ago after challenging that designation in accord with procedures set forth in the Receivership Order. The factual allegations raised by the HPM Entities regarding their connection with the Securities Defendants, as well as entitlement to net proceeds of the assets of Receivership Defendants, are already part of the State Court Action. The state court has the subject matter expertise to resolve the state law allegations in the State Court Action, to determine the scope of the receivership estate created in the State Court Action, and to consider appropriate remedies. The HPM Entities have appealed the state court Sale Order, and the California courts of appeal can properly determine the appeals already filed by the HPM Entities.

Federal proceedings are not required to reach a just and equitable resolution of the issues that the HPM Entities assert are the reasons for filing the HPM Bankruptcies. It would be a waste of resources and a damper on efficient administration for all parties to continue with the HPM Bankruptcies. Based on the record before the court, dismissing the HPM Bankruptcies would be less expensive for all parties, and all parties would be better served by resolving outstanding issues through the State Court Action.

Conclusion

Accordingly, the motion to dismiss pursuant to § 1112(b) is GRANTED. Were the court not dismissing this case pursuant to § 1112(b), it would be dismissed pursuant to § 305(a).

5. 21-11971-A-11 **IN RE: HIGH PLAINS MESA MANAGEMENT, LLC**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-11-2021 [1]

GARY KAPLAN/ATTY. FOR DBT.

NO RULING.

6. 21-11971-A-11 **IN RE: HIGH PLAINS MESA MANAGEMENT, LLC**
PJL-2

MOTION FOR AN ORDER EXCUSING TURNOVER OF PROPERTY HELD BY A CUSTODIAN
9-1-2021 [34]

THOMAS MCNAMARA/MV
GARY KAPLAN/ATTY. FOR DBT.
PAUL LEEDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled unless the motion to dismiss (calendar matter #7) is granted, in which case this matter will be denied as moot.

DISPOSITION: Granted if matter heard.

ORDER: The court will issue an order if the motion is denied as moot. If the matter is heard, the minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

If the motion to dismiss this chapter 11 bankruptcy case (calendar matter #7) is granted, this motion will be denied as moot. If the motion to dismiss is not granted, this motion will be granted based on the following.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on September 15, 2021. Doc. #53. The failure of other creditors or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

This motion to for an order excusing turnover filed in the chapter 11 bankruptcy case of High Plains Mesa Management LLC ("HPM Mgmt."), case no. 21-11971, Doc. #34. A near identical motion was filed in the chapter 11 bankruptcy case of High Plains Mesa Holdings LP ("HPM Holdings"), case no. 21-11970. When referenced together, HPM Holdings and HPM Mgmt. will be referred to as "the HPM Entities" and their bankruptcies will be the "HPM Bankruptcies."

The movant Thomas McNamara ("Receiver"), a state-court appointed receiver, moves for an order excusing the turnover of property to the HPM Entities. Doc. #34. The court has considered the motion, opposition, and reply. After due consideration, Receiver's motion to excuse turnover will be GRANTED.

Debtor's Objection to Declaration of Thomas McNamara

The HPM Entities object to the Declaration of Thomas McNamara filed in support of Receiver's motion to excuse turnover ("McNamara Declaration"). Obj., Doc. #58; McNamara Decl., Doc. #36. Specifically, the HPM Entities object to paragraphs 21 through 24 of the McNamara Declaration and the attachments referenced by those paragraphs and attached to the declaration as exhibits 11 through 14 (the "Exhibits"). Doc. #58. The HPM Entities object to the admission of that portion of the McNamara Declaration and Exhibits to the extent they purport to establish the truth of the contents of the documents as evidence in this proceeding.

The objection is SUSTAINED only to the extent paragraphs 21 through 24 of the McNamara Declaration and Exhibits 11 through 14 are offered to prove the truth of the allegations contained therein. The Exhibits are admissible to the extent the Exhibits establish the nature and timeline of proceedings in the state court action, discussed in greater detail below. Therefore, the Exhibits are admissible to prove what happened in the state court action, what are the allegations in the state court action, what motions have been filed in the state court action, and how the state court has ruled on those motions.

Further, the orders of the court in the state court action are admissible to establish that the state court ruled a particular way for a particular reason. The rulings, dispositions, and findings of the court in the state court action, to the extent they are contained in the written record, are not subject to reasonable dispute. Pursuant to Federal Rule of Evidence 201(c), the court may take judicial notice on its own. "[C]ourt orders and filings are proper subjects of judicial notice." Carmax Auto Superstores Cal. LLC v. Hernandez, 94 F. Supp. 3d 1078, 1087 (C.D. Cal. 2015) (collecting cases). The court "may take notice of proceedings in other courts, both within and without the federal

judicial system, if those proceedings have a direct relation to matters at issue." United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (quotations and citations omitted). The proceedings and filings of the state court action are the proper subject of judicial notice, and the court takes judicial notice of the orders and related filings in the state court action.

The High Plains Entities

HPM Mgmt is a Texas limited liability company authorized to do business in California. Decl. of Terry Hansen Supporting Chapter 11 Filings ("Hansen Bankr. Decl.") ¶ 1, Doc. #6, HPM Holdings case no. 21-11970; Decl. of Terry Hansen Opposing Motion to Excuse Turnover ("Hansen Turnover Decl.") ¶ 1, Doc. #54.

HPM Mgmt. is owned by three members. HPM Mgmt. List of Equity Security Holders, Doc. #31, Case No. 21-11971. Thomas M. Maney ("Maney") holds a 57% equity interest; Justin G. Child ("Child") holds a 33% equity interest; Terry E. Hansen ("Hansen") holds a 10% equity interest. Id. Hansen is the current manager of HPM Mgmt., although Child also has held the title of manager of HPM Mgmt. Hansen Turnover Decl. ¶ 3, Doc. #54. Hansen is responsible for handling day-to-day operations of HPM Mgmt. Id.
HPM Mgmt. scheduled a single asset: a 1% ownership interest in HPM Holdings valued at $40,000. HPM Mgmt. Am. Schedule A/B, Doc. #74, Case No. 21-11971. HPM Mgmt. scheduled no creditors, is not a party to any executory contracts or unexpired leases, and has no codebtors. HPM Mgmt. Schedules D, E/F, G, H, Doc. ##24-27, 75, Case No. 21-11971.

HPM Mgmt. is the general partner of HPM Holdings. Hansen Turnover Decl. ¶ 1, Doc. #54. HPM Holdings is a Texas limited partnership doing business in California. Hansen Turnover Decl. ¶ 3, Doc. #54.

HPM Holdings is owned by four limited partners. HPM Holdings List of Equity Security Holders, Case No. 21-11970, Doc. #27. Maney holds a 56.43% equity interest; Child holds a 21.29% equity interest; Hansen holds a 21.28% equity interest; and HPM Mgmt. holds a 1% equity interest. Id.

According to its bankruptcy schedules, HPM Holdings holds $499.34 cash in a BBVA checking account. HPM Holdings Am. Schedule A/B, Doc. #81. Pre-petition, HPM Holdings deposited $154,451 with Farella Braun + Martel LLP, legal counsel for the HPM Entities, as a retainer. HPM Holdings Am. Schedule A/B, Doc. #81; HPM Holdings Am. Stmt. of Financial Affairs Ques. 11, Doc. #84. HPM Holdings has no accounts receivable, no investments, neither owns nor leases any inventory, office furniture or equipment, machinery, or vehicles. HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings scheduled undivided fee simple interests in residential real properties known as 19790 Remos Ct., California City, CA 93505 APN 305-181-31-00-2 valued at $338,000.00 and 19840 Aloha Way, California City, CA 93505 APN 305-230-38-00-0 valued at $310,000.00 (collectively, the "Residences"). HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings has no interest in any intangibles or intellectual property. HPM Holdings Am. Schedule A/B, Doc. #81. The only other asset scheduled is a cause of action for turnover/avoidance against Receiver to recover the proceeds from the sale of approximately 640 acres of vacant land in unincorporated Kern County, California (the "Vacant Land") valued at $4,160,000. HPM Holdings Am. Schedule A/B, Doc. #81.

The only two scheduled secured creditors of HPM Holdings are (1) the Kern County Treasurer with claims totaling $21,493.18 from unpaid real property taxes on the Residences and Vacant Land, and (2) Accelerated Assets LLC who

holds a deed of trust on both Residences and is owed $10,434.11. HPM Holdings, Schedule D, Doc. #29; Proof of Claim #1, Case No. 21-11970.

HPM Holdings scheduled one unsecured claim of $419.18 owed for legal services provided by Parker Mills LLP. HPM Holdings Schedule E/F, Doc. #30.

HPM Holdings scheduled two unexpired leases. HPM Holdings Schedule G, Doc. #31. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch & Club Inc. rents the Residences. HPM Holdings Schedule G, Doc. #31. The rent received is HPM Holdings' sole source of revenue. Am. Form 207, Doc. #84.

HPM Holdings scheduled Silver Saddle Ranch & Club Inc. as a codebtor to the debt owed to the Kern County Treasurer and Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32. HPM Holdings scheduled MCQ Corporation as a codebtor with respect to Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32.

To summarize, the HPM Entities' schedules show that HPM Mgmt. is the manager and 1% owner of HPM Holdings. Both HPM Entities are majority owned by Maney, with Child and Hansen holding minority interests in both entities. HPM Holdings scheduled ownership in real property, the Residences and, previously, the Vacant Land, the proceeds from the sale of which may be the subject of a turnover or avoidance action. The Residences are leased to Silver Saddle Ranch, and the rent collected is HPM Holdings' sole source of revenue.

State Court Proceedings, Generally

On September 9, 2019, the California Commissioner of Business Oversight, also referred to by the parties as the California Commissioner of Financial Protection and Innovation, (hereafter, the "State"), filed a complaint against Maney, Silver Saddle Commercial Development LP ("Silver Saddle Development"), Silver Saddle Ranch & Club Inc. ("Silver Saddle Ranch"), the Galileo Commercial Property Owners Association Inc. ("Galileo"), and related entities (collectively the "Securities Defendants") initiating People of the State of California v. Silver Saddle Commercial Development, LP, Case No. 37-2019-00049151-CU-MC-CTL, Superior Court of California, County of San Diego (the "State Court Action"). McNamara Decl. ¶¶ 2, 14, Doc. #36; Ex. 4, Doc. #37. The allegations in the complaint centered around real estate investments called "LandBanking Plus" or "The Galileo Project" (collectively referred to as "Galileo Project"). Hansen Turnover Decl. ¶ 12, Doc. #54; Ex. 4, Doc. #37. The State alleges that Securities Defendants, through the Galileo Project, sold "overpriced fractionalized interests in vacant desert land in rural Kern County" in a scheme to defraud unsophisticated investors. Ex. 4, Doc. #37.

