

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

**January 16, 2025 at 10:30 a.m.**

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1. [24-90602-E-11](#)      **AMERICAN TRADERS, INC.**      **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#)           **VOLUNTARY PETITION**  
           **10-11-24 [1]**

**Item 1 thru 2**

Debtor's Atty: Michael Jay Berger

Notes:

Continued from 12/12/24 to be heard in conjunction with the continued Motion to Dismiss.

U.S. Trustee Report at 341 Meeting lodged 12/16/24

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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**JANUARY 15, 2025 STATUS CONFERENCE**

At the Status Conference, XXXXXXX

**DECEMBER 12, 2024 STATUS CONFERENCE**

In this Chapter 11 Case the court has not authorized the use of cash collateral and the Debtor in Possession has ceased the operation of the hotel, the Bankruptcy Estate's sole business. The Debtor in Possession filed a Status report on November 27, 2024. Dckt. 72. The Debtor in Possession confirms that operation of the business has ceased and no cash collateral has been used after November 8, 2024 (the expiration of the court's prior authorization).

The Debtor in Possession reports that the hotel property has a value of \$3,400,000 and the obligations secured by it total (\$3,229,852.09). The Debtor in Possession (though the reports says "Debtor"), as a fiduciary to the Bankruptcy Estate in exercising the powers of a bankruptcy trustee, intends to sell the hotel. The Debtor in Possession has an offer, but it is substantially short of paying the secured claims.

The Status Conference is 10:30 a.m. on January 16, 2025.

**January 16, 2025 at 10:30 a.m.**

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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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, 20 largest creditors, other parties in interest, and Office of the United States Trustee on November 13, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is XXXXXXX.**

### **January 16, 2025 Hearing**

The court continued the hearing on this Motion for Debtor in Possession to document its progress on selling the assets of this case and detail how it plans to diligently prosecute the case. A review of the Docket on January 14, 2025 reveals that Movant has filed a Supplemental Update (Dckt. 95). In the Supplemental Update, Movant asserts that the Debtor in Possession has made little effort in prosecuting this case. Though professing to be liquidating property of the Bankruptcy Estate, no professionals have been hired for the marketing and sale of the property of the Estate.

Movant asserts that the secured debt exceeds the value of the property of the Bankruptcy Estate.

At the hearing, XXXXXXX

### **REVIEW OF THE MOTION**

Poppy Bank ("Movant") moves this court for an Order dismissing the Chapter 11 case of Debtor in Possession American traders, Inc. ("Debtor in Possession") pursuant to 11 U.S.C. § 1112(b), alleging the case has not been filed in good faith. There are no other factual grounds stated in the Motion.

Creditor in this case Central Valley Associates, LLC filed a Joinder supporting Movant's Motion, citing the fact that Debtor cannot operate the hotel postpetition. Docket 69.

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

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

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

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

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

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*In re Weatherford*, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

*Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

### **The Pleadings in Support**

In the Declaration in support, Mr. Greenberg, Movant’s attorney, testifying as to the conversations Mr. Greenberg has had with Debtor in Possession’s attorney. These conversations involve a sale Debtor in Possession appears to have in place to sell the business and real estate asset, and Movant’s concerns with the sale, including the price being too low. Mr. Greenberg further states:

I have heard nothing from Debtor’s counsel since his November 4 email. Neither the Bank nor I have received any cooperation from Debtor in protecting the hotel property from vandalism and potential squatters. Neither the Bank nor I have received any further information about a potential sale. If the Court were to take Debtor’s counsel at his word stated in Court, once Debtor can no longer use the Bank’s cash collateral, there will be no money to protect the Subject Property.

Decl. ¶ 7, Docket 59.

In the Memorandum in Support, Movant argues the petition was not filed in good faith as the petition “serves no valid bankruptcy purpose.” Mem. 11:2-3, Docket 60. Movant alleges that the petition was filed solely to obtain a tactical advantage to stay a pending civil case on the eve of trial, and a foreclosure sale of the leasehold interest which was also about to be noticed shortly after Debtor’s petition date. Debtor has even represented to the Court, through its attorney, its intention to liquidate, with no suggestion of reorganization and without hope of legally operating in the City of Modesto until at least 2027. *Id.* at 11:4-9.

