UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 4, 2021 at 10:30 a.m.

1.	**20-25532-E-7** **FF-1**	**KEVIN STANSBERRY** **Gary Fraley**	**MOTION TO COMPEL ABANDONMENT** **1-6-21 [12]**

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 Chapter 7 Trustee, and Office of the United States Trustee on January 6, 2021 By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is denied.

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 Kevin Stansberry ("Debtor") requests the court to order J. Michael Hopper ("the Chapter 7 Trustee") to abandon property identified as Automate io, LLC, located at 272

Toledo Court in Vallejo, CA 94591 ("Property"), a limited liability company owned by the Debtor. The Property is not encumbered by a lien. The Declaration of Kevin Stansberry has been filed in support of the Motion and values the Property at $0.00. Dckt. 15.

The Motion states that "[D]ebtor provides customer relationship management, material resource planning, and enterprise retail planning services to the public" through the limited liability company. Motion, ¶ 5; Dckt. 12. The limited liability company has:

- No equipment
- No accounts receivable
- No other business-related assets

Id. ¶ 6. The Motion does not state whether Automate io, LLC has other "non-business-related assets."

Debtor also testifies that Automate io, LLC has "[n]o 'book of business' nor is there any saleable rights of benefit to anyone. As of the filing date, there were no active contracts." Declaration, ¶ 6; Dckt. 15. As set forth in the Motion and Declaration, it appears that Automate io, LLC is a mere shell, with no economic value or viability.

In his Declaration Debtor provides his legal opinion to the court concerning whatever business Automate io, LLC has, telling the court that "Since this is a LLC, if [sic] may be operated I may operate without court approval." *Id*., ¶ 13.

Trustee filed an Opposition on January 20, 20021. Dckt. 23. The Declaration of J. Michael Hopper has been filed in support of the Trustee's Response to Motion to Compel Abandonment on January 19, 2021, Dckt. 24. Trustee opposes abandonment because the evidence proffered in support of the motion is inaccurate, incomplete and unreliable.

Trustee testifies to having reviewed copies of statements for two of the Property's bank accounts which show that during the four month period of September 2020 through December 2020: (a) $80,000 was deposited, $69,000 pre-petition and $11,000 postpetition; and (b) $21,000 was remitted to the Debtor, $18,000 pre-petition and $3,000 postpetition. Declaration, Dckt. 24, ¶ 5.

Trustee then testifies that Debtor's Schedule I omitted all but $2,400 of the $18,000 received from Property during the three (3) months before the petition was filed. Trustee has requested, but not yet received, copies of a profit and loss statement for December 2020.

Moreover, Trustee contends that the Debtor's declaration omits Automate io's two bank accounts, the funds on deposit within, and what appears to be recently purchased software and licenses.

DISCUSSION

On Schedule I, Debtor states under penalty of perjury that he is self-employed as an "IT Consultant," and has been doing such for three months. He does not list working for Automate io, LLC. Dckt. 1 at 28. Debtor states that his net income from operating a business is $800 a month. *Id*. at 29. On Schedule J Debtor states that his current business endeavors cause him to have expenses that exceed

his income by ($5,327) a month. Schedule J, Dckt. 1 at 31. This includes Debtor having to pay $1,900 a month for "Back Taxes Owed."

On the Statement of Financial Affairs, Debtor states that he operates a business as a sole proprietorship, checking that box in response to Question 27, and not that he is a member of a limited liability company. *Id*. at 38-39. Further in response to Question 27 he identifies two businesses, The Help Desk San Francisco Bay, having existed from May 19, 2017 to November 24, 2020 (which is now in its own Chapter 7 bankruptcy case); and Automate io, LLC, which began operations September 3, 2020 and operating at the time of the filing of this bankruptcy case. *Id*. at 39.

In response to the gross income question on the Statement of Financial Affairs, Debtor states that he had gross income from operating a business of $39,180 in the first 11 months of 2020, $31,021 in 2019, and $18,925 in 2018. Statement of Financial Affairs Question 4; Dckt. 1 at 33-34.

On January 18, 2021, Debtor amended the Statement of Financial Affairs, correcting the response to Question 4, and now states that he had $213,047 in income from operating a business in 2019. The business is not identified, but it appears to be the now Chapter 7 Debtor The Help Desk San Francisco Bay. Dckt. 22 at 2.

The Chapter 7 Trustee has only begun his investigation of this asset of the bankruptcy estate and has presented the court with information that is inconsistent with that provided by Debtor. This includes Automate io, LLC having $69,000 in pre-petition deposits (the business starting operating in October 2020) and $11,000 after the December 14, 2020 commencement of this case. Declaration, ¶ 5; Dckt. 23. Additionally, though Debtor states that he receives only $800 a month from his "business," $18,000 was disbursed to him by Automate io, LLC during the period October (when Automate io, LLC began operations) to the December 14, 2020 commencement of this case, and additional post-petition disbursement of $3,000 to Debtor in December 2020. For the months of October, November, and December, the distributions from Automate io, LLC (presumably net income) averaged $7,000 a month, 875% greater than the $800 a month of net business income stated on Schedule I.

Without an accurate picture of Debtor's financial reality as it pertains to Debtor's business, Automate io, LLC, the court cannot determine whether the property is burdensome or is of inconsequential value and benefit. Rushing this asset out of the bankruptcy estate is not reasonable or proper. The Trustee must conduct his reasonable discovery and properly administer the assets of the bankruptcy estate in this voluntary Chapter 7 case.

