

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Sacramento, California

**January 11, 2024 at 10:30 a.m.**

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<b>1.</b>	<b><u>18-90029</u>-E-11</b> <b><u>FWP</u>-28</b>	<b>JEFFERY ARAMBEL</b> <b>Pro Se</b>	<b>CONTINUED MOTION TO USE CASH</b> <b>COLLATERAL</b> <b>10-20-23 [<u>1927</u>]</b>
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**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).**

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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 (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on October 20, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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, -----  
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**The Motion for Authority to Use Cash Collateral is granted, and continued to  
xxxx on xxxx, 2024, to consider a Supplement to the Motion to extend the  
authorization to use cash collateral.**

## January 11, 2024 Hearing

A review of the Docket on January 8, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) uploaded a new stipulation to extend the use of cash collateral. Docket 1947, DCN. FWP-29. Under the extension provision of the previous stipulation (Exhibit 1, Docket 1930 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through March 31, 2024. Docket 1947 at ¶ 3.

Arambel Cash Budget Plan of Conversion of Remaining Assets	Actual July 46	Actual August 47	Actual September 48	October 49	November 50	December 51	Funeral Expense 13th Month	Cumulative Post January 2021 Period
Starting Cash	\$ 3,473,636	\$ 3,457,916	\$ 3,436,787	\$ 3,429,373	\$ 3,415,994	\$ 3,396,324	\$ 3,367,254	\$ 1,601,766
<b>Cash-In</b>								
Summit Funding	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
MetLife Funding	-	-	-	-	-	-	-	-
FLCC Deposit	-	-	-	-	-	-	-	500,390
Additional Funding/LBA Settlement	-	-	-	-	-	-	-	525,118
Farm Equipment Auction Net Proceeds	-	-	-	-	-	-	-	172,546
Property Tax Refunds - Stanislaus County	-	-	-	-	-	-	-	157,169
Crop Retainage/Coop Patronage	-	-	-	-	-	-	-	-
IRS/CA Tax Refunds	-	-	-	-	-	-	-	1,544,827
Rental Income	-	-	-	-	-	-	-	17,928
Property Sales	-	-	-	-	-	-	-	-
<b>Total Cash-In</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,917,978
<b>Cash-Out</b>								
<b>Personal Expenses</b>								
Total Personal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Farm Expenses</b>								
Lot Line Adj and Other Asset Admin	153	144	144	170	170	170	2,000	11,587
Reorganizing Debtor's Professionals	-	-	-	-	-	-	-	11,645
<b>Total Farm</b>	\$ 153	\$ 144	\$ 144	\$ 170	\$ 170	\$ 170	\$ 2,000	\$ 23,232
<b>Plan Expenses</b>								
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,462
Property Taxes	-	-	-	-	-	9,400	10,000	198,642
Accountant	2,331	2,961	-	63	2,000	2,000	5,000	73,633
Plan Administrator's Attorneys	7,139	11,947	2,475	10,000	10,000	10,000	17,500	407,985
US Trustees Fees	500	-	-	500	-	-	26,938	37,828
Plan Administrator Fees	5,598	6,077	4,794	2,646	7,500	7,500	20,000	477,971
Contingency Reserve	-	-	-	-	-	-	903,030	903,030
<b>Total Plan</b>	\$ 15,567	\$ 20,985	\$ 7,269	\$ 13,209	\$ 19,500	\$ 28,900	\$ 982,468	\$ 2,111,551
<b>Sub-Total</b>	\$ 15,720	\$ 21,129	\$ 7,414	\$ 13,379	\$ 19,670	\$ 29,070	\$ 984,468	\$ 2,134,784
<b>Accrued Professional Fees</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2022 Income Tax	-	-	-	-	-	-	-	2,174
Unpaid Utilities	-	-	-	-	-	-	-	-
Class 2 Pre-Petition Property Taxes	-	-	-	-	-	-	-	-
Class 3 Cure Payments	-	-	-	-	-	-	-	-
<b>Sub-Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,174
<b>Property Sale Disbursements</b>								
Payment on Debt - Brighthouse	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payment on Debt - Summit	-	-	-	-	-	-	2,382,786	2,382,786
Sale Expenses (Title, Escrow, Recording)	-	-	-	-	-	-	-	-
Property Taxes	-	-	-	-	-	-	-	-
Other Costs Paid at Closing	-	-	-	-	-	-	-	-
<b>Sub-Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,382,786	\$ 2,382,786
<b>Total Cash-Out</b>	\$ 15,720	\$ 21,129	\$ 7,414	\$ 13,379	\$ 19,670	\$ 29,070	\$ 3,367,254	\$ 4,519,744
<b>Ending Cash</b>	\$ 3,457,916	\$ 3,436,787	\$ 3,429,373	\$ 3,415,994	\$ 3,396,324	\$ 3,367,254	\$ 0	\$ (0)
<b>Period Ending Cash Balance:</b>								
PA Operating Account	\$ 335,458	\$ 314,473	\$ 307,204	\$ 294,245	\$ 274,745	\$ 245,845	\$ (3,120,800)	
PA Filbin Account	954	954	954	704	704	704	704	
PA U.S. Trustee Fees Reserve	-	-	-	-	-	-	-	
PA 10% Holdback after \$2M to Summit	-	-	-	-	-	-	-	
PA Tax Reserve Account	3,121,503	3,121,359	3,121,215	3,121,045	3,120,875	3,120,705	3,120,097	
RD Checking/Petty Cash	-	-	-	-	-	-	-	
<b>Period Ending Cash Balance</b>	\$ 3,457,916	\$ 3,436,787	\$ 3,429,373	\$ 3,415,994	\$ 3,396,324	\$ 3,367,254	\$ 0	