Movant alleges the fact that Debtor in Possession's single real estate asset is over \$300,000 less than the amount of the debt secured by the liens is also evidence of a petition filed not in good faith. *Id.* at 11:12-16. Furthermore, the hotel business cannot operate as the City of Modesto has stated that Debtor cannot obtain all permits needed to legally operate its hotel business until at least 2027, so there is no hope of a reorganization. *Id.* at 11:19-20. Debtor in Possession is not profitable, so it is impossible to provide adequate protection. *Id.* at 11:24-25. Finally, Movant alleges Debtor's petition was tactical, and not related to reorganization, citing the filing being made on the eve of trial. *Id.* at 12:6-11.

## **Oppositions**

Debtor in Possession filed its Opposition November 27, 2024. Docket 75. Debtor in Possession states:

1. Contrary to Poppy's assertion, the Debtor has more than the real property at 1720 Sisk Road, Modesto, CA 95350 (the "Property") as its sole asset. The Debtor's Schedule A/8 shows that the Debtor owns furniture, equipment, and accounts worth approximately \$286,846.46, in addition to the Property. *Id.* at 2:1-8.
2. In the Motion to Dismiss, Poppy claims that the value of Debtor's estate is in decline, and claims that the Property is at significant risk of physical degradation, vandalism, and squatters. Poppy provides no evidence for these claims. On the contrary, the Debtor's Chief Financial Officer, Daljeet S. Mann, has provided for the Property's security from his personal funds, and no instances of vandalism or squatters have occurred at the Property. The Property has not degraded physically, and the estate has not declined in value. *Id.* at 2:10-17.
3. The Debtor has an offer to purchase the Property, however Debtor requests additional time under the auspices of bankruptcy to complete the sale of the Property and use the funds resulting from the sale to pay its creditors. The Debtor requests 90 additional days to complete a sale of the Property. This Motion should be denied or continued 60 to 90 days. *Id.* at 2:20-23.

Various other Oppositions were filed on December 2, 2024. Dockets 78-88. The Oppositions all state the various parties oppose dismissal, but no grounds for opposition are given.

## **Movant's Reply**

On December 4, 23024, Movant filed a Reply to the Oppositions. Docket 88. Movant states:

1. Debtor's Opposition asks this Court for more time to sell its only real estate property asset, without providing even a scintilla of evidence as to how it plans to sell this troubled property, and how it intends to obtain a sale price which will address all of the secured liens, let alone the significant unsecured claims against Debtor's estate. *Id.* at 1:24-27.

2. Debtor has, already for some time, unsuccessfully, been attempting to sell this property for over 9 months. *Id.* at 3:10.
3. The offer Debtor is pursuing is \$1,000,000.00 less than the amount needed to satisfy its secured obligations. This offer is also far less than the value of the property as represented by Debtor. *Id.* at 3:15-17.
4. Debtor has completely failed to provide this Court with any concrete plan to liquidate its only real estate asset for a price which would benefit the creditors of the Estate. *Id.* at 3:21-22.

## APPLICABLE LAW

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

(4) For purposes of this subsection, the term “cause” includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

The Ninth Circuit has held that, although “section 1112(b) does not explicitly require that cases be filed in ‘good faith,’ courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis.” *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court’s finding that the Chapter 11 Petition was not filed in good faith when “the debtor’s Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond.” *Id.* at 829.

The court would note that bankruptcy court’s have found that a “desire for orderly liquidation of assets” is not a reason that would support a bad faith filing, but is a “legitimate reason[] to file bankruptcy.” *In re Sullivan*, 522 B.R. 604, 616 (9th Cir. B.A.P. 2014). However, filing a bankruptcy solely to delay state court litigation has been found to constitute a bad faith cause for dismissal in Chapter 11. *In re Silberkaus*, 253 B.R. 890, 905 (Bankr. C.D. Cal. 2000).

## **DISCUSSION**

Movant’s facts in support of the Motion are that Movant is substantially undersecured, the business is not profitable and cannot operate in bankruptcy, Movant is not being offered adequate protection payments, and the filing was made solely to avoid trial.

While the record appears to show that the Debtor in Possession cannot operate the hotel post-petition, it is not the Debtor in Possession’s strategy of this case to operate the business. Rather, Debtor in Possession is seeking an orderly liquidation, which courts have held to be a legitimate reason to file bankruptcy.

