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

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

**January 15, 2025 at 10:30 a.m.**

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|---|---|---|---|
| **1.** | **24-25180-E-11**<br>**RFL-1** | **KAMALJIT KALKAT**<br>**Robert Marticello** | **MOTION FOR JOINT ADMINISTRATION**<br>**11-27-24 [22]** |

**1 thru 3**

**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's attorney, attorneys of record, and Office of the U.S. Trustee on December 26, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Joint Administration was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, 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, **xxxxxxx**

**The Motion for Joint Administration is granted.**

**January 15, 2025 Hearing**

At the hearing, **xxxxxxx**

**REVIEW OF THE MOTION**

**PLEADINGS FILED AS ONE DOCUMENT**

Movant filed the Motion, Notice, Declaration, and Exhibits in this matter as one document. Movant has improperly filed these documents as one document in all of these related Motions, but the court only addresses it in this Motion. Mass filing of separate documents as one document is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

**THE MOTION**

Kamaljit Kaur Kalkat ("Debtor in Possession") moves this court for an Order granting joint administration of this case with the related bankruptcy case of Diamond K, LLC ("Diamond"), case no. 24-25181, pursuant to Fed. R. Bankr. P. 1015. Debtor in Possession proposes its case be the lead case.

Debtor in Possession argues joint administration is proper as Debtor in Possession is the sole member and manager of Diamond, and creditors assert claims in both cases. Mot. 4:27-5:2. Due to overlap of creditors and the interests of the Debtors in the Cases, the Debtors' respective reorganizations are intertwined and the goal will be to move both Cases forward together towards a joint successful conclusion. *Id.* at 5:2-5.

**DISCUSSION**

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

> (a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
>
> (b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may

amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).

(c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

Notably, "neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law." 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Joint administration is the alternative to a substantive consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when "the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds." 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 r subchapter V of chapter 11 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

. . .

(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

In this case, the court finds that joint administration of the two cases is appropriate and in the best interests of the related debtors as well as creditors of the estates. Many of the assets are closely intertwined among the estates in the two cases, and some of the creditors have claims in both cases. Such a close relationship will inevitably result in many same or similar motions filed on behalf of the cases, and the court finds it is unnecessary to require the parties to sift through multiple versions of a same or similar Motion.

For these reasons, the Motion is granted and the cases shall be jointly administered with the case of Kamaljit Kaur Kalkat being the lead 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 Joint Administration filed by Kamaljit Kaur Kalkat ("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 pursuant to Fed. R. Bankr. P. 1015, and the case of Kamaljit Kaur Kalkat, case no. 24-25180, shall be jointly administered with the related bankruptcy case of Diamond K, LLC ("Diamond"), case no. 24-25181. The case of Kamaljit Kaur Kalkat, case no. 24-25180, shall be the lead case.

| | | | |
|---|---|---|---|
| **2.** | **24-25180-E-11**<br>**RFL-3** | **KAMALJIT KALKAT**<br>**Robert Marticello** | **MOTION TO EMPLOY RAINES FELDMAN LITTRELL, LLP AS ATTORNEY(S)**<br>**12-20-24 [33]** |

**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—No Opposition Filed.

Sufficient Notice not Provided. Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **xxxxxxx**

The Motion to Employ 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, **----------**.

**The Motion to Employ is ~~granted.~~**

**January 15, 2025 Hearing**

At the hearing, **xxxxxxx**

**REVIEW OF THE MOTION**

Kamaljit Kaur Kalkat ("Debtor in Possession") seeks to employ Raines Feldman Littrell LLP ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel to prosecute this bankruptcy case.

There is no Declaration of Counsel submitted in support of the Motion.

In the Motion itself, which is not properly authenticated evidence admissible before the court, Counsel states the firm does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Mot. 5:7-24, Docket 33.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Improperly attached to the Motion is a document titled Statement of Disinterestedness. Dckt. 33 at 7. This is signed by Robert Marticello and includes after the last paragraph stating that the statements are made under penalty of perjury. However, it also states "[I" declare that Paragraphs 6 through 12 are stated on information and belief." *Id.*; p. 9:6. The court is unaware how a person provides under penalty of perjury when they do not have personal knowledge of what they are stating.