The Motion is denied without prejudice.

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Kevin Stansberry ("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 denied.

2. **15-24664-E-7** **WILFRED DORAY** **MOTION TO SELL AND/OR MOTION TO PAY**
HSM-4 **Scott De Bie** **1-14-21 [75]**

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, Debtor's Attorney, creditors, and Office of the United States Trustee January 14, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Geoffrey 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 via auction the real property commonly known as vacant lot with APN 036-141-55 (alternatively called APN 036-141-55-11 or APN 036-141-5511), Lot 12 in Block 03 of California Pines Lake Unit 2, Modoc County, California. ("Property").

The proposed purchasers of the Property are Daniel Reyes and Pamela Reyes, and a summary of the terms of the sale are (the complete terms of the sale are found in the Purchase Agreement, Exhibit A, Dckt. 80):

A. The purchase price of the Property is $8,250.00, plus a 10% buyer's premium added to the purchase price for compensation to Auctioneer, Tranzon.

B. Buyer provided a deposit of $1,815.00.

C. Title to the property shall vest in a manner to be determined in escrow.

D. The sale of the property must close within 30 days, or expiration of the appeal period following entry of the order granting this motion, with no timely appeal taken, whichever is later.

E. Except as otherwise stated in the purchase agreement, the property is sold "As Is, Where Is, With All Faults", in its present condition with no representations or warranties s of any kind or character, express or implied, whatsoever.

F. Seller shall furnish buyer title insurance.

G. Seller will pay all closing costs, including but not limited to, escrow fees, document preparation fees, transfer taxes, recording fees, past due and current property taxes prorated to close of escrow, title fees, and closing fees.

H. The proposed sale and the Purchase Agreement are subject to bankruptcy court approval.

Overbidding Procedures

Trustee proposes the following overbidding procedures for the sale, prior to commencement of the hearing on the motion:

1. Any person or entity wishing to become a Qualified Overbidder must deliver to the Trustee (i) the Overbidder Deposit of $1,815.00 in the form of a cashier's check or money order, and (ii) a showing of financial ability to perform.

2. The winning overbidder shall close on the same terms as Buyer.

3. By submitting an overbid at the sale hearing, the Qualified Overbidder shall be deemed to have conclusively waived all contingencies to the purchase of the property, except as provided in the Purchase Agreement, and except for court approval of the sale to such Qualified Overbidder as the highest bidder.

4. If any party is unsuccessful, then the Overbidder Deposit shall be returned.

5. Trustee proposes a minimum overbid of $8,750.00, plus the 10% buyer's premium, and that subsequent overbids be in increments of not less than $500.00.

6. If the Buyer is outbid, and the Trustee receives full payment, the Purchase Agreement between Buyer and Trustee shall be of no further effect.

7. If the buyer is outbid, the buyer shall have the option to either (i) terminate the Purchase Agreement, or (ii) maintain the Purchase Agreement and remain obligated to purchase if the overbidder fails to close the overbid purchase.

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: xxxxxxxxxxxxxxx.

The Trustee seeks authority to pay through escrow the estate's undisputed share of all undisputed real property taxes owed in connection with the Property, and the estate's undisputed share of all undisputed Property Owners Association (HOA) assessments, including the estate's pre-closing pro-rata share of current real property tax and HOA assessments.

Payment of Auctioneer Fees

The court by prior order has authorized the Trustee to employ Tranzon Asset Strategies as the Auctioneer for this Property. Order, Dckt. 74. The order authorizes compensation for the Auctioneer as a professional representing the Trustee in the amount of 10% of the gross sales proceeds on the first $15,000 of the gross sales price. This compensation may be structured as a "buyer's premium," without it altering the compensation paid for representation of the Trustee as the auctioneer to sell property of the bankruptcy estate, with such compensation subject to both 11 U.S.C. § 330 and § 328. *Id*. All amounts of the "buyer's premium" in excess of the 10% on the first $15,000 of the gross sales price is paid to the Trustee, unless the court authorizes additional compensation for Auctioneer. *Id*.

The Motion states that the sales price is $8,250.00, plus an additional $825.00 as the buyer's premium to be paid Auctioneer as compensation for employment as a professional by the Trustee. In addition, the Trustee states that there are $125.00 in Auctioneer expenses, which is well below the $500.00 cap set in the Order for employment of the Auctioneer as a professional by the Trustee.

In the prayer, Trustee does not clearly request the court to authorize compensation of $825.00 in fees and $150.00 in expenses for Auctioneer pursuant to 11 U.S.C. § 330 as the professional authorized to be employed by the Trustee. However, such appears to be included in the general request to pay from escrow amounts customarily paid by a seller from escrow. Prayer, ¶ 4; Dckt. 75 at 9.

Though not expressly stated, the court reads the Motion to include a request for the court to allow Auctioneer $825.00 in fees and $150.00 in expenses for the services provided the Trustee, with the $825.00 to be paid from the additional buyer's premium and the $150.00 from the gross sales proceeds of $8,250.00 received by the Trustee. At the hearing, counsel for Trustee **xxxxxxx**

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because there are an estimated net proceeds of $4,490.22 for the benefit of creditors.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Geoffrey 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 Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Daniel Reyes and Pamela Reyes or nominee ("Buyer"), the Property commonly known as vacant lot with APN 036-141-55 (alternatively called APN 036-141-55-11 or APN 036-141-5511), Lot 12 in Block 03 of California Pines Lake Unit 2, Modoc County, California. ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $8,250.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 80, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 7 Trustee is authorized to pay through escrow the estate's undisputed share of all undisputed real property taxes owed in connection with the Property, and the estate's undisputed share of all undisputed Property Owners Association (HOA) assessments, including the estate's pre-closing pro-rata share of current real property tax and HOA assessments.