Debtor in Possession even reports having a sale potentially in place. However, no information about the sale is provided. Further, the Debtor in Possession does not provide how it intends to proceed with an orderly liquidation of the assets and the benefit to the Bankruptcy Estate from such a sale.

The main asset of the Bankruptcy Estate is the Debtor's real property, which on Schedule A/B is listed with a value of \$3,400,000. Sch. A/B, ¶ 55; Dckt. 37 at 6. On Schedule D Debtor lists the real property being encumbered by liens totaling (\$3,228,851), of which Debtor lists Movant's secured claim to be in the amount of (\$2,978,352.84). *Id.*; Sch. D. There is also a judgment lien securing a (\$214,931.70) securing the claim of TBS Financial, LLC listed by Debtor on Schedule D. It is not clear if this judgment lien encumbers the real property.

While the Debtor/Debtor in Possession, as the fiduciary of the Bankruptcy Estate, states that it is seeking buyers for the property of the Bankruptcy Estate, the court has not authorized the employment of any real estate or personal property sale professionals.

The creditors with claims secured by the real property not having yet filed proofs of claim, the court has only the Schedule D amounts to deal with at this time.

At the hearing, counsel for the Debtor/Debtor in Possession addressed the court, explaining how the Debtor/Debtor in Possession was going to proceed with the desired diligent sale of the assets of the Bankruptcy Estate.

Movant argues that there is no reorganization. If there were to be a liquidation, it is purported that there has been an attempt to sell the property, without any sale arising.

While professing that the Debtor in Possession is diligently working for a sale of assets (including the leasehold), little objective evidence exists.

The court continues the hearing on this Motion to afford Debtor in Possession and Debtor in Possession counsel to document the sale actions being taken and how that fits with the diligent prosecution of this Chapter 11 Case.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on January 16, 2025.

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

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

The Motion To Dismiss filed by Poppy Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXX**.



**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 on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, and Office of the United States Trustee on December 10, 2024. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits Gary R. Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1027 W. 18th Street, Merced, Ca 95340 ("Property").

The proposed purchaser of the Property is Jeff Czapla ("Buyer"), and the terms of the sale are:

- A. Purchase Price: \$259,950.00.
- B. Initial deposit: \$3,000.00.
- C. Loan Amount: \$207,960.00.
- D. Balance of down payment: \$48,990.00.
- E. Close of escrow shall occur within 15 days of written court approval.
- F. Loan contingency and appraisal contingency to be 15 days from acceptance.
- G. Investigation of Property to be completed 15 days after acceptance.

- H. Property is being sold in as-is condition, including but not limited to, buyer providing smoke detectors, carbon monoxide detectors, & water heater bracing, if necessary.
- I. Arbitration/Mediation to be removed from contract.
- J. Bathroom mirrors, stoves, ovens, stove/oven combos, and dishwashers to be included in sale.
- K. Seller will pay for Natural Hazard Zone Disclosure Report, including tax information.
- L. Buyer and Seller to each pay<sup>1</sup>/<sub>2</sub> of the escrow fees 50/50.
- M. Buyer and Seller to each pay <sup>1</sup>/<sub>2</sub> of owner's title insurance policy; Buyer to pay for Buyer's Lender title insurance policy.
- N. Seller to pay for County and City transfer tax (if applicable).
- O. Seller to pay HOA fee to prepare disclosures & HOA certification fee.
- P. Buyer waives home warranty plan.
- Q. Seller acceptance is subject to US Bankruptcy Court approval and possible overbid.
- R. Escrow and Title to be with Old Republic Title - Alicia McDonald.
- S. Seller agrees to pay the obligation of Buyer to compensate Buyer's Broker under a separate agreement.
- T. Seller and/or Buyer acknowledge and agree that broker may represent both Buyer and Seller.

Mot. 3:20-19, Docket 453.

## **DISCUSSION**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the estate will net \$137,006.80 pay administrative expenses, unsecured creditors, and lienholder WVJP 2021-4 LP.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$15,597. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker, Brian Brazeal, an amount not more than six percent commission.