Making statements under information and belief is a permissible practice for a complaint or motion where a party alleges a fact they have a good faith belief in but do not yet have evidence to prove. As discussed in Moores Federal Practice:

> [4] Allegations Supporting Claims for Relief May Be Made on Information and Belief
>
> Rule 8 does not expressly permit statements supporting claims for relief to be made on information and belief (see § 8.06[5]).94 However, Rule 11 permits a pleader, after reasonable inquiry, to set forth allegations that "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery" (see Ch. 11, Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions).95 Courts have read the policy underlying Rule 8, together with Rule 11, to permit claimants to aver facts that they believe to be true, but that lack evidentiary support at the time of pleading. Generally, however, such averments are allowed only when the facts that would support the allegations are solely within the defendant's knowledge or control.

2 Moore's Federal Practice - Civil § 8.04[4].

With respect to providing testimony, the Federal Rules of Evidence require that the person so testifying has personal knowledge of for the testimony being provided:

> Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Fed. R. Evid. 602

~~Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Raines Feldman Littrell LLP as Counsel for the Chapter 11 Estate. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

~~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 Employ filed by Kamaljit Kaur Kalkat ("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 to Employ is granted, effective November 14, 2024, and Debtor in Possession is authorized to employ Raines Feldman Littrell LLP as Counsel for Debtor in Possession.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

~~**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.~~

~~**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.~~

**3. 24-25180-E-11 CAE-1 KAMALJIT KALKAT STATUS CONFERENCE RE: VOLUNTARY PETITION 11-14-24 [1]**

Debtor's Atty: Robert S. Marticello; Mark S. Melickian; David M. Madden

Notes:
[RFL-1] Motion for Joint Administration filed 11/27/24 [Dckt 22]; set for hearing 1/9/25 at 10:00 a.m.

[RFL-3] Application to Employ Raines Feldman Littrell LLP as General Bankruptcy Counsel Effective November 14, 2024 filed 12/20/24 [Dckt 33]

[RFL-4] Initial Status Report filed 12/26/24 [Dckt 38]

**The Status Conference is xxxxxxx.**

**January 15, 2025 Hearing**

At the hearing, **xxxxxxx**

**4.** **24-25181-E-11** **DIAMOND K LLC** **MOTION FOR JOINT ADMINISTRATION**
**RFL-1** **Robert Marticello** **11-27-24 [18]**

**4 thru 8**

**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's attorney, attorneys of record, and Office of the U.S. Trustee on December 26, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Joint Administration was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, 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, **----------**.

**The Motion for Joint Administration is granted.**

**January 15, 2025 Hearing**

At the hearing, **xxxxxxx**

**REVIEW OF THE MOTION**

Diamond K, LLC ("Debtor in Possession") moves this court for an Order granting joint administration of this case with the related bankruptcy case of Kamaljit Kaur Kalkat, case no. 24-25180, pursuant to Fed. R. Bankr. P. 1015. Debtor in Possession proposes the case of Kamaljit Kaur Kalkat be the lead case.

Debtor in Possession argues joint administration is proper as Debtor in Possession is the sole member and manager of Diamond, and creditors assert claims in both cases. Mot. 4:27-5:2. Due to overlap of creditors and the interests of the Debtors in the Cases, the Debtors' respective reorganizations are intertwined and the goal will be to move both Cases forward together towards a joint successful conclusion. *Id.* at 5:2-5.

**DISCUSSION**

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

> (a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
>
> (b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).
>
> (c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

Notably, "neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law." 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Joint administration is the alternative to a substantive consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when "the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds." 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

> (a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.
>
> (b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code,

unless the case is under subchapter V of chapter 7 r subchapter V of chapter 11 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

. . .

(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

In this case, the court finds that joint administration of the two cases is appropriate and in the best interests of the related debtors as well as creditors of the estates. Many of the assets are closely intertwined among the estates in the two cases, and some of the creditors have claims in both cases. Such a close relationship will inevitably result in many same or similar motions filed on behalf of the cases, and the court finds it is unnecessary to require the parties to sift through multiple versions of a same or similar Motion.