D. The Chapter 7 Trustee is authorized to disburse the $825.00 buyer's premium and an additional $125.00 from the $8,250.00 gross sales proceeds to Tranzon Asset Strategies as the Auctioneer for this Property (Order authorizing employment, Dckt. 74) as compensation pursuant to 11 U.S.C. § 330.

E. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

3. **20-23267-E-7** **SHON/JILL TREANOR** **MOTION TO ABANDON**
DNL-3 **Pro Se** **1-21-21 [70]**

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 (*pro se*), creditor, parties requesting special notice, and Office of the United States Trustee on January 21, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Abandon 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 Abandon is granted.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). 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 Hank M. Spacone ("the Chapter 7 Trustee") requests that the court authorize him to abandon property commonly known as claims that have been asserted or could be asserted against Gary Ray Fraley ("Fraley"), including the contingent and unliquidated potential claim related to a trailer in possession of Fraley described in Amended Schedule A/B, Paragraph 34.1 ("Property"). The Property may be encumbered by a $1 million charging lien asserted by Stephen C. Sanders (that lien being the subject of dispute by Debtor and not something that the Trustee has formally documented a position for the bankruptcy estate). The Declaration of Hank M. Spacone has been filed in support of the Motion and provides testimony that the value of the Property is no greater than $21,620.00 and due to selling costs, would not likely result in a return to unsecured creditors.

The Debtor filed a Declaration on January 28, 2021 opposing the Motion to Abandon. Dckt.

84. Debtor mistakenly believes that Trustee's Motion to Abandon takes away their rights or ability to seek enforcement of their claim to the Property.

The court thus explains that Trustee's abandonment releases the claim back to Debtor to pursue such claims if they so choose and is no longer property of the estate under the control of the Trustee.

The court finds that the Property may secure claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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 Abandon Property filed by Hank M. Spacone ("the Chapter 7 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 Compel Abandonment is granted, and the Property identified as claims that have been asserted or could be asserted against Gary Ray Fraley, including the contingent and unliquidated potential claim related to a trailer in possession of Gary Ray Fraley described in Amended Schedule A/B, Paragraph 34.1 is abandoned to Shon/Jill Treanor by this order, with no further act of the Chapter 7 Trustee required.

4. **11-20679-E-7 MWB-2** | **BRANDON/LARAIN MADEROS** **Mark Briden** | **MOTION TO AVOID LIEN OF LVNV FUNDING LLC** **1-7-21 [41]**

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, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 7, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of LVNV Funding LLC assignee of HSBC Bank ("Creditor") against property of the Debtor, Brandon/Larain Maderos ("Debtor") commonly known as 1497 Hooker Oak Avenue, Chico, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,551.25. Exhibit 1, Dckt 44. An Abstract of Judgment was recorded with Butte County on June 14, 2010, that encumbers the Property.

Debtor filed a Voluntary Petition for Chapter 7 relief on January 10, 2011 and received an order granting Debtor a Discharge on May 16, 2011.

In 2014, approximately three years after receiving a Discharge in the Chapter 7 case, Debtor purchased the Property. Declaration, ¶ 3; Dckt. 43.

Debtor filed a declaration on January 6, 2021, Dckt. 43, explaining the following:

1. Creditor LVNV Funding LLC assignee of HSBC Bank, recorded an Abstract of Judgement as Instrument #2011-0000057 in Butte County on June 14, 2010 prior to the filing of Debtor's bankruptcy case. Exhibit 1, Dckt 44.

2. Debtor is selling their personal residence, 1497 Hooker Oak Ave, Chico, California. The Title Company is demanding an order avoiding this Judgement to close escrow without paying this judgment.

3. The Creditor was listed on Debtor's Schedule D as Best Buy LVNV Funding LLC, in the amount of $4,082.00. Exhibit 3, Dckt 44.

The court determines that discharge of this judgment was included within Debtor's May 16, 2011 discharge. The Scheduling of and notices of bankruptcy and Discharge to LVNV Funding, LLC in this case include:

A. LVNV Funding, LLC listed on Schedule D as a creditor in this bankruptcy case. Dckt. 1 at 18.

B. LVNV Funding, LLC was served with the Notice of this Chapter 7 Bankruptcy having been filed by the Bankruptcy Noticing Center. Notice and Certificate of Service, Dckt. 10.

C. LVNV Funding, LLC filed Proofs of Claim 3-1 and 4-1 in this bankruptcy case.

D. LVNV Funding, LLC was served with the Discharge of Debtor in this bankruptcy case by the Bankruptcy Noticing Center. Dckts. 23, 24.

The judgment lien at issue is for a pre-petition judgment which is subject to the Discharge. Congress provided in 11 U.S.C. § 524 the effect of a discharge, stating in pertinent part:

> § 524. Effect of discharge
>
> (a) A discharge in a case under this title—
>
> (1) **voids any judgment at any time obtained**, to the extent that such judgment is a **determination of the personal liability of the debtor with respect to any debt discharged under section 727**, 944, 1141, 1192, 1228, or 1328 of this title , whether or not discharge of such debt is waived;
>
> (2) **operates as an injunction against the commencement or continuation of an action,** the employment of process, or an act, **to collect**, recover or offset any **such debt as a personal liability of the debtor**, whether or not discharge of such debt is waived; . . . .

