

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

**January 4, 2024 at 10:30 a.m.**

1. [20-90479-E-12](#)  
[DCJ-8](#)

**JOE MACHADO**  
David Johnston

**MOTION FOR ENTRY OF DISCHARGE**  
12-4-23 [[173](#)]

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2023. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Entry of Discharge is granted.**

The Motion for Entry of Discharge has been filed by Joe Machado ("Debtor in Possession"). With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. Michael Meyer's ("the Chapter 12 Trustee") final report was filed on October 6, 2023, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the Chapter 12 Trustee was entered on December 11, 2023. Dckt. 177. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

**January 4, 2024 at 10:30 a.m.**

Debtor in Possession's Declaration (Dekt. 175) certifies that Debtor:

- A. has completed the plan payments;
- B. does not have any delinquent domestic support obligations;
- C. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;
- D. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and
- E. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

There being no objection, Debtor in Possession is entitled to a discharge.

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

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

The Motion for Entry of Discharge filed by Joe Machado ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the court shall enter the discharge for Joe Machado in this case.

2. <a href="#"><u>20-90479</u></a> -E-12 <a href="#"><u>CAE-1</u></a>	<b>JOE MACHADO</b>	<b>CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 7-9-20 <a href="#"><u>1</u></a></b>
--	--------------------	---

Debtor's Atty: David C. Johnston

Notes:

Continued from 12/7/23 to be heard in conjunction with the hearing on the Motion for Entry of Discharge in this case.

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
--

**JANUARY 4, 2024 STATUS CONFERENCE**

**January 4, 2024 at 10:30 a.m.**

**- Page 2 of 26 -**

On January 4, 2024, the court granted the Debtor's Motion for Entry in Discharge. At the Status Conference, **XXXXXXX**

3. 23-90206-E-7  
UST-4

**DONALD/KRISTENE DUARTE**  
Pro Se

**MOTION TO APPROVE STIPULATION  
TO DISMISS CHAPTER 7 CASE  
WITHOUT ENTRY OF DISCHARGE  
11-20-23 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and parties requesting special notice on November 20, 2023. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Approval of Stipulation, which the court deems to be a joint motion for a stipulated dismissal of the Bankruptcy Case, between the United States Trustee and Debtor Donald and Kristene Duarte is granted, and the Chapter 7 Case is Dismissed Without Entry of Discharge.**

The United States Trustee, Tracy Hope Davis (“Movant”), requests that the court approve a stipulation with Donald and Kristene Duarte (“Debtor”) which provides that Debtor’s Chapter 7 bankruptcy case be dismissed without an entry of discharge. As the parties are aware, when they seek an order from the court, it must be requested by motion or objection. See, Fed. R. Bankr. P. 9013, 1014..

## STIPULATION/JOINT MOTION

Movant and Debtor stipulate to an order dismissing Debtor's bankruptcy case, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 49): Movant is prepared to file a motion to dismiss this case for abuse pursuant to 11 U.S.C. §§ 707(b)(1) & (3), and to avoid costly litigation, Debtor desires to voluntarily dismiss the case.

## **DISCUSSION**

The Motion to Approve the Stipulation/Dismiss was filed and set for hearing. A total of 45 days notice was provided with no oppositions and responses having been filed. The Motion's Certificate of Service properly provides for all interested parties who may object to this Stipulation. Debtor and Movant have responsibly addressed these issues, allowed interested parties to participate in the solution, and have presented a Stipulation that allows Debtor to move on.

The Stipulation and Motion assert that a dispute exists and the US Trustee is prepared to file a Motion to Dismiss and an Objection to Discharge (11 U.S.C. § 727). Rather than engage in that battle, the Debtors have agreed to dismiss their bankruptcy case.

The Motion is granted.