At the hearing, XXXXXXXXXX

## REVIEW OF THE MOTION

Focus Management Group, Inc., the duly appointed Plan Administrator (“Plan Administrator”), moves for an order approving the use of cash collateral pursuant to its stipulation with SBN V AG I LLC (“Summit”) for the period of October 1, 2023 through December 31, 2023. Plan Administrator requests the use of cash collateral to fund the plan budget, which is a budget setting forth the anticipated expenses of administration of the Plan for a period of time that is prepared by the Plan Administrator and approved by the Oversight Committee. Exhibit 1, Dckt. 1930, p. 2. Summit’s cash collateral constitutes the sole source of funds to operate Debtor’s business under the Plan.

Plan Administrator proposes to use cash collateral in accordance with the plan budget, which is as follows as set forth in the Budget filed as Exhibit A, Dckt. 1930.

### Proposed Stipulation

Summit entered into a stipulation with the Plan Administrator detailing how Summit’s cash collateral may be used to fund the Plan. The stipulation is filed as Exhibit 1, Docket 1930. The stipulation proposes the Plan will be funded by Summit’s cash collateral, and Summit is willing to consent to the Plan Administrator’s use of the cash collateral to fund the plan budget. Stipulation, Exhibit 1, Dckt. 1930, p. 3. The stipulation shall automatically terminate on December 31, 2023, unless Summit agrees to an extension in writing. *Id.*

### APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. When a debtor is not qualified to operate as a debtor in possession, the court may appoint a trustee pursuant to 11 U.S.C. § 1104. 11 U.S.C. § 1108 gives the trustee authority to operate the business. In operating the business, the trustee can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(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, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## DISCUSSION

Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for administering the Plan, including paying employees, taxes, professional fees, and other business expenses. The Motion is granted, and Plan Administrator is authorized to use the cash collateral for the period October 1, 2023 through December 31, 2023, in accordance with the plan budget and stipulation. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Plan Administrator.

The court continues the hearing to 10:30 a.m. on January 11, 2024, for Plan Administrator to file a Supplement to the Motion to extend authorization. That Supplemental pleadings shall be filed and served on or before December 21, 2023, with any opposition to be presented orally at the continued hearing.

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 Authority to Use Cash Collateral filed by Focus Management Group, Inc., the duly appointed Plan Administrator (“Plan Administrator”) 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, pursuant to this order, for the period December 31, 2023 through March 31, 2024, and the cash collateral may be used to pay expenses, in accordance with the proposed stipulation and plan budget, Docket 1947.

**IT IS FURTHER ORDERED** that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same

priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

**IT IS FURTHER ORDERED** that the hearing on the Motion is continued to **xxxx on xxxx, 2024**, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

2. [17-26499-E-7](#)  
[MJD-1](#)

**WILLIAM CARPENTER**  
**Matthew DeCaminda**

**MOTION TO AVOID LIEN OF JAMES**  
**R. MACLAM**  
**11-29-23 [32]**

**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.

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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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 29, 2023. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 to Avoid Judicial Lien is granted.</b>
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This Motion requests an order avoiding the judicial lien of James Maclam ("Creditor") against property of the debtor, William Carpenter ("Debtor") commonly known as 12640 Florence Lane Auburn, California 95602 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$40,642.77. Exhibit A, Dckt. 35. An abstract of judgment was recorded with Placer County on December 20, 2016, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$80,000.00 as of the petition date. Dckt. 1, p. 10. The unavoidable consensual liens that total \$10,301.00

as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1, p. 19. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$75,000 on Schedule C. Dckt. 30, p. 3.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by William Carpenter ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of James Maclam, California Superior Court for Placer County Case No. SCV0035241, recorded on December 20, 2016, with the Placer County Recorder, against the real property commonly known as 12640 Florence Lane Auburn, California 95602, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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**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.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, 20 largest creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief For Approval of Stipulation for Relief from the Automatic Stay is XXXX.**

### January 11, 2024 Hearing

This court authorized Kronick, Moskovitz, Tiedemann & Girard ("KMTG") to serve as general counsel for Chapter 7 Trustee Nikki B. Farris. Order, Docket 208. A review of the Docket on January 5, 2024 reveals that no other documents have been uploaded with the court. At the hearing, XXXXXXXXXX

### REVIEW OF MOTION AND PROCEEDINGS

Secured creditor Persevere Lending, Inc. ("Movant") seeks relief from the automatic stay with respect to Bella View Capital, LLC's ("Debtor") real property commonly known as 831 Colusa Avenue, Oroville, California 95965 ("Property"). Debtor borrowed \$267,500.00 from John and Nancy Young and David and Corinne Gallagher on January 3, 1995, with their loan being secured by a deed of trust on the Property. Motion, Dckt. 155; Exhibit 2, Dckt. 159. Movant is the agent for the lenders John and Nancy

Young and David and Corinne Gallagher. Movant has provided the Declaration of Susan B. Luce to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Declaration, Dckt. 157.