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 Sell Property filed by Gary R. Farrar, the Chapter 7 Trustee, ("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 granted, and Gary R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jeff Czapl ("Buyer"), the Property commonly known as 1027 W. 18th Street, Merced, Ca 95340 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$259,950.00, on the terms and conditions set forth in the Purchase Agreement and Addendums, Exhibits A and B, Dckt. 458, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Chapter 7 Trustee's broker, Brian Brazeal.

**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 on Debtor, Debtor’s Attorney, all creditors and parties in interest, and Office of the United States Trustee on December 11, 2024. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion for Turnover is <span style="color: red;">XXXXXXX</span>.</b>
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Nichole B. Farris, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover as to two vehicles, a scheduled 2007 Dodge Dakota automobile with about 120,000 miles (“Dodge”), and a scheduled 2016 Cadillac SRX automobile with about 75,000 miles (“Cadillac”). Movant states with particularity:

1. Debtors’ schedules disclosed three vehicles: (a) the Dodge, valued at \$1,420.00; (b) a 2008 Mercedes C300 (“Mercedes”), valued at \$3,790.00 subject to a lien in the amount of \$5,312.15; and (c) the Cadillac, valued at \$6,065.00. Mot. 2:8-10, Docket 23.
2. Debtors claimed an exemption in the Dodge in the amount of \$1,420.00, and the Cadillac in the amount of \$6,065.00. *Id.* at 2:11-12.
3. In the course of her investigations into the assets and liabilities of the estate, the Trustee consulted with TMC AUCTION (“TMC”). TMC estimated the gross value of the Dodge on the petition date to be \$3,600 to \$4,800, and the Cadillac to be \$8,000 to \$10,000.
4. The value of the vehicles is not of inconsequential value to the estate. *Id.* at 3:1-2.

## DEBTOR'S OPPOSITION

Dale Soliman Del Rosario ("Debtor") filed an Opposition on January 2, 2024. Docket 32. Debtor states:

1. Trustee's valuation of the vehicles was improperly done and is not accurate. Specifically, Trustee has arrived at the valuations through observing pictures, not viewing the vehicles in person. *Id.* at 2:7-18.
2. Both vehicles, especially the Cadillac, are essential for the Debtor and his spouse's household needs. They rely on these vehicles for commuting to work and attending critical family appointments. *Id.* at 2:20-21.
3. Debtor has amended his exemptions to protect the full equity in the Cadillac by utilizing the \$7,500.00 vehicle exemption under C.C.P. § 704.010, leaving the Dodge truck unprotected. *Id.* at 2:26-27.
4. The turnover of the Cadillac would therefore be inequitable, as it serves no benefit to the estate. The sale of the Cadillac would not materially benefit creditors.
5. Debtor would prefer denying the motion or continuing the hearing in light of good faith settlement negotiations. *Id.* at 3:6-11.

## APPLICABLE LAW

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483

B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

## DISCUSSION

Debtor's most recently filed Amended Schedules A/B, C at Docket 38 show Debtor has elected to exempt the Cadillac in the full amount of \$7,500 pursuant to Cal. Code Civ. P. § 704.010. Am. Schedule C at 12, Docket 38. After costs of sale, it appears there would be no non-exempt equity for a Chapter 7 Trustee to distribute to creditors after selling the Cadillac, even using Trustee's number. The court would note that Debtor has valued the Cadillac and Dodge at a much lower numbers, the Cadillac at \$6,065 and the Dodge at \$1,420. Schedule A/B at 6, 7.

However, that does leave the non-exempt equity in the Dodge available for Trustee to distribute. Debtor has expressed his intent to negotiate with the Trustee, whereby the parties could potentially reach an amicable resolution. At the hearing, **XXXXXXX**

The court finds that the Dodge is not of inconsequential value to the Trustee, there being nonexempt equity available for Trustee to distribute to creditors. The court grants the Motion as to the Dodge truck.

## Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

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 Turnover of Property filed by Nichole B. Farris, the Chapter 7 Trustee, ("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 Turnover of Property is granted.