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

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

The Motion to Approve Stipulation filed by the United States Trustee, Tracy Hope Davis ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Stipulation between Movant and Donald and Kristene Duarte is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation, filed as Docket 49, in support of the Motion.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Attorneys of record who have appeared in the Bankruptcy Case, creditors holding the twenty largest unsecured claims, Creditors holding allowed secured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2023. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Modify the Chapter 11 Plan is <del>granted</del>.</b></p>
---

#### January 4, 2024 Hearing

On December 21, 2023 John Yap and Irene Loke ("Movant") submitted supplemental evidence to the court in support of their Motion. Movant submitted a Declaration of John Yap (Docket 312) and a proposed redlined Modified Plan and Disclosure Statement (Docket 313) in support. Mr. Yap explains in his Declaration his desire to keep the real property commonly known as 2412 6th Street, Hughson, California 95326 ("Property") in his family. Decl., Docket 312 ¶ 8. Mr. Yap further explains that even though the principal amount of the loan will be increased by this refinancing agreement, the monthly payments will go down by approximately \$559.72, allowing Movant to rely less on family support in paying the plan payments. *Id.* at ¶ 7. Of note, Movant has not submitted a stipulation with the court showing Creditor's (Bank of New York Mellon) consent to the modification.

As stated by Mr. Yap, on June 27, 2022, Debtors were granted their discharge on June 28, 2022. The findings of the court include that all plan payments have been completed under the Confirmed Chapter 11 Plan. Civil Minutes; Dckt. 266.

The present Motion in substance is a method by which Debtors and Creditor document a modification of the terms of the contract, which have been modified by the confirmed Chapter 11 Plan, for the secured claim of Creditor.

The proposed Modification is just of Creditor's obligation as provided for in the Plan. It does not impact any other creditors or the treatment of their terms in this Case.

Review of Proposed Modified Plan  
Re Treatment of Creditor's Secured Claim

In re-reviewing the proposed Modified Plan (Redline Version, Exhibit A; Dckt. 313), the court has identified several points for apparent clarification. These are:

- A. P. 3, Footnote 2. This footnote contains a narrative of what is to occur and what in the future stipulated terms for the claim may be, rather than affirmative stating treatment of Creditor's Class 1D secured claim. It also makes reference to a Stipulation with Creditor to modify the treatment. The court does not find a copy of the Stipulation in the record.
- B. P. 5. The Treatment for the 1D Claim is stricken, with the text being shown with a ~~strikeout format~~.
- C. P. 6. The text for the Class 1D Claim is shown in ~~strikeout text~~ and states that the payments will be made as provided in the above box, for which the ~~text is stricken~~, not shown as added.

It is not clear if this is a clerical error, and the ~~strikeout~~ should be underlined text. However, the Plan does not clearly state what Creditor is to be paid, what defaults in the original terms are modified, and the amount of the claim to be paid.

The Modified Terms of Creditor's Class 1 Claim are:

- 1. Principal Amount.....\$ **XXXXXXX**
- 2. Interest Rate.....\$ **XXXXXXX**
- 3. Period of Payments..... **XXXXXXX**
- 4. Monthly Payment.....\$ **XXXXXXX**
- 5. Other Payments.....\$ **XXXXXXX**

The existing Plan provides for Creditor to have a claim of \$301,324, which is being amortized over 30 years with an interest rate of 5% per annum, resulting in a month principal and interest payment of \$1,627.57.

With the Modification, the monthly principal and interest payment is \$XXXXXXX . The modification and all of the terms thereof between Debtors and Creditor will be documented by XXXXXXXX

At the hearing, XXXXXXXX

### REVIEW OF THE MOTION

Movant seeks to modify its confirmed Plan by reopening this case and “unwind a cram-down” of a first lienholder’s mortgage loan, Proof of Claim 5-1.” Claim 5-1 is held by the Bank of New York Mellon f/k/s/ the Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-through Certificates (“Creditor”). Creditor’s first lien is attached to the real property commonly known as 2412 6th Street, Hughson, California 95326 (“Property”). In reopening this case, Movant seeks to confirm a Modified Plan that purports to lower its monthly payment by \$600.00 Motion, Dckt. 303. Movant filed its individual Chapter 11 Case on March 17, 2020. Dckt 1. Movant’s Plan was confirmed on July 2, 2021 (Dckt. 229), and Movant received an Order granting an Application for Final Decree on December 2, 2022 (Dckt. 294).