The state court issued a receivership order on October 30. 2019, appointing Receiver in the State Court Action (the "Receivership Order"). McNamara Decl. ¶¶3, 15, Doc. #36; Receivership Order, Ex. 1, Doc. #37.

Per the Receivership Order, the state court found good cause to believe that Securities Defendants violated the Corporate Securities Law of 1968, specifically California Corporations Code sections 25401 and 25110, fraud in the offer and sale of securities and the offer and sale of unqualified securities, respectively. Receivership Order 2:12-26. Ex. 1, Doc. #37. The Receivership Order authorized and directed Receiver to

> take possession of all real and personal property and assets of Defendants SILVER SADDLE COMMERCIAL DEVELOPMENT, LP; SILVER SADDLE RANCH & CLUB, INC.; THE GALILEO COMMERCIAL PROPERTY OWNERS ASSOCIATION, INC. as well as any other entity that has conducted any

> business related to Defendants' offering and selling of the Galileo Project investment contracts, including receipt of assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant (hereinafter "Receivership Defendants"), and their respective subsidiaries and affiliates, and their successors and assigns wherever situated, or to which Receivership Defendants have any right of possession, custody or control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such assets which Receivership Defendants carry or maintain, or which may be received during the pendency of this receivership, in order to obtain an adequate accounting of Receivership Defendants' assets and liabilities and to secure a marshalling of said assets.

Receivership Order 5:7-20, Ex. 1, Doc. #37. The Receivership Order further empowered Receiver to identify nonparty entities as Receivership Defendants, and upon so doing required Receiver to promptly notify the entity that it could challenge Receiver's determination by filing a motion in the State Court Action. Receivership Order 10:16-22, Ex. 1, Doc. #37.

Pursuant to the Receivership Order, on October 2, 2020, Receiver notified the HPM Entities of Receiver's determination that they qualified as Receivership Defendants. McNamara Decl. ¶ 20, Doc. #36; Ex. 10, Doc. #38. On January 8, 2021, the HPM Entities, acting in concert through counsel, moved for an order to show cause challenging Receiver's determination in the State Court Action. McNamara Decl. ¶ 21, Doc. #36. Receiver responded. McNamara Decl. ¶ 21, Doc. #36. On February 11, 2021, after receiving argument from all parties, the state court determined that the HPM Entities were properly classified as Receivership Defendants, stating that Receiver presented "uncontroverted evidence" that

> the HPM entities have conducted business related to the Galileo Project investment scheme, received assets derived from activity that is the subject of the Complaint in this matter, and are controlled or owned by a Defendant. In fact, Defendant Maney presently holds a 56.43% interest in HPM Holdings, and until recently was employed by the HPM entities as an officer and manager. The HPM entities own real property utilized as part of the investment scheme. HPM entity expenses were paid with Silver Saddle investment funds. Defendant Maney used HPM Entities' property as collateral for the sale of Silver Saddle investment funds. Defendant Maney used HPM entity property as collateral for the sale of Silver Saddle investor promissory notes to Accelerated Assets. This agreement specifically states that HPM Holding is "an affiliated or controlled entity of Seller or Seller's principals."

Minute Order, Ex. 12, Doc. #38. Having assumed possession and control of the HPM Entities' real property pursuant to the Receivership Order and the determination of HPM Entities as Receivership Defendants, on May 13, 2021, Receiver sought state court approval to sell the Vacant Land, owned by HPM Holdings, to 69SV 8ME LLC for the purchase price of approximately $4.1 million in accordance with the terms of a pre-receivership purchase option contract between 69SV 8ME LLC and HPM Holdings. McNamara Decl. ¶ 23, Doc. #36; Hansen Turnover Decl. ¶ 11, Doc. #54.

The HPM Entities did not oppose Receiver's motion, and on June 11, 2021, Receiver's motion was granted in the State Court Action (the "Sale Order"). McNamara Decl. ¶ 24, Doc. #36; Sale Order, Ex. 14, Doc. #38. On August 10, 2021, the sale closed and the HPM Entities timely appealed the Sale Order.

McNamara Decl. ¶¶ 25-26, Doc. #36; Hansen Turnover Decl. ¶¶ 16-17, Doc. #54. The proceeds from the sale, approximately $4,155,000, are currently being held in escrow by Stewart Title. McNamara Decl. ¶ 27, Doc. #36; Hansen Turnover Decl. ¶ 17, Doc. #54. The Sale Order states that the net proceeds of escrow should be disbursed to the receivership estate. Ex. 14, Doc. #38.

On August 11, 2021, HPM Holdings and HPM Mgmt. filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The HPM Entities do not oppose the sale of the Vacant Land and intend to proceed with the sale to 69SV 8ME LLC. Hansen Bankr. Decl. ¶ 12, Doc. #6. The HPM Bankruptcies were filed so that the proceeds from the sale of the Vacant Land and the value of the Residences would inure to the HPM Entities' "stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6.

Receiver states that, but for the HPM Bankruptcies, Receiver would move to sell the Residences in the State Court Action and would use the proceeds to pay in full the secured claim of Accelerated Assets LLC and all outstanding property taxes and fees. McNamara Decl. ¶28, Doc. #36; Ex. 16, Doc. #38

Players Common to Bankruptcy Proceedings and State Court Action

In the State Court Action, the State identifies numerous named and unnamed defendants who have allegedly participated in a scheme to defraud investors that, broadly stated, involves the sale of unqualified securities, undeveloped desert land in Kern County, California, and membership in the Silver Saddle Ranch & Club. Complaint, Ex. 4, Doc. #37; Hansen Bankr. Decl. ¶ 6, Doc. #6.

Maney, majority equity holder in both HPM Mgmt. and HPM Holdings, is a named defendant in the State Court Action. Maney is the central figure of the State's case, and the allegations against Maney are generally that Maney controls all of the named Securities Defendants and Maney used the Securities Defendants to violate California law and commit securities fraud. Complaint, Ex. 4, Doc. #37.

The State's complaint also named Silver Saddle Development and Silver Saddle Ranch. Complaint, Ex. 4, Doc. #37. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch rents the Residences. HPM Holdings Am. Am. Schedules A/B, Doc. #81, and Schedule G, Doc. #31; Hansen Turnover Decl. ¶ 8, Doc. #54. Pursuant to the unwritten lease agreements, Silver Saddle Ranch is responsible for all maintenance, insurance, and property taxes for the Residences. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen Turnover Decl. ¶ 8, Doc. #54. Silver Saddle Ranch also is responsible for paying franchise fees for both HPM Holdings and HPM Mgmt. and must pay the property taxes for the Vacant Land. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen Turnover Decl. ¶ 8, Doc. #54. In 2010, HPM Holdings pledged the Residences as security for the obligations of Silver Saddle Ranch and MCQ Corporation to Accelerated Assets LLC. Hansen Turnover Decl. ¶ 9, Doc. #54. HPM Holdings scheduled Silver Saddle Ranch as a codebtor to debt owed to the Kern County Treasurer and to Accelerated Assets LLC. Schedule H, Doc. #32.

In addition to the equity interests stated above, Hansen is the manager of HPM Mgmt., which in turn is the sole general partner of HPM Holdings. Hansen Turnover Decl. ¶ 1, Doc. #54; HPM Holdings List of Equity Security Holders, Doc. #27. Hansen is not a named defendant in the State Court Action. Hansen Turnover Decl. ¶ 14, Doc. #54. Hansen has assisted in preparing financial reports and tax returns for HPM Holdings, HPM Mgmt., Silver Saddle Ranch, MCQ Corporation, and Silver Saddle Development. Hansen Turnover Decl. ¶ 10, Doc. #54. For this work, Hansen was paid a "minimum salary" to support Hansen's

health insurance coverage. Hansen Turnover Decl. ¶ 10, Doc. #54. Hansen states that his services were unrelated to the sale of Galileo Project investments and terminated more than two years ago. Hansen Turnover Decl. ¶ 10, Doc. #54.

Child, in addition to the equity interests stated above, was previously the manager of HPM Mgmt., though both Child and Hansen state that Hansen has always been responsible for day-to-day managerial duties of HPM Mgmt. Decl. of Justin S. Child Opposing Motion to Excuse Turnover ("Child Decl.") ¶ 1, Doc. #56; Hansen Turnover Decl. ¶ 3, Doc. #54. Child was employed by Silver Saddle Ranch until approximately 2008 or 2009. Child Decl. ¶ 4, Doc. #56. Silver Saddle Development is indebted to Child in the amount of $1,000,000 for a promissory note ("Note") that consolidated debts owed to Child by Silver Saddle Ranch and MCQ Corporation. Child Decl. ¶ 4, Doc. #56. Payments on the Note continued to be funded through Silver Saddle Ranch's and/or Silver Saddle Development's payroll system after Child retired approximately thirteen years ago. Child Decl. ¶ 4, Doc. #56. Child claims that the Note, based on monies Child loaned, is unrelated to the sale of Galileo Project investments giving rise to the State Court Action. Child Decl. ¶ 4, Doc. #56.

Both Child and Hansen state that "[a]lthough Thomas Maney also holds equity interests in each of [HPM Holdings] and [HPM Mgmt.] . . . he is neither a general partner of [HPM Holdings], nor a manager of [HPM Mgmt.], nor an officer or director of either [HPM Holdings] or [HPM Mgmt.]." Child Decl. ¶ 3, Doc. #56; Hansen Turnover Decl. ¶ 3, Doc. #54.

Standard under § 543(d)

Section 543(d) of the Bankruptcy Code allows the court to excuse compliance with the turnover requirements of § 543(a), (b), and (c) "if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property." 11 U.S.C. § 543(d)(1). A state-court appointed receiver is a custodian. 11 U.S.C. § 101(11).