~~**IT IS FURTHER ORDERED** that Dale Soliman Del Rosario ("Debtor"), and each of them, shall deliver on or before **XXXXXXX**, possession of a scheduled 2007 Dodge Dakota automobile with about 120,000 miles ("Vehicle"), with all of~~

~~their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Vehicle; and any other person or persons that Debtor, and each of them, allowed access to the Vehicle removed from the Vehicle.~~

5. [24-90652-E-7](#)  
[SLH-1](#)

GRANT ALLDRIN  
Seth Hanson

MOTION TO COMPEL ABANDONMENT  
12-30-24 [15]

**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 Chapter 7 Trustee, creditors and parties in interest, and Office of the United States Trustee on December 30, 2024. By the court’s calculation, 17 days’ notice was provided. 14 days’ notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 to Compel Abandonment is granted.**

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Grant Neil Alldrin (“Debtor”) requests the court to order Peter L. Fear (“the Chapter 7 Trustee”) to abandon property commonly known as 1725 Edgebrook Drive, Unit D, Modesto, CA 95354 (“Property”). The Property is encumbered by the lien of “Crosscountry/Mr. Cooper,” securing a claim of \$366,904.00. Schedule D at 19, Docket 1 The Declaration of Debtor has been filed in support of the Motion and values the Property at \$482,500. Decl. ¶ 3, Docket 17. Debtor has claimed a homestead exemption in the Property in the amount of \$110,000. Am. Schedule C at 1, Docket 14.

The court finds that the debt secured by the Property combined with the homestead exemption exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

### **CHAMBERS PREPARED ORDER**

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 Compel Abandonment filed by Grant Neil Alldrin (“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 Motion to Compel Abandonment is granted, and the Property identified as 1725 Edgebrook Drive, Unit D, Modesto, CA and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Peter L. Fear (“Trustee”) to Grant Neil Alldrin by this order, with no further act of the Trustee required.



**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 that have filed claims, other parties in interest, and Office of the United States Trustee on November 27, 2024. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits Geoffrey M. Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the undeveloped real property bearing Stanislaus County APN 017-056-033-000 and located on Michigan Avenue in Modesto, California ("Property").

The proposed purchaser of the Property is Efrain Tostado-Garcia and Rosa Maria Valadez Tostado ("Buyer"), and the terms of the sale are:

- a. The Buyer is to pay a purchase price \$300,000.00 for title to the Real Property (the "Purchase Price");
- b. The Buyer is to pay a \$3,000.00 earnest money deposit;
- c. The Buyer is to give to the Trustee and Anderson a promissory note in the amount of \$130,000.00, to bear simple interest at the rate of seven percent (7%) per annum over the fifteen-year term of the note; and is to pay into escrow the sum of \$167,000.00 cash, representing the balance of the Purchase Price in consideration of receipt of title to the Real Property;

- d. From escrow, the Trustee and Anderson are to pay liens of record, including accrued property taxes;
- e. From escrow, the Trustee and Anderson are to pay from escrow designated costs of sale, specifically including the sales commission to Broker, and the costs of (i) a mandatory natural hazard disclosure, (ii) a 50% share of escrow fees and title insurance, and (iii) city and county transfer fees or taxes.
- f. The sale escrow is to close once contingencies are satisfied and within forty-five (45) days of entry of the court order approving the sale; and
- g. The Real Property is sold "as-is," with no representations or warranties.

Mot. 3:11-27, Docket 140.

#### Proposed Overbidding Procedures

- a. All overbids shall be on substantially the same terms and conditions as the pending sale.
- b. The first initial overbid shall be in the minimum amount of \$310,000.00 (\$10,000.00 over pending sale price), and subsequent overbids shall be in minimum increments of \$10,000.00.
- c. Persons wishing to overbid must provide a cashier's check payable to the Trustee in the minimum amount of \$3,000.00, payable to the bankruptcy estate, before the time the prospective purchaser makes the first overbid at the hearing. This amount is the amount of the deposits provided under the Sale Contract.
- d. The successful overbidder shall be required to pay the balance of the purchase price and close the sale on those terms stated in the Sale Agreement, except that the parties may agree to close of the sale at a later date. Should a successful overbidder seek payment of any part of the purchase price under terms of a carry-back note, the Trustee would have authority, in his sole discretion, to terminate the sale contract should he determine that the overbidder is not financially qualified to perform under such a note.
- e. In the event that, through no fault of the Trustee, the approved purchaser fails to close escrow during the time period stated in the Sale Agreement, or such later date as Trustee and the approved purchaser may mutually agree, the entire amount of all deposits then held shall be retained by the Trustee and may be applied by the Trustee toward any damages incurred by the estate as a consequence of that party's default.
- f. The cashier's checks of all unsuccessful bidders shall be returned immediately following the hearing.
- g. A back-up bid may be approved, and the Real Property may be sold to the back-up bidder, at the option of the back-up bidder, if the successful bidder fails to close

escrow within the time limitations provided above, without necessity of a further court order.