The subject of Movant’s Motion is the claim in Class 1D of the Confirmed Plan. Plan, Dckt. 209, p. 4. Class 1D contains Creditor’s claim in the Property. Creditor’s Proof of Claim originally depicted a secured claim in the amount of \$405,421.01. POC, 5-1, p. 2. However, Movant filed a Motion to Value Collateral (the Property) on May 15, 2020 (Dckt. 62) which this court granted on September 3, 2020 (Dckt. 128), valuing the Property and secured claim at \$301,324.00.

Since Movant’s Plan was confirmed on July 2, 2021, Movant has been paying \$1,853.90 per month for this Class 1D claim. Movant now seeks to undo this court’s September 3, 2020 Order granting the Motion to Value, thereby reinstating Creditor’s previously asserted secured claim amount of \$405,421.01, adding approximately \$104,097.01 back to Creditor’s claim.

Movant states that such an action will reduce its monthly payment to Class 1D by roughly \$600.00. Declaration, Dckt. 305 ¶ 5. Movant’s pre-petition mortgage payments to Creditor were \$1,312.53 as stated in the Modification of Deed of Trust instrument, Exhibit, Dckt 306, p. 51, ¶ C. Movant asserts it needs that extra money to pay for medical bills, and that extra money would allow Movant to rely on its family support a little less. Declaration, Dckt. 305 ¶¶ 6, 9.

### APPLICABLE LAW

11 U.S.C. § 1127(e) allows an individual debtor in a Chapter 11 case to modify the contents of a plan post-confirmation. It states,

If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

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

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

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

11 U.S.C. § 1127(e) [emphasis added]. The Code further provides in 11 U.S.C. § 1127(f) that,

(1)Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection (e).

(2)The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.

11 U.S.C. § 1127(f). Therefore, the Code permits an individual Chapter 11 debtor to modify the plan any time after confirmation upon request, whether or not the plan has been substantially consummated, but the modification remains subject to the requirements of 11 U.S.C. §§ 1121–1129, including a disclosure as required by 11 U.S.C. § 1125 – as the court may direct.

## **DISCUSSION**

Movant petitions this court for a modification but has failed to show the court how the proposed modification will comply with 11 U.S.C. §§ 1121-1129. A review of the docket on November 1, 2023 reveals that there has been no submission of a proposed modified plan, a disclosure statement, or any information suggesting that Creditor will agree to the proposed modification. Movant informs the court in its Motion and supporting Declaration that “BNY appears willing to unwind the cram-down.” Declaration, Dckt. 305 ¶ 5. The court is not inclined to accept this conclusory statement without some supporting evidence.

### **Review of Motion and Grounds Stated With Particularity Therein**

The Motion seeking modification of the Confirmed Plan states the following grounds (as summarized by the court):

- A. Debtors seek to unwind a cramdown of the Bank of New York Mellon’s (“Creditor”) secured claim in the Confirmed Plan.
- B. The modification will be to increase the Creditor’s secured claim by \$104,097, vacating the court’s prior order valuing Creditor’s secured claim at the value of the collateral securing the claim.
- C. By adding the \$104,097 to the secure claim and going back to the pre-petition terms of the loan, Debtors can reduce their monthly payment to Creditor by \$600.
- D. Debtors will use the additional \$600 a month for their expenses, and let the family support of \$1,350.00 for the funding of the Confirmed Plan to be reduced.



- E. The fixed rate terms of the secured claim is at an interest rate for which the principal, interest, insurance, and taxes are only \$1,276.18 a month. Under the Plan, even with the reduced amount of the secured claim, Debtors are paying \$1,853.90 a month.

Exhibit C is a copy of Creditor's Proof of Claim, on which the interest rate is stated to be 3% per annum. It appears that while the Proof of Claim is filed for a \$405,421.01, the monthly payments are computed on a principal balance of \$280,269, and that there is a deferred principal balance of \$125,201.45.