For these reasons, the Motion is granted and the cases shall be jointly administered with the case of Kamaljit Kaur Kalkat being the lead 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 Joint Administration filed by Diamond K LLC ("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 pursuant to Fed. R. Bankr. P. 1015, and the case of Kamaljit Kaur Kalkat, case no. 24-25180, shall be jointly administered with the related bankruptcy case of Diamond K, LLC ("Diamond"), case no. 24-25181. The case of Kamaljit Kaur Kalkat, case no. 24-25180, shall be the lead case.

**5. 24-25181-E-11 RFL-3 — DIAMOND K LLC, Robert Marticello — MOTION TO EMPLOY THE OPPENHEIM GROUP AS BROKER(S), 12-18-24 [42]**

**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—No Opposition Filed.

Sufficient Notice not Provided. Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **xxxxxxx**

The Motion to Employ 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, **----------**.

**The Motion to Employ is granted.**

**January 15, 2025 Hearing**

At the hearing, **xxxxxxx**

**REVIEW OF THE MOTION**

***NUNC PRO TUNC***

As a preliminary matter, Diamond K LLC is seeking a "retroactive authorization" rather than nunc pro tunc authorization. The Ninth Circuit has noted that nunc pro tunc approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). Nunc pro tunc amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call

such after-the-fact authorizations "retroactive approvals," it is customary, but not necessarily correct, to refer to them generically as nunc pro tunc in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using nunc pro tunc and "retroactive approval" when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court). This long standing Ninth Circuit law was restated by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor's estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in "exceptional circumstances." *Atkins*, 69 F.3d at 974.

**THE MOTION**

Diamond K LLC ("Debtor in Possession") seeks to employ Jason Oppenheim of the Oppenheim Group ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to market and sell the real property commonly known as 623 N. Rexford Dr., Beverly Hills, California, 90210.

There is no Declaration of Broker submitted in support of the Motion.

In the Motion itself, which is not properly authenticated evidence admissible before the court, Counsel states the firm does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Mot. 4:5-25, Docket 42.

However, improperly attached to the Motion is a document titled Statement of Disinterestedness. Dckt. 42 at 7. This is signed by Jason Opperheim and includes after the last paragraph stating that the statements are made under penalty of perjury. However, it also states "[I" declare that Paragraph 6 through 11 are stated on information and belief." *Id*.; p. 9:6. The court is unaware how a person provides under penalty of perjury when they do not have personal knowledge of what they are stating.

Making statements under information and belief is a permissible practice for a complaint or motion where a party alleges a fact they have a good faith belief in but do not yet have evidence to prove. As discussed in Moores Federal Practice:

> [4] Allegations Supporting Claims for Relief May Be Made on Information and Belief
>
> Rule 8 does not expressly permit statements supporting claims for relief to be made on information and belief (see § 8.06[5]).94 However, Rule 11 permits a pleader, after reasonable inquiry, to set forth allegations that "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery" (see Ch. 11, Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions).95 Courts have read the policy underlying Rule 8, together with Rule 11, to permit claimants to aver facts that they believe to be true, but that lack evidentiary support at the time of pleading. Generally, however, such averments are allowed only

> when the facts that would support the allegations are solely within the defendant's knowledge or control.

2 Moore's Federal Practice - Civil § 8.04[4].

With respect to providing testimony, the Federal Rules of Evidence require that the person so testifying has personal knowledge of for the testimony being provided:

> Rule 602. Need for Personal Knowledge
>
> A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Fed. R. Evid. 602

**CREDITOR OPPOSITION**

Creditors the Juliet Alcasid Family Trust; Igya Demirci; Andrew L. Jones, Trustee of the Groundhog Trust dtd Feb 2, 2022 and any Amendments Thereto; and Private Money Solutions, Inc. ("Creditor") filed a limited opposition on December 31, 2024. Docket 59. Creditor does not oppose hiring Broker, but Creditor opposes any commission over 4%. As stated in the ruling below, no commission is addressed or approved as part of this Motion. Creditor will have an opportunity to object to a commission as part of a Motion to Sell or Motion for Allowance of Professional Fees.