The court finds the proposed overbidding procedures to be reasonable and adopts them for purposes of this Motion.

## **DISCUSSION**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the state will be realizing a return of approximately \$75,000, which will be sufficient to pay a large dividend toward unsecured claims in the amount of \$47,592.46.

Movant has estimated that a four percent broker's commission from the sale of the Property will equal approximately \$12,000. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker, PMZ Real Estate, an amount not more than four percent commission.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as Buyer has been attempting to purchase the Property for some time now, and to keep Buyer interested, it would be best to expedite the closing date. Mot. 8:20-27, Docket 140.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by Geoffrey M. Richards, the Chapter 7 Trustee, ("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 granted, and Geoffrey M. Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Efrain Tostado-Garcia and Rosa Maria Valadez Tostado or nominee ("Buyer"), the undeveloped real property bearing Stanislaus County APN 017-056-033-000 and located on Michigan Avenue in Modesto, California ("Property"):

- A. The Property shall be sold to Buyer for \$300,000.00, on the terms and conditions set forth in the Vacant Land Purchase Agreement, Exhibit A, Dckt. 145, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than four percent of the actual purchase price upon consummation of the sale. The four percent commission shall be paid to the Chapter 7 Trustee's broker, PMZ Real Estate.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

**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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 23, 2024. By the court's calculation, 24 days' notice was provided. 28 days' notice is required. However, the court set the hearing on an expedited basis for January 16, 2025. Order, Docket 23.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <del>XXXXXXX</del>.</b>
---

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that Cristina Cuevas Cruz and Eustaquio Amaya Retana ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 8:00 a.m. on January 29, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 27, 2024, and January 3, 2025. Dckts. 22, 28. The Oppositions both state that Debtor was present at the 341 Meeting, but there was a zoom malfunction where the other people in the Zoom meeting could not see Debtor.

## DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

However, Debtor has filed an Opposition stating they have attempted to appear and be examined.  
At the hearing, **XXXXXXX**

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

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

The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris (“Trustee”), 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 Dismiss is **XXXXXXX**.

# FINAL RULINGS

8. [24-90708-E-11](#)  
[MJB-2](#)

MCAP LLC  
Michael Berger

MOTION TO EMPLOY LAW OFFICES OF  
MICHAEL JAY BERGER AS  
ATTORNEY(S)  
12-12-24 [\[13\]](#)

**Final Ruling:** No appearance at the January 16, 2025 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, all creditors and parties in interest, and Office of the United States Trustee on December 11, 2024. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.**

MCAP LLC ("Debtor in Possession") seeks to employ Michael Jay Berger and the Law Offices of Michael Jay Berger ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel to represent Debtor in Possession and prosecute this bankruptcy case.

Mr. Berger testifies that he is an expert in the field of bankruptcy and is qualified to be Debtor in Possession's counsel. Decl. ¶ 3, Docket 17. Mr. Berger testifies he and the firm do 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. *Id.* at ¶ 5.

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 Michael Jay Berger and the Law Offices of Michael Jay Berger as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Client-Attorney Written Fee Agreement filed as Exhibit 3, Dckt. 16. 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 MCAP 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 21, 2024, and Debtor in Possession is authorized to employ Michael Jay Berger and the Law Offices of Michael Jay Berger as Counsel for Debtor in Possession on the terms and conditions as set forth in the Client-Attorney Written Fee Agreement filed as Exhibit 3, Dckt. 16.