Attached to Creditor's Proof of Claim 5-1 is a Modification of Deed of Trust, which also appears to be a modification of the loan it secured. The \$280,269 interest bearing portion of the debt is reamortized over forth (40) years at 3% interest, with a balloon payment of the \$125,201.45 deferred principal balance due upon sale of the property, when the interest bearing principal balance is paid, or when the loan matures.

- F. It is possible that Creditor will work out a stipulation to allow for the \$1,276.18 payments going forward.

No stipulation has been presented to the court.

The Motion does not state the grounds for confirmation of a modified plan, but merely states the Bankruptcy Code sections which must be complied with. Debtor's counsel states a conclusion that the Bankruptcy Code has been complied with, and it is likely only Creditor will vote for confirmation of the modified plan.

### **Review of Minimum Pleading Requirements for a Motion**

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

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

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

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

### **November 9, 2023 Hearing**

It is unclear from the pleadings whether the confirmation requirements for a modified plan have been met. From the pleadings, it appears that Debtors have concluded that they cannot perform the Plan and pay a creditor only the amount of its secured debt, but elect to "mortgage the future" and take on debt well in excess of the value of the collateral - effectively making them "tenants" of Creditor.

At the hearing, Creditor appeared and confirmed that the Parties were stipulating to the modification. Debtor/Plan Administrator's provided an overview of the economic rationale for this modification. Debtor/Plan Administrator shall file and serve supplemental pleadings documenting the agreement of Creditor and a redline version of the Plan as to be modified.

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

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

The Motion to Modify the Chapter 11 Plan filed by John Yap and Irene Loke ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Modify the Chapter 11 Plan is **XXXX**.

5. [23-90029-E-11](#)  
[RMB-4](#)

**RAMIL/MELINA ABALKHAD**  
**Roksana Moradi-Brovia**

**MOTION FOR COMPENSATION FOR**  
**PENNY M. FOX, CPA, APC,**  
**ACCOUNTANT(S)**  
**11-14-23 [\[158\]](#)**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on November 14, 2023. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

However, the court notes that Movant uploaded the Certificate of Service form over one week after filing this Motion and supporting documents, and not within the three days of the pleadings having been filed on November 14, 2023. The Certificate was filed on November 22, 2023. L.B.R. 9014-1(e)

In reviewing the Certificate of Service filed (Dckt. 163), the court notes that Section 5 of the Certificate in which the parties being served are identified is not completed. However, in Section 6, it states that pursuant to Federal Rule of Civil Procedure 5 and Federal Rule of Bankruptcy Procedure 7005 the persons listed on the Clerk's Creditor Matrix, which is attached as an exhibit, have been served by mail.

It appears that the failure to complete Section 5 is due to a clerical oversight.

At the hearing, **XXXXXXX**

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for <del>Allowance of Interim Professional Fees</del> is granted.</b>
---

Penny M. Fox of Penny M. Fox, CPA, APC, the Accountant (“Applicant”) for Ramil and Melina Abelhkhad, Debtor in Possession (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 8, 2023 through August 6, 2023. The order of the court approving employment of Applicant was entered on March 21, 2023. Dckt. 59. Applicant requests fees in the amount of \$4,390 and no costs.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still

that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include preparing monthly operating reports and quarterly accounting and financial statements, downloading and classifying transactions, and preparing and filing the 2022 federal and state tax returns. Motion, Docket 158; Exhibit A, Docket 162. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent approximately 11 hours in this category.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Penny M. Fox, CPA, APC	approx. 11	\$400.00	\$4,390.00
<b>Total Fees for Period of Application</b>			\$4,390.00

Applicant does not seek reimbursement for any costs in this Application.

## FEES ALLOWED

### Fees

#### Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$4,390 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

#### Final Fee Application Required

Applicant's interim request for fees is only for the period February 8, 2023 through August 6, 2023. It appears that: (1) Applicant may have additional fees that may be sought, and (2) that final approval of the interim fees is required.