11 U.S.C. § 524(a)(1), (2) [emphasis added].

The LVNV Funding, LLC judgment, and the judgment lien is rendered void as to it constituting a post-discharge determination of Debtor having any personal liability on the judgment.

Thus, the judgment lien on the pre-petition judgment subject to the Discharge could not attach to the Property Debtor acquired in 2014, which was three years after the entry of the Discharge rendered the judgment void as a personal liability of Debtor.

The distinction between rendering the judgment void as a personal liability and enforcing a lien that attached prior to the filing of bankruptcy is discussed in Collier on Bankruptcy:

> [1] Judgments for Discharged Debts Void; § 524(a)(1)
>
> Section 524(a)(1) provides that any judgment on a debt that is discharged is void as a determination of the debtor's personal liability. Section 524(a)(1) clearly pertains to judgments obtained both before and after the discharge order, in that it refers to "any judgment at any time obtained."
>
> **By referring to the debtor's personal liability, it also makes clear that an *in rem* judgment, based upon a prepetition lien and running solely against the debtor's property, would not be affected by the discharge**. As the Supreme Court explained in *Johnson v. Home State Bank*, the right to foreclose on a lien survives or passes through bankruptcy unaffected by the discharge. **Thus, a creditor may enforce a prepetition judgment lien after the discharge, if the automatic stay is no longer in effect and the lien has not been avoided, paid, or modified so as to preclude enforcement**.
>
> Section 524(a) is meant to operate automatically, with no need for the debtor to assert the discharge to render the judgment void. A bankruptcy court can find that a postpetition state court judgment is void despite the full faith and credit normally given to state court judgments. Because of the language that such a judgment is void, "whether or not discharge of such debt is waived," a creditor cannot claim that the voidness of the judgment was waived under a theory of estoppel when a debtor fails to raise the discharge as a defense. **A prepetition judgment that has been made void by this section cannot be the basis for a creditor obtaining a lien on property that was not subject to a lien before bankruptcy**. **Nor may a creditor proceed *in rem* against a property interest of the debtor if the creditor had no lien before the bankruptcy case and the debtor's personal liability has been discharged**.

4 Collier on Bankruptcy P 524.02 (16th 2020).

In 2014 when Debtor acquired the Property the judgment was void as to any personal liability of Debtor and there was no personal obligation for the judgment lien.

As presented, there is no judgment lien to be avoided. However, the court recognizes that debtors in this situation may need a court order stating such to satisfy a title company.

This situation brings to mind a matter that the judge in this case handled as an attorney. The client had discharged the debt, a pre-petition judgment for which a judgment lien had been obtained pre-petition. Debtor acquired real property post-discharged and then, when attempting to sell it, was faced with this issue. For that matter, the title company required certified copies of the schedules, service of

notice of the bankruptcy on the creditor, and the Discharge order.

The court grants the requested relief in the form of an order determining that the judgment is void as to any personal liability as to the Debtor and that the pre-petition judgment lien cannot attach to the Property acquired in 2014. Rather than drafting an order that "makes sense to the judge" but may not to the title company, thereby requiring Debtor to incur further cost and expense in amending it, counsel for the Debtor shall prepare and lodge with the court an order consistent with this ruling.

Before lodging such order with the court, counsel for Debtor shall provide a copy of this Ruling to the title officer and, presumably, title company counsel to confirm what is needed in connection with the transaction to document that there is no judgment lien on the Property. [Fn.1.]

FN. 1. The Abstract of Judgment provided as Exhibit 1 is dated June 14, 2010. Dckt. 44. The judgment was entered on March 1, 2010. California Code of Civil Procedure § 683.020 provides that upon expiration of 10 years after the entry of a money judgment, the judgment may not be enforced and any lien created by an enforcement procedure pursuant to the judgment. However, in California Code of Civil Procedure §§ 683.110 et seq., California law the judgment may be extended successive periods of ten years from when the extension is requested.

It is not clear whether the Creditor sought to extend the discharged judgment or not. It may be that documentation that the judgment has not been extended will provide the title company with the documentation to determine that, in addition to federal law, under state law the judgment is no longer enforceable.

At the hearing, **xxxxxxx**

MATTERS 5 THROUGH 7 TO BE HEARD AT 11:30 A.M. IN CONJUNCTION WITH THE MOTION FOR APPROVAL OF CHAPTER 11 DISCLOSURE STATEMENT AND MOTION TO TERMINATE EXCLUSIVITY.

5.	**20-24123-E-11** **FWP-16** **5 thru 7**	**RUSSELL LESTER** **Tom Willoughby**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JOHN DEERE** **1-21-21 [344]**

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2021. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

Movant has not provided sufficient notice. At the hearing, xxxxxxxx

The Motion for Approval of Compromise 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 for Approval of Compromise is xxxxx.

Russell Wayne Lester, the Debtor in Possession, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Deere & Company c/o John Deere Financial,

and John Deere Construction & Forestry Company ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's assertion of 20% default interest in this case and respecting John Deere's potential objection to confirmation of the Plan.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 348):

A. The Debtor in possession shall cause John Deere to be added as an additional insured and as a loss payee to its current insurance policy;

B. The Debtor in Possession shall amend Section 6.1 of its Plan to shorten the notice of default and cure periods from thirty (30) days to fifteen (15) days; and

C. John Deere agrees to a fifty percent reduction in its default interest from 20% to 10%.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

Debtor in Possession asserts that due to the complexity of the issues, the probability of success for either party is not clear. It is asserted that the Settlement gets the default interest in the ballpark (the court's terminology) of a permissible interest rate that the Debtor in Possession may achieve through litigation.