Movant submits a Stipulation to the court entered between itself and Debtor, showing Debtor's consent to grant relief from the stay as to the Property. Exhibit 1, Dckt. 158. Movant asks the court grant relief from stay in accordance with the Stipulation.

### **Terms of the Stipulation**

1. Upon approval of this Stipulation by the Court, the automatic stay set forth in 11 U.S.C. § 362 shall be terminated as to Debtor, its Bankruptcy estate;
2. Upon approval of this Stipulation by the Court, Lenders, their Assigns and/or their Agent may take all steps necessary to enforce their remedies to foreclose upon and take possession of the Property in accordance with applicable non-bankruptcy law.
3. Upon approval of this Stipulation by the Court, the 14-day stay provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

Exhibit 1, Dckt. 158. Movant and Debtor have agreed that the Property is not necessary to an effective reorganization. *Id.*

### **DISCUSSION**

This Bankruptcy Case was ordered reconverted to one under Chapter 7 on November 13, 2023. The Interim Trustee was reappointed on November 15, 2023. Dckt. 189.

At the November 30, 2023 hearing, the Chapter 7 Trustee requested a continuance to be able to conduct the First Meeting of Creditors and conduct an investigation of the assets of the Bankruptcy Estate.

With the concurrence of the Movant and other parties in interest appearing at the hearing, the court continued the hearing to 10:30 a.m. on January 11, 2024 (Specially Set Time).

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 Relief from the Automatic Stay filed by Persevere Lending, Inc. ("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 Relief For Approval of Stipulation for Relief from the Automatic Stay is **XXXX**.



4. [23-21407-E-7](#)  
[TRF-1](#)

BELLA VIEW CAPITAL, LLC  
Peter Macaluso

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
7-19-23 [\[61\]](#)

CENTER STREET LENDING VIII  
SPE, LLC VS.

**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.

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Local Rule 9014-1(f)(1) Motion— No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion for Relief from the Automatic Stay is XXXX.**

### January 11, 2023 Hearing

This court authorized Kronick, Moskovitz, Tiedemann & Girard ("KMTG") to serve as general counsel for Chapter 7 Trustee Nikki B. Farris. Order, Docket 208. A review of the Docket on January 5, 2024 reveals that no other documents have been uploaded with the court. At the hearing, XXXXXXXXXX

### REVIEW OF MOTION AND PROCEEDINGS

Movant Center Street Lending VIII SPE, LLC ("Movant") seeks relief from the automatic stay with respect to Bella View Capital, LLC's ("Debtor") real property commonly known as 5425 Bacon Road, Oakland, California 94619 ("Property"). Movant has provided the Declarations of Luis Montero and Russell Enyart to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Declaration, Dckts. 63 & 65.

Movant asserts Debtor executed a note to Movant to borrow \$2,555,695.00 secured by the Property on May 3, 2021. Declaration, Dckt. 63. The note's maturity date was on April 26, 2022. *Id.* Debtor subsequently defaulted on the note and Movant informed Debtor of its default on May 2, 2022, and again on October 3, 2022. Dckt. 61. Movant had scheduled a foreclosure sale on April 28, 2023. *Id.* Debtor filed its bankruptcy petition on that same day. *Id.*

### **Declaration of Russell Enyart**

The Declaration of Russell Enyart has been filed in support of this Motion, with Mr. Enyart providing expert witness testimony as to the value of the Property. Dec.; Dckt. 65. In the Declaration Mr. Enyart provides testimony of how he conducted his review and concludes that the value is \$2,199,000.00 due to the current state of the Property. He authenticates his Broker Price Opinion in which he provides the court with the information necessary to understand how he reached his opinion to assist the trier of fact in determining the value of the Property (not merely adopt the witnesses conclusion). See, Federal Rule of Evidence 702, which states:

#### **Rule 702. Testimony by Expert Witnesses**

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Exhibit 1, the Broker Price Opinion, begins with the standard identification of comparable sales and then the expert's adjustments for differences between the subject property and the comparables. Here, the Expert identifies three comparable properties, with list prices of \$1,565,000, \$1,375,000, and \$3,488,000. Exhibit 1; Dckt. 67 at 5. These three properties are listed to be in good or very good condition and are of substantial square footage. *Id.*

However, no information, other than the number of rooms, is provided for the Property that is the subject of this Motion. No adjustments are made for any differences in the location, condition, enhancements, and the like. The court is not provided with any information how the comparables are comparable to the subject Property.

In the Declaration Mr. Enyart does provide testimony of his investigation, including:

- 6. On or about April 29, 2023, I also walked the outside of the Bacon Property so that I could obtain exterior views. I also spoke with an occupant named Diarro Momar Foster, who came out of the Bacon Property. He expressed to me that he was living in the Bacon Property, in the downstairs portion of the property. He indicated that was the only section that was appropriate for occupancy and that the upstairs of

the Bacon Property had been "gutted" and was not in good shape at the time of the visit.

Dec., ¶ 6: Dckt. 65. Most of the testimony in this paragraph is hearsay testimony about what Mr. Enyart heard the tenant say.