At the hearing, the court addressed counsel as to whether there would be additional fees requested, or whether the fees are limited to the current request and whether applicant desired to orally amend the request for a final allowance of fees and costs.

Counsel advised the court, **XXXXXXX**

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

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

The Motion for Allowance of Fees and Expenses filed by Penny M. Fox of Penny M. Fox, CPA, APC ("Applicant"), Accountant Ramil and Melina Abelkhad, Debtor in Possession ("Client"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**~~IT IS ORDERED~~** that ~~Penny M. Fox of Penny M. Fox, CPA, APC is allowed the following fees and expenses as a professional of the Estate:~~

~~\_\_\_\_\_ Penny M. Fox, Professional employed by Debtor in Possession~~

~~\_\_\_\_\_ Fees in the amount of \$4,390~~

~~\_\_\_\_\_ as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.~~

~~\_\_\_\_\_ The court has dismissed this Chapter 11 Case pursuant to a Motion filed by the Debtor in Possession. Applicant shall file a Motion for Final Approval of Fees on or before February 4, 2024.~~

6. [23-90029](#)-E-11  
[RMB-6](#)

RAMIL/MELINA ABALKHAD  
Roksana Moradi-Brovia

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF RHM LAW LLP FOR  
ROKSANA D. MORADI-BROVIA,  
DEBTORS ATTORNEY(S)  
12-7-23 [\[168\]](#)**

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

-----

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in possession, creditors, parties requesting special notice, and Office of the United States Trustee on December 7, 2023. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

#### **INSUFFICIENT NOTICE OF MOTION**

Applicant provided 28 days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Movant has provided seven fewer days than the minimum.

Furthermore, the court notes that Movant did not properly fill out the Certificate of Service form as Movant did not check any boxes indicating any party was served. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l). At the hearing, **XXXXXXXX**

~~The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.~~

<b>The Motion for Allowance of Professional Fees is granted.</b>
--

Roksana D. Moradi-Brovia of RHM LAW LLP, the Attorney (“Applicant”) for Ramil and Melina Abalkhad, Debtor in Possession (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 6, 2023, through December 7, 2023. The order of the court approving employment of Applicant was entered on June 16, 2023. Dckt. 117. Applicant requests fees in the amount of \$62,506.50 and costs in the amount of \$1,648.44.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the



work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Adversary Proceeding: Applicant spent 3.9 hours in this category. Applicant addressed the nondischargeability complaint [Adv. No. 23-09005-E] filed by David Seror, in his capacity as a Chapter 7 Trustee in the Estate of R.J. Financial, Inc., d/b/a/ Romano’s Jewelers (the “Trustee”), pending in the United States Bankruptcy Court for the Central District of California, San Fernando Valley Division, Case No. 1:10-bk-10209-MT.

Asset Analysis and Valuation: Applicant spent 2.1 hours in this category. Applicant conferred with the Debtor in Possession regarding leasing the Calabasas Property and the related issues. This category includes entries related to the motion for relief and the effect on the property and reorganization.

Case Administration: Applicant spent 120.4 hours in this category. Applicant spent time getting the Debtor in Possession in compliance with the United States Trustee (“UST”) Guidelines and correcting the Schedules to ensure that all assets and creditors were properly disclosed. Applicant also advised and conferred regularly with the Debtor in Possession with regard to their continuing obligations to the UST, including the monthly operating reports, and acted as an intermediary between the UST and Debtor in Possession.

This represents the majority of work done on this Bankruptcy Case by Applicant.

Disclosure Statement and Plan of Reorganization: Applicant spent 4.7 hours in this category. Applicant conferred with the Debtors regarding the prospects and strategy for reorganization.

Employment and Fee Applications: Applicant spent 20 hours in this category. Applicant spent substantial time preparing the applications to employ Applicant, and a real estate broker to lease the Calabasas Property. The Debtor in Possession initially sought to retain special counsel for family law litigation. Applicant also prepared the fee application for the CPA who prepared the Debtors 2022 tax return and their monthly operating reports.