Difficulties in Collection

This is not a factor, as there would not be a recovery for the Debtor in Possession from Creditor, but the court would be determining what has to be paid Creditor under the Plan.

Expense, Inconvenience, and Delay of Continued Litigation

Debtor in Possession asserts, and the court finds reasonable, that the litigation would be expensive, with expert witness having to be hired. The litigation appears to be one that would be time consuming, which equates to financial resource consuming.

Paramount Interest of Creditors

Debtor in Possession asserts that this resolution provides a cost effective resolution which does not exhaust financial resources that would otherwise be available to fund a plan. Given no clear probability of success and the 10% agreed to interest rate, Debtor in Possession contends that the Settlement is in the interest of the other creditors.

Consideration of Additional Offers

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Russell Wayne Lester, the Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Deere & Company c/o John Deere Financial, and John Deere Construction & Forestry Company ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in Exhibit 1 in support of the Motion (Dckt. 348).

6. **20-24123-E-11 FWP-17** **RUSSELL LESTER Tom Willoughby** **MOTION FOR EXTENSION OF EXCLUSIVE PERIOD 1-21-21 [351]**

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, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Extension of Exclusive Period 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 hearing on the Motion to Extend the Exclusivity Period is continued to 10:30 a.m. on xxxxxxx 2021.

The Parties having agreed to mediate their disputes concerning this Motion and related matters in this case, the court continues the hearing. In light of the pending Mediation, the court does not post any tentative ruling or discussion of the Motion.

Debtor in Possession has advised the court that the mediation is scheduled for February 3, 2021. For the continued hearing on this and the related matters, Debtor in Possession has requested that the continued hearings be conducted after February 10, 2021 (one week after the mediation) and before February 23, 2021 (the date the current exclusivity period expires).

Reviewing possible hearing dates in that six work day period (during which Presidents' Day Holiday falls), the court has only one regularly scheduled law and motion date - February 11, 2021. Given the constructive dialogue between the "adversaries" in this case, the very experienced mediator, and the complexity of this case, the court wants to make sure that the parties have sufficient time to

consider what is learned at the initial mediation, consider any refined issues for a possibly final mediation, and not be "rushed into battle."

One possibility is that the court could set a special one case law and motion date for the parties. Another is that they could agree for an interim order extending the exclusivity period to March 2, 2021, and the court set the continued hearing date for 10:30 a.m. on February 25, 2021 (a regular Sacramento Chapter 7-12 law and motion day). This would be only slightly longer than the February 23, 2021 deadline identified by the Debtor in Possession.

At the hearing, the Parties addressed this point, **xxxxxxx**

7. **20-24123-E-11 FWP-2** **RUSSELL LESTER** **Tom Willoughby** **FINAL HEARING RE: MOTION TO USE CASH COLLATERAL AND/OR MOTION GRANTING REPLACEMENT LIENS**
8-31-20 [12]

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 in Possession, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2020. The initial emergency hearing was conducted on August 31, 2020, and the final hearing set by order of the court for September 17, 2020.

The Motion for Authority to Use Cash Collateral is xxxxx.

REVIEW OF THE MOTION

This Chapter 11 case was filed on August 27, 2020. The Debtor in Possession and creditors in this case have worked, and continue to work, in good faith to address issues arising. One such issue relates to the use of cash collateral, after entering an emergency first day cash collateral order on September 9, 2020 (Dckt. 95) and then issuing the first interim order for use of cash collateral on September 25, 2020 (Dckt. 171), there have been two prior sets of hearing and interim orders for use of cash collateral issued, the parties being able to only come to agreement for use during limited periods of time. The court's findings and conclusions with respect to these prior hearings are found in the Civil Minutes, at Dockets 75, 177, 190, and 243. The court does not restate the history therein, but incorporates it herein by this reference.

The current authorization to use cash collateral expires on December 11, 2020. Order; Dckt. 246. Debtor in Possession's supplemental pleadings for further use of cash collateral were filed on November 25, 2020, as are the Declaration of Russell Burbank, the Debtor in Possession's Financial Advisor, Dckt. 274, and Exhibits consisting of a new proposed budget, weekly cash collateral reports for the current use period and a report concerning funds that may be received under the Coronavirus Food Assistance Program, Dckt. 288.

In his Declaration, Mr. Burbank testifies that a Simplified Budget for the period December 12, 2020 through March 30, 2021, was filed as Exhibit A with his Motion. Declaration, ¶ ¶ 5, 6; Dckt. 274. The Budget is filed as Exhibit A, Dckt. 275.

Opposition by Prudential Insurance Company of America ("Prudential")

On January 14, 2021, Prudential filed its Supplemental Conditional Objection to the further use of cash collateral. Dckt. 326. Prudential recounts the ongoing communications with the Debtor in Possession and their efforts to reach mutually agreeable terms for a plan. Such has not yet been reached.

Prudential expresses concern about the Estate's, and ultimately Debtor's ability under a Plan, to generate income in the uncertain agricultural market. Prudential discusses the decline in the actual 2020 crop from the estate property from the earlier projections by the Debtor in Possession. Additionally, Prudential incorporates its earlier concerns/objections.