"Reorganization policy generally favors turnover of business assets to the debtor in a chapter 11 case." In re Orchards Vill. Invs., LLC, 405 B.R. 341, 352-53 (Bankr. D. Or. 2009). The party seeking relief from turnover pursuant to § 543(d) has the burden of demonstrating such relief is warranted. In re Skymark Props. II, LLC, 597 B.R. 391, 397 (Bankr. E.D. Mich. 2019).

By the motion, Receiver cites to Orchards Village to provide some guiding factors bankruptcy courts consider in determining whether to excuse turnover. Doc. #34. The HPM Entities counter with citation to Skymark to provide a more expansive list of factors appropriately considered by bankruptcy courts deciding whether to excuse turnover under 11 U.S.C. § 543(d). Doc. #53. Both Orchards Village and Skymark demonstrate that the issue of excusing turnover under § 543 is determined on a case-by-case basis in consideration of a number of factors, and "[t]he bankruptcy court has discretion under § 543(d)(1) to excuse a state court receiver from its mandatory turnover obligation[s.]" Skymark, 597 B.R. at 397. The Skymark factors, listed in order of relevance in this case, are:

(1) whether turnover would be injurious to creditors;

(2) whether the debtor will use the turned over property for the benefit of its creditors;

(3) whether or not there are avoidance issues raised with respect to property retained by a receiver, because a receiver does not possess avoiding powers for the benefit of the estate;

(4) the likelihood of reorganization;

(5) the probability that funds required for reorganization will be available;

(6) the fact that the bankruptcy automatic stay has deactivated the state court receivership action; and

(7) whether there are instances of mismanagement by the debtor.

Skymark, 597 B.R. at 397. After considering the facts of this case, the court finds that Receiver may properly be excused from compliance with § 543.

In Skymark, the bankruptcy court found that the interests of creditors and equity security holders would be better served by allowing the state court appointed receiver to continue. Skymark, 597 B.R. at 403. There, the debtor's tenant, in response to the debtor's mismanagement of certain properties, commenced a lawsuit in state court and obtained the appointment of the state court receiver. Id. at 401. The bankruptcy court stated that the most important factor in that case was that the debtor had no income, but the bankruptcy court also noted that the debtor had no clear prospects of obtaining capital, the debtor's tenants favored continued control by the receiver, the debtors could protect their interests in the state court action, and the debtor would not be able to obtain more relief in bankruptcy than out of bankruptcy. Id. at 400-02.

Although the facts giving rise to the receivership in Skymark are distinguishable, the court finds the considerations of the bankruptcy court in that opinion persuasive. As in Skymark, HPM Mgmt. has no income and the only income of HPM Holdings comes from renting the Residences to Silver Saddle Ranch, a named Securities Defendant. Any money the HPM Entities may be entitled to would come from Receiver as part of the State Court Action. Further, no creditors have opposed Receiver's motion. Should Receiver maintain possession and control of the HPM Entities' scheduled assets under the supervision of the State Court Action, all secured creditors in the HPM Bankruptcies will be paid in full. Although the HPM Entities assert a possible avoidance action against Receiver to recover the net proceeds from the sale of the Vacant Land, the HPM Entities do not oppose the sale itself. The distribution of the sale proceeds has not been finalized in the State Court Action, and the HPM Entities and their equity holders can continue to protect their interests in the State Court Action.

The HPM Entities rely heavily on the statutory mandate to consider the interests of equity security holders as part of the analysis excusing compliance with § 543. However, in the cases cited in the opposition, the circumstances giving rise to state court appointed receivers can generally be described as disputes between creditors (or stakeholders) and management. Under those circumstances, the interests of equity security holders are an obvious concern because, like creditors, the continued successful operation of the business of the debtor will provide the most benefit. When the continued operation of the debtor's business is not in question, however, the calculus changes.

For example, in In re Bryant Manor, LLC, 422 B.R. 278 (Bankr. D. Kan. 2010), the bankruptcy court found "that the fact that Debtor itself is not looking to operate and manage its business affairs in the course of this Chapter 11

proceeding reduces, at least a bit, the presumption that the property should be returned from the custodian to the Debtor under § 543(a)." In Bryant Manor, the debtor sought turnover to do the same thing the receiver was doing, which, in that case, was employing a third party to operate a business. Bryant Manor, 422 B.R. at 289-90. Here, the most significant asset in the HPM Bankruptcies is the Vacant Land, specifically the proceeds from the sale of the Vacant Land, approximately $4,155,000. The HPM Entities do not seek the return of the Vacant Land so that it can operate and manage the Vacant Land in the course of their chapter 11 proceedings. Instead, the HPM Entities, like Receiver, would sell the Vacant Land to 69SV 8ME LLC for the same price and are only seeking chapter 11 protection so that the individual equity security holders of the HPM Entities will receive a bigger payout than they are likely to receive from Receiver in the State Court Action. And while the parties hardly address the impact of turnover as it relates to the Residences, the Residences themselves are rented out to Securities Defendants pursuant to unwritten leases. Because the leases are unwritten, they must be for a period of less than one year. Cal. Civ. Code § 1624(a). In the State Court Action, Receiver has obtained authority to sell the Residences, and proceeds of those sales will satisfy all of secured claims the HPM Entities. Ex. 16, Doc. #38. Further, the HPM Entities have no employees, no vendors, and no other tenants. There is essentially no business for the HPM Entities to manage or operate in the course of their chapter 11 cases; the real dispute is over the distribution of sale proceeds.

It seems critical to acknowledge that Receiver gained pre-petition custody and control of the HPM Entities' scheduled assets through a lawsuit initiated by the California Commissioner of Financial Protection and Innovation on behalf of the people of the state of California, specifically certain allegedly defrauded investors. This is not a case where a receiver was appointed to oversee the management of a distressed company or to resolve a dispute between stakeholders. Requiring Receiver to turn over assets of Receivership Defendants would directly interfere with the State's authority to address securities fraud. There is no dispute that the HPM Entities are Receivership Defendants, that Maney is the majority equity security holder in both HPM Entities, and that Maney is the man at the center of all of the State's allegations in the State Court Action. Receiver should not be required to turn over assets that have been determined by the state court to be part of the receivership estate pursuant to a state court action commenced by the State to enforce State corporate securities law. Cf. In re NRA of Am., 628 B.R. 262, 281-82 (Bankr. N.D. Tex. 2021) ("While bankruptcy courts can, in some circumstances, apply state regulatory law, a bankruptcy case filed for the purpose of avoiding a regulatory scheme is not filed in good faith and should be dismissed."); Commodity Futures Trading Com. v. Co Petro Mktg. Grp., Inc., 700 F.2d 1279, 1283 (9th Cir. 1983) (regarding the automatic stay, acknowledging a policy of preventing "the bankruptcy court from becoming a haven for wrongdoers"); In re Charter Co., 913 F.2d 1575, 1579 (11th Cir. 1990) (explaining that turnover applies "only to those [funds] not in dispute" and that turnover principles should not applied to permit a bankruptcy debtor to recover property subject to a state law dispute).

In this case, Receiver will pay all secured creditors in full as part of a sale of the Residences. The HPM Entities will not use the turned over property for the benefit of creditors. Should this court deny Receiver's motion, there is no property that the HPM Entities would be able to recover through the use of avoiding powers that Receiver would not be able to recover. There is no greater likelihood of reorganization should Receiver be excused from turnover. All secured creditors will be paid by Receiver if Receiver is permitted to remain in place, so excusing turnover will not deprive the HPM Entities of funds necessary to pay secured creditors. The HPM Entities are Receivership Defendants.

Accordingly, the motion to excuse turnover will be GRANTED.

Property in Dispute

Receiver and the HPM Entities assume that the proceeds from the sale of the Vacant Land and the Residences, if sold, would be subject to the mandatory turnover obligations of 11 U.S.C. § 543. Although not raised by either party, the court will provide an additional explanation why, should the preceding application of the law be insufficient, the turnover of property by Receiver should not be required.

The mandatory turnover provisions of the Bankruptcy Code are not properly used to liquidate disputed state law claims. Charter Crude Oil Co. v. Exxon Co., U.S.A. (In re Charter Co.), 913 F.2d 1575, 1579 (11th Cir. 1990); MCI Telecomms. Corp. v. Gurga (In re Gurga), 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994); In re Even St. Prods. Ltd., No. LACV 17-1756, 2020 U.S. Dist. LEXIS 141267 *1, at *21-22 (C.D. Cal. Aug. 6, 2020). "[T]urnover proceedings involve return of *undisputed* funds." Gurga, 176 B.R. at 199.

The court is persuaded by the reasoning in In re Even St. Prods. Ltd., No. LACV 17-1756, 2020 U.S. Dist. LEXIS 141267 *1 (C.D. Cal. Aug. 6, 2020). In that case, the district court reversed the decision of the bankruptcy court requiring the turnover of royalties where the ownership of the royalties was not established and, consequently, ownership the royalty funds were in dispute. Even St., 2020 U.S. Dist. LEXIS 141267 at *27. The royalties to be turned over were the subject of ongoing state court litigation, and the state court had not determined that the debtors were entitled to the royalties. Id. at *20. Because the state court had not determined which party was entitled to the royalties, the district court determined that requiring turnover of the disputed property was "incorrect." Id. at *21-22. While the district court acknowledged that the debtors may have had an interest in a cause of action to recover the royalties, the debtors were seeking turnover of the funds in controversy, not the rights to a cause of action. Id. at *24-25. Reasoning that contingent litigation claims cannot be liquidated by a bankruptcy court prior to the entry of judgment in the state court action by means of a turnover order, the district court found the order to release the royalties to the debtors was in error. Id. at *26-27

Here, the HPM Entities have been designated Receivership Defendants in the State Court Action. The state court authorized Receiver to sell the Vacant Land, and that sale has closed with funds currently held in escrow. The HPM Entities do not want the Vacant Land, they want the proceeds from the sale of the Vacant Land. The Sale Order states that the net proceeds of escrow should be disbursed to the receivership estate, and the HPM Entities have appealed the Sale Order. As Hansen stated, the sale proceeds are "in escrow based on the dispute between HPM Holdings and the Receiver Regarding the entitlement to such funds." Hansen Turnover Decl. ¶ 17, Doc. #54. In his reply, Receiver suggests that the net proceeds from the sale of the Vacant Lot will be held in escrow pending a final determination in the State Court Action, although it is not clear from the record how or when Receiver would be authorized to distribute the receivership estate if the net proceeds of the sale of the Vacant Lot were turned over to the receivership estate as provided for in the Sale Order. Receiver was appointed in the State Court Action at the same time the state court issued a preliminary injunction and freezing of assets, and the State Court Action remains pending. The sale or disposition of any additional assets of the HPM Entities, as Receivership Defendants, has not been determined in the State Court Action.