General Creditor Issues: Applicant spent 26.6 hours in this category. Applicant spent substantial time addressing and resolving various issues and problems with creditors, including two motions for relief.

Initial Debtor Interview and Meeting of the Creditors: Applicant spent 6.4 hours in this category. Applicant prepared for, corresponded with the Debtors regarding, and attended the initial debtor interview and the §341(a) Meeting of Creditors.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Matthew D. Resnick, attorney	30.2	\$575.00	\$15,812.50
Roksana D. Moradi-Brovia, attorney	35.2	\$525.00	\$18,480.00
Rosario Zubia, paralegal	77.4	\$135.00	\$10,449.00
Russell J. Strong III, attorney	5.1	\$450.00	\$2,295.00
W. Sloan Youksetter, attorney	36.4	\$425.00	\$15,470.00
<b>Total Fees for Period of Application</b>			<b>\$62,506.50</b>

### Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,648.44 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Mailing/Postage	-----	\$1,395.11
Printing/Copying		\$142.56

Court Call		\$22.50
<b>Total Costs Requested in Application</b>		<b>\$1,560.17</b>

Applicant requests costs in the amount of \$1,648.4. Exhibit C, Docket 172. However, upon this court's calculations, Applicant has only listed costs in the amount of \$1,560.17 for reimbursement. Furthermore, this court does not authorize court calls to be a reimbursable cost. Therefore, costs are allowed in the amount of \$1,537.67 (costs actually listed less the court call fee), not \$1,648.44.

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. However, a closer review of 120.4 hours and \$ 30,505.00 in billings for Case Administration is warranted in this Case. Exhibit A, p. 3-8; Dckt. 172. Fortunately Applicant has provided the court with the detailed billing records. Reviewing the individual items billed, they are for reasonable time periods and do not include "lump billings" for multiple tasks. Additionally, the billing rates being charged are reasonable for the tasks being performed. While the requested fees are significant, Applicant was having to "eat, breath, and sleep" this case during the past year.

First and Final Fees in the amount of \$62,506.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$1,537.67 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

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

The Motion for Allowance of Fees and Expenses filed by Roksana D. Moradi-Brovina of RHM LAW LLP, the Attorney ("Applicant") for Ramil and Melina Abalkhad, Debtor in Possession ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that RHM LAW LLP is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of \$62,506.50  
Expenses in the amount of \$1,537.67,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as  
counsel for Debtor in Possession.

7. [23-90029-E-11](#)      **RAMIL/MELINA ABALKHAD**      **MOTION TO DISMISS CASE**  
[RMB-5](#)      **Roksana Moradi-Brovja**      **12-7-23 [164]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in possession, creditors, parties requesting special notice, and Office of the United States Trustee on December 7, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The court notes that Movant did not properly fill out the Certificate of Service form as Movant did not check any boxes indicating any party was served. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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

<b>The Motion to Dismiss Case is granted.</b>
---

The debtor in possession, Ramil and Melina Abalkhad, (“ΔIP”) filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. § 1112(b)(1).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed on January 27, 2023.
2. ΔIP owned a residential piece of property commonly known as 25561 Prado De Las Flores, Calabasas, CA 91302 (“Property”), against which this court granted creditor Deutsche Bank National Trust Company (“Creditor”) relief from stay to pursue remedies outside of bankruptcy on October 16, 2023 (Docket 154).
3. ΔIP planned to use this Property as a rental unit, generating income from renting the Property to fund its Chapter 11 Plan. With the Property being foreclosed on, ΔIP cannot feasibly fund a Chapter 11 case and Plan.
4. There is a pending adversary proceeding in a separate bankruptcy case for the Central District of California, San Fernando Valley Division, Case No. 1:10-bk-10209-MT, where the Chapter 7 Trustee in that case filed a nondischargeability complaint against ΔIP. ΔIP requests this court enter a judgment in the nondischargeability proceeding, ordering that certain prepetition judgments against ΔIP are not dischargeable.
5. Cause therefore exists to dismiss the case in order to avoid further loss or diminution to the Estate.