In its continuing commitment to try addressing its concerns with the Debtor in Possession and other creditors, Prudential will consent to a further short authorization to use case collateral, through March 31, conditioned on:

1. Prudential receiving interest payments as provided in its loan documents; and

2. Payment of Prudential's legal expenses based on its asserting to have an oversecured claim.

Prudential computes the interest payment and its legal fees to be current as of January 1, 2021, total $1,201,790.94; consisting of $966,108.89 in unpaid interest and $315,682.05 in legal fees and costs.

Response by First Northern Bank of Dixon ("FNBD")

FNBD filed its Conditional Consent to the further use of cash collateral. Dckt. 3420. FNBD recounts the prior proceedings and replacement liens provided. It further discusses variances in the actual from the budgets for the operation of the agricultural operations of the bankruptcy estate. By FNBD's calculation, the 2020 walnut harvest came in 29% smaller than projected. With respect to sales, for the period through January 1, 2021, FNBD computes the sales also coming in 29% less than projected in the budgets. FNBD also notes that from the sales, there is an outstanding account receivable from one purchaser of $72,943 that is more than 120 days past due, that appears to be of questionable collectability. If this amount is backed out of the reported sales, FNBD computes the actual, paid for sales of walnuts to be only 50% of the projections in the budgets.

FNBD also provides an analysis of the cash receipts received by the bankruptcy estate, concluding that they fall 30% short of the budgets. On the brighter side, in reviewing the case disbursements, FNBD computes that they have been 46% lower than projected in the budgets. This has resulted in the information provided showing a positive cash flow, occurring by FNBD's computation due to the estate's expenditures having been so greater reduced from what was budgeted.

FNDB states concerns over the Debtor in Possession projections and the ability to produce the increases in sales. It also notes the administrative expenses for professionals employed by the Debtor in Possession.

Notwithstanding the concerns, FNDB is willing to consent to the use of cash collateral through March 5, 2021, as shown in the Second Amended Budget, with no provision for emergency variances, on the following conditions:

1. The Secured Creditors shall be granted the Replacement Liens, as set forth in the First Interim Order, the Second Interim Order, the Third Interim Order, the Fourth Interim Order and Fifth Interim Order (the "**Prior Orders**").

2. The Cash Collateral Reporting Requirements shall continue, on a weekly basis, for each Budgeted Week.

3. Beginning with the Monthly Operating Report to be filed for the month-ended December 31, 2020, and each month thereafter, Debtor in Possession shall be ordered to file a Statement of Operations in the form required in General Business Cases filed in the Eastern District of California.

4. Beginning with the Monthly Operating Report to be filed for the month-ended December 31, 2020, and each month thereafter, Debtor in Possession shall be ordered to include in the Balance Sheet filed with the Monthly Operating Report the amount of Accrued Professional Fees incurred through the date of such report.

5. Counsel for FNB shall have approved the form of Order granting continued use of cash collateral, which shall be consistent with the form of the Prior Orders.

Conditional Consent, p. 13:2-16; Dckt. 320.

Reply of Debtor in Possession

The Debtor in Possession filed his written Reply. Dckt 380. The Debtor in Possession makes the following points. First, it asserts that Prudential does not have any interest in the cash collateral being used. Also, the Debtor in Possession asserts that Prudential is "vastly oversecured."

For FNBD, the Debtor in Possession believes that FNBD seeks to be too involved in making decisions over the operation of the bankruptcy estate. This sounds in the nature of the Debtor in Possession perceiving FNBD moving from the position of a creditor to that of a fiduciary responsible for the operation of the estate. (Clearly, FNBD would, and likely will, state at the hearing that it is merely expressing its concerns and is not trying to "micro-manage" this bankruptcy estate.)

The Debtor in Possession states with the conservation easement procured by the Debtor, from which the bankruptcy estate will benefit, the proceeds thereof will virtually assure the payments to creditors. The Declaration of Russell Burbank, the Senior Managing Director at BPM, LLP, the Financial Advisor to the Debtor in Possession is filed in support to the Reply. Dckt. 381. In discussing the adequate protection being afforded FNBD, he testifies:

11. With respect to adequate protection for FNB, the Debtor in Possession owns Putah Creek, regarding which FNB has shared an appraisal that valued the property at approximately $5,600,000. The only liens on Putah Creek are approximately $2,000,000 of loans owed to FNB; however, such loans are not cross-collateralized. As such, even in the unlikely event, there was a failure of

adequate protection, there is more than adequate unencumbered equity in Putah Creek alone to allow this case to proceed to confirmation of the proposed Plan.

Declaration, ¶ 11; Dckt. 381.

The Debtor in Possession closes, requesting that the court issue a final order authorizing the use of cash collateral through April 2, 2021. Reply, ¶ 10; Dckt. 380.

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. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363, but is limited when that property is cash collateral as follows:

> (c)
> . . .
> (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
>
> > (A) each entity that has an interest in such cash collateral consents; or
> >
> > (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.
>
> (3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.
>
> (4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

Since the use of cash collateral and the concept is well known to the experienced attorneys involved in this case, the court provides the brief discussion below from COLLIER ON BANKRUPTCY on the required adequate protection if a creditor's cash collateral is being used:

> [3] Form of Adequate Protection for Use of Cash Collateral
>
> In the context of a request for authorization to use cash collateral under section 363(c)(2), it is unlikely that the creditor will be able to receive the precise equivalent of cash collateral. However, section 363 does not require precise equivalency. The special treatment afforded cash collateral recognizes its unique status as the highest and best form of collateral but also establishes that upon an

appropriate showing it can be used if the rights of the secured creditor can be adequately protected. Whether adequate protection may be said to exist will depend on a number of factors, including the value of all collateral, the nature of the proposed use and the value of that which is being offered. While cases are quite varied, substitute liens, **equity cushions and operating controls have all been found sufficient**. [12] But maintaining insurance and granting a right to inspect books and records, without more, is not sufficient, where business is declining. [12a]