**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.

9. [18-90029-E-11](#)      **JEFFERY ARAMBEL**      **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#)      **VOLUNTARY PETITION**  
1-17-18 [1](#)

**Item 9 thru 10**

**Final Ruling: No appearance at the January 16, 2025 Status Conference is required.**

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Debtor's Atty: Pro Se

Notes:  
Continued from 9/19/24

Operating Reports filed: 10/21/24

Plan Administrator's Post-Confirmation Monthly Compensation Report filed: 11/13/24; 12/9/24

[FWP-28] Interim order granting use of cash collateral filed 10/30/24 [Dckt 2034]

[FWP-31] Plan Administrator's Motion to: (1) Sell Real Property Free and Clear of Liens (Westley Lot); and (2) Waiver 14 Day Stay Period filed 11/7/24 [Dckt 2035]; motion granted - order to be prepared by counsel for Focus Management Group

[FWP-32] Plan Administrator's Motion to: (1) Sell Real Property Free and Clear of Liens (Murphy Ranch and Murphy Rangeland); and (2) Waiver 14 Day Stay Period filed 11/7/24 [Dckt 2043]; motion granted - order to be prepared by counsel for Focus Management Group

<p><b>The Status Conference is continued to 10:30 a.m. on January 30, 2025.</b></p>
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**JANUARY 16, 2025 STATUS CONFERENCE**

On January 13, 2025, the Plan Administrator filed a Status Report. Dckt. 2069. The court has continued the hearing on the continued hearing on the Motion to Use Cash Collateral as requested by the Plan Administrator. As of the January 16, 2025 Status Conference the Plan Administrator reported that the documentation for the further use of cash collateral had not completed.

The Status Conference is continued to 10:30 a.m. on January 30, 2025.

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

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

The Chapter 11 continued Status Conference having been conducted by the court, and upon review of the pleadings, reports of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **2:00 p.m. on January 30, 2025.**

10. <a href="#">18-90029-E-11</a> <a href="#">FWP-28</a>	<b>JEFFERY ARAMBEL</b> Pro Se	<b>CONTINUED MOTION TO USE CASH COLLATERAL</b> 10-20-23 [ <a href="#">1927</a> ]
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**Final Ruling: No appearance at the January 16, 2025 Hearing is required.**  
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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.

**The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:30 a.m. on January 30, 2025.**

**January 16, 2025 Hearing**

On January 13, 2025, Plan Administrator filed a Status Report with the court. Docket 2071. Plan Administrator requests a continuance to January 30, 2025 in light of the fires in Los Angeles and the holidays causing a delay. Plan Administrator will have a Stipulation on file a week before that continued hearing.

The court continues the hearing to 10:30 a.m. on January 30, 2025.

### **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 continued 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.

**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.

At the hearing, the court grants the Motion and sets a continued hearing on March 28, 2024, with supplemental pleadings filed by Movant two weeks prior thereto.

## **March 28, 2024 Hearing**

A review of the Docket on March 25, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) and SBN V Ag I LLC uploaded a new Stipulation and proposed budget to extend the use of cash collateral. Docket 1968.

In the Stipulation the Plan Administrator and SBV address the use of cash collateral, but there is no outline of how the cash collateral will be used to complete the confirmed plan (confirmation order entered September 15, 2019; Dckt. 970). As reflected in the Civil Minutes from the last Post-Confirmation Status Conference conducted on January 25, 2024:

At the Status Conference, counsel for the Plan Administrator reported that not a lot new to report at this point. The parties need to regroup on the Filbin Land and Cattle matters, with there being no resolution at this point in time.

Counsel for the Plan Administrator requested the that the Status Conference be continued 6 months. Counsel for Creditor Summit and the continuance of the Status Conference.

Civ. Minutes; Dckt. 1961.

There were prior disputes concerning the asserted dissolution of the related entity Filbin Land and Cattle Co. (Though it does not appear to be in dispute as to who owns 100% of the member interest in Filbin Land and Cattle Co.)

As this Case is now in its Seventh (7th) Year of Existence and this Plan is now in its Sixth (6th) Year of Performance, it could well be that the court's attempts to insure that all parties prosecuting cases in good faith were not deprived of such opportunity (in Chapter 11, 12,13, and even 7 cases), created the appearance that the *status quo* would be the norm and that actually litigating disputes was not expected.

Under the extension provision of the previous stipulation (Docket 1947 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 June 30, 2024. Docket 1968 at ¶ 3.