**DISCUSSION**

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

~~Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Jason Oppenheim of the Oppenheim Group as Broker for the Chapter 11 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Docket 44. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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 Employ filed by Diamond K LLC ("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 to Employ is granted, effective December 12, 2024, and Debtor in Possession is authorized to employ Jason Oppenheim of the Oppenheim Group as Broker for Debtor in Possession.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

**6. 24-25181-E-11 RFL-4 — DIAMOND K LLC, Robert Marticello — MOTION TO EMPLOY RAINES FELDMAN LITTRELL, LLP AS ATTORNEY(S), 12-20-24 [46]**

**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—No Opposition Filed.

Sufficient Notice not Provided. Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **xxxxxxx**

The Motion to Employ 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, **----------**.

**The Motion to Employ is ~~granted.~~**

**January 15, 2025 Hearing**

At the hearing, **xxxxxxx**

**REVIEW OF THE MOTION**

Diamond K LLC ("Debtor in Possession") seeks to employ Raines Feldman Littrell LLP ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel to prosecute this bankruptcy case.

There is no Declaration of Counsel submitted in support of the Motion.

In the Motion itself, which is not properly authenticated evidence admissible before the court, Counsel states the firm does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Mot. 5:11-24, Docket 46.

However, improperly attached to the Motion is a document titled Statement of Disinterestedness. Dckt. 46 at 7. This is signed by Robert Marticello and includes after the last paragraph stating that the statements are made under penalty of perjury. However, it also states "[I" declare that Paragraph 6 through 12 are stated on information and belief." *Id.*; p. 9:6. The court is unaware how a person provides under penalty of perjury when they do not have personal knowledge of what they are stating.

Making statements under information and belief is a permissible practice for a complaint or motion where a party alleges a fact they have a good faith belief in but do not yet have evidence to prove. As discussed in Moores Federal Practice:

> [4] Allegations Supporting Claims for Relief May Be Made on Information and Belief
>
> Rule 8 does not expressly permit statements supporting claims for relief to be made on information and belief (see § 8.06[5]).94 However, Rule 11 permits a pleader, after reasonable inquiry, to set forth allegations that "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery" (see Ch. 11, Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions).95 Courts have read the policy underlying Rule 8, together with Rule 11, to permit claimants to aver facts that they believe to be true, but that lack evidentiary support at the time of pleading. Generally, however, such averments are allowed only when the facts that would support the allegations are solely within the defendant's knowledge or control.

2 Moore's Federal Practice - Civil § 8.04[4].

With respect to providing testimony, the Federal Rules of Evidence require that the person so testifying has personal knowledge of for the testimony being provided:

> Rule 602. Need for Personal Knowledge
>
> A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Fed. R. Evid. 602

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

~~Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Raines Feldman Littrell LLP as Counsel for the Chapter 11 Estate. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

~~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 Employ filed by~~ Diamond K LLC ~~("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 to Employ is granted, effective November 14, 2024, and Debtor in Possession is authorized to employ Raines Feldman Littrell LLP as Counsel for Debtor in Possession.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

~~**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.~~

~~**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.~~

**7. 24-25181-E-11 RJR-1 — DIAMOND K LLC — Robert Marticello — MOTION FOR RELIEF FROM AUTOMATIC STAY — 12-11-24 [28]**

**THE JULIET ALCASID FAMILY TRUST 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.

---

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 holding the twenty largest unsecured claims, other parties in interest, and Office of the United States Trustee on December 12, 2024. By the court's calculation, 28 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief from the Automatic Stay is denied without prejudice.**

**January 15, 2025 Hearing**

At the hearing, **xxxxxxx**

**REVIEW OF THE MOTION**

The Juliet Alcasid Family Trust; Igya Demirci; Andrew L. Jones, Trustee of the Groundhog Trust dtd Feb 2, 2022 and any Amendments Thereto; and Private Money Solutions, Inc. ("Movant") seeks relief from the automatic stay with respect to Diamond K LLC's ("Debtor in Possession") real property commonly known as 623 North Rexford Drive, Beverly Hills, California 90210 ("Property"). Movant has provided the Declarations of Elaine Guralnik and Daniel Poyourow to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decls., Dockets 31, 32.