12. *In re James Wilson Assocs.*, 965 F.2d 160, 26 C.B.C.2d 1673 (7th Cir. 1992); *Prudential Ins. Co. v. Monnier (In re Monnier Bros.)*, 755 F.2d 1336, 12 C.B.C.2d 323 (8th Cir. 1985); *Martin v. Commodity Credit Corp.* 761 F.2d 472, 12 C.B.C.2d 974 (8th Cir. 1985); *Crocker Nat'l Bank v. American Mariner Indus. (In re American Mariner Indus.)*, 734 F.2d 426, 10 C.B.C.2d 910 (9th Cir. 1984), overruled on other grounds, *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d 740, 17 C.B.C.2d 1368 (1988); *Wilmington Trust Co. v. AMR Corp. (In re AMR Corp.)*, 490 B.R. 470 (S.D.N.Y. 2013). Although the grant of an administrative priority is not adequate protection, see 11 U.S.C. § 361(3), at least one court has held that where the debtor failed to give proper notice to a creditor entitled to protection and failed to provide adequate protection, section 507(b) could provide an equitable solution. *See In re Center Wholesale, Inc.*, 759 F.2d 1440, 12 C.B.C.2d 1107 (9th Cir. 1985); *see also In re California Devices, Inc.*, 126 B.R. 82, 84 (Bankr. N.D. Cal. 1991) (purpose of section 507 is to "[e]stablish a failsafe system in recognition of the ultimate reality that protection previously determined the 'indubitable equivalent' … may later prove inadequate").

12a. *In re Sterling Estates (Delaware), LLC*, 64 C.B.C.2d 1745, 2011 Bankr. LEXIS 54 (Bankr. N.D. Ill. Jan. 6, 2011).

3 Collier on Bankruptcy, Sixteenth Edition, ¶ 363.05[3].

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

The proposed cash collateral budget for the period through the week of February 4, 2020, set forth in Exhibit A is:

[Intentional Page Break]

	DECEMBER FORECAST	JANUARY FORECAST	FEBRUARY FORECAST	MARCH FORECAST
	5th Interim Budget December	5th Interim Budget January	5th Interim Budget February	5th Interim Budget March
OPERATING STATISTICS				
Walnuts Harvested (lbs)	-	-	-	-
In-Shell Shipped (lbs)	-	150,000	150,000	150,000
Meats Shipped (lbs)	10,000	60,000	60,000	75,000
SALES (INVOICES)				
In-Shell	$ -	$ 187,500	$ 187,500	$ 187,500
Processed Meats	$ 40,000	$ 240,000	$ 240,000	$ 300,000
Custom Work	$ -	$ -	$ -	$ -
Total	**$ 40,000**	**427,500**	**427,500**	**487,500**
UNIT SALES PRICES ($/LB)				
In-Shell	$ 1.25	$ 1.25	$ 1.25	$ 1.25
Processed Meats	$ 4.00	$ 4.00	$ 4.00	$ 4.00
ACCOUNTS RECEIVABLE				
Beginning Balance	$ 383,588	$ 327,067	$ 327,067	$ 327,067
Add: Invoices	$ 40,000	$ 320,000	$ 320,000	$ 320,000
Less: Receipts	$ (30,000)	$ (240,000)	$ (240,000)	$ (240,000)
Ending Balance	**$ 393,588**	**$ 407,067**	**$ 407,067**	**$ 407,067**
CASH RECEIPTS				
TOTAL CASH RECEIPTS	**$ 105,000**	**$ 179,231**	**$ 366,731**	**$ 419,539**
CASH DISBURSEMENTS				
Labor & Related Total	**$ 65,600**	**$ 91,900**	**$ 91,900**	**$ 131,450**
Farming Total	**$ 4,354**	**$ 5,289**	**$ 5,289**	**$ 6,225**
Processing Total	**$ 31,296**	**$ 34,710**	**$ 34,710**	**$ 38,125**
Administrative Total	**$ 22,676**	**$ 23,220**	**$ 23,220**	**$ 29,763**
Other Operating Total	**$ -**	**$ -**	**$ -**	**$ -**
Financing Total	**$ 325**	**$ 163**	**$ 132**	**$ 132**
Professional (Restructuring) Total	**$ 20,000**	**$ 4,875**	**$ -**	**$ -**
TOTAL CASH DISBURSEMENTS	**144,251**	**$ 160,157**	**$ 155,252**	**$ 205,695**
NET CASH FLOW				
NET CASH FLOW	**$ (39,251)**	**19,074**	**211,479**	**213,843**
CASH (BOOK) BALANCE				
Beginning Book Balance	$ 504,232	$ 464,981	$ 484,055	$ 695,534
Add: Net Cash Flow	$ (39,251)	$ 19,074	$ 211,479	$ 213,843
ENDING BOOK BALANCE	**$ 464,981**	**$ 484,055**	**$ 695,534**	**$ 909,377**