7. The Bacon Property was sold on May 7, 2021 for the price of \$2,750,000.00. But now, based on my research, analysis, and work in generating the above two reports, in its current state, my opinion is that the Bacon Property has a market value of only \$2,199,000 "as-is." This is due to its state of disrepair; the downstairs is original, and the entire upstairs has been gutted. The property is not move-in ready. Rather, my suggestion for the use of the property is that it is a fix-up project for potential investors looking for a project.

*Id.*; ¶ 7. The testimony in paragraph 6 is that Mr. Enyart only conducted an exterior review. The statements about the inside condition appear to be based on the hearsay that Mr. Enyart is repeating. While such hearsay can be something an expert considers, it is not credible evidence of the actual condition of the Property.

Mr. Enyart does not provide the court with any photographs of the Property.

The Expert's Declaration and Broker Price Opinion provide the court with little more than this is my opinion of value – take it or leave it.

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be (\$2,773,730.64) (Dckt. 61). The testimony of Mr. Enyart and his Broker Price Opinion does not provide the court with sufficient information to determine the issue of fact – the value of the Property. Debtor's valuation as stated in Debtor's Schedule D, as Debtor valued the property at \$3,760,000.00. Schedule D, Dckt. 26.

### 11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Movant also asserts that since the Debtor did not cure the default pre-petition and filed bankruptcy so that the automatic stay would prevent the foreclosure sale, such weighs in favor of terminating the automatic stay. Debtor commenced a reorganization under Chapter 11 (the case was erroneously filed with the Chapter 7 box checked, the Motion to Convert to Chapter 11 filed four days after the case was filed, and the Order converting the case Chapter 11 entered (Dckt. 15) seventeen days after the case was filed). There is no assertion that Debtor has filed a series of cases or that Debtor transferred the property around to get the automatic stay. Debtor did what many debtors unfortunately do, bury their heads in the sand and not make the decision to obtain bankruptcy relief until the eve (or in this case the day) of foreclosure.

A debtor filing bankruptcy to obtain the automatic stay to stop a foreclosure sale from occurring itself, without other factors, is not cause to terminate the automatic stay.

### **11 U.S.C. § 362(d)(2): Grant Relief for Cause**

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

The burden of proof to establish that there is no equity in the Property falls on the moving party. 11 U.S.C. § 362(g).

### **September 21, 2023 Hearing**

At the hearing, the court continued the hearing to 1:30 p.m. on November 21, 2023, to afford Movant the opportunity to file and serve supplemental pleadings in support of the Motion on or before October 21, 2023. Supplemental opposition pleadings, if any, shall be filed and served on or before November 3, 2023.

### **SUPPLEMENTAL BRIEFING IN SUPPORT OF CONTINUED MOTION**

On October 21, 2023 Movant filed supplemental briefing in support of the Motion for Relief. Dckt. 150. The Movant had the Bacon Property appraised on October 10, 2023, which included an interior and exterior inspection of the Bacon Property. *Id.* Numerous photographs, research of comparable residential property sales in the vicinity, and adjustments to the sale prices of nearby comparable properties were used for a more accurate comparison to the Bacon Property. *Id.* With these supplemental filings, Movant has provided the court with enough information to support its factual contention of the Bacon Property's value.

Based on those filings, it was determined that the Bacon's Property market value is approximately \$2,000,000.00. Declaration, Exhibit 2, pg. 4, Dckt. 151. On October 11, 2023, the Movant generated a payoff quote for the loan secured by the Bacon Property at the request of Debtor's Counsel. Declaration, Exhibit 1, Dckt. 151. The payoff quote, which is good through the end of November 2023, shows a payoff amount of \$3,037,181.37, which is over a million dollars higher than the market value of the Bacon Property. Motion, Dckt. 150.

The Movant argues that there is no equity in the Bacon Property and, as discussed in the original motion, it is not necessary to an effective reorganization because the property does not generate income and the Debtor is in severe default of the loan secured against the Bacon Property. *Id.* Therefore, the Movant states the Court should grant Movant relief from the automatic stay. *Id.*

### **November 21, 2023 Hearing**

On November 13, 2023, the court entered its Order reconverting this Case to one under Chapter 7. Order; Dckt. 188. On November 15, 2023, the Notice of Appointment of Nikki B. Farris as the Chapter 7 Trustee in this Case. Notice; Dckt. 189. The 341 First Meeting of Creditors in the Chapter 7 Case is set for December 11, 2023. Notice of Reconversion; Dckt. 190.

The court continues this hearing to 10:00 a.m. on November 30, 2023; the next available Sacramento Chapter 7 hearing date.

### **November 30, 2023 Hearing**

This Bankruptcy Case was ordered reconverted to one under Chapter 7 on November 13, 2023. The Interim Trustee was reappointed on November 15, 2023. Dckt. 189.

At the hearing, the Chapter 7 Trustee requested a continuance to be able to conduct the First Meeting of Creditors and conduct an investigation of the assets of the Bankruptcy Estate.

With the concurrence of the Movant and other parties in interest appearing at the hearing, the court continued the hearing to 10:30 a.m. on January 11, 2024 (Specially Set Time).