Motion, Dckt. 164.

ΔIP, Ramil Abalkad, filed his own Declaration to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 166.

## **CREDITOR’S OPPOSITION**

Creditor filed a conditional opposition to ΔIP’s Motion on December 21, 2023. Docket 178. In its opposition, Creditor states it is fine with the case being dismissed; however, Creditor requests this court enter a 180-day bar to refiling, consistent with 11 U.S.C. § 109(g)(2), to prevent ΔIP from simply refiling this case after dismissal and enjoying another automatic stay period.

## **DISCUSSION**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Regarding the court imposing an 180-day (or other time period) bar to refiling, the Bankruptcy Code further provides:

(g)Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1)the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2)the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

11 U.S.C. § 109(g).

The court notes that this is a statutory bar on refiling imposed by Congress, which automatically goes into effect upon the Congressional statutory terms being satisfied. It is not a discretionary provision for the court to impose. Such discretionary provisions relating to the repeated refiling of bankruptcy cases include imposing a pre-filing review by the Chief Bankruptcy Judge in whatever District a future case may be filed for a specified period of time (similar to a vexatious litigant pre-filing review in a District Court).

Here, ΔIP asserts that its Property will be foreclosed on, so the case ceases to make financial sense. ΔIP's other assets are nominal and would not likely see value if liquidated due to outstanding liens. Further, the claims remaining against ΔIP are not substantial and can be pursued outside of bankruptcy. ΔIP argues there is cause to dismiss the case because continuing in bankruptcy would deplete property of the Estate without any greater recovery to creditors.

The provisions of 11 U.S.C. § 109(g)(2) expressly provide that there is a statutory bar of 180 days in the event that the dismissal is made after a motion for relief from the stay has been filed. Here, not only has the Motion for Relief been filed (Dckt. 134), but on October 16, 2023, the court granted such relief and the foreclosure is in process. Order; Dckt. 154.

Pursuant to the plain language of 11 U.S.C. § 109(g), Congress has imposed a 180-Day bar on Debtor being eligible to file a bankruptcy case. The court shall so state the statutory stay in the order dismissing this Case.

In addition to the Dismissal of this Chapter 11 Case, ΔIP also requests that the court dismiss related Adversary Proceeding 23-9005. No Motion to Dismiss the Adversary Proceeding has been filed in

Adversary Proceeding 23-9005. The court will address the dismissal of that Adversary Proceeding on the record at its January 4, 2024 Status Conference.

The requested dismissal allows ΔIP to resolve claims and move on to a “fresh start” outside of bankruptcy. However, the court will enter an order consistent with 11 U.S.C. § 109(g)(2), preventing ΔIP from refiling within 180 days after dismissal. ΔIP requested (and will receive) this voluntary dismissal where the court had already granted relief from stay under Section 362 in this case, meaning ΔIP may not refile within 180 days.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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

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

The Motion To Dismiss filed by Ramil and Melina Abalkhad (“ΔIP”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the case is dismissed.

This Bankruptcy Case filed by Ramil Abalkhad and Melina Abalkhad was dismissed after the filing of a Motion for Relief From the Automatic Stay was filed, Motion; Dckt. 134, (and for which an order granting relief subsequently entered; Dckt. 154), resulting in the provisions of 11 U.S.C. § 109(g)(2) being in effect, which bar the Debtors, and each of them, from being a debtor in a bankruptcy case within 180 days of the dismissal of this Bankruptcy Case.

Debtors' Atty: Matthew D. Resnik, Rokhsana D. Moradi-Brovia

Notes:

Continued from 12/7/23. The counsel for Debtor in Possession reporting that the Debtors have decided to dismiss this Bankruptcy Case and not pursue a reorganization.

[RMB-5] Motion to Dismiss Chapter 11 Case filed 12/7/23 [Dckt 164], set for hearing 1/4/24 at 10:30 a.m.