In the Motion Movant seeks relief pursuant to 11 U.S.C. § 362(d)(2) based on a lack of equity in the Property and that it is not necessary for an effective reorganization. In the Memorandum of Points and Authorities submitted in support, Movant also seeks relief pursuant to 11 U.S.C. § 362(d)(1). Requesting different or other relief in the Memorandum is not the practice of this court. The Supreme Court

requires that the motion itself state with particularity the grounds upon which the relief is requested, not the supporting Memorandum. FED. R. BANKR. P. 9013. Therefore, the court does not discuss relief pursuant to 11 U.S.C. § 362(d)(1), but only as to 11 U.S.C. § 362(d)(2) relief.

The Motion states the Property has a value of $5,275,000 while the amount owed, including delinquent property taxes, exceeds $5,600,000. Mot. 1:26-2:1, Docket 28. As such, there is no equity in the Property. Movant states that the Property is vacant and creates no income to Debtor in Possession, so it is not necessary for an effective reorganization. *Id.* at 2:3-4. Therefore, Movant requests relief be granted pursuant to 11 U.S.C. § 362(d)(2).

**DEBTOR IN POSSESSION'S OPPOSITION**

Debtor in Possession filed an Opposition on December 26, 2024. Docket 53. Debtor in Possession asserts:

1. The Property is necessary to the Debtor's overall reorganization strategy to maximize the value of its luxury residential real properties through a focused and competitive sale process in bankruptcy. Opp'n 2:4-6.

2. Movant's own appraiser suggests that there may be equity in the Property as the weighted average and the median and mean prices based on the adjusted values of the appraiser's comparable sales suggest that the Property is worth approximately $5,700,000 to $6,045,000. *Id.* at 4:22-24.

3. The Motion to Employ the Oppenheim Group is to be heard in conjunction with this Motion. The Oppenheim Group will engage in a competitive marketing process to maximize the price of the Property, and Debtor in Possession has already received ten bids on the Property. *Id.* at 6:13-21.

Debtor in Possession submits the Declaration of its owner and managing member, Kamaljit Kaur Kalkat, in support. Decl., Docket 54. Ms. Kalkat testifies it is Debtor in Possession's intention to sell its residential real properties for the highest and best price in order to repay the debt secured by those properties and with the goal of generating a meaningful surplus in sale proceeds. Decl. ¶ 6, Docket 54. As such, the Property is necessary for an effective reorganization.

**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 $5,451,149.98 (Decl. ¶ 9.e., Docket 31), while the value of the Property is determined to be $5,275,000 (Decl. ¶ 7, Docket 32).

**11 U.S.C. § 362(d)(2)**

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); 3 COLLIER ON

BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Debtor in Possession has met its burden and shown that the Property is necessary for an effective reorganization. Debtor in Possession has a simple and orderly liquidation process in place, and Debtor in Possession has met its burden in showing it is diligently carrying out its duties in moving the sale along.

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 the Juliet Alcasid Family Trust; Igya Demirci; Andrew L. Jones, Trustee of the Groundhog Trust dtd Feb 2, 2022 and any Amendments Thereto; and Private Money Solutions, 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 is denied without prejudice.

**8. 24-25181-E-11 CAE-1** **DIAMOND K LLC** **STATUS CONFERENCE RE: VOLUNTARY PETITION 11-14-24 [1]**

Debtor's Atty: Robert S. Marticello; Mark S. Melickian; David M. Madden

Notes:
[RFL-1] Motion for Joint Administration filed 11/27/24 [Dckt 18]; set for hearing 1/9/25 at 10:00 a.m.

[RJR-1] Motion for Relief of Automatic Stay [filed by The Juliet Alcasid Family Trust, et al.] filed 12/11/24 [Dckt 28]; set for hearing 1/9/25 at 10:00 a.m.; set for hearing 1/9/25 at 10:00 a.m.

[RFL-3] Application to Employ Real Estate Broker (The Oppenheim Group) filed 12/18/24 [Dckt 42]; set for hearing 1/9/25 at 10:00 a.m.

[RFL-4] Application to Employ Raines Feldman Littrell LLP as General Bankruptcy Counsel Effective November 14, 2024 filed 12/20/24; set for hearing 1/9/25 at 10:00 a.m.

[RFL-5] Initial Status Report filed 12/26/24 [Dckt 51]

**The Status Conference is xxxxxxx.**

**January 15, 2025 Hearing**

At the hearing, **xxxxxxx**