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 Relief from the Automatic Stay filed by Center Street Lending VIII SPE, LLC (“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 Relief from the Automatic Stay is

**XXXX.**

# FINAL RULINGS

5. [22-21115-E-7](#)  
[GMR-4](#)

JANICE/DAVID LACROIX  
Nikki Farris

MOTION FOR COMPENSATION FOR  
GEOFFREY RICHARDS, CHAPTER 7  
TRUSTEE(S)  
12-11-23 [\[226\]](#)

**Final Ruling:** No appearance at the January 11, 2024 Hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2023. By the court’s calculation, 31 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).

The Motion for Allowance of Trustee 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Allowance of Trustee Fees is granted.**

Geoffrey Richards, the Chapter 7 Trustee, (“Applicant”) for the Estate of Janice and David Lacroix (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested in the amount of \$30,540.82 and costs are requested in the amount of \$79.56. Declaration, Docket 228 ¶ 7.

## STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a

consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may receive, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

### **Benefit to the Estate**

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “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?

A review of the application shows that Applicant’s services for the Estate include:

- a. Employment and management of counsel and accountant.
- b. Negotiation with pro-se debtors to convince them to obtain counsel and to file complete and accurate schedules, to include appropriate exemptions.
- c. Negotiated with secured creditors to delay the foreclosure of secured assets where there might be equity for unidentified unsecured creditors.
- d. Investigated the pre-petition secured loan made by the SBA to determine that the security interest did not apply to deposit balances.
- e. Investigated the post-petition insurance payment made to the debtor and prepared tax returns and paid taxes.
- f. Using personal funds, Applicant paid \$6,147.67 to continue expiring insurance policies on the debtor’s personal and real property.
- g. Obtained turnover of \$927,960.61 of funds on deposit with Wells Fargo Bank.
- h. Prepared tax returns for post-petition crop insurance proceed that were included in the turnover, and paid \$238,926.00 of income taxes.
- I. Ultimately, Applicant filed motions to abandon most real and personal property in the estate to protect the estate from tax consequences related to foreclosure or repossession.

Declaration, Docket 228 ¶ 3. The administration of this case will result in approximately \$78,957.22, plus interest, to be paid to priority creditors, and approximately \$119,348.78, plus interest, to unsecured creditors. This represents a 100% payment to priority and unsecured creditors who filed claims in the case. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

**Applicant requests the following fees:**

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$24,790.82
3% of the balance of \$0	\$0
<b>Calculated Total Compensation</b>	<b>\$30,540.82</b>



Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$79.56 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>
Court Call	\$22.50	\$45.00
Photocopy	\$0.10	\$1.60
Envelopes	\$0.09	\$1.44
Mileage	\$0.63	\$12.50
Postage	\$8.40	\$8.40
Postage	\$0.66	\$4.62
Postage	\$0.60	\$6.00
<b>Total Costs Requested in Application</b>		<b>\$79.56</b>

The court does not allow court calls to be a reimbursable expense. Therefore, allowed costs will be \$34.56.

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

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$30,540.82 are approved pursuant to 11 U.S.C. § 330 and are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

First and Final Costs in the amount of \$34.56 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$30,540.82
Costs and Expenses	\$34.56

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 Name of Trustee, the Chapter 7 Trustee, (“Applicant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Geoffrey Richards is allowed the following fees and expenses as trustee of the Estate:

Geoffrey Richards, the Chapter 7 Trustee

Fees in the amount of \$30,540.82  
Expenses in the amount of \$34.56,

The fees and costs pursuant to this Motion are approved as final fees and costs pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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**Final Ruling:** No appearance at the January 11, 2024 Hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties in interest, and Office of the United States Trustee on December 6, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral and Secured Claim (POC 3-1) of Banker's Healthcare Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$8,894.09.**

The Motion filed by Robert P. Obregon DDS Inc. ("Debtor in Possession") to value the secured claim of Banker's Healthcare Group, LLC ("Creditor") is accompanied by Debtor in Possession's declaration. Declaration, Dckt. 65. Debtor in Possession owns the following items of personal property:

Category	Description	Market Value
Checking Account	Wells Fargo Bank, N.A Business checking account	\$10,000.00
Account Receivables	90 days or less, collectible receivables	\$8,137.90
Other inventory/Supplies	Office Supply Inventory: Paper, printer supplies and miscellaneous office supplies	\$1,000.00
Other inventory/Supplies	Dental Supply Inventory: Disposable supplies, filling materials, sutures, anesthetics, needles, endodontic supplies, implants and associated supplies, impression materials, hygiene supplies	\$8,000.00
Office furniture	Office waiting room chairs, table, kitchen table and reception chairs	\$5,000.00
Office fixtures	Office lights	\$500.00
Office Equipment	7 office computers, network equipment, Dentrix office software, printer and scanner	\$15,000.00
Office Equipment	Glidewell Intraoral Dental Scanner Equipment package Secured by: Ascentium Capital equipment loan. Estimated value of equipment: \$15,000 Loan balance: \$15,637.62	0.00
TOTAL:		\$47,637.90

(“Property”). Decl., Docket 65 ¶ 2, Table 1. The Property is valued at \$47,637.90 based on Debtor in Possession’s opinion. As the owner, Debtor in Possession’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor has four separate liens in the Property. *See* POCs 2-1–5-1. Debtor in Possession has provided the court with the following table, outlining the details of Creditor’s liens and Debtor in Possession’s equity:

Personal Property Value: \$47,637.90					
Recorded	Creditor	Claim Amount	POC NO.	Secured portion	Equity
12/13/2017	Bankers Healthcare Group, LLC - serviced by First Montana Bank	\$38,653.81	2	\$38,653.81	\$8,984.09
12/17/2018	Bankers Healthcare Group, LLC - serviced by Community Bank and Trust Company	\$ 84,258.62	3	\$8,984.09	\$(75,274.53)
12/3/2019	Bankers Healthcare Group, LLC - serviced by Five Star Bank	\$141,723.55	4	\$ -	\$(216,998.08)
5/5/2020	Small Business Administration (EIDL)	\$536,632.46	1	\$ -	\$(753,630.54)
5/18/2022	Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C	\$177,169.34	5	\$ -	\$(930,799.88)

Mtn, Docket 63 ¶ 6, Table 2. (A review of the UCC Financing Statements attached to the Proof of Claim show that they are filings with the Secretary of State, by which a lien in personal property is perfected.) The subject of this Motion, Debtor in Possession seeks to value Creditor’s Claim 3-1 as \$8,984.09 pursuant to 11 U.S.C. § 506(a)(1). That provision of the Code provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

11 U.S.C. § 506(a)(1).

As the Tables depict, the value of the Property is \$47,637.90, subject to Creditor’s senior lien of \$38,653.81 (POC 2-1). Debtor in Possession is left with \$8,984.09 of equity in the Property after subtracting the secured portion (\$38,653.81) of the senior lien. Therefore, \$8,984.09 is the estate’s interest in the Property, which permits only \$8,984.09 to be an allowed secured claim in Proof of Claim 3-1. *See Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889, 896 (E.D. Cal. 2012) (holding where a senior lien left no equity for junior liens in the same property, junior lienholders were left with wholly unsecured claims).

Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$8,984.09, the value of the bankruptcy estate's interest in the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Value Collateral and Secured Claim filed by Robert P. Obregon DDS Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and Claim 3-1 of Banker's Healthcare Group, LLC ("Creditor") secured by an asset described as Personal Property in Table 1 of Debtor Declaration, Docket 65 at ¶ 2 ("Property"), is determined to be a secured claim in the amount of \$8,984.09, and the balance of the claim (\$75,274.53) is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$47,637.90 and is encumbered by a senior lien securing a claim of \$38,653.81 (POC 2-1), leaving only \$8,984.09 in equity to be secured under Claim 3-1.

**Final Ruling:** No appearance at the January 11, 2024 Hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties in interest, and Office of the United States Trustee on December 6, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral and Secured Claim (POC 4-1) of Banker's Healthcare Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.**

The Motion filed by Robert P. Obregon DDS Inc. ("Debtor in Possession") to value the secured claim of Banker's Healthcare Group, LLC ("Creditor") is accompanied by Debtor in Possession's declaration. Declaration, Dckt. 70. Debtor in Possession owns the following items of personal property:

Category	Description	Market Value
Checking Account	Wells Fargo Bank, N.A Business checking account	\$10,000.00
Account Receivables	90 days or less, collectible receivables	\$8,137.90
Other inventory/Supplies	Office Supply Inventory: Paper, printer supplies and miscellaneous office supplies	\$1,000.00
Other inventory/Supplies	Dental Supply Inventory: Disposable supplies, filling materials, sutures, anesthetics, needles, endodontic supplies, implants and associated supplies, impression materials, hygiene supplies	\$8,000.00
Office furniture	Office waiting room chairs, table, kitchen table and reception chairs	\$5,000.00
Office fixtures	Office lights	\$500.00
Office Equipment	7 office computers, network equipment, Dentrix office software, printer and scanner	\$15,000.00
Office Equipment	Glidewell Intraoral Dental Scanner Equipment package Secured by: Ascentium Capital equipment loan. Estimated value of equipment: \$15,000 Loan balance: \$15,637.62	0.00
	<b>TOTAL:</b>	<b>\$47,637.90</b>

(“Property”). Decl., Docket 70 ¶ 2, Table 1. The Property is valued at \$47,637.90 based on Debtor in Possession’s opinion. As the owner, Debtor in Possession’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor has four separate liens in the Property. *See* POCs 2-1–5-1. Debtor in Possession has provided the court with the following table, outlining the details of Creditor’s liens and Debtor in Possession’s equity:

Personal Property Value: \$47,637.90					
Recorded	Creditor	Claim Amount	POC NO.	Secured portion	Equity
12/13/2017	Bankers Healthcare Group, LLC - serviced by First Montana Bank	\$38,653.81	2	\$38,653.81	\$8,984.09
12/17/2018	Bankers Healthcare Group, LLC - serviced by Community Bank and Trust Company	\$ 84,258.62	3	\$8,984.09	\$(75,274.53)
12/3/2019	Bankers Healthcare Group, LLC - serviced by Five Star Bank	\$141,723.55	4	\$ -	\$(216,998.08)
5/5/2020	Small Business Administration (EIDL)	\$536,632.46	1	\$ -	\$(753,630.54)
5/18/2022	Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C	\$177,169.34	5	\$ -	\$(930,799.88)