Therefore, the court finds that proceeds from the sale of Vacant Land and the rights to the Residences are in dispute in the State Court Action. The state court, in naming the HPM Entities as Receivership Defendants, brought into question the rights of HPM Entities in the Vacant Land and Residences. The state had authority to do so, because "[p]roperty interests are created and defined by state law." Butner v. United States, 440 U.S. 48, 55 (1979). What rights, if any, the HPM Entities have in the Residences and the net proceeds of the Vacant Lot is in dispute in the State Court Action. To adopt the reasoning of the Eleventh Circuit:

> To apply turnover principles to the dispute between [Receiver] and [the HPM Entities] would allow [the HPM Entities] to recover monies under the Bankruptcy Code from disputed claims based strictly on state law. "Certainly such procedure could not be sanctioned outside bankruptcy and there is no just reason why it should be sanctioned just because the entity seeking to collect disputed funds happens to be a Debtor under the Bankruptcy Code."

Charter Co., 913 F.2d at 1589 (quoting In re Chick Smith Ford, Inc., 46 B.R. 515, 518 (Bankr. M.D. Fla. 1985)). The HPM Entities do not have an undisputed right to the Vacant Land, the Residences, or the net proceeds from the sale of any assets. Requiring turnover of disputed property at this time is not proper.

Conclusion

Accordingly, the motion to excuse turnover will be GRANTED.

7. 21-11971-A-11 **IN RE: HIGH PLAINS MESA MANAGEMENT, LLC**
PJL-3

MOTION TO DISMISS CASE
9-1-2021 [40]

THOMAS MCNAMARA/MV
GARY KAPLAN/ATTY. FOR DBT.
PAUL LEEDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on September 15, 2021. Doc. #60. The United States Trustee for Region 17 filed a reservation of rights should the court deny this motion to dismiss. Doc. #44. The failure of other creditors or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

This motion to dismiss was filed in the chapter 11 bankruptcy case of High Plains Mesa Management LLC ("HPM Mgmt."), case no. 21-11971, Doc. #40. A near identical motion was filed in the chapter 11 bankruptcy case of High Plains Mesa Holdings LP ("HPM Holdings"), case no. 21-11970. When referenced together, HPM Holdings and HPM Mgmt. will be referred to as "the HPM Entities" and their bankruptcies will be the "HPM Bankruptcies."

The movant Thomas McNamara ("Receiver"), a state-court appointed receiver, moves to dismiss the HPM Bankruptcies under 11 U.S.C. § 1112(b) or, alternatively, to dismiss the HPM Bankruptcies under 11 U.S.C. § 305(a)(1). Doc. #40. The court has considered the motion, opposition, and reply. After due consideration, Receiver's motion to dismiss will be GRANTED pursuant to 11 U.S.C. § 1112(b). Even if dismissal is not warranted under § 1112(b), dismissal under § 305(a) would be appropriate.

Debtor's Objection to Declaration of Thomas McNamara

The HPM Entities object to the Declaration of Thomas McNamara filed in support of Receiver's motion to dismiss or abstain ("McNamara Declaration"). Obj., Doc. #65; McNamara Decl., Doc. #42. Specifically, the HPM Entities object to paragraphs 21 through 24 of the McNamara Declaration and the attachments referenced by those paragraphs and attached to the declaration as exhibits 11 through 14 (the "Exhibits"). Doc. #65. The HPM Entities object to the admission of that portion of the McNamara Declaration and Exhibits to the extent they purport to establish the truth of the contents of the documents as evidence in this proceeding.

The objection is SUSTAINED only to the extent paragraphs 21 through 24 of the McNamara Declaration and Exhibits 11 through 14 are offered to prove the truth of the allegations contained therein. The Exhibits are admissible to the extent the Exhibits establish the nature and timeline of proceedings in the state court action, discussed in greater detail below. Therefore, the Exhibits are admissible to prove what happened in the state court action, what are the allegations in the state court action, what motions have been filed in the state court action, and how the state court has ruled on those motions.

Further, the orders of the court in the state court action are admissible to establish that the state court ruled a particular way for a particular reason. The rulings, dispositions, and findings of the court in the state court action, to the extent they are contained in the written record, are not subject to reasonable dispute. Pursuant to Federal Rule of Evidence 201(c), the court may take judicial notice on its own. "[C]ourt orders and filings are proper subjects of judicial notice." Carmax Auto Superstores Cal. LLC v. Hernandez, 94 F. Supp. 3d 1078, 1087 (C.D. Cal. 2015) (collecting cases). The court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (quotations and citations omitted). The proceedings and filings of the state court action are the proper subject of judicial notice, and the court takes judicial notice of the orders and related filings in the state court action.

The High Plains Entities

HPM Mgmt. is a Texas limited liability company authorized to do business in California. Decl. of Terry Hansen Supporting Chapter 11 Filings ("Hansen Bankr. Decl.") ¶ 1, Doc. #6, HPM Holdings case no. 21-11970; Decl. of Terry Hansen Opposing Motion to Dismiss ("Hansen MTD Decl.") ¶ 3, Doc. #61.

HPM Mgmt. is owned by three members. HPM Mgmt. List of Equity Security Holders, Doc. #31. Thomas M. Maney ("Maney") holds a 57% equity interest; Justin G. Child ("Child") holds a 33% equity interest; Terry E. Hansen ("Hansen") holds a 10% equity interest. Id. Hansen is the current manager of HPM Mgmt., although Child also has held the title of manager of HPM Mgmt. Hansen MTD Decl. ¶ 3, Doc. #61. Hansen is responsible for handling day-to-day operations of HPM Mgmt. Id.
HPM Mgmt. scheduled a single asset: a 1% ownership interest in HPM Holdings valued at $40,000. HPM Mgmt. Am. Schedule A/B, Doc. #74. HPM Mgmt. scheduled no creditors, is not a party to any executory contracts or unexpired leases, and has no codebtors. HPM Mgmt. Schedules D, E/F, G, H, Doc. ##24-27, 75.

HPM Mgmt. is the general partner of HPM Holdings. Hansen MTD Decl. ¶ 1, Doc. #61. HPM Holdings is a Texas limited partnership doing business in California. Hansen MTD Decl. ¶ 3, Doc. #61.

HPM Holdings is owned by four limited partners. HPM Holdings List of Equity Security Holders, Case No. 21-11970, Doc. #27. Maney holds a 56.43% equity interest; Child holds a 21.29% equity interest; Hansen holds a 21.28% equity interest; and HPM Mgmt. holds a 1% equity interest. Id.
According to its bankruptcy schedules, HPM Holdings holds $499.34 cash in a BBVA checking account. HPM Holdings Am. Schedule A/B, Doc. #81. Pre-petition, HPM Holdings deposited $154,451 with Farella Braun + Martel LLP, legal counsel for the HPM Entities, as a retainer. HPM Holdings Am. Schedule A/B, Doc. #81; HPM Holdings Am. Stmt. of Financial Affairs Ques. 11, Doc. #84. HPM Holdings has no accounts receivable, no investments, neither owns nor leases any inventory, office furniture or equipment, machinery, or vehicles. HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings scheduled undivided fee simple interests in residential real properties known as 19790 Remos Ct., California City, CA 93505 APN 305-181-31-00-2 valued at $338,000.00 and 19840 Aloha Way, California City, CA 93505 APN 305-230-38-00-0 valued at $310,000.00 (collectively, the "Residences"). HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings has no interest in any intangibles or intellectual property. HPM Holdings Am. Schedule A/B, Doc. #81. The only other asset scheduled is a cause of action for turnover/avoidance against Receiver to recover the proceeds from the sale of approximately 640 acres of vacant land in unincorporated Kern County, California (the "Vacant Land") valued at $4,160,000. HPM Holdings Am. Schedule A/B, Doc. #81.

The only two scheduled secured creditors of HPM Holdings are (1) the Kern County Treasurer with claims totaling $21,493.18 from unpaid real property taxes on the Residences and Vacant Land, and (2) Accelerated Assets LLC who holds a deed of trust on both Residences and is owed $10,434.11. HPM Holdings, Schedule D, Doc. #29; Proof of Claim #1, Case No. 21-11970.

HPM Holdings scheduled one unsecured claim of $419.18 owed for legal services provided by Parker Mills LLP. HPM Holdings Schedule E/F, Doc. #30.

HPM Holdings scheduled two unexpired leases. HPM Holdings Schedule G, Doc. #31. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch & Club Inc. rents the Residences. HPM Holdings Schedule G, Doc. #31. The rent received is HPM Holdings' sole source of revenue. Am. Form 207, Doc. #84.

HPM Holdings scheduled Silver Saddle Ranch & Club Inc. as a codebtor to the debt owed to the Kern County Treasurer and Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32. HPM Holdings scheduled MCQ Corporation as a codebtor with respect to Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32.

To summarize, the HPM Entities' schedules show that HPM Mgmt. is the manager and 1% owner of HPM Holdings. Both HPM Entities are majority owned by Maney, with Child and Hansen holding minority interests in both entities. HPM Holdings scheduled ownership in real property, the Residences and, previously, the Vacant Land, the proceeds from the sale of which may be the subject of a turnover or avoidance action. The Residences are leased to Silver Saddle Ranch, and the rent collected is HPM Holdings' sole source of revenue.