The Motion for Authority to Use Cash Collateral was granted, and continued to 10:30 a.m. on June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

Supplemental Pleadings shall be filed by Movant two weeks prior to the continued hearing date.

## **June 27, 2024 Hearing**

The court granted Focus Management Group, Inc., the duly appointed Plan Administrator ("Plan Administrator") authority to use cash collateral up and through June 30, 2024, in accordance with the proposed budget attached as Exhibit A to that Order. Order, Docket 1978. The court expressed concerns at the March 28, 2024 Hearing that the cash collateral was not being properly used in this case to move the case forward, the case now being in its seventh year of existence. Plan Administrator filed a Status Report with the court on June 13, 2024. Docket 1988. Plan Administrator requests the court continue the hearing on this Motion to July 18, 2024, as the parties are working on a proposed stipulation.

**January 16, 2025 at 10:30 a.m.**

On June 20, 2024, Plan Administrator filed with the court its proposed Stipulation. Docket 1994. The Stipulation includes a new budget of Other Cash Collateral, defined in the Plan as “cash collateral (as defined by Section 363(a) of the Code) made available to the Reorganizing Debtor by Summit prior to or after the Effective Date, pursuant to a written cash collateral stipulation agreed to by Summit, which cash collateral is subject to the Allowed Secured Claim of Summit” (Plan 8:3-6, Docket 860). Stipulation for Use of Cash Collateral; Dckt. 1994.

The proposed budget would be extended through September 30, 2024, including authorizing a property sale disbursement of \$1,500,000 to SBN V AG I LLC (“Summit”), being heard in conjunction with this Motion.

### **July 18, 2024 Hearing**

The court continued this hearing from June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. The Cash Collateral Budget, for the period through September 30, 2024, was filed on was filed June 20, 2024, attached to the Stipulation for Use of Cash Collateral. Dckt. 1994. The court issued an order continuing the Stipulated Use of Cash Collateral to July 18, 2024.

At the July 18, 2024, the parties confirmed that they stipulated to the use of cash collateral through September 30, 2024, the end of the current budget, and requested a continued hearing so pleadings may be filed for further use of cash collateral.

Counsel for the Plan Administrator stated that while the budget provides for a \$1.5 Million payment to Creditor, such payment shall be authorized by a separate order of the court. The order authorizing the used of cash collateral through September 30, 2024, shall include the statement of such further order being required.

The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized as provided in the budget attached to the Stipulation for Use of Cash Collateral (Dckt. 1994) through September 30, 2024.

The hearing on the Motion is continued to 10:30 a.m. on September 19, 2024. Supplemental Pleadings shall be filed and served on or before September 12, 2024.

### **September 19, 2024 Hearing**

The court continued this hearing from July 18, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. The Cash Collateral Budget, for the period through December 30, 2024, was filed on was filed September 12, 2024, attached to the Stipulation for Use of Cash Collateral. Dckt. 2019. The court issued an order continuing the Stipulated Use of Cash Collateral to September 30, 2024. Order, Docket 2014.

In reviewing the proposed Budget for September through December 2024, it appears that the vast majority of the expenses to be paid are the fees for the Plan Administrator, Plan Administrator’s Attorney, the Plan Administrator’s Accountant, and U.S. Trustee Fees. Exhibit A, Budget; Dckt. 2019.

There is no income or “cash-in” being generated for the Plan Estate, other than a \$200,000 carve out for distribution to creditors holding general unsecured claim from a \$1,500,000 payment made to Summit on its secured claim.

The proposed Budget running through December 2024, has an additional column after December, which is titled “Funeral Expense 13th Month.” *Id.* These have been previously identified final expenses to be paid in the month the Plan is concluded.

The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized as provided in the budget attached to the Stipulation for Use of Cash Collateral (Dckt. 2019) through December 31, 2024.

The hearing on the Motion is continued to 10:30 a.m. on January 16, 2025. Supplemental Pleadings shall be filed and served on or before January 7, 2025.

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 hearing on the Motion is continued to **10:30 a.m. on January 30, 2025.**

**Final Ruling:** No appearance at the January 16, 2025 Hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor as stated on the Certificate of Service on December 5, 2024. The court computes that 42 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: \$338 due on November 6, 2024.

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

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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, no sanctions ordered, and the bankruptcy case shall proceed in this court.