Mtn, Docket 68 ¶ 6, Table 2. The subject of this Motion, Debtor in Possession seeks to value Creditor’s Claim 4-1 as \$0 pursuant to 11 U.S.C. § 506(a)(1). That provision of the Code provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

11 U.S.C. § 506(a)(1).

As the Tables depict, the value of the Property is \$47,637.90, subject to Creditor’s senior liens of \$38,653.81 (POC 2-1) and of \$84,258.62 (POC 3-1). Debtor in Possession is left with \$0 of equity in the Property after subtracting the secured amounts of Claims 2-1 and 3-1. *See Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889, 896 (E.D. Cal. 2012) (holding where a senior lien left no equity for junior liens in the same property, junior lienholders were left with wholly unsecured claims).

Therefore, Creditor’s claim secured by a lien against the Property is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$0, the remaining value of the bankruptcy

estate's interest in the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Value Collateral and Secured Claim filed by Robert P. Obregon DDS Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and Claim 4-1 of Banker's Healthcare Group, LLC ("Creditor") secured by an asset described as Personal Property in Table 1 of Debtor Declaration, Docket 70 at ¶ 2 ("Property"), is determined to be a secured claim in the amount of \$0, and the balance of the claim (\$141,723.55) is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$47,637.90 and is encumbered by senior liens securing claims totaling \$122,912.43 (POCs 2-1 & 3-1), leaving \$0 in equity to be secured under Claim 4-1.



**Final Ruling:** No appearance at the January 11, 2024 Hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties in interest, and Office of the United States Trustee on December 6, 2023. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Collateral and Secured Claim 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion to Value Collateral and Secured Claim of U.S. Small Business Administration (“Creditor”) is granted, and Creditor’s secured claim is determined to have a value of \$0.**

The Motion filed by Robert P. Obregon DDS Inc. (“Debtor in Possession”) to value the secured claim of U.S. Small Business Administration (“Creditor”) is accompanied by Debtor in Possession’s declaration. Declaration, Dckt. 74. Debtor in Possession owns the following items of personal property:

Category	Description	Market Value
Checking Account	Wells Fargo Bank, N.A Business checking account	\$10,000.00
Account Receivables	90 days or less, collectible receivables	\$8,137.90
Other inventory/Supplies	Office Supply Inventory: Paper, printer supplies and miscellaneous office supplies	\$1,000.00
Other inventory/Supplies	Dental Supply Inventory: Disposable supplies, filling materials, sutures, anesthetics, needles, endodontic supplies, implants and associated supplies, impression materials, hygiene supplies	\$8,000.00
Office furniture	Office waiting room chairs, table, kitchen table and reception chairs	\$5,000.00
Office fixtures	Office lights	\$500.00
Office Equipment	7 office computers, network equipment, Dentrux office software, printer and scanner	\$15,000.00
Office Equipment	Glidewell Intraoral Dental Scanner Equipment package Secured by: Ascentium Capital equipment loan. Estimated value of equipment: \$15,000 Loan balance: \$15,637.62	0.00
TOTAL:		\$47,637.90

(“Property”). Decl., Docket 74 ¶ 2, Table 1. The Property is valued at \$47,637.90 based on Debtor in Possession’s opinion. As the owner, Debtor in Possession’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor has a Claim in this case in the amount of \$536,632.46, asserting that \$38,415.00 is secured. POC 1-1. Debtor in Possession has provided the court with the following table, outlining the details of Creditor’s lien and Debtor in Possession’s equity:

Personal Property Value: \$47,637.90					
Recorded	Creditor	Claim Amount	POC NO.	Secured portion	Equity
12/13/2017	Bankers Healthcare Group, LLC - serviced by First Montana Bank	\$38,653.81	2	\$38,653.81	\$8,984.09
12/17/2018	Bankers Healthcare Group, LLC - serviced by Community Bank and Trust Company	\$ 84,258.62	3	\$8,984.09	\$(75,274.53)
12/3/2019	Bankers Healthcare Group, LLC - serviced by Five Star Bank	\$141,723.55	4	\$ -	\$(216,998.08)
5/5/2020	Small Business Administration (EIDL)	\$536,632.46	1	\$ -	\$(753,630.54)
5/18/2022	Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C	\$177,169.34	5	\$ -	\$(930,799.88)

Mtn, Docket 72 ¶ 6, Table 2. Debtor in Possession seeks to value Creditor’s Claim 1-1 as \$0 pursuant to 11 U.S.C. § 506(a)(1). That provision of the Code provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

11 U.S.C. § 506(a)(1).

As the Tables depict, the value of the Property is \$47,637.90, subject to creditor Bankers Healthcare Group, LLC’s senior liens of \$38,653.81 (POC 2-1), \$84,258.62 (POC 3-1), and \$141,723.55 (POC 4-1). Debtor in Possession is left with \$0 of equity in the Property after subtracting the secured amounts of Claims 2-1, 3-1, and 4-1. *See Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889, 896 (E.D. Cal. 2012) (holding where a senior lien left no equity for junior liens in the same property, junior lienholders were left with wholly unsecured claims).

Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of \$0, the remaining value of the bankruptcy estate's interest in the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Value Collateral and Secured Claim filed by Robert P. Obregon DDS Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and Claim 1-1 of U.S. Small Business Administration ("Creditor") secured by an asset described as Personal Property in Table 1 of Debtor Declaration, Docket 74 at ¶ 2 ("Property"), is determined to be a secured claim in the amount of \$0, and the balance of the claim (\$536,632.46) is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$47,637.90 and is encumbered by senior liens securing claims totaling \$122,912.43 (POCs 2-1 & 3-1), leaving \$0 in equity to be secured under Claim 1-1.

**Final Ruling:** No appearance at the January 11, 2024 Hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties in interest, and Office of the United States Trustee on December 6, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value Collateral and Secured Claim (POC 5-1) of Banker's Healthcare Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$0.**

The Motion filed by Robert P. Obregon DDS Inc. ("Debtor in Possession") to value the secured claim of Banker's Healthcare Group, LLC ("Creditor") is accompanied by Debtor in Possession's declaration. Declaration, Dckt. 79. Debtor in Possession owns the following items of personal property:

Category	Description	Market Value
Checking Account	Wells Fargo Bank, N.A Business checking account	\$10,000.00
Account Receivables	90 days or less, collectible receivables	\$8,137.90
Other inventory/Supplies	Office Supply Inventory: Paper, printer supplies and miscellaneous office supplies	\$1,000.00
Other inventory/Supplies	Dental Supply Inventory: Disposable supplies, filling materials, sutures, anesthetics, needles, endodontic supplies, implants and associated supplies, impression materials, hygiene supplies	\$8,000.00
Office furniture	Office waiting room chairs, table, kitchen table and reception chairs	\$5,000.00
Office fixtures	Office lights	\$500.00
Office Equipment	7 office computers, network equipment, Dentrux office software, printer and scanner	\$15,000.00
Office Equipment	Glidewell Intraoral Dental Scanner Equipment package Secured by: Ascentium Capital equipment loan. Estimated value of equipment: \$15,000 Loan balance: \$15,637.62	0.00
TOTAL:		\$47,637.90

(“Property”). Decl., Docket 79 ¶ 2, Table 1. The Property is valued at \$47,637.90 based on Debtor in Possession’s opinion. As the owner, Debtor in Possession’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor has four separate liens in the Property. *See* POCs 2-1–5-1. Debtor in Possession has provided the court with the following table, outlining the details of Creditor’s liens and Debtor in Possession’s equity:

Personal Property Value: \$47,637.90					
Recorded	Creditor	Claim Amount	POC NO.	Secured portion	Equity
12/13/2017	Bankers Healthcare Group, LLC - serviced by First Montana Bank	\$38,653.81	2	\$38,653.81	\$8,984.09
12/17/2018	Bankers Healthcare Group, LLC - serviced by Community Bank and Trust Company	\$ 84,258.62	3	\$8,984.09	\$(75,274.53)
12/3/2019	Bankers Healthcare Group, LLC - serviced by Five Star Bank	\$141,723.55	4	\$ -	\$(216,998.08)
5/5/2020	Small Business Administration (EIDL)	\$536,632.46	1	\$ -	\$(753,630.54)
5/18/2022	Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C	\$177,169.34	5	\$ -	\$(930,799.88)

Mtn, Docket 77 ¶ 6, Table 2. The subject of this Motion, Debtor in Possession seeks to value Creditor’s Claim 5-1 as \$0 pursuant to 11 U.S.C. § 506(a)(1). That provision of the Code provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

11 U.S.C. § 506(a)(1).

As the Tables depict, the value of the Property is \$47,637.90, subject to Creditor’s senior liens of \$38,653.81 (POC 2-1) and of \$84,258.62 (POC 3-1). Debtor in Possession is left with \$0 of equity in the Property after subtracting the secured amounts of Claims 2-1 and 3-1. *See Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889, 896 (E.D. Cal. 2012) (holding where a senior lien left no equity for junior liens in the same property, junior lienholders were left with wholly unsecured claims).

Therefore, Creditor’s claim secured by a lien against the Property is under-collateralized. Creditor’s secured claim is determined to be in the amount of \$0, the remaining value of the bankruptcy



estate's interest in the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Value Collateral and Secured Claim filed by Robert P. Obregon DDS Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and Claim 5-1 of Banker's Healthcare Group, LLC ("Creditor") secured by an asset described as Personal Property in Table 1 of Debtor Declaration, Docket 79 at ¶ 2 ("Property"), is determined to be a secured claim in the amount of \$0, and the balance of the claim (\$177,169.34) is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$47,637.90 and is encumbered by senior liens securing claims totaling \$122,912.43 (POCs 2-1 & 3-1), leaving \$0 in equity to be secured under Claim 5-1.

10. [23-24324-E-7](#)

**MOHAMMAD IQBAL**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-15-23 [\[28\]](#)**

**Final Ruling:** No appearance at the January 11, 2024 Hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Creditor Capital One, N.A., and Chapter 7 Trustee as stated on the Certificate of Service on December 15, 2023. Docket 29. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$25 due on December 1, 2023.

**The Order to Show Cause is discharged as moot, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured on January 2, 2024.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, no sanctions ordered, and the bankruptcy case shall proceed in this court.