State Court Proceedings, Generally

On September 9, 2019, the California Commissioner of Business Oversight, also referred to by the parties as the California Commissioner of Financial Protection and Innovation, (hereafter, the "State"), filed a complaint against Maney, Silver Saddle Commercial Development LP ("Silver Saddle Development"), Silver Saddle Ranch & Club Inc. ("Silver Saddle Ranch"), the Galileo Commercial Property Owners Association Inc. ("Galileo"), and related entities (collectively the "Securities Defendants") initiating People of the State of California v. Silver Saddle Commercial Development, LP, Case No. 37-2019-00049151-CU-MC-CTL, Superior Court of California, County of San Diego (the "State Court Action"). McNamara Decl. ¶¶ 2, 14, Doc. #42; Ex. 4, Doc. #43. The allegations in the complaint centered around real estate investments called "LandBanking Plus" or "The Galileo Project" (collectively referred to as "Galileo Project"). Hansen MTD Decl. ¶ 12, Doc. #61; Ex. 4, Doc. #43. The State alleges that Securities Defendants, through the Galileo Project, sold "overpriced fractionalized interests in vacant desert land in rural Kern County" in a scheme to defraud unsophisticated investors. Ex. 4, Doc. #43.

The state court issued a receivership order on October 30. 2019, appointing Receiver in the State Court Action (the "Receivership Order"). McNamara Decl. ¶¶3, 15, Doc. #42; Receivership Order, Ex. 1, Doc. #43.

Per the Receivership Order, the state court found good cause to believe that Securities Defendants violated the Corporate Securities Law of 1968, specifically California Corporations Code sections 25401 and 25110, fraud in the offer and sale of securities and the offer and sale of unqualified securities, respectively. Receivership Order 2:12-26. Ex. 1, Doc. #43. The Receivership Order authorized and directed Receiver to

> take possession of all real and personal property and assets of Defendants SILVER SADDLE COMMERCIAL DEVELOPMENT, LP; SILVER SADDLE RANCH & CLUB, INC.; THE GALILEO COMMERCIAL PROPERTY OWNERS ASSOCIATION, INC. as well as any other entity that has conducted any business related to Defendants' offering and selling of the Galileo Project investment contracts, including receipt of assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant (hereinafter "Receivership Defendants"), and their respective subsidiaries and affiliates, and their successors and assigns wherever situated, or to which Receivership Defendants have any right of possession, custody or control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such assets which Receivership Defendants carry or maintain, or which may be received during the pendency of this receivership, in order to obtain an adequate accounting of Receivership Defendants' assets and liabilities and to secure a marshalling of said assets.

Receivership Order 5:7-20, Ex. 1, Doc. #43. The Receivership Order further empowered Receiver to identify nonparty entities as Receivership Defendants, and upon so doing required Receiver to promptly notify the entity that it could

challenge Receiver's determination by filing a motion in the State Court Action. Receivership Order 10:16-22, Ex. 1, Doc. #43.

Pursuant to the Receivership Order, on October 2, 2020, Receiver notified the HPM Entities of Receiver's determination that they qualified as Receivership Defendants. McNamara Decl. ¶ 20, Doc. #42; Ex. 10, Doc. #44. On January 8, 2021, the HPM Entities, acting in concert through counsel, moved for an order to show cause challenging Receiver's determination in the State Court Action. McNamara Decl. ¶ 21, Doc. #42. Receiver responded. McNamara Decl. ¶ 21, Doc. #42. On February 11, 2021, after receiving argument from all parties, the state court determined that the HPM Entities were properly classified as Receivership Defendants, stating that Receiver presented "uncontroverted evidence" that

> the HPM entities have conducted business related to the Galileo Project investment scheme, received assets derived from activity that is the subject of the Complaint in this matter, and are controlled or owned by a Defendant. In fact, Defendant Maney presently holds a 56.43% interest in HPM Holdings, and until recently was employed by the HPM entities as an officer and manager. The HPM entities own real property utilized as part of the investment scheme. HPM entity expenses were paid with Silver Saddle investment funds. Defendant Maney used HPM Entities' property as collateral for the sale of Silver Saddle investment funds. Defendant Maney used HPM entity property as collateral for the sale of Silver Saddle investor promissory notes to Accelerated Assets. This agreement specifically states that HPM Holding is "an affiliated or controlled entity of Seller or Seller's principals."

Minute Order, Ex. 12, Doc. #44. Having assumed possession and control of the HPM Entities' real property pursuant to the Receivership Order and the determination of HPM Entities as Receivership Defendants, on May 13, 2021, Receiver sought state court approval to sell the Vacant Land, owned by HPM Holdings, to 69SV 8ME LLC for the purchase price of approximately $4.1 million in accordance with the terms of a pre-receivership purchase option contract between 69SV 8ME LLC and HPM Holdings. McNamara Decl. ¶ 23, Doc. #42; Hansen MTD Decl. ¶ 11, Doc. #61.

The HPM Entities did not oppose Receiver's motion, and on June 11, 2021, Receiver's motion was granted in the State Court Action (the "Sale Order"). McNamara Decl. ¶ 24, Doc. #42; Sale Order, Ex. 14, Doc. #44. On August 10, 2021, the sale closed and the HPM Entities timely appealed the Sale Order. McNamara Decl. ¶¶ 25-26, Doc. #42; Hansen MTD Decl. ¶¶ 16-17, Doc. #61. The proceeds from the sale, approximately $4,155,000, are currently being held in escrow by Stewart Title. McNamara Decl. ¶ 27, Doc. #42; Hansen MTD Decl. ¶ 17, Doc. #61. The Sale Order states that the net proceeds of escrow should be disbursed to the receivership estate. Ex. 14, Doc. #44.

On August 11, 2021, HPM Holdings and HPM Mgmt. filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The HPM Entities do not oppose the sale of the Vacant Land and intend to proceed with the sale to 69SV 8ME LLC. Hansen Bankr. Decl. ¶ 12, Doc. #6. The HPM Bankruptcies were filed so that the proceeds from the sale of the Vacant Land and the value of the Residences would inure to the HPM Entities' "stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6.

Receiver states that, but for the HPM Bankruptcies, Receiver would move to sell the Residences in the State Court Action and would use the proceeds to pay in

full the secured claim of Accelerated Assets LLC and all outstanding property taxes and fees. McNamara Decl. ¶28, Doc. #42; Ex. 16, Doc. #44.

Players Common to Bankruptcy Proceedings and State Court Action

In the State Court Action, the State identifies numerous named and unnamed defendants who have allegedly participated in a scheme to defraud investors that, broadly stated, involves the sale of unqualified securities, undeveloped desert land in Kern County, California, and membership in the Silver Saddle Ranch & Club. Complaint, Ex. 4, Doc. #43; Hansen Bankr. Decl. ¶ 6, Doc. #6.

Maney, majority equity holder in both HPM Mgmt. and HPM Holdings, is a named defendant in the State Court Action. Maney is the central figure of the State's case, and the allegations against Maney are generally that Maney controls all of the named Securities Defendants and Maney used the Securities Defendants to violate California law and commit securities fraud. Complaint, Ex. 4, Doc. #43.

The State's complaint also named Silver Saddle Development and Silver Saddle Ranch. Complaint, Ex. 4, Doc. #43. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch rents the Residences. HPM Holdings Am. Schedules A/B, Doc. #28, and Schedule G, Doc. #31; Hansen MTD Decl. ¶ 8, Doc. #61. Pursuant to the unwritten lease agreements, Silver Saddle Ranch is responsible for all maintenance, insurance, and property taxes for the Residences. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen MTD Decl. ¶ 8, Doc. #61. Silver Saddle Ranch also is responsible for paying franchise fees for both HPM Holdings and HPM Mgmt. and must pay the property taxes for the Vacant Land. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen MTD Decl. ¶ 8, Doc. #61. In 2010, HPM Holdings pledged the Residences as security for the obligations of Silver Saddle Ranch and MCQ Corporation to Accelerated Assets LLC. Hansen MTD Decl. ¶ 9, Doc. #61. HPM Holdings scheduled Silver Saddle Ranch as a codebtor to debt owed to the Kern County Treasurer and to Accelerated Assets LLC. Schedule H, Doc. #32.

In addition to the equity interests stated above, Hansen is the manager of HPM Mgmt., which in turn is the sole general partner of HPM Holdings. Hansen MTD Decl. ¶ 1, Doc. #61; HPM Holdings List of Equity Security Holders, Doc. #27. Hansen is not a named defendant in the State Court Action. Hansen MTD Decl. ¶ 14, Doc. #61. Hansen has assisted in preparing financial reports and tax returns for HPM Holdings, HPM Mgmt., Silver Saddle Ranch, MCQ Corporation, and Silver Saddle Development. Hansen MTD Decl. ¶ 10, Doc. #61. For this work, Hansen was paid a "minimum salary" to support Hansen's health insurance coverage. Hansen MTD Decl. ¶ 10, Doc. #61. Hansen states that his services were unrelated to the sale of Galileo Project investments and terminated more than two years ago. Hansen MTD Decl. ¶ 10, Doc. #61.

Child, in addition to the equity interests stated above, was previously the manager of HPM Mgmt., though both Child and Hansen state that Hansen has always been responsible for day-to-day managerial duties of HPM Mgmt. Decl. of Justin S. Child in Opposition to Motion to Dismiss ("Child Decl.") ¶ 1, Doc. #63; Hansen MTD Decl. ¶ 3, Doc. #61. Child was employed by Silver Saddle Ranch until approximately 2008 or 2009. Child Decl. ¶ 4, Doc. #63. Silver Saddle Development is indebted to Child in the amount of $1,000,000 for a promissory note ("Note") that consolidated debts owed to Child by Silver Saddle Ranch and MCQ Corporation. Child Decl. ¶ 4, Doc. #63. Payments on the Note continued to be funded through Silver Saddle Ranch's and/or Silver Saddle Development's payroll system after Child retired approximately thirteen years ago. Child Decl. ¶ 4, Doc. #63. Child claims that the Note, based on monies Child loaned, is unrelated to the sale of Galileo Project investments giving rise to the State Court Action. Child Decl. ¶ 4, Doc. #63.

Both Child and Hansen state that "[a]lthough Thomas Maney also holds equity interests in each of [HPM Holdings] and [HPM Mgmt.] . . . he is neither a general partner of [HPM Holdings], nor a manager of [HPM Mgmt.], nor an officer or director of either [HPM Holdings] or [HPM Mgmt.]." Child Decl. ¶ 3, Doc. #63; Hansen MTD Decl. ¶ 3, Doc. #61.