	5th Interim Forecast	5th Interim Budget	Variance to 5th Interim Budget
5TH INTERIM BUDGET AND VARIANCE DEC 12 THRU MARCH 30			
OPERATING STATISTICS			
Walnuts Harvested (lbs)	-	-	-
In-Shell Shipped (lbs)	450,000	450,000	-
Meats Shipped (lbs)	145,000	145,000	-
SALES (INVOICES)			
In-Shell	$ 562,500	$ 562,500	$ -
Processed Meats	$ 580,000	$ 580,000	$ -
Custom Work	$ -	$ -	$ -
Total	**$ 1,142,500**	**$ 1,142,500**	$ -
UNIT SALES PRICES ($/LB)			
In-Shell	$ 1.25	$ 1.25	$ -
Processed Meats	$ 4.00	$ 4.00	$ -
ACCOUNTS RECEIVABLE			
Beginning Balance	$ 553,259	$ 553,259	$ -
Add: Invoices	$ 1,142,500	$ 1,142,500	$ -
Less: Receipts	$ (965,001)	$ (965,001)	$ -
Ending Balance	**$ 730,758**	**$ 730,758**	**$ -**
CASH RECEIPTS			
TOTAL CASH RECEIPTS	**$ 1,070,501**	**$ 1,070,501**	**$ -**
CASH DISBURSEMENTS			
Labor & Related **Total**	**380,850**	**$ 380,850**	**$ -**
Farming **Total**	**21,157**	**$ 21,157**	**$ -**
Processing **Total**	**$ 138,842**	**$ 138,842**	**$ -**
Administrative **Total**	**$ 98,879**	**$ 98,879**	**$ -**
Other Operating **Total**	**-**	**$ -**	**$ -**
Financing **Total**	**753**	**$ 753**	**$ -**
Professional (Restructuring) **Total**	**24,875**	**$ 24,875**	**$ -**
TOTAL CASH DISBURSEMENTS	**$ 665,355**	**$ 665,355**	**$ -**
NET CASH FLOW			
NET CASH FLOW	**$ 405,146**	**$ 405,146**	**$ -**
CASH (BOOK) BALANCE			
Beginning Book Balance	$ 504,232	$ 504,232	$ -
Add: Net Cash Flow	$ 405,146	$ 405,146	$ (0)
ENDING BOOK BALANCE	**$ 909,377**	**$ 909,378**	**$ (0)**

The Parties are now using mediation to try and hammer out their differences to put together a consensual plan. They have agreed to continue a number of other items in dispute, but the court must address the cash collateral Motion.

At the hearing, **xxxxxxx**

FINAL RULINGS

8.	**20-25398-E-11 EVW-3**	**ALEJANDRO ALEJANDRO AND GRISELDA GONZALEZ Eric Wood**	**MOTION TO EMPLOY E. VINCENT WOOD AS ATTORNEY(S) 12-23-20 [24]**

Final Ruling: No appearance at the February 4, 2021 hearing is required.

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, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2020. By the court's calculation, 43 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.

Alejandro C. Alejandro and Griselda Gonzalez, the two debtors serving as the Debtor in Possession ("Debtor in Possession"), seek to employ E. Vincent Wood ("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 advise and guide as to the proper performance of all duties required under Chapter 11 of the Bankruptcy Code and Rules.

Debtor in Possession argues that Counsel's appointment and retention is necessary to assist the Debtor in Possession, to propose and obtain confirmation of a plan of reorganization, and to negotiate with the creditor in this cases. [Fn.1.]

FN. 1. The Motion loosely uses the term Debtor in connection with seeking the employment of the professional. It is only the Debtor in Possession who may employ a professional pursuant to 11 U.S.C. § 327 and only the professional employed by the Debtor in Possession, who is exercising the rights and powers of a trustee, who may be compensated pursuant to 11 U.S.C. § 330. *See* 11 U.S.C. § 330(b)(4) limiting allowable compensation to debtor counsel only in Chapter 12 and Chapter 13 cases; COLLIER on Bankruptcy, ¶ 330.02.

The court summarizes the terms of employment as follows (the full terms are stated in the Chapter 11 Bankruptcy Retainer Agreement, Exhibit A, Dckt. 28):

A. Representation includes all matters that arise within the case, except for appeals.

B. The Firm estimates total attorney fees will be approximately $18,000 to $25,000.

C. Debtor in Possession to also pay for the costs and expenses while performing legal services.

D. The Firm has received a pre-petition retainer of $7,000.00 from Debtor, which is to be held as a retainer for fees allowed for services provided to the Debtor in Possession.

E. Any dispute related to the employment and the payment of fees and expenses will be resolved by in this court.

E. Vincent Wood, an owner and attorney of the Law Offices of E. Vincent Wood, testifies that he has been employed by Debtor in Possession to assist them in performance of their duties; he has been practicing bankruptcy since 2014; has several Chapter 11 cases active in the Northern District of California; has participated in eight (8) other Chapter 11 cases; and he is a disinterested person. Wood testifies he and his law firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor (other than commencing the present case), creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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 E. Vincent Wood as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Chapter 11 Bankruptcy Retainer Agreement filed as Exhibit A, Dckt. 28. Approval of the compensation 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 a minute order substantially in the following form holding that:

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

The Motion to Employ filed by Alejandro C Alejandro, Griselda Gonzalez, serving as the 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, and Debtor in Possession are authorized to employ E. Vincent Wood as Counsel for Debtor in Possession on the terms and conditions as set forth in the Chapter 11 Bankruptcy Retainer Agreement filed as Exhibit A, Dckt. 28.

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 property of the bankruptcy estate and a retainer to be held and applied pay allowed fees and expenses for this representation.

IT IS FURTHER ORDERED that funds that are deemed to be a retainer 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.