**~~The Chapter 11 Status Conference is concluded and removed from the Calendar, the court having dismissed this Bankruptcy Case.~~**



9. [23-90029](#)-E-11      RAMIL/MELINA ABALKHAD  
[23-9005](#)                      CAE-1  
SEROR V. ABALKHAD ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
4-28-23 [\[1\]](#)

Plaintiff's Atty: David Seror; Jessica S. Wellington  
Defendant's Atty: James R. Selth

Adv. Filed: 4/28/23  
Answer: none

Nature of Action:  
Objection/revocation of discharge  
Dischargeability - priority tax claims  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

Notes:

Continued to 1/4/24 at 10:30 a.m. by order dated 12/11/23 [Dckt 19]. To be heard in conjunction with the Motion to Dismiss filed in case number 23-90029. No status reports or other pleadings are required to be filed by any Party to this Adversary Proceeding.

**~~The Status Conference is concluded and removed from the calendar, the Parties stating their oral motion to dismiss without prejudice on the record at the January 4, 2024 Status Conference.~~**

### JANUARY 4, 2024 STATUS CONFERENCE

On December 6, 2023, the Plaintiff-Trustee and Defendant-Debtors filed their Stipulation for a Fourth Extension of Time for Defendant-Debtors to respond to the Complaint and for a continuance of the Status Conference. Stipulation; Dckt. 17. No motion requesting an order of the court (as required by Fed. R. Civ. P. 7(b) and Fed. R. Bank. P. 7007, 9013) has been filed.

The original Status Conference was set for July 13, 2023, and continued at the request of the Parties. Order; Dckt 12. In their Second Stipulation for Extension of Time (which the court notified the parties that it construed to be an *ex parte* motion) and to Continue Status Conference, the additional time was requested to allow the parties to further review their positions and engage in settlement discussions. The Status Conference was continued to September 28, 2023.

On September 1, 2023, the Parties filed their Stipulation for a Third Extension of Time and Second Continuance of the Status Conference. Dckt. 14. The grounds stated include that a settlement has been reached in the R.J. Financial bankruptcy Case and this Adversary Proceeding, and that the Parties will be seeking approval of both Stipulations. The court granted the Third Request (expressly construing it to be a joint *ex parte* motion) and continued the Status Conference to January 25, 2024. Order; Dckt. 16.

On December 6, 2023, the Parties filed their Fourth Stipulation for Extension of Time and to Continue the Status Conference, requesting that the Status Conference be continued to April 25, 2024. Dckt. 17. In this Fourth request, the Parties expressly state that the “Defendants now intend to move to dismiss the Bankruptcy Case within the next one to two weeks.” Stipulation, Whereas Paragraph, p. 3:1-2; Dckt. 17.

However, while granting the request to extend the time for Defendant-Debtors to respond to March 7, 2024, the Court’s Order continued the Status Conference to 10:30 a.m. on January 4, 2024, so it could be conducted in conjunction with the Debtors’ motion to dismiss the Chapter 11 case. This would provide the court with documentation that Plaintiff and Defendant-Debtors were in good faith prosecuting this Adversary Proceeding.

The Motion to Dismiss the Chapter 11 Case has been filed and is set for 10:30 a.m. on January 4, 2024.

~~At the Status Conference, the Parties stated their joint oral Motion to Dismiss this Adversary Proceeding without prejudice, the court having granted the Defendant-Debtor’s motion to dismiss the related Chapter 11 Case.~~

### **JULY 13, 2023 STATUS CONFERENCE**

The court has continued the Status Conference pursuant to the request of the Parties. Order; Dckt. 10. The Parties report that they have reach agreed terms for a settlement, the documents are being drafted, and approval of the settlement will be requested both in this court and the court in which the R.J. Financial Bankruptcy Case is pending.

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

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

~~The Oral Motion to Dismiss this Adversary Proceeding Without Prejudice having been stated on the record at the January 4, 2024 Status Conference by Plaintiff David Seror, Trustee, and Ramil and Melina Abalkhad, Defendant-Debtors, and each of them, the Defendant-Debtors’ related Chapter 11 Case having been dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Adversary Proceeding is dismissed without prejudice.~~