Receiver has Standing

The HPM Entities contend that Receiver's motion must be dismissed because Receiver is not a party in interest and thus lacks legal standing to bring the motion. Doc. #67. The HPM Entities argument focuses on whether Receiver is a party in interest under 11 U.S.C. §§ 1109(b) and 1112(b).

Section 1112(b) of the Bankruptcy Code states that a motion to dismiss a chapter 11 case under this subsection must be brought "on request of a party in interest." 11 U.S.C. § 1113(b)(1).

Section 1109(b) provides that "[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). The statutory "list is illustrative, and not exhaustive." Hughes v. Tower Park Props., LLC (In re Tower Park Props., LLC), 803 F.3d 450, 457 (9th Cir. 2015). The Ninth Circuit has "observed that the party-in-interest standard has 'generally been construed broadly,' and that '[c]ourts must determine on a case by case basis whether the prospective party has a sufficient stake in the proceedings so as to require representation.'" Tower Park, 803 F.3d at 457 (quoting Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d 869, 884 (9th Cir. 2012)).

However, "an entity 'that may suffer collateral damage' but does not have a legally protected interest does not have standing under § 1109(b). Such interests are 'too remote to entitle the entity to intervene in a bankruptcy case.'" Id. (quoting In re C.P. Hall Co., 750 F.3d 659, 661 (7th Cir. 2014)).

Some courts have found pre-petition receivers to lack standing as a party in interest. In In re Rimsat, Ltd., 193 B.R. 499 (Bankr. N.D. Ind. 1996), cited by the HPM Entities, the bankruptcy court found the pre-petition receiver lacked standing as a party in interest because the receiver had not been relieved of the obligation to comply with the turnover requirements of 11 U.S.C. § 543. Rimsat, 193 B.R. at 502. The Rimsat court indicated that, had the receiver been excused from compliance with § 543, "the excused custodian would be a party in interest." Id. at 502 n.2, 503. Additionally, the Rimsat bankruptcy court determined that even if the receiver were a party in interest under § 1109(b), the receiver did not have any interests protected by § 1112(b), again, because the receiver had not attempted to be excused from the obligations of § 543(a) and (b) and had thus lost any protectable interest he may have had as a pre-petition receiver. Id. at 503.

Other courts have acknowledged that "[w]here the petition has been filed to allegedly end-run [a nonbankruptcy court's] liquidation order, the Receiver has a sufficient interest to qualify him as a real party in interest with standing for purposes of" motions brought under § 1112(b) and § 305(a). In re Ofty Corp., 44 B.R. 479, 482 (Bankr. D. Del. 1984); accord El Torero Licores v. Raile (In re El Torero Licores), No. SACV 13-08875-VAP, 2013 WL 6834609, 2013 U.S. Dist. LEXIS 179953 *1 (C.D. Cal. Dec. 20, 2013). This is true where the pre-petition receiver was appointed to liquidate the debtor's assets and the filing of the bankruptcy petition stayed the receiver's ability to carry out

this function and put the debtor under the same control as when the receiver was first appointed. Ofty, 44 B.R. at 481-82.

Here, Receiver has standing to pursue this motion. Unlike Rimsat, where the receiver neither sought nor obtained a court order excusing compliance with § 543, Receiver has moved for an order excusing turnover. Doc. #40. More importantly, in consideration of Rimsat, it is significant to acknowledge that the HPM Entities and Receiver stipulated to defer Receiver's obligations under § 543 until the court rules on this motion. Doc. #20; Order, Doc. #33. The HPM Entities' reliance on Rimsat is specious given that they have consented to excuse Receiver's obligations under § 543 until this motion is resolved.

The facts presented in this case are strikingly similar to those in Ofty. As in Ofty, Receiver alleges that this bankruptcy was filed solely so the HPM Entities could avoid the consequences of an unfavorable state court proceeding. The HPM Entities agree, having repeatedly stated that the HPM Entities intend to use the protections of the Bankruptcy Code "so that proceeds of [the sale of the Vacant Land] inure to [HPM Holding]'s stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6. The Receivership Order requires Receiver, in the event that an entity designated as a Receivership Defendant files bankruptcy, to continue to collect any rents and other income and make disbursements to preserve and protect the assets while Receiver awaits a decision from the State as to whether it intends to seek relief from the requirement to turnover assets to the debtor in possession. The State has objected to any turnover and requested Receiver remain in possession and preserve the assets in issue. McNamara Decl. ¶¶ 11-12, Doc. #42. As in Ofty, the filing of this bankruptcy case has stayed Receiver's ability to carry out his duties and subjects Receiver to competing, inconsistent obligations.

Accordingly, the court finds that Receiver has standing as a party in interest under 11 U.S.C. §§ 1109(b) and 1112(b).

Dismissal under § 1112(b): Bad Faith Filing

Receiver argues that the HPM Bankruptcies should be dismissed for cause under 11 U.S.C. § 1112(b) because they were not filed in good faith. Doc. #40. "Dismissal for a lack of good faith in filing is a matter for the bankruptcy court's discretion." In re Stolrow's, Inc., 84 B.R. 167, 170 (B.A.P. 9th Cir. 1988). A bankruptcy court "may consider any factors which evidence an intent to abuse the judicial process and the purposes of" reorganization. Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1048 (9th Cir. 2013) (quoting Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.), 849 F.2d 1393, 1394 (11th Cir. 1988)). The debtor bears the burden of proving that the bankruptcy petition was filed in good faith. Id. (citations omitted).

"Dismissal of a chapter 11 case under 11 U.S.C. § 1112(b) requires a two-step analysis." Moore v. United States Tr. for Region 16 (In re Moore), 583 B.R. 507, 511 (C.D. Cal. 2018). It must first be determined that there is "cause" to act, and it then must be determined that dismissal, rather than conversion to chapter 7 or appointment of a trustee, is in the best interests of the creditors and the estate. Id. (citing Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006)). While § 1112(b)(4) of the Bankruptcy Code identifies specific conduct constituting cause, "bankruptcy courts may look beyond 11 U.S.C. § 1112(b)(4) and 'consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" Id. at 512 (quoting Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000)).

Both the HPM Entities and Receiver recite a number of factors typically present when a bankruptcy court determines that a bankruptcy petition is not filed in good faith. These factors seemingly appear in case law from every circuit, and for the sake of consistency will be repeated in the same manner set forth in Receiver's motion:

(1) the debtor has only one asset

(2) the pre-petition conduct of the debtor has been improper;

(3) there are only a few unsecured creditors;

(4) the debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court;

(5) the debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford;

(6) the filing of the petition effectively allows the debtor to evade court orders;

(7) the debtor has no ongoing business or employees; and

(8) the lack of possibility of reorganization.

Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd. P'ship), 30 F.3d 734, 738 (6th Cir. 1994); see also St. Paul Self Storage Ltd. P'ship v. Port Auth. (In re St. Paul Self Storage Ltd. P'ship), 185 B.R. 580, 582-83 (B.A.P. 9th Cir. 1995). It matters not whether all the factors listed are present, and it may be the case that only a few factors weigh so heavily as to be determinative. Can-Alta Props., Ltd. v. State Sav. Mortg. Co. (In re Can-Alta Props., Ltd.), 87 B.R. 89, 91-92 (B.A.P. 9th Cir. 1988).

Some bankruptcy courts must go great lengths to determine why an entity filed for relief under the Bankruptcy Code. See, e.g., In re NRA of Am., 628 B.R. 262 (Bankr. N.D. Tex. 2021) (ruling on § 1112(b) motions to dismiss after a twelve-day hearing with twenty-three witnesses). Here, the HPM Bankruptcies were filed "to ensure that the proceeds of the sale of [the Vacant Land], as well as the value of the [Residences] inure to [the HPM Entities'] estate and its stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen MTD Decl. ¶ 19, Doc. #61. The HPM Entities' stakeholders are Maney, Child, and Hansen. Maney is the central figure in the State's case, and one of the specifically named Securities Defendants in the State Court Action. If the HPM Bankruptcies were not dismissed and the net proceeds from the sale of the Vacant Land as well as the net value of the Residences were distributed to Maney, Child, and Hansen as the ultimate equity holders of the HPM Entities, Maney would receive nearly $2.7 million. This number is calculated by taking 56.43% of the estimated net sale proceeds from the Vacant Land (.5643 x $4,155,000 = $2,344,666.50) and the Residences (.5643 x .90($648,000-$620,000) = $314,879.40) plus 57% of HPM Mgmt.'s 1% interest in HPM Holdings (.57 x $47,130 = $26,864.10), which equals $2,686,410.00.

Also telling are the arguments and facts relied on by the HPM Entities against dismissal. The declarations of Child and Hansen filed in opposition to Receiver's motion emphasize the HPM Entities' position that the HPM Entities were not involved in the Galileo Project and are not named defendants in the

State Court Action. Yet the state court determined the HPM Entities to be Receivership Defendants in February 2021 in response to an objection filed by the HPM Entities. The declarations also state that, despite their personal connections to Securities Defendants, neither Child nor Hansen have any continued personal involvement with the businesses of the Securities Defendants (although payments from Silver Saddle Development to Child may be ongoing). Neither declaration sets forth any additional facts, separate from the State Court Action, demonstrating that the HPM Bankruptcies were filed in good faith, that a reorganization is possible, or that creditors (as distinguished from equity security holders) would benefit from bankruptcy protection. In essence, the HPM Entities seek to demonstrate that the HPM Entities should not be Receivership Defendants. This issue has been argued and determined in the State Court Action, and the HPM Entities are now attempting to use the Bankruptcy Code to avoid the consequences of the State Court Action.

Other factors also weigh in favor of dismissal. The HPM Entities, combined, have one unsecured creditor with a scheduled claim of less than $500, and two secured creditors with aggregate claims of less than $35,000 against the Residences and Vacant Land. The Residences are valued at a combined $648,000. There are no employees for either entity. HPM Mgmt. has only one asset, its 1% ownership interest in HPM Holdings. HPM Holdings has more than one asset, but those assets may be subject to the receivership estate. The primary asset, the Vacant Land, was sold by Receiver in the State Court Action, and Receiver intends to sell the Residences. There are no significant assets that have not been incorporated into the State Court Action. Whatever the number of assets, these bankruptcy cases are essentially two-party disputes, Receiver against the HPM Entities, that will be better resolved outside of the bankruptcy court's jurisdiction. Resolution outside of the bankruptcy court's jurisdiction, in fact, is already happening in the context of the ongoing State Court Action and related appeals.

Taking all the circumstances into consideration, it is evident from the record before this court that the HPM Bankruptcies were filed to prevent Receiver from complying with the Sale Order, to renew unsuccessful state court arguments pertaining to the HPM Entities' status as Receivership Defendants, to prevent sale proceeds from being distributed in the manner required by the State Court Action, and to funnel nearly $2.7 million to Maney, the central figure in the State Court Action. The HPM Bankruptcies were filed in bad faith and there is cause for dismissal under 11 U.S.C. § 1112(b).

Dismissal is in the best interest of creditors and the estate. There are no creditors with claims secured by the Vacant Land that would be in a better position if the proceeds from the sale of the Vacant Land went to the HPM Entities rather than Receiver. The Kern County Tax Commissioner will be paid from the sale proceeds no matter who ultimately claims the pot. Additionally, dismissing the HPM Bankruptcies to permit Receiver to continue under the authority of the State Court Action will likely result in the full satisfaction of Accelerated Assets' secured claim against the Residences and the payment in full of all outstanding property taxes, thus satisfying all secured claims against the HPM Entities.

Accordingly, Receiver's motion to dismiss under 11 U.S.C. § 1112(b) will be granted. The HPM Bankruptcies will be dismissed.

Dismissal under § 305(a)(1)

Even if dismissal is not warranted under § 1112(b), dismissal under § 305(a) would be appropriate.

Section 305(a) of the Bankruptcy Code allows the court to dismiss or suspend bankruptcy proceedings if "the interests of creditors and the debtor would be better served by such dismissal or suspension." 11 U.S.C. § 305(a)(1).

In the Ninth Circuit, dismissal under § 305(a)(1) most frequently arises in involuntary cases. See Wechsler v. Macke Int'l Trade, Inc. (In re Macke Int'l Trade, Inc.), 370 B.R. 236, 252 (B.A.P. 9th Cir. 2007) (stating that § 305(a)(1) is "intended to deal with involuntary petitioners who . . . improperly seek to impose the consequences of bankruptcy on an unwilling debtor"); Marciano v. Fahs (In re Marciano), 459 B.R. 27, 49-50 (B.A.P. 9th Cir. 2011) (holding the two-step process for dismissal under § 1112(b) "is appropriate in the context of deciding a § 305(a) motion with respect to a pending Involuntary Petition"). Courts have also held that dismissal under § 305(a) is not confined to involuntary cases, see In re Honolulu Affordable Hous. Partners, LLC, No. 15-00146, 2015 Bankr. LEXIS 1558 *1 (Bankr. D. Haw. May 7, 2015), In re Law Offices of T. Robert Hill, P.C., No. 17-10597, 2017 Bankr. LEXIS 4321 *1 (Bankr. W.D. Tenn. June 20, 2017), and the HPM Entities do not argue that § 305(a) is inapplicable to this proceeding. Therefore, the court will address the § 305(a) arguments of the parties.

"Dismissal under § 305(a)(1) is appropriate 'only in the situation where the court finds that both creditors and the debtor would be better served by a dismissal.'" Marciano, 459 B.R. at 46 (quoting Eastman v. Eastman (In re Eastman), 188 B.R. 621, 624 (9th Cir. 1995)). As with the motion to dismiss under § 1112(b), both Receiver and the HPM Entities recite and apply various factors that courts frequently apply. The parties recite the following seven factors set forth in Marciano:

(1) the economy and efficiency of administration;

(2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;

(3) whether federal proceedings are necessary to reach a just and equitable solution;

(4) whether there is an alternative means of achieving an equitable distribution of assets;

(5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;

(6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and

(7) the purpose for which bankruptcy jurisdiction has been sought.

Marciano, 459 B.R. at 44-45. "While a court may afford more weight to any factor it deems most relevant, many courts have held that the first factor, the economy and efficiency of administration, is the paramount concern when determining if abstention under § 305(a) is appropriate." Law Offices of T. Robert Hill, P.C., 2017 Bankr. LEXIS 4621 at *9.

The economy and efficiency of administration favor dismissal of this case. The HPM Entities do not seek to avoid the sale of the Vacant Land, they only seek to retain the proceeds from the sale. The HPM Entities have repeatedly stated that chapter 11 protection has been sought so that the Vacant Land sale

proceeds and the value of the Residences are distributed among HPM Entities' equity holders, including Maney, rather than to the receivership estate. The dispute over the validity of the sale of Vacant Land by Receiver is ongoing in the State Court Action, as the HPM Entities have appealed the Sale Order. The State Court Action alleges violations of state corporate law against numerous Securities Defendants on behalf of many individual investors, and decisions impacting the HPM Entities would be more efficiently resolved by the state court that has expertise and jurisdiction over all parties in the State Court Action. Additionally, the State Court Action likely would need to be resolved in full to settle disputes over the assets of the HPM Bankruptcies' estates. Dismissal favors economy and efficiency of administration for creditors and the HPM Entities.

There already is a pending proceeding, the State Court Action, that has been pending in state court for two years. The proceedings in the State Court Action can adequately protect the interests of the HPM Entities, Receiver, and HPM Entities' creditors. The HPM Entities were designated Receivership Defendants seven months ago after challenging that designation in accord with procedures set forth in the Receivership Order. The factual allegations raised by the HPM Entities regarding their connection with the Securities Defendants, as well as entitlement to net proceeds of the assets of Receivership Defendants, are already part of the State Court Action. The state court has the subject matter expertise to resolve the state law allegations in the State Court Action, to determine the scope of the receivership estate created in the State Court Action, and to consider appropriate remedies. The HPM Entities have appealed the state court Sale Order, and the California courts of appeal can properly determine the appeals already filed by the HPM Entities.

Federal proceedings are not required to reach a just and equitable resolution of the issues that the HPM Entities assert are the reasons for filing the HPM Bankruptcies. It would be a waste of resources and a damper on efficient administration for all parties to continue with the HPM Bankruptcies. Based on the record before the court, dismissing the HPM Bankruptcies would be less expensive for all parties, and all parties would be better served by resolving outstanding issues through the State Court Action.

Conclusion

Accordingly, the motion to dismiss pursuant to § 1112(b) is GRANTED. Were the court not dismissing this case pursuant to § 1112(b), it would be dismissed pursuant to § 305(a).

1:30 PM

1. 21-11034-A-7 **IN RE: ESPERANZA GONZALEZ**
JES-2

MOTION TO SELL
8-18-2021 [55]

JAMES SALVEN/MV
JUSTIN HARRIS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Esperanza Hansen Gonzalez ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2012 Mercedes Benz C250 Coupe, VIN WDDGJ4HB9CF867350 (the "Vehicle") to Debtor for the purchase price of $6,114.00, with a net to the estate of $2,739 after deducting Debtor's exemption credit, subject to higher and better bids at the hearing. Doc. #55.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. ##55, 57. Trustee's proposed sale to Debtor is made in consideration of the full and fair market value of the Vehicle. Doc. #57. Debtor offered to buy the Vehicle for the net purchase price of $6,114.00, subject to overbid at the hearing. Doc. #55. No commission will need to be paid because the sale is to Debtor. Doc. #57.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, the Vehicle will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtor on the terms set forth in the motion.

2. 19-10646-A-7 **IN RE: ALFRED ESPINOZA**
NES-1

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
9-1-2021 [24]

ALFRED ESPINOZA/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, an amended Schedule C was filed on September 1, 2021. Am. Schedule C, Doc. #64. The amended Schedule C changes the value of the debtor's residence subject to California's homestead exemption. Id.

Because parties in interest can still object to the debtor's claimed exemption under Rule 4003, the debtor cannot yet establish entitlement to the scheduled exemption the debtor asserts is impaired by the lien. This motion is therefore premature and not ripe for hearing because the debtor cannot satisfy the first element required to avoid a lien under § 522(f)(1).

3. 21-11047-A-7 **IN RE: KARMJIT SINGH AND RUPINDERPAL KAUR**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-23-2021 [28]

TOYOTA MOTOR CREDIT CORPORATION/MV
PETER BUNTING/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED 08/03/21

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted in part and denied in part.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on August 3, 2021. Doc. #24. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2017 Toyota Camry ("Vehicle"). Doc. #28.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete post-petition payments. Movant has produced evidence that the debtors are delinquent by at least $1,015.74. Doc. #30. The moving papers show the collateral is a depreciating asset and there is lack of insurance.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least three post-petition payments to Movant. The moving papers show the collateral is a depreciating asset and there is lack of insurance.

4. 21-10548-A-7 **IN RE: RICHARD/ASHLEY BRAZIL**
JDR-2

MOTION TO AVOID LIEN OF KINGS FEDERAL CREDIT UNION
8-30-2021 [61]

ASHLEY BRAZIL/MV
JEFFREY ROWE/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Richard Patrick Brazil and Ashley Nicole Brazil (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Kings Federal Credit Union ("Creditor") on their residential real property commonly referred to as 1067 W. Minaret Place, Hanford, CA 93230 (the "Property"). Doc. #61; Am. Schedule C, Doc. #54.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors' amended schedules reflect that, like other 11 U.S.C. § 522(f)(1) lien avoidance matters that have come before the court, Debtors include the cost of a hypothetical sale to reduce the apparent value of their interest in the Property. In Amended Schedule A/B, Debtors assert a market value for the

Property of $293,801.00, but deducted an estimated 8% costs of a hypothetical sale leaving the value of their interest in the Property at $270,296.92 on their Schedules and for this motion. Am. Schedule A/B, Doc. #40; Am. Schedule C, Doc. #54.

However, this approach is contrary to In re Aslanyan, which this court finds persuasive and follows, in which Judge McManus held "[l]iquidation costs or closing costs are not deducted from market value in the context of a motion to avoid a judicial lien." In re Aslanyan, No. 17-24195-A-7, 2017 Bankr. LEXIS 4363, at *4 (Bankr. E.D. Cal. Dec. 20, 2017). "When the bankruptcy court determines a debtor's exemption rights in property, 11 U.S.C. § 522(a)(2) directs it to value property at 'market value as of the date of the filing of the petition . . . .' There is no provision in section 522(a)(2) or in the statutory formula in section 522(f)(2)(A) mandating that a debtor's likely costs of sale be taken into account when ascertaining market value." Id. Debtors perhaps foresaw this reasoning, and note that Creditor's lien impairs the exemption on the Property even after eliminating the cost of sale. Doc. #61.

Debtors filed their bankruptcy petition on March 5, 2021. A judgment was entered against Richard Brazil in the amount of $17,095.34 in favor of Creditor on March 13,2019. Ex. B, Doc. #64. The abstract of judgment was recorded pre-petition in Kings County on April 4, 2019. Ex. B, Doc. #64. The lien attached to Debtors' interest in the Property located in Kings County. Doc. #63. The Property also is encumbered by a lien in favor of Kings Mortgage Services Inc. in the amount $220,954.90. Am. Schedule D, Doc. #40. Debtors claimed an exemption of $300,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #54. Eliminating Debtors' deduction of 8% estimated cost of sale, Debtors assert a market value for the Property as of the petition date at $293,801. Am. Schedule A/B, Doc. #40.

Applying the statutory formula:

Amount of Creditor's judicial lien		$17,095.34
Total amount of all other liens on the Property (excluding junior judicial liens)	+	220,954.90
Amount of Debtors' claim of exemption in the Property	+	300,000.00
		$538,050.24
Value of Debtors' interest in the Property absent liens	-	293,801.00
Amount Creditor's lien impairs Debtors' exemption		$244,249.24

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

5. 20-13750-A-7 **IN RE: JAN NGO**
SL-2

MOTION TO AVOID LIEN OF CASHCALL, INC.
8-24-2021 [32]

JAN NGO/MV
SCOTT LYONS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Jan Ngo ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of CashCall Inc. ("Creditor") on Debtor's residential real property commonly referred to as 3608 E. Center Ct., Visalia, CA 93292 (the "Property"). Doc. #32; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed a chapter 7 bankruptcy petition on November 30, 2020. A judgment was entered against Jan Ngo dba Jan Ngo C&N Housecleaning Service, aka C&N Home & Office Maintenance Service in the amount of $23,384.98 in favor of Creditor on November 18, 2014. Ex. D, Doc. #35. The abstract of judgment was recorded pre-petition in Tulare County on December 16, 2014. Ex. D, Doc. #35. The lien attached to Debtor's interest in the Property located in Tulare County. Doc. #34. The Property is encumbered by a first deed of trust in favor of Chase Mortgage in the amount $115,231 and a second deed of trust in favor of Union Bank in the amount of $58,371. Am. Schedule D, Doc. #30. Debtor claimed an exemption of $75,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at $210,705. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$23,384.98
Total amount of all other liens on the Property (excluding junior judicial liens)	+	173,602.00
Amount of Debtor's claim of exemption in the Property	+	75,000.00
		$271,986.98
Value of Debtor's interest in the Property absent liens	-	210,705.00
Amount Creditor's lien impairs Debtor's exemption		$61,281.98

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

6. 12-15465-A-7 **IN RE: TARIQ/RAJWANT ABEDI**
KMS-2

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
8-23-2021 [75]

RAJWANT ABEDI/MV
KANWAL SINGH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Tariq Abedi and Rajwant Abedi (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Wells Fargo Bank N.A. ("Creditor") on Debtors' residential real property commonly referred to as 1643 Tulip Court, Los Banos, CA 93635 (the "Property"). Doc. #75; Am. Schedule C, Doc. #81.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on June 19, 2012. A judgment was entered against Tariq Abedi individually and dba Mountain Mike's Pizza in the amount of $99,213.67 in favor of Creditor on January 23, 2012. Ex. C, Doc. #79. The abstract of judgment was recorded pre-petition in Merced County on February 10, 2012. Ex. C, Doc. #79. The lien attached to Debtors' interest in the Property located in Merced County. Doc. #78. The Property is encumbered by a first deed of trust in favor of Bank of America N.A. in the amount $263,000. Schedule D, Doc. #1. Debtors claimed an exemption of $1.00 in the Property under California Code of Civil Procedure § 703.140(b)(5). Am. Schedule C, Doc. #81. Debtors assert a market value for the Property as of the petition date at $190,000. Schedule A, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$99,213.67
Total amount of all other liens on the Property (excluding junior judicial liens)	+	263,000.00
Amount of Debtors' claim of exemption in the Property	+	1.00
		$362,214.67
Value of Debtors' interest in the Property absent liens	-	190,000.00
Amount Creditor's lien impairs Debtors' exemption		$172,214.67

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

7. 20-10271-A-7 **IN RE: JEFFREY KERBO**
ICE-1

OBJECTION TO CLAIM OF NANCY RUSSELL KERBO, CLAIM NUMBER 2
8-31-2021 [16]

IRMA EDMONDS/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

This motion will be OVERRULED WITHOUT PREJUDICE for improper notice and insufficient service.

The chapter 7 trustee ("Trustee") filed this claim objection on August 31, 2021 and set the matter for hearing on September 29, 2021. Doc. ##16-19. Federal Rule of Bankruptcy Procedure 3007(a)(1) requires a claim objection to be "filed and served at least 30 days' before any scheduled hearing on the objection or any deadline for the claimant to request a hearing." Trustee's objection was filed and served less than 30 days before the scheduled hearing.

Further, Trustee's notice required that the claimant file and serve written opposition to the claim objection. However, Local Rule of Practice ("LBR") 3007-1 provides that written opposition to an objection to claim is not required to be filed if the claim objection is filed and served at least 30 days prior to the hearing date, but fewer than 44 days. LBR 3007-1(b)(2). If Trustee seeks to require the claimant to file and serve written opposition to the claim objection prior to the scheduled hearing, Trustee's claim objection would need to be filed and served at least 44 days prior to the hearing date.

Finally, Federal Rule of Bankruptcy Procedure 3007(a)(2)(A) requires the objection and notice to be served "to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated." The certificate of service filed by Trustee in connection with the claim objection shows that service on the claimant was made at the address: 815 South Demaree Street **#16**, Visalia, CA 93277. Doc. #19 (emphasis added). However, the proof of claim giving rise to Trustee's objection lists the proper address as: 815 South Demaree Street **#28**, Visalia, CA 93277. Claim 2-2 (emphasis added).

Because this objection was filed and served less than 30 days before the scheduled hearing date and the objection was not sent to the address indicated on the subject proof of claim, this objection is OVERRULED WITHOUT PREJUDICE.

8. 21-11678-A-7 **IN RE: ROBERT LEANOS**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-10-2021 [11]

NEIL SCHWARTZ/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for October 4, 2021 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

9. 21-11685-A-7 **IN RE: AZUCENA NUNEZ**
PPR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-17-2021 [11]

NASA FEDERAL CREDIT UNION/MV
VINCENT GORSKI/ATTY. FOR DBT.
DIANA TORRES-BRITO/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, NASA Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2007 Cadillac Escalade ("Vehicle"). Doc. #11.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $1,511.90 which includes late charges of $43.42. Doc. #13.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Id. The Vehicle is valued at $9,233.00 and the debtor owes $11,332.30. Doc. #13.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

10. 21-11495-A-7 **IN RE: KEVIN ROCHE**
CLB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-20-2021 [21]

U.S. BANK NATIONAL ASSOCIATION/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
CHAD BUTLER/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, U.S. Bank National Association as Trustee for Angel Oak Mortgage Trust 2019-5, Mortgage-Backed Certificates, Series 2019-5 ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 20071 W. Glendale Ave in Lemoore, CA ("Property"). Doc. #21.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 18 complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $234,671.33 and the entire balance of $1,708,246.34 is due. Doc. #25.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to

use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Property will be surrendered. Doc. #1.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least 18 payments, both pre- and post-petition, to Movant and because the debtor intends to surrender the Property.

11. 21-11299-A-7 **IN RE: PHYLENA HERRIN**
UST-1

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)
8-26-2021 [21]

TRACY DAVIS/MV
JASON BLUMBERG/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Tracy Hope Davis ("U.S. Trustee"), the United States Trustee for Region 17, moves the court for an order denying the debtor's discharge pursuant to 11 U.S.C. § 727(a)(8). Doc. #21.

Section 727(a)(8) of the Bankruptcy Code prohibits the court from granting a discharge if "the debtor has been granted a discharge under this section . . . in a case commenced within 8 years before the date of the filing of the petition." 11 U.S.C. § 727(a)(8). Phylena Mae Herrin ("Debtor"), the chapter 7 debtor, filed the present bankruptcy petition on May 21, 2021. Doc. #1. At the time Debtor commenced this case, Debtor had a pending chapter 7 case through which Debtor received a discharge under chapter 7 on June 21, 2021. Ex. 1, Doc. #24. The bankruptcy case giving rise to Debtor's June 21, 2021 chapter 7 discharge was commenced within 8 years before the filing of the current bankruptcy case, and, under § 727(a), the court cannot grant Debtor a discharge in this chapter 7 case.

The court notes that Debtor submitted a handwritten request to dismiss this bankruptcy case, and that request was filed on August 17, 2021. Doc. #18. A request to dismiss a chapter 7 bankruptcy case must be set for a hearing and all creditors and other parties in interest must be provided with notice of that hearing at least 21 days before the hearing date under Federal Rule of Bankruptcy Procedure 2002(a)(4) and LBR 9014-1(a) and (k). Debtor's request to dismiss her bankruptcy case was never noticed for hearing, as Debtor was advised in the calendar correction memo filed by the Bankruptcy Court Clerk on August 18, 2021. Doc. #19. If Debtor wishes to dismiss this bankruptcy case, Debtor must set her motion to dismiss for hearing and provide notice of the hearing as required by the Federal Rules of Bankruptcy Procedure and this court's Local Rules of Practice.

Accordingly, U.S. Trustee's motion is GRANTED. Debtor is not entitled to a discharge pursuant to 11 U.S.C. § 727(a)(8).

12. 21-11782-A-7 **IN RE: MARICELA FREITAS**
JES-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-27-2021 [13]

NICHOLAS WAJDA/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for October 28, 2021 at 1:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.